

Dated 18 August 2017

**SUPERLIFE UK PENSION
TRANSFER 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.
2. **PUBLIC TRUST** a New Zealand Crown Entity established under the Public Trust Act 2001.

BACKGROUND

- A. By trust deed dated 10 February 2011, MCA Trustee Limited ("**MCA**") and SuperLife Limited established a superannuation scheme that was registered under the Superannuation Schemes Act 1989 and the scheme was called Ascot. The trust deed establishing Ascot was amended on 11 May 2012 and replaced on 29 September 2014 ("**Former Trust Deed**").
- B. The scheme is now called the SuperLife UK pension transfer scheme ("**Scheme**") and is currently governed by a trust deed dated 8 November 2016 ("**Existing Trust Deed**").
- C. Since 14 April 2011, the Scheme has been an approved Qualifying Recognised Overseas Pension Scheme under the Finance Act 2004 (UK) with the reference number QROPS 503780.
- D. For the purposes of the Finance Act 2004 (UK), on 16 November 2016 SuperLife Limited notified the relevant authority, HM Revenue & Customs, of the Scheme's change of name from Ascot to the SuperLife UK pension transfer scheme and of the change of the manager to Smartshares Limited, which amalgamated with SuperLife Limited on 9 November 2016.
- E. Pursuant to clauses 23(2) and (3) of Schedule 4 to the FMCA and the Financial Markets Conduct (Restricted Schemes) Order 2016, the Scheme has two sections:
 - (a) a superannuation section; and
 - (b) a legacy section that is closed to new joiners and is designated for FMCA purposes as a legacy scheme.
- F. The Manager and the Supervisor wish to amend the Existing Trust Deed as a consequence of recent changes to the UK legislation governing a Recognised Overseas Pension Scheme ("**ROPS**").
- G. The Supervisor is satisfied that the amendments contained in this Trust Deed are permitted under clause 29.1 of the Existing Trust Deed. Prior to entering into this Trust Deed, the Supervisor obtained a certificate from a solicitor as required by section 139(2)(b) of the FMCA.

BY THIS TRUST DEED: in accordance with the power of amendment contained in clause 29.1 of the Existing Trust Deed, it is declared that with effect on and from the date of this Trust Deed the Existing Trust Deed is amended by substituting the provisions of the Existing Trust Deed with all of the provisions of this Trust Deed (so that on and from the date of this Trust Deed the Scheme will be operated, administered and governed in accordance with the provisions of this Trust Deed).

PART 1 – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In the Trust Deed unless the context requires otherwise:

Auditor means the Auditor of the Scheme appointed pursuant to clause 25.3.

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.

Authorised Member Payments has the meaning set out in section 164 of the Finance Act 2004 (UK).

Beneficiary means any Member or other person either presently or contingently entitled to any benefit from the Scheme.

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

Custodian means a person appointed by the Supervisor to hold some or all of the Investments and includes any sub-custodian appointed by the Custodian.

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

End Payment Date has the meaning set out in clause 2 of Schedule 12 to the FMCR.

Exchange means any recognised market of financial products (including any stock, commodities, futures 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 starting and 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 under Part 2 of the Financial Markets Authority Act 2011.

Fund means a pooled investment option made available under the Scheme and that is established and administered under clause 9.

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

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.

Legacy Section means the section of the Scheme established and maintained in accordance with Part 5 of 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 as is appointed, from time to time, as the manager of the Scheme.

Member means a person who is a Member of the Scheme pursuant to clause 32.1 or clause 36.1 and has a balance in his or her Retirement Account of more than zero, unless the Manager determines otherwise, subject always to the provisions of clause 20.2.

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) generally, the times specified in the Fund Establishment Deed or 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 determination of the Net Asset Value of a Fund made pursuant to clause 11.4, 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 11.

Normal Minimum Pension Age has the meaning given in section 279(1) of the Finance Act 2004 (UK).

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

Overseas Transfer Charge means the UK tax charge payable by a Member on or after 9 March 2017 in respect of a transfer requested during the relevant period specified in section 244A of the Finance Act 2004 (UK), unless the transfer is exempted from the charge.

Permanent Early Retirement has the meaning set out in clause 3 of Schedule 12 to the FMCR.

Permitted Withdrawals has the meaning set out in Schedule 12 to the FMCR.

Register means a register of Members of the Scheme and the Funds maintained in accordance with clause 24.

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

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

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 41 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 Benefit has the meaning set out in section 172(1) of the FMCA.

Related Party has the meaning given to in section 172(2) 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, and may include the Financial Markets Legislation and any methodologies or frameworks issued by the FMA applicable to the Scheme.

Retirement Account means in respect of a Member, the Retirement Account as defined in clause 8.

Retirement Scheme means a KiwiSaver scheme, superannuation scheme or equivalent overseas retirement scheme as the meaning is defined in clause 12(2) of Schedule 12 to the FMCR.

ROPS means a recognised overseas pension scheme for the purposes of the Finance Act 2004 (UK).

ROPS Account means a sub-account in respect of a Member's Retirement Account which is credited with a Transfer Value from a UK Pension Fund.

Scheme means the SuperLife UK pension transfer 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 date of this Trust Deed and subject to the trusts of the Scheme;
- (b) any contributions paid to the Scheme by the Members;
- (c) Transfer Values received in respect of Members;
- (d) all other income and property that the Manager receives, derives or acquires directly or indirectly from contributions or property referred to in (a), (b) and (c) of this paragraph for the purposes of the Scheme.

Scheme's Bank Account means the bank account established in the name of the Supervisor and maintained by the Manager pursuant to clause 8.7.

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

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

Superannuation Section means the section of the Scheme established and maintained in accordance with Part 4 of the Trust Deed.

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

Transferee Plan means a UK Pension Fund or another Retirement Scheme that receives the transfer of a Member's Retirement Account balance.

Transfer Value means any assets received from a UK Pension Fund or another Retirement Scheme or paid to another Retirement Scheme or another scheme with ROPS status.

Trust Deed means this deed as varied from time to time.

UK Pension Fund means a registered pension scheme for the purposes of Part 4 of the Finance Act 2004 (UK).

Winding Up Date has the meaning set out in clause 27.1.

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 are, for convenience of reference, identified with a capital initial letter;
- (b) words implying any gender shall include the other genders;
- (c) words implying the singular number shall include the plural and vice versa;
- (d) 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 thereunder or any amendment thereof;
- (e) 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;
- (f) 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;
- (g) the implied provisions of 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;
- (h) any reference to currency is to the lawful currency of New Zealand;

- (i) references to “includes” mean “includes without limitation”, and “include” and “including” shall be construed accordingly;
- (j) any reference to an account established, maintained, credited or debited, an election or nomination made or any other action taken or thing done (each an “**Action**”) under, in accordance with or pursuant to a provision of this Trust Deed at or in respect of a date before the date of this Trust Deed (“**Relevant Date**”) shall be a reference to an equivalent Action taken under, in accordance with or pursuant to a materially corresponding provision in the deed which governed the Scheme as at the Relevant Date; and
- (k) any reference to the operation or effect of a provision of this Trust Deed at or in respect of a date before the date of this Trust Deed shall be a reference to the operation or effect of a materially corresponding provision in the deed which governed the Scheme as at the Relevant Date.

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.

PART 2 – STATUS AND CONTINUITY OF SCHEME

3. CONSTITUTION OF THE SCHEME

3.1 Name: The Scheme shall be known as the SuperLife UK pension transfer scheme.

3.2 Change of name: Subject to the requirements of the FMCA or any other Relevant Law the Manager may change the name of the Scheme and if it does it shall notify the Members and the Supervisor as soon as reasonably practicable.

3.3 Sections: The Scheme has two sections:

- (a) the Superannuation Section; and
- (b) the Legacy Section, which is closed to new joiners.

3.4 **Purposes of sections:** The purpose of the Superannuation Section is to provide retirement benefits directly or indirectly to individuals, and the principal purpose of the Legacy Section is to provide retirement benefits directly or indirectly to individuals who joined the Scheme prior to 9 November 2016.

4. CONTINUATION OF THE SCHEME

4.1 **Trusts under Existing Trust Deed:** The trusts established in accordance with the Existing Trust Deed are, from the date of this Trust Deed, continued. The Manager is designated to continue managing the Scheme in accordance with the provisions of the Trust Deed and the FMCA.

4.2 **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 and the FMCA.

4.3 **Perpetuity period:** If the Scheme ceases to be exempt under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take such action as it thinks fit (including the re-establishment of the trusts of the Scheme and the payment over of the assets of the Scheme to a new trustee) so as to prevent the operation of any rules of law relating to perpetuities which might otherwise invalidate (or might be taken to invalidate) any of the trusts of the Scheme of any disposition made under it or for its purposes.

4.4 **Indemnity under Former Trust Deed:** The Manager and the Supervisor agree that if and to the extent that any claim or proceeding is made against MCA as the former trustee of the Scheme as a result of the execution or purported execution of the trusts of the Scheme or the exercise of any powers, authorities or discretions vested in MCA by the Former Trust Deed before 9 November 2016, MCA will remain indemnified out of the Scheme Assets in accordance with clause 16(c) of the Former Trust Deed and that (subject to the limits on permitted indemnities under the FMCA) MCA shall remain entitled to enforce this clause for the purposes of the Contracts (Privity) Act 1982.

PART 3 – MANAGEMENT AND ADMINISTRATION OF THE SCHEME

5. ROLE OF THE MANAGER

5.1 **Manager's assumption of responsibilities:** The Manager is appointed as manager of the Scheme for the purposes of the FMCA and 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 of the Scheme and, as appropriate, each Fund.

5.2 **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, supervisor or trustee for other trusts (whether of a nature similar to or different from the trusts of the Scheme).

- 5.3 **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 FMCA).
- 5.4 **Manager's functions:** The Manager shall be responsible for the following functions for the Scheme:
- (a) offering interests in the Scheme; and
 - (b) issuing interests in the Scheme; and
 - (c) managing and investing the Scheme Assets and Investments; and
 - (d) administering the Scheme.
- 5.5 **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 as a professional manager of a Retirement 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;
 - (c) not make use of information acquired through being the Manager in order to:
 - (i) gain an improper advantage for itself or any other person; or
 - (ii) cause detriment to the Members; and
 - (d) in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by section 13C of the Trustee Act 1956.
- 5.6 **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.

5.7 **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.

5.8 **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.

5.9 **Notification of Supervisor:** The Manager shall advise the Supervisor of any delegation under clause 5.7 before any such delegation is entered into.

5.10 **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.

5.11 **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 or 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.

6. ROLE OF THE SUPERVISOR

6.1 Supervisor's appointment: The Supervisor is appointed 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.

6.2 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;
 - (ii) any matter connected to the Trust Deed or the terms of any Regulated Offer;
 - (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.

6.3 Supervisor's duties: The Supervisor must:

- (a) act honestly in acting as supervisor of the Scheme;
- (b) in exercising any powers or performing duties as Supervisor:
 - (i) act in the best interests of the Members; and
 - (ii) exercise the degree of care, diligence, and skill that a prudent person engaged in the business of acting as a Licensed Supervisor for a Retirement Scheme would exercise in the same circumstances;
- (c) do all things it has the power to do to cause any contravention referred to in clause 6.2(a) 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 6.2(a); and
 - (ii) any other matter connected with the Supervisor's functions under clause 6.2.
- 6.4 **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.
- 6.5 **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.
- 6.6 **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 Funds.
- 6.7 **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 6.6, 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 is subject to the same duties and restrictions as if the Supervisor had performed it 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 6.7(c).

- 6.8 **Limits on delegation:** The Supervisor must not delegate its functions under clause 6.2 (except its function of holding the Scheme Assets under clause 6.2(c)) unless otherwise permitted by the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.
- 6.9 **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.
- 6.10 **Manager's obligations in relation to experts:** If the Supervisor engages an expert under clause 6.9:
- (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.
- 6.11 **Manager's indemnity:** The Manager shall be indemnified for the expert's fees and expenses payable out of the Scheme Assets under clause 6.10(b), and may allocate those fees and expenses either to the Scheme as a whole or to a particular Fund as the Manager determines, subject to any limits under the Trust Deed or the FMCA.
- 6.12 **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.

7. COVENANTS BY MANAGER AND SUPERVISOR

- 7.1 **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 also 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 Manager's 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.

7.2 **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 drafts of the Disclosure Documents provided by the Manager within a reasonable 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 or 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, will 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 clause 12 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.

8. ESTABLISHMENT OF ACCOUNTS

8.1 Retirement Account: The Manager shall in respect of each Member establish and maintain an account, known as the Member's Retirement Account, which shall from time to time be credited or debited as appropriate with:

- (a) contributions by or in respect of the Member under clauses 33 and 37;
- (b) any interest, dividends and other income and market earnings including those due to negative market movements attributable to the Retirement Account 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 in respect of the Member or paid in respect of the Member;
- (d) any refunded Overseas Transfer Charge;
- (e) management and administration expenses payable in respect of the Member under clause 19;
- (f) any regulatory expenses incurred by the Scheme in respect of the Member or the Member's share of any such expenses incurred by the Scheme as a whole in each case as determined on an equitable basis by the Manager;
- (g) the amount of any Overseas Transfer Charge that the Member and the Manager become liable to pay to Her Majesty's Revenue & Customs under UK law; and
- (h) the value of any benefit delivered or paid to in respect of the Member.

8.2 Sub-accounts of Retirement Account: The Manager may establish sub-accounts of the Retirement Account in respect of a Member as it deems appropriate and necessary. Any Transfer Value received by the Manager from a UK Pension Fund shall be credited into the Member's ROPS Account.

8.3 Investment election:

- (a) Any amount credited to the Member's Retirement Account and any other amount held to the credit of the Member's Retirement Account shall be invested in accordance with the Member's nomination as advised to the Manager from time to time having regard to such rules as the Manager may establish and notify to Members.

- (b) In the event no investment election is made in respect of a Member's Retirement Account, 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 for that Member.

8.4 **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.

8.5 **Member's interest in the Scheme:** The interest of a Member in the Scheme from time to time 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.

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

8.7 **Scheme Bank Account:** 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 Trust Deed and in accordance with Relevant Law.

9. SCHEME ASSETS AND FUNDS

9.1 **Establishment and maintenance of Funds:** The Manager shall have the power to separate 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.

9.2 **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.

9.3 **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.

9.4 **Operation of Funds:** Without limiting the generality of clause 9.3, 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 in consultation with the Supervisor) only if, and to the extent that, the Fund Investments are insufficient to meet such Liabilities.

9.5 **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.

9.6 **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.

9.7 **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.

10. INVESTMENT OF SCHEME ASSETS

10.1 **SIPO:** The Manager shall, after consultation with the Supervisor, maintain a SIPO for the Scheme which covers each Fund.

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

10.3 **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, after 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 Members' 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.

10.4 **No responsibility for investment performance:** Subject to Relevant Law, neither the Supervisor nor the Manager is responsible to the Scheme or a Fund or to any Member for the performance of a Fund arising from an Authorised Investment.

10.5 **Related Party Benefit permitted:** Subject to the SIPO, Relevant Law and compliance with clauses 14.1 to 14.4, the Manager may invest in Authorised Investments where the transaction provides a Related Party Benefit.

10.6 **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.

10.7 **Supervisor's notification obligations:** If the Supervisor refuses pursuant to clause 10.6 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.

- 10.8 **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.
- 10.9 **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.
- 10.10 **Manager's investment directions:** Subject to clauses 10.2 to 10.8 and clause 10.13, 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.
- 10.11 **Supervisor's commitment:** 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.
- 10.12 **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.
- 10.13 **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 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.
- 10.14 **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 10.14.

10.15 **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.

10.16 **Availability for inspection:** The Supervisor must ensure the records required by clause 10.15 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.

10.17 **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.

11. NET ASSET VALUE OF FUNDS

11.1 **Net Asset Value determination:** As soon as reasonably practicable after each Net Asset Determination Time for a Fund, and subject to compliance with clause 11.7, 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.

11.2 **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.

11.3 **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 and/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 purposes of making an equitable determination of the Net Asset Value of the Fund.

11.4 **Special valuation:** Without limiting the generality of clause 11.1, 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.

11.5 **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.

- 11.6 **How long determinations remain in force:** Determinations of the Net Asset Value of a Fund remain in force from the time specified in clause 11.1 until the time that the Manager makes the next succeeding determination of the Net Asset Value of the Fund.
- 11.7 **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.
- 11.8 **Consistency applied basis:** The Manager will determine the Net Asset Value of each Fund on a basis that is consistent across all Funds.
- 11.9 **Methodology for allocating Investment returns to Members' interest:**
- (a) The Manager shall allocate a Fund's investment returns to the Members of that Fund 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 11.3 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 after 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 and shall deduct that from the investment returns before they are allocated to the Member's Retirement Account.
 - (f) Subject to clause 8.3 and to the nominations of the Member in accordance with the rules set by the Manager from time to time as to the allocation of investment returns, a Member's investment returns are retained in the Member's Retirement Account and are re-invested in the Fund in respect of which the investment returns have been calculated unless the Member advises the Manager otherwise.
- 11.10 **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 11 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 this clause 11 if (after all relevant adjustments and set-offs have been made under this provision or otherwise) 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).

12. BORROWING POWERS

12.1 Borrowing by Supervisor: Subject to clauses 12.2 to 12.4 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; or
- (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.

12.2 Limits on borrowing: The aggregate of 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 12, borrowings shall include any bill of exchange, promissory note, or other negotiable instrument in respect of which the Supervisor is a drawer or acceptor.

12.3 Notice to Supervisor of required borrowing: The Manager shall (subject to the limits mentioned in clause 12.2) 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 12.4, 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.

12.4 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 12.3, 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.

12.5 Manager to ensure compliance with limits: The Manager will ensure that the entry into any borrowing arrangement does not breach the limitations in clause 12.2.

13. LIABILITIES AND INDEMNITIES OF PARTIES

- 13.1 **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.
- 13.2 **No personal liability:** Subject to clause 13.4, 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.
- 13.3 **Indemnity:** If, contrary to the provisions of clauses 13.1 and 13.2 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, the Supervisor or the Manager (as the case may be) shall be entitled (subject to the limits on permitted indemnities under the FMCA and except to the extent that such expense or liability is otherwise 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) 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.
- 13.4 **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 13.9) 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.
- 13.5 **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 5.7;
- (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.

13.6 Limitation on liability: Subject to the FMCA, without prejudice to the generality of clauses 13.1 to 13.4:

- (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 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 where such loss is attributable to the Supervisor’s own negligence or wilful default.

13.7 **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 as applicable to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

- 13.8 **Indemnity by Manager:** To the maximum extent permitted by the FMCA, the Manager shall indemnify and keep indemnified the Supervisor out of the Scheme Assets 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 (including of the Scheme);
 - (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.
- 13.9 **Statutory limitation on exemptions and indemnities:** No provision of the Trust 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.
- 13.10 **Power to indemnify investment managers and administration managers:** The Manager 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 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).
- 13.11 **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).

14. RELATED PARTY TRANSACTIONS

- 14.1 **Dealings with Related Parties:** Subject to clause 14.2, 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 the Manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 14.2 **Permitted transactions:** Clause 14.1 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 14.3; 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.
- 14.3 **Restrictions on consent:** The Supervisor must not consent to a transaction or transactions under clause 14.2(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.
- 14.4 **Certification:** Before entering into a transaction or series of transactions under clause 14.2(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.
- 14.5 **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 14.2 unless the Manager or Supervisor has failed to meet the standard of care required of it by clause 5.5(b)(iii) or 6.3(b)(ii) as the case may be.
- 14.6 **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 14.2.
- 14.7 **Exceptions:** The acquisition of interests in one Fund by another Fund, and any disposal thereof, will not require any notification or certification under clause 14.4 or clause 14.6.
- 14.8 **Limitation of powers:** The powers contained in this clause 14 are subject to clause 10.
- 15. REMUNERATION OF THE MANAGER**
- 15.1 **Management Fees:** Subject to the FMCA, the Manager shall be paid out of the assets of the Scheme in respect of its services under the Trust Deed.
- 15.2 **Manager's entitlements:** 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 payable under the Goods and Services Tax Act 1985.
- 15.3 **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.

16. REMUNERATION OF THE SUPERVISOR

- 16.1 **Remuneration basis:** Subject to any relevant requirements of the FMCA, the Supervisor shall be paid by the Manager for its services under the Trust Deed such fee as may be agreed from time to time in writing between the Supervisor and the Manager.
- 16.2 **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 any fees or expenses reasonably incurred by the Supervisor or the Manager within the terms of the Trust Deed.
- 16.3 **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 payable under the Goods and Services Tax Act 1985.
- 16.4 **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.

17. MEMBERS BOUND BY TRUST DEED

- 17.1 **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.

18. LIMITATION OF LIABILITY OF MEMBERS

- 18.1 **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 and do not extend to a Member in the Member's 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.

19. PAYMENT OF FEES AND COSTS BY MEMBERS

- 19.1 **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 as are made from time to time by the Manager and announced to the Members.
- 19.2 **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.

20. GENERAL RULES APPLICABLE TO MEMBERSHIP AND CONTRIBUTIONS

- 20.1 **Cessation of membership:** Unless the Manager shall otherwise decide, a Member shall cease to be a Member when the Member's balance in the Retirement Account is zero.
- 20.2 **Minimum balance:** If the balance standing to the credit of a Member's Retirement Account falls below \$50 or such other minimum amount as the Manager decides and notifies Members of from time to time, the Manager shall be entitled to pay such balance to the Member and upon such payment the Member shall cease to be a Member.
- 20.3 **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 or Funds); 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.
- 20.4 **Disclosure Document requirements:** Each Disclosure Document must comply with the FMCA and FMCR and, subject to clause 20.5, be in the form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 20.5 **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 drafts (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).
- 20.6 **Transfer Value in ROPS Account:** A Member is not entitled to transfer the benefit in the Member's ROPS Account to another Retirement Scheme under any provision of this Trust Deed unless:
- (a) the Retirement Scheme to which the transfer is proposed is a ROPS or UK Pension Fund; and
 - (b) the governing document contains limits or restrictions that comply with the requirements for a ROPS; and

- (c) the transfer that has been applied for complies with any limits or restrictions specified in respect of ROPS.

21. GENERAL RULES GOVERNING BENEFITS

21.1 Payment of a benefit: If a Member is entitled to a benefit equal to the amount standing to the credit of the Member's Retirement Account, that Member may:

- (a) choose to receive the full amount of the benefit and/or any part thereof as a lump sum; and/or
- (b) in respect of any amount then remaining to the credit of the Member's Retirement Account, choose to receive a regular amount payable monthly (or at such other frequency as may be agreed between the Member and Manager) from the Member's Retirement Account in accordance with the rules established and advised by the Manager of at least \$50 per payment until the exhaustion of the Member's Retirement Account provided that the minimum regular payment may be altered at the Manager's discretion from time to time having regard to the change in the Consumer's Price Index since the date of the last alteration or on such other basis as the Manager decides and announces from time to time; and/or
- (c) choose to transfer the amount then standing to the credit of the Member's Retirement Account to a Retirement Scheme chosen by the Member; and/or
- (d) choose to leave in the Member's Retirement Account some or the entire amount then standing to the credit of the Member's Retirement Account.

21.2 Payment of benefit from ROPS Account: Any request for a benefit payment or a withdrawal from a ROPS Account is subject to the limits or restrictions that are imposed on the Scheme to ensure that the Scheme complies with the requirements of ROPS and any such request for such benefit payment or withdrawal must comply with those limits and restrictions.

21.3 Benefit withdrawals:

- (a) When a Member is entitled to a benefit payment, the Member may request that the amount payable be withdrawn from a specified Fund or Funds in which the Member has an interest.
- (b) If the amount in the specified Fund or Funds is insufficient to meet the benefit payment or the Manager holds the view that the proposed withdrawal will be inequitable for the other Members who have interests in the relevant Fund or Funds, the Manager may make the withdrawal from the Funds in which the Member has an interest in such manner as it thinks fit and equitable.

21.4 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 his 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 any order of a Court of New Zealand the effect of which is to assign any benefit payable under the Scheme.

21.5 Information from Beneficiary:

- (a) Each Beneficiary shall produce such evidence or information as may be reasonably required by the Manager concerning the Beneficiary's entitlement under the Scheme and until such

evidence or information is produced, the Manager may withhold the payment of any benefit to such Beneficiary.

- (b) No benefit shall be payable under the Scheme before a Beneficiary has provided the Manager with adequate identity verification.

21.6 **Mis-statement of information:** If any mis-statement is made by a Beneficiary, the Manager shall be entitled to make such adjustments as are reasonable and necessary to the benefits receivable by anyone in respect of the Beneficiary and the Manager shall also be entitled to vary the terms of a Member's membership of the Scheme to reflect any such mis-statement.

21.7 **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 a Beneficiary 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 the Beneficiary in full satisfaction of the Beneficiary's entitlement to benefits under the Scheme.

21.8 **Augmentation of benefits:** 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 the Trust Deed for any Beneficiary or provide any other benefits and may establish and maintain such accounts as may be necessary for this purpose.

21.9 **Variation of benefits:** Subject to clause 21.2, the Manager in respect of a Member may with the consent of the Beneficiary so affected provide benefits of a different nature from those to which the Beneficiary is otherwise presently or contingently entitled under the Scheme provided that the total benefits so payable to or in respect of the Beneficiary shall be equivalent in value as determined by the Manager to those benefits which the Beneficiary would have been entitled to receive under the Trust Deed but for this clause 21.9.

21.10 **Unclaimed benefits:** The Manager shall exercise reasonable diligence in tracing Beneficiaries entitled to immediate benefits from the Scheme, but in the event of the Manager being unsuccessful any money payable out of the Scheme which is not claimed within 12 years after the date on which it becomes due, or if earlier at the Winding up Date determined in accordance with clause 27.1, shall (unless the Manager decides otherwise and subject to Relevant Law) revert to the Scheme.

21.11 **Benefit on bankruptcy:** The entitlement of a Beneficiary in the Scheme shall be immediately forfeited to the Scheme, to the maximum extent permitted by law, if the Beneficiary does or permits anything to be done, or is subject to a process of law, whereby he or she may be deprived or be liable to be deprived of the benefit of his entitlement, commits an act of bankruptcy or becomes insolvent and at the discretion of the Manager any benefit to which the Beneficiary would otherwise have been entitled may be applied as thought fit by the Manager solely for the benefit of the Beneficiary or of other Beneficiaries presently or contingently entitled to such benefit and in such manner as is determined by the Manager.

21.12 **Incapacity of Beneficiary:** If a Beneficiary is in the opinion of the Manager incapable of managing his or her own affairs, the Manager shall be entitled to withhold payment of any benefit payable in terms of the Trust Deed and shall thereupon apply such benefit to or for the benefit of the

Beneficiary or of other Beneficiaries contingently entitled to such benefit and in such manner as is determined by the Manager.

21.13 **Discharged from payment obligations:** On payment of a benefit in full to a Beneficiary, the Manager is fully discharged from all obligations in connection with that benefit payment and has no obligation to see how it is applied and the rights and interests of the Beneficiary under the Trust Deed in respect of that benefit are entirely extinguished.

21.14 **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 of the Administration Act 1969 to whom apart from the provisions of this clause 21.14 there would be a benefit payable pursuant to the provisions of the Trust Deed, the benefit payable shall be forfeited and the proceeds shall revert to the Scheme.

22. APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER

22.1 **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.

22.2 **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.

22.3 **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 22.6.

22.4 **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.

22.5 **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.

- 22.6 **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.
- 22.7 **Retiring Manager released:** From the date of execution by the new manager of a deed in accordance with clause 22.6, the Manager as 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 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.
- 22.8 **Manager's right to benefits:** Nothing in this clause 22 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.

23. APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR

- 23.1 **Removal of Supervisor:** The Supervisor shall cease to hold office as supervisor if the Supervisor is removed pursuant to the FMCA.
- 23.2 **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 23.3 and the new Supervisor has executed the deed referred to in clause 23.4 and all of the Scheme Assets have been transferred to the new Supervisor in accordance with the FMCA.
- 23.3 **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.
- 23.4 **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.
- 23.5 **Retiring Supervisor released:** From the date of execution by the new Supervisor of a deed in accordance with clause 23.4, 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 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 of the Scheme under the Trust Deed in all respects as if the new Supervisor had been originally named as a party to the Trust Deed.

24. REGISTERS

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

- (a) Members;
- (b) contributions in respect of Members;
- (c) Permitted 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 FMCA.

24.2 **The Register:**

- (a) The Manager shall keep and maintain or cause to be kept and maintained (in accordance with the requirements of the FMCA) a separate register of Members in respect of the Scheme and each Fund in a form and manner 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.

24.3 **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 a Member acquired 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 from a Member's Retirement Account;
- (e) the date and amount of any interest, dividend and other income and market earnings including due to negative market movements;
- (f) the date and amount of any Overseas Transfer Charge debited from or credited to a Member's Retirement Account;
- (g) the dates and amounts debited for taxes and fees from a Member's Retirement Account;
- (h) the dates of any transfers, and the amounts transferred, from a Member's Retirement Account;
- (i) the date on which any person ceased to be a Member with an interest in the Scheme; and
- (j) such other details as the Manager may require or as may be required by law from time to time.

24.4 **Audit of the Register:** The Manager shall cause the Register to be audited by the Auditor at least every year as required by 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.

- 24.5 **Inspection:** A Member or the 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 and such inspection may be at any time during the normal working hours and in accordance with the requirements of the FMCA.
- 24.6 **Reliance upon Register:** Each of the Manager and the Supervisor, unless it has 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.
- 24.7 **Evidence of entitlement:** Notwithstanding clause 24.6, 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 that the person seeking to effect such dealing is the person named in the Register as the holder of the relevant interests in the Scheme.
- 24.8 **No notice of trust etc.:** No notice of any trust, express, 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.

25. ACCOUNTS, AUDITS AND REPORTING

Accounts

- 25.1 **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.
- 25.2 **Financial Statements:** The Manager shall cause Financial Statements to be prepared and audited in accordance with Relevant Law.

Auditor

- 25.3 **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.
- 25.4 **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.

25.5 **Replacement of Auditor:** Any vacancy in the office of Auditor must be filled by the Manager as soon as reasonably practicable pursuant to clause 25.3.

25.6 **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

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

25.8 **Manager reporting to the Supervisor:** The Manager shall provide the Supervisor with such reports at such times and frequency and in such format as is set out in the agreement between the Manager and the Supervisor.

25.9 **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.

26. MEETINGS OF MEMBERS AND DIRECTIONS TO SUPERVISOR

26.1 **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.

26.2 **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.

26.3 **Rules of meetings:** All meetings of Members, other than the meetings called by the Manager under clause 26.2, shall be convened and held in accordance with the FMCR.

26.4 **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 and that are consistent with the provisions of the Trust Deed and, where applicable, the FMCA.

26.5 **Compliance with directions or orders:** Where any direction is given to the Supervisor pursuant to clause 26.4 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 it following the direction. Where applicable, the Supervisor may also at its discretion apply to the High Court in accordance with section 207 of the FMCA for an order in respect of any matter.

27. TERMINATION OF SCHEME

27.1 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, if:
 - (i) an order is made or resolution passed to place the Manager or the Supervisor in liquidation and no replacement is appointed under clause 22 or 23 (as applicable);
 - (ii) the Manager notifies the Supervisor in writing that the Scheme is to be wound up; or
 - (iii) the winding up of the Scheme is otherwise required by 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 33 or clause 37, except contributions that had accrued or were due before the Winding Up Date;
 - (ii) no further persons shall be admitted as Members; and
 - (iii) the Supervisor shall comply with the requirements of the FMCA in respect of winding up the Scheme.

27.2 **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 be recoverable from the Members.

27.3 **Application of Scheme Assets:** If the Scheme is wound up, the Supervisor shall allocate the Scheme Assets, so far as the Scheme Assets permit, 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 34.2, 35.2(d) or 38.1 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 27.3.

27.4 **Securing benefits on dissolution:** The Supervisor may, subject to the provisions of the FMCA, secure the benefits described in clause 27.3 at its sole discretion by one or more of the following:

- (a) the payment of lump sums to the Beneficiaries; or
- (b) a transfer, with the written consent of the affected Beneficiaries to another Retirement Scheme.

27.5 **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 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 Scheme Assets is completed.

28. NOTICES

- 28.1 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 email.
- 28.2 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.
- 28.3 Deemed delivered:** Any notice given under the Trust Deed or Relevant Law will be deemed to have been given if:
- (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 to 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.
- 28.4 Form of signature:** The signature to any notice given by the Manager or the Supervisor may be written or printed or electronically affixed.
- 28.5 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.
- 28.6 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 relevant 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.

29. AMENDMENTS TO TRUST DEED

29.1 **Power to amend:** Subject to the requirements of and to the extent permitted by 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 the Trust Deed including this clause 29.1.

29.2 **Retrospective effect:** Any amendment under clause 29.1 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.

30. GOVERNING LAW

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

PART 4 – SUPERANNUATION SECTION

31. INCORPORATION OF SUPERANNUATION SCHEME RULES

31.1 The superannuation scheme rules set out in Schedule 12 to the FMCR are incorporated into this Part 4 of the Trust Deed and any provision in this Part 4 that is contrary to Schedule 12 to the FMCR is void to the extent it is contrary. To the extent of any inconsistency between a provision in this Part 4 and the rest of the Trust Deed, the Part 4 provision shall prevail.

32. ELIGIBILITY AND MEMBERSHIP

32.1 **Membership:** A person who wishes to join the Scheme may make a written application in such form as the Manager may from time to time require. Upon acceptance by the Manager, such person shall become a Member and shall be deemed to have become a Member on the date advised to the Member by the Manager.

33. MEMBER CONTRIBUTIONS AND TRANSFERS

33.1 **Manner of making contributions:** Each Member shall contribute to the Scheme an amount elected by the Member and advised to the Manager from time to time having regard to such rules as the Manager may establish in respect of all Members or specified classes of Members and notify to the relevant Members. Subject to the FMCA and any such rules, an election shall take the form of either:

(a) a single lump sum contribution or;

(b) a regular contribution, which shall be deducted from the Member's bank account by the Manager or be secured 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.

33.2 **Minimum contributions:** The Manager may impose minimum contribution amounts and such amounts may be altered at the Manager's discretion from time to time having regard to the change

in the Consumer's Price Index since the date of the last alteration or on such other basis as the Manager decides and announces from time to time. No Member shall be obliged to increase his contribution rate following a change by the Manager in the minimum contribution, but if a Member does change his contribution following such an increase in the minimum contribution then the new minimum shall apply to the changed contribution.

33.3 Transfer into Scheme: If a Member is entitled to a benefit under a Retirement Scheme or a UK Pension Fund the Manager may at its discretion accept from such scheme a Transfer Value which the trustees or manager (as applicable) of such scheme may be authorised to pay or transfer to the Scheme in respect of such Member. Any such Transfer Value accepted by the Manager shall be credited either to the Member's Retirement Account or the Member's ROPS Account as shall be agreed between the Manager and the trustees or manager (as applicable) of such scheme.

33.4 Transfer out of Scheme: If a Member becomes a member of another scheme with ROPS status or another Retirement Scheme ("**Transferee Plan**") the Manager may with the consent of the Member, instead of granting the Member the benefit to which the Member is entitled under the Scheme, transfer a Transfer Value determined by the Manager to the Transferee Plan so that the Member shall become entitled to such rights under the Transferee Plan as may be agreed between the Manager and the trustees or manager (as applicable) of the Transferee Plan or other person authorised thereunder ("**Transferee**"). A Member in respect of whom a transfer is made under this clause 33.4 shall not be entitled to any other benefit under the Scheme and the receipt of the Transferee 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.

34. MEMBER BENEFITS FOR SUPERANNUATION

34.1 Retirement benefit:

- (a) When a Member has reached the End Payment Date or the Supervisor is reasonably satisfied that the Member has met the requirements of Permanent Early Retirement, 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 after the End Payment Date, as the Member wishes.

34.2 Death benefit and payment of death benefit:

- (a) If a Member dies there shall be payable a benefit equal to the amount standing to the credit of the deceased Member's Retirement Account.
- (b) The Manager shall pay the sum payable in accordance with clause 34.3(e).

34.3 Permitted Withdrawals: The Supervisor or Manager, as applicable, may reasonably require a Member who makes an application for a Permitted Withdrawal to provide evidence of the facts necessary to establish the Member's right to make the withdrawal.

- (a) **Permitted withdrawal for transition to retirement:** If the Supervisor is reasonably satisfied that the Member has reached an age that is 10 years before the New Zealand superannuation qualification age (as defined in clause 1, Schedule 12 to the FMCR) and that the withdrawals are to be made through periodic payments that relate to each other and are made over an identifiable period of time, the Member is entitled to make a withdrawal from the Member's Retirement Account, subject always to the maximum amount specified in the formula in clause 4(4), Schedule 12 to the FMCR.
- (b) **Significant financial hardship:** In the event of significant financial hardship, as determined by the Supervisor in accordance with clause 9 of Schedule 12 to the FMCR, the Member may be permitted to withdraw a portion of the amount standing to the credit of the Member's Retirement Account. If payable, the benefit is equal to the amount required to alleviate the Member's financial hardship, subject to a maximum of the amount standing in the Member's Retirement Account.
- (c) **Serious illness:** In the event of serious illness as determined by the Supervisor in accordance with clause 10 of Schedule 12 to the FMCR, the Member may withdraw an amount up to the value of the Member's Retirement Account as at the date of the payment of the serious illness benefit, as the Member determines.
- (d) **Release of funds required under other enactments:** The Manager must comply with the provisions of any enactment that requires the Manager to release specified amounts from a Member's Retirement Account in accordance with that enactment. This includes a requirement by order of any Court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).
- (e) **Permitted Withdrawals on death:** The Manager must on application by the deceased Member's personal representative pay to that person the withdrawal benefit at the date on which the application is accepted (as part of deceased Member's estate) or, if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section.

34.4 **Compliance with ROPS rules:** Without otherwise limiting any other provision of this clause 34, to the extent required by the ROPS rules any withdrawals from a Member's Retirement Account shall be treated as withdrawals from the Member's ROPS Account for so long as the Member is under the Normal Minimum Pension Age and is therefore subject to the provisions of clause 35.1.

35. MEMBER BENEFITS FROM ROPS ACCOUNT

35.1 Any withdrawal from the ROPS Account must be in the manner and in circumstances that are consistent with the requirements for the Scheme to be a ROPS. In particular, the Manager may not pay any benefit from a Member's ROPS Account:

- (a) any earlier than the benefit would be payable if Pension Rule 1 in section 165 of the Finance Act 2004 (UK) applied; or

- (b) if the benefit is payable earlier than the time specified in paragraph (a) of this sub-clause, unless the circumstances of the payment are such that it would be an Authorised Member Payment if made by a UK Pension Fund.

35.2 A Member is entitled to an Authorised Member Payment in respect of the Member's ROPS Account if a benefit is payable in accordance with the rules applying to ROPS as amended from time to time. In particular, the following benefits are payable from a Member's ROPS Account:

- (a) **Retirement benefit:** When a Member has attained the Normal Minimum Pension Age the Member may make a written application to withdraw all or part of the amount standing to the credit of the Member's ROPS Account, and the Manager shall pay to the Member all or part of the amount standing to the credit of the Member's ROPS Account at the date of payment, subject at all times to the deduction of any taxes payable, if applicable (and to clause 35.1).
- (b) **Ill-health early retirement benefit:** When a Member makes a written application for an ill-health early retirement benefit, the Manager upon receipt of written evidence from a registered medical practitioner and upon being satisfied that the Member has met the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004 (UK) as amended from time to time shall pay to the Member part or all of the amount standing to the credit of the Member's ROPS Account, subject at all times to the deduction of any taxes payable, if applicable (and to clause 35.1).
- (c) **Serious ill-health lump sum benefit:**
 - (i) When a Member makes a written application for a serious ill-health lump sum benefit, the Manager (upon being satisfied based on receipt of written evidence from a registered medical practitioner that the Member has met the serious ill-health condition in paragraph 4 of Schedule 29 to the Finance Act 2004 (UK) as amended from time to time) shall pay to the Member all of the amount standing to the credit of the Member's ROPS Account at the time of payment, subject to clause 35.1.
 - (ii) Upon the payment of the serious ill-health lump sum benefit to the Member, the Member is not entitled to any other benefit under the Scheme and the receipt of the serious ill-health lump sum benefit by the Member shall be a complete discharge to the Manager of all liability in respect of the Member under the Scheme.
- (d) **Death benefit:**
 - (i) If a Member dies there shall be payable a benefit equal to the amount standing to the credit of the deceased Member's ROPS Account.
 - (ii) The Manager shall pay or apply the sum payable on the death of the Member to the person specified (or to the persons specified, in the proportions stated) in the latest nomination form provided to the Manager in writing or electronically and accepted by the Manager. If the deceased Member has not made a nomination accepted by the Manager, or the Member's nomination has become invalid through the death of the person (or any of the persons) so nominated before the death of the deceased Member, then the Manager shall pay the sum to the deceased Member's personal representative.

- 35.3 The maximum amount of a benefit is the amount that is equal to the value of the balance in the Member's ROPS Account at the date of payment of the benefit.
- 35.4 For avoidance of doubt, a Member is not entitled to make a withdrawal from the Member's ROPS Account under clause 34.3(a), (b), (c) or (d) or on meeting the requirements of Permanent Early Retirement unless the withdrawal is in accordance with the rules applying to ROPS as amended from time to time.

PART 5 –LEGACY SECTION

36. ELIGIBILITY AND MEMBERSHIP PRIOR TO EFFECTIVE DATE

- 36.1 **Continued membership in Scheme:** All Members who joined prior to 9 November 2016 are Members and shall continue to be treated under the Trust Deed as Members of the Legacy Section.
- 36.2 **Admission of new Members:** No new Members may be accepted into the Legacy Section.

37. MEMBER CONTRIBUTIONS AND TRANSFERS

- 37.1 **Manner of making contributions:** Each Member shall contribute to the Scheme an amount elected by the Member and agreed with the Manager from time to time in accordance with such rules as the Manager may establish in respect of all Members or specified classes of Members and notify to the relevant Members. Subject to the FMCA and any such rules, an election shall take the form of either:
- (a) a single lump sum contribution; or
 - (b) a regular contribution, which shall be deducted from the Member's bank account by the Manager or be secured 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.
- 37.2 **Minimum contributions:** The Manager may impose minimum contribution amounts and such amounts may be altered at the Manager's discretion from time to time having regard to the change in the Consumer's Price Index since the date of the last alteration or on such other basis as the Manager decides and announces from time to time. No Member shall be obliged to increase his or her contribution rate following a change by the Manager in the minimum contribution, but if a Member does change his contribution following such an increase in the minimum contribution then the new minimum shall apply to the changed contribution.
- 37.3 **Transfers out of Scheme:** The provisions of clause 33.4 in Part 4 of this Trust Deed shall apply equally to Members of the Legacy Section.

38. MEMBER BENEFITS UNDER THE LEGACY SECTION

- 38.1 **ROPS Accounts benefits:** The provisions of clause 35 in Part 4 of this Trust Deed shall apply equally to the Members of the Legacy Section in relation to the balances in their ROPS Accounts.
- 38.2 **Benefits in relation to non-ROPS money:** To the extent that a Member has a balance in the Member's Retirement Account that relates to non-ROPS money (including returns derived from ROPS money) the Manager shall pay benefits from this non-ROPS balance to the Member in

accordance with the relevant provisions of the Former Trust Deed (provided that to the extent required by the ROPS rules any withdrawals from a Member's non-ROPS money shall be treated as withdrawals from the Member's ROPS Account for so long as the Member is under the Normal Minimum Pension Age and is therefore subject to the provisions of clause 38.1).

EXECUTION

Executed as a deed.

SIGNED by **Smartshares Limited** :



Director



Director

SIGNED on behalf of **Public Trust**
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 :

Director

Director

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



Attorney



Witness signature

Print Name **Gerard Joseph Field**
Senior Manager Client Services
Auckland

Print Name

Elena Sasha Vinton

Manager Client Services
Occupation
Public Trust, Auckland

Address

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

I, Gerard Joseph Field, of Auckland, hold the office of Senior Manager Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 18 April 2017, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand; and
- 2 at the date hereof I hold the position of Senior Relationship Manager with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 18 August 2017



Signature of attorney