

Trust Deed

Lifestages KiwiSaver Scheme

Funds Administration New Zealand Limited

Trustees Executors Limited

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Deed dated 13 April 2018

Parties

- 1 **Funds Administration New Zealand Limited** at Invercargill (**'Manager'**)
- 2 **Trustees Executors Limited** at Wellington (**'Supervisor'**)

Background

- A The Lifestages KiwiSaver Scheme (**'Scheme'**) was established by a trust deed dated 30 April 2007 (**'Original Deed'**). The Original Deed has subsequently been amended and the Scheme is currently governed by a consolidated trust deed dated 1 November 2016 (**'Existing Deed'**).
- B The Scheme is a registered KiwiSaver scheme under the Financial Markets Conduct Act 2013 (**'FMC Act'**).
- C Under clause 35 of the Existing Deed the Manager may, subject to the Governing Requirements and the other restrictions set out in that clause, and with the consent of the Supervisor, by deed from time to time rescind, alter, modify or add to any of the provisions of the Existing Deed.
- D The Supervisor and the Manager wish to amend the Existing Deed in the manner recorded in the operative part of this Deed primarily in order to amend the content requirements of a Switching Notice.
- E The Supervisor is satisfied that the amendments contained in this Deed do not have a material adverse effect on Members, and has provided or procured the certifications required by section 139 of the FMC Act. The Supervisor's consent to the amendments to the Existing Deed is evidenced by its execution of this Deed.

Covenants

In accordance with the powers of amendment contained in clause 35 of the Existing Deed, it is declared that, with effect from the date of this Deed, the Existing Deed is amended by substituting the provisions of the Existing Deed with all of the provisions of this Deed so that from that date the Scheme will be operated, administered, and governed in accordance with the provisions of this Deed.

Operative Provisions

1 Interpretation

1.1 Defined terms

In this Deed, unless the context otherwise requires:

'Administration Manager' means any Person to whom the Manager has contracted part or all of the administration of the Scheme;

'AML/CFT Act' means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;

'Application Form' means the form (if any) that is required to be completed by a natural person applying for membership of the Scheme as prescribed from time to time by the Manager;

'Assets' means any money, property or assets whatsoever and such expression includes:

- a real and personal property;
- b any debts owing to the Scheme;
- c any right or interest or other benefit; and
- d any interest in any of the above whether in possession or not;

'Associate' has the same meaning as 'Associated Person' in the FMC Act;

'Auditor' means the Person for the time being holding the office of auditor in accordance with clause 30;

'Authorised Investments' means any of the following anywhere in the world:

- a any, stock, bonds, mortgages or securities of, or deposits with, any Government or Governmental Agency;
- b ordinary and preference shares or capital of any Person listed on any licensed financial product market in New Zealand or a recognised stock exchange in any other country;
- c deposits with, loans to, or other debt obligations of any Person whether secured or unsecured;
- d bills of exchange;
- e Futures Contracts;
- f units, sub units or other shares or interest in any trust, group investment fund, managed investment scheme, superannuation scheme or similar undertaking or scheme whether constituted in New Zealand or in any other country (which includes, for the avoidance of doubt, but subject to clause 24, Units in an Investment Portfolio);
- g Foreign Exchange and Exchange Contracts;
- h any other investment approved as an Authorised Investment pursuant to this Deed; and
- i any option or right to take up or dispose of any other investments set out in this definition;

'Benefit' means a benefit arising from membership of the Scheme in accordance with clauses 8 and 9;

'Business Day' means a day, other than a Saturday, Sunday, or public holiday, on which the principal bank for the Scheme is open for business in Wellington;

'Cash' includes cheque and bank cheque;

'Closing Date' means the effective date of closing the Scheme in accordance with clause 37;

'Commencement Date' means 1 June 2007;

'Contribution' means any sum paid by or in respect of a Member to the Supervisor or the Manager as a contribution to the Scheme;

'Custodian' means a Person appointed by the Supervisor to hold the Scheme Property under clause 20.1;

'Date of Termination' means the date of termination of the Scheme in accordance with clause 36.1;

'Default Investment Portfolio' means the Investment Portfolio or combination of Investment Portfolios nominated by the Manager for the time being (in accordance with the requirements of the Governing Requirements, if applicable) as the default Investment Portfolio or combination of Portfolios for the investment of Contributions received by or in respect of Investment Portfolio Members who have not selected the Investment Portfolio or Portfolios in which they wish to hold Units;

'Deed' means this Deed as amended from time to time;

'Disclosure Document' has the meaning set out in the FMC Act and includes any PDS, Register Entry or Fund Update;

'Distribution Period' means the period commencing on a Net Asset Determination Time and ending on the day before the next Net Asset Determination Time or such other period or periods from time to time fixed by the Manager;

'Equalisation Reserve Account' means each of the accounts described in clause 17.2;

'Financial Markets Legislation' has the meaning given in the FMC Act;

'Financial Year' means the period commencing on a Review Date and ending on the day before the next following Review Date, both dates being included;

'FMA' means the Financial Markets Authority;

'FMC Act' means the Financial Markets Conduct Act 2013;

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

'Foreign Exchange and Exchange Contracts' means the currency or exchange of any country in the world and any contract for the sale or purchase of any such currency or exchange at any point of time after the date of entering into the contract;

'Fractional Unit' means that part of a Unit in respect of which there is contributed by or in respect of the Member for the Unit an amount which is less than the amount of the Unit Price at the time the Unit is issued;

'Fund' means all Assets of every type from time to time vested in the Supervisor, Custodian, or Sub-Custodian on the trusts established by this Deed;

'Fund Update' has the meaning given in regulation 5 of the FMC Regulations;

'Futures Contract' means any contract for the sale or purchase of any commodity, right or interest of any nature where sale or purchase is to be effected some time later than the date at which the sale or purchase is entered into and includes any contract taken out hedging or guaranteeing the performance or position of any stock exchange index or similar index at a point of time later than the date of the contract;

'Governing Agreements' means the KiwiSaver scheme provider agreement(s) relating to the Scheme;

'Governing Legislation' means, as appropriate, all laws applicable to the Manager (including compliance with the terms of its manager licence from the FMA), the Supervisor or the Scheme at applicable points in time and which may include, without limitation, the Financial Markets Legislation, the KiwiSaver Act, and any other methodologies or frameworks issued by the FMA under such legislation;

'Governing Requirements' means the Governing Legislation and the Governing Agreements;

'Government' or **'Government Agency'** means the government of any country or any state within a country and includes any local authority in New Zealand and any other governmental, state, municipal or similar body designated as such by the Manager following consultation with the Supervisor;

'Gross Asset Value' means, subject to clause 1.4, in respect of the Fund or an Investment Portfolio or Personal Plan, the current gross asset value of the Fund or that Investment Portfolio or Personal Plan as determined from time to time in accordance with clause 16.1a;

'GST' means goods and services tax payable under the Goods and Services Tax Act 1985;

'Income' means the amount which the Manager determines to be the net income of the Scheme attributable to the relevant Investment Portfolio or Personal Plan in accordance with clause 17.1;

'Insured Benefits' means benefits provided to Members by way of the Supervisor or Manager entering into a Policy in respect of those Members;

'Insurer' means a company selected from time to time by the Manager to provide a Policy;

'Investment' means any one of the holdings of Authorised Investments or other Assets or rights of the Scheme forming part of the relevant Investment Portfolio or Personal Plan;

'Investment Manager' means any Person to whom the Manager has contracted some or all of the investment of the Scheme's Assets;

'Investment Portfolio' means an investment portfolio nominated by the Manager in accordance with clause 5.1, comprising all Scheme Property, Liabilities and obligations for the time being vested in the Supervisor, Custodian, or Sub-Custodian upon the trusts of this Deed attributed to that investment portfolio, including:

- a the proceeds of sale or realisation of any Scheme Property attributable to that investment portfolio pending reinvestment;

- b all additions, accretions or other assets relating to the Scheme Property attributable to that investment portfolio; and
- c all of the Income attributable to that investment portfolio held pending reinvestment;

'Investment Portfolio Member' means a member for whom no Personal Plan has been created and remains in existence;

'Investment Profile' means, in respect of a Member, the proportions in each Investment Portfolio that the Member indicates to the Manager he or she would like their interest in the Scheme to be invested;

'Issuer Obligations' has the meaning given to that term by the FMC Act;

'KiwiSaver Act' means the KiwiSaver Act 2006 and includes the KiwiSaver Rules;

'KiwiSaver Rules' means the KiwiSaver Scheme Rules contained in Schedule 1 to the KiwiSaver Act;

'Liabilities' means debts and other obligations of the Supervisor and the Manager acting in their respective capacity as supervisor and trustee or as manager of the Scheme payable from the Fund and the liability of the Supervisor or Manager as drawer or acceptor of a bill of exchange including all taxes and duties payable from the Fund but excluding all Units, the obligation to pay benefits to Personal Plan Members (whether pursuant to a current Withdrawal Request or otherwise), and contingent liabilities except to the extent the Manager after consultation with the Supervisor decides an allowance should properly be made therefor;

'Licensed Manager' means a Person who holds a licence under the FMC Act to act as a manager of a managed investment scheme;

'Licensed Supervisor' means a Person who holds a licence to act as a supervisor of a managed investment scheme under the Financial Markets Supervisors Act 2011;

'Manager' means the party to this Deed named as manager or such other Person for the time being appointed to act as manager of the Scheme pursuant to this Deed;

'Member' means a natural person who has been accepted for membership of the Scheme;

'Minimum Personal Plan Balance' means in respect of any Personal Plan, the minimum Net Asset Value that must be maintained in that Personal Plan as may be determined from time to time by the Manager;

'Minimum Value of Units' means in respect of any Investment Portfolio, the minimum value of Units that may be held in that Investment Portfolio as may be determined from time to time by the Manager;

'Month' means calendar month;

'Net Asset Determination Time' means such time or times on any Business Day and at such intervals as the Manager may from time to time reasonably determine in respect of the Scheme for the purposes of clause 16.1, **provided that** such intervals shall be no longer than one calendar month;

'Net Asset Value' means, subject to clause 1.4, in respect of an Investment Portfolio or Personal Plan, the current net asset value of that Investment Portfolio or Personal Plan as determined from time to time in accordance with clause 16.1b;

'Net Asset Value per Unit' means, in respect of an Investment Portfolio, the Net Asset Value current at the time a determination is made divided by the Number of Units issued at such time;

'New Zealand Superannuation Qualifying Age' means the age specified in section 7(1) of the New Zealand Superannuation and Retirement Income Act 2001, irrespective of whether or not the particular person qualifies for New Zealand superannuation at that or any other age;

'Number of Units issued' means, in respect of an Investment Portfolio, the total number of all Units issued and outstanding at the Relevant Time;

'Office' means the registered office from time to time of the Manager;

'Ordinary Resolution' means a resolution approved by a simple majority of the Members who are entitled to vote and who vote on the question;

'Payment Period for Benefits' means a period of five Business Days after the next Net Asset Determination Time immediately following receipt by the Manager of the relevant Withdrawal Request;

'PDS' has the meaning given to that term in the FMC Act;

'Permanent Employee' means an employee (including a part-time employee) other than an employee employed in temporary employment within the meaning of section 12 of the KiwiSaver Act;

'Person' includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality);

'Personal Plan' means a Personal Plan created for a Personal Plan Member in accordance with clause 5.3, comprising all Scheme Property, Liabilities and obligations for the time being vested in the Supervisor, Custodian, or Sub-Custodian upon the trusts of this Deed attributed to that Personal Plan, including:

- a the proceeds of sale or realisation of any Scheme Property attributable to that Personal Plan pending reinvestment;
- b all additions, accretions or other assets relating to the Scheme Property attributable to that Personal Plan; and
- c all of the Income attributable to that Personal Plan held pending reinvestment;

'Personal Plan Member' means a Member for whom a Personal Plan has been created and remains in existence;

'Policy' means a policy of insurance or assurance entered into between an Insurer and the Supervisor or the Manager in connection with the provision of Insured Benefits;

'Register' means the register of Members pursuant to clause 31;

'Register Entry' has the meaning given to that term in the FMC Act;

'Registrar' means the Registrar of Financial Service Providers;

'Regulated Offer' has the meaning given in the FMC Act;

'Related Party Benefit' has the meaning given to that term in the FMC Act;

'Relevant Time' means, subject to clause 1.4:

- a in respect of an issue of Units for Cash means the time immediately after the next Net Asset Determination Time after acceptance by the Manager of the relevant Contribution;
- b in respect of a cancellation of Units pursuant to a Withdrawal Request or to facilitate a transfer or a refund under clause 6.11 means (subject to clause 10.1) the time immediately after the next Net Asset Determination Time after the receipt by the Manager of the Withdrawal Request or after the transfer or refund obligation arises (as the case may be); and
- c in respect of the realisation of Investments attributable to a Personal Plan to facilitate a refund under clause 6.11 means (subject to clause 10.1, 10.2, or 10.5) the time of realisation of Investments to satisfy the refund obligation;

'Review Date' means 1 April in each year or such other date as may be determined from time to time by the Manager;

'Scheme' means the KiwiSaver scheme governed by this Deed and known as the Lifestages KiwiSaver Scheme;

'Scheme Property' has the meaning given in the FMC Act;

'SIPO' means a statement of investment policy and objectives for the Scheme which complies with the Governing Requirements;

'Special Resolution' means a resolution approved by no less than 75% of the number of Members who are entitled to vote and who vote on the question;

'Sub-Custodian' has the meaning given to that term in clause 20.1biiC;

'Supervisor' means the party to this Deed named as supervisor or such other Person for the time being appointed to act as supervisor and trustee of the Scheme pursuant to this Deed;

'Switching Notice' means a notice given pursuant to clause 11.1;

'Tax' includes all income tax, withholding tax, goods and services tax, stamp, registration and other duties and other taxes, levies, imposts, deductions and charges whatsoever together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof but does not include income tax payable by the Supervisor or Manager on fees received by the Supervisor or Manager for performing services pursuant to this Deed;

'Unit' means an individual part or share in the beneficial interest in an Investment Portfolio and includes a Fractional Unit unless the context otherwise requires;

'Unit Price' in relation to an Investment Portfolio means:

- a on the establishment of an Investment Portfolio the sum of \$1.00; and
- b at any other time, subject to clause 1.4, the Net Asset Value per Unit in respect of that Investment Portfolio rounded to five decimal places as determined by the Manager having regard to the need to maintain equity between the Members of that Investment Portfolio;

'Winding Up Date' means the effective date of the winding up the Scheme in accordance with clause 38;

'Withdrawal Request' means a withdrawal request in accordance with clause 8.2; and

'Working Day' has the meaning given in the Interpretation Act 1999.

1.2 **General construction**

In this Deed unless the context otherwise requires:

- a words importing the singular number include the plural and vice versa and the masculine gender includes the feminine gender and vice versa;
- b references to statutes, regulations, sections of statutes, clauses of regulations, or other legislative instruments includes all amendments, re-enactments and replacements thereof and any additions thereto covering the same subject matter;
- c reference to any statute includes statutory regulations or legislative instruments promulgated or otherwise made from time to time and in force under that statute and, in the case of the FMC Act, includes any framework or methodology issued by FMA under the FMC Act;
- d headings are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed;
- e a reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time;
- f a reference to any party to a document includes its successors and permitted assigns; and
- g references to clauses or parts are to clauses or parts of this Deed.

1.3 **Terms implied by law**

The KiwiSaver Rules and any statutory provisions or other terms implied in this Deed under the Governing Requirements or otherwise at law apply for so long as they are implied in this Deed despite anything to the contrary in this Deed, and any provision in this Deed that is contrary to any such implied term is void to the extent that it is contrary.

1.4 **Frameworks or methodologies**

Where FMA has published frameworks or methodologies that require certain matters to be calculated, determined, fixed, or carried out in a particular way, the Manager and the Supervisor (as applicable) shall comply with the requirements of those frameworks or methodologies. Any such frameworks or methodologies shall apply notwithstanding, and

prevail over, anything to the contrary in this Deed and the provisions of this Deed shall be construed accordingly.

2 Establishment of the Scheme

2.1 Continuation of Scheme

The continuation of the trusts relating to the Scheme established in accordance with the Original Deed as subsequently amended is confirmed, on the basis of the amendments contained in this Deed.

2.2 Purpose of Scheme

The purpose of the Scheme is to provide retirement benefits directly to individuals.

2.3 Relationship with Governing Legislation

If there is any inconsistency between the provisions of this Deed and any Governing Legislation, the provisions of the relevant Governing Legislation shall prevail and this Deed shall be construed accordingly.

3 Admission to membership

3.1 Offers of membership

Any natural person who meets the New Zealand criteria in section 128(2) or 128(3) of the FMC Act may become a Member:

- a in accordance with section 48 of the KiwiSaver Act; or
- b subject to the Governing Requirements, by applying to the Manager on such conditions as the Manager may from time to time determine (including any conditions requiring identification of the applicant to enable the Manager to comply with its obligations under the AML/CFT Act), and the Manager accepting that application **provided that** where section 84B(g) of the State Sector Act 1988 applies the Manager shall be obliged to accept such application.

3.2 Eligibility

A person may not be admitted as a Member unless they meet the New Zealand criteria in section 128(2) or (3) of the FMC Act.

3.3 Cessation of membership

Subject to the Governing Requirements, a Member shall cease to be a Member:

- a if the Member does not hold any Units or has an interest in a Personal Plan to which no Scheme Property is attributable and the Manager notifies the Member that his or her membership is terminated; or
- b in accordance with section 20(1) of the KiwiSaver Act.

3.4 Continued eligibility on change of employer

Where a Member who has become a Member by virtue of his or her employer's choice of the Scheme for the purposes of section 46 of the KiwiSaver Act ceases, for any reason, to be employed by that employer, that Member shall continue to be eligible to be a Member and the 'Involuntary Transfer' procedure set out in section 57 of the KiwiSaver Act shall not apply. This clause does not limit section 181 of the FMC Act (which provides for transfers with FMA consent in certain circumstances).

3.5 Members' right to information

Each Member shall be entitled to receive all information that he or she is entitled to receive under the Governing Requirements in such form and within such timeframes specified by the relevant Governing Requirements.

4 Nature of Member's interest

4.1 Beneficial interest in Investment Portfolios

The beneficial interest in each Investment Portfolio shall be divided into Units which shall each confer an interest in that Investment Portfolio.

4.2 Equal but not specific interests

Subject to the terms of this Deed, each Unit in an Investment Portfolio other than a Fractional Unit shall be of equal value and shall confer an equal interest in the relevant Investment Portfolio. A Fractional Unit shall confer a proportional interest in the relevant Investment Portfolio. However, a Unit shall not confer any interest in any other Investment Portfolio, Personal Plan, or other particular part of the Fund or in any Investment or Liability of the Scheme.

4.3 Beneficial interests in Personal Plans

The beneficial interest in a Personal Plan shall be held by the Member to whom that Personal Plan relates. A Member's interest in a Personal Plan shall not confer any interest in any Investment Portfolio, other Personal Plan, or other particular part of the Fund or in any Investment or Liability of the Scheme that does not form part of the Member's Personal Plan.

4.4 No right to Investments or to be involved in management

Subject to Member's rights created by this Deed, or by the Governing Requirements, no Member shall be entitled to:

- a require the transfer to the Member of any Investment; or
- b attend meetings whether of shareholders or otherwise or to vote or take part in or consent to any action concerning any Investment. This shall not in any way prevent or restrict the ability of a Member to bring any action against the Supervisor or Manager for any breach of their duties under the Governing Legislation or otherwise at law.

4.5 Manager has full powers

Subject to compliance with the Manager's obligations under this Deed, and to all applicable Governing Requirements, the Manager shall have sole and unrestricted rights and powers in

dealing with the Scheme, the Fund, each Investment Portfolio and Personal Plan, and each Investment or any part thereof.

5 Creation of Investment Portfolios and Personal Plans

5.1 Nomination of Investment Portfolios

Subject to clause 5.7, the portion of the Fund not attributable to any Personal Plans created under clause 5.3 shall be divided into one or more Investment Portfolios on such terms and conditions determined by the Manager, in consultation with the Supervisor, from time to time. No Investment Portfolio terms shall be changed unless notified to the Supervisor. The Scheme Property attributable to each Investment Portfolio shall be held on the trusts of this Deed, **provided that** in respect of each Investment Portfolio the Manager may from time to time, subject to compliance with the Governing Requirements and clause 23, prescribe:

- a the types of Authorised Investment that may be held in relation to the Investment Portfolio;
- b the investment strategy and objectives that will apply to the Investment Portfolio;
- c the Minimum Value of Units for the Investment Portfolio or each class of Members holding Units in the Investment Portfolio (either alone or as an aggregate across one or more specified Investment Portfolios) (**provided that**, where it is an express or implied requirement of the Governing Requirements in respect of a class of Members or Investment Portfolio, there shall be no Minimum Value of Units);
- d the level of fees that will apply in respect of the Investment Portfolio or each class of Members holding Units in the Investment Portfolio; and
- e such other matters not inconsistent with the terms of this Deed or the Governing Requirements as the Manager considers necessary or desirable for the appropriate administration of the Investment Portfolio or as is otherwise required by law.

5.2 Nomination of Default Investment Portfolio

The Manager (or such other Person so authorised by the Governing Requirements) shall, from time to time, nominate for the Scheme or a group of Investment Portfolio Members in the Scheme (in accordance with the requirements of the Governing Requirements, if applicable) an Investment Portfolio or combination of Investment Portfolios as the Default Investment Portfolio for the investment of amounts received by or in respect of Investment Portfolio Members who have not selected the Investment Portfolio or Portfolios in which they wish to hold Units, or where otherwise required by the Governing Requirements.

5.3 Creation of Personal Plans

Subject to clause 5.7, the Manager may create Personal Plans for Personal Plan Members on such terms and conditions as may be determined by the Manager from time to time. The Scheme Property attributable to each Personal Plan shall be held on the trusts of this Deed, **provided that** in respect of each Personal Plan the Manager may from time to time, subject to compliance with the Governing Requirements and clause 23, prescribe:

- a the types of Authorised Investment that may be held in relation to the Personal Plan;

- b the investment strategy and objectives that will apply to the Personal Plan;
- c the Minimum Personal Plan Balance for the Personal Plan;
- d the level of fees that will apply in respect of the Personal Plan; and
- e such other matters not inconsistent with the terms of this Deed or the Governing Requirements as the Manager considers necessary or desirable for the appropriate administration of the Personal Plan or as is otherwise required by law,

provided that, in the case of a Personal Plan created for the purpose of effecting a conversion on the winding up of one or more Investment Portfolios under clause 38.2, the Supervisor must be satisfied that the terms and conditions of the Personal Plan and any other matters prescribed by the Manager under this clause must not, without the written consent of the relevant Member, have a material adverse effect on the relevant Member.

5.4 **Scheme a single fund**

Notwithstanding the division of the Fund into Investment Portfolios pursuant to clause 5.1 and Personal Plans pursuant to clause 5.3, the Scheme shall comprise a single trust fund with the value of the various Members' interests in the Fund determined by reference to the value of the Units held by the Members in relation to the Investment Portfolio or Portfolios which they have selected or, in the case of Personal Plan Members, the Scheme Property attributable to the relevant Personal Plan. Notwithstanding the fact that the Investment Portfolios and Personal Plans do not constitute separate and independent trust funds:

- a the Liabilities attributable to a particular Investment Portfolio or Personal Plan shall be met at first instance from the Scheme Property attributable to that Investment Portfolio or Personal Plan;
- b where the Scheme Property attributable to a particular Investment Portfolio or Personal Plan are insufficient to meet the Liabilities attributable to that Investment Portfolio or Personal Plan, those Liabilities shall be met from the Fund in such equitable manner as the Manager with the approval of the Supervisor sees fit;
- c except to the extent required to meet the Liabilities of the Scheme attributable to any other Investment Portfolio or Personal Plan, all Investments of the Fund attributable to an Investment Portfolio or a Personal Plan shall be vested in the Supervisor, Custodian, or Sub-Custodian (as applicable) for the benefit of the Member(s) who have an interest in that Investment Portfolio or Personal Plan pursuant to this Deed; and
- d subject to clause 20.2, the Manager shall cause separate records and accounts to be maintained in respect of each Investment Portfolio and Personal Plan in accordance with the Governing Requirements.

5.5 **Variation and merger of Investment Portfolios**

Unless the Manager, in consultation with the Supervisor, determines that to do so would have a material adverse effect on the interests of Members generally, and subject to clause 5.7 and any express provision in this Deed, any Disclosure Documents relating to the Investment Portfolio in question, and compliance with the Governing Requirements, the Manager may:

- a by notice in writing to the Supervisor vary all or any of the terms of any Investment Portfolio prescribed by the Manager under clause 5.1 if the Manager, in consultation with the Supervisor, determines that the variation is not material;
- b in any case where the Manager, in consultation with the Supervisor, determines that the variation is material, by notice in writing to the Supervisor and the affected Members vary all or any of the terms of any Investment Portfolio prescribed by the Manager under clause 5.1; and
- c by notice in writing to the Supervisor and the affected Members, where the Manager considers that doing so would be beneficial for the more convenient, economical or advantageous working, management or administration of the Scheme and would not have a material adverse effect on the interests of Members holding Units relating to the relevant Investment Portfolio or Investment Portfolios in general, terminate and merge any one or more Investment Portfolios with any other Investment Portfolio with the terms of the affected Investment Portfolios varied accordingly.

5.6 Variation of Personal Plans

Subject to clause 5.7 and any express provision in this Deed, any Disclosure Documents relating to the Personal Plan, and compliance with the Governing Requirements, the Manager may, after giving prior written notice to the Supervisor:

- a by notice in writing to the relevant Member vary all or any of the terms of any Personal Plan prescribed by the Manager under clause 5.3 if the Manager is satisfied that the variation would not have a material adverse effect on the interests of the relevant Member and, in the case of a Personal Plan created for the purpose of effecting a conversion on the winding up of one or more Investment Portfolios under clause 38.2, will not have an effect which is prohibited by the proviso to clause 5.3; and
- b in any case vary all or any of the terms of any Personal Plan prescribed by the Manager under clause 5.3 with the written consent of the relevant Member.

5.7 Limitation on variation powers

The Manager's powers of variation and merger under clause 5.5 and variation under clause 5.6 do not extend to permit any alteration to the Scheme that:

- a would be contrary to or have the effect of nullifying or reversing or amending any matter stated in this Deed, or any provision implied in this Deed by or any other requirement of the Governing Requirements; or
- b would have the effect of extending or varying or limiting the scope of this Deed in a material particular.

5.8 Assets vested in the Supervisor, Custodian, or Sub-Custodian

All Scheme Property is vested in the Supervisor to be held in trust for Members, in accordance with the terms of this Deed. However a Custodian or Sub-Custodian may be appointed in accordance with clause 20.

6 Contributions and allocation of Units

6.1 Rate of Contributions

- a Any minimum Contribution required to be made to the Scheme by or in respect of a Member by sections 64 to 68 and 101A of the KiwiSaver Act, rule 3 of the KiwiSaver Rules and section MK 1 of the Income Tax Act 2007 must be made. Subject to the terms and conditions contained in or pursuant to this Deed (including without limitation, clause 14.4), and any other terms and conditions that the Manager shall from time to time determine (not being inconsistent with the Governing Requirements) no other Contributions to the Scheme shall be required by a Member or his or her employer (if any). An employer that is making Contributions to the Scheme in respect of a Member shall be entitled to cease contributing to the Scheme in respect of that Member if that Member ceases to be an employee of that employer.
- b The employer of each Member who is an employee may at any time make voluntary contributions to the Scheme on behalf of the Member by:
 - i paying those contributions via the Commissioner of Inland Revenue in accordance with the KiwiSaver Act; or
 - ii to the extent permitted by the KiwiSaver Act, remitting money to the Manager for this purpose in accordance with the requirements of the Manager from time to time.
- c In addition, subject to the Governing Requirements the Manager may in its discretion accept other amounts in respect of a Member (including lump sum contributions).

6.2 Payment of Contributions

Contributions to the Scheme may be made, received or collected by any authorised agent on behalf of the Manager in any manner provided for in the Governing Requirements or in any other manner set by the Manager from time to time.

6.3 Application of Contributions

Subject to clause 6.10, all Contributions accepted by the Manager from or in respect of a Member shall be applied by the Manager:

- a in the case of an Investment Portfolio Member, by way of subscription by the Member for Units in the Investment Portfolio or Portfolios in the Scheme selected from time to time by the Member in accordance with the Member's Investment Profile on terms and conditions determined by the Manager from time to time (or, if no such selection has been made by the Member or if the Governing Requirements otherwise require, in the Default Investment Portfolio); and
- b in the case of a Personal Plan Member, towards the purchase of Investments in accordance with the terms of that Personal Plan prescribed by the Manager under clause 5.3.

6.4 Issue of Units

The Manager shall issue Units to Investment Portfolio Members at a Unit Price for the relevant Investment Portfolio determined in accordance with the terms and conditions

contained in this Deed. In particular, the Manager must not make a Regulated Offer of Units or of membership of the Scheme unless:

- a the Scheme is registered under the FMC Act;
- b a PDS has been prepared and lodged with the Registrar in respect of the Scheme; and
- c all information that the Register Entry in respect of the Scheme is required by the FMC Act to contain has been supplied to the Registrar.

6.5 Disclosure Documents

- a The Manager must use reasonable commercial endeavours to ensure that the Disclosure Documents for the Scheme at all times comply with the Financial Markets Legislation.
- b The Manager must provide the Supervisor with a draft of all Disclosure Documents (other than any Disclosure Document to be made available under subpart 4 of Part 3 of the FMC Act), drafts of which shall be provided to the Supervisor on request) so as to provide the Supervisor with a reasonable opportunity to review and provide comments on those draft Disclosure Documents (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).
- c The Manager will consider in good faith any comments received from the Supervisor on the draft Disclosure Documents provided under clause 6.5b.

6.6 Cash and non-Cash Contributions

The Contributions by or in respect of Investment Portfolio Members shall be paid in Cash. Contributions by or in respect of Personal Plan Members shall be paid in Cash unless the Manager, in its absolute discretion, determines to accept Contributions in non-Cash form. The Manager shall only be entitled to exercise this discretion if it is satisfied and certifies to the Supervisor that:

- a doing so would not breach the Governing Requirements; and
- b the proposed Contribution is an Authorised Investment and could be held or otherwise dealt with in accordance with the terms of the relevant Personal Plan prescribed by the Manager under clause 5.3.

Where the Manager accepts a non-Cash Contribution, the Member must provide all documentation and take all other action necessary to enable the Contribution to be vested in the Supervisor, Custodian, or Sub-Custodian (as applicable) immediately upon receipt. Subject to the Governing Requirements, if this requirement is not met the Contribution and any interest in the Scheme to which it relates are void.

6.7 Funds which do not clear

Subject to the Governing Requirements, Units issued (in the case of an Investment Portfolio Member) and interests in a Personal Plan recognised (in the case of a Personal Plan Member) against funds which do not clear are void.

6.8 Discretion to refuse

Subject to the Governing Requirements, the Manager may, in its absolute discretion accept or refuse any application for membership of the Scheme or to invest in the Scheme and is not required to give any reason or ground for such refusal. A decision to refuse an application shall be made within five Business Days of receipt. Once the Manager has made a decision to reject an application, the Manager must as soon as practicable (and in any event, no later than one month after the obligation to refund arises) refund or arrange to refund the relevant application monies in accordance with the FMC Act (without interest).

6.9 Application monies subject to trusts

All Cash Contributions received by or on behalf of the Manager shall:

- a be promptly paid into a separate bank account in accordance with the Governing Requirements; and
- b be held in trust and subsequently applied or repaid in accordance with the Governing Requirements.

All non-Cash Contributions received by or on behalf of the Manager shall become subject to the trusts created by this Deed immediately upon receipt and acceptance as part of the Fund, and shall be immediately vested in the Supervisor, Custodian, or Sub-Custodian (as applicable).

6.10 Entry fee

The Manager may deduct an entry fee for any Contribution to the Scheme of up to the greater of \$500 or 5% of the Cash or other consideration received as it may determine from time to time in respect of an Investment Portfolio, class of Members investing in an Investment Portfolio, Personal Plan, or type or nature of Contribution or other amount received. Any such fee must comply with the Governing Requirements and be disclosed in a manner that complies with the Governing Requirements.

6.11 Refunds required by Governing Legislation

In the event of a refund to the Government department or other Person acting as central administrator of KiwiSaver from time to time being required pursuant to the Governing Requirements, or if the Manager determines to refund an amount where under the Governing Requirements to do so is voluntary, Units with an aggregate Unit Price at the Relevant Time (in the case of an Investment Portfolio Member) or Scheme Property attributable to the Member's Personal Plan (in the case of a Personal Plan Member) with a realisable value at the Relevant Time equal to the amount of the refund to be paid shall be treated as void, and the Manager shall refund or arrange for the Supervisor to refund the relevant amount in the manner prescribed or otherwise agreed from time to time. If the aggregate Unit Price of all of the relevant Member's Units or the total realisable value of the Scheme Property attributable to the Member's Personal Plan after providing for all Liabilities of the Scheme attributable to that Personal Plan (as applicable) at the Relevant Time is insufficient to meet the amount to be refunded pursuant to this clause the Manager shall (subject to the Governing Requirements and any other rule of law) be entitled to recover the amount of any shortfall from the Member personally.

6.12 Vesting of employer Contributions

All Units in the Scheme issued to an Investment Portfolio Member and all interests of a Personal Plan Member in a Personal Plan as a result of Contributions to the Scheme by an employer of that Member shall vest completely in the Member immediately after the relevant Contribution is made and corresponding Unit issued, or interest recognised.

7 Number of Units to be allocated

7.1 Number of Units

The number of Units to be allocated in respect of a Contribution to an Investment Portfolio shall be calculated by dividing the amount of Cash received by the Unit Price at the Relevant Time.

7.2 Classes of Units

The Manager may, in applying Contributions by way of a subscription for Units pursuant to clause 6.3, distinguish between the types of Contribution received by recognising different classes of Units or Fractional Units and for this purpose may, if it so wishes, establish a separate account for each Member for each class of Units held by that Member.

7.3 Consolidation of Fractional Units

If it shall be necessary to allocate Fractional Units then the Manager may require all Fractional Units of the relevant class held by a Member in respect of an Investment Portfolio to be consolidated into whole Units of the relevant class in that Investment Portfolio so far as is possible.

8 Benefits and Withdrawal Requests

8.1 Circumstances where benefits available

A Member may cancel all or any of that Member's Units in the Scheme or direct the Manager to realise Scheme Property attributable to a Member's Personal Plan (as applicable) if he or she is entitled to a withdrawal pursuant to rules 4 to 17 of the KiwiSaver Rules, and any other Governing Requirements as applicable from time to time.

8.2 Making a Withdrawal Request

A Member may, in person or by an agent, request the Manager to redeem all or any of the Units held by that Member (in the case of an Investment Portfolio Member) or realise any or all of the Scheme Property attributable to the relevant Personal Plan (in the case of a Personal Plan Member) to pay a Benefit payable under clause 8.1.

8.3 Form of request

Subject to the Governing Requirements, a Withdrawal Request in respect of a Member shall either be in writing signed by the Member or that Member's duly authorised agent or may be in such other form as is acceptable to the Manager. A Withdrawal Request in respect of any Member shall only be effective on the Business Day it is received by the Manager and shall at the discretion of the Manager:

- a subject to clause 10.5, or unless otherwise agreed by the Manager, be irrevocable once given;
- b specify the number of Units to be redeemed (in the case of an Investment Portfolio Member) or the amount of money to be withdrawn (in the case of either an Investment Portfolio Member or a Personal Plan Member); and
- c in the case of an Investment Portfolio Member only, either specify the Investment Portfolio(s) in respect of which Units shall be redeemed and the class of Units which shall be redeemed or, in the absence of any such specification, shall be deemed to have specified such Investment Portfolio(s) or classes of Units as the Manager sees fit, having regard to the Member's Investment Profile.

8.4 Processing of Withdrawal Request

Subject to clause 10.1 or 10.2, a Withdrawal Request shall take effect and the Manager shall:

- a in the case of an Investment Portfolio Member, redeem the Units subject to the Withdrawal Request at the Unit Price at the Relevant Time; or
- b in the case of a Personal Plan Member, realise sufficient Scheme Property attributable to the relevant Personal Plan in order to satisfy the Withdrawal Request.

Where a Withdrawal Request is given for the purpose of rule 10 or 12 of the KiwiSaver Rules, the Withdrawal Request shall be considered by the Supervisor in accordance with the KiwiSaver Rules and, if the Supervisor is reasonably satisfied as to the matters required by the KiwiSaver Rules, shall be actioned by the Manager in accordance with the KiwiSaver Rules.

8.5 Exit or transfer fee

The Manager may charge a fee of up to the greater of \$500 or 5% of the amount withdrawn or transferred from the Scheme (as applicable) as it may determine from time to time in respect of an Investment Portfolio, class of Members investing in an Investment Portfolio, Personal Plan, or type or nature of transaction. Any such fee must comply with the Governing Requirements and be disclosed in a manner that complies with the Governing Requirements.

8.6 Benefits fully funded

The Benefits of the Scheme provided pursuant to this Deed shall be fully funded as they accrue.

9 Payment of Benefits

9.1 Time for payment

Subject to clauses 10.1, 10.2 and 32.1, upon receipt of a Withdrawal Request the Manager shall within the Payment Period for Benefits pay the Benefit to the Member or, subject to the Governing Requirements, such other person entitled to payment.

9.2 Calculation of Investment Portfolio Members' Benefits

- a Subject to clause 1.4, where the Withdrawal Request by an Investment Portfolio Member specifies the number of Units in each Investment Portfolio to be redeemed, the Benefit shall be calculated in accordance with the following formula:

$$(A \times B) - C = D$$

Where:

A is the Unit Price at the Relevant Time.

B is the number of Units in the relevant Investment Portfolio to be redeemed in accordance with the Withdrawal Request.

C is any amount determined by the Manager to be deducted in accordance with clause 32.1 and any exit or transfer fee payable under clause 8.5.

D is the Benefit payable.

- b Subject to clause 1.4, where the Withdrawal Request by an Investment Portfolio Member specifies the amount of money required, the Manager shall at the Relevant Time redeem the number of Units as determined under the following formula:

$$\frac{(A + B)}{C} = D$$

Where:

A is the amount of moneys requested in the Withdrawal Request.

B is any amount determined by the Manager to be deducted under clause 32.1 and any exit or transfer fee payable under clause 8.5.

C is the Unit Price at the Relevant Time.

D is the number of Units in the relevant Investment Portfolio to be redeemed in accordance with the Withdrawal Request.

9.3 Limit on Benefit amount for Personal Plan Members

Where a Withdrawal Request by a Personal Plan Member specifies an amount of money that exceeds the amount that is obtained from the realisation of all Scheme Property attributable to that Personal Plan, after providing for all Liabilities of the Scheme attributable to that Personal Plan, the amount of the Benefit payable shall be limited to the amount obtained.

9.4 Deductions from Benefits paid to Personal Plan Members

The Manager may deduct from any Benefit payable to a Personal Plan Member any amount determined by the Manager to be deducted in accordance with clause 32.1 and any exit or transfer fee payable under clause 8.5.

9.5 Constraints on Benefit payments

Any Benefit payable from the Scheme as a result of a Withdrawal Request being made shall (subject to the Governing Requirements) be subject to the deduction of any amounts payable under clause 32.1 and:

- a in the case of an Investment Portfolio Member:
 - i the minimum Units being redeemed complying with any minimum Unit requirements fixed from time to time by the Manager; and
 - ii the value of the Member's remaining Units satisfying the Minimum Value of Units; or
- b in the case of a Personal Plan Member:
 - i the Benefit requested complying with any minimum requirements fixed from time to time by the Manager (unless it is for a full Benefit payment); and
 - ii the Member continuing to maintain any required Minimum Personal Plan Balance,

provided that the Manager may reduce or waive any applicable penalties, management fees or other charges payable on the redemption of Units and any minimum Unit or Minimum Personal Plan Balance requirements applying.

10 Suspension rights

10.1 Suspension of withdrawals

If by reason of:

- a a decision to terminate the Scheme;
- b financial, political or economic conditions applying in respect of any financial market in which Investments may be sold;
- c the nature of any Investments; or
- d the occurrence or existence of any other circumstances or events in relation to the Scheme,

the Manager shall reasonably form the opinion that it is not practicable, or would be materially prejudicial to the interests of Members, to realise Investments relating to the Scheme or borrow in accordance with this Deed in order to permit payment of Benefits for the Scheme, then the Manager may (unless to do so is precluded by the Governing Requirements in the relevant circumstances), having given prior written notice to the Supervisor, give notice (a '**Scheme Suspension Notice**') to that effect to any Member who provides a Withdrawal Request during the suspension period or has given a Withdrawal Request that has not already been given effect to.

10.2 Suspension of withdrawals from a Personal Plan

Without limiting the generality of clause 10.1, if by reason of any of the circumstances set out in that clause, or by reason of the nature or composition of the Scheme Property attributable to a Personal Plan, the Manager shall reasonably form the opinion that it is not practicable, or would be materially prejudicial to the interests of the Member to whom that Personal Plan

relates, or to any other Member, to realise Scheme Property attributable to that Personal Plan or borrow in accordance with this Deed in order to permit payment of Benefits to be funded from that Personal Plan, then the Manager may (unless to do so is precluded by the Governing Requirements in the relevant circumstances), having given prior written notice to the Supervisor, give notice (a '**Personal Plan Suspension Notice**') to that effect to the Member to whom that Personal Plan relates.

10.3 **Effect of suspension notice**

Subject to clause 10.5, a Scheme Suspension Notice and a Personal Plan Suspension Notice shall have the effect of suspending the operation of all existing and future Withdrawal Requests relating to that Scheme or the Personal Plan (as applicable) until:

a the Manager gives notice to the Supervisor and Members to the effect that the relevant Suspension Notice is cancelled; or

b after the expiration of six months,

whichever is the earlier.

10.4 **Unit Price following suspension**

Subject to clause 1.4 and clause 8, where Withdrawal Requests are suspended pursuant to clause 10.1, the Unit Price payable to Investment Portfolio Members shall be calculated on the basis of the relevant Net Asset Value determined at the Net Asset Determination Time immediately after the date the suspension is cancelled.

10.5 **Timing of Withdrawal Request during suspension period**

Where Withdrawal Requests are suspended pursuant to clause 10.1 or 10.2 a Member may revoke a Withdrawal Request at any time prior to cancellation of the Suspension Notice or the expiration of six months, whichever is the earlier.

11 **Switching**

11.1 **Switching Notice**

Any Investment Portfolio Member may at any time give a notice in writing (a '**Switching Notice**') to the Manager to the effect that the Member wishes to withdraw Units from one Investment Portfolio ('**Withdrawal Portfolio**') and invest the proceeds of such withdrawal in another Investment Portfolio or Investment Portfolios ('**Switch Portfolio**' or '**Switch Portfolios**').

11.2 **Contents of Switching Notice**

A Switching Notice shall:

a at the discretion of the Manager specify either:

i a monetary amount or the number of Units in the Withdrawal Portfolio in respect of which the Member desires to effect withdrawal and the Switch Portfolio or Switch Portfolios in which the Member desires to invest and, where there is more than one Switch Portfolio, the relevant proportions the Member desires to invest in those Switch Portfolios; or

- ii the Member's desired Investment Profile, which the Manager will then use to determine the number of Units to be withdrawn from the Withdrawal Portfolio and the resulting investment to be made in the Switch Portfolio or Switch Portfolios;
- b unless otherwise agreed by the Manager, not be able to be revoked by the Member by whom it has been given;
- c not relate to less than the applicable Minimum Value of Units or relate to a number of Units that would reduce the holding of the Member in the Withdrawal Portfolio to less than the applicable Minimum Value of Units unless the Switching Notice relates to all of the Units held by the Member in the Withdrawal Portfolio;
- d provide for investment in each Switch Portfolio of not less than the Minimum Value of Units applicable to the relevant Member and Investment Portfolio from time to time; and
- e be in such form or comply with such specification as may be prescribed by the Manager from time to time.

11.3 **Effecting a switch**

The applicable provisions of clauses 6, 7, 8, 9, 10 and 32.1 shall apply to a Switching Notice with any necessary modifications as if it were a Withdrawal Request in respect of Units in the Withdrawal Portfolio and as if the amount realised (less any fee payable under clause 11.4) was a new Contribution to be applied to the Switch Portfolios in the proportions specified.

11.4 **Switching fee**

The Manager may charge a fee of up to the greater of \$500 or 5% of the amount switched as it may determine from time to time in respect of the Scheme, an Investment Portfolio, a class of Members investing in an Investment Portfolio or the type or nature of the transaction. Any such fee must comply with the Governing Requirements and be disclosed in a manner that complies with the Governing Requirements.

12 **Conversion of Investment Portfolio membership to Personal Plan membership**

12.1 **Conversion**

Any Investment Portfolio Member may, by agreement with the Manager, withdraw all of his or her Units from the Investment Portfolio(s) in which that Member holds Units and invest the proceeds in a Personal Plan created by the Manager for that Member under clause 5.3. Such agreement shall:

- a unless otherwise agreed by the Manager, not be able to be revoked by the Member;
- b provide for investment in the relevant Personal Plan of not less than the Minimum Personal Plan Balance applicable to that Personal Plan; and
- c be in such form or comply with such specification as may be prescribed by the Manager from time to time.

12.2 Effecting a conversion

The applicable provisions of clauses 6, 7, 8, 9, 10 and 32.1 shall apply to a conversion under clause 12.1 with any necessary modifications as if the agreement with the Manager to convert were a Withdrawal Request in respect of Units in the relevant Investment Portfolio(s) and as if the amount realised (less any fee payable under clause 12.3) was a new Contribution to be applied to the relevant Personal Plan.

12.3 Conversion fee

Except in the case of a conversion under clause 38.4b, the Manager may charge a fee of up to the greater of \$500 or 5% of the amount converted as it may determine from time to time in respect of the Scheme, an Investment Portfolio, a class of Members investing in an Investment Portfolio, or the type or nature of the Personal Plan. Any such fee must comply with the Governing Requirements and be disclosed in a manner that complies with the Governing Requirements.

13 Transfers to and from the Scheme

13.1 Transfers to another scheme with consent or where required by Governing Legislation

Where a Member joins or becomes a member of another registered KiwiSaver scheme the Manager shall transfer to that scheme an amount equal to the aggregate Unit Price of all of the Member's Units at the Relevant Time (in the case of an Investment Portfolio Member) or the amount that would be derived from the wind up of the relevant Personal Plan under clause 38.5 (in the case of a Personal Plan Member) (as applicable), less any amount determined by the Manager to be deducted in accordance with clause 32.1 and any transfer fee payable under clause 8.5, in the manner provided for in the Governing Requirements, or otherwise on such terms and conditions as it may determine from time to time, if:

- a the Member requests it; or
- b the Governing Requirements require it.

13.2 Transfers to another scheme without consent

Subject to the Governing Requirements the Manager may, following consultation with the Supervisor, and without the consent of the relevant Member(s), transfer an amount equal to the aggregate Unit Price at the Relevant Time of affected Members' Units (in the case of Investment Portfolio Members) or the amount that would be derived from the wind up of the relevant Personal Plan under clause 38.5 (in the case of Personal Plan Members) (as applicable) to another registered KiwiSaver scheme on such terms and conditions as it shall determine.

13.3 Transfers from another scheme

If any Member is entitled to a benefit or to otherwise transfer an amount from any other managed investment scheme or registered KiwiSaver scheme the Manager shall on such terms and conditions as it shall (to the extent permitted by the Governing Requirements) determine from time to time, accept a transfer from that other scheme of an amount notified to either the Supervisor or the Manager by the trustee(s), supervisor, or manager (as the case may be) of that other scheme. Any amount so received shall be applied as a Contribution to the Scheme pursuant to clause 6.3.

14 Insurance

14.1 Insurance may be offered

Subject to compliance with the Governing Requirements, the Manager may offer Insured Benefits to all Members, any class of Members or a particular Member and for that purpose the Manager may enter into, or may direct the Supervisor to enter into, a policy or policies of insurance with an Insurer. Where Insured Benefits are offered they shall be made available to a Member:

- a only if requested by the relevant Member;
- b only after the relevant Member has provided to the relevant Insurer all information required by that Insurer to enable it to issue a Policy or to enable the relevant Member to be included within an existing Policy;
- c only if and to the extent that a Policy is available to cover the Member; and
- d otherwise on the terms and conditions and subject to the restrictions and limitations contained in this Deed (including, without limitation, clause 14.4), in the relevant Policy or otherwise set by the Manager from time to time.

14.2 Continuation of Insured Benefits

Insured Benefits shall only continue to be offered to a Member if:

- a the Policy entered into in respect of provision of those Insured Benefits remains in full force and effect;
- b the relevant Member has provided to the relevant Insurer all information required by that Insurer from time to time to enable the Member to be included or remain included within the relevant Policy;
- c in the case of an Investment Portfolio Member, the relevant Member continues to hold Units with an aggregate Unit Price sufficient to enable the payment of all premiums payable in respect of the relevant Policy or to make any additional contribution required by clause 14.4, as applicable;
- d in the case of a Personal Plan Member, sufficient Scheme Property capable of being realised to enable the payment of all premiums payable in respect of the relevant Policy continue to be attributable to the relevant Personal Plan, or the Member continues to make any additional contribution required by clause 14.4, as applicable;
- e the relevant Member continues to comply with any applicable terms and conditions or restrictions and limitations applying pursuant to clause 14.1d; and
- f continuing to offer the Insured Benefits will not result in a breach of the Governing Requirements.

14.3 Payment of premiums

The premiums payable by the Manager to each Insurer in respect of the provision of Insured Benefits to any Member shall be an expense of the Scheme attributable to the relevant Member. Subject to clause 14.4 and compliance with the Governing Requirements (including, without limitation, section 68 of the KiwiSaver Act and rule 3(3) of the KiwiSaver Rules),

unless an alternative arrangement is agreed between the relevant Member and the Manager, the Manager shall be entitled:

- a in the case of an Investment Portfolio Member, to cancel a Member's Units with an aggregate Unit Price sufficient to meet the amount of any premium(s) payable in respect of the relevant Policy to the extent that it relates to the relevant Member and to apply the amount realised in payment of the said premium(s); and
- b in the case of a Personal Plan Member, to realise Scheme Property attributable to that Personal Plan with an aggregate realisable value sufficient to meet the amount of any premium(s) payable in respect of the relevant Policy to the extent that it relates to the relevant Member, and to apply the amount realised in payment of the said premium(s).

14.4 Additional Contributions

Notwithstanding any other provision of this Deed, where:

- a the Governing Requirements preclude the cancellation of some or all of a Member's Units or the realisation of some or all of the Scheme Property attributable to a Member's Personal Plan (as applicable) to facilitate payment of the premiums payable to an Insurer in respect of the provision of Insured Benefits to that Member; or
- b cancelling some or all of the relevant Member's Units or realising some or all of the Scheme Property attributable to a Member's Personal Plan (as applicable) would result in the Member being considered, for the purposes of the Governing Requirements, not to have made any minimum contributions required by the Governing Legislation,

then subject to the Governing Requirements the Manager shall be entitled to require that the relevant Member make an additional Contribution to the Scheme to cover such amount.

14.5 Amount of Insured Benefit

The amount of any Insured Benefit payable to or in respect of a Member on the occurrence of any event shall in no circumstances exceed the amount actually received (if any) by the Manager in respect of that Member on occurrence of that event under the relevant Policy. The Manager shall not be required to pay any Insured Benefit to or in respect of any Member at any time prior to actual receipt of any moneys (if any) payable to the Manager in respect of that Member under the relevant Policy.

15 Transfers, alienation and assignment

15.1 General prohibition

Subject to clauses 15.2 and 15.3, no Member may transfer, alienate, assign, charge, pass to any other Person, mortgage, pledge or grant any other interest in his or her present or future interest in the Scheme or any withdrawal payable from the Scheme in any way, and the Supervisor and the Manager shall not be entitled to recognise any other Person as having an interest of any nature in the Member's present or future interest in the Scheme or any withdrawal payable from the Scheme, or be obliged to give effect to or see to the performance of any such interest.

15.2 Forfeiture of entitlements

Subject to the Governing Requirements, the Manager may from time to time determine (in respect of some or all Members) that if in its opinion a Member becomes of unsound mind, or incapable of managing his or her affairs, the Member shall (to the maximum extent permitted by the Governing Requirements) forfeit his or her interest in the Scheme. The Manager shall (subject to compliance with the Governing Requirements) apply such forfeited interest for the benefit of the Member or his or her dependents in such manner as the Manager shall in its discretion think fit. Neither the Supervisor nor the Manager shall be under any obligation to make enquiry as to whether circumstances exist in respect of any Member which may give rise to the operation of this clause.

15.3 Release of amounts to comply with legislation

A Member's interest in the Scheme or any future benefits that will or may become payable to a Member under the Scheme may be released, assigned, charged or passed to another person if required by the provisions of any enactment or by the order of a court under any enactment (including, by way of example only, an order made under section 31 of the Property (Relationships) Act 1976).

16 Determination of Gross Asset Value and Net Asset Value

16.1 Procedure for determination

Subject to clause 1.4, promptly after each Net Asset Determination Time the Manager shall determine the amount expressed in New Zealand currency that represents the Gross Asset Value and Net Asset Value of each Investment Portfolio and Personal Plan determined at the relevant Net Asset Determination Time by:

- a in the case of the Gross Asset Value, taking the aggregate of:
 - i Investments of the Fund which relate to that Investment Portfolio or Personal Plan listed on a stock exchange valued by reference to quotations and sell prices on such exchange having regard to the dates of the last quotations and last known significant sales or such other information that the Manager considers appropriate (provided that the Manager may apply a different valuation methodology in accordance with proper prudent principles of valuation or the advice of any valuer or suitably qualified Person engaged under clause 16.4);
 - ii Investments of the Fund which relate to that Investment Portfolio or Personal Plan not listed on a stock exchange valued at the current fair market value by reference to most recent material or significant sales, valuations or other information that the Manager considers appropriate (provided that the Manager may apply a different valuation methodology in accordance with proper prudent principles of valuation or the advice of any valuer or suitably qualified Person engaged under clause 16.4); and
 - iii income accruing from the Investments of the Fund which relate to that Investment Portfolio or Personal Plan or a proper proportion thereof relative to the Business Day on which income is being determined to the extent such income is not included paragraphs i or ii; and

- b in the case of the Net Asset Value, taking the Gross Asset Value of each Investment Portfolio and Personal Plan calculated in accordance with clause 16.1a and deducting from such value the total of:
 - i all Liabilities of the Fund which relate to that Investment Portfolio or Personal Plan;
 - ii all costs, charges and other amounts incurred or accrued or which will be incurred in holding the Investments in the Fund which relate to that Investment Portfolio or Personal Plan or a proper proportion of any of the foregoing having regard to the Business Day on which the cost, charge or other amount is being determined in relation to the period to which it relates;
 - iii any provision for Tax;
 - iv an amount (if any) which the Manager may from time to time determine (acting reasonably) as representing the estimated cost that would be incurred if the Investments of the Fund which relate to that Investment Portfolio or Personal Plan were realised and converted into Cash but nothing in this paragraph shall prevent the Manager from determining that no such amount need be allowed;
 - v an amount (if any) which the Manager may from time to time determine as the estimated acquisition costs which would be likely to be incurred in respect of the purchase or acquisition of any Investments of the Fund which relate to that Investment Portfolio or Personal Plan if the Manager considers it reasonable to allow for such costs after giving consideration to the type of assets of the Fund which relate to that Investment Portfolio or Personal Plan; and
 - vi such other amount as the Manager thinks necessary or desirable (acting reasonably) to make provision for any Liabilities or losses or contingent Liabilities or losses to the extent that such provision has not been deducted in accordance with subclauses i to v above.

16.2 Equalisation Reserve Account

In determining the Gross Asset Value and Net Asset Value of an Investment Portfolio no account shall be taken of the amounts from time to time held in the relevant Equalisation Reserve Account.

16.3 Effective time of determination

Subject to clause 1.4, every such determination of the Gross Asset Value and Net Asset Value pursuant to clause 16.1 shall be deemed to take effect at the Net Asset Determination Time in respect of which it is made.

16.4 Use of valuers or other experts

The Manager may from time to time (but shall not be under any duty to do so) engage any valuers or other suitably qualified Persons for the purposes of assisting the fixing of the current fair market value of any Investment and, provided it has met the standard of care set out in clauses 23.1d and 25.2 (if applicable), the Manager shall be entitled to rely upon the advice of any such valuer or other Person and any such valuer or other Person shall be deemed to be acting as an expert. The Manager is not however bound to accept the advice of any such valuer or other Person engaged pursuant to this clause. Any valuation made by the Manager in good faith under this clause shall be binding on all Members.

16.5 Values binding

Each Gross Asset Value and Net Asset Value determined in accordance with this Deed is final and binding on all Persons including the Supervisor, the Manager, and the Members **provided that** such Gross Asset Value or Net Asset Value (as applicable) is determined in good faith and in accordance with the requirements of this Deed and the Governing Requirements.

17 Income and equalisation reserves

17.1 Determining Income

In determining the Income of the Fund attributable to an Investment Portfolio and Personal Plan for any period the Manager shall take into account all amounts due and receivable which are or would be liable to be included in the total assessable income of the Fund attributable to that Investment Portfolio or Personal Plan and all costs, charges and expenses due and payable in accordance with generally accepted accounting practice (as defined in the Financial Reporting Act 2013).

17.2 Equalisation reserve

The Manager may immediately before the end of each Distribution Period set aside in respect of each Investment Portfolio (but not in respect of a Personal Plan) such amount out of the Income for such Distribution Period as the Manager considers appropriate and shall credit such amounts to a separately identified account for the relevant Investment Portfolio to be known as the Equalisation Reserve Account. The amounts standing to the credit of each Equalisation Reserve Account shall be held as a contingency fund and may be applied in whole or in part from time to time at the discretion of the Manager:

- a in or towards satisfying the amount of any loss on the realisation of any Investment of the relevant Investment Portfolio or other capital loss incurred or suffered by the relevant Investment Portfolio or arising as a result of the revaluation of any Investment of the relevant Investment Portfolio;
- b in the cost of acquisition of or disposal of any Investment of the relevant Investment Portfolio;
- c in payment to the corpus of the Fund to be thereafter included in determining the Gross Asset Value and Net Asset Value of the relevant Investment Portfolio; or
- d in or towards satisfying any other Liability or contingency that shall properly be met by the relevant Investment Portfolio.

17.3 Reinvestment of Income

Subject to the Manager exercising its discretion and setting aside an amount under clause 17.2 the Manager shall, at the end of each Distribution Period, accumulate the Income for that Distribution Period by investing the same in the relevant Investment Portfolio or Personal Plan and the resulting income thereof to the intent that all such accumulations shall be added as an accretion to the relevant Investment Portfolio or Personal Plan.

17.4 **Determination of Income where no reserve**

All Income shall be included in the determination of the Gross Asset Value and Net Asset Value of the relevant Investment Portfolio unless and until the Manager exercises its discretion under clause 17.2.

18 **Appointment, removal, and retirement of supervisor**

18.1 **Supervisor requirements**

The Scheme shall have one supervisor, who:

- a must be a Licensed Supervisor whose licence covers supervision of the Scheme;
- b must not be the Manager or an Associate of the Manager;

Trustees Executors Limited is the supervisor and trustee of the Scheme as at the date of this Deed. **Removal of Supervisor**

The Supervisor may be removed from office:

- c by the FMA, if the FMA is satisfied that the Manager and the Supervisor no longer meet the requirements of section 127(1)(e) of the FMC Act;
 - d by the FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011; or
 - e by either:
 - i a Special Resolution of Members; or
 - ii the Manager, with FMA's consent;
- if:
- i all functions and duties of the position have been performed;
 - ii a new Licensed Supervisor has been appointed, and accepted the appointment, and all of the Scheme Property has been transferred to it; or
 - iii the High Court consents.

18.2 **Retirement**

If:

- a all functions and duties of the position have been performed;
- b a new Licensed Supervisor has been appointed, and accepted the appointment, and all of the Scheme Property has been transferred to it; or
- c the High Court consents,

the Supervisor may retire at any time without assigning any reason upon giving not less than 30 days' notice (or such lesser period as the Manager and the Supervisor agree) in writing to the Manager of its intention so to do, or upon giving such lesser period of notice as it

considers appropriate in the circumstances where it is of the opinion on reasonable grounds that the acts or omissions of the Manager have resulted or are likely to result in the Supervisor being in breach of its obligations pursuant to this Deed or under the Governing Requirements.

18.3 **Appointment of Supervisor**

The power of appointing a new supervisor of the Scheme (in place of a supervisor who has been removed under clause 0 or retired under clause 18.2) shall, subject to the Governing Requirements, be vested in the Manager. If the Manager fails or refuses to appoint a new supervisor, the new supervisor may be appointed by the Members by a Special Resolution.

18.4 **Restrictions on new appointment**

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

18.5 **Retiring Supervisor released**

Subject to the Governing Requirements, from the date of execution by the new supervisor of a deed in accordance with clause 18.4, the retiring supervisor is absolved and released from all such covenants under this Deed (except in respect of prior breach) and the new supervisor must thereafter exercise all powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the supervisor under this Deed in all respects as if such supervisor had been originally named as a party to this Deed.

19 **Appointment, removal, and retirement of Manager**

19.1 **Manager requirements**

The Scheme shall have one manager, who:

- a must be a Licensed Manager whose licence covers management of the Scheme;
- b must have at least one director who is a New Zealand resident for tax purposes;
- c must not be the Supervisor or an Associate of the Supervisor; and
- d if required by regulations made under the KiwiSaver Act, must be a party to a scheme provider agreement with the Commissioner of Inland Revenue.

Funds Administration New Zealand Limited is the manager of the Scheme as at the date of this Deed. **Removal**

The Manager shall cease to hold office as manager of the Scheme if:

- e the Manager is removed by a written direction of the Supervisor after the Supervisor certifies that it is in the best interests of the Members that the Manager be removed from office as manager;
- f the Manager is removed by a Special Resolution of Members;
- g the Manager is substituted by the High Court under section 209 of the FMC Act; or

- h the Manager has a receiver or statutory manager appointed or if an order is made or a resolution passed for the liquidation of the Manager.

19.2 Retirement

Subject to the Governing Requirements, the Manager may retire without giving any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so (or such lesser period as the Manager and the Supervisor agree).

19.3 Effect of removal and replacement Manager

- a If the Manager ceases to hold office pursuant to clauses 0 or 19.2, the Manager and any delegate of the Manager must immediately desist from all management activities relating to the Scheme, unless the Supervisor agrees to the contrary.
- b Subject to the Governing Requirements, the power of appointing a new manager of the Scheme shall be vested in the retiring manager, but no new manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld). If the retiring manager fails or refuses to appoint a new Manager, a new Manager may be appointed by the Members by a Special Resolution.

19.4 Temporary Manager

The Supervisor or the FMA shall have power in accordance with the FMC Act to appoint a company qualified under the FMC Act as a temporary Manager in place of a Manager which has retired pursuant to clause 19.2 or been removed from office pursuant to clause 0.

19.5 Restrictions on new appointment

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

19.6 Release of manager

Subject to all Governing Requirements, from the date of execution by the new manager of a deed in accordance with clause 19.5, the retiring manager is absolved and released from all such covenants under this Deed (except in respect of prior breach) and the new manager must thereafter exercise all powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the manager under this Deed in all respects as if such manager had been originally named as a party to this Deed. For the avoidance of doubt, the Manager shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date on which it ceases to hold office under this Deed.

20 Custody

20.1 Supervisor may appoint Custodian

- a The Supervisor may from time to time, on prior notice to the Manager, appoint in writing a Custodian in which may be vested all or any of the Scheme Property where the Custodian:
 - i is a body corporate that the Supervisor believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Scheme Property; and
 - ii is not the Manager, or an Associate of the Manager.
- b If the Supervisor contracts the holding of the Scheme Property to a Custodian under clause 20.1a, then the Supervisor:
 - i must ensure that the contracting out of that function is pursuant to a written agreement between the Supervisor and the Custodian;
 - ii must take all reasonable steps to:
 - A ensure that the function is performed by the Custodian in the same manner and subject to the same duties and restrictions as if that person had performed them directly;
 - B monitor the performance of that function;
 - C ensure that the Custodian does not sub-delegate the function to another Person ('**Sub-Custodian**') without the prior written consent of the Supervisor; and
 - D ensure that the Custodian remains liable for the performance of that function by any Sub-Custodian; and
 - iii is jointly and severally liable with the Custodian (and any other person who has contracted out the function) for the performance of that function in accordance with clause 20.1bii.

20.2 Investment records

- a The Supervisor (and any Custodian or Sub-Custodian) shall keep, or arrange to be kept, complete and accurate records of all Scheme Property in accordance with the requirements of the Governing Requirements.
- b The Supervisor (and any Custodian or Sub-Custodian) shall keep the records required by clause 20.2a, or ensure that they are kept, in a manner that enables those records to be conveniently inspected by the Manager and the Supervisor and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with the requirements of the Governing Requirements.
- c The Manager shall be entitled to assume that the Supervisor's, Custodian's, or Sub-Custodian's records of the Scheme Property are complete and accurate and to rely upon them accordingly.

21 General provisions relating to the Supervisor and Manager

21.1 Supervisor and Manager discretion

Subject to this Deed and the Governing Requirements, the Supervisor and the Manager in the exercise of the Scheme's authorities, powers and discretions conferred upon them by this Deed shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those of the Scheme's authorities, powers and discretions that are conferred on them or may refrain from exercising all or any of the same from time to time or at all.

21.2 Receipts and payments

The Manager shall make all necessary arrangements for dealing with receipts and payments under the Scheme and may in accordance with clause 28 resolve that cheques should be drawn or endorsed by any one Person duly authorised by the Manager or in such manner as it may from time to time resolve and may give, vary and revoke instructions as to the custody and disposal of any Scheme Property and as to the signature of proposal forms, Certificates and the giving of receipts and discharges in connection with the Scheme on behalf of the Manager.

21.3 Reliance on advice

The Supervisor and Manager may in performing their functions in respect of the Scheme, and provided they have met the standard of care set out in clauses 23.1d and 25.2 (in the case of the Manager) and clause 26.2 (in the case of the Supervisor) (in each case, if applicable), rely upon the advice or opinion (whether or not obtained by it) of any professional Person or upon any advice the Supervisor or Manager may obtain directly or indirectly from any Person as shall in the recipient's opinion be qualified to advise it. The cost of obtaining any such advice shall form part of the expenses incurred by the Supervisor or Manager (as applicable) in connection with the Scheme.

22 Supervisor's and Manager's indemnity and liability

22.1 Supervisor and Manager not liable

Subject to clause 22.5 and the Governing Requirements, the Supervisor and Manager shall not be liable for:

- a any losses or damages sustained by the Scheme or any Member;
- b any act or attempted act done in exercise of, or pursuant to, any trust, power or discretion vested in it by this Deed; or
- c any omission or non-exercise in respect of any trust, power or discretion of the Supervisor or Manager (as applicable) under this Deed.

22.2 Indemnity

Subject to clause 22.5, the Supervisor, the Manager and every other Person acting on behalf of the Supervisor or the Manager shall be indemnified out of the Scheme Property against all liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Supervisor or Manager (as applicable) pursuant to this Deed, and in respect of any matter or thing done or omitted to be done in any way relating to

this Deed and the Scheme. This indemnity shall extend to any payments made to any Person whom the Supervisor or Manager (as applicable) bona fide believes to be entitled thereto although it may be subsequently found that the Person was not in fact so entitled. The Supervisor and the Manager shall have a lien or charge on the Fund and may retain and pay out of any moneys in the Scheme, all sums and amounts necessary to give effect to this indemnity.

22.3 Provisions apply to agents

Any Investment Manager, Administration Manager, Custodian, manager or agent acting for or on behalf of the Supervisor or Manager shall have the benefit of any exclusions or indemnities given to the Supervisor or Manager (as applicable) whether contained in this Deed or in any application for membership of the Scheme, on the same basis as they are available to the Supervisor or Manager (as applicable).

22.4 No personal liability

Subject to the Governing Requirements, unless the Supervisor or the Manager is in breach of their obligations under this Deed, the liability of the Supervisor or the Manager (as applicable) under this Deed or at law shall at all times be limited to the Scheme Property.

22.5 Degree of care and skill required

No provision of this Deed (including, without limitation, clauses 22.1 to 22.4, 28.1 or 33.3p) shall have the effect of exempting the Supervisor or Manager from any liability or indemnifying the Supervisor or Manager against any liability where:

- a in the case of the Supervisor, it fails to comply with its duties under clauses 26.2 and 26.5; or
- b in the case of the Manager, it fails to comply with its duties under clauses 25.2 or 25.3.

23 Investment

23.1 Investment of Scheme Property

- a The Manager will ensure that there are one or more SIPOs agreed in writing with the Supervisor for the Scheme which comply with the Governing Requirements and cover each Investment Portfolio and each Personal Plan established pursuant to this Deed. The Manager must give the Supervisor prior written notice of any proposed amendment or replacement of the SIPO.
- b Each Investment Portfolio and Personal Plan shall be invested only in Authorised Investments for that Investment Portfolio or Personal Plan, and only in accordance with the relevant SIPO.
- c If the Manager proposes to alter the SIPO in relation to an Investment Portfolio or a Personal Plan in a manner which materially affects existing Members, the Manager shall, prior to effecting any such alteration, give at least 30 days' written notice to the relevant Members.
- d The Manager shall have a duty and obligation to exercise the care, diligence and skill in managing the Scheme Property to the extent required by the Governing Requirements

and by the terms of this Deed (and in particular, clause 25). The Manager shall have no duty or obligation to acquire, dispose of or diversify the Scheme Property other than to the extent that those factors arise in giving effect to the relevant SIPO or as otherwise required by this Deed or by the Governing Requirements. This clause constitutes a 'contrary intention' for the purposes of sections 13D of the Trustee Act 1956.

- e Notwithstanding sections 13B and 13C of the Trustee Act 1956, the Supervisor shall not in carrying out its duties be required to exercise any care, diligence or skill in respect of the Scheme Property, other than to supervise the performance by the Manager of its Issuer Obligations and its functions under this Deed and the Governing Requirements. This clause constitutes a 'contrary intention' for the purposes of section 13D of the Trustee Act 1956.
- f Subject to the provisions of this Deed, neither the Supervisor nor the Manager shall be responsible to the Scheme or to any Member for the investment performance of an Investment Portfolio or a Personal Plan arising as a result of the proper implementation of the relevant SIPO.

24 Related party transactions

24.1 General prohibition on Related Party Benefits

The Manager (or any Investment Manager, Administration Manager, or other person to whom the Manager has contracted out some or all of its functions as Manager) must not enter into a transaction that provides for a Related Party Benefit to be given.

24.2 Certain benefits permitted

Clause 24.1 does not apply to a transaction or a series of transactions if the Manager notifies the Supervisor of the transaction or series of transactions, including the Related Party Benefits given under the transaction or series of transactions, and either:

- a the Manager obtains the Supervisor's consent to the transaction or series of transactions; or
- b section 174 of the Act applies (ie: the transaction is on arm's-length terms; or is an acquisition or disposal of a managed investment product in another registered scheme; or is a prescribed registered bank investment; or is another prescribed benefit or transaction under the FMC Act), and the Manager certifies to that effect in accordance with the requirements of the FMC Act; or
- c any other exemption under the Governing Requirements applies to the transaction or series of transactions or all Related Party Benefits to be given.

24.3 Effect of permitted benefit

Where clause 24.2 applies, the Manager or other recipient of a Related Party Benefit is entitled to profit from the transaction or transactions concerned and is not liable to account to the Fund or any Member for the Related Party Benefit.

25 Manager's responsibilities, powers, and duties

25.1 Manager's responsibilities

The Manager is responsible for performing the following functions:

- a offering interests in the Scheme;
- b issuing interests in the Scheme;
- c managing the Scheme Property and Investments; and
- d administering the Scheme,

and without limiting the generality of the foregoing, the Manager shall be responsible for performing any specific functions agreed between the Supervisor and the Manager from time to time in writing.

25.2 Manager's duties

The Manager must:

- a act honestly in acting as Manager;
- b in exercising any powers or performing any duties as Manager:
 - i act in the best interests of the Members; and
 - ii treat the Members equitably; and
- c not make use of information acquired through being the Manager, and ensure that no director or senior manager of the Manager makes use of information acquired through being a director or senior manager, in order to:
 - i gain an improper advantage for itself, himself, herself, or any other person; or
 - ii cause detriment to the Members;
- d not make improper use of its position as Manager and ensure that no director or senior manager of the Manager makes improper use of the position as a director or senior manager of the Manager, to gain, directly or indirectly, an advantage for itself, himself, herself or any other person or to cause detriment to the Members.

25.3 Manager's standard of care

The Manager must, in exercising any powers, and performing any duties exercise the care, diligence and skill that a prudent person engaged in the profession of a professional manager would exercise in the same circumstances.

25.4 Compliance with relevant requirements

The Manager must carry out its functions as manager of the Scheme, and any Investment Manager must carry out its functions as investment manager of the Scheme, in accordance with this Deed, the relevant SIPO, and all other Issuer Obligations.

25.5 **Manager's liability**

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 inconsistent with the FMC Act).

25.6 **Action on limit breaks**

The Manager must take any action required by the FMC Act if a limit break (within the meaning of section 167 of the FMC Act) or material pricing error or non-compliance (in terms of section 168 of the FMC Act) occurs. For the purposes of section 168 of the FMC Act and regulation 99 of the FMC Regulations, the minimum compensation level for pricing errors or non-compliance is an amount determined on a case-by-case basis by the Manager after consultation with the Supervisor based on relevant industry guidelines which take into account the size, type, and/or frequency of the issue and the costs of reimbursement or compensation.

25.7 **Manager's powers**

Subject to the provisions of this Deed and the Governing Requirements, and without in any way limiting the responsibilities of the Manager outlined in clause 25.1, the Manager shall have all powers over and in respect of the Scheme and the Scheme Property which it could exercise if it were the absolute and beneficial owner of the Scheme and the Scheme Property. In particular, without derogating from the foregoing, the Manager shall have full and absolute power to do the following:

- a direct the Supervisor, Custodian, or Sub-Custodian (as applicable) to purchase, sell or otherwise deal with Investments or Scheme Property upon such terms as the Manager thinks fit (and the Supervisor, Custodian, or Sub-Custodian (as applicable) shall, subject to clause 25.8, comply with any such direction of the Manager);
- b execute and pay for repairs, and improvements relating to Scheme Property;
- c insure any Scheme Property for such amounts and on such conditions and in such types of insurances as the Manager determines;
- d attend and vote at meetings relating to Scheme Property;
- e lend money;
- f instruct agents and consultants to act in relation to Scheme Property or proposed Investments of the Scheme;
- g make and carry out any takeover proposal, offer or invitation;
- h promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager deems fit;
- i subject to the terms of this Deed, 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, security interest or other encumbrance over the whole or any part of the Scheme Property;
- j subject to clause 27.2, create, grant, renew, alter or vary any mortgage, charge, security interest or other encumbrance over the whole or any part of the Scheme Property for the

- purposes of the Scheme and upon such terms and conditions as the Manager may in its absolute discretion think fit, or direct the Supervisor to do so;
- k agree, enter into and perform any contract, option or other right relating to any Scheme Property, or direct the Supervisor to do so;
 - l agree to the release, modification or variation of any rights, privileges or liabilities of any Scheme Property from time to time or any securities given in relation thereto;
 - m agree to the rearrangement or reconstruction of any Person;
 - n 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;
 - o enter into any arrangements with any Government, public body or authority to obtain any rights, authorities, concessions or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out, exercise and comply with any of the same;
 - p enter into agreements with employers for the purposes of facilitating employers' choice of the Scheme for the purposes of section 46 of the KiwiSaver Act on such conditions as the Manager deems fit and to carry out, exercise and comply with any of the same;
 - q to employ, engage or contract with, upon such terms and conditions as the Manager deems expedient (which comply with the Governing Requirements) including as to salary, remuneration, contract, payment, fees, expenses, or other consideration, any Investment Manager, Administration Manager or other manager, agent, professional advisor or other Person (including the Supervisor) as the Manager thinks fit to do any act of any nature whatsoever relating to the Scheme, in which case:
 - i the fees and expenses of any such appointee may be payable out of the Scheme Property;
 - ii those terms will be as agreed between the Manager and the appointee from time to time; and
 - iii the terms of appointment may indemnify the appointee for liabilities or expenses incurred in relation to its contracted functions; but
 - iv in the case of the appointment of an Investment Manager those terms may only indemnify the Investment Manager for liabilities or expenses incurred in relation to the performance of its contracted functions where the Investment Manager has, in exercising any powers or performing any duties, exercised the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances; and
 - v clause 28.2 applies;
 - 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 Scheme Property or to act as the operator or one of the operators under any such agreement which relates to Scheme Property;

- s consolidate and divide all or any of the Units into Units of a larger amount or subdivide all or any of the Units into Units of a smaller amount;
- t perform and enforce agreements;
- u institute, prosecute, compromise and defend legal proceedings;
- v enter into or obtain any guarantee, indemnity or similar contract for the benefit of the Scheme or the Members (and whether relating to the guaranteeing of the capital or income of the Scheme, any amounts to be paid to Members, or otherwise) and to pay any fee or other consideration from the Scheme for any such guarantee, indemnity or similar contract;
- w determine whether any money or other Scheme Property is capital or income and what expenses ought to be paid out of income and capital respectively and also to apportion blended funds. Every such determination or apportionment shall be final and binding on all Persons interested in the Scheme **provided that** such determination is made in good faith and in accordance with the requirements of this Deed;
- x deduct from the Fund and to pay to itself or any other Person such amount as the Manager considers necessary or reasonable for the Scheme to meet for costs, expenses or other amounts incurred or payable by the Supervisor, the Manager, or any other Person in respect of the Scheme and including a contribution towards the cost of establishing and maintaining any office premises, equipment or employees by the Supervisor, the Manager or any other Person; and
- y invest in pooled or mixed forms of investment in common with other investors, or direct the Supervisor to do so.

25.8 **Supervisor's limited duty to refuse to act**

The Supervisor must refuse to act, and must direct any Custodian or Sub-Custodian to refuse to act, on a direction of the Manager that relates to the acquisition or disposal of any Scheme Property if the Supervisor considers that the proposed acquisition or disposal would be:

- a in breach of this Deed, any rule of law, or any enactment; or
- b manifestly not in the interests of the Members.

25.9 **If Supervisor refuses to act**

If in accordance with clause 25.8 the Supervisor refuses, or directs any Custodian or Sub-Custodian to refuse, to act on a direction of the Manager, then:

- a the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for the refusal or direction; and
- b the Supervisor, Custodian, and Sub-Custodian will not be liable to Members or to the Manager for refusing (and in the case of the Supervisor, for directing any Custodian or Sub-Custodian to refuse) to act on the Manager's direction.

25.10 **Manager to provide information and reports**

The Manager will:

- a make available to the Supervisor or to any Custodian or the Auditor the whole of the records of the Manager kept pursuant to or in relation to this Deed and whether kept at the Office or elsewhere;
- b without limiting sections 147 to 151 of the FMC Act, give the Supervisor or any Custodian or the Auditor such oral or written information and such reports and certificates, comprised of such information and at such frequency, as may be agreed in writing from time to time between the Manager and the Supervisor or as required by Relevant Law or requested by the Supervisor under the Governing Requirements with respect to all matters relating to the Scheme, the Manager and the Scheme Property and the management and administration of the Scheme;
- c at the request of the Supervisor, give the Supervisor or any Custodian or the Auditor such oral or written information as may be required with respect to all matters relating to the Manager provided that the Supervisor shall only request such information in the following circumstances:
 - i after consultation with the Manager; and
 - ii if the Supervisor believes that the Manager is unable or is likely to become unable to carry out its Issuer Obligations and the Supervisor certifies its belief in writing to the Manager;
- d provide to the Supervisor on request such information or access to such employees and board members of, and service providers to, the Manager as the Supervisor reasonably requires; and
- e notify the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Members or on the reputation of the Manager or its licence under the FMC Act.

26 **Supervisor's responsibilities, powers, and duties**

26.1 **Supervisor's responsibilities**

The Supervisor is responsible for the following functions:

- a acting on behalf of the Members in relation to:
 - i the Manager;
 - ii any matter connected to this Deed or the terms of any Regulated Offer of Units or interests in the Scheme;
 - iii any contravention or alleged contravention of the Manager's Issuer Obligations; and
 - iv any contravention or alleged contravention of the FMC Act by any other person regarding the Scheme;

- b supervising:
 - i the Manager's performance of its functions under this Deed, its Issuer Obligations and under the Governing Requirements; and
 - ii the financial position of the Manager and the Scheme in respect of the interests in the Scheme and the Units to ascertain that it is adequate;
- c holding the Scheme Property or ensuring that the Scheme Property is held in accordance with the FMC Act; and
- d performing or exercising any other functions, powers, and duties conferred or imposed on the Supervisor by or under the FMC Act, the Financial Markets Supervisors Act 2011, and this Deed.

26.2 **Supervisor's duties**

The Supervisor must:

- a act honestly in acting as supervisor;
- b in exercising its powers and performing its duties as supervisor, act in the best interests of the Members; and
- c exercise reasonable diligence in carrying out its functions as supervisor.

26.3 **Supervisor unable to delegate certain responsibilities**

The Supervisor must not delegate the function described in clause 26.1, except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.

26.4 **Supervisor's duty to act**

The Supervisor must:

- a do all the things it has the power to do to cause any contravention referred to in clause 26.1a to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Members); and
- b subject to any order of a court under section 210 of the FMC Act, act in accordance with any direction given by a Special Resolution that is not inconsistent with any enactment, rule of law, or this Deed in relation to:
 - i seeking a remedy to a contravention referred to in clause 26.1a; and
 - ii any other matter connected with the Supervisor's functions.

The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Members.

26.5 **Supervisor's standard of care**

The Supervisor must, in exercising its powers and performing its duties as the Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances.

26.6 **Supervisor's liability**

The Supervisor has the same duties and liability in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMC Act).

26.7 **Supervisor may engage experts**

The Supervisor is entitled, in the performance of the Supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

- a determine the financial position of the Manager or the Scheme; or
- b review the business, operation, or management systems, or the governance, of the Manager or the Scheme.

26.8 **Manager's obligations in relation to expert**

If the Supervisor engages an expert under clause 26.7:

- a the Manager must provide reasonable assistance to the expert to allow the expert to provide the assistance under clause 26.7;
- b the Manager must pay the fees and expenses of the expert, which must be reasonable in the circumstances; and
- c subject to clause 22.5, the Manager is entitled to be indemnified for those fees and expenses out of the Scheme Property.

27 **Borrowing powers**

27.1 **Supervisor may borrow**

Subject to clauses 24, 25.8 and 27.2, the Supervisor has the power to, and must, if so directed by the Manager:

- a borrow or raise money from any Person (including a Member or the Manager);
- b enter into any form of credit facility or other accommodation or sell, discount and deal with bills of exchange; or
- c grant a security interest in the Investments of the Scheme or any of them as security for any moneys borrowed or raised or for the purposes of acquiring further Investments for the Scheme.

27.2 Restrictions on borrowing

All borrowings, raising of money, granting of security interests in investments or other transactions entered into or undertaken pursuant to clause 27.1 (**'Security Transactions'**) shall only be entered into or made where the Manager in good faith (following consultation with the Supervisor) determines that the Security Transactions are necessary or desirable in the general interests of the Members of the Scheme, or for the purposes of conducting the investment, management or other operation of the Scheme pursuant to this Deed including the cancellation of any Units in an Investment Portfolio, the realisation of any Scheme Property attributable to a Personal Plan, or the payment of any Benefit **provided that:**

- a no such direction shall require the Supervisor to take any action which it reasonably believes would cause it to breach any of its obligations under any rule of law or under this Deed; and
- b no Security Transactions shall be entered into if the result will be that the total amount owing under the Security Transactions will exceed 15% of the Gross Asset Value of the Fund or such other percentage stated in the relevant SIPO from time to time.

28 Delegation by Manager

28.1 Manager may delegate

The Manager shall have, to the extent permitted by the Governing Requirements, this Deed, and otherwise at law, full power to delegate to its officers and employees, any Associate of the Manager, the officers or employees of any Associate of the Manager, or any attorney, agent or other Person nominated by the Manager, all or any of the powers, authorities and discretions exercisable by the Manager under this Deed but without in any way releasing the Manager from its obligations under this Deed (and in particular, without affecting the responsibilities of the Manager outlined in clauses 25.1 and 25.2). Without in any way affecting the generality of the foregoing the Manager may, on notice to the Supervisor, in exercising the power herein contained:

- a by power of attorney appoint any Person to be attorney or agent of the Manager for such purposes and with such powers, authorities or discretions 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 agent or sub-agent 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 agent or sub-agent for such cause or reason as the Manager may in its sole discretion think sufficient,

and subject to clause 16.4 the Manager shall be liable for the acts and omissions of any such officer, employee, agent, Person or other delegate, sub-delegate or sub-agent.

28.2 Obligations of Manager

Where the Manager delegates or contracts out any of its functions as manager pursuant to this Deed:

- a the delegation must be in writing; and

- b the Manager must comply with the requirements of the Governing Requirements when delegating or contracting out all or some of its functions as Manager; and
- c the Manager must take all reasonable steps to:
 - i ensure that the 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 must monitor the performance of those functions; and
- d the Manager remains jointly and severally liable for the performance of the functions delegated or contracted out.

28.3 No delegation or agency

Except as expressly provided in this Deed or in writing by the Supervisor, no powers of the Supervisor are delegated to the Manager, and the Manager is neither appointed as, nor permitted to represent itself as, agent of the Supervisor.

29 Accounts and annual reports

29.1 Record keeping and accounting requirements

The Manager shall ensure that in accordance with the Governing Requirements:

- a proper books of account are kept in respect of the Scheme and the Manager and include records of those matters required by the Governing Requirements to be recorded;
- b financial statements for the Scheme are prepared at the end of each Financial Year; and
- c those financial statements are audited by the Auditor and submitted to the Supervisor.

The Manager must have appropriate systems of control and oversight in respect of the accounting records, and the provisions of Part 7 of the FMC Act must be complied with.

29.2 Preparation of annual reports

The Manager shall, within four months after the end of each Financial Year (or such shorter period as may from time to time be required by the Governing Requirements), prepare a report on the Scheme for that Financial Year. The report shall include the information required by the Governing Requirements.

29.3 Distribution of information

The Manager shall, by the date specified in the Governing Requirements:

- a file, lodge, or report or cause to be filed, lodged, or reported with or to the relevant authority; and
- b send or otherwise make available to each Member,

any information required by the Governing Requirements or any other law to be filed, lodged, reported, sent, or made available.

30 Auditor

- 30.1 The Manager shall, following consultation with the Supervisor in accordance with the FMC Act, appoint an Auditor qualified in terms of clause 30.2 of the Scheme. If not already completed, such appointments shall be made as soon as possible after the execution of this Deed.
- 30.2 Each Auditor shall be a qualified auditor in terms of the Act who is not precluded by the FMC Act from acting as Auditor of the Scheme. An Auditor may also be auditor of the Manager or of the Supervisor, and the same Person may hold office as Auditor of the Scheme.
- 30.3 The Manager must consult with the Supervisor in relation to the nature and scope of the services to be performed by the Auditor, which services must:
- a include any matters required by the Governing Requirements; and
 - b require the Auditor to, in addition to its functions as set out in this Deed, perform any other functions required by the Governing Requirements and comply with any obligations it has under the Governing Requirements.
- 30.4 The terms of appointment of the Auditor must meet the requirements of the Governing Requirements and, without limitation, must require the Auditor to, from time to time and at the request of the Supervisor, provide the Supervisor with any information relating to the Manager or the Scheme that the Supervisor requests and that is within the Auditor's knowledge and that, in the Auditor's opinion, is relevant to the exercise or performance of the Supervisor's powers or duties.
- 30.5 The Manager shall furnish to the Supervisor, at the same time as the Manager furnishes to the Supervisor the financial statements pursuant to clause 29.1, in relation to the end of the Financial Year a separate report by the Auditor covering the matters as may be agreed from time to time between the Manager and the Supervisor.
- 30.6 The remuneration of the Auditor shall be agreed by the Manager, in consultation with the Supervisor, and shall be paid out of the Scheme Property.
- 30.7 The Auditor may at any time be removed from office by the Manager or the Supervisor after two months' notice (or such lesser period as may be agreed) has been given by the Manager or the Supervisor as the case may be.
- 30.8 An Auditor may retire upon the expiration of not less than three months' notice (or such other period as agreed by the Manager in consultation with the Supervisor) in writing both to the Manager and the Supervisor.
- 30.9 Any vacancy in the office of an Auditor occurring under clauses 30.7 or 30.8 shall be filled by the Manager (following consultation with the Supervisor in accordance with the FMC Act) appointing an Auditor qualified for appointment in terms of clause 30.2.

31 Registers of Members

31.1 Register to be kept

A Register of Members shall be kept in New Zealand in respect of the Scheme by the Manager.

31.2 **Form and manner of keeping Register**

The Register:

- a may be:
 - i an electronic register; or
 - ii kept in any other reasonable manner that the Manager thinks fit; and
- b must otherwise comply with the Governing Requirements.

31.3 **Details in Register**

There shall be entered in the Register in respect of each Member:

- a the Member's name and address;
- b in the case of an Investment Portfolio Member, the number of Units of the relevant class held by that Member and the Investment Portfolio to which they relate;
- c the date on which the Member became a Member and the date on which the Member ceased to be a Member;
- d in the case an Investment Portfolio Member, the date Units in the Scheme are issued to that Member and the date Units are cancelled;
- e in the case of a Personal Plan Member, identification of the Personal Plan to which their membership relates; and
- f such other information as may be required by the Governing Requirements to be kept or that the Manager determines should be kept.

31.4 **Audit of Register**

The Manager shall cause the Register to be audited by the Auditor in accordance with the Governing Requirements (being at intervals of not more than 12 months or as otherwise required by the Governing Requirements). The Auditor, in completing its audit of the Register, shall perform any other functions required by the Governing Requirements, and comply with any obligations it has under the Governing Requirements.

31.5 **Inspection of Register**

By written notice to the Manager the Supervisor (and any other Person so entitled by the Governing Requirements) is entitled to inspect the full Register during the business hours of the Manager. Any Member is entitled to inspect that part of the Register that concerns that Member during the business hours of the Manager.

31.6 **Reliance on Register**

The Manager shall be entitled to treat the registered holder of a Unit, and the Member shown in the Register as being the person to whom a Personal Plan relates (as applicable) as the absolute owner thereof. Except in the circumstances prescribed by the Governing Requirements, no notice of any trust (express, implied or constructive) shall be entered upon the Register.

32 General provisions relating to Benefits and Units

32.1 Deduction of duties, taxation or other charges

The Manager may deduct from any payment under this Deed any amount in respect of:

- a duty or Tax payable from or in respect of that payment by a Member and shall thereupon pay such duty or Tax to the relevant authority; and
- b management fees, penalties, and any other amounts, fees and charges payable by the Member to the Supervisor, the Manager, the Investment Manager, the Administration Manager, Custodian or any other manager or agent properly employed or engaged by the Manager or the Supervisor pursuant to this Deed **provided that** such amounts comply with the Governing Requirements, and the payment which the Member shall be entitled to receive shall be the net amount after all the above deductions have been met.

32.2 Proofs

Subject to the Governing Requirements, any Member or any other Person purporting or claiming to be qualified or entitled to any Benefit under the Scheme shall on request produce to the Supervisor or the Manager (as applicable) such evidence as they may require and such information, if any, as the Governing Requirements may require the Member to produce.

32.3 Receipt for payments

The payment by the Manager of any Benefit to a Member or any other Person authorised to receive payment of a Benefit, shall be a complete discharge to the Manager for any liability the Manager and the Supervisor have in respect of the Benefit paid. Subject to the proper performance of their duties set out in this Deed and the Governing Requirements, neither the Manager nor the Supervisor shall be under any liability to see to the application of the Benefit so paid.

32.4 Transmission

The executor or administrator of a deceased Member shall be the only Person (other than the Member) recognised by the Manager as having any title to the Units registered in the name of an Investment Portfolio Member or to the beneficial interest in the Personal Plan relating to a Personal Plan Member.

33 Supervisor's and Manager's fees and reimbursement of expenses

33.1 Supervisor's fee

The Supervisor shall be paid out of the Fund in respect of its services under this Deed a fee equal to an amount of up to 0.5% of the Net Asset Value of the Scheme plus any GST as agreed between the Supervisor and the Manager, such fee to be reviewed annually and paid on a monthly basis or such other basis as the Manager and the Supervisor agree in writing. The fees payable to the Supervisor shall be no greater than the fees that would normally be charged by a statutory trustee corporation for carrying out the services required under this Deed and shall comply with the Governing Requirements.

33.2 **Manager's fee**

The Manager shall be paid out of the Fund in respect of its services under this Deed a fee (or fees) set by it from time to time of up to 2% of the Gross Asset Value of the Scheme plus any GST that comply with the Governing Requirements, are notified to the Supervisor in writing, and set out in the Disclosure Documents. Such fee shall be paid on a monthly basis or such other basis as the Manager and the Supervisor agree in writing.

33.3 **Reimbursement of expenses**

Subject to the Governing Requirements, the Supervisor and Manager, as applicable, shall be reimbursed out of the Scheme (whether from income or capital or both) for and in respect of:

- a all costs, charges and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with the Investments of the Scheme, including real estate and solicitors' fees and commissions, bank charges and stamp duty, and the expenses of any agents or any Custodian or Sub-Custodian both within and outside New Zealand;
- b all costs incurred by the Manager in determining each Net Asset Value relating to the Scheme (whenever the Manager is required to do so in accordance with the provisions of this Deed);
- c any costs and expenses relating to the Scheme including all legal costs, expenses and registration fees incurred by the Manager or the Supervisor to or in connection with the preparation, approval and execution of this Deed and any amendments, modifications or additions to the provisions of this Deed or any deed supplemental to this Deed or obtaining any approvals which may be required by the Governing Requirements or otherwise in respect of any such supplemental deed;
- d the fees and expenses of the Auditor;
- e expenses in connection with the financial statements and the annual report of the Scheme;
- f all taxes, duties and imposts charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other Person) in connection with the Scheme on any account whatsoever;
- g interest on borrowings and discounts and acceptance fees in respect of bill facilities for the Scheme;
- h the fees, costs and expenses of any Administration Manager, Investment Manager, Custodian, manager or any other agent or Person engaged, contracted or employed by the Manager or the Supervisor in respect of the Scheme as provided in this Deed;
- i the fees and expenses of any solicitor, barrister, valuer, accountant, actuary or other Person from time to time employed or engaged by the Manager or the Supervisor in the discharge of its duties under this Deed in respect of the Scheme;
- j expenses in connection with the keeping of the Register;

- k any reasonable amounts incurred by the Manager or the Supervisor in respect of the management of any Investment or in investigating any proposed investment of the Scheme;
- l taxation, the costs of preparing taxation returns and imputation credits and other costs arising in respect of taxation matters relating to the Scheme or the Members of the Scheme;
- m any other expenses properly and reasonably incurred by the Manager or the Supervisor in connection with carrying out their duties under this Deed in relation to the Scheme;
- n all costs in or in connection with the retirement or removal of the Manager or the Supervisor under this Deed and the appointment of any Person in substitution;
- o all costs, expenses, duties and disbursements incurred by the Manager or the Supervisor in connection with the closing or winding up of the Scheme;
- p all costs in connection with the initiation, conduct and settlement of any court proceedings (including any negotiations and demands relating to them) including, without limitation (but subject to clause 22.5), proceedings against the Supervisor or the Manager arising from any neglect, breach or default under this Deed;
- q the amount of any rates, land Tax, insurance premiums, property repairs and maintenance costs and other outgoings incurred in respect of any Investment which relate to the Scheme;
- r all management fees, commissions and other fees and expenses paid to any real estate agents, property managers or other Persons appointed to manage any Investments which relate to the Scheme; and
- s all costs in preparing and printing performance reports or bulletins for Members of the Scheme,

provided that the Supervisor and the Manager shall unless otherwise provided bear their own internal administration costs.

34 Manager's power to alter fees and charges

34.1 Manager may alter fees and charges

Subject to compliance with the maximum fees set out in this Deed, clause 35.1, the Governing Requirements, and the consent of the Supervisor in respect of the Supervisor's fee payable under clause 33.1, the Manager may at any time increase or reduce the amount of any penalties, fees or other charges payable by a Member pursuant to this Deed.

34.2 Effective time of reduction

In any case where the Manager reduces the amount of any penalties, fees or other charges pursuant to clause 34.1, the reduction shall take effect from a date determined by the Manager.

34.3 Effective time of increase

If the Manager determines to increase the amount of any penalties, fees or other charges pursuant to clause 34.1 then, subject to compliance with the Governing Requirements, the increase shall become effective from a date determined by the Manager.

35 Amendments

35.1 General power to amend

The Manager and the Supervisor may, subject to the Governing Requirements, by deed from time to time rescind, alter, modify or add to any of the provisions of this Deed if:

- a the Supervisor is satisfied that amendment does not have a material adverse effect on Members; or
- b the amendment has been approved by (or is contingent on approval by) a Special Resolution of Members (or, if applicable, of each class of Members that is or may be adversely affected by the amendment),

provided that no amendment shall be made if it would result in any provision of section 84B(a) to (g) of the State Sector Act 1988 ceasing to apply to the Scheme.

35.2 Other amendments

This Deed may also be rescinded, altered, modified or added to in any other manner permitted by the Governing Requirements.

35.3 Certificate

Before any amendment is made to this Deed the Supervisor and the Manager (as applicable) shall comply with any procedural requirements of the Governing Requirements.

35.4 Filing of Amendment

Within 5 Working Days after any amendment to this Deed is made the Manager shall lodge a copy of the amendment with the Registrar together with any other documents required by the Governing Requirements.

36 Period of Scheme

36.1 Period of Scheme

The Scheme commenced on the Commencement Date and shall continue until wound up in accordance with clause 38. If the Scheme ceases to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take such action as it thinks fit (including re-establishing the trusts of the Scheme and paying over the Scheme Property to a new Supervisor to hold as trustee) in order to prevent the operation of any rule of law relating to perpetuities which might otherwise invalidate any of the trusts of the Scheme.

37 Closure of the Scheme

37.1 Closure on notice

Subject to the Governing Requirements, the Manager may resolve to close the Scheme at any time, after first giving the Supervisor not less than 10 days' prior notice in writing.

37.2 Procedure for closure

The Scheme shall, subject to the Governing Requirements, be closed in accordance with the following provisions:

- a the resolution of the Manager closing the Scheme shall specify a Closing Date from which the closure shall take place;
- b after the passing of the resolution of the Manager, each Member shall be promptly given notice in writing of the closure of the Scheme;
- c the FMA shall, after the passing of the Manager's resolution, be given notice in writing of the intention to close the Scheme;
- d no further Persons shall be admitted as Members of the Scheme or be issued any Units in the Scheme, after the passing of the Manager's resolution; and
- e no further Contributions shall be accepted by the Manager for the Scheme after the passing of the Manager's resolution.

38 Winding up of an Investment Portfolio, Personal Plan, or the Scheme

38.1 Winding up of an Investment Portfolio

An Investment Portfolio shall determine and be wound up if the Manager, on giving prior notice to the Supervisor, resolves to wind up that Investment Portfolio or to wind up every Investment Portfolio (**provided that** the Manager may not so resolve if to do so would be contrary to the Governing Requirements).

38.2 Procedure for winding up Investment Portfolio

Within 14 days of winding up an Investment Portfolio under clause 38.1, the Manager must give to the Supervisor and each Member holding Units in the affected Investment Portfolio or Investment Portfolios notice in such form as it determines of the winding up and of the intention of the Manager to reinvest the Scheme Property attributable to that Investment Portfolio or those Investment Portfolios. Where such notice is given in relation to the Default Investment Portfolio the Manager must nominate an alternative Investment Portfolio as the Default Investment Portfolio for the Scheme in accordance with clause 5.2. From the date of a winding up resolution made in accordance with clause 38.1 no Withdrawal Requests shall be given in respect of Units relating to that Investment Portfolio or those Investment Portfolios. A notice given by the Manager pursuant to this clause shall:

- a specify a particular Investment Portfolio (the 'Substitute Investment Portfolio') determined by the Manager in favour of which the relevant Member shall be deemed to have given a Switching Notice in accordance with clause 11.1 on expiration of the notice period set out in the notice if no Switching Notice is received from the Member prior to that time and, if applicable, the new Default Investment Portfolio; or

- b refer to a Personal Plan created for the relevant Member under clause 5.3 in favour of which the relevant Member shall be deemed to have agreed with the Manager to effect a conversion under clause 12.1 on expiration of the notice period set out in the notice.

38.3 Cashing up of Investment Portfolio

Following the expiration of the notice period set out in a notice under clause 38.2, the Manager shall as soon as is practicable and in respect of each Investment Portfolio in question:

- a sell, call in and convert into Cash the whole of the Scheme Property attributable to that Investment Portfolio; and
- b pay out, discharge or otherwise make proper provision for the Liabilities of the Scheme attributable to that Investment Portfolio.

38.4 Reinvestment of Investment Portfolio

The Cash held in respect of each relevant Member following the cashing up of an Investment Portfolio in accordance with clause 38.3 shall be reinvested by the Manager:

- a if clause 38.2a applies:
 - i in accordance with any Switching Notice given by that Member; or
 - ii in the absence of a Switching Notice, in the Substitute Investment Portfolio as specified by the Manager pursuant to clause 38.2a; or
- b if clause 38.2b applies, by effecting a conversion to the relevant Personal Plan under clause 12.2.

38.5 Winding up of a Personal Plan

A Personal Plan shall determine and be wound up if the Manager resolves to wind up that Personal Plan and gives notice to the Supervisor and to the Member to whom that Plan relates accordingly (**provided that** the Manager may not so resolve if to do so would be contrary to the Governing Requirements). The notice given to the Member shall specify a particular Investment Portfolio determined by the Manager in which the proceeds of winding up the Personal Plan will be reinvested unless, within the notice period specified in the notice, the Member requests the Manager in writing to reinvest the proceeds in a specified different Investment Portfolio. From the date of the Manager giving notice no Withdrawal Requests shall be given by the Member to whom the Personal Plan relates.

38.6 Cashing up of Personal Plans

Following the expiration of the notice period set out in the notice given to the Member under clause 38.5, the Manager shall as soon as is practicable:

- a sell, call in and convert into Cash the whole of the Scheme Property attributable to that Personal Plan; and
- b pay out, discharge or otherwise make proper provision for the Liabilities of the Scheme attributable to that Personal Plan.

38.7 Reinvestment of Personal Plan

The Cash held following the cashing up of a Personal Plan in accordance with clause 38.6 shall be reinvested by the Manager:

- a in accordance with any written notice given by the relevant Member under clause 38.5; or
- b in the absence of such a notice, in the substitute Investment Portfolio as specified by the Manager in its notice to the Member pursuant to clause 38.5.

38.8 Winding up of Scheme

The Scheme shall be wound up and dissolved if:

- a the Manager (after first giving to the Supervisor not less than ten days' prior notice in writing of its intention) resolves in writing to wind up the Scheme;
- b the last Member redeems that Member's Units in the Scheme or receives full payment of the Member's interest in his or her Personal Plan, as applicable, and the Manager resolves in writing to wind up the Scheme; or
- c the Scheme is required to be wound up by operation of law.

38.9 Effect of wind-up resolution

Every resolution to wind up the Scheme shall specify an effective Winding Up Date of the Scheme and on and after the Winding Up Date:

- a no further Persons shall be admitted as Members of the Scheme or be allocated any Units in the Scheme; and
- b no further Contributions shall be made to the Scheme but (subject to the Governing Requirements) Contributions that accrued before the Winding Up Date may be applied by way of subscription to Units or towards the purchase of Investments for the relevant Personal Plan (as applicable) or refunded at the Manager's discretion,

and the Scheme Property shall thereupon be realised by the Manager as soon as reasonably possible having regard to the nature of the Scheme Property to be realised.

38.10 Members to be notified

Immediately after the passing of the resolution to wind up the Scheme each Member shall be promptly given notice in writing of the resolution.

38.11 Applications of proceeds

The proceeds obtained from realising the Scheme Property shall be applied by the Manager in the following order of priority:

- a first, in meeting all costs, expenses and Liabilities of the Scheme including setting aside any amounts the Manager considers necessary or desirable in respect of any contingent Liability of the Scheme; and
- b secondly, in calculating for each Member a share of the remaining amount in the proportion that the Members' respective interest in the Scheme (be it by way of a holding

of Units or an interest in a Personal Plan) bears to the total interest of all Members at the Winding Up Date, less any amount properly deductible under clause 32.1, and applying such amount in accordance with section 57 of the KiwiSaver Act.

38.12 Authorities to be notified of winding up resolution

The Supervisor shall within 10 Working Days after the winding up resolution or order by the High Court that the Scheme be wound up is made:

- a give a copy of that order or resolution to the FMA and the Commissioner of Inland Revenue; and
- b provide any other information required by the Governing Requirements to the Commissioner of Inland Revenue.

38.13 Winding-up report

The Supervisor shall ensure that final financial statements of the Scheme showing the financial position of the Scheme as at the Winding Up Date are prepared and audited by the Auditor in accordance with the Governing Requirements.

38.14 Procedure following receipt of accounts

The Supervisor shall within 20 Working Days after the final financial statements have been audited or within such longer period as the FMA may permit in accordance with the FMC Act, ensure that:

- a a copy of those financial statements is sent to the FMA and to every Person who was a Member immediately before it was wound up; and
- b the FMA and the relevant Members are advised in writing as to the manner in which the remaining Scheme Property (if any) are to be distributed.

38.15 Partial distributions permitted

The Supervisor, following consultation with the Manager, may make a partial distribution of Scheme Property at any time before a copy of the final financial statements is sent to the FMA under clause 38.14a.

38.16 Notification to FMA following distribution

The Supervisor shall, within the required timeframes, inform the FMA of the date on which the distribution of the Scheme Property is completed.

39 Meetings of Members

39.1 Request for meeting

The Manager shall summon a meeting of Members upon the request in writing of:

- a the Supervisor;
- b Members whose 'member's accumulations' (as defined in the KiwiSaver Act and calculated in accordance with this Deed) in the Scheme have a combined value of no less than 5% of the total value of all 'member's accumulations' in the Scheme;

- c no less than 5% of the number of Members; or
- d any other person or persons entitled by the Governing Requirements to summon a meeting.

39.2 Manager may convene meeting

The Manager may at any time of its own volition convene a meeting of Members.

39.3 Meeting procedure

All meetings of Members shall be convened and held in accordance with the provisions set out in Schedule 1. Subject to regulation 89(2) of the FMC Regulations, those provisions shall apply notwithstanding anything to the contrary in the FMC Act.

39.4 Meeting of Class of Members

The Manager may, and shall on the request in writing of those entitled to request a meeting pursuant to clause 39.1 (with references in that clause to Members read as if they were references to the particular class of Members), summon a meeting of the holders of any class of Members. Unless otherwise provided, or the context otherwise requires, all the provisions of this Deed relating to meetings of Members shall apply with all necessary modifications to any such meeting.

39.5 Restrictions on voting

Except where permitted by the Governing Requirements, the Manager and its Associates are not entitled to, and must not, vote their interest on a resolution of Members if they have an interest in the resolution or matter other than as a Member.

40 Notices

40.1 Notice to Members

Subject to the Governing Requirements, any notice or other document to be served on a Member shall be deemed served if:

- a delivered to that Member personally or to the Member's principal place of business or place of abode; or
- b sent by prepaid post to the address of the Member last known to the Manager or Supervisor (as applicable) (in which case the notice shall be deemed to be served three days after the date of posting).
- c by electronic communication sent to the electronic address of the Member last known to the Manager or Supervisor (as applicable) (in which case the notice shall be deemed to be served on the date and time at which it leaves the sender's information system).

40.2 Notice to Supervisor or Manager

Any document or notice to be served or required to be given to the Supervisor or the Manager may be delivered personally to the registered office of the Supervisor or the registered office of the Manager or may in the Supervisor's or Manager's discretion be made by facsimile, orally or in such other manner as is acceptable to or prescribed by the Supervisor or Manager

in respect of notices to be given to itself. A notice given to the Supervisor or the Manager shall only be effective when received by the Supervisor or the Manager as the case requires.

41 Members bound by this Trust Deed

The terms and conditions of this Deed are for the benefit of and binding on the Supervisor, the Manager and each Member and all persons claiming through them respectively and as if each Member had been party to and had executed this Deed.

42 New Zealand Law

This Deed shall be construed, interpreted, and administered in accordance with the laws of New Zealand.

43 Currency

43.1 New Zealand currency

Contributions shall be paid in New Zealand currency. All amounts and benefits payable by the Manager in respect of this Deed shall be paid in New Zealand currency.

43.2 Conversion to New Zealand currency

Where for the purposes of any provision of this Deed 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 by the Manager and any Liability which is payable in a non-New Zealand currency shall for the purposes of this Deed be treated as being a Liability of an amount equal to the New Zealand currency equivalent determined as aforesaid **provided always that:**

- a the basis for conversion fixed by the Manager must accord with proper prudent principles of valuation; and
- b 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.

Execution

Signed for Funds Administration New Zealand Limited
by two of its directors:



Director's signature

Graham Duxton

Director's name



Director's signature

DEREK YOUNG

Director's name

Signed for Trustees Executors Limited
by two authorised signatories:



Authorised signatory's signature

Matthew Joseph Band


Authorised signatory's name



Authorised signatory's signature

KELSEY KHAW.

Authorised signatory's name

Witness signature 
Full name Adesh Kaur
Occupation Business Analyst
Town/city Auckland



2018/095(1091)

Schedule 1 Meetings of Members (clause 39)

1 Venue of Meetings

- 1.1 A meeting of the Members of the Scheme shall be held in such place and at such time as the Manager determines.

2 Notice of Meetings

- 2.1 Notice of every meeting shall be given in the manner provided in this Deed to every Member entitled to receive notice of the meeting who is entered on the Register and who has supplied to the Manager an address for the giving of notices to him or her.
- 2.2 At least 15 Working Days' notice 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.
- 2.3 The notice shall specify:
- a the place, day, and hour of the meeting;
 - b the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it;
 - c the text of any Special Resolution to be submitted to the meeting (but it is not necessary to state the text of any Ordinary Resolution to be submitted to the meeting); and
 - d the right of a Member to appoint a proxy.
- 2.4 An irregularity in a notice of meeting is waived if:
- a all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver; or
 - b the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Members.
- 2.5 A copy of the notice and any other communications that a Member receives in connection with the meeting shall be sent to the Supervisor, the Manager, every director of the Manager, and an auditor of the Manager.
- 2.6 The accidental omission to give notice to, or the failure to receive notice of a meeting by, any Member, does not invalidate proceedings at any meeting.
- 2.7 A notice of meeting that contains a Special Resolution to approve a Related Party Benefit must contain, and be accompanied by, the matters required by the FMC Act.
- 2.8 If a Special Resolution is to be submitted to the meeting:
- a A draft of the proposed notice of the meeting (including any explanatory memorandum required under the FMC Act) must be given to the Supervisor at least 10 Working Days

before the notice is given under clause 2.1 (or any lesser period approved by the Supervisor); and

- b The notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Manager at least 5 Working Days before the notice is given under clause 2.1, or any lesser period approved by the Manager).

3 Quorum

- 3.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum necessary for a meeting at which:
 - a a Special Resolution is to be submitted, shall be not less than 25% of the number of Members entitled to vote on the business to be transacted by the meeting present in person or by proxy or attorney; and
 - b any other resolution is to be submitted, shall be five Members present in person or by proxy or attorney.
- 3.3 If within 30 minutes after the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Members shall be dissolved. In any other case it shall stand adjourned to the day that is 10 Working Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint and at such adjourned meeting if a quorum is not present within 30 minutes after the time appointed for the meeting the Members present in person or by proxy or by attorney and entitled to vote shall be a quorum.
- 3.4 To avoid doubt, a Member participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.
- 3.5 If a meeting of Members is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned. Notice of any other adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting.

4 Supervisor and Manager may attend and speak

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

5 Chairperson

- 5.1 A Person nominated in writing by the Supervisor ('**Chairperson**') shall preside at every meeting.

6 Adjournment of meetings

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

7 Voting rights

- 7.1 The only Persons entitled to vote in Person or by proxy or by attorney shall be the Members of the Scheme registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- 7.2 Each Member present in person or by proxy or attorney has one vote, regardless of the value of their interest in the Scheme.

8 Proxies

- 8.1 Votes may be given either personally or by proxy or by attorney. An instrument of proxy shall be in such form as the Manager shall stipulate from time to time and need not be witnessed.
- 8.2 Whenever the Chairperson of the meeting or an officer of the Supervisor is appointed a proxy for a Member and the Member has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll or show of hands the manner in which his or her proxy is to vote upon any resolution coming before the meeting his or her vote shall be used in favour of the resolution.
- 8.3 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing.
- 8.4 A Person appointed to act as a proxy need not be a Member.
- 8.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a notary public or in such manner as the Manager shall approve shall be deposited at such place as the Manager may in the notice convening the meeting appoint or (if no such place is appointed) then at the Manager's registered office not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the Person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid provided that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.
- 8.6 A proxy shall unless the contrary is stated thereon be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of 12 months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney otherwise than by an instrument of proxy.
- 8.7 An instrument of proxy in favour of the Chairperson of the meeting or the Chairperson, (howsoever expressed) shall be valid and effective as though it were in favour of a named

Person and shall constitute the Chairperson for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointor.

- 8.8 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 Member concerned.
- 8.9 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 mental disorder of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed provided that no intimation in writing of such death, mental disorder, or revocation is received by the Manager at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

9 Power of Attorney

- 9.1 Any Member may by power of attorney appoint an attorney (who need not be a Member) to vote and act on his behalf at any meeting and such power of attorney or proof thereof to the satisfaction of the Manager 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 Manager's registered office. Such attorney if so empowered may appoint a proxy for the Member granting the power of attorney.

10 Procedure

- 10.1 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:
- a the Chairperson;
 - b the Supervisor or any representative of the Supervisor; or
 - c not less than two Members having the right to vote at the meeting.
- 10.2 Unless a poll is so demanded a declaration by the Chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost 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.
- 10.3 If a poll is required or is duly demanded it shall be taken in such manner as the Chairperson may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 10.4 To the extent permitted by law, in the case of an equality of votes whether on a show of hands or on a poll the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Member or on behalf of Members.

- 10.5 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 30 days from the date of the meeting) and place as the Chairperson may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 10.6 The demand for a poll 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.
- 10.7 On a poll votes may be given either personally or by proxy or by attorney.

11 Resolutions

- 11.1 When a particular majority is not required by this Deed or by law, any matter arising at any meeting of Members shall be determined by Ordinary Resolution.
- 11.2 Subject to the Governing Requirements, a meeting of Members shall have the following powers exercisable by Special Resolution:
- a power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Members howsoever such rights shall arise;
 - b power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
 - c 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 this Deed;
 - d the powers set out in clauses 18.1ei, 18.3, 19.1f, 19.3b, 26.4b, and 35.1b,

provided that no such sanction, assent, release or waiver which materially and adversely affects the interests of one class of Members in a manner different from that in which it affects the interest of other Members shall be effective without the approval of a separate Special Resolution of the Members of the first mentioned class.

12 Special Resolution binds all Members

- 12.1 Subject to the provisions of the proviso to paragraph 11 of this Schedule and the Governing Requirements, a Special Resolution passed at a meeting duly convened and held in accordance with this Deed shall be binding upon all Members whether present or not present at the meeting.
- 12.2 Each of those Members, 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 those Members 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 provided that (without prejudice to the proviso to paragraph 11) a Special Resolution which affects a particular Member or a class of Members only as opposed to the rights of the Members

generally shall not be binding on such Member or class unless such Member or Members agrees to be bound by the terms of such resolution.

13 Minutes to be kept

Minutes of all resolutions and proceedings at every meeting shall be made by the Manager (or if the Manager shall not be present at any meeting by some Person appointed by the Chairperson of such meeting) and duly entered in books from time to time provided for that purpose by the Manager and any such minutes as aforesaid if purporting to be signed by the Chairperson of the meeting at which such resolutions were passed or proceedings had or by the Chairperson of the next succeeding meeting of Members shall be prima facie evidence of the matters therein stated and until the contrary is provided every respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had.

14 Resolution in lieu of meeting

A written resolution is valid as if it has been passed at a meeting if it is signed in accordance with the FMC Act by no less than 75% of the Members who are entitled to vote on the resolution at the meeting.