

**Dated 2 November 2016**

**SUPERLIFE WORKPLACE SAVINGS  
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. The superannuation scheme currently called SuperLife was established by a trust deed dated 8 November 1993 and is currently governed by a trust deed dated 21 June 2007 ("**Existing Trust Deed**").
- B. The current manager of SuperLife is Smartshares Limited, a subsidiary of NZX Limited which is licensed under the Financial Markets Conduct Act 2013 ("**FMCA**") to act as a manager of registered schemes.
- C. Pursuant to a Deed of Discharge and Appointment of Trustee dated 2 November 2016, effective immediately prior to this trust deed ("**Trust Deed**") taking effect, SuperLife Trustee Limited, as trustee of SuperLife, appointed Public Trust as the replacement trustee of SuperLife.
- D. In accordance with clause 23(2) and (3) of Schedule 4 to the FMCA, the Financial Markets Conduct (Restricted Schemes) Order 2016 has designated SuperLife to have:
  - (a) a SuperLife workplace savings section that accepts contributions from participating employers who have signed a participation deed; and
  - (b) a SuperLife legacy section that is closed to new joiners and accepts contributions only from designated employee members, individual members, spouse members and myFutureFund members.
- E. The parties now wish to amend and restate the Existing Trust Deed in order to comply with the requirements of:
  - (a) the FMCA and the Financial Markets Conduct Regulations 2014 ("**FMCR**");
  - (b) the Financial Markets Conduct (Restricted Schemes) Order 2016; and
  - (c) to make other minor amendments as a consequence of adopting the FMCA and for the efficient operation of SuperLife.
- F. The parties consider that these amendments comply with the terms of clause 14(d) of the Existing Trust Deed and prior to executing this Trust Deed, Public Trust obtained a certificate from a solicitor as required under section 12(1)(b) of the Superannuation Schemes Act 1989.

**BY THIS DEED** the Existing Trust Deed is amended by deleting all of its provisions and replacing them with the provisions of this trust deed as set out below.

## **PART 1 – DEFINITIONS AND INTERPRETATION**

## 1. DEFINITIONS

In the Trust Deed unless the context requires otherwise:

**Associated Employer** means in respect of an Employer, any person or Entity which is or becomes directly or indirectly associated in business with or which is or becomes directly or indirectly controlled by the Employer or such other person or Entity as the Employer may decide.

**Auditor** means the auditor of the Scheme appointed pursuant to clause 26.3.

**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.

**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 day 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.

**Designated Employee** means an Employee who is a member of a Designated Plan.

**Designated Plan** means retirement arrangements provided by an Employer for its Employees without the Employer's having entered into a Participation Deed with the Manager prior to the Effective Date.

**Director** means:

- (a) in relation to a company any person occupying the position of director by whatever name called;
- (b) in relation to an Entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that Entity in the same or a similar manner as a director would act if that Entity was incorporated in New Zealand under the Companies Act 1993.

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

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

**Early Retirement Date** means in respect of an Employee Member or Industry Member, the early retirement date specified in the Schedule applicable to the Employee Member or Industry Member.

**Employee** means in respect of an Employer, an eligible individual including a Director who the Employer deems for the purposes of the Scheme to be in the Employer's Service.

**Employee Member** means an Employee who is a Member under a Plan and if an Employee Member leaves Service and remains a Member in the Scheme, that Employee Member shall cease to be an Employee Member and shall continue as an Individual Member.

**Employer** means any person or Entity in respect of which the Manager, at its sole discretion, agrees to allow such person or Entity's eligible individuals to participate in the Scheme, and in respect of a Member or an Employee means the Employer by which the Member or Employee is employed or was last employed as the case may be.

**Employer Account** means a sub-account in respect of a Member's Retirement Account, which is credited with the Employer's contributions in respect of the Member's Member Subsidised Contributions.

**Employer Contributions** means an Employer's regular contributions as specified in the Schedule.

**Entity** means any of the following:

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

**Equivalent Overseas Scheme** means an equivalent overseas retirement scheme as defined in regulation 82(3) of the FMCR.

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

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

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

**Financial Year** means in relation to the Scheme and if applicable to a Fund, the period commencing on 1 April of one year or on the commencement date of the Fund if later and ending on 31 March in the next year, or such other period 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 clauses **Error! Reference source not found.** to 9.7.

**FutureFund Account** means a sub-account in respect of a Member's Retirement Account which is credited with contributions made in respect of a myFutureFund Member.

**FutureFundGuardian** means the person who acts as the trustee for a myFutureFund Member and makes all decisions in respect of that Member's FutureFund Account.

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

**Individual Member** means a natural person who has been admitted or continues membership in the Scheme other than as an Employee Member or an Industry Member or a Designated Employee.

**Industry** means a group of employers engaged in a common economic activity or operating in the same sector and that agree to participate in the Scheme.

**Industry Application Form** means the written application completed by an Entity in respect of an Industry to join the Scheme.

**Industry Member** means any person employed or engaged in an Industry and admitted to the membership of the Scheme.

**Insured Benefit** means a benefit made available to a Member by way of the Manager entering into a master policy of insurance or life or disability income insurance with a Licensed Insurer.

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

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

**KiwiSaver** 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, Section B 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 Insurer** means a licensed insurer as defined in section 6(1) of the Financial Markets Conduct Act 2013 which is appointed by the Manager to provide an Insured Benefit under the SuperLife Insurance Plans and the SuperLife Medical Insurance arrangements to the Members.

**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 an Employee Member, a Designated Employee, an Individual Member, an Industry Member, a myFutureFund Member, a Spouse Member or a MIS Member who has a balance in their Retirement Account of more than zero, unless the Manager determines otherwise, subject always to the provisions of clause 20.1.

**Member Account** means a sub-account in respect of a Member's Retirement Account, which is credited with the Member's regular contributions while an Employee Member that are Member Subsidised Contributions as specified in the Schedule.

**Member Subsidised Contributions** means in respect of an Employee Member, the Member's regular contributions that are subsidised by the Employer and credited to the Member's Member Account.

**Member Voluntary Contributions** means a Member's contributions that are not Member Subsidised Contributions and that are credited to the Member's Voluntary Account.

**MIS Application Form** means the written application completed by a MIS Member to join the Scheme.

**MIS** means the managed investment scheme in respect of a Retirement Scheme.

**MIS Member** means in respect of a Retirement Scheme, the persons who, are trustees or managers of the Retirement Scheme and become (jointly if there are two or more of them) a Beneficiary for the purposes of investing the assets of that other Retirement Scheme in the Scheme.

**myFutureFund Member** means a Member who has been admitted to membership of the Scheme under the myFutureFund arrangements while they remain under those arrangements.

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

- (a) the times specified in the Fund Establishment Deed or at such other times and at such other intervals as are determined by the Manager and notified to the Supervisor; or
- (b) in relation to a special valuation of the Net Asset Value of a Fund made pursuant to clause 11.4, such time on any Business Day on which the Manager makes such special determination.

**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 Retirement Date** means in respect of a Member the date on which the Member reaches age 65.



**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).

**Participation Deed** means a deed entered into between the Manager and an Entity in its capacity as an Employer or Associated Employer under clauses 32 and 33, as amended from time to time.

**Plan** means a workplace savings plan provided by an Entity in its capacity as an Employer or Associated Employer pursuant to a Participation Deed.

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

**PIR** means a prescribed investor rate as defined in the Tax Act.

**Register** means a register of Members of the Scheme and the Funds maintained in accordance with clause 25.

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

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

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

**Regulated Offer** has the meaning set out in section 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 set out 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 which include the Financial Markets Legislation and any methodologies or frameworks issued by the FMA applicable to the Scheme.

**Reserve Account** means the Reserve Account as specified in clause 8.8.

**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 a workplace savings scheme, as defined in the FMCA.

**Schedule** means a schedule annexed to a Participation Deed or to a MIS Application Form or to an Industry Application Form from time to time which is in force and, in respect of a Member or Beneficiary shall mean the Schedule or Schedules applicable to that Member or Beneficiary.

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

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

- (a) the assets held by the Supervisor or Custodian at the Effective Date and subject to the trusts of the Scheme;
- (b) any contributions paid to the Scheme by the Members and by the Employers;
- (c) Transfer Values received in respect of Members; and
- (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 8.9.

**Service** means in respect of an Employee Member or Designated Employee continuous, permanent employment under a contract of service or apprenticeship with an Employer or under a contract for services to provide personal services principally to an Employer, including employment while a Director, any period of temporary absence approved by an Employer and notified to the Manager and any period deemed by the Manager to be Service. In the event of any doubt as to whether the requirements of Service have been fulfilled, the decision of the Employer of the Employee Member or the Designated Employee shall be final.

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

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

**Spouse Member** means an Individual Member who is the spouse or partner of an Employee Member and in respect of whom the required contributions under the Plan shall be deducted from the Employee Member's remuneration and in relation to a particular Employee Member, the Spouse Member shall be referred to as the Employee Member's Spouse Member provided that if the Employee Member shall leave Service and the Spouse Member remains a Member then the Spouse Member shall no longer be a Spouse Member, but shall continue as an Individual Member.

**State Sector Employer** means an employer in the state services within the meaning of the State Sector Act 1988 or any person or organisation that participates in the Scheme for the purposes of establishing a superannuation scheme for its officers or employees under section 84A of the State Sector Act 1988.

**SuperLife Insurance Plans** means the arrangements associated with Scheme in respect of the Insured Benefits.

**SuperLife Medical Insurance** means the arrangements associated with the Scheme and governed by agreements between the Manager and medical insurers that provide Members with the facility to purchase medical insurance cover from time to time for them and their immediate family members.

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

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

**Transfer Value** means any assets received from another Retirement Scheme or an overseas retirement scheme or paid to another Retirement Scheme or an Equivalent Overseas Scheme or a MIS non-retirement scheme.

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

**Vested Balance** means in respect of an Employee Member or Designated Employee, the aggregate of the Member's Member Account, the vested portion of the Member's Employer Account as specified in the Schedule, and the Member's Voluntary Account, maintained in respect of that Member.

**Voluntary Account** means a sub-account in respect of a Member's Retirement Account which is credited with voluntary contributions made by a Member.

**Winding Up Date** has the meaning set out in clause 28.1.

**Workplace Savings Section** means the section of the Scheme established and maintained in accordance with Part 4, Section A of the Trust Deed.

## 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) headings to clauses and to parts of the Trust Deed are for convenience of reference and are not to be interpreted as part of any clause;
- (c) words implying any gender shall include the other genders;
- (d) words implying the singular number shall include the plural and vice versa;
- (e) any reference to a statute or to any regulation (or to any particular clause or section) shall include a reference to any subsequent statutory modification or re-enactment and regulations made thereunder or any amendment thereof;
- (f) any reference to any deed, agreement or other instrument shall include a reference to that deed, agreement or instrument as amended or novated from time to time;
- (g) where any frameworks or methodologies specified in notices issued by the FMA under the FMCA are applicable to the Scheme and relate to any matter which is required to be provided for adequately in the Trust Deed under the FMCA, the provisions of the Trust Deed which deal

with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme;

- (h) the implied provisions of the FMCA are deemed to be implied in the Trust Deed for so long as those provisions are in force and any provision of the Trust Deed that is contrary to the implied provisions is void to the extent it is contrary;
- (i) any reference to currency is to the lawful currency of New Zealand;
- (j) references to “includes” mean “includes without limitation”, and “include” and “including” shall be construed accordingly.
- (k) 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 Effective Date (“**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
- (l) any reference to the operation or effect of a provision of this Trust Deed at or in respect of a date before the Effective Date 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 workplace savings 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 shall notify the Members and the Supervisor as soon as reasonably practicable.
- 3.3 **Sections:** The Scheme has two sections:
- (a) Workplace Savings Section; and
  - (b) Legacy Section, which is closed to new joiners on and from the Effective Date.
- 3.4 **Purposes of Sections:** The purposes of the Workplace Savings Section are to provide retirement benefits directly or indirectly to individual Members and benefits to eligible Employee Members or Industry Members who leave Service under the relevant Plan or Schedule, and the principal purpose of the Legacy Section is to provide retirement benefits directly or indirectly to individuals.

### 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 Effective Date governed by the Trust Deed and the Manager is designated to manage the Scheme in accordance to the provisions of the Trust Deed 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 or any disposition made under it or for its purposes.

## 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 Beneficiaries 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 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 FMCA).
- 5.4 **Manager's functions:** The Manager shall be responsible for the following functions for the Scheme:
- (a) offering interests in the Scheme;
  - (b) issuing interests in the Scheme;
  - (c) managing and investing the Scheme Assets and Investments; and
  - (d) administering the Scheme.
- 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; and
  - (c) not make use of information acquired through being Manager in order to:
    - (i) gain an improper advantage for itself or any other person; or
    - (ii) cause detriment to the Members; and
  - (d) in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by sections 13B or 13C of the Trustee Act 1956.
- 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 nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

## 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; and
- (b) supervising:
  - (i) the performance by the Manager of its functions and its Issuer Obligations;
  - (ii) the financial position of the Manager and the Scheme, to ascertain that they are adequate; and
- (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; and
- (b) in exercising any powers or performing duties as Supervisor:
  - (i) act in the best interests of the Members; and



- (ii) exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Licensed Supervisor for a Retirement Scheme would exercise in the same circumstances; and
  - (c) do all things it has the power to do to cause any contravention referred to in clause 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 subject to the same duties and restrictions as if the Supervisor had performed them directly;
    - (ii) monitor the performance of that function;

- (iii) ensure that the Custodian does not sub-delegate the function without the prior written consent of the Supervisor; and
    - (iv) ensure that the Custodian remains liable for the performance of that function by any of its sub-delegates; and
  - (d) is jointly and severally liable with the Custodian (and any other person who has contracted out the function) for the performance of that function in accordance with clause 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, in consultation with the Supervisor, 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 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 and other Beneficiaries 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 and other Beneficiaries), 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, 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 clauses 12.1 to 12.5 and the provisions of Relevant Law, whenever the Manager determines it is necessary borrow money as directed by the Manager; and
- (j) will remain at all times a Licensed Supervisor.

## **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;
- (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;
- (d) management and administration expenses payable in respect of the Member;
- (e) any contribution towards the management and administration expenses received by the Scheme in respect of the Member;
- (f) amounts required to meet the premiums of all or any of the SuperLife Insurance Plans and the SuperLife Medical Insurance chosen by the Member or such other insurer providing insurance benefits in respect of the Member;

- (g) 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; and
- (h) the value of any benefit delivered or paid to or 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. The Manager may establish the following sub-accounts:

- (a) a Member Account;
- (b) an Employer Account; and
- (c) a Voluntary Account,

together with such other sub-accounts as the Manager deems appropriate for the efficient management of the Member's entitlements under the Scheme.

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 or FutureFundGuardian's nomination as advised to the Manager from time to time having regard to such rules as the Manager may establish and notify Members of and, for the avoidance of doubt, any such rules may require all Members or specified classes of Members to choose a particular manner of investment and prohibit any subsequent change to that nomination if the Schedule relevant to that Member so requires.
- (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 **Maintenance of Retirement Accounts:** The Retirement Accounts shall be accounted for under this clause 8 and maintained in accordance with rules determined by the Manager in its sole discretion and notified to the Members in accordance with clause 29 from time to time.

8.5 **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 shall not be entitled to require the transfer of any Investments to them.

8.6 **Member's interest in the Scheme:** The interests of a Member in the Scheme from time to time are represented by the benefit that is prospectively payable in respect of the Member and are limited to the amounts standing to the Member's credit in the Member's Retirement Account.

- 8.7 **Confirmations:** The Manager shall issue confirmation information to each Member each year in accordance with the FMCA and the FMCR.
- 8.8 **Reserve Account:** The Manager shall establish and maintain an account known as the Reserve Account in respect of an Employer and has the discretion to establish sub-accounts in respect of an Employer as it deems necessary or appropriate.
- (a) The Reserve Account shall from time to time be credited or debited, as appropriate, with:
    - (i) any amount reverted to the Scheme in respect of a Member in accordance with clause 22.10;
    - (ii) any amount forfeited to the Scheme in respect of a Member in accordance with clause 22.11 or clause 22.14;
    - (iii) any interest, dividends and other income 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; and
    - (iv) any Transfer Values received by the Manager which are to be credited to the Reserve Account.
  - (b) The Manager shall from time to time decide how any amount standing to the credit of the Reserve Account shall be invested.
  - (c) The Reserve Account may be applied by the Manager in all or any of the following ways:
    - (i) increasing the relevant Members' Retirement Accounts;
    - (ii) payment of all or part of the relevant expenses of the Scheme as provided under clause 8.1(e); and
    - (iii) payment of benefits under the relevant Participation Deed in respect of those amounts reverted under clause 22.10 or forfeited under clause 22.11 or clause 22.14.
  - (d) The Manager shall maintain the Reserve Account under this clause in accordance with rules made by the Manager from time to time and that it notifies Members of.
- 8.9 **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, into which all money is paid, as appropriate, and is held on trust by the Supervisor in terms of the Deed and in accordance with Relevant Law.

## 9. SCHEME ASSETS AND FUNDS

- 9.1 **Establishment and maintenance of Funds:** The Manager shall have the power to segregate the Scheme Assets into different Funds in order to offer to the Members a choice of how the amount credited to the Retirement Account of each such Member is to be invested from time to time.
- 9.2 **Creation of Funds:** Each Fund shall be established and 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 to 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 interest 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 interest 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 is in the Members' interest to give effect to the changes earlier. With effect from the date of such variation, the SIPO must be amended accordingly and the Trust Deed and/or the relevant Establishment Deed must be interpreted as if the definition of Authorised Investments is as notified to the Members under this clause.
- 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 purpose 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 **Consistently applied basis:** The Manager must 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' interests:**

- (a) The Manager shall allocate a Fund's investment returns to the appropriate Members on a fair and equitable basis and the Investment returns earned by one Fund are not to be allocated to the Members of another Fund.

- (b) At the Net Asset Determination Time of each Fund, the Manager shall value the Investments of the Fund in accordance with clause 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 at the Member's PIR as last notified by the Member to the Manager and shall deduct that from the investment returns before they are allocated to the Member's Retirement Account. If a Member has failed to notify the Manager of the PIR, the amount of tax deducted from the Member's investment returns shall be at the appropriate rate as set out in Relevant Law.
- (f) Subject to clause 8.3 and to the nominations of the Member in accordance with the rules set by the Manager from time to time, a Member's investment returns are retained in the Member's Retirement Account and re-invested in the Fund in respect of which the investment returns have been calculated.

**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 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).

**11.11 Determination binding:** If the Manager complies with the provisions of clause 11, the determination of the Net Asset Value of a Fund by the Manager shall be final and binding on all persons, including the Manager, the Supervisor, and the Members.

## **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;
- (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 the money borrowed or raised and outstanding in respect of the Scheme or secured against the Investments of a Fund, together with the money proposed to be raised or borrowed or secured in respect of the Scheme, shall not exceed any amount specified in the Establishment Deed and/or SIPO as the limit on borrowings for the Scheme or with respect to the Fund. For the purposes of this clause, borrowings shall include any bill of exchange, promissory note, or other negotiable instrument in respect of which the Supervisor is a drawer or acceptor.

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, then 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 indemnify 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 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 against all losses suffered and liabilities incurred by the Supervisor:

- (a) through the unauthorised acts, wilful breach of the provisions of the Trust Deed, gross negligence, fraud or dishonesty of the Manager or its officers or employees; and
- (b) as a result of an act or omission by the Supervisor where such act or omission occurs because the Supervisor has followed directions given to it in writing by the Manager pursuant

to the provisions of the Trust Deed; or as a result of the Manager exercising its powers under the Trust Deed not to approve any action that the Supervisor notifies the Manager in writing it wishes to take.

- 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, in consultation with the Supervisor, agree to limit the liability (in connection with its services in respect of the Scheme) of, and/or to indemnify and reimburse out of Scheme Assets, any investment manager or administration manager appointed in respect of the Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including, without limitation, legal fees and disbursements).
- 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 a 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 clause 14 are subject to clause 10.

## 15. REMUNERATION OF THE MANAGER

- 15.1 **Management fees:** Subject to any relevant requirements of 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 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 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 that it notifies

Members of, provided that the expenses payable in respect of an Employee Member or Designated Employee may be met in whole or in part by the Employer as decided by the Employer (and to the extent that they are not met by the Employer shall be met by the Employee Member or Designated Employee on the basis of such rules as are made from time to time by the Manager and advised to the Employee Member or Designated Employee).

- 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 MEMBERS

- 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 Beneficiary'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 Beneficiary and upon such payment the Beneficiary shall cease to be a Beneficiary.

- 20.3 **Lump sum Member contributions:** A Member may make a single lump sum contribution of a minimum amount of \$50 in a manner agreed between the Member and the Manager and such amount shall be paid to the Manager.

- 20.4 **Minimum contributions:**

- (a) 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 any change in the Consumer Price Index since the date of the last alteration or on such other basis as the Manager decides and notifies Members of from time to time.
- (b) No Member shall be obliged to increase their contribution rate following a change by the Manager in the minimum contribution but if a Member does change their contribution following such an increase in the minimum contribution then the new minimum shall apply to the changed contribution (except in the case of a Member who was a Member at 30 June 1998 and who has remained a Member continuously since that date from whom there shall be no minimum contribution required).

- 20.5 **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.

- 20.6 **Disclosure Document requirements:** Each Disclosure Document must comply with the FMCA and FMCR and, subject to clause 20.8, be in the form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 20.7 **Manager's best endeavours:** The Manager must use its best endeavours to ensure that the Disclosure Documents for the Scheme and each Fund at all times comply with the FMCA and FMCR.
- 20.8 **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).

## 21. GENERAL RULES GOVERNING INSURED BENEFITS

### 21.1 Liability in respect of insurance:

- (a) Any Insured Benefit provided in respect of a Member shall be as agreed between the Member and the Licensed Insurer and having paid or secured the amounts to meet part or all the costs of insurance as required neither the Supervisor nor the Manager shall be in any way responsible to the Member if the Licensed Insurer for any reason either does not provide part or all of the requested insurance cover or, having provided such cover, declines subsequently to meet part or all of a claim in respect of such cover.
- (b) The obligation of the Manager under the Trust Deed in respect of any SuperLife Insurance Plan and SuperLife Medical Insurance shall be limited at the time any payment is due to the amount held in the Member's Retirement Account and neither the Manager nor the Supervisor shall be under any liability to or in respect of the Member for whatever reason if:
- (i) the amount in the Member's Retirement Account shall be insufficient to meet all or part of the cost of such insurance cover; and/or
- (ii) the amount in the Member's Retirement Account shall be insufficient to meet the benefit that would otherwise be payable in respect of the Member's membership of the Scheme had the Insured Benefit been payable in full.

### 21.2 Payment of Insured Benefit:

- (a) The amount of any Insured Benefit payable to a Beneficiary in respect of a Member shall in no circumstances exceed the amount (if any) actually received by the Manager in respect of that Member.
- (b) The Manager shall not be required to pay any Insured Benefit to a Member or Beneficiary in respect of any Member before the receipt of any money payable to the Scheme in respect of that Member under the relevant SuperLife Insurance Plan.

21.3 **Claims in respect of SuperLife Medical Insurance:** A Member shall make any claim in respect of a SuperLife Medical Insurance directly to the Licensed Insurer and neither the Supervisor nor the Manager shall be in any way responsible to the Member if the Licensed Insurer for any reason either does not provide part or all of the requested claim or, having provided such medical insurance cover declines subsequently to meet part or all of a claim in respect of such cover.

## 22. GENERAL RULES GOVERNING BENEFITS

### 22.1 Retirement benefit:

- (a) If:
  - (i) an Employee Member leaves Service, or an Industry Member leaves the Industry, for any reason other than death, on or after either the Normal Retirement Date or on or after a permitted Early Retirement Date; or
  - (ii) in respect of a Spouse Member, the relevant Employee Member leaves Service for any reason,that Member shall be entitled to a benefit equal to the amount standing to the credit of the Member's Retirement Account.
- (b) The Member may:
  - (i) elect to receive the full amount of the benefit and/or any part thereof as a lump sum;
  - (ii) in respect of any amount then remaining to the credit of the Member's Retirement Account, the Member may 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 that 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 any changes in the Consumers Price Index since the date of the last alteration or on such other basis as the Manager decides and notifies Members of from time to time;
  - (iii) choose to transfer the amount then standing to the credit of the Member's Retirement Account to a Retirement Scheme or an Equivalent Overseas Scheme chosen by the Member; and/or
  - (iv) 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 and an Employee Member or an Industry Member making this election shall thereupon become an Individual Member.

### 22.2 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 an interest 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 it thinks fit and equitable.

**22.3 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 or apply the sum payable on the death of the Member to any person whose name and particulars have been notified to the Manager in writing by the Member and accepted by the Manager in any proportions nominated by the Member. If the Member has not made such a nomination the Manager shall pay the sum to the deceased Member's estate.

**22.4 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, subject to the relevant Participation Deed or Designated Plan or arrangements under the Scheme 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.

**22.5 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/or under the SuperLife Insurance Plans 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.

**22.6 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 the Beneficiary's membership of the Scheme to reflect any such mis-statement.

**22.7 Deduction in respect of tax:**

- (a) 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 entitlements under the Scheme.



- (b) While the Scheme is taxed under the PIE regime in accordance with the Tax Act, the Manager will deduct tax from the taxable income attributable to a Member's Retirement Account at the Member's PIR as last advised to the Manager by the Member or if not advised, at the highest PIR, and shall pay that tax to the Inland Revenue on behalf of the Member.
- (c) Any Employer contributions to the Scheme for an Employee Member or Designated Employee are subject to employer's superannuation contribution tax ("ESCT") which is deducted from those Employer contributions before the net amounts are paid to the Scheme for the benefit of the Employee Member. The Manager's and Supervisor's obligations and any benefits derived from the Employer's contributions in respect of the Employee Member or Designated Employee relate only to the net amounts received by the Scheme. The rules relating to ESCT may change from time to time.

22.8 **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.

22.9 **Variation of benefits:** The Manager in respect of an Employee 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.

22.10 **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 sub-clause 28.1, shall (unless the Manager decides otherwise and subject to Relevant Law), revert to the Scheme.

22.11 **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 the 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.

22.12 **Incapacity of Beneficiary:** If a Beneficiary is in the opinion of the Manager incapable of managing their own affairs, the Manager shall be entitled to withhold payment of any benefit payable in terms of 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.

22.13 **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 Beneficiary's under the Trust Deed in respect of that benefit are entirely extinguished.

22.14 **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 which apart from the provisions of this sub-clause 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.

## 23. APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER

23.1 **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.

23.2 **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.

23.3 **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 23.6.

23.4 **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.

23.5 **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.

- 23.6 **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.
- 23.7 **Retiring Manager released:** From the date of execution by the new manager of a deed in accordance with clause 23.6, 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 for under the Trust Deed) and the new manager must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the manager under the Trust Deed in all respects as if the new manager had been originally named as a party to the Trust Deed as manager of the Scheme.
- 23.8 **Manager's right to benefits:** Nothing in clause 23 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.

#### **24. APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR**

- 24.1 **Removal of Supervisor:** The Supervisor shall cease to hold office as supervisor if the Supervisor is removed pursuant to the FMCA.
- 24.2 **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 24.3 and the new supervisor has executed the deed referred to in clause 24.4 and all of the Scheme Assets have been transferred to the new supervisor in accordance with the FMCA.
- 24.3 **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.
- 24.4 **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.
- 24.5 **Retiring supervisor released:** From the date of execution by the new supervisor of a deed in accordance with clause 24.4, 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.

## 25. REGISTERS

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

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

25.2 **The Register:**

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

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

- (a) the names, addresses and PIRs 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, dividends and other income and market earnings including due to negative market movements;
- (f) the dates and amounts debited for taxes and fees from a Member's Retirement Account;
- (g) the dates of any transfers and the amounts transferred, from a Member's Retirement Account;
- (h) the date on which any person ceased to be a Member; and
- (i) such other details as the Manager may require or as may be required by law from time to time.

25.4 **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.

25.5 **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 of the Manager and in accordance with the requirements of the FMCA.

25.6 **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.

25.7 **Evidence of entitlement:** Notwithstanding clause 25.6, 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.

25.8 **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.

## 26. ACCOUNTS, AUDITS AND REPORTING

### Accounts

26.1 **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.

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

### Auditor

26.3 **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.

26.4 **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.

26.5 **Replacement of Auditor:** Any vacancy in the office of Auditor must be filled by the Manager as soon as reasonably practicable pursuant to clause 26.3.

26.6 **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

26.7 **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.

26.8 **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 agreed from time to time between the Manager and the Supervisor.

26.9 **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.

## 27. MEETINGS OF MEMBERS AND DIRECTIONS TO SUPERVISOR

27.1 **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.

27.2 **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.

27.3 **Rules of meetings:** All meetings of Members, other than the meetings called by the Manager under clause 27.2, shall be convened and held in accordance with the FMCR.

27.4 **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.

27.5 **Compliance with directions or orders:** Where any direction is given to the Supervisor pursuant to clause 27.4 in respect of any matter, the Supervisor may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction. Where applicable, the

Supervisor may also at its discretion apply to the High Court in accordance with section 207 of the FMCA for an order in respect of any matter.

## **28. TERMINATION OF SCHEME**

### **28.1 Winding up of the Scheme:**

- (a) The Scheme shall be wound up from such date (“**Winding Up Date**”) as is determined by the Supervisor as most appropriate:
  - (i) if an order is made or resolution passed to place the Manager or the Supervisor in liquidation and no replacement is appointed under clause 23 or 24 (as applicable);
  - (ii) if the Manager notifies the Supervisor in writing that the Scheme is to be wound up; or
  - (iii) if the winding up of the Scheme is otherwise required by 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 36 or clause 44, 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.

**28.2 Termination of Plans and Schedules:** If the Scheme is wound up, then each portion of the Scheme represented by a Plan and/or a Schedule shall be deemed to have terminated on the Winding Up Date and the affected Retirement Accounts relevant to the Plan or Schedule shall be dealt with in accordance with clauses 28.3 to 28.5 and the Employers’ Reserve Account balances shall be dealt in accordance with the terms specified in the relevant Plan or Schedule.

**28.3 Expenses:** Upon the winding up of the Scheme, the Supervisor shall be entitled to set aside an amount which is considered necessary by the Supervisor to meet any expenses of the administration and winding up of the Scheme and to meet any tax for which the Supervisor may be accountable and which in the opinion of the Supervisor may not in either case be recoverable from the Employers or Members.

**28.4 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 22.3 shall be distributed in accordance with the provisions of that clause and shall not form part of the Scheme Assets for purposes of allocation in accordance with this clause.



28.5 **Securing benefits on dissolution:** The Supervisor may, subject to the provisions of the FMCA and each Participation Deed, secure the benefits described in clause 28.4 at its sole discretion by one or more of the following:

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

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

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

## 29. NOTICES

29.1 **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.

29.2 **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.

29.3 **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 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.



- 29.4 **Form of signature:** The signature to any notice given by the Manager or the Supervisor may be written or printed or electronically affixed.
- 29.5 **Notice to Employer:** Any notice to be given to any Employer may be given either personally or by post to the address specified by the Employer or by email.
- 29.6 **Calculation of notice period:** Subject to any Relevant Law, where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be included in the number of days or other period.
- 29.7 **Notice to Supervisor or Manager:** Any notice, communication or information required by the Trust Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be addressed to the 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.

### **30. AMENDMENTS TO TRUST DEED**

- 30.1 **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 (provided that no amendment may be made which would have the effect of changing the Trust Deed or any Schedule, or any Participation Deed, in respect of a State Sector Employer in such a manner that the administration and operation of the Scheme in respect of the State Sector Employer or of any Member employed by the State Sector Employer could contravene the provisions of sections 84B(a) to (g) of the State Sector Act 1988).
- 30.2 **Retrospective effect:** Any amendment under clause 30.1 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.

### **31. GOVERNING LAW**

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

## PART 4 – SECTION A: WORKPLACE SAVINGS PLANS

### 32. PARTICIPATION OF EMPLOYERS

32.1 **Establishment of a Plan:** An Entity, as an Employer that wishes to participate in the Scheme for the purpose of providing retirement benefits directly or indirectly to its Employees may do so by entering into a Participation Deed in the form approved by the Manager for the establishment of a Plan.

32.2 **Participation Deeds:** All Participation Deeds form part of the Trust Deed and must be read and construed in accordance with, and to reflect the provisions of the Trust Deed, including all amendments made to it from time to time.

32.3 **Existing Participation Deeds:** The deeds of participation in the Scheme entered into between an Employer and the Scheme's trustee before the Effective Date and which remain in force immediately before the Effective Date shall be deemed to be Participation Deeds under the Trust Deed and with effect from the Effective Date:

- (a) all references in each such Participation Deed to "the Trustee" must be read and construed as if they were references to the Manager or to the Supervisor as the context requires; and
- (b) all references in such Participation Deeds to provisions in the Existing Trust Deed must be read and construed as references to the relevant clauses in the Trust Deed.

32.4 **Conditions of participation:** The Participation Deed shall specify a Plan's provisions for an Employer's Employees in the Schedule to the Participation Deed and the conditions may include matters relating to:

- (a) eligibility to join the Plan;
- (b) the contributions payable by the Employer and by Employee Members (if applicable);
- (c) the period(s) if any over which the vesting of the Employer's contributions to the Employee Members occurs and the treatment of unvested contributions;
- (d) the benefits payable, including any specific obligation to provide any Insured Benefit under the SuperLife Insurance Plans and/or the SuperLife Medical Insurance arrangements;
- (e) any permitted early partial withdrawals;
- (f) any expenses payable by Employers and/or Employee Members;
- (g) the Fund or Funds applicable to those Employee Members;
- (h) the establishment and maintenance of a Reserve Account to receive unvested contributions and the use of that Reserve Account to provide additional retirement benefits to the Employer's Employee Members; and
- (i) such other matters as the Manager and Employer consider appropriate, including the manner (and consequences) of terminating the Employer's obligations under the Participation Deed.

- 32.5 **Terms of Participation Deed prevail:** Subject to clause 32.6, in the event of any conflict or inconsistency between the terms of a Participation Deed and the other terms contained in the Trust Deed, the terms of the Participation Deed shall prevail.
- 32.6 **FMCA prevails:** Notwithstanding any other provision in the Trust Deed, no term in a Participation Deed may be contrary to the requirements of the FMCA and any such term shall be read down to the extent necessary to give effect to that term.
- 32.7 **Vesting of Employer Contributions:** Where a Participation Deed prescribes a vesting scale and an Employee Member has withdrawn a portion of the Employee Member's interest that includes an amount representing vested Employer Contributions, the withdrawal shall not cause any other Employer Contributions in respect of the Employee Member to vest earlier (or to a greater extent) than those contributions would have vested had the withdrawal not occurred.
- 32.8 **Ceasing employment with Employer:** If an Employee Member ceases to be employed by an Employer (without another employer agreeing to assume the obligations of the former employer under the relevant Participation Deed), or if the Employee Member's employer ceases to participate in the Scheme pursuant to the Participation Deed, then, following the calculation and securing of the Employee Member's entitlements, the provisions of the relevant Participation Deed shall cease to apply to the Employee Member.

### 33. PARTICIPATION OF ASSOCIATED EMPLOYERS

- 33.1 **Admission:** An Associated Employer specified to the Manager in writing by an Employer may participate in the Employer's Plan by entry into a deed whereby it covenants with the Employer and the Manager to comply with and observe all the provisions of the Trust Deed and the Participation Deed so far as those may apply to it as an Associated Employer.
- 33.2 **Commencement of Associated Employer's participation:** From the date the Associated Employer is admitted into the Plan under clause 33.1, an Employee of the Associated Employer can become an Employee Member on the invitation of the Associated Employer.
- 33.3 **Terms of participation:** Until subsequently varied, the terms of participation in the Plan for any Employee of an Associated Employer shall be the terms set out in the Schedule appropriate to the Employee and references to the Employer in the Schedule shall be deemed to be references to the Associated Employer except in relation to any provisions governing the Reserve Account in respect of the Employer and any powers of the Employer in relation to the amendment of the Participation Deed (provided that the Manager may at the request of the Associated Employer establish a reserve account under the Plan in respect of the Associated Employer).
- 33.4 **Change of employment:** If an Employee Member's employment with the Employer or with the Associated Employer changes to become employment with another Associated Employer or with the Employer, such a change of employment shall not be treated as leaving Service for the purposes of the Plan.

33.5 **Cessation of Associate Employer's participation:** An Associated Employer shall cease to participate in the Plan so far as it relates to the Employer if:

- (a) the Associated Employer gives not less than one month's notice (or such shorter period of notice as the Manager shall be willing to accept) in writing to the Manager and the Employer that it intends to cease to contribute to the Plan for any reason;
- (b) the Associated Employer is placed in liquidation or receivership (other than for the purposes of reconstruction or amalgamation);
- (c) the Employer gives notice in writing to the Associated Employer and the Manager that the participation of the Associated Employer shall cease at the end of such notice; or
- (d) the Employer ceases to be an Employer under the Trust Deed;

and upon any such cessation of the Associated Employer's participation in the Plan:

- (e) the provisions that would have governed the Employer's cessation of participation shall (mutatis mutandis) apply in respect of the Associated Employer; and
- (f) no Member employed by that Associated Employer will be entitled to a portion of the Employer's Reserve Account, unless the Employer determines otherwise.

#### 34. PARTICIPATION OF INDUSTRY ENTITIES

34.1 **Admission:** An Entity in an Industry may with the consent of the Manager provide retirement benefits and other benefits through the Scheme to any eligible individuals employed or engaged in that Industry. The Manager and the Entity in respect of the Industry shall complete an Industry Application Form in respect of the Industry in the form approved by the Manager.

34.2 **Conditions of admission:** Subject to the FMCA, the conditions of eligibility, contributions payable, benefits payable, early partial withdrawals, expenses payable and all matters relating to the operation of the Scheme for the Industry Members shall be as provided in the Schedule to the Industry Application Form relating to the Industry and may include specific obligations to provide Insured Benefits under the SuperLife Insurance Plans and/or SuperLife Medical Insurance arrangements or for the Industry Members to obtain these insurance benefits. The Manager and the Entity in respect of an Industry may agree to vary or amend the Schedule at any time.

#### 35. MEMBERSHIP UNDER SECTION A

35.1 **Employee Members:** An Employee of an Entity or an individual who provides personal services (other than as an Employee) principally to an Entity shall be eligible to apply to join the Plan following an invitation by the Entity. Any Employee or individual who is eligible under this provision to apply to become a Member shall make written application in such form as the Manager may from time to time require. Upon acceptance by the Manager such Employee or individual shall become an Employee Member and shall be deemed to have become a Member on the date advised to the Member by the Manager.

- 35.2 **Industry Members:** An individual who is employed or engaged in an Industry shall be eligible to apply to join the Scheme and shall 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 an Industry Member and shall be deemed to have become a Member on the date advised to the Member by the Manager.
- 35.3 **Continued membership in Scheme:** An Employee Member or an Industry Member who has ceased to be an Employee Member or an Industry Member and chooses to remain in the Scheme may continue membership as an Individual Member.
- 35.4 **MIS Members:** The Manager may admit as a Beneficiary a MIS Member. The person who is eligible to be admitted as a MIS Member on behalf of the MIS shall complete a MIS Application Form with the terms and conditions in respect of the membership specified in the Schedule attached to the MIS Application Form. Upon acceptance by the Manager the applicant shall become a MIS Member and shall be deemed to have become a Member on the date advised to the Member by the Manager.

## 36. SAVINGS CONTRIBUTIONS UNDER SECTION A

### 36.1 Employee Member contributions:

- (a) **Member Subsidised Contributions:** Where an Employee Member makes regular contributions that are subsidised by the Employer to the Scheme, as specified in the Participation Deed governing the Employer's Plan and advised to the Manager, the regular contributions shall be deducted by the Employer from the Employee Member's remuneration and paid to the Manager.
- (b) **Member Voluntary Contributions:** Where an Employee Member makes voluntary contributions under the Employer's Plan, such contributions shall be deducted by the Employer from the Employee Member's remuneration and paid to the Manager.

### 36.2 Employer Contributions:

- (a) **Employer/Associated Employer:** An Employer or Associated Employer shall make Employer Contributions in respect of an Employee Member as specified, in the Participation Deed governing the Employer's Plan.
- (b) **Limitation on Employer and Associated Employer contributions:** Unless the Participation Deed provides otherwise, an Employer or an Associated Employer is not required to make Employer Contributions in respect of an Employee Member who has attained the Normal Retirement Date and remains a Member of the Scheme. However, an Employer or an Associated Employer may choose to continue, reduce or terminate the Employer Contributions in respect of an Employee Member after the Member's Normal Retirement Date.
- (c) **Continued membership in Scheme:** Unless the Participation Deed provides otherwise and for the avoidance of doubt, upon an Employee Member becoming entitled to payment of a benefit upon attainment of the Normal Retirement Date:

- (i) that Member's Employer's obligation (if any) to make the Employer Contributions shall cease;
- (ii) the management and administration expenses of the Scheme that are attributable to the Member and that were paid by the Employer shall be thenceforth paid by the Member; and
- (iii) subject to the terms of the SuperLife Insurance Plans and the SuperLife Medical Insurance, any entitlement to Insured Benefits provided under the Employer's Plan under the Scheme shall cease,

notwithstanding that the Employee Member remains a Member until the benefit is paid to the Member.

**36.3 MIS Member contributions:** A MIS Member may contribute to the Scheme such amounts and at such times as are specified in the Schedule and having regard to such rules as the Manager may establish in respect of all such MIS Members. The contributions payable in relation to the MIS Member's membership of the Scheme shall be as provided in the Schedule relating to the MIS Member and secured in a manner agreed between the MIS Member and the Manager and paid to the Manager.

**36.4 Industry Member's contributions:** Each Industry Member shall contribute to the Scheme such amounts and at such times as are specified in the Schedule, having regard to such rules as the Manager may establish in respect of all such Members or specified classes of such Members and that such Members are notified of. If an Industry Member makes regular contributions as specified in the Schedule, the amounts shall be paid to the Manager or secured in a manner agreed between the Industry Member and the Manager and paid to the Manager.

### **37. SUPERLIFE INSURANCE PLANS AND SUPERLIFE MEDICAL INSURANCE UNDER SECTION A**

**37.1 Criteria for Employee Members:** The SuperLife Insurance Plans and SuperLife Medical Insurance are available:

- (a) if requested and provided by the Employer under the Employer's Plan for its Employees or if an Employee Member chooses to procure voluntary insurance benefits;
- (b) only after the Employee Member has provided to the relevant Licensed Insurer all the information required by it; and
- (c) on the terms and conditions and subject to the restrictions and limitations contained in the SuperLife Insurance Plan and SuperLife Medical Insurance policy documents.

**37.2 Insurance costs for Employee Members:**

- (a) In respect of the insurance cover and/or medical insurance cover that has been provided by the Employer for its Employees under the Employer's Plan by all or any of the SuperLife Insurance Plans and the SuperLife Medical Insurance in respect of the Member the Manager

shall deduct from the Employee Member's Employer Account the amounts needed from time to time to meet the costs of that insurance cover.

- (b) In respect of any insurance or/and medical insurance cover provided by all or any of the SuperLife Insurance Plans and SuperLife Medical Insurance for the Employee Member that an Employee Member takes voluntarily for himself or herself, the Employee Member shall make voluntary contributions either directly or through payroll deductions to the Manager for the amounts needed from time to time to meet the costs of that insurance cover.

**37.3 Criteria for Industry Members:** The SuperLife Insurance Plans and SuperLife Medical Insurance are available:

- (a) if requested by any Industry Member for any person;
- (b) only after the Industry Member has provided to the relevant Licensed Insurer all the information required by it; and
- (c) on the terms and conditions and subject to the restrictions and limitations contained in the SuperLife Insurance Plan and SuperLife Medical Insurance policy documents.

**37.4 Insurance costs for Industry Members:** In respect of any insurance or/and medical cover that an Industry Member voluntarily takes for himself or for any other person provided by all or any of the SuperLife Insurance Plans and SuperLife Medical Insurance for that Member the Manager shall deduct from the Industry Member's Retirement Account the amounts needed from time to time to meet all the costs of that insurance cover.

## **38. SAVINGS BENEFITS UNDER SECTION A**

**38.1 Employee Members/ Industry Members:**

- (a) **Retirement benefit:** Unless the Participation Deed provides otherwise, an Employee Member or an Industry Member upon making a request to the Manager at any time on or after attaining either the Normal Retirement Date or a permitted Early Retirement Date and on the terms provided in the relevant Plan or Schedule shall be entitled to an amount equal to the sum in the Member's Retirement Account at the date of payment of the retirement benefit.
- (b) **Deferred benefits:**
  - (i) An Employee Member or an Industry Member who is eligible to receive a benefit under sub-clause 38.1 may choose to defer the receipt of that benefit until the date on which the Employee Member or Industry Member ceases to be employed by their Employer or leaves the Industry.
  - (ii) The Manager shall inform the Employee Member or the Industry Member in writing of the right to choose to defer the receipt of any benefit under this sub-clause.
- (c) **Death benefits:** If an Employee Member or Industry Member dies there shall be payable a benefit equal to the amount standing to the credit of the deceased Member's Retirement

Account at the date of payment of the death benefit to the Member's Beneficiary or personal representatives as applicable.

- (d) **Resignation benefit:**
- (i) An Employee Member resigning from Service or an Industry Member leaving the Industry and not being entitled to a benefit under sub-clauses (a), (e), or (f) of this clause shall be entitled to a resignation benefit.
  - (ii) The resignation benefit for an Employee Member shall be an amount equal to the Employee Member's Vested Balance in the Member's Retirement Account as specified in the Participation Deed governing the relevant Plan at the date of payment of the resignation benefit.
  - (iii) The resignation benefit for an Industry Member shall be the amount as specified in the relevant Schedule at the date of payment of the resignation benefit.
  - (iv) Any amount that the Employee Member is not entitled to, pursuant to the relevant Plan, shall be credited to the Employer's Reserve Account within the relevant Plan.
- (e) **Total and Permanent Disablement benefit:** Unless the Participation Deed provides otherwise, when an Employee Member or an Industry Member becomes totally and permanently disabled, as defined in the SuperLife Insurance Plan's policy documents, a total and permanent disablement benefit is payable to the Member, that is, an amount equal to the sum in the Member's Retirement Account at the date of payment of the total and permanent disablement benefit and in addition if applicable, any benefit payable under clause 40.
- (f) **Ill health:** Unless the Participation Deed provides otherwise, when an Employee Member leaves Service as a result of ill health (as certified by the Employer), or an Industry Member leaves the Industry as a result of ill-health (as decided by the Manager), the Member will become entitled to receive an ill health benefit equal to the sum in the Member's Retirement Account at the date of payment of the ill health benefit.
- (g) **Redundancy benefit:** Unless the Participation Deed provides otherwise, when an Employee Member leaves Service because the position of the Employee Member is made redundant (as certified by the Employee Member's Employer), the Employee Member becomes entitled to receive a redundancy benefit equal to the sum in the Employee Member's Retirement Account at the date of payment of the redundancy benefit.
- (h) **Dismissal benefit:**
- (i) If an Employee Member is dismissed from Service for reasons of fraud or gross misconduct (as certified by the Employee Member's Employer), or leaves to avoid such dismissal the Employee Member becomes entitled to receive a dismissal benefit as set out in the Participation Deed governing the relevant Plan.
  - (ii) If an Industry Member is dismissed for reasons of fraud or gross misconduct or leaves to avoid such dismissal (as decided by the Industry Member's employer), the Industry



Member becomes entitled to receive a dismissal benefit as set out in the relevant Schedule.

- 38.2 **Continuation as Individual Member:** If an Employee Member or Industry Member for whatever reason becomes ineligible to remain in a Plan but wishes to retain their savings within the Scheme they can continue their membership in the Scheme as an Individual Member of Section A.
- 38.3 **MIS Member benefits:** Subject to the FMCA a MIS Member may receive benefits as specified in the Schedule applicable to the MIS Member and having regard to such rules as the Manager may establish in respect of all such MIS Members.

#### 39. TRANSFER OF SAVINGS BENEFITS UNDER SECTION A

- 39.1 **Transfer of savings benefits:** If an Employee Member becomes entitled to a benefit payment under a Plan, the Employee Member may request that the Manager transfer all or part of the amount representing the Member's savings benefit to another Retirement Scheme or an Equivalent Overseas Scheme. Upon such transfer being made, the Employee Member shall not be entitled to any other benefit under the relevant Plan in respect of the amount transferred and the Manager has no responsibility to enquire about the application of any benefit transferred.
- 39.2 **Effect of transfer from a Plan:** Subject to Relevant Law, no person (including any Beneficiary) has any right against the Manager or an Employer in respect of any savings benefits transferred under clause 39.1.
- 39.3 **Transfer of savings benefit to a Plan:** Subject to the FMCA if a Member is entitled to a benefit under a Retirement Scheme the Manager may at its discretion accept from such other scheme a Transfer Value which the trustees or managers thereof may be authorised to pay or transfer to the Scheme in respect of the Member. The Transfer Value shall be credited either to the Member's Retirement Account or to the Reserve Account as shall be agreed between the Manager and the trustees of such other scheme.

#### 40. INSURED BENEFITS UNDER SECTION A

##### 40.1 **Employee Member/Industry Member:**

- (a) **Funeral benefit:** If an Employee Member or Industry Member dies in Service a lump sum funeral benefit, if any, is payable as set out in the relevant Participation Deed or Schedule to the person or persons nominated by the Employee Member or Industry Member or if there is no such nomination, to the deceased Member's personal representatives.
- (b) **Death insurance benefit:** If an Employee Member or Industry Member dies in Service a death insurance benefit may be payable as set out in the relevant Participation Deed or Schedule to the person or persons nominated by the Employee Member or Industry Member or if there is no such nomination, to the deceased Member's personal representatives.
- (c) **Disablement insurance benefit:** If an Employee Member or Industry Member becomes totally and permanently disabled in Service and as defined in the SuperLife Insurance Plan, a

disablement insurance benefit, if any, is payable as set out in the relevant Participation Deed or Schedule to the Employee Member/Industry Member.

- (d) **Disability income insurance:** If an Employee Member or Industry Member is off work for more than the “waiting period” as defined in the relevant Participation Deed or Schedule because of total but temporary disability a monthly disability income benefit, if any, is payable to the Employee Member or Industry Member as set out in the relevant Participation Deed or Schedule.
- (e) **Medical plan insurance benefit:** If an Employee Member or Industry Member chooses to have medical insurance and if the Employer or the Entity related to the Industry Member pays a “medical subsidy” as defined in relevant Participation Deed or Schedule, the subsidy shall be payable to the Licensed Insurer in respect of the Employee Member or Industry Member such that the Employee Member or Industry Member becomes entitled to medical benefits.

#### 41. PARTIAL WITHDRAWALS UNDER WORKPLACE SAVINGS PLANS

##### 41.1 Access benefits:

- (a) **Financial hardship:**
  - (i) In the event of financial hardship, as determined by the Manager and approved by the Employer, an Employee Member may be permitted to withdraw a portion of the amount standing to the credit of that Member's Retirement Account as set out in the relevant Participation Deed. If payable the benefit is equal to the amount required to alleviate the Employee Member's financial hardship subject to a maximum of the amount standing in the Member Account and/or the Employer Account and as specified in the relevant Participation Deed.
  - (ii) In the event of financial hardship, as determined by the Manager, an Employee Member may be permitted under the relevant Participation Deed to withdraw the amount standing to the credit of the Employee Member's Voluntary Account.
  - (iii) In the event of financial hardship, as determined by the Manager, an Industry Member may be permitted under the relevant Schedule to withdraw a portion of the amount standing to the credit of that Member's Retirement Account.
  - (iv) The Employee Member or Industry Member shall supply such evidence of the Member's financial hardship as the Manager may reasonably require to satisfy itself of the hardship and of the amount required to alleviate that.
- (b) **Transfers to KiwiSaver:** At the request of an Employee Member or an Industry Member, the Manager may transfer an amount of up to \$1,043 a year, or such other amount as the Manager may determine from time to time, from the Employee Member's or Industry Member's Member Account to the Member's KiwiSaver account held under a KiwiSaver scheme. Where the KiwiSaver account is not in the SuperLife KiwiSaver scheme the transfer may be subject to a transaction charge as determined by the Manager from time to time.

- (c) **Disability income insurance:** An Employee Member or an Industry Member, if applicable, may be eligible to receive Insured Benefits under the disability income insurance arrangements while remaining a Member as set out in the relevant Participation Deed or Schedule to the Employee Member/Industry Member.
- (d) **Other permitted withdrawals specified in Participation Deed or Schedule:** Subject to the FMCA an Employee Member or an Industry Member may be eligible to withdraw some of the amount standing to the credit of that Member's Retirement Account for other purposes and on the terms set out in the relevant Participation Deed or Schedule.

## 42. MIS MEMBER BENEFITS

- 42.1 **Benefits payable:** The benefits payable to a MIS Member shall be as provided in the Schedule to the MIS Application Form relating to the MIS Member.

## PART 5 – SECTION B: LEGACY SCHEME

### 43. MEMBERSHIP PRIOR TO EFFECTIVE DATE

#### 43.1 Continued membership in Scheme:

- (a) All Members who as at the Effective Date are Designated Employees, Individual Members, myFutureFund Members or Spouse Members shall be treated under this Trust Deed on and from the Effective Date as Members of Section B.
- (b) When a myFutureFund Member who has attained age 25 or a Spouse Member who has ceased to be a Spouse Member chooses to remain in the Scheme they can continue their membership in the Scheme as an Individual Member under Section B.
- (c) If a Designated Employee for whatever reason becomes ineligible to continue as such but wishes to retain their savings within the Scheme they can continue their membership in the Scheme as an Individual Member under Section B.

- 43.2 **Admission of new Members:** No new Members may be accepted into Section B on or after the Effective Date.

### 44. SAVINGS CONTRIBUTIONS UNDER SECTION B

#### 44.1 Designated Employee:

- (a) **Member Subsidised Contributions:** When a Designated Employee makes regular contributions to the Scheme that are subsidised by the Employer, as specified in the Designated Plan and advised to the Manager, the regular contributions shall be deducted by the Employer from the Designated Employee's remuneration and paid to the Manager.
- (b) **Member Voluntary Contributions:** When a Designated Employee makes voluntary contributions under the Designated Plan, such contributions shall be deducted by the Employer from the Designated Employee's remuneration and paid to the Manager.

#### 44.2 **Employer Contributions:**

- (a) **Employer/Associated Employer:** An Employer or an Associated Employer shall make the Designated Employee's Employer Contributions as specified in the Designated Plan.
- (b) **Limitation on Employer and Associated Employer contributions:** Subject to the Designated Plan an Employer or an Associated Employer is not required to make Employer Contributions to the Scheme in respect of a Designated Employee who has attained the Normal Retirement Date and remains a Member of the Scheme and may choose to continue, reduce or terminate the Employer Contributions after the Normal Retirement Date.
- (c) **Continued membership in Scheme:** For the avoidance of doubt, where a Designated Employee becomes entitled to payment of a benefit upon attainment of the Normal Retirement Date and subject to the requirements of the Designated Plan:
  - (i) that Designated Employee's Employer's obligation (if any) to make the Employer Contributions shall cease;
  - (ii) the management and administration expenses of the Scheme that are attributable to the Designated Employee that were paid by the Employer shall thenceforth be paid by the Designated Employee; and
  - (iii) subject to the terms of the SuperLife Insurance Plans and the SuperLife Medical Insurance, any entitlement to Insured Benefits provided under the Designated Plan under the Scheme shall cease,

notwithstanding that the Designated Employee remains a Member until the benefit is paid to the Designated Employee.

44.3 **Individual Members:** Each Individual Member may contribute to the Scheme such amounts at such times as are elected by the Individual Member and advised to the Manager from time to time having regard to any rules the Manager may establish in respect of all such Members or specified classes of Members and that those Members are notified of. If an Individual Member elects to make regular contributions the amounts shall be deducted from the Individual Member's bank account by the Manager as secured in a manner agreed between the Individual Member and the Manager and paid to the Manager.

44.4 **myFutureFund Members:** Any person can make such contributions as they determine either regularly or by lump sum payments for a myFutureFund Member. These contributions shall be paid to the Manager for the benefit of the myFutureFund Member.

44.5 **Spouse Members:** Any regular contributions as determined by the Employee Member for the Member's spouse or partner shall be deducted from the Employee Member's regular remuneration by the Employee Member's Employer and paid to the Manager for the benefit of the Spouse Member.

## **45. SUPERLIFE INSURANCE PLANS & SUPERLIFE MEDICAL INSURANCE**

**45.1 Criteria for Members under Section B:** The SuperLife Insurance Plans and SuperLife Medical Insurance are available:

- (a) if requested by any Member for any person to whom Section B applies;
- (b) only after the Member has provided to the relevant Licensed Insurer all the information required by it; and
- (c) on the terms and conditions and subject to the restrictions and limitations contained in the SuperLife Insurance Plan and SuperLife Medical Insurance policy documents.

**45.2 Insurance costs for Designated Employees:**

- (a) The amounts needed from time to time to meet the costs of the insurance cover and/or medical insurance cover that has been provided by the Employer for a Designated Employee under the Designated Plan by all or any of the SuperLife Insurance Plans and the SuperLife Medical Insurance in respect of the Designated Employee shall be deducted from the Designated Employee's Employer Account by the Manager.
- (b) The costs of any insurance or/and medical insurance cover provided by all or any of the SuperLife Insurance Plans and SuperLife Medical Insurance for the Designated Employee that a Designated Employee takes voluntarily for themselves and/ or for their family, shall be met by the Designated Employee either directly or through payroll deductions to made by the Designated Employee's Employer and paid to the Manager.

**45.3 Insurance costs for other Members under Section B:** For Members other than Designated Employees under Section B, in respect of any insurance or/and medical cover provided by all or any of the SuperLife Insurance Plans and SuperLife Medical Insurance that the Member voluntarily takes for himself or herself or for any other person, the Manager shall deduct from that Member's Retirement Account the amounts needed from time to time to meet all the costs of that insurance cover as agreed between the Manager and the Member.

## **46. SAVINGS BENEFITS UNDER SECTION B**

**46.1 Designated Employee:**

- (a) **Retirement benefit:** Unless the Designated Plan provides otherwise a Designated Employee upon making a request to the Manager at any time on or after either attaining the Normal Retirement Date or a permitted Early Retirement Date on the terms provided in the relevant Designated Plan shall be entitled to an amount equal to the sum in the Designated Employee's Retirement Account at the date of payment of the retirement benefit.
- (b) **Deferred benefits:**
  - (i) A Designated Employee who is eligible to receive a benefit under the relevant Designated Plan on or after attaining either the Normal Retirement Date or, if

appropriate, a permitted Early Retirement Date may elect to defer the receipt of that benefit until the date on which the Designated Employee ceases to be employed by their Employer.

- (ii) The Manager shall inform the Designated Employee in writing of the right to elect to defer the receipt of any benefit under this sub-clause.
- (c) **Death benefits:** If a Designated Employee dies there shall be payable a benefit equal to the amount standing to the credit of the deceased Designated Employee's Retirement Account at the date of payment of the death benefit to the Designated Employee's Beneficiary or personal representative as applicable.
- (d) **Resignation benefit:**
  - (i) A Designated Employee resigning from Service and not being entitled to a benefit under sub-clauses (a), (e), or (f) of this clause shall be entitled to a resignation benefit.
  - (ii) The resignation benefit for a Designated Employee shall be an amount equal to the Vested Balance in the Designated Employee's Retirement Account as specified in the relevant Designated Plan at the date of payment of the resignation benefit.
  - (iii) Any remaining amount that is not paid to the Designated Employee, pursuant to the relevant Designated Plan, shall be credited to the Employer's Reserve Account within the relevant Designated Plan.
- (e) **Total and Permanent Disablement benefit:** Unless the Designated Plan provides otherwise when a Designated Employee becomes totally and permanently disabled as defined in the SuperLife Insurance Plan's policy documents, a total and permanent disablement benefit is payable to the Designated Employee that is an amount equal to the sum in the Designated Employee's Retirement Account at the date of payment of the total and permanent disablement benefit and in addition if applicable, any benefit payable under clause 47.
- (f) **Ill health:** Unless the Designated Plan provides otherwise when a Designated Employee leaves Service as a result of ill health (as certified by the Employer), the Designated Employee will become entitled to receive an ill health benefit equal to the sum in the Designated Employee's Retirement Account at the date of payment of the ill health benefit.
- (g) **Redundancy benefit:** Unless the Designated Plan provides otherwise when a Designated Employee leaves Service because the position of the Designated Employee is made redundant (as certified by the Employer), the Designated Employee becomes entitled to receive a redundancy benefit equal to the sum in the Designated Employee's Retirement Account at the date of payment of the redundancy benefit.
- (h) **Dismissal benefit:** If a Designated Employee is dismissed from Service for reasons of fraud or gross misconduct (as certified by the Employer) or leaves to avoid such dismissal the Designated Employee becomes entitled to receive a dismissal benefit as set out in the relevant Designated Plan.

- 46.2 **Transfer of Designated Employee savings benefit:** If a Designated Employee becomes entitled to a benefit payment under a Designated Plan, the Designated Employee may request that the Manager transfer all or part of the amount representing the Designated Employee's savings benefit to another Retirement Scheme or a non-retirement MIS or any other fund of which the Designated Employee is or is eligible to become a member. Upon such transfer being made, the Designated Employee shall not be entitled to any other benefit from the relevant Designated Plan in respect of the amount transferred and the Manager has no responsibility to enquire about the application of any benefit transferred.
- 46.3 **Transfer of savings benefit to a Designated Plan:** If a Designated Employee is entitled to a benefit under a Retirement Scheme or overseas retirement scheme or a non-retirement MIS, the Manager may at its discretion accept from such other scheme a Transfer Value which the trustees or managers thereof may be authorised to pay or transfer to the Scheme in respect of the Designated Employee. The Transfer Value shall be credited either to the Designated Employee's Retirement Account or to the Reserve Account in such proportions as shall be agreed between the Manager and the trustees of such other scheme.
- 46.4 **Individual Members:** An Individual Member may at any time by making a written request to the Manager in the manner specified by the Manager withdraw an amount of up to the sum in the Individual Member's Retirement Account at the date of payment.
- 46.5 **myFutureFund Members:**
- (a) After the date on which a myFutureFund Member attains age 25, the myFutureFund Member is entitled at any time by making a written request to the Manager in the manner specified by the Manager to withdraw an amount of up to the sum in the myFutureFund Member's FutureFund Account at the date of payment.
  - (b) Before the date on which a myFutureFund Member attains age 25, the FutureFund Guardian may at any time by making a written request to the Manager in the manner specified by the Manager elect to withdraw an amount of up to the sum in the myFutureFund Member's FutureFund Account at the date of payment and the Manager shall pay that amount to the myFutureFund Member.
- 46.6 **Spouse Members:** A Spouse Member is entitled to receive the amount standing to the credit of the Spouse Member's Retirement Account when the relevant Employee Member leaves Service for any reason specified in clause 38 or the relevant Designated Employee leaves Service for any reason specified in clause 46, and in either case the Spouse Member may at any time by making a written request to the Manager in the manner specified by the Manager withdraw an amount of up to the sum in the Spouse Member's Retirement Account at the date of payment.
- 46.7 **Transfer of savings benefit:** If a Member becomes entitled to a benefit payment under clauses 46.4 to 46.6, the Member may request that the Manager transfer all or part of the amount representing the Member's savings benefit to another Retirement Scheme or a non-retirement MIS or any other fund of which the Member is or is eligible to become a member. Upon such transfer

being made, the Member shall not be entitled to any other benefit from the Scheme in respect of the amount transferred and the Manager has no responsibility to enquire about the application of any benefit transferred.

#### **47. INSURED BENEFITS FOR DESIGNATED EMPLOYEES**

- (a) **Funeral benefit:** If a Designated Employee dies in Service a lump sum funeral benefit, if any, is payable as set out in the relevant Designated Plan to the person or persons nominated by the Designated Employee or if the Designated Employee has not made a nomination to the deceased Designated Employee's personal representatives.
- (b) **Death insurance benefit:** If a Designated Employee dies in Service a death insurance benefit may be payable as set out in the relevant Designated Plan to the person or persons nominated by the Designated Employee or if the Designated Employee has not made a nomination to the deceased Designated Employee's personal representatives.
- (c) **Disablement insurance benefit:** If a Designated Employee becomes totally and permanently disabled in Service as defined in the SuperLife Insurance Plan a disablement insurance benefit, if any, is payable to the Designated Employee as set out in the relevant Designated Plan.
- (d) **Disability income insurance:** If a Designated Employee is off work for more than the "waiting period" as defined in the relevant Designated Plan because of total but temporary disability a monthly disability income benefit, if any, is payable to the Designated Employee as set out in the relevant Designated Plan.
- (e) **Medical plan insurance benefit:** If a Designated Employee chooses to have medical insurance and if the Employer pays a "medical subsidy" as defined in relevant Designated Plan, the subsidy shall be payable to the Licensed Insurer in respect of the Designated Employee such that the Designated Employee becomes entitled to medical benefits.

#### **48. PARTIAL WITHDRAWALS**

- 48.1 **Permitted withdrawals specified in Designated Plan:** A Designated Employee may be eligible to withdraw some of the amount standing to the credit of their Retirement Account for other purposes and on the terms set out in the relevant Designated Plan.



**EXECUTION**

Executed as a deed.

**SIGNED by Smartshares Limited :**



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Director



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Director

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

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Attorney

---

Print Name

---

Witness signature

---

Print Name

---

Occupation

---

Address

**EXECUTION**

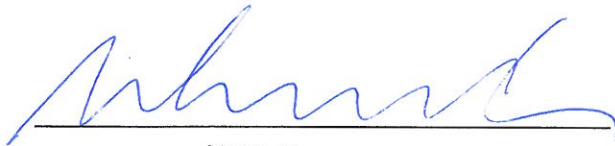
Executed as a deed.

**SIGNED** by Smartshares Limited :

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

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

  
\_\_\_\_\_

Attorney

Dennis Raymond Church  
\_\_\_\_\_

Print Name

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

\_\_\_\_\_  
Elena ~~Sasha~~ Vinton  
Manager Client Services  
Public Trust, Auckland  
Occupation

\_\_\_\_\_  
Address

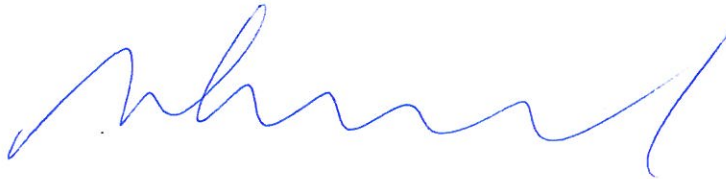
**CERTIFICATE OF NON-REVOCATION  
OF POWER OF ATTORNEY**

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

**HEREBY CERTIFY:**

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

SIGNED at Auckland                      this 2 day of      November              2016



By Dennis Raymond Church