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# Trust Deed

relating to

the Aon KiwiSaver Scheme

**Aon Saver Limited**

Manager

and

**Public Trust**

Supervisor

**Date**

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This **Trust Deed** is made on

2016

**between** (1) Aon Saver Limited (**Manager**)

**and** (2) Public Trust (**Supervisor**)

## Introduction

- A. By a Trust Deed dated 26 September 2006 (the **Original Trust Deed**) there was established a registered superannuation scheme that was capable of being converted into a KiwiSaver Scheme, to be known as the AonSaver Scheme.
- B. By a Trust Deed dated 28 March 2007 (the **2007 Deed**) the name of the Scheme was changed to the AonSaver Scheme (the **Scheme**) and the Original Trust Deed was replaced in its entirety with effect that the Scheme was to be governed by the Existing Deed.
- C. The Scheme is a registered KiwiSaver scheme under the KiwiSaver Act 2006 (**Act**), and is not a restricted KiwiSaver scheme as defined in that Act.
- D. On 28 September 2012 Aon New Zealand, the Manager and Superannuation Management Nominees Limited entered into a Deed of assignment under which Aon New Zealand, as manager of the Scheme, assigned all of its interests in, rights, powers and obligations as manager of the Scheme to Aon Saver Limited, with the effect that from 28 September 2012, Aon Saver Limited became known as the manager to the Scheme. Superannuation Management Nominees Limited consented to the transfer and assignment.
- E. On 28 September 2012 Superannuation Management Nominees Limited, the trustee, Aon New Zealand and the Manager entered into a Deed of Retirement and Appointment of Trustee with effect from that date under which Superannuation Management Nominees Limited retired as trustee of the Scheme and was replaced by the Supervisor.
- F. On 28 September 2012 the Manager and the Supervisor entered into a trust deed which replaced in its entirety the provisions governing the Scheme at that time (the **2012 Deed**). The 2012 Deed also changed the name of the Scheme from the AonSaver Scheme to the Aon KiwiSaver Scheme.
- G. The Manager and the Supervisor wish to amend the 2012 Deed by substituting this Trust Deed for the 2012 Deed in order to ensure that the Scheme is able to meet its requirements under the Financial Markets Conduct Act 2013 (**FMCA**) from the date on which the Manager elects to transition the Scheme to the financial markets conduct regime under the FMCA (**Effective Date**).
- H. The Manager and the Supervisor are satisfied that all of the amendments as contained in this Trust Deed do not have a material adverse effect on Scheme participants and the Supervisor has certified to that effect and has also certified that this Trust Deed will comply with sections 135 to 137 of the FMCA on the basis set out in its certificate.

# It is agreed

## 1. Interpretation

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### 1.1 Definitions

In this Trust Deed, unless the context otherwise requires:

**Accounting Policies** means the accounting policies applicable to the Scheme developed by the Manager which comply with Relevant Law and generally accepted accounting principles, as advised to the Supervisor;

**Accounts** means the financial statements of the Scheme for a Financial Year, as required by the Accounting Policies;

**Act** means the KiwiSaver Act 2006 (including the KiwiSaver Scheme Rules);

**Annual Report** means the annual report required by Regulation 62 of the Regulations;

**Attributed Tax** means tax paid or payable by the Scheme, the Manager or the Supervisor (whether current or deferred) which is attributed under the Income Tax Act to Members or is otherwise determined by the Supervisor or Manager to be attributable to Member and transfers of value between Investment Funds made under clause 10.1 and determined by the Supervisor or the Manager to be equivalent to Attributed Tax;

**Attributed Tax Credit** means tax rebates paid or payable to the Scheme which are determined by the Manager or Supervisor to be attributable to Members and transfers of value between Investment Funds made under clause 10.1 and determined by the Supervisor or the Manager to be equivalent to Attributed Tax Credits;

**Auditor** means the auditor of the Scheme appointed pursuant to clause 28;

**Business Day** means a day on which registered banks are open for business in Auckland and Wellington;

**Chartered Accountant** has the meaning set out in section 6(1) of the FMCA;

**Commissioner** has the meaning given to that term by the Act;

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

**Disclosure Document** means any PDS or Register Entry required by the FMCA and includes any amendment to such documents;

**Effective Date** means the date the Manager elects to opt-in to the financial markets conduct regime under the FMCA;

**Financial Markets Authority** includes any person lawfully delegated to exercise or perform any of the powers or functions of the Financial Markets Authority;

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

**Financial Year** means each period of 12 months ending on 31 March (or such other period ending on such other date as the Manager may determine and notify to the Supervisor from time to time, or on the date when the Scheme is wound up if earlier);



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

**Fund Update** has the meaning given to it in Regulation 5 of the Regulations;

**Income Tax Act** means the Income Tax Act 2007;

**Investment Fund** means an investment fund established and maintained under clause 10.1;

**Issuer Obligations** has the meaning given to it in section 6(1) of the FMCA;

**KiwiSaver Scheme** has the meaning given to that term by the Act;

**KiwiSaver Scheme Rules** has the meaning given to that term by the Act;

**Licensed Manager** means a person under Part 6 of the FMCA who holds a licence to act as a manager of a managed investment scheme;

**Licensed Supervisor** means a person who holds a licence to act as Supervisor of a Management Investment Scheme under the Financial Markets Supervisors Act 2011;

**Manager** means the manager for the time being of the Scheme;

**Member** means any natural person who has been admitted to membership of the Scheme and who is, or may become, entitled to benefits under the Scheme;

**Member's Account** means an account established and maintained for a under clause 1.1 of Schedule 2;

**Monthly Report** means a report provided by the Manager to the Supervisor as per Schedule 3 each month;

**Net Value** means the value of an Investment Fund as calculated under clause 3 of Schedule 2 on a Valuation Day;

**Participating Employer** means an employer, (whether a corporate body, association, partnership or individual) who has entered into an agreement with the Supervisor or Manager and has not ceased to be a Participating Employer;

**Participation Agreement** means an agreement entered into between the Supervisor or Manager and a Participating Employer under clause 7.1;

**PDS or Product Disclosure Statement** has the meaning set out in section 6(1) of the FMCA;

**Permitted Withdrawal** has the meaning given to that term by the Act;

**Quarterly Certificate** means the certificate provided by the Manager to the Supervisor in the form set out in Schedule 5;

**Register** means a register of Members in respect of each Investment Fund;

**Register Entry** means a register entry required under section 57(1)(b) of the FMCA;

**Registered Scheme** means a managed investment scheme that is a registered scheme under the FMCA;

**Register of Offers of Financial Products** has the meaning set out in section 6(1) of the FMCA;

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

**Regulations** means any regulations under the FMCA;

**Related Body Corporate** means: a body corporate who is related to another body corporate pursuant to section 12(2) of the FMCA;

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

**Related Party** as the context requires, has the meaning given to it in section 172 of the FMCA;

**Related Party Benefit** is a benefit:

- (a) that either is given out of the investments of an Investment Fund or creates an exposure to loss for the investments of an Investment Fund; and
- (b) that is given to, or received by, a Related Party; but
- (c) does not include fees or expenses that are paid or reimbursed to the Manager in accordance with the Act, the FMCA or this Trust Deed;

**Relevant Law** means, as appropriate, all laws applicable to the Manager, the Supervisor, the Scheme or a Fund at applicable points in time which may include, without limitation, the Financial Markets Legislation and the Act;

**Scheme** means the Aon KiwiSaver Scheme governed by this Trust Deed;

**SIPO** means the statement of investment policy and objectives for the Scheme and each Investment Fund in the form and containing the contents required by the FMCA;

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

**Superannuation Scheme** has the meaning set out in section 6(1) of the FMCA and, during the Transition Period, includes a superannuation scheme registered under the Superannuation Schemes Act 1989, and includes any foreign superannuation scheme, in respect of which transfers to or from the Scheme (as applicable) are permitted;

**Supervisor** means the supervisor for the time being appointed under the provisions of this Trust Deed and where the context requires or allows, this term includes any nominated company or nominee appointed in accordance with clause 2.3(b);

**Transition Period** has the meaning set out in clause 19(1) of Schedule 4 of the FMCA.

**Trust Deed** means this Trust Deed, as this Trust Deed may be amended from time to time and includes, in accordance with clause 7.2, each Participation Agreement (subject to clause 7.4);

**Unit** means a unit in an Investment Fund as referred to in clause 2 of Schedule 2;

**Unit Price** means the price of a Unit calculated in accordance with clause 2.6 or 2.7 of Schedule 2;

**Valuation Day** means a day on which an Investment Fund is valued under clause 3 of Schedule 2;

**Winding Up Date** means the date of a resolution to wind up the Scheme passed under clause 20.1.

## 1.2 Implied terms

- (a) The provisions of this Trust Deed that apply to the Scheme are deemed to include the provisions implied by the Act, the FMCA, or any other legislation for so long as those provisions are in force and any provision of this Trust Deed that is contrary to such implied provisions is void to the extent it is contrary.
- (b) The terms expected to be implied in this Trust Deed under section 116 of the Act as at the Effective Date, are set out in Part A of Schedule 1 of the Trust Deed for reference purposes and convenience.
- (c) Selected definitions from the Act which are of relevance to the implied terms referred to in (b) above are also set out in Part B of Schedule 1 for reference purposes and convenience.
- (d) For the avoidance of doubt the implied terms and related definitions referred to in (a), (b), and (c) above will become part of this Trust Deed by virtue of the Act and not by virtue of this Trust Deed. Those implied terms and related definitions are set out in Schedule 1 for reference purposes and convenience. This Trust Deed will not operate to incorporate those implied terms and related definitions into this Trust Deed independently of the Act or the FMCA.

## 1.3 Construction

In the construction of this Trust Deed, unless the context otherwise requires:

- (a) headings appear as a matter of convenience and shall not affect construction;
- (b) references to clauses and Schedules are to clauses and Schedules of this Trust Deed;
- (c) references to money are references to New Zealand currency;
- (d) the singular includes the plural and vice versa and words importing any gender include the other gender;
- (e) references to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory regulations or instrument as from time to time amended or re-enacted or, as the context permits, provisions substituted therefor for the time being in force and, in addition, reference to any statute includes statutory regulations or instruments from time to time made and in force under that statute;
- (f) references to any deed, agreement or other instrument shall be read as referring to such deed, agreement or other instrument as from time to time modified, supplemented or novated; and
- (g) the word "including" and other similar words do not imply any limitation.

## 1.4 **Currency**

Where for the purposes of any provision of this Trust Deed it is necessary to determine the New Zealand currency equivalent at any date of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on a basis fixed from time to time by the Manager and approved by the Auditor and any liability which is payable in a non-New Zealand currency is for the purposes of this Trust Deed to be treated as being a liability of an amount equal to the New Zealand currency equivalent determined in the same way with the exception that in determining the New Zealand currency equivalent of a liability payable or an amount expressed in a non-New Zealand currency, account may be taken of any contractual arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the liability.

## 2. **Constitution of the Scheme**

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### 2.1 **Continuation of trusts**

The continuation of the trusts established by the 2012 Deed is confirmed, on the basis of the amendments contained in this Trust Deed.

### 2.2 **Principal purpose**

The principal purpose of the Scheme is to provide retirement benefits directly or indirectly to natural persons.

### 2.3 **Contributions and other assets held on trust**

- (a) All the assets of the Scheme shall vest in the Supervisor to hold on trust in accordance with the terms of this Trust Deed.
- (b) The Supervisor may from time to time, contract out the holding of the assets of the Scheme. Any company contracted by the Supervisor under this clause may, if authorised in writing by the Supervisor, in turn contract one or more persons as a nominee in which may be vested all or any of the assets of the Scheme. The Supervisor shall cause any such nominated company and procure each nominated company that appoints any nominee to comply with the relevant covenants and obligations on the part of the Supervisor expressed or implied in the FMCA, and this Trust Deed.
- (c) If a person contracts the holding of the investments of an Investment Fund to another person under clause 2.3(b), the person contracting out that function:
  - (i) must take all reasonable steps to:
    - (A) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person had performed them directly; and
    - (B) monitor the performance of a function,
  - (ii) is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with clause 2.3(c)(i)(A).

## 2.4 **Name**

The Scheme and each Investment Fund or Investment Funds shall be known by such name or names as are determined by the Manager from time to time after consultation with the Supervisor. Where the Scheme's name is changed pursuant to this clause, the Manager will give notice to the Financial Markets Authority in accordance with section 164 of the Act. The Manager must notify all Members of the change as soon as reasonably practicable.

## 2.5 **Perpetuities**

If the Scheme ceases to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may with the approval of the Supervisor take such action as it thinks fit (including re-establishing the trusts of the Scheme and paying over the assets of the Scheme to a new trustee) in order to prevent the operation of any rule of law relating to perpetuities which might otherwise invalidate any of the trusts of the Scheme.

# 3. **Admission of Members**

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## 3.1 **Admission**

Natural persons who are eligible to join the Scheme under the Act shall be admitted to membership of the Scheme as follows:

- (a) in respect of any employees of any employer who has arranged with the Manager for that employer's employees to become Members of the Scheme under section 47 of the Act, in accordance with section 48 of that Act; or
- (b) in respect of any natural person who is not admitted to membership of the Scheme under (a) above, by contracting directly with the Manager to become a Member of the Scheme.

## 3.2 **Acceptance of applications**

Unless precluded by the Act and the FMCA, the Manager may in its discretion refuse to accept in whole or in part any application for membership and shall not be required to give any reason or ground for such refusal.

## 3.3 **Cessation of membership**

A person shall cease to be a Member on the first to occur of:

- (a) the person's death;
- (b) the person receiving the person's full benefit from the Scheme and ceasing to have any further entitlement under the Scheme;
- (c) the person transferring from the Scheme to another KiwiSaver Scheme and ceasing to have an entitlement under the Scheme; and
- (d) receipt of notice by that person under rule 4(5)(b) of the KiwiSaver Scheme Rules.

## 3.4 **Compliance with Relevant Law**

- (e) The Manager shall in making any invitation in terms of clause 3.1 and accepting applications for membership under clause 3.2, comply with Relevant Law.
- (f) If the Manager makes or includes an error in the calculation of the price at which Units are transferred or reversed, or fails to comply with any applicable methodology for the pricing of Units under relevant Financial Markets Legislation, the minimum level of reimbursement or compensation payable to current or former members will be [\$20]

### **3.5 Restriction on making a regulated offer**

Without limiting clause 3.4, the Manager must not make a Regulated Offer of Units 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; and
- (c) all of the information that the Register of Offers of Financial Products is required to contain under the FMCA has been lodged as a Register Entry with respect to the Scheme and each Investment Fund.

### **3.5 PDS and Register Entry**

Each PDS and Register Entry must comply with Financial Markets Legislation and the Act at the time and otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.

### **3.6 PDS and Register of Offer of Financial Products**

The Manager must use its best endeavours to ensure that the PDS and Register of Offer of Financial Products for the Scheme and the Investment Funds at all times comply with Financial Markets Legislation and the Act.

## **4. Contributions**

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### **4.1 Contributions payable**

- (a) Each Member will make contributions in accordance with and in the manner specified in the Act and may suspend contributions at any time and for any period provided that the requirements of the Act have been complied with. A member who is an employee of an employer which has entered into a Participation Agreement must make contributions as required under the relevant Participation Agreement and the Act.
- (b) A Member may make additional contributions on the basis prescribed in the Act.
- (c) Each employer who has entered into a Participation Agreement will make contributions in respect of each Member it employs as provided for in the Participation Agreement, subject to any minimum requirements under the Act.

### **4.2 Contributions that must be accepted**

The Manager shall accept:

- (a) contributions required to be made to the Scheme by or in respect of a Member under the Act (including Crown Contributions); and
- (b) amounts transferred from another KiwiSaver Scheme in respect of a Member.

All contributions and amounts received by the Manager or its agent shall on receipt become subject to the trusts governing the Scheme that are set out in this Trust Deed and shall be paid into the Scheme's bank account in accordance with clause 11.10.

#### 4.3 **Contributions that may be accepted**

The Manager may accept other amounts in respect of a Member subject to such terms and conditions (including, without limitation, as to the amount and mode of payment) as the Manager may determine from time to time.

#### 4.4 **Vesting of employer contributions**

Every employer contribution in respect of a Member shall vest completely in the Member immediately the contribution is made.

### 5. **Benefits**

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#### 5.1 **Calculation of “member’s accumulation”**

It is acknowledged that, for the purposes of calculating benefits under the Scheme, the Act will require the calculation of amounts representing the “member’s accumulation” as that term is defined in the Act. Subject to clause 5.2 below, those amounts shall be calculated in accordance with the provisions of Schedule 2 to this Trust Deed.

#### 5.2 **Different method of calculation**

Subject to clause 5.3, the Manager:

- (a) must adopt a method of calculating amounts representing the “member’s accumulation” that is different to that set out in Schedule 2 if the Manager determines that the method set out in Schedule 2 does not comply with the Act; and
- (b) may adopt a method of calculating those amounts that is different to that set out in Schedule 2 if the Manager considers it appropriate to do so.

#### 5.3 **Different method of calculation must meet certain requirements**

Any different method adopted by the Manager under clause 5.2 must:

- (a) comply with the Act and Relevant Law; and
- (b) not be adopted without the prior approval in writing of the Supervisor (such approval not to be unreasonably withheld or delayed).

#### 5.4 **Payment of benefits**

The circumstances in which benefits are payable by the Scheme are those set out in the KiwiSaver Scheme Rules. The Manager must pay any benefits payable in the manner

required by the KiwiSaver Scheme Rules. The Manager may, in its discretion, defer payment of any benefit in accordance with the Act.

#### 5.5 **Back dated validation**

The Manager will pay any amounts to the Commissioner which it is required to pay under Subpart 4 of Part 2 of the Act.

### 6. **Transfers**

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The Manager and the Supervisor shall effect transfers to or from the Scheme in accordance with the requirements of the Act and the FMCA and subject to the restrictions on transfer in the Act and the FMCA.

### 7. **Arrangements with employers**

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#### 7.1 **Participation Agreement**

If the Supervisor has given its approval to the form of the proposed agreement (such approval not to be unreasonably withheld or delayed), the Manager and an employer may enter into an agreement that determines some of the conditions on which the employer's employees may become Members of the Scheme (being matters that are supplemental or additional to the matters contained in this Trust Deed), including conditions relating to:

- (a) the contributions payable by the employer;
- (b) the Investment Funds applicable to those Members; and
- (c) such other matters as the Manager and the employer consider appropriate.

#### 7.2 **Participation Agreement forms part of Trust Deed**

Any Participation Agreement shall form part of this Trust Deed.

#### 7.3 **Terms of Participation Agreement prevail**

Subject to clause 7.4, in the event of any conflict or inconsistency between the terms of a Participation Agreement and the other terms contained in this Trust Deed, the terms of the Participation Agreement shall prevail.

#### 7.4 **KiwiSaver Act and Financial Markets Conduct Act prevail**

Notwithstanding any other term in this Trust Deed, no term in a Participation Agreement may be contrary to the requirements of the Act and the FMCA and any such term shall be void to the extent that it is contrary.

#### 7.5 **Existing Participation Agreements continue**

Any Participation Agreement entered into in accordance with the Original Trust Deed, the 2007 Deed or the 2012 Deed continues unaffected by the amendment of the 2012 Deed by this Trust Deed.



## 8. Management and administration of the Scheme

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### 8.1 Supervisor's functions

The Supervisor has the following functions in respect of the Scheme and each Investment Fund:

- (a) acting on behalf of Members in relation to:
  - (i) the Manager;
  - (ii) any matter connected to this Trust Deed or the terms of any offer of Units;
  - (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 each Investment Fund;
- (b) supervising:
  - (v) the performance by the Manager of its functions and its Issuer Obligations;
  - (vi) the financial position of the Manager and each Investment Fund, to ascertain that they are adequate;
- (c) holding the investments of each Investment Fund, or ensuring that the investments of each Investment Fund are held, in accordance with sections 156 to 158 of the FMCA;
- (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 this Trust Deed.

### 8.2 Supervisor's general powers

Subject to the provisions of this Trust Deed and all Relevant Law and the powers, rights and discretions given to the Manager by all Relevant Law and this Trust Deed, the Supervisor shall have the rights and powers in respect of the Scheme and each Investment Fund and over and in respect of the Scheme and each Investment Fund which it could exercise if it were the absolute and beneficial owner of such Investment Fund. Notwithstanding the preceding references to the provisions of this Trust Deed, the Supervisor shall have the power to settle and complete all transactions in respect of the Scheme and each Investment Fund.

### 8.3 Supervisor's duties

- (a) The Supervisor must:
  - (i) act honestly in acting as the Supervisor of the Scheme and each Investment Fund;
  - (ii) in exercising any powers or performing duties as Supervisor:
    - (A) act in the best interests of the Members; and

- (B) exercise reasonable diligence in carrying out its functions as a supervisor;
- (iii) do all things it has the power to do to cause any contravention referred to in clause 8.1(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members); and
- (iv) act in accordance with any direction given by a Special Resolution of Members that is not inconsistent with any enactment, rule of law or this Trust Deed, and in particular clause 8.3(d) in relation to:
  - (A) seeking a remedy to a contravention referred to in clause 8.1(a); and
  - (B) any other matter connected with the Supervisor's functions under clause 8.1.
- (b) The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Members.
- (c) The Supervisor has the same duties and liability in the performance of its functions as Licensed Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMCA).
- (d) The duty in clause 8.3(a)(iv) is subject to any order of the court made under section 210 of the FMCA.
- (e) The Supervisor must, in exercising its powers and performing its duties as Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances.
- (f) The Supervisor may, subject to clause 8.3(g), authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Investment, perform any act, or exercise any discretion within the Supervisor's power. The authorisation must be written. The Supervisor remains liable for the acts or omissions of a delegate. However, the Supervisor may include provisions to protect and assist those dealing with the delegate in the authorisation as the Supervisor thinks fit. The delegate may be the Manager or a Related Person of the Manager or the Supervisor.
- (g) The Supervisor must not delegate its functions under clause 8.3(f) (except its function of holding the investments of a Fund under clause 8.1(a)) unless otherwise permitted by the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.
- (h) 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:
  - (v) determine the financial position of the Manager, the Scheme or an Investment Fund; or
  - (vi) review the business, operation, management systems or governance of the Manager, the Scheme or an Investment Fund.
- (i) If the Supervisor engages an expert under clause 8.3(h):

- (vii) the Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 8.3(h); and
  - (viii) the Manager must pay the expert's reasonable fees and expenses.
- (j) The Manager shall be indemnified for those fees and expenses out of the relevant Investment Fund, subject to any limits under this Trust Deed or the FMCA.
  - (k) The Supervisor may institute, prosecute, defend and compromise legal proceedings in order to secure compliance with the provisions of this Trust Deed and may recover any loss suffered by any Members on their behalf in respect of their Units.

#### 8.4 **Manager's functions**

- (a) The Manager agrees to carry out and perform the duties and obligations on its part contained in this Trust Deed, and as otherwise required by law for the benefit of the Members in each Investment Fund. Nothing contained in this Trust Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this Trust Deed.
- (b) The Manager shall be responsible for the following functions for the Scheme:
  - (i) offering interests in the Scheme for subscription;
  - (ii) issuing interests in the Scheme;
  - (iii) managing the Scheme's investments and property; and
  - (iv) administering the Scheme.
- (c) Without limiting the generality of the foregoing, the Manager shall perform the following specific functions:
  - (v) accept amounts transferred from other KiwiSaver Schemes and Superannuation Schemes;
  - (vi) establish and maintain Member records, including records of Member's Accounts and a Register meeting the requirements of the Financial Markets Legislation;
  - (vii) make arrangements for the receipt of contributions and other monies payable to the Scheme, such contributions and other monies (if accepted into the Scheme) to be placed in an account in the name of the Supervisor or a custodian appointed by the Supervisor;
  - (viii) liaise with Members;
  - (ix) manage and make all decisions relating to investments, including the investment, reinvestment or realisation of any investment and the exercise of any voting rights associated with any investment;

- (x) keep complete and accurate records of all investments of the Scheme and each Investment Fund and effect transfers between Investment Funds;
- (xi) determine whether benefits are payable (except where, under the KiwiSaver Scheme Rules, the Supervisor is responsible for determining whether benefits are payable) and make arrangements for the payment of benefits to or in respect of Members, and for transfers to other KiwiSaver Schemes;
- (xii) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;
- (xiii) subject to the Act and the FMCA, determine the terms of all contracts to be entered into in respect of the Scheme provided that the Manager must ensure that at all times the liability of the Supervisor in relation to any contract or agreement is limited to the assets of the Scheme or the relevant Investment Fund (as applicable);
- (xiv) take all actions and make all determinations and calculations necessary or desirable pursuant to Schedule 2;
- (xv) ensure compliance by the Scheme with the requirements of the Act and Financial Markets Legislation;
- (xvi) prepare annual accounts at the end of each Financial Year in accordance with the Financial Reporting Act 1993 (or any other Relevant Law) and provide a draft of those accounts to the Supervisor as soon as is practicable and will ensure that those accounts are audited;
- (xvii) provide to the Supervisor as soon as possible following receipt copies of all notices or communications received from the Financial Markets Authority, any regulatory authority, or the Manager's dispute resolution scheme for the purposes of the Financial Service Providers (Registration and Dispute Resolution) Act 2008;
- (xviii) ensure compliance with the taxation obligations of the Scheme;
- (xix) maintain all accounting records for the Scheme;
- (xx) give and receive notices and other information in accordance with the Act;
- (xxi) enter into the Participation Agreements and complete any filings required by the Relevant Law in respect of the same, within any timeframes required by the Relevant Law;
- (xxii) exercise such other powers, authorities, functions and discretions as are incidental to the above or may be agreed from time to time in writing between the Manager and the Supervisor; and
- (xxiii) take such actions reasonably required by the Supervisor to enable it to comply with its obligations under the Financial Markets Supervisors Act 2011; and
- (xxiv) prepare application forms, Disclosure Documents and other promotional material in respect of the Scheme as required in terms of this Trust Deed, the FMCA, the Act or any other Relevant Law and in order for the Supervisor to be able to satisfy its statutory obligations, provide to the Supervisor such Disclosure Documents in draft form sufficiently far ahead of the proposed registration or distribution date to allow the Supervisor a reasonable period of time to review and provide comments.

## 8.5 Manager's duties

- (a) The Manager, in exercising its powers and performing its duties as the manager of the Scheme, must:
  - (i) act honestly;
  - (ii) in exercising any powers or performing any duties as Manager:
    - (A) act in the best interests of Members;
    - (B) treat the Members equitably; and
  - (i) not make use of information acquired through being Manager in order to:
    - (A) gain an improper advantage for itself or any other Person; or
    - (B) cause detriment to the Members;
  - (i) exercise the care, diligence and skill that a prudent person engaged in the profession of managing a Registered Scheme would exercise in the same circumstances; and
  - (ii) carry out its functions in accordance with this Trust Deed, each SIPO and all other Issuer Obligations.
- (b) The Manager must, in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by section 13B or 13C of the Trustee Act 1956. This requirement applies despite anything to the contrary in section 13D(1) of the Trustee Act 1956.
- (c) The Manager shall have the same duties and liabilities in the performance of its functions as Manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act or the FMCA).
- (d) The Manager may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) or contract any person or persons to perform any act, or exercise any discretion within the Manager's power. The authorisation must be written. In doing this:
  - (i) the Manager must take reasonable steps to:
    - (A) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager was performing them directly; and
    - (B) monitor the performance of those functions; and
  - (ii) the delegation or contracting out does not affect the liability of the Manager for the performance of those functions.

The Manager shall advise the Supervisor of any delegation or contracting out under this clause before any such delegation or contracting out is entered into.

- (e) The Manager may include provisions to protect and assist those dealing with the delegate in the authorisation as the Manager thinks fit. The delegate or contracted party may be a Related Person of the Manager or Supervisor.
- (f) The Manager shall keep a complete record of:
  - (i) Members;
  - (ii) Participating Employers;
  - (iii) the Members employed by each Participating Employer; and
  - (iv) all other matters, information and data necessary or expedient for the proper and efficient working of the Scheme or required by the Relevant Law.
- (g) The Manager shall keep and maintain or cause to be kept and maintained a separate Register of Members in respect of each Investment Fund.
- (h) Each Register shall take the form of a computer file compiled in a manner required by the FMA and approved by the Supervisor.
- (i) Each Register shall be kept or caused to be kept by the Manager at the Office or such other place as the Manager may from time to time approve.
- (j) On request by the Supervisor, the Manager will provide the Supervisor with a copy of each Register in such form as the Supervisor may approve and the Supervisor shall be entitled to inspect the Register at any time during the normal working hours of the Manager.
- (k) There shall be entered in each Register:
  - (i) the names, addresses and Prescribed Investor Rates (if given) of the Members having an interest in the relevant Investment Fund;
  - (ii) the number and type of Units held by each Member in the Investment Fund;
  - (iii) the date on which the name of every person was entered in the Register as a Member having an interest in the Investment Fund;
  - (iv) the date on which any person ceased to be a Member having an interest in the Investment Fund;
  - (v) in respect of Members who are employees of Participating Employers, the name of the relevant Participating Employers; and
  - (vi) such other details as the Manager may require or as may be required by law from time to time.
- (l) The Manager shall cause each Register to be audited by the Auditor at annual intervals or as required by the FMCA. Such audit shall be completed in accordance with the FMCA and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of the Act has not been complied with. The Supervisor may at any time for a specified and reasonable purpose request the Manager to cause each Register or one or more of them to be audited.

- (m) Any change of name or address of any Member shall be notified by such Member in writing to the Manager who shall alter the relevant Register accordingly.
- (n) Any Member having an interest in any Investment Fund, the Supervisor and the Auditor shall be entitled to inspect the Register of that Investment Fund in respect of their interest in that Investment Fund free of charge at any time during normal working hours of the Manager.
- (o) Each of the Manager and the Supervisor shall be entitled:
  - (i) to rely absolutely on each Register as being correct; and
  - (ii) for all purposes to treat a person whom it believes to be the person entered on a Register as the holder of any Units as the legal and beneficial owner of those Units; and
  - (iii) to effect transfers, redemptions or other dealings of any nature with Units on the basis of the information recorded in a Register.
- (p) Notwithstanding clause 8.5(o), the Manager shall be entitled, at its absolute discretion before giving effect to any transfer, redemption or other dealing with any Units to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in a Register as the holder of the Units in question.
- (q) Except as required by law or to the extent the Manager and the Supervisor determine to the contrary, neither the Manager nor the Supervisor shall be bound to see to the performance of any Investment Fund (express implied or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in the Register as the Member.

## 8.6 **Manager's powers**

- (a) Subject to Relevant Law and this Trust Deed, in performing its duties and responsibilities the Manager shall have all powers over and in respect of each Investment Fund and its assets which it could exercise if it were the absolute and beneficial owner of such investments. In particular, without derogating from the foregoing, the Manager shall perform the following specific functions:
  - (i) purchase, sell and otherwise deal with investments upon such terms as the Manager thinks fit;
  - (ii) lease and accept surrenders of leases and otherwise deal in any manner with lessees or other occupants of investments;
  - (iii) execute and pay for repairs and improvements relating to investments;
  - (iv) insure any investment for such amounts and on such conditions and in such types of insurance as may be deemed necessary;
  - (v) attend and vote at meetings;
  - (vi) lend money;

- (vii) in accordance with clause 12.1, arrange for the Investment Fund to borrow or raise money unsecured or secured subject to the conditions contained in this Trust Deed and the relevant Investment Fund Particulars and secure the repayment of moneys so borrowed and interest on those moneys by charge over all or any of the assets of the Scheme;
- (viii) develop, build, demolish and otherwise make improvements or alterations to any Real Estate or other Investment in such manner as the Manager thinks fit;
- (ix) instruct and pay from an Investment Fund, agents, consultants and other persons to act in relation to investments or proposed investments;
- (x) make and carry out any takeover proposal, offer or invitation;
- (xi) promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager deems fit;
- (xii) create, grant, renew, alter or vary any mortgage, charge or other encumbrance over the whole or any part of an Investment Fund for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- (xiii) agree to enter into and perform any contract option or other right relating to any Investment including any futures contract;
- (xiv) agree to the release, modification or variation of any rights, privileges or liabilities of any investments or any securities given in relation thereto;
- (xv) agree to the rearrangement or reconstruction of any person including any increase or reduction in the capital of the person;
- (xvi) agree to the amalgamation or merger of any person with any other person or the sale or other disposition of all or any part of the property or undertaking of any person;
- (xvii) enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out exercise and comply with any of the same;
- (xviii) manage any real property or other Investment being an asset of an Investment Fund and for that purpose at its discretion to employ managing agents and delegate powers of management to such managing agents and to employ or authorise the employment of staff and contractors and to enter into maintenance and management contracts of all kinds at the expense of an Investment Fund;
- (xix) participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership, joint venture or other agreement relating to investments or to act as the operator or one of the operators under any such agreement which relate to investments;
- (xx) consolidate and divide all or any of the Units of an Investment Fund into Units of a larger amount or subdivide all or any Units into Units of a smaller amount;
- (xxi) perform and enforce agreements;



- (xxii) institute, prosecute, compromise and defend legal proceedings including arbitration;
- (xxiii) enter into or obtain any guarantee, indemnity or similar contract for the benefit of an Investment Fund or Member (and whether relating to the guaranteeing of the capital or income of an Investment Fund any amounts to be paid to the Members in respect of an Investment Fund or otherwise) and to pay any guarantee fee or other consideration from an Investment Fund for any such guarantee, indemnity or similar contract;
- (xxiv) group the profits or losses of an Investment Fund with those of any other person and for such purposes to make or to accept subvention or other payments between an Investment Fund and the other person;
- (xxv) incur and pay charges and expenses which, in the opinion of the Manager, are necessary or desirable to carry out the purposes of an Investment Fund, including tax and other levies imposed on the Scheme or the Manager or the Supervisor in connection with an Investment Fund;
- (xxvi) invest in pooled or mixed forms of investments in common with other Members; and
- (xxvii) enter into any futures contracts subject to any limitations contained in this Trust Deed or any relevant SIPO;
- (xxviii) ensure that all rights of voting conferred by the investments of an Investment Fund shall be exercised in such manner as the Manager may determine and provided the Manager is not acting in breach of its obligations under this Trust Deed or the law in general 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. PROVIDED THAT the Manager is not acting in breach of its obligations under this Trust Deed or Relevant Law, the Manager shall not be under any liability or responsibility in respect of the management of any Investment Fund 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.

## 8.7 Shared administration platforms

In exercising its powers, authorities, functions and discretions, the Manager may participate in an administration platform that is also used by other schemes.

## 8.8 Appointment not exclusive

Nothing contained in this Trust Deed shall be construed to prevent the Manager from establishing, or acting as manager in relation to, another KiwiSaver Scheme, Superannuation Scheme or similar scheme.

## 9. Fund Accounts, Reports and Updates

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### 9.1 Accounting records

- (a) The Manager must keep or cause to be kept, in accordance with the Accounting Policies for the Scheme and each Investment Fund, proper records and Accounts of or relating to the Scheme and each Investment Fund and must keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of each Investment Fund and the matters in respect of which each receipt and expenditure takes place and of all sales, purchases and other transactions relating to the investments and the liabilities of each Investment Fund and issue or transfer of Units. The Manager must furnish to the Supervisor from time to time any information necessary for this purpose.
- (b) In keeping or causing to be kept the Manager's proper records or accounts under clause 9.1(a):
  - (i) the Manager must have appropriate systems of control and oversight;
  - (ii) the Manager must keep such records or Accounts at a suitable secured location accessible by the Supervisor and the Auditor; and
  - (iii) the provisions of Part 7 of the FMCA must be complied with.

### 9.2 Inspection by the Auditor

The accounting and other records of the Manager and of the Supervisor in respect of the Scheme and each Investment Fund are open to the inspection of each other and the Auditor. The Auditor is entitled to require from the Manager and the Supervisor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

### 9.3 Accounts to be sent to Supervisor and Members

At the end of each Financial Year, the Manager must:

- (a) prepare financial statements for each Investment Fund and arrange for them to be audited; and
- (b) arrange for the financial statements to be sent or made available to the Supervisor and, to the extent and in a manner required by the Relevant Law, the Members in accordance with the Act together with any documents and reports required by any Relevant Law to be annexed to or to accompany the financial statements.

### 9.4 Annual Report:

- (c) The Manager shall, within 4 months after the end of each Financial Year (or such other time as may be prescribed by law) prepare a report on the Scheme for that Financial Year as required by the FMCA Act or as may otherwise be required at law. The Manager must provide the Supervisor with the draft Annual Report and allow the Supervisor a reasonable period of time to review and provide comments on the form of the Annual Report.

- (d) The Manager shall, on completing any such report, send a copy to the Supervisor and to any Person to whom a copy of the report is required to be sent under the Act or the FMCA.
- (e) The Manager shall deliver to the Supervisor at the same time as the Manager furnishes to the Supervisor the annual financial statements, a separate report by the Auditor addressed to the Supervisor stating:
  - (i) whether or not in the performance of their duties as Auditor they have become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Manager or the Supervisor by Relevant Law or by this Trust Deed and if so, giving particulars thereof;
  - (ii) whether or not in the performance of their duties as Auditor they have become aware of any matter which in their opinion calls for further investigation by the Supervisor in the interests of the Members;
  - (iii) that they have perused the certificates given pursuant to clause 9.9 since the last report by the Auditor and state:
    - (A) whether or not in the Auditor's opinion the financial statements are properly drawn up so as to comply with NZ GAAP;
    - (B) whether or not there has been any material trading or capital loss that has been sustained by the Scheme and Investment Funds;
    - (C) whether or not there has been any material contingent liabilities that have been incurred by the Scheme and Investment Funds;
    - (D) whether or not in the Auditor's opinion the Register is properly drawn up so as to give a true account and record of the Members of the Scheme for the year then ending; and
    - (E) whether or not in the performance of their duties as Auditor, anything has come to the Auditor's attention to indicate that the amounts due to Members, whether by way of refunds, income, entitlements, repayments or otherwise, have not been paid or credited in accordance with the directions of the Members, or to the Members.
  - (iv) whether or not in the performance of their duties as Auditor anything has come to their attention to indicate that the method of valuation of the investments or liabilities of the Scheme and the Investment Funds has not been in accordance with this Trust Deed;
  - (v) whether or not:
    - (A) proper accounting records have been kept by the Scheme and the Investment Funds as far as it appears from an examination of such records in the performance of their duties as auditors;
    - (B) the audited financial statements comply with NZ GAAP and confirming that an audit opinion was issued by the Auditor on (the date specified).

The content of the Auditor's report can be varied at any time by written agreement between the Supervisor and Auditor.

## 9.5 Manager's reports

The Manager must from time to time during the currency of the Scheme and each Investment Fund in respect of the Scheme and each Investment Fund:

- (a) furnish or cause to be furnished to the Supervisor copies of any financial statements, notices or circulars issued to the Members at the time of such issue;
- (b) give or cause to be given to the Supervisor a Monthly Report comprised of all the reports and information listed in Schedule 3 (or as otherwise agreed in writing) to be received within 1 month of each month end;
- (c) make available to the Supervisor (or any other authorised person) all documents and records relating to the Manager, the Scheme or the Investment Funds (including those held by an investment manager or administration manager);
- (d) give to the Supervisor (or any other authorised person) such other reports or information as the Supervisor (or any other authorised person) requires with respect to:
  - (i) all matters relating to the Investment Funds; or
  - (ii) any business of the Manager or to any property of the Manager (whether acquired before or after the date of this Deed) or otherwise relating to the affairs of the Manager or the performance of the Manager's functions;

#### 9.6 **Special reports:**

At the request of the Supervisor by not less than 14 days' notice in writing (which request shall only be made when the Supervisor considers that special circumstances warrant such request and so certifies in writing to the Manager specifying such special circumstances), give to the Supervisor:

- (a) copies of the financial statements of the Scheme or Investment Fund specified by the Supervisor, duly audited and signed and made up as at the end of the next Month occurring after the expiry of the said notice, or as at such other date as the Supervisor and the Manager agree, together with all documents and reports required by the Act, the FMCA or the Financial Reporting Act 1993 to be annexed to or to accompany such financial statements; and
- (b) a report by the Auditors setting out the information referred to in clause (e) in respect of the financial statements so requested with such adaptations as may be necessary or such of that information as may be required by the Supervisor.

#### 9.7 **Annual Report and Annual Return and Personalised Statements**

- (a) The Manager shall, in consultation with the Supervisor, prepare an annual report and an annual return on the Scheme as required by the Act.
- (b) The Manager shall provide to each Member a personalised statement of contributions and accumulations in accordance with the Act.
- (c) The annual return and each personalised statement shall include such matters and be provided to such persons and within such timeframes as may be required by the Relevant Law.

#### 9.8 **Report to Members**

Each Member shall:

- (a) if required by the Act, have the right, upon request:
  - (i) to receive an estimate of the Member's maximum available amount which it can withdraw;
  - (ii) to look at, at any reasonable time, a copy of this Trust Deed and the relevant SIPO; and
  - (iii) to receive, upon payment of a reasonable fee, a copy of this Trust Deed including any SIPO;
- (b) be given such other information which may from time to time be required to be given to the Member under the Act or the FMCA, in accordance with the provisions of the Act or the FMCA.

#### **9.9 Manager's Quarterly Certificate:**

Within 1 month of the end of each quarter the Manager shall deliver to the Supervisor for each Scheme and Investment Fund the Manager's Quarterly Certificate (or such period as shall be agreed with the Supervisor) in the form provided in Schedule 5 or in such other form as the Supervisor and Manager shall otherwise agree in writing.

#### **9.10 Fund Update**

The Manager shall:

- (a) prepare quarterly Fund Updates as required by the Act or the FMCA;
- (b) if required, provide a final draft of Fund Updates required to the Supervisor for its review at a reasonable time prior to finalisation; and
- (c) arrange for the Fund Updates to be lodged with the Registrar and sent to Members and the Supervisor in the time and manner required by the Act or the FMCA.

#### **9.11 Regulatory compliance**

The Manager shall cause at all relevant times file or lodge all reports, returns, statements, information or other material required by law to be filed or lodged with any public registry or regulatory authority by the Manager (and Supervisor upon request) in respect of the Scheme.

#### **9.12 Custodian reports**

Unless already provided to the Manager, 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 practical following receipt.

#### **9.13 Audit of Register**

The Manager shall within 4 months after the end of each Financial Year (or such other time as may be prescribed by law) provide the Supervisor with a copy of the Audit of the Register as required by the FMCA.

#### 9.14 **Custodial Assurance Report**

The Manager shall deliver to the Supervisor at the same time as the Manager furnishes to the Supervisor the annual financial statements a separate Custodial Assurance Report in respect to property not held by a sub-custodian undertaken by a qualified auditor in accordance with applicable auditing and assurance standards.

#### 9.15 **Manager Accounts**

The Manager will provide the Supervisor with copies of the signed and audited financial statements of the Manager at the same time as they are filed under the relevant law.

### 10. **Establishment of Investment Funds**

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#### 10.1 **Separate Investment Funds**

The Manager may, with the approval in writing of the Supervisor (such approval not to be unreasonably withheld or delayed) establish on such terms and conditions as it thinks fit separate Investment Funds within the Scheme, designed to enable Members to have their savings invested by reference to particular asset classes or mixes of asset classes. The terms and conditions of any Investment Fund must include the SIPO for each Investment Fund. The SIPO in respect of an Investment Fund, must be approved in writing by the Supervisor before an Investment Fund is established (such approval not to be unreasonably withheld or delayed). The Manager may alter the SIPO in respect of an Investment Fund from time to time with consent in writing from the Supervisor, such consent not to be unreasonably withheld or delayed. This clause 10.1 shall not be construed so as to prohibit the Manager from transferring value between Investment Funds to accommodate the Scheme being a single taxpayer, (such as a payment being made for the benefit of tax losses made by one Investment Fund being used to reduce tax payable by another Investment Fund), and the Manager may implement such transfers.

#### 10.2 **Exclusive assets and liabilities**

Although the Scheme is intended to be treated as one registered KiwiSaver Scheme for the purposes of the Act, with the statutory and other obligations applicable to it construed accordingly, the assets of each Investment Fund are the exclusive property of that Investment Fund, and all liabilities incurred in relation to an Investment Fund shall be the exclusive liabilities of that Investment Fund, and the Supervisor and the Manager shall in all respects act so as to give effect to these intentions. Without prejudice to the generality of the foregoing:

- (a) the assets held for an Investment Fund shall not be available to meet the liabilities incurred in relation to any other Investment Fund;
- (b) all investments made with the moneys of an Investment Fund shall be held by or on behalf of the Supervisor as the exclusive property of that Investment Fund and for the exclusive benefit of the Members who have an interest in that Investment Fund pursuant to this Trust Deed;
- (c) the Manager shall keep separate records and accounts in respect of each Investment Fund, and shall not permit the property, assets or liabilities of any Investment Fund to become intermingled with those of any other Investment Fund provided that nothing in this subclause shall prevent the assets of any Investment Fund being lent to, deposited with or invested in another Investment Fund;

- (d) without limiting the generality of this clause 10.2, the provisions of this Trust Deed relating to the indemnities in favour of the Supervisor and the Manager, the fees payable to the Supervisor and the Manager and the reimbursement of the Supervisor and the Manager shall be construed in a manner consistent with this clause where separate Investment Funds have been established, that is to say:
- (i) any amounts payable to the Supervisor or the Manager shall be payable from the Investment Fund or Investment Funds to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Investment Funds); and
  - (ii) where the amount payable to the Supervisor or the Manager relates to more than one Investment Fund, that amount shall be apportioned between those Investment Funds on such fair and equitable basis as may be determined by the Manager.

### 10.3 **Termination of Investment Funds**

The Manager may close or terminate any Investment Fund on terms and conditions as it thinks fit with the prior written approval of the Supervisor (such approval not to be unreasonably withheld or delayed). The Supervisor must give its approval to any proposal to close or terminate any Investment Fund unless the Supervisor reasonably considers that doing so would cause the Supervisor to be in breach of its obligations under any rule of law.

### 10.4 **Member entitled to choose Investment Fund(s)**

Subject to clause 10.5, a Member shall be entitled to choose the Investment Fund or Investment Funds in which the Member's savings will be invested from time to time provided that where a Member has the opportunity to choose an Investment Fund or Investment Funds and declines or fails to do so, the Manager may nominate one or more Investment Fund to be the default investment option for the Member.

### 10.5 **Restrictions on choosing Investment Fund(s)**

In exercising their choice under clause 10.4, Members shall comply with all the rules prescribed by the Manager from time to time regarding:

- (a) the maximum number of Investment Funds that may be chosen in respect of any Member;
- (b) the minimum amounts that may be invested in any Investment Fund in respect of any Member provided that any rules prescribed by the Manager regarding such minimum amounts must be consistent with the requirements of the Act;
- (c) changing their choice of an Investment Funds (in relation to either amounts already invested or amounts to be invested in the future);
- (d) the manner in which such choice should be communicated;
- (e) any other matters relating to the choice of Investment Funds by Members.

### 10.6 **Effect of Investment Fund choice**

The choice of an Investment Fund or Investment Funds by a Member shall be a direction given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956.

## 11. **Manager's powers to invest**

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### 11.1 **Statement of Investment Policies and Objectives**

The Manager in consultation with the Supervisor must ensure there is a SIPO for the Scheme and for each Investment Fund.

### 11.2 **Investment Guidelines and Procedures**

The Manager and the Supervisor may from time to time agree upon guidelines and procedures in writing for the Manager to follow in connection with the investment of each Investment Fund. The Manager will comply with any such guidelines currently in force.

### 11.3 **Investment direction by the Manager**

The Manager will manage the investments of the Scheme and each Investment Fund in accordance with the provisions of the Trustee Act 1956 as to investment of trust funds and, as necessary, may (subject to the provisions of this Trust Deed) direct the Supervisor to:

- (a) Invest in, purchase, acquire, realise, sell or dispose of the Investments of any Investment Fund;
- (b) enter into any commitments or liabilities in respect of such investments;
- (c) execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing;
- (d) take any other action which may be required in respect of investments; and
- (e) complete and deliver any proxies or related notices,

and the Supervisor will from time to time, to the extent of the respective funds in its hands or control, subject to clause 11.4, act as directed in writing by the Manager.

### 11.4 **Supervisor's duty to refuse to act**

- (a) The Supervisor must refuse to act, and must direct any custodian or nominee appointed under clause (b) to refuse to act, on a direction of the Manager under clause 11.3 to:
  - (i) invest, acquire or dispose of or transfer any Investment; or
  - (ii) enter into any loan, security or other obligation; or
  - (iii) exercise rights of voting conferred by the investments,

if in the opinion of the Supervisor, given in writing to the Manager, the proposed Investment, acquisition or disposition or transfer of assets into or out of that Investment Fund or the loan security or other obligation or exercise of rights of voting conferred by the investments, as the case may be:

- (iv) is manifestly not in the interests of the Members of that Investment Fund; or
- (v) would breach this Trust Deed, any rule of law or enactment.



- (b) The Supervisor shall not be liable to the Members or the Manager for acting or refusing to act on any such direction of the Manager, or directing any custodian or nominee contracted under clause (b) to act or refuse to act on any such direction, in respect of the investment, acquisition or disposal of any Investment in accordance with the provisions of this Trust Deed.
- (c) If the Supervisor refuses pursuant to this clause 11.4 to act on a direction from the Manager, or directs any custodian or nominee to refuse to act on a direction of the Manager, the Supervisor must notify the Manager and the Financial Markets Authority in writing of its reasons for refusing to act.

#### 11.5 **Compliance with SIPO**

The Manager will comply with the SIPO of the Scheme and each Investment Fund, as applicable.

#### 11.6 **No liability for investment performance**

Subject to clause 13.4, neither the Manager nor the Supervisor shall be responsible nor liable to any Member for the investment performance of the Scheme or an Investment Fund arising as a result of complying with the SIPO.

#### 11.7 **Advisers**

In relation to the purchase, sale of, or any other dealing with, any investment the Manager may determine the time and mode of, and the consultants, agents, brokers and professional advisors (if any) for, the purchase, sale or other dealing.

#### 11.8 **Dealing with related parties**

- (a) The Manager (and any investment manager, administration manager, or other person to whom the Manager has contracted out or delegated to 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.
- (b) However, clause 11.8(a) 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:
  - (i) the Manager obtains the Supervisor's consent for the transaction or transactions; or
  - (ii) 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.
- (c) The Supervisor must not consent to a transaction or transactions under clause 11.8(b) unless one of the following applies and the Supervisor certifies to that effect:
  - (i) The Supervisor considers that the transaction or transactions are in the best interests of the Member; or
  - (ii) The transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Members of the relevant Investment Fund that are affected or potentially affected by the transaction or transactions.

- (d) Subject to clauses 8.4(a), 8.4(b), 8.5(a) 8.5(c), 8.5(d), 8.6 and clauses 11.8(a) to 11.8(c) (inclusive), the Manager may only enter into the following transactions if the transactions are on reasonable commercial terms and all the provisions contained in clause 11.8(e) are satisfied:
- (i) cause any part of any Investment Fund Asset to be invested or lodged with the Manager or any Related Party of the Manager;
  - (ii) sell, purchase or otherwise dispose of or acquire any asset or Investment to or from the Manager or any Related Party of the Manager or managed investment scheme or other trust or scheme managed by the Manager or by such Related Party of the Manager; and
  - (iii) enter into any contract, agreement or other arrangement with any Related Party of the Manager to provide management or consultancy services or any other services that the Manager considers desirable.
- (e) Before entering into a transaction or series of transactions under clause 11.6(d), the Manager must comply with all of the following:
- (i) The Manager must provide the Supervisor with reasonable detail of the transaction and a certificate signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager, stating that in the Manager's opinion the transaction or transactions are on reasonable commercial terms and in accordance with the SIPO relating to the relevant Investment Fund; and
  - (ii) The Manager obtains the prior written approval of the Supervisor.
- (f) Neither the Supervisor, the Manager nor any Related Party shall be liable to account to any Investment Fund, the Scheme or any Member for any profit or loss arising from any transaction entered into in accordance with clauses 11.8(b) or 11.8(d).
- (g) 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 clauses 11.8(b) and 11.8(3). The acquisition of Units in one Investment Fund by another Investment Fund, and any disposal thereof, will not require any notification or certification under clause 11.8(e) or this clause 11.8(g).
- (h) The powers conferred in this clause 11.8 are subject to clauses 11.1 to 11.5.

## 11.9 **Investments in Supervisor's name**

The Manager shall cause investments to be vested in the Supervisor or a nominee appointed in accordance with clause 2.3 and to be registered in the name of the Supervisor or such nominee in each case as soon as reasonably practicable after receipt of the necessary documents, and must deliver all certificates or other documents of title for safe custody as directed by the Supervisor.

## 11.10 **Bank accounts**

A bank account or accounts in the name of the Supervisor or a nominee appointed in accordance with clause 2.3 must be opened and maintained for the Scheme and/or each Investment Fund. All moneys held for the Scheme and/or the relevant Investment Fund and coming into the hands of the Manager or the Supervisor must be paid to the credit of such bank account.

### 11.11 **Manager may enter into derivative financial instruments**

For the avoidance of doubt, the Manager may direct the Supervisor to enter into derivative financial instruments (including without limitation forward exchange contracts, swap agreements, Futures Contracts, options and any form of agreement creating a contingent liability) for the purpose of investment or the purpose of risk management.

## 12. **Powers of the Supervisor**

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### 12.1 **Borrowing powers**

In addition to any other powers granted under this Trust Deed or by law, the Supervisor may subject to any applicable laws, at the direction of the Manager borrow and raise money for any of the purposes of the Scheme on such terms and conditions as the Manager directs and secure the repayment of moneys so borrowed and interest on those moneys by mortgage over all or any of the assets of the Scheme, provided that nothing in this clause 12.1 shall require the Supervisor to take any action which it reasonably believes may cause it to breach its obligations under any rule of law or under this Trust Deed.

### 12.2 **Exercise of Supervisor powers**

Subject to the other provisions of this Trust Deed and to rule 2 of the KiwiSaver Scheme Rules, unless a court of law decides otherwise:

- (i) the Supervisor may transact any business of the Scheme with the Manager and its Related Companies and may use the assets of the Scheme as directed by the Manager to pay any fees, premiums, commissions and other payments payable in respect of such business; and
- (j) no decision or exercise of a power by the Supervisor will be invalidated on the ground that the Supervisor (or any director, officer or agent of the Supervisor) had a direct or personal interest in the result of that decision or in the exercise of that power.

## 13. **Indemnities etc**

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### 13.1 **No personal liability of Supervisor and Manager**

Subject to clause 13.4, the Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action for or in connection with the Scheme, are and are deemed to be, each acting for and on behalf of the Scheme and not in their own respective capacities. Subject to clause 13.4, or as otherwise provided by law, neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation or claim relating to the Scheme, and only the assets of the Scheme are available for that purpose.

### 13.2 **Indemnification of Supervisor and Manager**

Subject to clause 13.4, if, contrary to the provisions of clause 13.1, 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, for or in connection with the Scheme then the Supervisor or the Manager (as applicable) is entitled to indemnity and reimbursement out of the assets of the Scheme to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined including, without limitation, legal fees and disbursements.

### **13.3 Reimbursement of Supervisor and Manager**

Subject to clause 13.4, the Supervisor and the Manager are each entitled to be reimbursed out of the assets of the Scheme for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as applicable) under this Trust Deed including, without limitation, any expense, loss, cost or liability which may be incurred by the Supervisor or the Manager (as applicable) in bringing or defending any action or suit in respect of the Scheme.

### **13.4 Breach of duty**

No provision of clauses 13.1 to 13.3 has the effect of exempting the Supervisor or the Manager or any director or officer of the Supervisor or of the Manager from, or indemnifying the Supervisor or Manager or any such director or officer against, any liability for breach of trust where it or that director or officer fails to properly perform its duties under sections 143(1) and 144 or sections 153(1) and 154 of the FMCA.

### **13.5 Reliance of Manager by Supervisor and vice versa**

Subject to the provisions of Relevant Law, neither the Supervisor nor the Manager is nor will be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the other (including as concerns the Supervisor, for avoidance of doubt and not by way of limitation, any decision of the Manager to invest any assets of the Scheme or any Investment Fund or any part thereof in any Futures Contracts, foreign exchange contracts and options, interest rate and currency swap contracts or options entered into for the purpose of hedging or otherwise) or any agent of the other or for checking any information, document, form or list supplied to it by the other or by any agent of the other that is reasonably believed by it to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by it in any step taken by it) except to the extent that the loss is attributable to that party's own fraud, wilful default or gross negligence.

### **13.6 Reliance upon advice**

The Supervisor and the Manager may jointly or separately, accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Supervisor or the Manager or instructed by the Supervisor or the Manager and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Supervisor or the Manager and believed by the Supervisor or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Supervisor nor the Manager is liable for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information. Nothing in this clause 13.6 shall impede the Supervisor or the Manager from applying to any court if considered necessary.

### **13.7 Reliance upon documents**

Whenever pursuant to any provision of this Trust Deed any certificate, notice, instruction, direction or other communication is given by the Manager to the Supervisor or vice versa, the recipient may accept as sufficient evidence thereof a document signed on behalf of the other by any one of its directors or by any other person or persons duly authorised by the other.

### **13.8 Manager's discretion and authority**

Except insofar as is otherwise expressly provided in this Trust Deed or required by law, the Manager has absolute and uncontrolled discretion as to the exercise or non-exercise of all the powers, authorities and discretions vested in it by this Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise, subject to the giving of any

notice to the Supervisor and the approval of or supervision by the Supervisor wherever required.

### 13.9 **Supervisor's discretion and authority**

Except insofar as is otherwise expressly provided in this Trust Deed or required by law, the Supervisor as regards all the powers, authorities and discretions vested in it by this Trust Deed has absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of and time for their exercise, subject to the giving of any notice to the Manager and the approval of or supervision by the Manager wherever required under this Trust Deed.

### 13.10 **Supervisor's limited liability to Members**

Notwithstanding anything contained in this Trust Deed, except in cases of fraud or of dishonesty or where the Supervisor has failed to show the degree of care, diligence and skill required of a trustee under the Act having regard to the powers, authorities and discretions conferred on the Supervisor by this Trust Deed, the Act and the Supervisor Act 1956, in no event is the Supervisor bound to make any payment to Members except out of the assets of the Scheme or to be liable to the Members to any greater extent than the investments, vested in or received by the Supervisor in accordance with this Trust Deed.

### 13.11 **Manager's limited liability to Members**

Notwithstanding anything contained in this Trust Deed, except in the case of fraud, gross negligence or wilful default or where the Manager has failed to meet the standard of care required of it by clause 8.5, in no event is the Manager bound to make any payment to Members except out of the assets of the Scheme or to be liable to the Members to any greater extent than the investments, vested in or received by the Supervisor in accordance with this Trust Deed.

### 13.12 **Reliance upon apparently genuine documents**

Neither the Manager nor the Supervisor is liable for any action taken, any omission, or thing suffered by the Manager or the Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.

## 14. **Remuneration of Supervisor**

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### 14.1 **Fees**

The Supervisor is, subject always to rule 2 of the KiwiSaver Scheme Rules, entitled to be paid out of the Scheme fees as agreed with the Manager from time to time.

The amount of such fees and the method and timing of their payment (for example, whether they are paid from amounts received by the Scheme, Member's Accounts, the general assets of the Scheme or an Investment Fund or otherwise) shall be as agreed between the Manager and the Supervisor from time to time.

### 14.2 **Special fees**

In addition to any fees payable to the Supervisor under clause 14.1, and subject always to rule 2 of the KiwiSaver Scheme Rules, the Supervisor is entitled, subject to the prior approval of the Manager (such approval not to be unreasonably withheld or delayed), to charge in respect of the Scheme, and to retain, special fees on a time cost (to be calculated on the

basis of the normal hourly rates applicable to the relevant personnel of the Supervisor) and disbursements basis.

#### 14.3 **Goods and Services Tax etc**

The Supervisor is entitled to receive, in addition to the fees referred to in this clause 14, any goods and services tax or duty or similar tax or duty payable in respect of such fees.

### 15. **Remuneration of Manager**

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#### 15.1 **Fees payable to the Manager**

The Manager is, subject always to rule 2 of the KiwiSaver Scheme Rules, entitled to be paid and retain the fees it notifies to the Supervisor (which fees shall also be specified in the Offer Documents of the Scheme) from time to time. Such fees may include the following annual or other fees in relation to the Scheme:

- (a) administration fees;
- (b) management fees;
- (c) entry fees;
- (d) exit fees;
- (e) switching fees;
- (f) membership fees;
- (g) transfer fees; and
- (h) such other fees as the Manager determines from time to time.

The amount of any such fees and the method of their payment (for example, whether they are paid from amounts received by the Scheme, Member's Accounts, the general assets of the Scheme or an Investment Fund or otherwise) shall be determined by the Manager from time to time and notified to the Supervisor in writing.

#### 15.2 **Alteration or waiver of fees**

The Manager may, after consultation with the Supervisor, in respect of the Scheme and either generally or in respect of any particular Member or Members, waive part or all of any fee payable to the Manager and may:

- (a) increase (subject always to rule 2 of the KiwiSaver Scheme Rules) or decrease the fees payable in respect of the Scheme or Investment Fund or by the relevant Members; or
- (b) provided that any such fee is permitted under this Trust Deed, commence charging any such fee which is not currently being charged.

#### 15.3 **Goods and Services Tax etc**

The Manager is entitled to receive, in addition to the fees referred to in this clause 15, any goods and services tax or duty or similar tax or duty payable in respect of such fees.

## 16. Reimbursement of expenses

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### 16.1 Reimbursement

In respect of the Scheme, and subject always to rule 2 of the KiwiSaver Scheme Rules, the Manager, the Supervisor and any nominee appointed under clause 2.3 are each entitled to be reimbursed out of the assets of the Scheme (whether from income or capital or both) for and in respect of:

- (a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation of the Scheme, the preparation and registration of any Offer Document, the acquisition, registration, custody, disposal of or other dealing with investments of the Scheme, including bank charges and stamp duty, and the expenses of any agents or nominated company of the Supervisor or the Manager both within and outside New Zealand but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Manager or the Supervisor;
- (b) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the investigation and negotiation for the acquisition for the Scheme of any investment, whether or not it is in fact acquired;
- (c) the fees and expenses of the Auditor relating to the audit of the Scheme;
- (d) all taxes (other than Attributed Tax, unless that Attributed Tax is not charged to or recovered from the relevant Member), duties and imposts charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other person) in connection with the Scheme or the relevant investments on any account whatsoever;
- (e) interest and other expenses relating to borrowing and discounts and acceptance and other fees in respect of bill facilities;
- (f) the costs of postage in respect of all cheques, accounts, notices, quarterly and other reports and other documents posted to all or any Members in accordance with the provisions of this Trust Deed;
- (g) the fees and expenses of any solicitor, barrister, valuer, accountant or other person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties under this Trust Deed;
- (h) all costs of preparing, printing and distributing certificates, accounts, cheques, any Offer Document and any Member communications;
- (i) expenses in connection with the keeping of the Register; and
- (j) any other expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this Trust Deed.

### 16.2 Allocation of expenses

The Manager may charge any amount in relation to which the Manager or the Supervisor is entitled to be reimbursed or indemnified under clause 13 or clause 16.1 to a particular

Member's Account or Member's Accounts in such manner as the Manager considers equitable.

## 17. Amendments

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Subject to the Act and the FMCA, this Trust Deed may be amended by deed executed by the Manager and the Supervisor.

## 18. Appointment, removal and retirement of Supervisor

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### 18.1 Removal

- (a) The Supervisor will cease to hold office as supervisor if:
- (i) the Supervisor is removed by the Financial Markets Authority if the Financial Markets Authority is satisfied that the Supervisor no longer meets the requirements in section 127(1)(e) of the FMCA (not Associated Person);
  - (ii) the Supervisor is removed by the Financial Markets Authority or the Manager under Part 2 of the Financial Markets Supervisors Act 2011; or
  - (iii) the Members by Special Resolution remove the Supervisor from office.

### 18.2 Retirement

- (a) The Supervisor may retire at any time without assigning any reason upon giving 3 Months' notice in writing to the Manager of its intention so to do. The Supervisor shall retire if the Supervisor itself goes into liquidation. No such retirement will take effect until a Licensed Supervisor has been appointed as Supervisor pursuant to clause 18.3 and the new Supervisor has executed the Deed referred to in clause 18.4 and all of the investments of all of the Investment Funds have been transferred to the new Supervisor and the requirements of section 193(2) of the FMCA have been met.
- (b) The Supervisor may only retire in respect of all the Investment Funds.

### 18.3 New appointment:

The power of appointing a new Supervisor (in place of a Supervisor which 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 whose licence covers supervision of the Scheme. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution of the Members.

### 18.4 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 whereby the new Supervisor undertakes to the Manager and the Members to be bound by all the covenants on the part of the former Supervisor under this Trust Deed from the date of such appointment.



## 18.5 Retiring Supervisor released

From the date of execution by the new Supervisor of a Deed in accordance with clause 18.4, the retiring Supervisor is absolved and released from all such covenants under this Trust Deed (except in respect of any prior breach in respect of which the retiring Supervisor is not indemnified for under this Trust Deed) and the new Supervisor must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Supervisor under this Trust Deed in all respects as if the new Supervisor had been originally named as a party to this Trust Deed.

## 19. Appointment, removal and retirement of Manager

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### 19.1 Removal

- (a) The Manager will cease to hold office as Manager if:
- (i) the Manager is removed by written direction of the Supervisor after the Supervisor certifies, in respect of the Scheme, pursuant to section 185(1)(a) of the FMCA, that it is in the interests of Members that the Manager should cease to hold office. Without in any way limiting the generality of the foregoing it will be sufficient and valid grounds for such a certificate to be given if the Manager has a receiver or manager or statutory manager appointed or if an order is made or a resolution is passed for the liquidation or winding-up of the Manager; or
  - (ii) the Manager is removed by a Special Resolution of the Members; or
  - (iii) the Manager is substituted from office by the High Court by court order on the application of the Supervisor, the Financial Markets Authority or a Member under sections 207, 208 and 209 of the FMCA.
- (b) If the Manager ceases to hold office pursuant to clause 19.1, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Scheme and the Investment Fund unless the Supervisor agrees to the contrary.

### 19.2 Retirement

The Manager may retire as manager of the Scheme at any time without assigning any reason upon giving 3 months' 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 pursuant to clauses 19.3 or 19.4, and the new Manager has executed the Deed referred to in clause 19.5.

### 19.3 Temporary Manager

Subject to the powers of the Financial Markets Authority 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. No Person can be appointed as a temporary Manager unless that Person meets the requirements of section 186(3) of the FMCA.

### 19.4 Appointment of new manager

- (a) Upon any vacancy occurring in the office of Manager, the Supervisor (or the Financial Markets Authority if there is no Supervisor) must take all reasonable

steps to secure, in accordance with this Trust Deed, the appointment of a new Manager in place of the temporary Manager.

- (b) 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 secure the appointment of any new Manager. Any meeting of Members may ratify the appointment of any temporary Manager appointed by the Supervisor or Financial Markets Authority or may appoint a new Manager. Any directions given to the Supervisor by any such meeting of Members must be given by way of a Special Resolution. Any new Manager must be qualified to act as a Licensed Manager under Part 6 of the FMCA.

## 19.5 **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 whereby the new Manager undertakes to the Supervisor and the relevant Members to be bound by all the covenants on the part of the Manager under this Trust Deed from the date of such appointment.

## 19.6 **Retiring Manager released**

From the date of execution by the new Manager of a Deed in accordance with clause 19.5, the retiring Manager is absolved and released from all such covenants under this 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 this 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 this Trust Deed in all respects as if the new Manager had been originally named as a party to this Trust Deed as Manager of the Scheme and each Investment Fund.

Nothing in this clause 19 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this Trust Deed prior to the date of or arising on the Manager's retirement or removal from office.

## 20. **Winding up of the Scheme**

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### 20.1 **By Manager's resolution**

The Manager may, by resolution in writing, wind-up the Scheme and shall, by resolution in writing, wind-up the Scheme if the Scheme is required to be wound up under the FMCA. The Manager shall, as soon as practicable after passing that resolution, provide a copy of the resolution to the Supervisor.

The provisions of the FMCA relating to the winding-up of KiwiSaver Schemes (being sections 213 and 214) shall apply with effect from the date of a resolution passed under this clause 20.1.

In winding up the Scheme:

- (a) the Supervisor shall, on the Manager's direction, postpone the sale, calling in and conversion of any part of an Investment Fund, for the length of time the Manager reasonably considers desirable in the best interests of Members, and neither the Supervisor nor Manager shall be responsible nor liable for any loss attributable to such postponement; and

- (b) the Supervisor at the Manager's direction shall make any provision the Manager considers necessary to provide for any outgoing or liabilities (actual or contingent) of the Scheme, any tax liabilities attributable to Members or any assets of the Scheme.

## 20.2 Distribution of assets on winding-up

- (a) When the proceeds obtained from realising the assets of the Scheme have been received the Manager shall direct the Supervisor to allocate the proceeds in the following order of priority:
  - (i) first, in allowing for all reasonable costs, fees, liabilities and expenses that have or will accrue in accordance with clauses 14, 15 or 16 in the winding up of the Scheme and the administration of the Scheme up to the Winding Up Date and any tax of the Scheme or of the Members;
  - (ii) secondly, in providing for benefits payable under this Trust Deed which had become payable prior to the Winding Up Date and then remain unpaid;
  - (iii) thirdly, in respect of each Member who at the Winding Up Date has any sum in their Member Account, the transfer of a benefit equal in value to this sum to another KiwiSaver Scheme in accordance with clause 20.2(d) below.
- (b) If in following the priorities of payment there is insufficient money to satisfy all the obligations above the amount of each benefit shall be reduced equitably and proportionately among all Members entitled to the benefits.
- (c) No assets held in respect of any Member Account shall be used to pay any benefit or liability for any Member apart from the Member in respect of whom the Member Account is held.
- (d) All benefits payable to Members of the Scheme on a windup shall (subject to compliance with the Act and the FMCA) be paid by way of transfer to another KiwiSaver Scheme.
- (e) The Manager shall provide, and the Supervisor shall ensure that the Manager has provided, copies of final accounts and advice as to the manner in which the assets of the Scheme are to be distributed to such persons and within such timeframes as may be required by the Act and/or any other relevant legislation, including the FMCA.
- (f) The Supervisor must on a wind up of the Scheme or an Investment Fund comply with the requirements of section 213 of the FMCA.

## 20.3 Completion of distribution

- (a) The Manager shall, and the Supervisor shall ensure the Manager has, to the extent required by any relevant legislation, inform the Financial Markets Authority of the date on which the winding up of the Scheme is completed.

## 21. Members bound by this Trust Deed

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The terms and conditions of this Trust Deed are for the benefit of and binding on the Supervisor, the Manager and each Member (including, for the avoidance of doubt, any Member admitted to membership of the Scheme pursuant to clause 3.1(a)), and all persons

claiming through each Member, as if the Member had been party to and had executed this Trust Deed.

## **22. Limitation of liability of Members**

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### **22.1 No personal obligation to indemnify**

Except as expressly provided by this Trust Deed, no Member is, by reason solely of being a Member or by reason solely of the relationship hereby created with the Supervisor or with the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency in the assets of the Scheme as compared with the liabilities to be met from those assets.

### **22.2 Limited recourse to assets of the Scheme**

Save for any right under clause 22.3 the rights (if any) of the Supervisor or the Manager or of any creditor to seek indemnity are limited to having recourse to the assets of the Scheme and do not extend to a Member personally in such person's capacity as a Member.

### **22.3 Attributed Tax Indemnity**

In the event that a Member's Account balance is insufficient to meet that Member's attributed Tax Liability the Member shall indemnify the Supervisor and the Manager for such shortfall.

### **22.4 No liability to contribute to any shortfall**

On the winding up of the Scheme, no Member will have any liability to contribute to any shortfall in the assets of the Scheme.

## **23. Notices to Members**

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### **23.1 Notices**

A notice may be given under this Trust Deed to any Member personally by leaving it at the Member's registered address, by sending it addressed to the Member at the Member's registered address by ordinary prepaid post (or, if that address is outside New Zealand, by airmail, prepaid post or by advertisement with the prior written approval of the Supervisor) or, if the Member has given his or her electronic address to the Supervisor or the Manager, by means of an electronic communication pursuant to section 219 of the Act. A Member must notify the Manager of any change to the Member's registered or electronic address and the relevant register shall be altered accordingly. Any notice given to Members by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Members in substantially the same form but with personalised details in respect of each Member, it shall be sufficient to provide the Supervisor with a sample of such a notice.

### **23.2 Manner of notice**

Any notice sent by post will be deemed to have been given at the expiration of 2 Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. A notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a Business Day, or the transmission is sent after 5p.m. on a Business Day, then the notice will be deemed to have been given on the next Business Day after the date of the confirmation of transmission).

### 23.3 **Signature of notice**

The signature to any notice to be given by the Manager or the Supervisor may be written or printed or otherwise provided in accordance with the Electronic Transactions Act 2002.

### 23.4 **Calculation of notice periods**

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 reckoned in the number of days or other period.

### 23.5 **Receipt of notice**

Any notice or document delivered or sent by post or electronic communication to or left at the registered address for service of any Member in pursuance of the provisions of this Trust Deed will (notwithstanding that the Member is then deceased and whether or not the Manager has notice of such deceased Member's death) be deemed to have been duly given until some other person is registered in the place of the Member.

## 24. **Meetings of Members and directions to Supervisor**

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### 24.1 **Meetings**

- (a) Meetings of the Members shall be convened and conducted in accordance with the provisions of Schedule 4.
- (b) By means of a Special Resolution passed at a meeting of Members, the Members have the power to give such directions to the Supervisor as they think proper concerning the Scheme or any Investment Fund, being directions that are consistent with the provisions of this Trust Deed and, where applicable, the Act or the FMCA.

### 24.2 **Directions**

- (a) Where any direction is given to the Supervisor pursuant to clause 24 in respect of any matter, the Supervisor may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction. Where applicable, the Supervisor may also at its discretion in accordance with section 207 of the FMCA apply to the High Court for an order in respect of any matter.

## 25. **Notices between Manager and Supervisor**

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Any certificate, notice, communication or information required by this Trust Deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager must be given in writing or by facsimile communication or Electronic Communication acceptable to the recipient and addressed to the secretary, director or principal officer of the party to whom it is intended to be given at its registered office or other usual place of business (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to this Trust Deed) and must be signed by a duly authorised officer on behalf of the party giving it.

## 26. **Attributed Tax**

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### 26.1 **Adjustment of Members Interests**

The Members' Interests in the Scheme may be adjusted at intervals determined appropriate by the Manager to pay Attributed Tax and to provide the benefit of any Attributed Tax Credit.

## 27. **Withholding taxes**

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If the Manager or the Supervisor is obliged by law to make, or may make and determines to make, any deduction or withholding on account of taxes from any payment to be made to a Member, the Manager or the Supervisor (as the case may be) shall make such deduction or withholding and pay such amount to the Commissioner of Inland Revenue or other taxing authority. On payment of the net amount to the relevant Member and of the amount deducted or withheld to the taxing authority, the full amount payable to the relevant Member shall be deemed to have been duly paid and satisfied.

## 28. **Auditor**

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### 28.1 **Appointment and remuneration**

A person or firm of Chartered Accountants selected by the Manager and acceptable to the Supervisor must be appointed Auditor of the Scheme and the Investment Funds provided that such person or firm of Chartered Accountants is licensed under the Audit Regulation Act 2011 and meets the requirements of Relevant Law. The terms of the audit, including the services to be performed by the Auditor and their scope and the remuneration of the Auditor is to be determined by the Manager on an arm's length basis following consultation with the Supervisor and in the manner required by Schedule 13 of the Regulations.

### 28.2 **Removal/retirement**

The Auditor may at any time and from time to time be removed by the Manager subject to the approval of the Supervisor. The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Scheme and/or Members, and the Supervisor instructs the Manager to do so. The Auditor may retire upon giving the Manager 90 days' notice in writing, or such other shorter period of notice in writing as agreed with the Manager.

### 28.3 **New appointment**

- (a) Any vacancy in the office of Auditor must be filled by the Manager with the approval of the Supervisor by appointing an Auditor a Person or firm of Chartered Accountants provided that such Person or firm of Chartered Accountants meets any requirements of Relevant Law and the process prescribed in Schedule 13 of the Regulations is followed.
- (b) The terms of appointment of an Auditor must meet the requirements of Schedule 13 of the FMCA.

### 28.4 **Restrictions on Auditor**

The Auditor may be the auditor of the Manager or of the Supervisor, or of a Related Company of either the Manager or the Supervisor or of any other trust whether of a similar nature to the Scheme or otherwise.

## 29. **Payments to Members**

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### 29.1 **Method of payment**

Subject to the Act, any moneys payable by the Supervisor or by the Manager to a Member under the provisions of this Trust Deed may be paid by cheque that is crossed “non-transferable” and made payable to the Member or the Member’s personal Representative.

### 29.2 **Delivery method**

Subject to the Act, the moneys may be given or sent through the post to the Member or the Member’s personal representative or may be credited to any bank account nominated by the Member or the Member’s personal representative.

### 29.3 **Satisfaction of moneys payable**

Payment of every cheque, if duly presented and paid, and in respect of direct credits the giving by the Manager of the encoded payment instructions to the paying bank, will be due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.

### 29.4 **Tax deductions**

If any amount has been deducted with respect to taxes from a payment to a Member, details of such deduction shall be provided to the Member when the relevant payment is made.

## 30. **Law applicable**

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This Trust Deed shall be interpreted and administered in accordance with New Zealand law.

## 31. **Severance**

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- (a) If a provision of this Deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.
- (b) Notwithstanding clause 53.1, if a provision of this Deed is still void or voidable or unenforceable or illegal:
  - (i) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
  - (ii) in any other case, the whole provision is hereby severed,

and the remainder of this Deed has full force and effect.

## 32. **Contracts (Privity) Act 1982**

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This Deed shall take effect as a contract (as well as a deed) to the extent provided in this Deed and shall be enforceable for the benefit of every Member from time to time except that, for the purposes of the proviso to section 4 of the Contracts (Privity) Act 1982, the benefit so extended to Members is intended to be limited by, and enforceable subject to, the rights of

parties to the deed to vary or discharge benefits or obligations as provided in this Deed without the consent of any Member, other than as so provided.

### **33. Delivery**

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Without limiting any other mode of delivery, this Deed may be delivered by each of the parties to this Deed by:

- (a) physical delivery by that party, its solicitors or any other person authorised by that party, of an original of this Deed, executed by that party, into the custody of the other party or its solicitors; or
- (b) (transmission, in electronic form by any means of electronic communication (including facsimile or email of a scanned copy) to the other party or its solicitors, by that party, its solicitors or any other person authorised in writing by that party, of an original of this Deed, executed by that party, and the parties hereby consent to such form of delivery.



## Execution

Executed as a deed.

**Aon Saver Limited by**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

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

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

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

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

\_\_\_\_\_  
Attorney

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## Schedule 1: KiwiSaver Scheme Rules as at the Effective Date

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### Notes:

- A. For reference purposes, Part A of this Schedule sets out the KiwiSaver Scheme Rules applicable to the Scheme as they are expected (at the date of this Trust Deed) to be at the Effective Date. See clause 1.2(a) of the Trust Deed.
- B Reference to this Schedule to “sections” are, unless indicated otherwise, reference to sections in the Act.
- C. Selected definitions from the Act, which are relevant to the KiwiSaver Scheme Rules are set out in Part B of this Schedule. The terms in the KiwiSaver Scheme Rules for which definitions are set out in Part B are in italics. Note that not all definitions referred to in the KiwiSaver Scheme Rules are set out.

### Part A – KiwiSaver Scheme Rules

#### 1. Fees must not be unreasonable

- (1) The following persons must not charge a fee that is unreasonable:
  - (a) the manager of the scheme:
  - (b) the supervisor of the scheme
  - (c) administration manager of the scheme:
  - (d) the investment manager of the scheme:
  - (e) any other person who charges a *fee* for services in relation to the provision of a KiwiSaver scheme.
- (2) All fees charged by the manager, supervisor, administration manager, or investment manager of a related underlying fund, and by any other person who charges a fee for services in relation to the provision of a related underlying fund, must be treated as being included in the fee charged by the manager of the KiwiSaver scheme.

#### 2. Minimum *contributions* for *employee* member

- (1) For each pay period an *employee* member must contribute to the KiwiSaver scheme at least the minimum contribution rate of that employee’s *salary or wages* in accordance with sections 64 to 68.
- (2) Subclause (1) does not apply if the employee is taking a *contributions holiday* or for the period that the employee has a valid non-deduction notice under section 112B that they have given to their employer.
- (3) For the purposes of this clause, a member does not contribute to the KiwiSaver scheme, if the *contributions* are made for a purpose other than –
  - (a) to enable the payment of future benefits to the member under the KiwiSaver scheme; or

(b) to enable the payment of *fees* in respect of the KiwiSaver scheme.

### **3. Lock-in of funds to KiwiSaver end payment date**

- (1) Subject to other *permitted withdrawals*, a member may not make a withdrawal from the KiwiSaver scheme until the KiwiSaver end payment date or a date after that date.
- (2) For the purposes of subclause (1), the KiwiSaver end payment date is the later of –
  - (a) the date on which the member reaches the *New Zealand superannuation qualification age*; or
  - (b) the 5 year qualification date (which means the earliest of (i) the date that is 5 years after the day on which the member first became a member of a KiwiSaver scheme; or (ii) the date that is 5 years after the day, under section 85, on which the Commissioner first received a contribution for a KiwiSaver scheme in relation to the member; or (iii) the date that is 5 years after the day on which the member first became a member of a complying superannuation fund, if the member has become a member of the KiwiSaver scheme as a result of a transfer from a complying superannuation fund).
- (3) A member is entitled to withdraw an amount not more than the *member's accumulation* on the later date referred to in subclause (2).
- (4) Nothing in this clause requires a member to withdraw from the KiwiSaver scheme on the date specified in subclause (2).
- (5) A person ceases, at the option of the provider of the KiwiSaver scheme, to be a member of the KiwiSaver scheme if –
  - (a) the balance in all of the member's account reaches zero; and
  - (b) the provider gives notice to the member that the person's membership is terminated.

### **3A. No external financial advantages from funds**

- (1) The manager must ensure that the entire value, benefit, or other return derived in respect of the member's accumulation is credited to the member's accumulation and is not received as an external financial advantage.
- (2) In this clause, an external financial advantage:
  - (a) means any direct or indirect financial advantage payable to or derived by the member or any associated person of the member; and
  - (b) includes the value of a reduction or an avoidance of a financial liability (such as a financial advantage obtained by using any part of the member's accumulation to offset, or to reduce the interest payable on, a loan); but
  - (c) to avoid doubt, excludes permitted withdrawals.
- (3) This clause does not prevent minor financial advantages that are incidental or secondary to a KiwiSaver scheme membership from being provided to or in respect of a member, including such advantages in the form of—
  - (a) an inducement or incentive or other form of reward to contribute to, or be a member of, the scheme; or

- (b) a reduction or rebate of the fees or commission payable to a financial adviser, or for financial adviser services, that takes into account the member's accumulation; or
  - (c) rewards such as discounts on fees payable in respect of non-KiwiSaver services or products.
- (4) In this clause, associated person has the same meaning as in section 12 of the Financial Markets Conduct Act 2013.

### **3B Amounts from Australian complying superannuation schemes**

- (1) A member may withdraw the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount), if the member is 60 years or more and the member's retirement (as that term is defined in regulation 6.01(7) of the Superannuation Industry (Supervision) Regulations 1994 (Aust), with necessary modification for KiwiSaver scheme manager) is taken to have occurred.

#### **4. Manager must pay *permitted withdrawal* as lump sum**

- (1) The manager must, at the member's request, pay a *permitted withdrawal* as a lump sum.
- (2) Nothing in subclause (1) prevents a member purchasing annuities or a pension from all or part of the *member's accumulation* or Member's Interest that is withdrawn by that member.

#### **5. Manager may reasonably require evidence to establish right to make *permitted withdrawal***

A manager may reasonably require a member who applies to make a *permitted withdrawal* to provide evidence of the facts necessary to establish the member's right to make the withdrawal.

#### **6. Release of funds under other enactments**

- (1) The manager must comply with the provisions of any enactment that requires them to release funds from the KiwiSaver scheme in accordance with that enactment.
- (2) A requirement to release funds from the KiwiSaver scheme under any enactment includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

#### **7. Withdrawal for purposes of purchase of first home**

- (1) This clause applies to a member if the member has not made a withdrawal under this clause before (whether or not from the member's current KiwiSaver scheme or from a KiwiSaver scheme to which the person previously belonged) and, – –
- (a) at least 3 years have expired after the Commissioner received the first contribution in respect of the person (whether or not a contribution in relation to the scheme of which the member is currently a member); or
  - (b) the person has been a member of 1 or more KiwiSaver schemes or complying superannuation schemes for a combined total period of 3 years or more.
- (2) Every amount of contribution that is deducted from salary or wages under this Act is treated, for the purpose of subclause (1)(a), as received by the Commissioner on the 15th day of the month in which the deduction is made.

- (3) A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an estate in land located in New Zealand (whether alone or as a joint tenant or tenant in common) if—
- (a) the purchase is made in the prescribed circumstances; or
  - (b) both of the following apply:
    - (i) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family; and
    - (ii) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the KiwiSaver scheme) held an estate in land (whether alone or as a joint tenant or tenant in common); or
  - (c) both of the following apply:
    - (i) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family; and
    - (ii) the member is a qualifying person under the regulations.
- (3B) A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an interest in a dwellinghouse on Maori land if—
- (a) the purchase is made in the prescribed circumstances; or
  - (b) both of the following apply:
    - (i) the dwellinghouse is, or is intended to be, the principal place of residence for the member or for the member and the member's family; and
    - (ii) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the KiwiSaver scheme), held an estate in land (whether alone or as a joint tenant or tenant in common); or
  - (c) both of the following apply:
    - (i) the dwellinghouse is, or is intended to be, the principal place of residence for the member or for the member and the member's family; and
    - (ii) the member is a qualifying person under the regulations.
- (4) A member may not make a withdrawal under this clause of more than an amount equal to the member's accumulation, at the time of the withdrawal, less the total of the following 2 amounts:
- (a) \$1,000;
  - (b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).
- (5) If a person holds an estate in land in any of the following circumstances, that estate must be disregarded for the purposes of subclauses (3)(b)(ii) and (3B)(b)(ii):
- (a) the person holds the estate in land as a bare trustee:

- (ab) the estate in land is a leasehold estate:
- (ac) the estate in land is an interest in Maori land:
- (b) the person holds the estate in land as a trustee who—
  - (i) is a discretionary, contingent, or vested beneficiary under the relevant trust; but
  - (ii) has no reasonable expectation of being entitled to occupy the land as the principal place of residence for the person or the person’s family until the death of the person who currently occupies the land (the occupier) or the death of the occupier’s survivor.

(6) In this clause,—

dwellinghouse means a building that is intended to have as its principal use occupation as a private residence

estate means a fee simple estate, a leasehold estate, or a stratum estate

Maori land has the same meaning as in the Te Ture Whenua Maori Act 1993.

(7) It is a condition of subclauses (3) and (3B) that—

(a) any withdrawal made under the relevant provision must be paid—

- (i) first, from the member’s accumulation excluding the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of that contribution) paid in respect of the member; and
- (ii) second, from the Crown contribution (including any positive or negative returns for the purpose of calculating the amount of that contribution), less the amount paid under section 226; and

(b) any withdrawal made under the relevant provision must be paid to a practitioner (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) acting on behalf of the member; and

(c) the manager may require from that practitioner, before payment of the withdrawal,—

- (i) a copy of an agreement for the sale and purchase (the agreement) of the estate in land or of the interest in a dwellinghouse on Maori land, showing the member as purchaser; and
- (ii) for an interest in a dwellinghouse on Maori land, evidence of the member’s right to occupy the Maori land; and
- (iii) an undertaking that the agreement is unconditional at the time the manager makes the request; and
- (iv) an undertaking that the funds will be paid to the vendors as part of the purchase price or will be repaid to the manager on account of the member if settlement of the agreement is not completed by the due date or any extended date.

- (8) This clause is subject to the terms of any participation agreement that restricts or prevents the withdrawal of employer vested contributions that are not compulsory employer contributions in relation to the member.

#### **8. Withdrawal on death**

If a member dies, the manager must, -

- (a) on application by the member's personal representative, pay to that person an amount that is equal to the value of the **member's accumulation** at the date on which the application is accepted as part of the member's estate; or
- (b) if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.

#### **9. Withdrawal in cases of significant financial hardship**

- (1) If the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) is reasonably satisfied that a member is suffering or is likely to suffer from significant financial hardship, the member may, on application to the manager or supervisor in accordance with clause 12, make a significant financial hardship withdrawal in accordance with this clause.
- (2) The amount of that significant financial hardship withdrawal may, subject to the manager's approval (in the case of a restricted KiwiSaver scheme) or the supervisor's approval (in the case of any other KiwiSaver scheme) under subclause (3), be up to the value of the *member's accumulation* less the amount of the Crown Contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown Contribution) on the date of withdrawal.
- (3) The manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) –
  - (a) must be reasonably satisfied that reasonable alternative sources of funding have been explored and have been exhausted; and
  - (b) may direct that the amount withdrawal be limited to a specified amount that, in the opinion of the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme), is required to alleviate the particular hardship.

#### **10. Meaning of significant financial hardship**

- (1) For the purposes of these rules, significant financial hardship includes significant financial difficulties that arise because of –
  - (a) a member's inability to meet minimum living expenses; or
  - (b) a member's inability to meet mortgage repayments on his or her principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or
  - (c) the cost of modifying a residence to meet special needs arising from a disability of a member or a member's dependant; or
  - (d) the cost of medical treatment for an illness or injury of a member or a member's dependant; or
  - (e) the cost of palliative care for a member or a member's dependant; or
  - (f) the cost of a funeral for a member's dependant; or

(g) the member suffering from serious illness.

(2) In this section, serious illness has the meaning given to it by clause 11(3).

#### **11. Withdrawal in cases of serious illness**

(1) In addition to a withdrawal on the grounds of serious illness under clause 10(1)(g), if the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) is reasonably satisfied that a member is suffering from serious illness, the member may, on application to the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) in accordance with clause 12, make a serious illness withdrawal in accordance with this clause.

(2) The amount of that serious illness withdrawal may be up to the value of the *members' accumulation*.

(3) In this clause, serious illness means an injury, illness, or disability –

(a) that results in the member being totally and permanently unable to engage in work for which he or she is suited by reason of experience, education, or training, or any combination of those things; or

(b) that poses a serious and imminent risk of death.

#### **12. Application for withdrawal for significant financial hardship or serious illness**

(1) The application for a withdrawal under clause 9 or 11 must be in the form required by the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme).

(1B) The application for a withdrawal under clause 9 must include a completed statutory declaration in respect of the member's assets and liabilities.

(2) The manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) –

(a) may require that any medical matter asserted in support of the application for withdrawal be verified by medical evidence:

(b) may require that any other documents, things, or information produced in support of the application be verified by oath, statutory declaration, or otherwise.

#### **13. Withdrawal or transfer to foreign scheme in cases of permanent emigration**

(1) Unless clause 13B applies, a member may, on application to the manager, and no earlier than 1 year after the member's permanent emigration from New Zealand, withdraw an amount equal to the value of the *member's accumulation* at the time of the withdrawal less the amount of the Crown Contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown Contribution).

(2) Unless clause 13B applies, a member may, on application to the manager at any time after the member's permanent emigration from New Zealand, have the manager transfer to a foreign superannuation scheme authorised for that purpose under regulations made under section 228 the member's accumulation less the amount of the Crown Contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown Contribution) and the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).



- (3) An application under clause (1) or (2) must be in the a form required by the manager and must include –
  - (a) a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated from New Zealand; and
  - (b) proof to the satisfaction of the manager –
    - (i) of the member’s departure from New Zealand (for example, evidence of confirmed travel arrangements, passport evidence, and evidence of any necessary visas);
    - (ii) that the member has resided at an overseas address at some time during the year following the member’s departure from New Zealand.
- (4) The manager may require that any other documents, things, or information produced in an application under subclause (1) or (2) be verified by oath, statutory declaration, or otherwise.

### **13B Exceptions to clause 14 for Australian permanent emigration**

- (1) This clause applies for a KiwiSaver scheme (but not for a complying superannuation fund) after a member’s permanent emigration to Australia.
- (2) At any time after the member’s permanent emigration to Australia, a member may, on application to the manager, have the manager transfer the member’s accumulation to an Australian complying superannuation scheme.
- (3) As soon as practicable after receiving a satisfactory application, the manager must transfer the whole of the member’s accumulation to the relevant Australian complying superannuation scheme and provide that scheme with any necessary information it reasonably requires.
- (4) An application under subclause (2) must be in the form required by the manager and must include– –
  - a. a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated to Australia; and
  - b. proof to the satisfaction of the manager– –
    - i. of the member’s departure from New Zealand (see, for examples of proof: clause 13(3)(b)(i)); and
    - ii. that the member has resided at an Australian address at some time following the member’s departure from New Zealand.
- (5) The manager may require that any other documents, things, or information produced in an application under subclause (2) be verified by oath, statutory declaration, or otherwise.

### **13C Withdrawal to meet tax liability on foreign superannuation withdrawal**

- (1) A member may, on application to the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), withdraw an amount for the payment of the member’s liability for—
  - (a) tax, other than interest or penalties, arising under the Income Tax Act 2007 from the member’s withdrawal of an interest in a foreign superannuation scheme and conversion of the interest into an interest in a KiwiSaver scheme:

- (b) repayment obligations arising under the Student Loan Scheme Act 2011 from the member's withdrawal of an interest in a foreign superannuation scheme and conversion of the interest into an interest in a KiwiSaver scheme.
- (2) The amount withdrawn under—
- a. subclause (1)(a) may not exceed the lesser of—
    - i. the member's liability for tax referred to in that paragraph:
    - ii. the member's liability for terminal tax in the tax year to which the tax relates:
  - b. subclause (1)(b) may not exceed the member's repayment obligations referred to in that paragraph.
- (3) An amount withdrawn under subclause (1) may not exceed the value at the time of the withdrawal of the member's accumulation less the amount of the Crown Contribution.
- (4) An application under subclause (1) must—
- a. be made within the period of 24 months beginning from the end of the month in which the liability of the member for tax or student loan repayments is assessed; and
  - b. be in the form required by the trustees or manager (as the case may be); and
  - c. must include a completed statutory declaration giving the relevant details of the foreign superannuation withdrawal, the reinvestment, and the resulting liability of the member for tax under the Income Tax Act 2007; and
  - d. must include any documents and other information that may be required by the trustees or manager (as the case may be) in support of the statutory declaration.
- (5) The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must—
- a. provide to the Commissioner of Inland Revenue, in a form satisfactory to the Commissioner, the details of any withdrawal made by a member under subclause (1); and
  - b. if payment to a person other than the member is possible, pay to the Commissioner the amount of the withdrawal.

#### **14. Contributions holiday**

An *employee* member may, at any time, take a *contributions holiday* in accordance with subpart 4 of Part 3.

#### **15. Transfer of members**

- (1) A member may, at any time during that person's membership of a KiwiSaver scheme, on application to the manager, apply to have the manager transfer the member's accumulation to another KiwiSaver scheme.
- (2) On application by a member, the manager must, if the other KiwiSaver scheme indicates it will accept that person as a member, transfer the member's accumulation to the other KiwiSaver scheme in accordance with subpart 3 of Part 2.

- (3) A member may, at any time during the person's membership of a KiwiSaver scheme, be transferred to another KiwiSaver scheme in the circumstances provided for in, and in accordance with, this Act.

**16. Crown contributions: tax credits**

- (1) Despite rules 3 to 13C, the amount of Crown Contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown Contribution) may not be withdrawn –
  - (a) before the member, the personal representative, or the relevant person under section 65 of the Administration Act 1969 (as the case may be) gives the provider a statutory declaration stating, to the best of their knowledge, the periods for which the member has their principal place of residence in New Zealand; and
  - (b) to the extent to which the provider has notice that their claim for tax credit is wrong, because they have got the time for which the member meets the requirements of section MK 2 of the Income Tax Act wrong.

## Part B – Selected Definitions relevant to the KiwiSaver Scheme Rules

**Contribution** means any contribution to a KiwiSaver scheme, including an employer contribution and a Crown contribution.

**Contributions holiday**, in respect of an employee, means a period in respect of which the deduction of contributions is not required to be made from his or her salary or wages in accordance<sup>3</sup> with subpart 4 of Part 3.

**Employee** means a natural person who receives, or is entitled to receive, salary or wages.

**Employer** means, in relation to a person (A), who is not a private domestic worker, the person (B) who pays, or is liable to pay salary or wages to person A.

### **Fee –**

- (a) means a fee charged directly or indirectly in respect of a member's membership of a KiwiSaver scheme; and
- (b) includes a fee charged to a member's account for –
  - (i) administration of the member's account;
  - (ii) management of the member's funds in the KiwiSaver scheme;
  - (iii) the transfer of the member's account or the member's funds in the KiwiSaver scheme to different sections of the KiwiSaver scheme or to a different KiwiSaver scheme; and
- (c) includes any other fee or charge prescribed to be a fee for the purposes of this Act; but
- (d) does not include a fee referred to in section 200 or charged under regulations made under section 228(c) except in the context of those provisions.

**Member's accumulation**, in relation to a member of a KiwiSaver scheme or a member of a registered superannuation scheme, means the net value of the total of –

- (a) the member's contributions; and
- (b) any vested employer contributions in respect of the member; and
- (c) any fee subsidies paid in respect of the member; and
- (d) the Crown contributions paid in respect of the member.

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

**Participation agreement** means an agreement or any instrument in writing related to an arrangement between an employer and provider of a scheme that determines some of the conditions on which the employer's employees may be members of the scheme as amended from time to time.

**Permitted withdrawal** means a withdrawal that is permitted under the KiwiSaver scheme rules.

**Salary or wages**, in relation to any person, means salary or wages as defined in section RD (5)(1)(a) to (c) of the Income Tax Act 2007 (whether the salary or wages are primary or secondary employment earnings) except that, in this Act, -

- (a) it excludes –

- (i) salary or wages described in section RD (5)(4), (6)(b), (6)(c), and (8) and RD 68 of the Income Tax Act 2007; and
- (ii) payments that are income under section CF (1)(b) to (e), (g), or (h) of that Act; and
- (iii) expenditure on account of an employee and allowances calculated by reference to reasonable costs, if the expenditure or allowances are for accommodation overseas or other costs of living overseas; and
- (iv) for the purposes of contributions to complying superannuation funds, bonuses, commissions, and other amounts not included in an employer's gross base salary or wages by the relevant complying superannuation fund; and
- (v) for the purposes of subpart 3A of Part 3 of this Act –
  - (A) salary or wages described in section RD (5)(1)(b)(iii) and (7) of the Income Tax Act 2007; and
  - (B) payments of weekly compensation, as defined in the Accident Compensation Act 2001, made by an employer, unless the employer chooses to not exclude the payments from this definition of salary or wages:
- (b) it includes extra pay (as defined in section YA 1 of the Income Tax Act 2007), unless –
  - (i) otherwise excluded under paragraph (a) of this definition; or
  - (ii) the amount is a redundancy payment (as defined in section YA 1 of the Income Tax Act 2007).

## Schedule 2: Calculation of amounts representing the “member’s accumulation”

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### 1. Establishment of Member’s Account

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- 1.1 The Manager must establish and maintain a Member’s Account for each Member and that Member’s Account shall be denominated in Units.
- 1.2 A Member’s Account in respect of a Member shall comprise:
- (a) Units issued in respect of contributions received by the Scheme from or in respect of the Member (including any Crown Contribution);
  - (b) Units issued in respect of any amount transferred into the Scheme from another KiwiSaver Scheme or Superannuation Scheme in respect of the Member;
  - (c) Units issued in respect of any fee subsidy (if applicable) paid in respect of the Member;
  - (d) Units issued in respect of any other amount received by the Scheme in respect of the Member which the Manager considers should be credited to the Member’s Account in respect of the Member;
  - (e) Units issued in respect of any Attributed Tax Credit; and
  - (f) Units issued in respect of any amount relating to the Member that is transferred from one Investment Fund to another Investment Fund;
- less
- (a) Units cancelled in respect of any amount debited to the Member’s Account to meet fees, charges, costs, expenses, premiums or attributed tax payable that may be debited to the Member’s Account in respect of the Member under this Trust Deed;
  - (b) Units cancelled in respect of any amount transferred out of the Scheme to another KiwiSaver Scheme in respect of the Member;
  - (c) Units cancelled in respect of any Permitted Withdrawal in respect of the Member;
  - (d) Units cancelled in respect of any amount relating to the Member that is transferred from one Investment Fund to another Investment Fund;
  - (e) Units cancelled in respect of any amount of Attributed Tax; and
  - (f) Units cancelled in respect of any other amount which the Manager considers should be debited to the Member’s Account in respect of the Member.
- 1.3 The Manager may establish sub-accounts within a Member’s Account, including (without limitation) in respect of any amounts transferred into the Scheme.

## 2. Unitisation

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- 2.1 The Manager shall operate each Investment Fund on a unitised basis.
- 2.2 The beneficial interest in each Investment Fund shall be divided into Units (including, if the Manager so determines, fractions of Units).
- 2.3 All Units referable to an Investment Fund shall be of one class and confer identical rights and interests.
- 2.4 A Unit shall not confer any right or interest in any particular investment comprised in the Investment Fund to which it relates and no Member shall be entitled to require the transfer of any of the assets to the Member.
- 2.5 A Unit of one Investment Fund shall not confer any right or interest in the assets of any other Investment Fund.
- 2.6 In the case of Units issued on establishment of each Investment Fund, the initial Unit Price will be \$1.
- 2.7 Thereafter each Unit Price will be determined on each Valuation Day by dividing the Net Value of the relevant Investment Fund by the number of Units then on issue in respect of that Investment Fund.
- 2.8 Subject to clauses 2.9 and 2.10, the Manager will in respect of:
- (a) each contribution received by the Scheme from or in respect of a Member (including any Crown Contribution);
  - (b) any amount transferred into the Scheme from another KiwiSaver Scheme or Superannuation Scheme in respect of a Member;
  - (c) any amount received by the Scheme as a fee subsidy (if applicable);
  - (d) any other amount received by the Scheme which the Manager considers should give rise to the issue of Units;
  - (e) amounts representing attributed Tax Credits; and
  - (f) any amount transferred from one Investment Fund to another Investment Fund pursuant to clause 10.5(c),
- issue Units in the relevant Investment Fund or Investment Funds based upon the amount received or transferred (net of any amount that the Manager considers appropriate to deduct for fees, tax, etc) and the relevant Unit Price or Unit Prices on the next Valuation Day after the receipt or transfer.
- 2.9 Without limiting clause 2.8 and subject to the Act, the Manager may delay the conversion into Units under clause 2.8 of any contributions accepted into the Scheme in respect of a Member or group of Members until such time as the Manager is reasonably satisfied that those contributions do not exceed the amount required to be paid to the Scheme in respect of the Member (or those Members collectively) under the Act and this Trust Deed and have not otherwise been paid in error.
- 2.10 Without limiting clause 2.8 or any other provision of this Trust Deed (but subject at all times to the provisions of the Act), the Manager may determine at any time or times that from a specified date no further Units will be issued pursuant to this Trust Deed, or in relation to a specified Investment Fund or Investment Funds, either:
- (a) for a specified period; or

- (b) until the relevant Investment Fund or Investment Funds, or the Scheme, is or are terminated;

and in that case the Manager shall not, after the date specified and for the period contemplated by paragraph (a) or paragraph (b) (as applicable), issue any further Units under this Trust Deed or in relation to such Investment Fund or Investment Funds. The Manager will in respect of:

- (a) amounts debited to Members' Accounts to meet fees, charges, costs, expenses, premiums or tax payable that may be debited to those Accounts;
- (b) amounts transferred out of the Scheme to another KiwiSaver Scheme;
- (c) Permitted Withdrawals;
- (d) any amount transferred from one Investment Fund to another Investment Fund under clause 10.5(c);
- (e) amounts debited on account of Attributed Tax;
- (f) any other amount which the Manager considers should be debited to Member's Accounts,

cancel the number of the Units determined by dividing the amount debited, transferred or withdrawn in respect of the relevant Investment Fund or Investment Funds by the relevant Unit Price or Unit Prices on the Valuation Day next following the day on which the Manager makes a final determination that the debit, transfer or withdrawal shall be made; provided that the Manager may use the same Valuation Day as the day on which it makes a final determination of Attributed Tax to be debited.

### 3. Valuations

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- 3.1 The Manager will calculate the Net Value of each Investment Fund at least once every 5 Business Days (or more frequently as the Manager may consider necessary or desirable from time to time) by deducting the liabilities attributable to that Investment Fund from the market value of its assets.
- 3.2 The Manager will determine the market value of each asset in the Investment Fund on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice as defined in the Financial Reporting Act 1993 (except to the extent that the Supervisor and the Manager agree that the Manager need not have regard to that practice) and may from time to time engage any valuers or other suitably qualified persons for the purposes of fixing the market value of any asset (but is not under any duty to do so).
- 3.3 The Manager will determine the liabilities attributable to an Investment Fund on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice as defined in the Financial Reporting Act 1993 (except to the extent that the Supervisor and the Manager agree that the Manager need not have regard to that practice) and in doing so may (subject to clause 10.2):
  - (a) apportion the liabilities of the Scheme generally amongst the Investment Funds on such basis as the Manager considers appropriate; and
  - (b) take account of each debt, liability, provision, cost, charge, expense and outgoing, contingent liability, provision, liability to Tax, unpaid remuneration, reimbursement or indemnity or other matter as it considers appropriate.



- 3.4 Notwithstanding clause 3.1, the Manager may exclude certain liabilities from the liabilities that are deducted from the market value of the assets of an Investment Fund. For example, but without limitation, the Manager may exclude:
- (a) Attributed Tax where Units relating to that Member will be cancelled in respect of that liability to pay tax; and
  - (b) amounts representing the interests of Members to the extent considered appropriate by the Manager whether or not accounting practice requires those amounts to be treated as liabilities for accounting purposes.
- 3.5 The Supervisor is entitled to rely on the Manager's calculations under this clause 3 and is not required to verify those calculations or the methods and procedures used by the Manager in relation to them except as prescribed by law.

#### **4. Calculation of "member's accumulation"**

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Where this Trust Deed requires the Manager to calculate an amount representing the "member's accumulation" in respect of a Member for the purposes of calculating a benefit payable to or in respect of the Member that amount shall be calculated by multiplying the Units attributable to the Member's Account in respect of the Member by the relevant Unit Price or Unit Prices on the Valuation Day next following the day on which the Manager makes a final determination that the benefit should be paid..

## Schedule 3: Monthly report

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### **A - INVESTMENT POSITION vs. SIPO**

	<i>Asset Class (this form can be customised to suit funds)</i>				
<b>Fund A</b>	<b>Asset A</b>	<b>Asset B</b>	<b>Asset C</b>	<b>Asset D</b>	<b>Asset E</b>
Actual (\$)					
Actual (%)					
SIPO Range					

<b>Fund B</b>	<b>Asset A</b>	<b>Asset B</b>	<b>Asset C</b>	<b>Asset D</b>	<b>Asset E</b>
Actual (\$)					
Actual (%)					
SIPO Range					

### **B - RELATED PARTY TRANSACTIONS DETAILS**

#### **Related Party Benefit Transaction**

(list transactions)

#### **Other Related Party Transactions**

(list transactions)

## **C - SUMMARY OF PERFORMANCE AS AT [DATE]**

### **INVESTMENT RETURNS**

<b>Fund A</b>	<b>current month</b>	<b>3 month</b>	<b>6month</b>	<b>1 year</b>	<b>3 year</b>
<i>Actual (%)</i>					
<i>Benchmark</i>					

<b>Fund B</b>	<b>current month</b>	<b>3 month</b>	<b>6month</b>	<b>1 year</b>	<b>3 year</b>
<i>Actual (%)</i>					
<i>Benchmark</i>					

	<b>current month</b>		<b>3 month</b>		<b>6month</b>		<b>1 year</b>		<b>3 year</b>	
	<i>Actual (%)</i>	<i>Benchmark (%)</i>	<i>Actual (%)</i>	<i>Benchmark (%)</i>	<i>Actual (%)</i>	<i>Benchmark (%)</i>	<i>Actual (%)</i>	<i>Benchmark (%)</i>	<i>Actual (%)</i>	<i>Benchmark (%)</i>
<b>Fund A</b>										
<b>Fund B</b>										
<b>Fund C</b>										

## **D - NET ASSET VALUE AND UNITS**

<b><i>Fund Name</i></b>	<b><i>Total NAV</i></b>	<b><i>No. units on issue</i></b>	<b><i>NAV per unit</i></b>	<b><i>Published Unit Price</i></b>
Fund A				
Fund B				
Fund C				

Provide explanation where NAV per unit is different from Published Unit Price.

## **E – UNITHOLDERS DETAILS FOR THE QUARTER ENDED**

Investors at the beginning of the period [number]

New Investors [number]

Closed Investors accounts [number]

Investors at the end of the period [number]

Number of investors per fund

Fund A [Number]

Fund B [Number]

Fund C [Number]

## **F – UNITHOLDERS DETAILS FOR THE QUARTER ENDED**

Breakdown of withdrawals

Retirement	[Number]	[\$Amount]
Deceased member	[Number]	[\$Amount]
Invalid Enrolment	[Number]	[\$Amount]
Permanent emigration	[Number]	[\$Amount]
Serious illness	[Number]	[\$Amount]
Financial hardship	[Number]	[\$Amount]
First home	[Number]	[\$Amount]
Transfer to another scheme	[Number]	[\$Amount]
Trans-tasman transfer	[Number]	[\$Amount]

## **G – PORTFOLIO VALUATION (LIST OF INVESTMENTS) AND SCHEDULE OF INVESTMENTS TO BE RECEIVED IN THE NEXT 20 DAYS**

## **H – MANAGEMENT ACCOUNTS FOR THE FUND(S)**

## **I – CUSTODIAN REPORTS DISCLOSING ALL INVESTMENTS HELD BY THE CUSTODIAN ON BEHALF OF THE FUND(S)**

## **J – COMPLAINTS REGISTER**

## **K – MANAGERS NTA CALCULATIONS**

## **SCHEDULE 4: Meeting provisions**

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### **1 Convening of meetings**

- 1.1 The Manager must summon a meeting of Members of the relevant Investment Fund upon the request in writing of the Supervisor of one twentieth in number of the Members in the relevant Investment Fund, or of an Member or Members in the relevant Investment Fund holding not less than one twentieth of the Number of Units on Issue in the relevant Investment Fund at the date of such request.
- 1.2 If the Manager fails to call a meeting in accordance with clause 1.1, the Supervisor shall be entitled to call such a meeting on behalf of the Manager.
- 1.3 The Manager may at any time of its own volition convene a meeting of Members to be held at such place as is acceptable to the Supervisor.

### **2 Notice of meetings**

- 2.1 Notice of every meeting must be given in the manner provided in the Deed to every relevant Member, the Supervisor, every director of the Manager and the Auditor.
- 2.2 Fifteen Business Days' notice at least of every meeting must be given. The notice is to be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice must specify:
- 2.2.1 the place, day and hour of the meeting; and
  - 2.2.2 the general nature of the business to be transacted and sufficient detail to enable an Member to form a reasoned judgement in relation to it; and
  - 2.2.3 the text of any Special Resolution to be submitted to the meeting; and
  - 2.2.4 the right of an Member to appoint a proxy.
- 2.3 The accidental omission to give notice to or the non-receipt of notice by any Person entitled to that notice does not invalidate proceedings at any meeting.

### **3 Quorum**

- 3.1 No business is to be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum for meetings of Members for any business other than requiring a Special Resolution is any two Members present in person or by proxy or by attorney or by authorised representative or electronically holding not less than 10% of the Number of Units on Issue.

- 3.3 The quorum for meetings of Members if a Special Resolution is to be submitted is Members present in person or by proxy or by attorney or by authorised representative or electronically holding a combined value of not less than 25% of the value of Units on Issue.
- 3.4 If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Members must be dissolved. In any other case it will stand adjourned to such day and time not being less than 14 days thereafter and to such place as may be appointed by the Supervisor and at such adjourned meeting the Members present in person or by proxy or by attorney or by authorised representative and entitled to vote shall form a quorum.
- 3.5 Notice of any such adjourned meeting must be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice must state that the Members present at the adjourned meeting, in the case of a meeting of Members, whatever their number and whatever the number of Units held by them shall form a quorum.

## **4 Supervisor and Manager may attend and speak**

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

## **5 Chairperson**

- 5.1 A Person nominated in writing by the Supervisor must preside at every meeting.

## **6 Adjournment of meetings**

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

## **7 Voting rights**

- 7.1 The only persons entitled to vote in person or by proxy or by attorney or by authorised representative at a meeting of the Members are the Members registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- 7.2 Votes may be given either personally, or by proxy, or by attorney or by authorised representative.

## 8 Proxies

- 8.1 An instrument of proxy is to be in such form as the Manager may stipulate from time to time and need not be witnessed.
- 8.2 Whenever the chairperson of the meeting or an officer of the Supervisor is appointed a proxy for an Member and the Member has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which such Person's proxy is to vote upon any resolution coming before the meeting such Person's vote must be voted in the manner directed by the Manager.
- 8.3 The instrument appointing a proxy must be in writing under the hand of the appointor or of such Person's attorney duly authorised in writing.
- 8.4 A Person appointed to act as a proxy need not be a Member.
- 8.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority is to be deposited at such place as the Manager may in the notice convening the meeting appoint.
- 8.6 If no such place is appointed then it is to be deposited at the Manager's principal place of business not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the Person named in the instrument proposes to vote.
- 8.7 In default of the above the instrument of proxy is not to be treated as valid with the exception that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.
- 8.8 Unless it states to the contrary a proxy is valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy is valid after the expiration of 12 Months from the date of its execution but this provision is not construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.
- 8.9 An instrument of proxy in favour of the chairperson of the meeting or the chairperson, (howsoever expressed) is valid and effective as though it were in favour of a named Person and constitutes the Person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointor.
- 8.10 A Person appointed proxy has the right to speak at a meeting and to demand or join in demanding a poll and (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) has power generally to act at the meeting for the Member concerned.
- 8.11 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or, in the case of a meeting of the Members, the transfer of the Units in respect of which the vote is given with the exception that no intimation in writing of such death, insanity, revocation or transfer must have been received by the Manager at the



Manager's principal place of business before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **9 Power of attorney**

- 9.1 Any Member may by power of attorney appoint an attorney (who need not be an Member) to vote and act on the Member's behalf at any meeting.
- 9.2 Such power of attorney or proof thereof to the satisfaction of the Manager (unless such power of attorney or such proof has previously been produced to the Manager before the time of holding the meeting at which the attorney proposes to vote) be produced for inspection at such place as the Manager may in the notice convening the meeting direct or (if no such place is appointed) then at the Manager's principal place of business. Such attorney if so empowered may appoint a proxy for the Member granting the power of attorney.

## **10 Procedure**

- 10.1 A resolution put to the vote of a meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Supervisor or any representative of the Supervisor or in the case of a meeting of the Members by one or more Members holding or representing not less than 5% of the Number of Units on Issue.
- 10.2 Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.3 If a poll is duly demanded it is to be taken in such manner as the chairperson may direct and the result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.
- 10.4 In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled for any reason whatsoever.
- 10.5 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 1 Month from the date of the meeting) and place as the chairperson may direct. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 10.6 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

- 10.7 On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all such Person's votes or cast all the votes such Person uses in the same way.
- 10.8 In the case of a meeting of the Members, on a show of hands every Person present at the meeting and entitled to vote (whether as an Member or as a proxy or attorney or authorised representative) has one vote only. On a poll every Member who is present in person or by proxy or by attorney or by an authorised representative is entitled to one vote for every Unit of which such Member is the holder.

## **11 Resolutions**

- 11.1 The expression 'Special Resolution' means:
- 11.1.1 a resolution relating to a matter that is required by the FMCA to be done by way of Special Resolution; and
  - 11.1.2 a resolution relating to a matter that is required by this Trust Deed to be done by way of Special Resolution.
- 11.2 A meeting of Members has the following powers exercisable by Special Resolution:
- 11.2.1 To sanction the exchange of Units for, or the conversion of Units into, shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed or into units or other interests in any other unit trust or similar entity.
  - 11.2.2 To sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Members howsoever such rights arise.
  - 11.2.3 To assent to any alteration, modification of, variation, or addition to the provisions contained in this Trust Deed or any deed supplemental thereto or the conditions attaching to the Units and to authorise the Manager and Supervisor to concur in and execute any supplemental deed or other document embodying any such alteration or addition.
  - 11.2.4 To give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Trust Deed.
  - 11.2.5 Subject to the FMCA (if applicable), to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Trust Deed.
  - 11.2.6 To appoint a new supervisor if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new supervisor pursuant to this Trust Deed.
  - 11.2.7 To appoint a new Manager if a vacancy arises in the office of Manager and the Supervisor fails to appoint a new Manager pursuant to this Trust Deed.

- 11.2.8 To sanction any variation to the investments of a Fund.
- 11.2.9 To give such directions to the Supervisor as they think proper concerning an Investment Fund being directions that are consistent with this Trust Deed and the Act (where applicable).
- 11.2.10 To direct the removal of the Manager.

## **12 Resolutions bind all Members**

- 12.1 An Ordinary Resolution and a Special Resolution passed at a meeting of the Members duly convened and held in accordance with this Schedule are binding upon all Members present or not present at the meeting. Each of the Members, the Supervisor and the Manager is bound to give effect to such resolution accordingly.
- 12.2 The passing of any such resolution shall as between the Manager, the Supervisor, and the Members be conclusive evidence that the circumstances justify the passing of the Ordinary Resolution or Special Resolution as the case may be, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

## **13 Minutes to be kept**

- 13.1 Minutes of all resolutions and proceedings at every meeting must be made by the Supervisor or if the Supervisor is not present at any meeting by some person appointed by the chairperson of such meeting and duly entered in books from time to time provided for that purpose by the Supervisor.
- 13.2 Any such minutes as if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings had or by the chairperson of the next succeeding meeting are prima facie evidence of the matters in those minutes and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made is deemed to have been duly held and convened and all resolutions passed or proceedings of the meeting had duly passed and conducted.



- d. any relevant legislation of which specific aspects are noted below;
3. the Manager is able to pay its debts as they become due in the normal course of business;
  4. there was no significant risk or matter that materially prejudiced, or is reasonably likely to materially prejudice, the interests of Members of the Scheme and each Investment Fund or the ability of the Manager to perform any of its obligations under the Trust Deed;
  5. The Manager was issued a MIS Manager licence by the FMA on [date] subject to the Standards Conditions which can be found on the FMA website [if applicable - and subject to the following additional conditions...]. We confirm that the Manager has met these conditions, and more specifically:
    - a. no reports were issued to the FMA (or if there were note date and provide copy)
    - b. no changes were reported to FMA (and if there were, attach copies of correspondence)
  6. The net tangible assets of the Manager, calculated in accordance with the Standard Conditions for managed investment scheme manager licences, as at <date> were <\$amount>.

### **Investments**

7. no material trading or capital loss have been sustained by the Scheme or any Investment Fund;
8. no material contingent liabilities have been incurred by the Scheme or any Investment Fund;
9. no matter has arisen relating to an investment which has materially and adversely affected or would be reasonably likely to materially and adversely affect the assets of the Scheme;
10. except as previous advised in writing by the Manager, there are no other matters relevant to the Investments or [any of] the Investment Funds, reasonably required by the Supervisor to be disclosed;
11. other than where provided for in Schedule 3B(attached), there were no Related Party transactions giving rise to a Related Party Benefit. All Related Party Transactions (as per Schedule 3B attached) were dealt with in accordance with clause [relevant clause] of the Trust Deed, in that relevant certificates and notifications have been provided to the Supervisor or prior consent of the Supervisor has been obtained. For the avoidance of doubt, transactions between Investment Funds do not confer a Related Party Benefit;
12. no Investment Fund has any borrowings/the Investment Fund(s) has/have the following borrowings which have been undertaken in accordance with clause [relevant clause] of the Trust Deed and within guidelines agreed to by the directors and with other representations contained in the current Disclosure Documents;
13. no bank accounts were opened or closed which the Supervisor has not been notified of;
14. the apportionment of any transaction expenses and reimbursements between Members was conducted on the basis of formal policies and procedures adopted by the Manager, with any such amounts being equitably applied to the member accounts of the Members to whom the relevant transactions related;
15. the assets of the Scheme and each Investment Fund were held in the name of the Supervisor or such other person or persons as nominated by the Supervisor;
16. all income derived from the assets of the Scheme and available to be received was received by the Scheme and allocated to the relevant Investment Funds;

17. there were no matters relevant to the assets of the Scheme and each Investment Fund which would cause the Supervisor to request information from the Manager in accordance with the Governing Documents which the Supervisor has not been notified of.

### **SIPO and Limit Breaks**

18. The last Regulation 95 Quarterly Limit Break Report to the Supervisor was issued on [Date]. The following Non-Material Limit Break Report[s] were issued to the Supervisor: [Nil/list by date of report].
19. Except as disclosed in the Quarterly Limit Breaks Reports referred to above, the Investments of the Investment Fund[s] at all times have been dealt with or invested within investment parameters in accordance with any policies, strategy and or guidelines and with other representations contained in the current SIPO and Disclosure Documents;
20. The guidelines and procedures set out in the [Investment Mandates/SIPO] were appropriate for each of the Investment Funds and remain consistent with the Disclosure Documents Product compliance
21. there is on issue a PDS dated [xxxx] which is accurate in all material respects and complies with the requirements of the FMCA and Regulations;
22. all Register Entries have been uploaded, are current and are not misleading;
23. all fund updates required by the FMCA have been issued and are fully compliant with the FMCA and the Regulations;
24. there are no material contractual commitments (other than in respect of investment trading activities) or contingent liabilities or guarantees that are not disclosed in the attached reports and there are no other matters, which should be brought to the attention of the Supervisor;
25. the Scheme complied with the eligibility criteria and requirements of a Portfolio Investment Entity as set out in the Income Tax Act 2007;

### **Anti-Money Laundering and Countering Financing of Terrorism Act 2009**

26. the Manager has, where required, conducted customer due diligence, account monitoring, record keeping and suspicious transaction reporting in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and met its reporting obligations;

### **Accounting and Tax**

27. the Scheme's books and records were kept up-to-date and all bank accounts of the Scheme were reconciled to the relevant bank statements at the end of the period to which this certificate relates;
28. proper accounting and internal control processes were maintained;
29. the Scheme and each Investment Fund are able to pay their debts as they become due in the normal course of business;
30. the value of the Scheme's Liabilities, including contingent liabilities, is less than the value of the Scheme's assets;
31. all money paid out of the Scheme's bank account[s] has [have] been used to pay for withdrawals or benefits, Authorised Investments, fees, taxes, or expenses authorised by the Trust Deed and for the credit of Members and in no other way;
32. all payments due and payable were made on or before their final due date and were properly accounted for;

33. all fees have been calculated in accordance with the provisions of the Governing Documents;
34. there has been no departure from the agreed accounting standards and valuation methods including but not limited to the following:
  - a. no departure in the accounting standards or method of valuation of assets (including Investments) or Liabilities of the Scheme and each Investment Fund;
  - b. no circumstances have arisen which render adherence to the existing method of valuation of any part of the assets (including Investments) or Liabilities of the Scheme and each Investment Fund misleading or inappropriate [and if so include particulars of those circumstances];
  - c. no significant departures from internal control procedures that should be brought to either the attention of the Auditor or the Supervisor. Proper internal control procedures have been maintained and adhered to by the Manager;
35. the Scheme's liability for taxation, not limited to full and adequate provision for taxation liabilities to be paid or reclaimed (including deferred taxation) has been assessed and has been properly recorded, tax payments have been made by the due date and there are no outstanding tax issues;
36. The Manager has attended to all tax matters related to the Fund(s) to ensure compliance with the Income Tax Act 2007 and there are [no matters] (or) [the following matters] to be brought to the Supervisor's attention;
37. The following Regulation 97 Pricing Error (Material) Report[s] were issued since the last certificate [Nil/Date of report[s] issued]. The following Regulation 97 Pricing Error (Non-Material) Report[s] were issued since the last certificate [Nil/Date of report[s] issued].

#### **Administration**

38. the Register of Members has been properly maintained and is up to date including but not limited to the following:
  - a. benefits were paid in accordance with the Trust Deed, [the Instrument of Appointment] and any relevant legislation;
  - b. the Unit Register has been duly maintained in accordance with the Trust Deed [and Instrument of Appointment];
  - c. all calculations of the valuation of members' accounts were carried out in accordance with the Act and the Trust.
39. All transfers to other KiwiSaver schemes were administered in accordance with the Act;
40. all notices, certificates, reports and other documents required by the Governing Documents have been issued;
41. interests in the Scheme were issued and administered in accordance with the Act, [Instrument of Appointment], and the Governing Documents.
42. all valuations of units have been carried out in accordance with the provisions of the Trust Deed and the relevant Establishment Deed. All instances to the contrary (if any) have been reported to the Supervisor as soon as reasonably practical in accordance with relevant legislation;
43. issues of interest in the Scheme have been administered in accordance with the FMCA;

When used in this certificate the term "material" will have the meaning agreed from time to time between the Supervisor and the Manager, and, in the absence of such agreement, in the context of financial information, will have the meaning commonly applied under standard accounting concepts.

Signed for and on behalf of the Board of Directors of [**Name of Manager**].

.....

Director

Director

Date

Date