

**Dated 2 November 2016**

**SUPERLIFE KIWISAVER SCHEME  
TRUST DEED**

**SMARTSHARES LIMITED**

**PUBLIC TRUST**

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## PARTIES

1. **SMARTSHARES LIMITED** a company duly incorporated in New Zealand under the Companies Act 1993 (“**Smartshares**”).
2. **PUBLIC TRUST** a New Zealand Crown Entity established under the Public Trust Act 2001 (“**Public Trust**”).

## BACKGROUND

- A. By trust deed dated 29 November 2006 (“**Original Trust Deed**”), SuperLife Limited and SuperLife Trustee Limited established a superannuation scheme to become a KiwiSaver scheme under the KiwiSaver Act 2006 (“**KiwiSaver Act**”) called “SuperLife KiwiSaver”. The Original Trust Deed was replaced by a deed dated 28 March 2007, and amended by a deed dated 9 September 2011, under which the name was changed to “SuperLife” (“**2007 Deed**”). The 2007 Deed was replaced by a deed dated 14 September 2012 (“**Existing Deed**”).
- B. Under a Deed of Retirement and Appointment dated 28 September 2013 SuperLife Trustee Limited retired as trustee of the Scheme, and Public Trust was appointed as the trustee of SuperLife and SuperLife Limited continued as the manager of SuperLife.
- C. On 16 January 2015 by way of an Agreement for Sale and Purchase, SuperLife Limited was purchased by NZX Limited and SuperLife Limited became a subsidiary of NZX Limited.
- D. From 30 June 2016, Smartshares Limited, a subsidiary of NZX Limited, was licensed to provide market services as a manager of a registered scheme under the Financial Markets Act 2013 (“**FMCA**”).
- E. On or before the Effective Date Smartshares Limited will be amalgamated with SuperLife Limited under the Companies Act 1993 and Smartshares Limited will become the manager of SuperLife (“**Manager**”).
- F. The Parties now wish to amend the Existing Deed by replacing the provisions of the Existing Deed with the provisions of this deed (“**Trust Deed**”) in order to comply with the requirements of:
  - a. the FMCA and the Financial Markets Conduct Regulations 2014 (“**FMCR**”); and
  - b. the KiwiSaver Act and all other relevant enactments as amended by the Financial Markets (Repeals and Amendments) Act 2013; and
  - c. to make other minor amendments as a consequence of adopting the FMCA and for the efficient operation of SuperLife.
- G. Pursuant to the FMCA, Public Trust as the trustee of SuperLife is the supervisor (“**Supervisor**”) of SuperLife.
- H. The Parties consider that these amendments comply with the terms of clause 13.15 of the Existing Deed and the Existing Deed is amended by deleting all of its provisions and replacing them with the provisions of this trust deed as set out below.

## 1. DEFINITIONS

1.1 In this trust deed, unless the context requires otherwise:

**Auditor** means the auditor of the Scheme appointed pursuant to clause 29.3.

**Australian Scheme** means an entity that is a complying superannuation fund for the purposes of Part 5, Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and regulated by the Australian Prudential Regulation Authority.

**Authorised Investments** means, in respect of a Fund, the investments in which the Fund may be invested as specified in the relevant Fund Establishment Deed and/or the SIPO from time to time.

**Business Day** means any day other than a day that is a Saturday or Sunday or a public holiday in Auckland or Wellington.

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

**Contribution** means any contribution made to the Scheme by or for a Member, an Employer or the Crown.

**Crown** has the meaning given to that term by the KiwiSaver Act.

**Crown Contribution** has the meaning given to that term by the KiwiSaver Act.

**Custodian** means a person appointed by the Supervisor to hold some or all of the Investments and includes to the extent permitted under the Trust Deed any sub-custodian appointed by the Custodian.

**Disclosure Document** has the meaning set out in section 6(1) of the FMCA.

**Effective Date** means the date the Manager elected under clause 19(1)(a) of Schedule 4 of the FMCA, and notified to FMA for applying the provisions of the FMCA to the Scheme.

**Employee** means a Person who receives or is entitled to receive, salary or wages subject to the PAYE tax regime.

**Employee Member** means a Member in respect of whom an Employer is making Contributions.

**Employer** means an employer as set out in section 4(1) of the KiwiSaver Act.

**End Payment Date** has the meaning set out in the KiwiSaver Scheme Rules.

**Entity** means any of the following:

- (a) a company or other body corporate;
- (b) a corporation sole;
- (c) in the case of a trust that has –
  - (i) only one trustee, the trustee acting in his or her or its capacity as trustee; or
  - (ii) more than one trustee, the trustees acting jointly in their capacity as trustees;
- (d) an unincorporated body (including a partnership).

**Exchange** means any recognised market of financial products (including any stock, commodities, future or options exchange market) in any country which brings buyers and sellers of investments together.

**Financial Markets Legislation** has the meaning set out in section 6(1) of the FMCA.

**Financial Statements** means the financial statements for a Financial Year for the Scheme, including any financial statements of a Fund if established as a Fund with separate and distinct assets and liabilities.

**Financial Year** means in relation to the Scheme and if applicable to a Fund, the period commencing on 1 April of one year or on the commencement date of the Fund if later and ending on 31 March in the next year, or such other period ending on such other dates as may be determined by the Manager and notified to the Supervisor, provided that the last Financial Year shall end on the date as at which the Scheme or a fund, as applicable, is wound up.

**FMA** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011 or any successor entity.

**Foreign Superannuation Scheme** means an overseas superannuation scheme other than an Australian Scheme.

**Fund** means a pooled investment option made available under the Scheme and that is established and administered under clauses 8.1 to 8.7.

**Fund Establishment Deed** means a deed executed by the Manager and the Supervisor by which one or more Funds are established.

**Individual Member** means a Person who has been admitted to membership of the Scheme and is not an Employee Member and who has not ceased to be a Member under clause 5.4.

**Investment** means in relation to a Fund, an investment forming part of the assets of the Fund;

**Issuer Obligations** has the meaning set out in section 6(1) of the FMCA.

**KiwiSaver Act** means the KiwiSaver Act 2006.

**KiwiSaver Scheme Rules** means the rules set out in Schedule 1 to the KiwiSaver Act (including any amendments made from time to time) and implied in the Trust Deed.

**Liabilities** means in relation to a Fund, debts and other obligations of the Supervisor (acting in its capacity as supervisor of the Scheme), payable from the Fund and the liability of the Supervisor as drawer or acceptor of a bill of exchange, including in particular but without limitation all taxes or duties payable from the Fund but excluding:

- (a) contingent liabilities of any amount which results from treating a Member's interest in the Fund as a liability except to the extent that the Manager decides that an allowance should be made; and
- (b) such debts and other obligations of the Supervisor in respect of which by the terms of the Trust Deed the Supervisor is not entitled to be indemnified out of the Scheme or a Fund.

**Licensed Manager** means a person who is licensed under the FMCA to act as a manager of a Registered Scheme.

**Licensed Supervisor** means a person who is licensed under the Financial Markets Supervisors Act 2011 to act as a supervisor of a Registered Scheme.

**Manager** means Smartshares Limited or such other Licensed Manager that is appointed as the manager of the Scheme.

**Member** means a Person who has been admitted to the membership of the Scheme and has not ceased to be a Member under clause 5.4.

**Net Asset Determination Time** means in relation to a Fund, the time that the Manager determines the Net Asset Value of the Fund and will be:

- (a) the times specified in the Fund Establishment Deed or at such other times and at such other intervals as are determined by the Manager and notified to the Supervisor; or
- (b) in relation to a special valuation of the Net Asset Value of a Fund made pursuant to clause 10.4, such time on any Business Day on which such special determination is made.

**Net Asset Value** means in relation to a Fund and at a particular time, the net asset value of the Investments of the Fund at that time, as determined in accordance with clause 10.

**New Zealand Criteria** has the meaning set out in section 128(2) and section 128(3) of the FMCA.

**Office** means the principal office from time to time of the Manager or the Supervisor (as applicable).

**Participating Employer** means an Entity who has entered into a Participation Deed with the Manager to enable its employees to join the Scheme under the special rules established and set out in the Participation Deed.

**Participation Deed** means a deed to establish a Participating Employer under the Scheme.

**Permitted Withdrawal** means a withdrawal that is permitted under the KiwiSaver Scheme Rules.

**Person** means a natural person.

**PIE** means a portfolio investment entity as defined in the Tax Act.

**PIR** means the prescribed investor rate and has the meaning set out in the Tax Act.

**Register** means a register of Members of the Scheme and the Funds maintained in accordance with clause 28;

**Register Entry** means the entry on the offer register and scheme register for the Scheme and any Fund.

**Registered Scheme** has the meaning set out in section 6(1) of the FMCA.

**Registrar** means the Manager or the person for the time being appointed to that office by the Manager to keep and maintain the Register.

**Regulated Offer** has the meaning set out in section 6(1) of the FMCA.

**Related Body Corporate** means a body corporate (A) that is related to another body corporate (B) in terms of section 12(2) of the FMCA.

**Related Party** has the meaning given to it in section 172(2) of the FMCA.

**Related Party Benefit** has the meaning set out in section 172(1) of the FMCA.

**Relevant Law** means, as appropriate, all laws applicable to the Manager, the Supervisor, the Scheme or a Fund at applicable points in time, which may include the Financial Markets Legislation and any methodologies or frameworks issued by the FMA.

**Reserve Account** means the account defined as such in clause 27.1(d).

**Retirement Account** means in respect of a Member the account defined as such in clause 7.

**Retirement Scheme** means a KiwiSaver scheme, superannuation scheme or a workplace savings scheme as defined in the FMCA, or any Foreign Superannuation Scheme or Australian Scheme in respect of which transfers to or transfers from the Scheme (as applicable) are permitted under the KiwiSaver Scheme Rules.

**Scheme** means the SuperLife KiwiSaver scheme constituted and governed by the Trust Deed.

**Scheme Assets** means the investments and property of the Scheme for the time being vested in the Supervisor for the purposes of the Scheme and includes:

- (a) the assets held by the Supervisor or Custodian at the Effective Date and subject to the trusts of the Scheme;
- (b) any Contributions paid to the Scheme;
- (c) Transfer Values received in respect of Members; and
- (d) all other property received, derived or acquired by the Manager for the purposes of the Scheme.

**Scheme Bank Account** means the bank account established in the name of the Supervisor and maintained by the Manager pursuant to clause 6.8.

**Scheme Provider Agreement** means the scheme provider agreement applying from time to time with respect to the Scheme under the KiwiSaver Regulations 2006.

**SIPO** means the statement of investment policy and objectives for the Scheme (or if applicable to a Fund).

**Special Resolution** has the meaning set out in section 6(1) of the FMCA.

**Supervisor** means Public Trust or such other Licensed Supervisor that is appointed as the supervisor for the Scheme.

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

**Transfer Value** means any assets received from or paid to another scheme under clause 12.

**Trust Deed** means this deed as amended from time to time.

**Winding Up Date** has the meaning set out in clause 32.1(a).

## 2. INTERPRETATION

- 2.1 **Index and headings:** The index to and headings in the Trust Deed are used for convenience only, and do not affect in any way its interpretation.

**2.2 Interpretation rules:** In the interpretation of the Trust Deed, the following provisions apply unless the context otherwise requires:

- (a) words defined in clause 1.1 are for convenience of reference and are identified with a capital initial letter;
- (b) headings to clauses and to parts of the Trust Deed are for convenience of reference and are not to be interpreted as part of the clause;
- (c) words implying any gender shall include the other genders;
- (d) words implying the singular number shall include the plural and vice versa;
- (e) any reference to a statute or to any regulation (or to any particular clause or section) shall, include a reference to any subsequent statutory modification or re-enactment and regulations made there under or any amendment thereof;
- (f) any reference to any deed, agreement or other instrument shall include a reference to that deed, agreement or instrument as amended or novated from time to time;
- (g) where any frameworks or methodologies specified in notices issued by the FMA under the FMCA, are applicable to the Scheme and relate to any matter which is required to be provided for adequately in the Trust Deed under the FMCA, the provisions of the Trust Deed which deal with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme;
- (h) the implied provisions of the KiwiSaver Act, the KiwiSaver Scheme Rules and the FMCA are deemed to be implied in the Trust Deed for so long as those provisions are in force and any provision of the Trust Deed that is contrary to the implied provisions is void to the extent it is contrary;
- (i) any reference to currency is to the lawful currency of New Zealand; and
- (j) references to “includes” means “includes without limitation”, and “include” and “including” shall be construed accordingly.

**2.3 Currency conversions:** If, under the Trust Deed:

- (a) there is any liability that is payable in a foreign currency, it shall be treated as being a liability in New Zealand dollars of an amount equal to the New Zealand dollar equivalent of that foreign currency amount; and
- (b) if it is necessary to determine the New Zealand dollar equivalent of a sum expressed in a foreign currency (including for the purposes of clause 2.3(a)), that foreign currency sum shall be converted into New Zealand dollars using an exchange rate set in accordance with the Manager’s policy on the date of conversion.

**2.4 Reading down provisions:** If a provision of the Trust Deed is void or voidable or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal if it were read down and it is capable of being read down, it shall be read down accordingly to the extent necessary to give it legal effect.



- 2.5 **Severance:** Notwithstanding clause 2.4, if a provision of the Trust Deed is void or voidable or unenforceable or illegal:
- (a) if the provision would not be void or voidable or unenforceable or illegal if a word or words (as the case may be) were omitted, that word or those words are severed; and
  - (b) in any other case, the whole provision is severed,
- and the remainder of the Trust Deed has full force and effect.

### 3. **CONSTITUTION OF THE SCHEME**

- 3.1 **Name:** The scheme shall be known as "SuperLife KiwiSaver scheme".
- 3.2 **Change of name:** Subject to the requirements of the FMCA or any other Relevant Law or the Scheme Provider Agreement, the Manager may change the name of the Scheme and shall notify the Members and the Supervisor as soon as reasonably practicable.
- 3.3 **Purpose of Scheme:** The purpose of the Scheme is to provide retirement benefits directly to Members in accordance with the KiwiSaver Act and the FMCA.

### 4. **CONTINUATION OF THE SCHEME**

- 4.1 **Trusts under Existing Deed:** The trusts established in accordance with the Existing Deed are from the Effective Date governed by the Trust Deed and the Manager is designated to manage the Scheme in accordance to the provisions of the Trust Deed, the KiwiSaver Act and the FMCA.
- 4.2 **KiwiSaver scheme:** The Scheme is continued as a KiwiSaver scheme on the basis set out in the Trust Deed, effective on and from the Effective Date.
- 4.3 **Contributions and assets:** All Contributions and other assets of the Scheme shall be held on trust in accordance with the terms of the Trust Deed, KiwiSaver Act and the FMCA.
- 4.4 **Perpetuity period:** In accordance with section 19 of the Perpetuities Act 1964, the rule against perpetuities shall not apply to the trusts created for the Scheme.

### 5. **MEMBERSHIP OF THE SCHEME**

- 5.1 **Eligibility:** Any Person who meets the New Zealand Criteria may join the Scheme as a Member:
- (a) in respect of an Employer who has established Employer chosen arrangements with the Manager in accordance with the KiwiSaver Act, that Employer's Employees; or
  - (b) in respect of an Employee who joins under a Participation Deed in accordance with the terms and conditions specified in the Participation Deed; or
  - (c) in respect of an Employee who through market referrals makes a choice to join the Scheme or any Person who does not join the Scheme under sub-clause 5.1(a) or (b) by completing a written application in such form as the Manager may from time to time determine.
- 5.2 **Refusal of Application:** Subject to the KiwiSaver Act and the FMCA, the Manager may refuse any application for membership of the Scheme. A decision to refuse an application shall be made

promptly and the Manager shall as soon as reasonably practicable refund or arrange for the Supervisor to refund any moneys received in respect of such application.

- 5.3 Issue of an interest in the Scheme:** An interest in the Scheme is issued when a Person becomes a Member and is represented by the benefit that is prospectively payable in respect of the Member and is limited to the amounts standing to the Member's credit in the Member's Retirement Account.
- 5.4 Cessation of membership:** A Member will cease to be a Member when:
- (a) the Member (or the Member's personal representatives or any other persons entitled under the KiwiSaver Act to receive the Member's benefits) receives all benefits the Member is entitled to receive under the Scheme; or
  - (b) the Member transfers to another KiwiSaver Scheme or to an Australian Scheme in accordance with the requirements of the KiwiSaver Scheme Rules and ceases to have an entitlement under the Scheme; or
  - (c) the Manager gives notice to the Member that the balance in the Member's Retirement Account is zero and the Member's membership is terminated,
- whichever occurs first.
- 5.5 Compliance with legislation:** The Manager shall, in accepting any application under clause 5.1, comply with all Relevant Law.
- 5.6 Regulated Offer:** The Manager must not make a Regulated Offer of interests in the Scheme unless:
- (a) the Scheme is registered under the FMCA;
  - (b) a PDS has been prepared and lodged as a Register Entry in respect of the Scheme or the relevant Fund; and
  - (c) all of the information that the Register Entry is required to contain under the FMCA has been lodged with respect to the Scheme and each relevant Fund.
- 5.7 Disclosure Document requirements:** Each Disclosure Document must comply with the FMCA and FMCR and, subject to clause 5.9, otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 5.8 Manager's best endeavours:** The Manager must use its best endeavours to ensure that the Disclosure Documents for each Fund at all times comply with the FMCA and FMCR.
- 5.9 Supervisor's review of Disclosure Documents:** The Manager shall provide to the Supervisor, with reasonable notice, drafts of all proposed Disclosure Documents in respect of the Scheme or each Fund so as to allow the Supervisor time to review and provide comments on the draft (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).

## 6. CONTRIBUTIONS

**6.1 Contributions payable:** The contributions payable to the Scheme (and the rules applying to changing those contributions) shall be as set out in the KiwiSaver Act and the Disclosure Documents for the Scheme.

### 6.2 Regular Member Contributions:

- (a) An Employee Member shall make regular Contributions as required under the KiwiSaver Act and the Contributions shall be deducted from the Employee Member's regular remuneration by the Employer.
- (b) An Individual Member may make regular Contributions in a manner agreed between the Member and the Manager and paid to the Manager at such times as the Manager shall from time to time decide.
- (c) An Employee Member may make regular Contributions in a manner agreed between the Member and the Manager and paid to the Manager at such times as the Manager shall from time to time decide.

**6.3 Lump sum Member Contributions:** A Member may make a single lump sum contribution in a manner agreed between the Member and the Manager provided that the Manager may set a minimum lump sum contributions amount which may be altered at the Manager's discretion from time to time on such basis as the Manager decides and notifies Members of.

### 6.4 Employer Contributions:

- (a) In relation to an Employee Member, an Employer shall contribute at a rate as provided in the KiwiSaver Act as a Contribution to the Scheme.
- (b) The Employer shall deduct from the Employer Contribution for an Employee the employer superannuation contribution tax and pay it to the Commissioner and the Commissioner shall forward the net Employer Contribution to the Scheme to be credited in the relevant Employee's Retirement Account.
- (c) For the avoidance of doubt, an Employer shall cease to contribute to the Scheme in respect of an Employee Member, if that Employee Member ceases to be an Employee of that Employer.

**6.5 Crown Contributions:** The Manager shall accept any member tax credit paid to the Scheme as a Crown Contribution under the KiwiSaver Act in respect of any Member.

**6.6 Contributions that may be accepted:** The Manager may at its discretion accept other amounts payable to the Scheme by or in respect of a Member, including amounts transferred in respect of the Member from a Retirement Scheme.

**6.7 Member may suspend Contributions:** A Member may stop and recommence making contributions to the Scheme at any time and for any period provided that in respect of an Employee Member any requirements contained in the KiwiSaver Act have been complied with.

**6.8 Scheme Bank Accounts:** The Manager must arrange for all cash and other moneys, including Contributions, from time to time made to the Scheme to be held in the Supervisor's name and

lodged in a separate bank account or accounts opened and designated for the Scheme as soon as is reasonably possible after receipt of such cash and other moneys. The Manager is authorised by the Supervisor to operate such bank account or accounts. The Manager, at the written request of the Supervisor, shall provide evidence satisfactory to the Supervisor that a bank account is established in the name of the Supervisor for the Scheme and, as appropriate, for each Fund, and into which all money is paid, as appropriate, and is held on trust by the Supervisor in terms of the Deed and in accordance with Relevant Law.

## 7. RETIREMENT ACCOUNT

**7.1 Establishment of Retirement Accounts:** The Manager shall establish and maintain an account for each Member (a **Retirement Account**), which shall from time to time be credited or debited as appropriate, with:

- (a) Contributions under clause 6.1 to 6.5;
- (b) any interest, dividends and other income and market earnings including those due to negative market movements attributable to that Member, less an amount which represents the investment management fees payable and the liability or potential liability for taxation in respect of such income as determined by the Manager;
- (c) any Transfer Value received from a Retirement Scheme in respect of the Member or paid to another Retirement Scheme Member under clause 12;
- (d) any contribution towards the management and administration expenses received by the Scheme in respect of the Member;
- (e) management and administration expenses payable in respect of the Member under clause 25;
- (f) any regulatory expenses incurred by the Scheme in respect of the Member or the Member's share of any expenses incurred by the Scheme as a whole in each case as determined on an equitable basis by the Manager; and
- (g) the value of any benefit delivered or paid to or in respect of the Member.

**7.2 Sub-accounts:** The Manager shall be entitled to establish sub-accounts of the Retirement Account in respect of a Member as it deems appropriate.

**7.3 Member's investment election:** Any balance in the Member's Retirement Account under clause 7.1 and any other amount held to the credit of the Member's Retirement Account shall be invested in accordance with the Member's election as advised to the Manager from time to time having regard to such rules as the Manager may establish and notify Members of.

**7.4 Failure to make investment election:** If a Member fails to complete an investment election under clause 7.3, the Manager shall credit any amounts received in respect of such Member to the investment option nominated from time to time by the Manager as the Scheme's default investment option.

**7.5 Change of investment election:** A Member may amend the investment election for their Retirement Account. Such amendment may be done in a form prescribed by the Manager.

7.6 **Confirmations:** The Manager shall issue confirmation information to each Member each year in accordance with the FMCA and the FMCR.

7.7 **Unitisation:** If the Retirement Accounts are to be maintained under a unitised system, as determined by the Manager in its sole discretion, the Manager shall from time to time determine the appropriate rules, procedures and methodologies to facilitate the determination of unit prices and the allocation and redemption of units and the Members shall be advised of the unitisation. A unit shall not confer any interest in any particular part of the Scheme to which it relates and Members are not entitled to require the transfer of any Investments to them.

## 8. SCHEME ASSETS AND FUNDS

8.1 **Establishment and maintenance of Funds:** The Manager shall have the power to segregate the Scheme Assets into different Funds in order to offer to the Members a choice of how the amount credited to the Retirement Account of each such Member is to be invested from time to time.

8.2 **Creation of Funds:** Each Fund shall be maintained under a Fund Establishment Deed which may include the following matters as shall be applicable to the relevant Fund:

- (a) a description of the Authorised Investments for the Fund as determined by the Manager from time to time;
- (b) the Net Asset Determination Time for the Fund;
- (c) the fees and expenses payable to the Supervisor and the Manager (if any) in respect of the Fund;
- (d) the fees and expenses payable by the Members in respect of the Fund;
- (e) the borrowing restrictions or requirements to the extent that they amend or supplement the borrowing restrictions or requirements set out in the Trust Deed;
- (f) the terms and procedures relating to the switches in respect of the Fund;
- (g) whether the Fund is constituted as a pool of investments held on a non-segregated basis or as a distinct segregated fund and the terms that apply to assets and Liabilities (if any); and
- (h) any other matters which the Manager, after consulting with the Supervisor, deems appropriate.

8.3 **Investments:** The Manager shall decide whether a Fund is constituted as a pool of Investments held on a non-segregated basis or as a distinct segregated fund with its assets and Liabilities governed by the terms set out in the Trust Deed and Fund Establishment Deed. All Investments made for a Fund shall be held by the Supervisor as the property of the Fund for the benefit of the Members who have an interest in the Fund.

8.4 **Operation of Funds:** Without limiting the generality of clause 8.3, the Manager:

- (a) must, where it establishes a Fund with separate and distinct assets and Liabilities, ensure that:

- (i) all profits and losses of that Fund belong to the Member(s) who invest in that Fund in proportion to each Member's interest, subject to any loss of each Member being limited at all times to the value of their interest in the Fund; and
  - (ii) all Liabilities incurred in relation to a Fund shall be met only from the Fund's assets held for that Fund;
- (b) must, in all other cases, ensure that:
- (i) all Liabilities incurred in relation to a Fund shall be met in the first instance from the Investments for that Fund; and
  - (ii) the Liabilities incurred in relation to a Fund may be met from the Investments of other non-segregated funds (and in such equitable manner as the Manager, decides and advises the Supervisor) only if, and to the extent that, the Fund Investments are insufficient to meet such Liabilities.

**8.5 Apportionment between Funds:** The Manager shall determine whether any liability, cost, expense or charge properly incurred under the Trust Deed should be apportioned between one or more Funds and shall apportion such liability, cost, expense or charge and every such determination or apportionment shall be final and binding on all Members affected by such determination or apportionment.

**8.6 Fund property:** A Fund shall consist of all of the Investments for the time being held by the Supervisor for that Fund, including:

- (a) the proceeds of sale of any such Investments; and
- (b) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained in respect of the Fund.

**8.7 No claims on other Funds:** No Member in one Fund shall, by virtue of investing in such Fund, have any claim on the Investments of any other Fund.

## 9. INVESTMENT OF SCHEME ASSETS

**9.1 SIPO:** The Manager shall in consultation with the Supervisor maintain a SIPO for the Scheme and as appropriate, for each Fund.

**9.2 Investment in accordance with SIPO:** Each Fund shall be invested in Authorised Investments in accordance with the relevant SIPO.

**9.3 Amendment of SIPO:** Subject to Relevant Law, the SIPO for the Scheme or a Fund may be amended or replaced from time to time by the Manager in consultation with the Supervisor. If the Manager proposes to amend or replace the SIPO in relation to the Scheme or a Fund, in a manner that materially adversely affects existing Members that have an interest in that Fund, the Manager shall, prior to effecting any such amendment or replacement, give written notice to those Members. Unless the Manager in consultation with the Supervisor determines that it is in the Member's interests to give effect to the change earlier, such written notice shall be given at least 30 days' prior to the effective date of the amendment or replacement.

- 9.4 **No responsibility for investment performance:** Subject to Relevant Law, neither the Supervisor nor the Manager is responsible to the Scheme, a Fund or to any Member for the investment performance of a Fund arising from an Authorised Investment.
- 9.5 **Related Party Benefit permitted:** Subject to the SIPO, Relevant Law and to compliance with clauses 21.1 to 21.4, the Manager may invest in Authorised Investments where the transaction provides a Related Party Benefit.
- 9.6 **Supervisor's duty to refuse to act:** The Supervisor must refuse to act (and must direct any Custodian to refuse to act), on a direction of the Manager to:
- (a) invest, acquire or dispose of or transfer any Investment; or
  - (b) enter into any loan, give any security or other obligation; or
  - (c) exercise or not exercise voting rights conferred by the Investments,
- (collectively and individually referred to after this as the "**Proposed Action**") in respect of a Fund if in the opinion of the Supervisor, given in writing to the Manager before the Proposed Action, the Proposed Action:
- (d) is manifestly not in the interests of the Members with interests in the relevant Fund; or
  - (e) would breach the Trust Deed, or Relevant Law,
- and neither the Supervisor nor any Custodian shall be liable to the Members who have an interest in the Fund or to the Manager for so refusing to act on any such direction by the Manager.
- 9.7 **Supervisor's notification obligations:** If the Supervisor refuses pursuant to clause 9.6 to act on a direction from the Manager (or directs any Custodian to refuse to act), the Supervisor must notify the Manager in writing of that fact and the Supervisor's reasons for the refusal or direction to refuse.
- 9.8 **Manager's investment power:** The Manager shall have the full and absolute power to make all investment decisions in relation to the Funds and, subject to compliance with the SIPO and the terms set out in the Trust Deed and the relevant Fund Establishment Deed, may determine the terms of all sales, purchases, leases or other dealings with Investments, and all contracts, rights and other matters relating to such Investments or Liabilities, and acquire and sell property on behalf of a Fund for cash or upon such terms as are determined by the Manager.
- 9.9 **Manager's authority in respect of Investments:** The Manager shall be authorised from time to time to make or cause to be made any contracts or transactions in relation to any Investments by a Fund which the Manager considers to be in the interests of the Members with interests in the Fund and will ensure that all acquisitions resulting from such contracts or transactions are made in the name of the Supervisor.
- 9.10 **Manager's investment directions:** Subject to clauses 9.2 to 9.8 and clause 9.12, the Manager may direct the Supervisor in respect of:
- (a) the investment and management of the Investments;
  - (b) the purchase, acquisition, sale, transfer, replacement and disposition of Investments;
  - (c) the amendment or modification of any Investments; and

(d) the entering into any commitments or Liabilities.

At the Manager's written direction, the Supervisor will enter into such contracts and will to the extent of the Scheme Assets held in the relevant Fund in its hands or control, effect and pay for such contracts or transactions or investments or other commitments or Liabilities and will sign all documents and do all things necessary on its part to give effect to such direction.

- 9.11 Registration of Investments:** The Manager shall ensure that Investments for which provision for registration exists are registered in the name of the Supervisor or the appropriate Custodian as soon as reasonably practicable after receipt of the necessary documents and shall deliver all certificates or other documents of title for safe custody as directed by the Supervisor.
- 9.12 Supervisor's right to limitation of liability:** The Supervisor may, before entering into any transaction, security or liability, require that its liability is restricted or limited to the assets or Investments held by the Supervisor as supervisor for the relevant Fund or Funds. For the avoidance of doubt, this includes assets or Investments held by a Custodian in relation to the Fund or Funds.
- 9.13 Varying definition of Authorised Investments:** Where the Manager considers that it is in the interests of the Members to vary the definition of 'Authorised Investments' in respect of any Fund it may vary that definition by notice in writing to the Supervisor and the proposed variation must then be notified to the Members no later than 30 days prior to the variation taking effect, unless the Manager in consultation with the Supervisor determines that it is in the Members' interests to give effect to the change earlier. With effect from the date of such variation, the SIPO must be amended accordingly and the Trust Deed and/or the relevant Fund Establishment Deed must be interpreted as if the definition of Authorised Investments is as notified to the Members under this clause.
- 9.14 Custodian to keep records:** If the Supervisor has appointed a Custodian, it shall procure that the Custodian, keeps complete and accurate records of all Investments relating to each relevant Fund in accordance with the requirements of Relevant Law.
- 9.15 Availability for inspection:** The Supervisor must ensure the records required by clause 9.14 are kept in a manner that enables those records to be conveniently inspected by the Manager or its agent and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with Relevant Law.
- 9.16 Manager may rely on records:** The Manager shall be entitled to assume that the Supervisor's and Custodian's records of Investments are complete and accurate, and to rely upon them accordingly.

## 10. NET ASSET VALUE OF FUNDS

- 10.1 Net Asset Value determination:** As soon as reasonably practicable after each Net Asset Determination Time for a Fund, and subject to compliance with clause 10.7, the Manager will determine the amount, expressed in New Zealand dollars (or another currency if the Manager considers that other currency more appropriate), that fairly represents the Net Asset Value of the Fund at the Net Asset Determination Time.



**10.2 Principles relating to valuation:** The Manager shall decide on the methodology or rules for valuing the Investments of a Fund and for attributing the Net Asset Value of the Fund subject to the following:

- (a) The method for calculating the value of each asset in the Fund shall be consistent with the range of ordinary commercial practices for valuing that type of asset and shall be reasonably current at the Net Asset Determination Time.
- (b) The Manager may change the valuation method if in the Manager's opinion that change is needed to ensure equity amongst Members in the Fund.
- (c) The value of the Investments of the Fund may be adjusted where such an adjustment is considered necessary to reflect the fair value of the Fund's assets and taking account of currency exposures and fluctuations, marketability of the invested assets and/or such other considerations that the Manager decides are relevant.

**10.3 Methodology for valuing and pricing Investments:** The Investments of a Fund shall be established at fair value as at the Net Asset Determination Time by the Manager. The fair values shall be determined as follows:

- (a) In the case of investments that are managed by an investment manager, the realisable value of the Investments as advised by the investment manager taking account of the underlying market value.
- (b) In the case of shares listed on an Exchange and holdings of other securities traded on an active market, by reference to the relevant last traded market price at the Net Asset Determination Time, where the last traded price falls within the bid-ask spread. Where the last traded price is not within the bid-ask spread, the Manager will determine the point within the bid-ask spread that is the most representative of fair value.
- (c) For Investments not listed on an Exchange or traded in an active market, the Manager shall determine the appropriate valuation techniques that may, as the Manager decides, include reference to recent comparable arms-length market transactions, reference to the current market value of another similar investment or discounted cash flow analysis or another appropriate valuation model.
- (d) Valuation models shall use data taken from observable markets where possible, but may also use other considerations, assumptions or factors that the Manager decides are appropriate to the establishment of fair value.
- (e) The Manager shall record dividends on Investments on the ex-dividend date based on dividend announcement and adjusted, if appropriate, to reflect the amount received. Any tax credits associated with a dividend shall also be recorded consistently.
- (f) The Manager shall record interest on Investments on an accruals basis and adjusted, if appropriate, to reflect the amount received.
- (g) The Manager shall deduct from the aggregate value of all Investments of a Fund the total of:
  - (i) all the Liabilities of the Fund;

- (ii) all costs, charges and other amounts incurred or accrued or which will be incurred in holding or administering the Investments of the Fund (excluding, for the avoidance of doubt, any tax liability of a Member calculated in accordance with the PIE rules under the Tax Act) or a proper proportion of any of the foregoing having regard to the Business Day on which the Manager determines the costs, charges or other amounts in relation to the period to which they relate;
- (iii) the amount of any money held by the Manager or the Supervisor in respect of applications that have not been accepted by the Manager or that have been rejected by the Manager to the extent that such money has been included in the assets of the Fund;
- (iv) provision for any expenses that the Manager anticipates are or will be payable or reimbursable from the relevant Fund and that the Manager decides should be included for the purpose of making an equitable determination of the Net Asset Value of the Fund; and
- (v) any other amount which the Manager decides should be included for the purpose of making an equitable determination of the Net Asset Value of the Fund.

**10.4 Special valuation:** Without limiting the generality of clause 10.1 the Manager may make a special valuation where the Manager thinks there is the potential for material issues of equity as between one Member and all other Members in the Fund or amongst Members in the Fund as a whole.

**10.5 Effective at Net Asset Determination Time:** Every determination by the Manager of the Net Asset Value of a Fund shall be deemed to take effect at the Net Asset Determination Time in respect of which it is made.

**10.6 How long determinations remain in force:** Determinations of the Net Asset Value of a Fund remain in force from the time specified in clause 10.1 until the time that the Manager makes the next succeeding determination of the Net Asset Value of the Fund.

**10.7 Manager may engage a valuer:** The Manager may from time to time engage a valuer or other suitably qualified person, for the purposes of assisting the Manager to fix the current fair market value of any Investment and the Manager shall be entitled to rely upon the advice of such valuer or other person.

**10.8 Consistently applied basis:** The Manager must determine the Net Asset Value of each Fund on a basis that is consistent across all Funds.

**10.9 Methodology for allocating Investment returns to Members' interests:**

- (a) The Manager shall allocate a Fund's investment returns to the appropriate Members on a fair and equitable basis and the Investment returns earned by one Fund are not to be allocated to the Members of another Fund.
- (b) At the Net Asset Determination Time of each Fund, the Manager shall value the Investments of the Fund in accordance with clause 10.3 to determine the Net Asset Value of the Fund and the investment returns earned since the last such determination. The

Manager shall identify the taxable and the non-taxable components of the Fund's investment returns.

- (c) As at each Net Asset Determination Time the Manager shall allocate the investment returns of each Fund to each Member with an interest in the Fund in proportion to that Member's interest in the Fund at the previous Net Asset Determination Time, after deducting any withdrawals or transfers out of the Fund made subsequently to that previous Net Asset Determination Time.
- (d) At the Net Asset Determination Time, the Manager shall credit each Member's Retirement Account with the total returns earned on the interests held in the Fund, whether positive or negative, net of fees and with appropriate provisions for taxes since the immediately preceding Net Asset Determination Time.
- (e) The Manager will calculate the tax attributable to a Member at the Member's PIR as last notified by the Member to the Manager and shall deduct that from the investment returns before they are allocated to the Member's Retirement Account. If a Member has failed to notify the Manager of the PIR, the amount of tax deducted from the Member's investment returns shall be at the appropriate rate as set out in Relevant Law.
- (f) Subject to clause 7.3, a Member's investment returns are retained in the Member's Retirement Account and re-invested in the Fund in respect of which the investment returns have been calculated.

**10.10 Compensation:** The Manager shall alter a Member's interest in a Fund to address the impact of any pricing error or non-compliance with the provisions of this clause 10 provided that such alteration does not adversely affect the relevant Member's Retirement Account balance, or the position of other Members, as compared with the position such Member or other Members would have been in had the error or non-compliance not occurred. The Manager is not required to reimburse or compensate a Member or a former Member for a pricing error or for non-compliance with the provisions of clause 10 if the loss to the Member or former Member is less than \$20 (or such other amount as the Manager and Supervisor may determine or agree from time to time and advise to the Members as appropriate).

**10.11 Determination binding:** If the Manager complies with the provisions of clause 10, the determination of the Net Asset Value of a Fund by the Manager shall be final and binding on all persons, including the Manager, the Supervisor, and the Members.

## 11. BENEFITS

### 11.1 Retirement benefit and payment of retirement benefit:

- (a) When a Member has reached the End Payment Date the Member is entitled to a retirement benefit and can withdraw a benefit equal to the value of the balance in the Member's Retirement Account as at the date of payment of the retirement benefit as a lump sum.
- (b) A Member is not required to withdraw their interest in the Scheme on the End Payment Date and the Manager, subject to any rules imposed by the Manager, may let a Member withdraw the retirement benefit as the Member wishes.

**11.2 Transfer Value from an Australian Scheme:** A Member may withdraw the amount in the Member's Retirement Account that represents the Member's Transfer Value from an Australian Scheme (disregarding any positive or negative returns for the purpose of calculating that amount), if the Member is at least 60 years old and the Member's retirement (as that term is defined in regulation 6.01(7) of the Superannuation Industry (Supervision) Regulations 1994 (Aust)) has occurred as determined by the Manager.

**11.3 Death benefit and payment of death benefit:**

- (a) If a Member dies there shall be payable a death benefit equal to the value of the balance in the deceased Member's Retirement Account at the date of payment of the death benefit.
- (b) The Manager shall pay or apply the sum payable on the death of such a Member to the deceased Member's personal representatives or if the requirements of section 65 of the Administration Act 1969 are met, to the relevant person authorised by that section.

**11.4 Permitted Withdrawals:** Subject to the KiwiSaver Rules, Members are entitled to make withdrawals from their Retirement Account. The Permitted Withdrawals are as follows:

- (a) **Significant financial hardship:** Subject to the Supervisor's approval, if a Member suffers significant financial hardship, the Member may become entitled to a payment from their Retirement Account of an amount equal to the lesser of:
  - (i) the value of the Retirement Account as at the date of payment less the sum of the Crown Contributions (if any) credited to the Retirement Account; or
  - (ii) the amount required to alleviate the significant financial hardship as determined by the Trustee.
- (b) **Serious illness:** If a Member suffers serious illness and the Supervisor is reasonably satisfied that the Member is suffering from serious illness, the Member can apply for a serious illness benefit. The serious illness benefit is equal to the amount that the Member nominates up to the value of the Member's Retirement Account as at the date of the payment of the serious illness benefit.
- (c) **First home:** If a Member has been a member of a KiwiSaver scheme for at least three years the Member can choose to receive a first home benefit. The first home benefit is equal to an amount the Member nominates up to the amount that is equal to the value of the Retirement Account as at the date of payment less the sum of \$1,000 and any amount transferred from an Australian Scheme.
- (d) **Payment of liability:** A Member may apply to withdraw an amount for the payment of their liability for:
  - (i) tax, other than interest or penalties arising under the Income Tax Act 2007 from the Member's withdrawal of an interest in a Foreign Superannuation Scheme (other than an Australian Scheme) and conversion of the interest into an interest in a KiwiSaver scheme;
  - (ii) repayment obligations arising under the Student Loan Scheme Act 2011 from the withdrawal of an interest in a Foreign Superannuation Scheme (other than an

Australian Scheme) and conversion of the interest into an interest in a KiwiSaver scheme,

provided that any withdrawal for these purposes may not exceed the value at the time of the withdrawal of the Member's Retirement Account less the sum of Crown Contributions (if any) credited to the Member's Retirement Account.

- (e) **Other permitted benefits:** Notwithstanding the other provisions of clause 11, the Manager shall be entitled to pay or apply the full amount standing to the credit of the Member's Retirement Account and/or any part thereof in any other circumstance that is permitted by the KiwiSaver Act.

**11.5 Payment of benefits if eligible:** If the Manager or Supervisor (as required by the KiwiSaver Act) makes a determination that a benefit should be paid to a Member pursuant to the KiwiSaver Rules the Manager shall pay the benefit to the relevant Member as soon as reasonably practicable and unless the Member instructs otherwise the Manager may redeem the Member's interest from the Funds in which the Member has an interest in a manner determined by the Manager.

## 12. TRANSFERS

**12.1 Transfers into Scheme:** If a Member is entitled to a benefit under a Retirement Scheme (**Transferor Plan**), the Manager shall, in accordance with the KiwiSaver Act, accept from the Transferor Plan a Transfer Value which the trustees or managers thereof may be authorised to pay or transfer to the Plan in respect of such Member provided that the Member shall provide such information to the Manager and to the Transferor Plan as they reasonably require to satisfy their obligations under the KiwiSaver Act. Any such Transfer Value accepted by the Manager shall be credited to the Member's Retirement Account.

**12.2 Transfers to another Retirement Scheme:** If a Member advises the Manager that the Member wishes to become a member of another Retirement Scheme (**Transferee Plan**) the Manager shall at the written request of the Member, transfer to the Transferee Plan a Transfer Value determined by the Manager as being the amount standing to the credit of the Member's Retirement Account at the date of transfer so that the Member shall become entitled to such rights under the Transferee Plan as may be agreed between the Manager and the managers of the Transferee Plan or other person authorised thereunder provided that:

- (a) the Member shall provide such information that the Manager and the Transferee Plan reasonably require to satisfy their obligations under the KiwiSaver Act;
- (b) the Manager shall in accordance with its obligations under the KiwiSaver Act supply the information required in respect of the Member to the Transferee Plan, the Inland Revenue and/or the FMA;
- (c) the Manager may in accordance with the provisions of the FMCA transfer a Member or group of Members under this sub-clause (*mutatis mutandis*) without requiring the written consent of each affected Member; and
- (d) a Member in respect of whom a transfer is made under this clause shall not be entitled to any other benefit under the Scheme and the receipt of the Transferee Plan shall be a

complete discharge to the Manager of all liability in respect of the Member under the Scheme and the Manager shall be under no liability to see to the application of the amount so transferred.

### 13. OTHER PROVISIONS RELATING TO BENEFITS

- 13.1 Benefits not assignable:** Benefits and rights under the Scheme are personal to the Member and no Member may assign, charge, borrow against the security of or otherwise alienate the Member's benefits in any way provided that the Manager shall give effect to any arrangement entered into by a Member and the Member's spouse in terms of the Property (Relationships) Act 1976 or to an order of a court of New Zealand under any enactment or shall comply with the provisions of any enactment, the effect of which is to assign any benefit payable under the Scheme.
- 13.2 Information from Member:** Subject to the KiwiSaver Act and the FMCA, each Member shall produce such evidence or information as may be reasonably required by the Manager concerning the Member's entitlement under the Scheme and until such evidence or information is produced the Manager may withhold the payment of any benefit to such Member.
- 13.3 Deduction in respect of tax:** If the Manager becomes liable for the payment of any duty, tax or other money to any regulatory or governmental authority in respect of any benefit due to or in respect of a Member the Manager shall be entitled to deduct any such amount so payable from the benefit which would have been payable and to pay the balance of such benefit to or in respect of the Member in full satisfaction of the Member's entitlement to the benefits under the Scheme.
- 13.4 Augmentation of benefits:** Subject to the KiwiSaver Act and the FMCA, the Manager at the request of any person and upon the payment by that person of such additional contributions as the Manager may consider appropriate shall augment any of the benefits provided in accordance with this Trust Deed for any Member or provide any other benefits and may establish and maintain such accounts as may be necessary for this purpose.
- 13.5 Unclaimed money:** The Manager shall exercise reasonable diligence in tracing Members entitled to benefits from the Scheme after the End Payment Date, but in the event of the Manager being unsuccessful then in accordance with the KiwiSaver Act any money payable out of the Scheme which is not claimed within 5 years after the End Payment Date and where no contribution has been made to the Retirement Account in the preceding 5 years or if earlier at the Winding Up Date determined in accordance with clause 32.1 shall be paid to the Crown.
- 13.6 Incapacity of Member:** If a Member is in the opinion of the Manager incapable of managing their own affairs the Manager shall be entitled to withhold payment of any benefit payable in terms of this Trust Deed and shall thereupon apply such benefit to or for the benefit of the Member in such manner as determined by the Manager.
- 13.7 Advice on Retirement Account balance:** Each Member shall have the right to be advised as soon as practicable after the Member request for the amount standing to the credit of the Member's Retirement Account.
- 13.8 No Beneficiaries:** If a Member dies intestate and not being survived by a person described in items 1 to 7 set out in column 1 of section 77 the Administration Act 1969 to which apart from the

provisions of this sub-clause there would be a benefit payable pursuant to the provisions of this Trust Deed then the benefit payable shall be treated as unclaimed money pursuant to clause 13.5.

## 14. THE MANAGER

**14.1 Manager continued appointment:** With the amalgamation of the previous manager of the Scheme with the Manager, the Manager continues in office as the manager of the Scheme. The Manager agrees to carry out and perform the duties and obligations on its part contained in the Trust Deed and as otherwise required by Relevant Law for the benefit of the Members in the Scheme and as appropriate in each Fund.

**14.2 Non-exclusive:** Nothing contained in the Trust Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of the Scheme.

**14.3 Duties equivalent to trustee:** The Manager shall have the same duties and liabilities in the performance of its functions as manager as it would if it performed those duties as a trustee (except to the extent that those duties are altered by or are inconsistent with the KiwiSaver Act or the FMCA).

**14.4 Manager's functions:** The Manager shall be responsible for the following functions for the Scheme:

- (a) offering interests in the Scheme;
- (b) issuing interests in the Scheme;
- (c) managing and investing the Scheme Assets and Investments; and
- (d) administering the Scheme.

**14.5 Manager's general duties:** The Manager must:

- (a) act honestly in acting as a manager;
- (b) in exercising any powers or performing any duties as Manager:
  - (i) act in the best interests of the Members;
  - (ii) treat the Members equitably as a whole or where it determines appropriate, individually;
  - (iii) exercise the care, diligence and skill that a prudent person engaged in as a professional manager of a Registered Scheme would exercise in the same circumstances; and
  - (iv) carry out its functions in accordance with the Trust Deed, the SIPO and all other Issuer Obligations; and
- (c) not make use of information acquired through being Manager in order to:
  - (i) gain an improper advantage for itself or any other person; or

- (ii) cause detriment to the Members; and
- (d) in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by sections 13B or 13C of the Trustee Act 1956.

**14.6 Powers of Manager:** Subject to Relevant Law and the Trust Deed, in performing its duties and responsibilities the Manager shall have all the powers over and in respect of the Investments of the Scheme that it could exercise if it was the trustee of such Investments. In particular, without derogating from the foregoing, the Manager shall have the power to:

- (a) manage the Investments and determine the terms of sales, purchases and other dealings with Investments;
- (b) make all decisions relating to Investments, including sale and purchase decisions, the acceptance or rejection of takeover offers and cash and other issues, the investment of dividends and the exercise of voting rights in respect of Investments;
- (c) make all decisions relating to lending of property in the Scheme or borrowing property for the Scheme (including securities lending) and the terms of such lending or borrowing and any security relating to such lending or borrowing;
- (d) determine the terms of all contracts, rights and other matters relating to the Funds' Investments or Liabilities;
- (e) appoint and engage barristers and/or solicitors or other advisers on such terms as the Manager determines;
- (f) enter into any contract for the purpose of hedging against or providing for or spreading or reducing the risk of any loss in respect of any Investments or class of Investments or Liability which might result from any circumstance whatsoever, including fluctuations in any currency or currencies or interest rates or other financial risks;
- (g) grant or take up options to purchase or sell any Authorised Investments;
- (h) execute and deliver such contracts, documents, bills, notes, deeds and other instruments as may be necessary in respect of the Scheme; and
- (i) enter into any underwriting, agreement to underwrite, sub-underwriting or agreement to sub-underwrite any issue of financial products which when issued would constitute an Authorised Investment.

**14.7 Delegation of functions by Manager:** The Manager may authorise in writing any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to perform some or all of its functions as the Manager.

**14.8 Delegation requirements:** If the Manager delegates or contracts out any of its functions as the Manager:

- (a) the Manager must take reasonable steps to:
  - (i) ensure that those functions are performed, and are subject to the same duties and restrictions, as if the Manager was performing them directly; and
  - (ii) monitor the performance of those functions; and



- (b) the delegation does not affect the liability of the Manager for the performance of those functions.

**14.9 Notification of Supervisor:** The Manager shall advise the Supervisor of any delegation under clause 14.7 before any such delegation is entered into.

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

**14.11 Limitation of liability on exercise of voting rights:** Provided that the Manager is not acting in breach of its obligations under the Trust Deed or Relevant Law, the Manager shall not be under any liability or responsibility in respect of the management of the Scheme nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

## 15. THE SUPERVISOR

**15.1 Supervisor's continued appointment:** The Supervisor continues in office as the supervisor of the Scheme for the purposes of the FMCA. The Supervisor has the same duties and liabilities in the performance of its functions as it would if it performed those functions as a trustee except to the extent those duties are altered by or inconsistent with the FMCA.

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

- (a) acting on behalf of Members in relation to:
  - (i) the Manager; and
  - (ii) any matter connected to the Trust Deed or the terms of any Regulated Offer; and
  - (iii) any contravention or alleged contravention of the Issuer Obligations; and
  - (iv) any contravention or alleged contravention of the FMCA by any other person in connection with the Scheme;
- (b) supervising:
  - (i) the performance by the Manager of its functions and its Issuer Obligations; and
  - (ii) the financial position of the Manager and the Scheme, to ascertain that they are adequate;

- (c) holding the Scheme Assets, or ensuring that the Scheme Assets are held, in accordance with the FMCA; and
- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the FMCA, the Financial Markets Supervisors Act 2011 or the Trust Deed.

**15.3 Supervisor's duties:** The Supervisor must:

- (a) act honestly in acting as supervisor of the Scheme; and
- (b) in exercising any powers or performing duties as Supervisor:
  - (i) act in the best interests of the Members; and
  - (ii) 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; and
- (c) do all things it has the power to do to cause any contravention referred to in clause 15.2(a)(iii) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Members); and
- (d) subject to any order of the court made under section 210 of the FMCA, act in accordance with any direction given by a Special Resolution of Members that is not inconsistent with any enactment, rule of law or the Trust Deed in relation to:
  - (i) seeking a remedy to a contravention referred to in clause 15.2(a)(iii); and
  - (ii) any other matter connected with the Supervisor's functions under clause 15.2.

**15.4 Supervisor's general powers:** Subject to the provisions of the Trust Deed, the FMCA and all Relevant Law and the powers, rights and discretions given to the Manager by all Relevant Law and the Trust Deed, the Supervisor shall have the rights and powers in respect of the Scheme Assets which it could exercise as a bare trustee. Notwithstanding the preceding references to the provisions of the Trust Deed, the Supervisor shall have the power, on the instructions of the Manager to settle and complete all transactions in respect of the Scheme.

**15.5 Exercise of Supervisor's powers:** The Supervisor acknowledges that in exercising its powers and performing its duties as supervisor of the Scheme it must provide to the Manager as soon as possible following receipt, copies of all notices or documents received by the Supervisor or any Custodian in relation to any Investments of a Fund.

**15.6 Delegates of Supervisor:** The Supervisor may from time to time appoint, after consultation with the Manager, a Custodian to hold all or any of the Investments of the Scheme.

**15.7 Contracting out of custody:** If the Supervisor contracts the holding of any of the Investments of the Scheme or a Fund to a Custodian under clause 15.6, then the Supervisor:

- (a) must ensure that the contracting out of that function is pursuant to a written agreement between the Supervisor and the Custodian;
- (b) must ensure that the written agreement with the Custodian requires the Custodian to comply with all of the obligations under sections 157 to 159 of the FMCA, and any other

duties and requirements in relation to the Investments prescribed by the FMCA and the FMCR from time to time;

- (c) must take all reasonable steps to:
  - (i) ensure that the function is performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Supervisor had performed them directly;
  - (ii) monitor the performance of that function;
  - (iii) ensure that the Custodian does not sub-delegate the function without the prior written consent of the Supervisor; and
  - (iv) ensure that the Custodian remains liable for the performance of that function by any of its sub-delegates; and
- (d) 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 15.7(c).

**15.8 Limits on delegation:** The Supervisor must not delegate its functions under clause 15.2 (except its function of holding the Scheme Assets under clause 15.2(c)) unless otherwise permitted by the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.

**15.9 Right of Supervisor to engage expert:** The Supervisor may in the performance of its functions engage an expert if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

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

**15.10 Manager's obligations in relation to experts:** If the Supervisor engages an expert under clause 15.9:

- (a) the Manager must provide reasonable assistance to the expert, to allow the expert to make the determination or undertake the review; and
- (b) the Manager must pay the expert's reasonable fees and expenses.

**15.11 Manager's indemnity:** The Manager shall be indemnified for the expert's fees and expenses payable out of the Scheme Assets under clause 15.10(b) and may allocate those fees and expenses either to the Scheme as a whole or to a particular Fund as the Manager determines, in consultation with the Supervisor, subject to any limits under the Trust Deed or the FMCA.

**15.12 Best interest of Members:** The Supervisor has the power to take such action, including providing directions to the Manager, as it believes to be in the best interests of the Members.

## 16. COVENANTS BY MANAGER AND SUPERVISOR

**16.1 Manager covenants:** The Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall be not only for the Supervisor, but for the Members) that the Manager:

- (a) has power to act continuously as Manager and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Manager under the Trust Deed, or which might prevent it from so acting and will act continuously as Manager in accordance with the Trust Deed until wound up or until the Manager has retired or been removed from office;
- (b) will use its best endeavours to ensure that the Scheme is managed in a proper and efficient manner and in accordance with the provisions of the Trust Deed, the Fund Establishment Deeds, the SIPO and Relevant Law;
- (c) will ensure that the Disclosure Documents for the Scheme at all times comply with the FMCA and FMCR;
- (d) will pay to the Supervisor or the Custodian as soon as practicable, after their receipt by the Manager, any money that is received by the Manager in respect of a Fund;
- (e) will without delay forward to the Supervisor all notices and other information relevant to the Supervisor and received by the Manager, or on the Manager's behalf, in connection with the Scheme;
- (f) will make available to the Supervisor or to any Custodian or the Auditor, the whole of the records of the Manager kept pursuant or in relation to the Trust Deed whether kept at the Office or elsewhere;
- (g) will, without limiting sections 147 to 151 of the FMCA, give the Supervisor such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by Relevant Law or requested by the Supervisor under Relevant Law with respect to all matters relating to the Scheme, the Manager and the Investments and the management of each Fund;
- (h) will provide access to such employees and board members of, and service providers to the Manager as the Supervisor reasonably requires;
- (i) will 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 FMCA; and
- (j) will remain at all times a Licensed Manager.

**16.2 Supervisor covenants:** The Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall be not only for the Manager, but also for the Members) that the Supervisor:

- (a) has power to act continuously as supervisor and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as

Supervisor, or which might prevent it from so acting and will continuously act as Supervisor until it is determined otherwise in accordance with the Trust Deed or until it has retired or been removed from office;

- (b) will review the drafts of the Disclosure Documents provided by the Manager within a reasonable practicable time;
- (c) will comply with the Trust Deed and Relevant Law;
- (d) will ensure that the Scheme Assets are held in safe custody;
- (e) will keep the Investments of any Fund that is managed on a segregated basis separate from the Investments of other Funds, and from all other assets, investments and other property vested in or held by the Supervisor;
- (f) except as set out in the Trust Deed, the relevant Fund Establishment Deed, the SIPO or as authorised by Relevant Law, will not sell, mortgage, charge or otherwise part with the possession of any of the Investments;
- (g) will without delay forward to the Manager all notices and other information relevant to the Manager and received by the Supervisor or on the Supervisor's behalf in connection with the Scheme;
- (h) subject to the Trust Deed, shall execute all such proxies, powers of attorney and other instruments, deal with the Investments, and exercise any discretion conferred on the Supervisor under the Trust Deed, as shall be required to let the Manager or any person nominated by the Manager exercise the powers of management or other rights of the Manager in relation to the Trust Deed;
- (i) subject to clauses 17.1 to 17.5 and the provisions of Relevant Law, whenever the Manager determines it is necessary, borrow money as directed by the Manager; and
- (j) will remain at all times a Licensed Supervisor.

## 17. **BORROWING POWERS**

**17.1 Borrowing by Supervisor:** Subject to clauses 17.2 to 17.4 and the provisions of Relevant Law, the Supervisor has power to and, if so directed by the Manager shall:

- (a) borrow or raise money from any person;
- (b) enter into any form of credit facility or other accommodation or sell, discount or deal with bills of exchange, promissory notes and other negotiable instruments; or
- (c) charge the Investments or any of them as security for any money borrowed or raised.

**17.2 Limits on borrowing:** The aggregate of the money borrowed or raised and outstanding in respect of the Scheme or secured against the Investments of a Fund, together with the money proposed to be raised or borrowed or secured in respect of the Scheme, shall not exceed any amount specified in the Fund Establishment Deed and/or SIPO as the limit on borrowings for the Scheme or with respect to the Fund. For the purposes of this clause, borrowings shall include

any bill of exchange, promissory note, or other negotiable instrument in respect of which the Supervisor is a drawer or acceptor.

**17.3 Notice to Supervisor of required borrowing:** The Manager shall (subject to the limits mentioned in clause 17.2) determine and give notice to the Supervisor of the amounts and name of the lender and other terms and conditions of all borrowings to be undertaken by the Supervisor and all securities to be entered into. The Supervisor shall, subject to clause 17.4, enter into and execute all loan and security documents and will take all other steps necessary to give effect to any such borrowing or the giving of such security.

**17.4 Supervisor may refuse to borrow under some circumstances:** There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clause 17.3, or to complete any loan or security documents unless the Supervisor is satisfied that:

- (a) the Supervisor's liability is restricted to the Investments from time to time comprising the Scheme;
- (b) any loan or security or other obligation binding on the Scheme does not impose any unreasonable obligation upon the Supervisor in any capacity other than in its capacity as Supervisor; and
- (c) the repayment of all borrowings and the payment of all interest can be met on the relevant due dates.

**17.5 Manager to ensure compliance with limits:** The Manager will ensure that the entry into of any borrowing arrangement does not breach the limitations in clause 17.2.

## 18. APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER

**18.1 Removal of Manager:** The Manager shall cease to hold office as Manager if:

- (a) the Manager is removed by written direction of the Supervisor after the Supervisor certifies, in respect of the Scheme, that it is in the best interests of Members that the Manager should cease to hold office;
- (b) the Manager is removed by a Special Resolution of the Members;
- (c) the Manager is substituted by the High Court by court order on the application of the Supervisor, the FMA or a Member under the FMCA; or
- (d) the Manager has a receiver appointed in relation to its assets or if an order is made or resolution passed for the liquidation or winding up of the Manager.

**18.2 Manager to desist from activities:** If the Manager ceases to hold office, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Scheme unless the Supervisor advises the Manager to the contrary.

**18.3 Retirement of Manager:** The Manager may retire at any time without assigning any reason, upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement will take effect until a new manager has been appointed and the new manager has executed the deed referred to in clause 18.6.

- 18.4 Temporary manager:** Subject to the powers of the FMA under the FMCA, the power of appointing a temporary manager of the Scheme where a vacancy in the office of Manager arises is vested in the Supervisor. Where the Supervisor appoints a temporary manager, the Supervisor shall take all reasonable steps to appoint a permanent manager that is a Licensed Manager and meets the requirements under the FMCA.
- 18.5 Directions from meeting:** If the Supervisor is to secure the appointment of a new manager, the Supervisor must summon a meeting of Members and must take such steps as that meeting or any subsequent meeting of Members may require to appoint the new manager. Any meeting of Members may ratify the appointment of any temporary manager appointed by the Supervisor or FMA or may appoint a new manager. Any directions given to the Supervisor by any such meeting of Members must be by way of a Special Resolution.
- 18.6 New manager to execute a deed:** Any new manager must forthwith upon such appointment execute a deed in such form as the Supervisor may require and the new manager shall undertake to the Supervisor and the Members to be bound by all the covenants on the part of the manager under the Trust Deed from the date of such appointment.
- 18.7 Retiring Manager released:** From the date of execution by the new manager of a deed in accordance with clause 18.6, the retiring Manager is absolved and released from all such covenants under this Trust Deed in relation to the Scheme (except in respect of any prior breach in respect of which the retiring manager is not indemnified for under the Trust Deed) and the new manager must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the manager under the Trust Deed in all respects as if the new manager had been originally named as a party to the Trust Deed as Manager of the Scheme.
- 18.8 Manager's right to benefits:** Nothing in clause 18 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of the Trust Deed prior to the date of or arising on the Manager's retirement or removal from office.

## 19. APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR

- 19.1 Removal of Supervisor:** The Supervisor shall cease to hold office as supervisor if the Supervisor is removed pursuant to the FMCA.
- 19.2 Retirement of Supervisor:** The Supervisor may retire at any time without assigning any reason, upon giving 90 days' notice in writing to the Manager of its intention so to do. No such retirement will take effect until a Licensed Supervisor has been appointed as Supervisor pursuant to clause 19.3 and the new Supervisor has executed the deed referred to in clause 19.4 and all of the Scheme Assets have been transferred to the new Supervisor (or a Custodian appointed by it) in accordance with the FMCA.
- 19.3 New appointment:** The power of appointing a new Supervisor (in place of a Supervisor that has retired or been removed from office) is vested in the Manager. No person can be appointed as a new Supervisor unless it is a Licensed Supervisor. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution of the Members.

**19.4 New supervisor to execute a deed:** Any new Supervisor must forthwith upon such appointment execute a deed in such form as the Manager may require and the new Supervisor shall undertake to the Manager and the Members to be bound by all the covenants on the part of the Supervisor under the Trust Deed from the date of such appointment.

**19.5 Retiring Supervisor released:** From the date of execution by the new Supervisor of a deed in accordance with clause 19.4, the retiring Supervisor is absolved and released from all such covenants under the Trust Deed (except in respect of any prior breach in respect of which the retiring Supervisor is not indemnified for under the Trust Deed) and the new Supervisor must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Supervisor under the Trust Deed in all respects as if the new Supervisor had been originally named as a party to the Trust Deed.

## 20. LIABILITIES AND INDEMNITIES OF PARTIES

**20.1 Supervisor and Manager in representative capacity:** The Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to the Trust Deed for or in connection with the affairs of the Scheme, are each, and shall each be deemed to be, acting for and on behalf of the Members of the Scheme and not in their own respective personal capacities.

**20.2 No personal liability:** Subject to clause 20.4, neither the Supervisor nor the Manager shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with the Scheme, and only the Scheme Assets shall be available for that purpose.

**20.3 Indemnity:** If, contrary to the provisions of clauses 20.1 and 20.2 either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Scheme or any action taken or omitted in connection with the Scheme, then the Supervisor or the Manager (as the case may be) shall be entitled subject to the limits on permitted indemnities under the FMCA to indemnity and reimbursement out of the Scheme to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, except to the extent that such expense or liability is caused by the failure of the Manager or the Supervisor (as the case may be) to meet the standard of care required by Relevant Law or is a liability under clause 20.4.

**20.4 Liability for default:** The Supervisor and the Manager shall each be liable for any loss arising out of their respective wilful default, fraud or wilful breach of trust but otherwise (and subject to clause 20.9) neither the Supervisor nor the Manager shall be liable to the Scheme or to any Member as a result of acting as Supervisor or Manager (as the case may be) under the Trust Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Scheme.

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



foregoing the Supervisor and the Manager shall be entitled to be reimbursed for the following costs and expenses reasonably incurred:

- (a) expenses, costs or liabilities in connection with the formation and registration of the Scheme and any Fund, the acquisition, registration, custody, ownership, disposal of or other dealing with Investments of the Scheme and any Fund, including legal costs, bank charges and stamp duty, valuation fees, search and enquiry fees, brokerage, commission, registration fees, the expenses of any agents or Custodian both within and outside New Zealand, and other outgoings of or in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement or other dealing with or disposition of an Investment;
- (b) the fees and expenses of the Auditor;
- (c) any expense or liability that may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in respect of the Scheme or the provisions of the Trust Deed;
- (d) all income tax, capital gains tax, brokerage, financial institutions' duties and bank account debits, taxes or any other duty, tax or impost properly charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other person) in connection with the Scheme or the acquisition, registration, custody, disposal of or other dealing with an Investment;
- (e) costs of postage in respect of all cheques, accounts, Disclosure Documents, notices, reports and other documents posted to all or any Members;
- (f) costs of convening and holding any meeting of Members;
- (g) costs of preparing, printing and distributing accounts, statements, Disclosure Documents, cheques, and Member communications and all other documents required to be prepared in connection with the Scheme, pursuant to the Trust Deed or any Relevant Law;
- (h) all costs, charges and expenses of and incidental to the preparation, execution and lodgement of any deeds supplemental to this Trust Deed;
- (i) fees and expenses of any solicitor, barrister, computer expert or other person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under the Trust Deed including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions under clause 14.7;
- (j) the keeping of the Register, including the costs of establishing and maintaining any computer equipment and services or a fair contribution towards such a cost where the equipment and services are shared or used for other purposes not related to the Scheme;
- (k) all costs, charges and expenses incurred in the advertising and promotion of the Scheme; and
- (l) all other costs or expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under the Trust Deed.

**20.6 Limitation on liability:** Subject to the FMCA, without prejudice to the generality of clauses 20.1 to 20.4:

- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager, nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager;
- (b) the Manager shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor, nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;
- (c) the Supervisor and the Manager may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted and neither the Supervisor nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (d) whenever pursuant to any provision of the Trust Deed any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence of it a document signed on behalf of the Manager by any director or officer of the Manager or by any other person or persons, authorised by the Manager;
- (e) unless the Trust Deed states otherwise, the Manager and the Supervisor shall as regards all the trusts, powers, authorities and discretions vested in each of them by the Trust Deed have absolute and uncontrolled discretion as to the exercise of them whether in relation to the manner or as to the mode of or time for the exercise;
- (f) nothing in the Trust Deed shall be deemed to prohibit the Supervisor or any Related Body Corporate of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Related Body Corporate of the Manager or any shareholder or officer of the Manager (**Relevant Persons**) who is eligible for membership of the Scheme in terms of clause 5 from being a Member or from acting in any representative capacity for a Member. In particular and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Member and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by the Trust Deed or imposed or implied by law; and
- (g) the Supervisor is entitled to rely on the Manager's assessment of the validity of any signature on any transfer, application or other instrument if such reliance is based on a reasonable belief that the signature is genuine and any order by a court of competent jurisdiction against the Supervisor for damages in favour of any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of

reimbursement of any other person, be borne by the Scheme except that such loss may be attributable to the Supervisor's own negligence or wilful default.

- 20.7 Apportionment:** If any expense, cost or liability shall in the opinion of the Supervisor or the Manager be incurred on account of several Funds, then that expense, cost or liability shall be apportioned amongst those Funds in such manner as the Manager may conclusively determine. The Supervisor or the Manager may at any time choose not to seek reimbursement from any Fund for any expense, cost or liability without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).
- 20.8 Indemnity by Manager:** To the maximum extent permitted by the FMCA, the Manager shall indemnify and keep indemnified the Supervisor against all losses suffered and liabilities incurred by the Supervisor:
- (a) through the unauthorised acts, wilful breach of the provisions of the Trust Deed, gross negligence, fraud or dishonesty of the Manager or its officers or employees; and
  - (b) as a result of an act or omission by the Supervisor where such act or omission occurs because the Supervisor has followed directions given to it in writing by the Manager pursuant to the provisions of the Trust Deed; or as a result of the Manager exercising its powers under the Trust Deed not to approve any action that the Supervisor notifies the Manager in writing it wishes to take.
- 20.9 Statutory limitation on exemptions and indemnities:** No provision of this Deed has the effect of exempting the Supervisor or Manager or any director, officer or employee of the Supervisor or the Manager from, or indemnifying the Supervisor or Manager or any such director, officer or employee against, any liability to the extent that doing so would be void under the FMCA or any Relevant Law.
- 20.10 Power to indemnify investment managers and administration managers:** The Manager may, in consultation with the Supervisor, agree to limit the liability (in connection with its services in respect of the Scheme) of, and/or to indemnify and reimburse out of Scheme Assets, any investment manager or administration manager appointed in respect of the Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including, without limitation, legal fees and disbursements).
- 20.11 Power to indemnify Custodians:** The Supervisor may agree to limit the liability (in connection with its services in respect of the Scheme) of, and/or to indemnify and reimburse out of Scheme Assets, any Custodian appointed in respect of the Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including without limitation, legal fees and disbursements).

## 21. RELATED PARTY TRANSACTIONS

- 21.1 Dealings with Related Parties:** Subject to clause 21.2, the Manager (and any investment manager, administration manager, or other person to whom the Manager has contracted out some or all of its functions as a Manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 21.2 Permitted transactions:** Clause 21.1 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:
- (a) the Manager obtains the Supervisor's consent for the transaction or transactions under clause 21.3; or
  - (b) section 174 of the FMCA applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.
- 21.3 Restrictions on consent:** The Supervisor must not consent to a transaction or transactions under clause 21.2(a) unless one of the following applies and the Supervisor certifies to that effect:
- (a) the Supervisor considers that the transaction or transactions are in the best interests of the Members; or
  - (b) the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Members that are affected or potentially affected by the transaction or transactions.
- 21.4 Certification:** Before entering into a transaction or series of transactions under clause 21.2(b), the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate that complies with section 175 of the FMCA signed on behalf of the Manager by two directors, or one director and one other authorised signatory of the Manager.
- 21.5 No liability to account:** Neither the Supervisor, the Manager nor any Related Party shall be liable to account to the Scheme or any Member for any profit or loss arising from any transaction entered into in accordance with clause 21.2 unless the Manager or Supervisor has failed to meet the standard of care required of it by clauses 14.5(b)(iii) or 15.3(b)(ii) as the case may be.
- 21.6 Supervisor notification:** The Manager shall provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clause 21.2.
- 21.7 Exceptions:** The acquisition of interests in one Fund by another Fund, and any disposal thereof, will not require any notification or certification under clause 21.4 or clause 21.6.
- 21.8 Limitation of powers:** The powers contained in clause 21 are subject to clause 9.

## 22. REMUNERATION OF THE MANAGER

- 22.1 Management fees:** Subject to the KiwiSaver Act and the FMCA, the Manager shall be paid out of the assets of the Scheme in respect of its services under this Trust Deed.

**22.2 Manager's entitlements:** Subject to the KiwiSaver Act, the Manager shall be entitled:

- (a) at any time and from time to time after consultation with the Supervisor to increase, reduce or waive Members' management and administration fees by giving at least 30 days prior notice to all Members; and
- (b) to receive, in addition to the Management Fee, any goods and services tax under the Goods and Services Tax Act 1985.

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

## 23. REMUNERATION OF THE SUPERVISOR

**23.1 Remuneration basis:** Subject to the KiwiSaver Act and the FMCA, the Supervisor shall be paid by the Manager for its services under this Trust Deed such fee as may be agreed from time to time in writing between the Supervisor and the Manager.

**23.2 Cashing up of Interests:** The Supervisor shall be entitled to withdraw money (including by way of selling the interests in the Scheme) from an appropriate Retirement Account to meet the costs of meeting any fees or expenses reasonably incurred by the Supervisor or the Manager within the terms of the Trust Deed.

**23.3 Reimbursement of taxes:** The Supervisor shall be entitled to receive, in addition to any fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.

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

## 24. MEMBERS BOUND BY TRUST DEED

**24.1 Provisions benefit Members:** Except where the Trust Deed expressly provides otherwise or the context otherwise requires, the terms and conditions of the Trust Deed are for the benefit of and binding on each Member and all persons claiming through each Member as if the Member had been party to and had executed the Trust Deed.

## 25. PAYMENT OF FEES AND COSTS BY MEMBERS

- (a) **Fees and costs:** The expenses of the management and administration of the Scheme (including the administration fees, costs of investing, investment fees and other fees) shall be met by the Members on the basis of such rules made from time to time by the Manager and that it notifies Members of, provided that the expenses payable in respect of an Employee Member may be met in whole or in part by the Employer as decided by the Employer and to the extent that they are not met by the Employer shall be met by the Employee Member on the basis of such rules made from time to time by the Manager and that it notifies Members of.

**25.2 Changing the basis:** The fees and costs and the basis for allocating them or charging the Members may change, and if there is a change, the Manager shall, as appropriate, notify the Members of such change.

## **26. LIMITATION OF LIABILITY OF MEMBERS**

**26.1 Limitation:** Notwithstanding anything contained in the Trust Deed or any Relevant Law:

- (a) except as expressly provided by the Trust Deed, no Member shall in any circumstances be personally liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Scheme in the event of there being insufficient Scheme Assets to meet such debt or liability;
- (b) nothing in the Trust Deed or in the relationship between the Members shall be deemed to create a partnership amongst Members;
- (c) neither the Supervisor nor the Manager shall be or act as agent for the Members in respect of interests in the Scheme, and neither shall have power to incur liabilities on behalf of any Member or pledge the credit of any Member;
- (d) the rights (if any) of the Supervisor or the Manager to seek an indemnity are limited to having recourse to the Scheme Assets or the assets of a relevant Fund as applicable and do not extend to a Member in their personal capacity; and
- (e) on the winding up of the Scheme, no Member will have any liability to contribute to any shortfall in the Scheme Assets or assets of a relevant Fund.

## **27. PARTICIPATING EMPLOYERS**

**27.1 Participation Deed:** The Manager and an Entity, as an Employer, may enter into a Participation Deed (which shall form part of the Trust Deed) that prescribes the conditions on which all or any of the Participating Employer's Employees may become Members, including conditions relating to:

- (a) the contributions payable by the Participating Employer in addition to those required under the KiwiSaver Act;
- (b) the vesting of those additional contributions to the Employee Members and the treatment of unvested contributions;
- (c) the Fund or Funds applicable to those Employees Members;
- (d) the establishment of an account referred to as a "Reserve Account", to receive unvested contributions and to provide additional retirement benefits to the Employee Members; and
- (e) such other matters as the Manager and Participating Employer consider appropriate, including the manner (and consequences) of terminating the Participating Employer's obligations under the Participation Deed.

- 27.2 Terms of Participation Deed prevail:** Subject to 27.3, in the event of any conflict or inconsistency between the terms of a Participation Deed and the other terms contained in this Trust Deed, the terms of the Participation Deed shall prevail.
- 27.3 KiwiSaver Act prevails:** Notwithstanding any other term in this Trust Deed, no term in a Participation Deed may be contrary to the requirements of the KiwiSaver Act and any such term shall be void to the extent that it is contrary.
- 27.4 Vesting of Participating Employer Contributions:** Where a Participation Deed prescribes a vesting scale and a Member has withdrawn a portion of the Member's interest that includes an amount representing vested Participating Employer Contributions (as determined in accordance with the KiwiSaver Act), the withdrawal shall not cause any Participating Employer Contributions in respect of the Member to vest earlier (or to a greater extent) than those Contributions would have vested had the withdrawal not occurred.
- 27.5 Ceasing employment with Participating Employer:** If a Member ceases to be employed by a Participating Employer (without another employer agreeing to assume the obligations of the former employer under the relevant Participation Deed), or if the Member's Employer ceases to participate in the Scheme pursuant to the Participation Deed, then, the provisions of any relevant Participation Deed shall cease to apply to the Member.

## 28. REGISTERS

**28.1 Records to be kept:** The Manager shall keep a complete record of:

- (a) Members;
- (b) Contributions in respect of Members;
- (c) Withdrawals and transfers in respect of Members; and
- (d) all other matters, information and data as are necessary or expedient for the proper and efficient working of the Scheme or are required by the KiwiSaver Act and the FMCA.

**28.2 The Register:**

- (a) The Manager shall keep and maintain or cause to be kept and maintained a separate register of Members in respect of the Scheme and each Fund in a form and manner as determined by the Manager.
- (b) Each Register shall be kept or caused to be kept by the Manager or any person appointed by the Manager for this purpose.
- (c) On request by the Supervisor, the Manager will provide the Supervisor with a copy of each Register and the Supervisor shall be entitled to inspect the Register at any time during the normal working hours of the Manager.

**28.3 Contents of Register:** There shall be entered in the Register:

- (a) the names, addresses and PIR of the Members having an interest in the Scheme;
- (b) the date on which the name of every person was entered in the Register as a Member having an interest in the Scheme;

- (c) the date and amount of each Contribution made into a Member's Retirement Account;
- (d) the date and amount of each Permitted Withdrawal in a Member's Retirement Account;
- (e) the date and amount of any interest, dividends and other income and market earnings including due to negative market movements
- (f) the date and amount debited for taxes and fees from a Member's Retirement Account;
- (g) the date and amount transferred from a Member's Retirement Account
- (h) the date on which any person ceased to be a Member having an interest in the Scheme; and
- (i) such other details as the Manager may require or as may be required by law from time to time.

**28.4 Audit of the Registers:** The Manager shall cause the Register to be audited by the Auditor at least every year as required by the FMCA and in accordance with the FMCA. The Supervisor may at any time and for a specified and reasonable purpose request the Manager to cause the Register to be audited.

**28.5 Inspection:** A Member or Supervisor shall be entitled to inspect the Register (in the Member's case solely in respect of their interests in the Scheme) free of charge on giving prior written notice to the Manager at any time during the normal working hours of the Manager and in accordance with the requirements of the FMCA.

**28.6 Reliance upon Register:** The Manager and the Supervisor and each of them, unless they have reasonable cause for doubt, shall be entitled:

- (a) to rely upon entries in the Register as being correct and to act on that reliance;
- (b) for all purposes to treat a person whom it believes to be the person entered on a Register as the holder of an interest in the Scheme as the legal and beneficial owner of that interest; and
- (c) to effect transfers, withdrawals or other dealings of any nature with interests in the Scheme on the basis of the information recorded in a Register in respect of the relevant Member's interests in the Scheme.

**28.7 Evidence of entitlement:** Notwithstanding clause 28.6, the Manager shall be entitled, at its absolute discretion before giving effect to any transfer, withdrawal or other dealing with any interests in the Scheme to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in a Register as the holder of the relevant interests in the Scheme.

**28.8 No notice of trust etc:** No notice of any trust, express or, implied, or constructive, may be entered on the Register except as required by Relevant Law and neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express implied or constructive) or of any charge, pledge, or equity to which any interest in the Scheme is or may be subject, or to recognise any person as having any interest in the Scheme except for the person recorded in the Register as the Member.



## 29. ACCOUNTS, AUDITS AND REPORTING

### Accounts

29.1 **Accounting records:** The Manager shall keep or cause to be kept such accounting records in relation to the Scheme and each Fund, if appropriate as are required by Relevant Law.

29.2 **Financial Statements:** The Manager shall cause Financial Statements to be prepared and audited in respect of the Scheme and where appropriate for a Fund in accordance with Relevant Law.

### Auditor

29.3 **Appointment of Auditor:** The Manager must appoint a licensed auditor or registered audit firm, after consultation with the Supervisor, as the Auditor for the Scheme. The Manager, in consultation with the Supervisor, must agree upon the services to be performed and reports to be provided by the Auditor, and their scope having regard to requirements under Relevant Law. The remuneration of the Auditor shall be determined by the Manager.

#### 29.4 **Removal of Auditor:**

- (a) The Manager may at any time, after consultation with, and prior notice to, the Supervisor, remove the Auditor.
- (b) The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Scheme and/or Members and so instructs the Manager.
- (c) The Auditor may retire upon giving the Manager 30 days' notice in writing.

29.5 **Replacement of Auditor:** Any vacancy in the office of Auditor must be filled by the Manager as soon as reasonably practicable pursuant to clause 29.3.

29.6 **No restriction on other appointments:** The Auditor may also be the auditor of the Manager or the Supervisor, or of a Related Body Corporate of either the Manager or the Supervisor, or of any other managed investment scheme whether of a similar nature to the Scheme or otherwise.

### Reports

29.7 **Statutory reports:** The Manager will prepare reports and updates as required by the KiwiSaver Act and Relevant Law and file or submit these as appropriate and consult with the Supervisor on the content of those reports as required.

29.8 **Manager reporting to the Supervisor:** The Manager shall provide the Supervisor such reports at such times and frequency and in such format as agreed between the Manager and the Supervisor.

29.9 **Custodian reports:** The Supervisor shall provide the Manager with copies of all reports received from the Custodian confirming all property held by the Custodian as soon as reasonably practicable following receipt.

### 30. **MEETINGS OF MEMBERS AND DIRECTIONS TO SUPERVISOR**

- 30.1 **Call of meetings by Supervisor or Members:** The Manager shall summon a meeting of a class of Members upon the request in writing of the Supervisor or of no less than 5% of the number of Members in that class who hold an interest in the Scheme.
- 30.2 **Call of meeting by Manager:** The Manager may at any time convene a meeting of Members of the Scheme, to be held at such place as it may determine and in accordance with such procedures as the Manager may in its sole discretion determine, subject to the requirements of Relevant Law.
- 30.3 **Rules of meetings:** All meetings of Members, other than the meetings called by the Manager under clause 30.2, shall be convened and held in accordance with the FMCR.
- 30.4 **Members' directions to the Supervisor:** The Members have the power by a Special Resolution to give the Supervisor such directions as they think proper concerning the Scheme that are consistent with the provisions of the Trust Deed and, where applicable, the KiwiSaver Act or the FMCA.
- 30.5 **Compliance with directions or orders:** Where any direction is given to the Supervisor pursuant to clause 30.4 in respect of any matter, the Supervisor may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction. Where applicable, the Supervisor may also at its discretion in accordance with section 207 of the FMCA apply to the High Court for an order in respect of any matter.

### 31. **NOTICES**

- 31.1 **Notices to Members:** A notice may be given to any Member either personally or by sending it by post to the address of the Member shown in the relevant Register by ordinary prepaid post or if the address is outside New Zealand, by airmail prepaid post, or (unless and until notified to the contrary by the Member) by e-mail.
- 31.2 **Notice by email:** For the avoidance of doubt, notices may with the Member's consent be given to any Member by email but the Member may at any time in writing or by email withdraw that consent.
- 31.3 **Deemed delivered:** Any notice given under the Trust Deed or KiwiSaver Act or Relevant Law will be deemed to have been given:
- (a) by personal delivery: when delivered;
  - (b) by post: if posted or delivered to a document exchange five Business Days after posting or five days after posting if by airmail, or by delivery of the document to the document exchange (if another country); and
  - (c) by email: when successfully transmitted to the recipient,
- provided that any communication received or deemed to have been received after 5 pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent shall be deemed to have been received on the next working day in that place.

- 31.4 Form of signature:** The signature to any notice given by the Manager or the Supervisor may be written or printed or electronically affixed.
- 31.5 Notice to Employer:** Any notice to be given to any Employer may be given either personally or by sending it by post to the address specified by the Employer or by email.
- 31.6 Calculation of notice period:** Subject to any Relevant Law, where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be included in the number of days or other period.
- 31.7 Notice to Supervisor or Manager:** Any notice, communication or information required by the Trust Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be addressed to the Office, in writing and be signed by a duly authorised officer of the party giving the notice provided that the Manager and the Supervisor may agree that certain notices or communications may be given by electronic communication.

## 32. TERMINATION OF SCHEME

### 32.1 Winding up of the Scheme:

- (a) The Scheme shall be wound up from such date (**Winding Up Date**) as is determined by the Supervisor as most appropriate:
- (i) if an order is made or resolution passed to place the Manager or the Supervisor in liquidation and no replacement is appointed within a reasonable time under clause 18 or 19 (as applicable);
  - (ii) if the Manager notifies the Supervisor in writing that the Scheme is to be wound up; or
  - (iii) if the winding up of the Scheme is otherwise required by any Relevant Law and the Supervisor accordingly resolves that the Scheme should be wound up.
- (b) From the Winding Up Date:
- (i) no further Contributions shall be payable to the Scheme under clause 6, except contributions that had accrued or were due before the Winding Up Date;
  - (ii) no further Persons shall be admitted as Member; and
  - (iii) the Supervisor shall comply with the requirements of the FMCA in respect of winding up the Scheme.

**32.2 Termination of Participation Deeds:** If the Scheme is wound up, then each Participating Employer shall be treated as having terminated that Participating Employer's obligations under the relevant Participation Deed on the effective Winding Up Date and the relevant Retirement Account and Reserve Account balances shall be dealt with accordingly.

**32.3 Expenses:** Upon the winding up of the Scheme, the Supervisor shall be entitled to set aside an amount which is considered necessary by the Supervisor to meet any expenses of the administration and winding up of the Scheme and to meet any tax for which the Supervisor may

be accountable and which in the opinion of the Supervisor may not in either case be recoverable from the Employers or Members.

**32.4 Application of Scheme Assets:** If the Scheme is wound up, the Supervisor shall allocate the Scheme Assets, amongst each Member in proportion to the amount standing to the credit of the Member's Retirement Account as at the Winding Up Date. Any assets held by the Supervisor at the Winding Up Date in respect of a death benefit which has become payable under clause 11.3 shall be distributed in accordance with the provisions of that clause and shall not form part of the Scheme Assets for purposes of allocation in accordance with this clause.

**32.5 Securing benefits on dissolution:** The Supervisor may, subject to the provisions of the KiwiSaver Act, secure the benefits described in clause 32.4 at its sole discretion by one or more of the following:

- (a) by the payment of lump sums to the persons to which they are entitled under the KiwiSaver Act, or
- (b) by a transfer, with the consent of the Member whose benefit entitlements are being transferred, to another KiwiSaver scheme provided that if the Member refuses to consent to such a transfer or to make a nomination, the Supervisor shall pay the Member's benefit to another KiwiSaver scheme specified by the Commissioner.

**32.6 Compliance with the FMCA:** The Supervisor shall also comply, or ensure compliance, with all applicable requirements under the FMCA relating to the winding up of the Scheme, including:

- (a) giving a copy of any order or resolution for the winding up to the FMA within the required timeframes;
- (b) ensuring that the final Financial Statements of the Scheme are prepared and audited within the required timeframes;
- (c) ensuring that copies of the final audited Financial Statements are sent to the FMA and Members within the required timeframes; and
- (d) informing the FMA of the date on which the final distribution of the assets is completed.

### **33. AMENDMENTS TO TRUST DEED:**

**33.1 Power to amend:** Subject to the requirements of and to the extent permitted by the KiwiSaver Act and the FMCA, the Manager may by deed and with the consent of the Supervisor given in accordance with the FMCA, vary all or any of the provisions of this Trust Deed including this clause.

**33.2 Retrospective effect:** Any amendment under clause 33.1 takes effect:

- (a) on any effective date (including any retrospective date) specified in the deed of amendment; or
- (b) if no effective date is specified, on the date the deed is executed.

34. **LAW APPLICABLE:**

34.1 **Governing law and jurisdiction:** The Trust Deed shall be interpreted and administered in accordance with New Zealand law.

**EXECUTION**

Executed as a deed.

**SIGNED** by **Smartshares Limited** as  
Manager:



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Director



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Director

**SIGNED** on behalf of **Public Trust**  
as Supervisor by its attorney in the  
presence of:

---

Attorney

---

Print Name

---

Witness signature

---

Print Name

---

Occupation

---

Address

**EXECUTION**

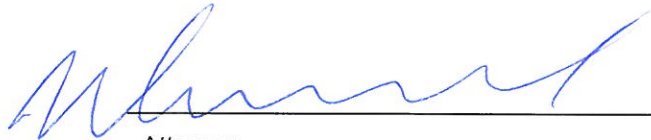
Executed as a deed.

**SIGNED** by **Smartshares Limited** as  
Manager:

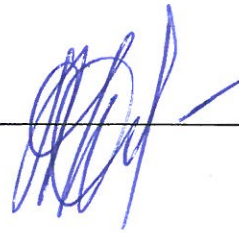
\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**SIGNED** on behalf of **Public Trust**  
as Supervisor by its attorney in the  
presence of:

  
\_\_\_\_\_  
Attorney

Dennis Raymond Church  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness signature 

\_\_\_\_\_  
Print Name  
**Elena Sasha Vinton**  
**Manager Client Services**  
\_\_\_\_\_  
Occupation  
**Public Trust, Auckland**

\_\_\_\_\_  
Address

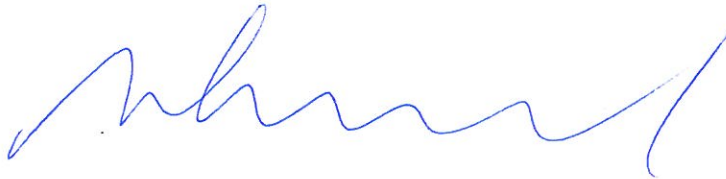
**CERTIFICATE OF NON-REVOCATION  
OF POWER OF ATTORNEY**

I, Dennis Raymond Church, of Auckland holding the office of General Manager Corporate Trustee Services with Public Trust:

**HEREBY CERTIFY:**

1. THAT by Deed dated 1 July 2015, a copy of which is deposited in the Land Registry Office at Hamilton, Public Trust appointed me as its attorney on the terms and subject to the conditions set out in the said Deed and the attached document is executed by me under the powers thereby conferred.
2. THAT at the date hereof I hold or I have authority to exercise the powers of General Manager Corporate Trustee Services with Public Trust.
3. THAT at the date hereof the transaction or obligation evidenced by the attached document is of a kind I am authorised to enter into by virtue of a delegation from the Board or Chief Executive of Public Trust.
4. THAT at the date hereof I have not received any notice of the revocation of that appointment.

SIGNED at Auckland                      this 2 day of      November              2016



By Dennis Raymond Church