

Restructure Information Document

NZFUNDS

KiwiSaver Scheme

NOVEMBER 2011

INTRODUCTION

This information document has been prepared to provide members of the NZ Funds KiwiSaver Scheme ('Scheme') with detailed information about the effect of the restructure of the Scheme under the KiwiSaver Amendment Act 2011 ('Amendment Act') that took place on 7 November 2011.

The overall effect of the restructure is that NZ Funds Management Limited ('Manager') is now the issuer of the Scheme, with primary responsibility for management and administration of the Scheme and direct duties to members. Perpetual Trust Limited ('Trustee') is the independent trustee with supervisory responsibilities (although it remains responsible for assessing significant financial hardship and serious illness withdrawal applications).

This information document identifies:

- the material amendments to the Scheme's trust deed made under section 63 of the Amendment Act (these are amendments that were necessary or desirable for the trust deed to comply with legislation amended by the Amendment Act, and were made with the prior written consent of the Financial Markets Authority);
- the material variations in the terms or conditions of membership of the Scheme that result from amendments to legislation made by the Amendment Act; and
- a number of other minor amendments made to the Scheme's trust deed.

The content of this information document reflects the requirements of section 65(1)(a) of the Amendment Act. More information about the Scheme is contained in the Scheme's current investment statement, which is available at www.nzfunds.co.nz/kiwisaver or by calling 0800 NZF KIWI (693 5494).

MATERIAL AMENDMENTS TO THE TRUST DEED

The trust deed for the Scheme was amended by the Manager and Trustee entering into a consolidated and amended trust deed dated 7 November 2011 ('Trust Deed'). That Trust Deed replaced the original trust deed for the Scheme dated 21 October 2010 ('Original Trust Deed').

The schedule to this information document contains a full copy of the Trust Deed, marked-up to identify the changes made from the Original Trust Deed. This includes:

- the amendments that were necessary or desirable for the Trust Deed to comply with legislation amended by the Amendment Act, and made with the prior written consent of the Financial Markets Authority under section 63 of the Amendment Act; and
- a number of other minor amendments made by agreement between the Manager and the Trustee, as permitted by the Original Trust Deed.

Recital D to the Trust Deed sets out the amendments that were made with the prior written consent of the Financial Markets Authority. Recital E sets out the amendments that were made by agreement between the Manager and the Trustee.

MATERIAL VARIATIONS IN THE TERMS AND CONDITIONS OF MEMBERSHIP OF THE SCHEME

The table below outlines the material variations to the terms and conditions of membership of the Scheme that result from amendments to legislation made by the Amendment Act. It also provides corresponding references to the provisions of the Trust Deed that were materially amended to reflect these changes.

The table below is not a comprehensive summary of the Trust Deed. For a complete summary of the principal terms of the Trust Deed, members should refer to the prospectus for the Scheme.

Terms that are capitalised in the table below but not defined in this information document have the meanings that are given to them in the Trust Deed.

MANAGER AND TRUSTEE RESPONSIBILITIES

PRE-RESTRUCTURE

POST-RESTRUCTURE

MANAGER'S RESPONSIBILITIES

The Trustee was primarily responsible for management and administration of the Scheme but delegated many of those functions under the Trust Deed to the Manager to perform on its behalf.

Amongst other things, the Manager as delegate of the Trustee performed the following functions:

- determining the terms of all contracts to be entered into in respect of the Scheme (other than Participation Agreements) and entering into such contracts as agent for the Trustee;
- subject to consultation with the Trustee, appointing various service providers (including a custodian) on terms and conditions and with such powers, duties, discretions, indemnity, and remuneration agreed by the Manager and the service provider; and
- entering into Participation Agreements in a form reasonably approved by the Trustee as agent for the Trustee, and completing any filings required by law in respect of the same.

The Manager is the 'issuer' of the Scheme for the purposes of the Securities Act 1978, and has primary responsibility for management and administration of the Scheme, including offering and issuing interests in the Scheme and managing Scheme Assets, rather than doing so on behalf of the Trustee.

Amongst other things, the Manager directly performs the following functions:

- determining the terms of all contracts to be entered into in respect of the Scheme;
- on notice to the Trustee, appointing various service providers (not including a custodian) on terms and conditions and with such powers, duties, discretions, indemnity, and remuneration agreed by the Manager and the service provider; and
- entering into Participation Agreements and completing any filings required by law in respect of the same.

Trust Deed provision(s) materially amended: clause 8.2.

TRUSTEE'S RESPONSIBILITIES

The Trustee was the 'issuer' of the Scheme for the purpose of the Securities Act 1978 and had primary responsibility for management and administration of the Scheme.

In particular, it:

- had responsibility for administering the trusts governing the Scheme in accordance with the Trust Deed and applicable statutes and regulations, including the KiwiSaver Act 2006; and
- held, or caused a nominee appointed in accordance with the Trust Deed to hold, all of the assets of each Portfolio, on trust for members in accordance with the terms of the Trust Deed.

The Trustee is the independent trustee with supervision responsibilities (although it remains responsible for assessing significant financial hardship and serious illness withdrawal applications).

In particular:

- the Trustee supervises the Manager's performance of the functions of the Manager under the Trust Deed and any enactment; and
- all assets of the Scheme are vested in the Trustee to hold on trust in accordance with the Trust Deed, although the Trustee after consultation with the Manager may nominate in writing any one or more persons who are legally eligible for such nomination to hold any of the assets of the Scheme on its behalf.

Trust Deed provision(s) materially amended: clauses 2.3 and 8.1.

TRUSTEE'S OVERSIGHT POWERS

The Trustee had the right not to act on any direction of the Manager regarding investment if in its reasonable opinion, conveyed in writing to the Manager within five Business Days of the determination being made by the Trustee, the proposed investment, acquisition, or disposition was not in accordance with the investment policy of the Scheme or the Portfolio, as the case may be, or was contrary to the provisions of the Trust Deed.

The Trustee had the power to:

- exercise the powers, authorities, functions, and discretions delegated by the Trustee to the Manager;
- require the Manager to exercise the powers, authorities, functions, and discretions delegated by the Trustee to the Manager in accordance with the reasonable written instructions of the Trustee; and
- by notice in writing to the Manager, terminate the authority of the Manager to exercise powers, authorities, functions, and discretions delegated by the Trustee to the Manager.

The Trustee was able to exercise these powers to the extent that it reasonably believed that doing so was necessary:

- to prevent the Trustee from being in breach of its obligations under any rule of law or to cause such a breach to cease; and
- to cause the Scheme to be managed and administered in a proper and efficient manner, provided that the Trustee could only exercise those powers if and to the extent that, in its reasonable opinion, the Manager had failed to manage or administer the Scheme in a proper or efficient manner.

Further restrictions existed on the Trustee's ability to terminate the Manager's authority to exercise the powers, authorities, functions, and discretions delegated by the Trustee to the Manager.

The Trustee must refuse to act on a direction of the Manager relating to the acquisition or disposal of Assets if the Trustee considers that the proposed acquisition or disposal either:

- would be in breach of the Trust Deed or an enactment; or
- would be manifestly not in the best interests of Members.

If the Trustee refuses to act on a direction of the Manager, the Trustee must notify the Manager and the Financial Markets Authority in writing of the Trustee's reasons for refusing to do so.

Because the Manager has primary responsibility for management and administration of the Scheme, the Trustee does not have a 'back-stop' power to act, although it has a general ability to enforce the terms of the Trust Deed should the Manager fail to fulfil its obligations.

Trust Deed provision(s) materially amended: clauses 11.2 and 12.1, and deletion of clauses 8.4 to 8.6 from the Original Trust Deed.

MANAGER AND TRUSTEE STANDARD OF CARE

PRE-RESTRUCTURE

MANAGER'S STANDARD OF CARE

The Manager was required to use all reasonable endeavours and skill to ensure that it exercised the powers, authorities, functions, and discretions vested in it under the Trust Deed in a proper and efficient manner, and to ensure it complied with all relevant laws.

POST-RESTRUCTURE

The Manager, in exercising its powers and performing its duties as manager, must:

- act in the best interests of the members; and
- exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a manager would exercise in managing the affairs of others, unless the Manager is exercising a power of investment, in which case the Manager must exercise the care, diligence, and skill required of a trustee by section 13B or 13C of the Trustee Act 1956.

The Manager must use its best endeavours and skill to ensure that the affairs of the Scheme are conducted in a proper and efficient manner.

Trust Deed provision(s) materially amended: clause 8.5.

TRUSTEE'S STANDARD OF CARE

No express standard of care was included in the Original Trust Deed.

The Trustee, in exercising its powers and performing its duties as trustee, must:

- act in the best interests of members; and
- exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a trustee would exercise in acting as the trustee of a KiwiSaver scheme other than a restricted scheme (as defined in the KiwiSaver Act).

Trust Deed provision(s) materially amended: clause 8.4.

LIMITATIONS ON LIABILITY AND INDEMNITIES

The Manager and Trustee were not entitled to an exemption from liability or an indemnity out of the Assets of the Scheme for any liability for fraud, gross negligence or wilful default, or for failing to show the degree of care and skill required having regard to the provisions of, and the powers, authorities, and discretions conferred by, the Trust Deed.

Except in the case of fraud, gross negligence or wilful default, or for failing to show the degree of care and skill required having regard to the provisions of, and the powers, authorities, and discretions conferred by, the Trust Deed and (in the case of the Trustee, the Trustee Act 1956), the Trustee and Manager do not have any personal liability to members.

The Manager and Trustee are not entitled to an exemption from liability or an indemnity out of the Assets of the Scheme for any liability for fraud, gross negligence or wilful default, or for failing to meet the standard of care required by the Trust Deed (as outlined above).

Except in the case of fraud, gross negligence or wilful default, or for failing to meet the standard of care required by the Trust Deed (as outlined above), the Trustee and Manager do not have any personal liability to members.

Trust Deed provision(s) materially amended: clauses 13.4, 13.10, and 13.11.

MANAGER AND TRUSTEE QUALIFICATIONS

PRE-RESTRUCTURE

QUALIFICATIONS AND REMOVAL OF MANAGER

The Original Trust Deed did not contain provisions for the qualification or removal of the Manager.

POST-RESTRUCTURE

The Scheme must have a manager who must not be an associated person (within the meaning of subpart YB of the Income Tax Act) of the Trustee and must otherwise be entitled by law to act as manager of the Scheme.

Subject to all applicable laws, the Trustee may apply to the High Court for an order to remove the Manager from office if the Trustee is satisfied that either:

- there is a significant risk that the interests of members will be materially prejudiced; or
- the provisions of the Trust Deed are no longer adequate to give proper protection to members.

The Trustee will give prior notice to the Manager of its intention to apply to the High Court for an order to remove the Manager, including notifying the Manager of its reasons for seeking that order.

Trust Deed provision(s) materially amended: clauses 19.1 and 19.2.

QUALIFICATIONS OF TRUSTEE

A corporate body was required to be the sole trustee of the Scheme and, in respect of any period during which the Scheme was a default KiwiSaver Scheme for the purposes of the KiwiSaver Act, that corporate body was required to be a trustee corporation as defined in that Act.

The Scheme must have a single trustee who must not be an associated person (within the meaning of subpart YB of the Income Tax Act) of the Manager and must otherwise be entitled by law to act as trustee of the Scheme.

The Trustee must at all times be lawfully entitled to act as trustee of the Scheme.

Trust Deed provision(s) materially amended: clauses 8.1(c) and 18.1.

OTHER

PRE-RESTRUCTURE

APPLICATIONS FOR MEMBERSHIP

The Manager or the Trustee could, in their discretion, refuse in whole or in part any application for membership unless precluded by the KiwiSaver Act.

POST-RESTRUCTURE

The Manager can, in its discretion, refuse in whole or in part any application for membership unless precluded by the KiwiSaver Act.

Trust Deed provision(s) materially amended: clause 3.5.

CONTRIBUTIONS

The Trustee accepted and held on trust the contributions, fee subsidies (if applicable), and amounts transferred into the Scheme.

The Trustee was required, where so directed by the Manager, to accept other amounts in respect of a Member and could only accept such amounts where so directed.

The Trustee was required, where so directed by the Manager and to such person directed by the Manager, to pay all or any part of an amount paid to the Scheme in respect of a Member, if that amount (or the relevant part of it) was paid in error, or as otherwise required or permitted by law.

The Manager accepts the contributions, fee subsidies (if applicable), and amounts transferred into the Scheme, and must pay them into the Scheme's bank account.

The Manager may in its discretion accept other amounts in respect of a Member.

The Manager may, and Trustee shall where so directed by the Manager, pay all or any part of an amount paid to the Scheme in respect of a Member to any person (in the case of the Trustee, being the person specified by the Manager), if that amount (or the relevant part of it) was paid in error, or as otherwise required or permitted by law.

Trust Deed provision(s) materially amended: clauses 4.1, 4.3, 4.4, 4.5, and 4.7.

ESTABLISHMENT OF PORTFOLIOS

The Trustee was required to establish separate Portfolios within the Scheme as and when directed to do so by the Manager on terms and conditions directed by the Manager, unless the Trustee reasonably considered that doing so would cause the Trustee to be in breach of its obligations under any rule of law.

The Trustee was required to terminate, close or alter the nature of any Portfolio, or amalgamate any two or more Portfolios, as and when directed to do so by the Manager on terms and conditions directed by the Manager, unless the Trustee reasonably considered that doing so would cause the Trustee to be in breach of its obligations under any rule of law.

The Manager may establish on such terms and conditions as it thinks fit separate Portfolios within the Scheme.

The Manager may terminate, close or alter the nature of any Portfolio, or amalgamate any two or more Portfolios, on such terms and conditions as it thinks fit.

Trust Deed provision(s) materially amended: clauses 10.1 and 10.3.

SCHEDULE

See attached Trust Deed showing amendments to the Original Trust Deed.

Trust Deed

relating to

the NZ Funds KiwiSaver Scheme

New Zealand Funds Management Limited

Manager

and

Perpetual Trust Limited

Trustee

Date: ~~21 September 2010~~ 7 November 2011

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This **Trust Deed** is made on ~~21 September 2014~~ 7 November 2011

between (1) **New Zealand Funds Management Limited (Manager)**
and (2) **Perpetual Trust Limited (Trustee)**

Introduction

~~The Manager wishes to establish a KiwiSaver Scheme. The Trustee, being a trustee corporation as defined in the KiwiSaver Act, has agreed to act as the trustee of that KiwiSaver Scheme.~~

- A By a trust deed dated 21 September 2010 (**Existing Deed**) the Trustee established the NZ Funds KiwiSaver Scheme (**Scheme**) and appointed the Manager as its manager.
- B The Scheme is a registered KiwiSaver scheme under the KiwiSaver Act 2006 (**KiwiSaver Act**), and is not a restricted KiwiSaver scheme as defined in that Act.
- C The Manager and the Trustee wish to amend the Existing Deed by substituting this Trust Deed for the Existing Deed in order to effect the restructure of the Scheme as a retail KiwiSaver Scheme under the KiwiSaver Amendment Act 2011 (**Amendment Act**), and to make a number of other minor amendments to the Existing Deed as a consequence of that restructure.
- D Pursuant to section 63(3) of the Amendment Act, the Financial Markets Authority has given its prior written consent to the amendments contained in clauses 1.1 (the change in the definitions of Assets, Effective Date, and Financial Year), 2.3, 2.5, 3.2, 3.5, 3.6, 4.1, 4.3, 4.4, 4.7, 5.4, 8.1, 8.2(a) to (i), 8.2(m), 8.2 (q) to (s), 8.4, 8.5, 10.1, 10.2, 10.3, 11.1, 11.3, 11.4, 11.7, 11.8, 13.4, 13.8 to 13.11, 16.1(g), 18.1, 18.4 to 18.7, 19.1 to 19.8, 23.1, 26.2 of this Trust Deed, Schedule 1 clauses 1.1, 3.1, and 4 of this Trust Deed, and the deletion of former clauses 8.4 to 8.6 of the Existing Deed.
- E The Trustee is satisfied that the remaining amendments contained in this Trust Deed (being the amendments contained in clauses 1.1 (the change in the definition of Participation Agreement), 1.2, clause 2 (the change in the heading), 2.1, 3.4, 4.2, 4.5, 5.1, 5.3, 7.1, 7.4, 8.2(j), 8.2(p), deletion of the proviso to clause 8.2, 8.10, 10.6, 10.7, the heading to clause 11, 11.2, 11.5, 12.1, 16.1(a), 16.1(o), 18.2, 18.3, 18.7, 20.2, 20.3, 25.9, 26.1, 26.3, 28 (the definition of "Tax Bank Account") of this Trust Deed, Schedule 1 clauses 1.2, 2.8, and 2.9, and Schedule 2 clause 4 of this Trust Deed, and the deletion of former clauses 8.10, 8.13, and 11.7 of the Existing Deed) do not require the consent of members of the Scheme in accordance with section 9 of the Superannuation Schemes Act 1989 (as applied by section 120 of the KiwiSaver Act, as that section of the KiwiSaver Act currently applies to the Scheme under section 58(3) of the Amendment Act), and can be made by a deed executed by the Manager and the Trustee under clause 17 of the Existing Deed.
- F Prior to executing this deed, the Trustee obtained a certificate from its solicitor as required by section 129 of the KiwiSaver Act.

It is agreed

In accordance with the power of amendment contained in clause 17 of the Existing Deed, it is declared that with effect from the Effective Date the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Trust Deed so that from the Effective Date the Scheme will be operated, administered, and governed in accordance with the provisions of this Trust Deed.

1. Interpretation

1.1 Definitions

In this Trust Deed, unless the context otherwise requires:

Assets means:

- (a) where the Scheme is a PIE, any cash, investment, asset, right, interest, estate or property of any nature then forming part of the assets of the Scheme at that time, but excluding, as the Manager considers appropriate to be consistent with the PIE Rules, any tax benefit to the extent that it will, for the purposes of the PIE Rules, be attributed, allocated, received or utilised to or by particular Members of the Scheme, provided that the total value of such assets is reduced by an amount equal to any tax liability of the Scheme for which an adjustment to the interests of or payment of benefits to particular Members has been or will be made;
- (b) where the Scheme is not a PIE, any cash, investment, asset, right, interest, estate or property of any nature then forming part of the assets of the Scheme at that time, including, for the avoidance of doubt, any tax loss, imputation or other tax credit or any other tax benefit where there is a probability that such tax loss, imputation or other tax credit or any tax benefit will be utilised. The ~~Trustee and the~~ Manager must confirm to the Trustee that ~~they are~~ it is satisfied with the methodology (including any discounting of such tax loss, imputation, or other tax credit or any other tax benefit) used ~~by the Manager~~ in determining the amount of such tax loss, imputation or other tax credit or tax benefit. The Trustee may engage a qualified auditor for the purposes of determining whether the methodology adopted is reasonable;

Auditor means the person for the time being holding the office of auditor of the Scheme;

Authorised Investments means any investment, asset, right, interest, estate or property of any nature whatsoever, whether in New Zealand or any other country, and whether legal, equitable or otherwise, in or in relation to any or all of:

- (a) any share, security (as defined in the Securities Act 1978) or like interest in any person;
- (b) deposits with or loans to (with or without any security) any person;
- (c) debentures, bonds, notes, debt securities (as defined in the Securities Act 1978) or similar obligations (with or without security) issued by any person;
- (d) bills of exchange or promissory notes made, drawn or accepted by any person;
- (e) mortgages of any real property;
- (f) cash, foreign currencies and foreign exchange contracts;
- (g) any interest of any nature in any real or personal property of any nature whatsoever;
- (h) futures contracts and derivatives transactions pursuant to clause 11.10 of this Trust Deed;
- (i) any right or option to acquire or take up any of the above; and
- (j) any other investment, asset, right, interest, estate or property of any nature whatsoever,

and without prejudice to the generality of (a) to (j) above, includes:

- (k) units, sub-units or other interests in any unit trust, group investment fund, scheme, participatory security, partnership (limited or otherwise), fund or similar undertaking or scheme of any nature, in any jurisdiction; and
- (l) stocks, bonds, mortgages and securities of, or deposits with, issued or guaranteed by, any government, public, municipal or local body or authority in any part of the world;

Business Day means any day other than a Saturday or a Sunday or a statutory public holiday, in Auckland, New Zealand;

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

Employer's Reserve Account means an account established under clause 1.3 of Schedule 1;

Effective Date means ~~the date on which the Scheme's registration as a KiwiSaver Scheme takes effect;~~ 7 November 2011;

Fee Subsidy has the meaning given to that term by the KiwiSaver Act;

Financial Year means a period of 12 months ending on 31 March (or such other date as the Manager, ~~in consultation with the Trustee,~~ may determine and notify the Trustee) in each year (or the date on which the Scheme is wound-up, if earlier) ~~and includes the period commencing on the Effective Date and ending on the next occurring 31 March;~~

GST means any goods and services tax chargeable under the Goods and Services Tax Act 1985 and any value added tax or similar tax or duty;

Instrument of Appointment means, if at any time the Scheme is a default KiwiSaver scheme under the KiwiSaver Act, the instrument of appointment pursuant to which the Scheme is specified as such;

KiwiSaver Act means the KiwiSaver Act 2006;

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

KiwiSaver Scheme Rules means the provisions implied in this Trust Deed under section 126 and schedule 1 of the KiwiSaver Act;

Liabilities means:

- (a) where the Scheme is a PIE, debts and other obligations and outgoings of the Trustee acting in its capacity as trustee of the Scheme, or of the Manager acting in its capacity as manager of the Scheme, which are then payable or which the Manager considers in its absolute discretion either are likely to become payable or are likely to be paid for any reason, together with such other provisions as the Manager considers are necessary or desirable, but excluding (i) any debts or other obligations and outgoings of the Trustee or the Manager in respect of which the Trustee or the Manager is not entitled to be indemnified out of the Assets of the Scheme; (ii) Members funds presented as a liability in the financial statements of the Scheme; and (iii) as the Manager considers appropriate to be consistent with the PIE Rules, any accrued or realised income tax liabilities of the Scheme which have or will be, for the purposes of the PIE Rules, reflected by an adjustment to the interests of or payments of benefits to particular Members; and
- (b) where the Scheme is not a PIE, debts and other obligations and outgoings of the Trustee acting in its capacity as trustee of the Scheme, or of the Manager

acting in its capacity as manager of the Scheme, which are then payable or which the Manager considers in its absolute discretion either are likely to become payable or are likely to be paid for any reason, including, for the avoidance of doubt, all taxes, duties, or other imposts which are then assessed or which the Manager considers in its absolute discretion either are likely to be assessed or are likely to be paid by or in respect of the Scheme, together with such other provisions as the Manager considers are necessary or desirable, but excluding (i) any debts and other obligations and outgoings of the Trustee or the Manager in respect of which the Trustee or the Manager is not entitled to be indemnified out of the Assets of the Scheme and (ii) Members funds presented as a liability in the financial statements of the Scheme;

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

Member means a 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 Investment Account means an account established for a Member under clause 1.1 of Schedule 1;

Net Asset Value means the value of a Portfolio as calculated under clause 3 of Schedule 1 on a Valuation Day;

Offer Document means the document or documents, however described, by which membership of the Scheme may be offered;

Participation Agreement means an agreement entered into between the Manager, ~~the Trustee~~ and an employer under clause 7.1;

Person means and includes a natural person, a company, a corporation, a corporation sole, a unit trust, a government or body of persons (whether corporate or unincorporated);

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

PIE means a portfolio investment entity as that term is defined in the Tax Act;

PIE Rules means any obligation or requirement in the Tax Act, the TAA or any other statute or regulation (or any administrative requirement of the Inland Revenue or any other revenue authority) relating to a PIE;

Portfolio means a portfolio established under clause 10.1;

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993, provided that the term "company" shall mean any body corporate, wherever incorporated;

Scheme means the KiwiSaver Scheme established by this Trust Deed;

Superannuation Scheme has the meaning given in the Superannuation Schemes Act 1989;

TAA means the Tax Administration Act 1994;

Tax has the meaning given to it in clause 25.1;

Tax Act means the Income Tax Act 2007;

Trust Deed means this Trust Deed, as this Trust Deed may be amended from time to time;

Trustee means the trustee for the time being of the Scheme;

Unit means a unit in a Portfolio as referred to in clause 2 of Schedule 1;

Unit Price means the price for a Unit calculated under clause 2.6 or 2.7 of Schedule 1; and

Valuation Day means a day on which a Portfolio is valued under clause 3 of Schedule 1.

1.2 ~~Implied terms under the KiwiSaver Act~~ Terms implied by law

The ~~terms of the~~ KiwiSaver Scheme Rules and any statutory provisions or other terms and the sections of the Superannuation Schemes Act 1989 implied in the Trust Deed under the KiwiSaver Act or otherwise at law apply for so long as they are implied in the Trust Deed ~~under the KiwiSaver Act~~ despite anything to the contrary in the Trust Deed, and any provision in the Trust Deed that is contrary to any such implied term is void to the extent that it is contrary.

1.3 **Construction**

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

- (a) headings and notes appear as a matter of convenience and shall not affect construction;
- (b) references to clauses are to clauses of the 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 genders;
- (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;
- (g) the word “including” and other similar words do not imply any limitation;
- (h) references to any party includes that person’s successors, permitted assigns, substitutes, executors and administrators;
- (i) if a payment or other act must be made or done on a day which is not a Business Day, then it must be made or done on the next following Business Day;
- (j) a warranty, representation, covenant or obligation given or entered into by more than one person binds them jointly and severally;
- (k) where a word or phrase is defined in this Trust Deed, its other grammatical forms shall have a corresponding meaning; and
- (l) unless this Trust Deed otherwise specifies or except as provided by law, the Manager may give any notice or communication in writing required of it under this Trust Deed in electronic form and on such other terms and conditions as the Manager may determine.

1.4 Currency

Where for the purposes of any provision of this Trust Deed it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on a basis fixed from time to time by the Manager 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.

1.5 Generally accepted accounting practice

Notwithstanding any provision of the Trust Deed, where a matter is to be or may be interpreted pursuant to any provision of the Trust Deed by reference to generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements and accounts, but including when valuing any assets or net assets for any other purpose), the Manager may, in its discretion, elect not to follow such generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards. If the decision not to follow generally accepted accounting practice results in the Manager adopting a position that is materially different to that of the generally accepted accounting practice, the Manager must consult with the Trustee and the Trustee may require the Manager to provide it with copies of any advice obtained by the Manager from its accountants or auditors to support the proposed deviation from generally accepted accounting practice, and to the extent that such advice has not been obtained by the Manager, the Trustee may obtain such advice and may recover the costs of doing so in accordance with clause 16.1(h).

2. **Establishment Constitution of the Scheme**

2.1 **Establishment dateContinuation of trusts**

~~The Scheme is established with effect from the date of this Trust Deed, and shall commence operations with effect from the Effective Date. The continuation of the trusts established in accordance with the Existing 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~~Assets vested in Trustee**

~~The Trustee will hold all contributions and other assets~~ All Assets of the Scheme shall be vested in the Trustee to hold on trust in accordance with the terms of the Trust Deed. However, the Trustee after consultation with the Manager may nominate in writing any one or more persons who are legally eligible for such nomination to hold any of the Assets of the Scheme on its behalf.

2.4 **Name**

The Scheme and each Portfolio or Portfolios shall be known by such name or names as are determined by the Manager from time to time by notice in writing to the Trustee (and which shall be recorded in Schedule 3).

2.5 No perpetuity period

There shall be no perpetuity period for any trust created under the Trust Deed in accordance with section 19 of the Perpetuities Act 1964, and if the Scheme shall cease to qualify under section 19 thereof, the ~~Trustee~~ Manager may take such action as it thinks fit (including re-establishment of the Scheme to prevent any rule of law regarding perpetuities applying to or invalidating the Scheme).

3. Admission of Members

3.1 Admission

Subject to clause 3.3, natural persons shall be admitted to membership of the Scheme as follows:

- (a) in respect of any period during which the Scheme is a default KiwiSaver Scheme for the purposes of the KiwiSaver Act, in accordance with section 52 of that Act;
- (b) in respect of any employees of any employer who has agreed with the Manager that the Manager will provide access to the Scheme for the employer's employees under section 47 of the KiwiSaver Act, in accordance with section 48 of that Act; or
- (c) in respect of any natural person who is not admitted to membership of the Scheme under (a) or (b) above, by contracting directly with the Manager to become a Member of the Scheme, or as otherwise permitted by law.

3.2 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, or any other scheme or fund permitted by law, and ceasing to have an entitlement under the Scheme;
- (d) the Manager ~~in its capacity as delegate under clause 8.2~~ determining that the person shall cease to be a Member if:
 - (i) the balance in all of the Member's accounts (including any Member's Investment Account) reaches zero; and
 - (ii) the Manager ~~in its capacity as delegate under clause 8.2~~ gives notice to the Member in accordance with the KiwiSaver Act that the person's membership is terminated; and
- (e) any date or other circumstance prescribed by law on or upon which that person ceases to be a Member.

3.3 Eligibility

Admission of a person to membership of the Scheme may be subject to such criteria as are determined by the Manager from time to time and are permitted by law, including as may be set out in a Participation Agreement, and a person shall not be admitted to membership of the Scheme if the Manager determines that the person does not satisfy those criteria.

The eligibility of a person to remain as a Member may be subject to such criteria as are set out in the Offer Documents for the Scheme or a Participation Agreement applicable to that Member. Without limiting the generality of the foregoing, the Manager may determine that a Member is no longer eligible to continue as a Member if the Member fails to give consent to a matter referred to in clause 10.3. If a Member is no longer eligible to remain as a Member, section 50(4) of the KiwiSaver Act shall be applicable to that Member, and the Trustee, Manager and Member shall act in accordance with that section.

3.4 Register is conclusive

Each of the Manager and the Trustee:

- (a) shall be entitled to rely absolutely on the register of Members maintained by the Manager as being correct; and
- (b) shall be entitled for all purposes to treat a person whom it believes to be the person entered on that register as the holder of any Units as the legal and beneficial owner of those Units; and
- (c) shall be entitled to effect dealings of any nature with Units on the basis of the information recorded in that register.

Notwithstanding the foregoing, the Manager shall, in its absolute discretion, be entitled to require the production of evidence satisfactory to it that the person seeking to effect dealings of any nature with respect to the Units is the person so named on the register of Members.

Neither the Manager nor the Trustee shall be bound to see to the performance of any trust (express, implied or constructive) or of any charge, pledge, or equity to which any 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 in respect of those Units, and no notice of any trust, charge, pledge or equity shall be entered upon that register.

The Manager may from time to time close the register of Members for such period or periods as the Manager may determine (not to exceed 30 days in aggregate in any year). Subject to the foregoing, any Member is entitled to inspect the register of Members free of charge during normal working hours.

To the extent necessary, the Manager shall retain (whether within the register of Members or otherwise) and make available to the Trustee or any relevant authority, as may be required, such details as are necessary for the Scheme to comply with, and for the Manager to administer the Scheme in accordance with, the PIE Rules.

3.5 Acceptance of applications

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

3.6 Applications received

An application for membership received by the Manager prior to 2:00pm on the Business Day preceding a Valuation Day (or such other time or date ~~agreed by the Trustee and set by~~ the Manager from time to time) shall be effective for that Valuation Day. Any application for membership received by the Manager at or after 2:00pm on a Business Day (or such other time and date ~~as agreed by the Trustee and set by~~ the Manager from time to time) or on such day that is not a Business Day, shall be deemed to have been received by the Manager at the start of the Business Day immediately following receipt of the application by the Manager.

Notwithstanding the foregoing, the Manager may, in its discretion, defer accepting any application for a period of up to two Business Days.

3.7 Rights of a Member are personal

The rights and interests of a Member are personal and may not be transferred, charged or otherwise dealt with except as expressly permitted by this Trust Deed or as required by law.

4. Contributions

4.1 Contributions that must be accepted

The ~~Trustee shall accept and hold on trust pursuant to clause 2.3 of this Trust Deed~~ Manager shall accept:

- (a) contributions required to be made to the Scheme in respect of a Member under sections 101A and 226 of the KiwiSaver Act, rule 3 of the KiwiSaver Scheme Rules, and section MK1 of the Tax Act (including Crown Contributions);
- (b) Fee Subsidies (if applicable) paid in respect of a Member under section 225 of the KiwiSaver Act; and
- (c) amounts transferred from another KiwiSaver Scheme or Superannuation Scheme in respect of a Member.

4.2 Employee and employer contributions

Each Member who is an employee (as defined in the KiwiSaver Act) shall make the minimum contributions required by clause rule 3 of the KiwiSaver Scheme Rules.

The employer of each Member who is an employee may at any time make voluntary contributions to the Scheme on behalf of the Member by:

- (a) paying those contributions via the Commissioner of Inland Revenue in accordance with the KiwiSaver Act; or
- (b) to the extent permitted by the KiwiSaver Act, remitting money to the ~~Trustee~~ Manager for this purpose in accordance with the requirements of the ~~Trustee~~ Manager from time to time.

4.3 Contributions that may be accepted

The ~~Trustee shall, where so directed by the~~ Manager may in its discretion, accept other amounts in respect of a Member (including pursuant to a Participation Agreement), ~~and shall only accept such amounts where so directed.~~

4.4 Manner of making contributions

Contributions to the Scheme shall be made in accordance with the KiwiSaver Act or as agreed by the Manager (including pursuant to a Participation Agreement).

Contributions received by (or on behalf of) the Manager shall be paid into a bank account established under clause 11.8 and shall be held pursuant to clause 2.3 of this Trust Deed.

4.5 Uncleared funds

Subject to the provisions of the KiwiSaver Act, Units issued after the Effective Date against funds which do not clear are void. Units need not be issued against contributions received prior to the Effective Date unless and until the funds are cleared. Such amounts shall be held on trust for the relevant Member in a trust account until they clear.

Units may be issued against non-cash contributions, being the contributions applicable to Members who transfer to the Scheme in accordance with the Superannuation Schemes Act 1989.

4.6 Units issued in error

Units that the Manager determines have been issued in error are also void, unless any Member has, in good faith, altered their position to their detriment in reliance on the validity of those Units in circumstances where the provisions of the KiwiSaver Act or other law does not require those Units to be treated as void.

4.7 Overpayments

The Manager may, and Trustee shall, where so directed by the Manager, ~~and to such person directed by the Manager,~~ pay all or any part of an amount paid to the Scheme in respect of a Member to any person (in the case of the Trustee, being the person specified by the Manager), if that amount (or the relevant part of it) was paid in error, or as otherwise required or permitted by law. For the purposes of this clause, the Manager may cancel Units in respect of that Member in relation to any amount to be paid.

5. Benefits

5.1 Calculation of “member’s accumulation”

It is acknowledged that, as at the date of this Trust Deed, for the purposes of calculating benefits under the Scheme, the KiwiSaver Act requires the calculation of amounts representing the “member’s accumulation” as that term is defined in the KiwiSaver Act. Subject to clause 5.2 below, the Manager ~~(as the Trustee’s delegate pursuant to clause 8.2)~~ shall calculate that amount in accordance with the provisions of Schedule 1 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 1 if the Manager determines that the method set out in Schedule 1 does not comply with the KiwiSaver Act; and
- (b) must adopt a method of calculating those amounts that is different to that set out in Schedule 1 if the Manager and the Trustee agree that it is appropriate for the Manager to do so.

5.3 Different method of calculation must meet certain requirements

Any different method adopted by the Manager under clause ~~5.2(a)~~5.2 must:

- (a) comply with the KiwiSaver Act; and
- (b) be approved by the Trustee prior to adoption by the Manager, such approval not to be unreasonably withheld.

5.4 Payment of benefits

The circumstances in which benefits are payable by the Scheme are set out in rules 4 to 17 of the KiwiSaver Scheme Rules. The Manager may, in its discretion, defer payment of any benefit in accordance with the KiwiSaver Act.

6. Transfers

6.1 Transfers in and out

A person may transfer:

- (a) to the Scheme from another KiwiSaver Scheme or from any other scheme or fund, and from the Scheme to another KiwiSaver Scheme or to any other scheme or fund, in accordance with the KiwiSaver Act; and
- (b) to the Scheme from a Superannuation Scheme in accordance with any conditions determined from time to time by the Manager.

6.2 Exit or transfer fees

The Manager may charge a fee of such amount or such percentage of the amount withdrawn or transferred from the Scheme (as applicable), in each case subject to the provisions of the KiwiSaver Act, as it may determine from time to time in respect of a Portfolio, class of Members in a Portfolio or type or nature of transaction.

7. Arrangements with employers

7.1 Participation Agreement

The Manager, ~~the Trustee~~ and an employer may enter into an agreement in such form as the Manager determines is appropriate ~~(and the Trustee reasonably approves)~~ that determines conditions on which the employer's employees may be Members, including conditions relating to:

- (a) the contributions payable by the employer;
- (b) the vesting of those contributions;
- (c) the treatment of unvested contributions;
- (d) the Portfolio or Portfolios applicable to those Members; and
- (e) such other matters as the Manager and employer consider appropriate.

Any Participation Agreement may include provisions providing for existing Members who are employees of the employer to become subject to the terms of that agreement.

7.2 Trust Deed prevails

Any Participation Agreement must comply with the Trust Deed and the provisions of the Trust Deed will prevail.

7.3 KiwiSaver Act prevails

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

7.4 Existing Participation Agreements continue

Any Participation Agreement entered into in accordance with the Existing Deed continues unaffected by the amendment of the Existing Deed by this Trust Deed.

8. Management and administration of the Scheme

8.1 Trustee's responsibilities

The Trustee shall:

(a) supervise the Manager's performance of:

(i) the functions of the Manager as set out in clause 8.2(a) to (d); and

(ii) any other functions that the Manager performs in relation to the Scheme under the Trust Deed or an enactment.

~~(a) have responsibility for administering the trusts governing the Scheme in accordance with the Trust Deed and applicable statutes and regulations including the KiwiSaver Act;~~

~~(b) itself hold, or cause a nominee of the Trustee appointed in accordance with clause 8.2(n) to hold, all of the assets of each Portfolio, on trust for Members in accordance with the terms of the Trust Deed;~~

(b) provide to the Manager, as soon as possible following receipt, copies of all notices or documents received by the Trustee, or any of its nominees, in relation to any assets of a Portfolio; and

~~(c) be at all times lawfully entitled to act as the trustee of the Scheme., as concerns the Scheme, an independent trustee (as defined in the KiwiSaver Act), and have at least one director who is a New Zealand resident.~~

(c)

8.2 Manager's responsibilities

~~Subject to clause 8.4, the Trustee delegates to the Manager the following functions in relation to the Scheme:~~ The Manager shall be responsible for the following functions:

~~(a) the promotion of the Scheme to prospective Members and other relevant interested persons offering interests in the Scheme for subscription;~~

(b) issuing interests in the Scheme;

(c) managing Scheme Assets; and

(d) administering the Scheme.

Without limiting the generality of the foregoing, the Manager shall perform the following specific functions:

(e) the ~~admission~~, transfer and termination of membership of Members, and the prescribing, implementation and enforcement of rules under clause 10.6

(f) the establishment and maintenance of Member records, including a register of Members meeting the requirements of the Securities Act 1978 and the Securities Regulations 2009;

- (g) making arrangements for the receipt of contributions and other monies payable to the Scheme in accordance with clause 4.4, ~~such contributions and other monies to be placed in an account in the name of the Trustee or a custodian appointed by the Trustee in accordance with clause 8.2(n) (provided that the Manager and nominated employees of the Manager (as notified to the Trustee in writing) shall be authorised to operate all such accounts)~~, and for the refund of any contribution as required by the KiwiSaver Act, provided that any gain as a result of the investment of that contribution between the time of receipt and the time of refund may be retained as an asset of the Scheme;
- (h) liaising with Members;
- ~~(f) managing and making all decisions relating to the Assets of the Scheme including the Investment, reinvestment or realisation of any Authorised Investment and the exercise of any voting rights associated with any Authorised Investment;~~
- (i) keeping complete and accurate records of all Assets and Authorised Investments of the Scheme and each Portfolio;
- (j) ~~other than Participation Agreements, which are covered by clause 8.2(p)~~, determining the terms of all contracts to be entered into in respect of the Scheme ~~and entering into such contracts as agent of the Trustee (including entering into arrangements with an employer for that employer's employees to become Members of the Scheme under section 47 of the KiwiSaver Act)~~ provided that the Manager ~~has obtained the prior consent of the Trustee (such consent not to be unreasonably withheld) and~~ must ensure that at all times, to the extent possible having regard to the KiwiSaver Act, the Superannuation Schemes Act 1989, and the law relating to trusts and trustees, the liability of the Trustee in relation to any contract or agreement is limited to the assets of the Scheme or the relevant Portfolio (as applicable);
- (k) determining whether benefits are payable and making arrangements for the payment of benefits or (where applicable) refunds to or in respect of Members;
- (l) appointing and engaging solicitors and other consultants and advisers on such terms as the Manager determines;
- (m) making arrangements for compliance by the Scheme with the requirements of the KiwiSaver Act, the Securities Act 1978, the Financial Reporting Act 1993 and other applicable legislation, ~~provided that no prospectus or advertisement under the Securities Act 1978 may be registered or distributed unless it has been approved by the Trustee (such approval not to be withheld unless the Trustee reasonably determines that the prospectus or advertisement, if distributed, will breach the Securities Act 1978)~~;
- (n) taking all actions and making all determinations and calculations necessary or desirable pursuant to Schedule 1;
- (o) taking all actions and making all determinations, decisions or elections relevant to the taxation treatment or status of the Scheme;
- (p) ~~subject to consultation with the Trustee~~, appointing and engaging any auditor (other than the Auditor, who shall be appointed pursuant to clause 26), administrator, ~~custodian trustee~~, investment manager or other nominee on terms and conditions and with such powers, duties, discretions, indemnity and remuneration agreed by the Manager and the other person, and with notice of such appointment to be given to the Trustee;
- (q) giving and receiving notices and other information in accordance with the KiwiSaver Act;

- (r) ~~subject to the Trustee reasonably approving the form of the Participation Agreement in accordance with clause 7.1 and any amendment to a Participation Agreement (such approval not to be unreasonably withheld), entering into the Participation Agreements as agent for the Trustee and completing any filings required by law in respect of the same, within any timeframes required by law; and~~
- (s) ~~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 Trustee and the Manager.~~

~~In performing the above functions, the Manager will act in accordance with the terms of this Trust Deed and any services agreement between the parties.~~

8.3 Restrictions on Members

A Member must not interfere with or restrict any of the powers, rights or responsibilities of either the Trustee or the Manager under this Trust Deed.

8.4 Trustee may act

~~Subject to clause 8.6, nothing in clause 8.2 precludes the Trustee from taking one or more of the actions referred to in clause 8.5 to the extent that the Trustee reasonably believes that doing so is necessary:~~

- ~~(a) to prevent the Trustee from being in breach of its obligations under any rule of law or to cause such a breach to cease; or~~
- ~~(b) to cause the Scheme to be managed and administered in a proper and efficient manner, provided that the Trustee may only exercise its powers hereunder if and to the extent that, in its reasonable opinion, the Manager has failed to manage or administer the Scheme in a proper or efficient manner.~~

8.5 Actions of the Trustee

~~The actions referred to in clause 8.4 are:~~

- ~~(a) the Trustee itself exercising any of the powers, authorities, functions and discretions referred to in clause 8.2 (and, in the event of any conflict between the exercise of such a power, authority, function or discretion by the Trustee and the Manager, the exercise by the Trustee shall prevail);~~
- ~~(b) the Trustee requiring the Manager to exercise any of the powers, authorities, functions and discretions referred to in clause 8.2 in accordance with the reasonable written instructions of the Trustee (the Manager shall comply with any such written instructions); or~~
- ~~(c) subject to clause 8.6, the Trustee, by notice in writing to the Manager, terminating the authority of the Manager to exercise any one or more of the powers, authorities, functions and discretions referred to in clause 8.2.~~

8.6 Restriction on exercise

~~The Trustee shall not give any notice under clause 8.5(c) unless:~~

- ~~(a) it follows a material breach of this Trust Deed or any relevant related agreement between the Trustee and the Manager by the Manager and a failure by the Manager to remedy that breach within ten days of receiving notice from the Trustee requiring it to do so (or such longer period as may be agreed by the Manager and the Trustee, the Trustee's agreement not to be unreasonably withheld); and~~

~~(b) the notice concerns a power, authority, function or discretion which is the subject of that breach; and~~

~~(c) it reasonably considers that it would not be sufficient, to achieve the purposes specified in clause 8.4, for the Trustee solely to take action under clause 8.5(a) or clause 8.5(b).~~

8.4 Trustee's duties

The Trustee, in exercising its powers and performing its duties as the trustee of the Scheme, must:

- (a) act in the best interests of the Members; and
- (b) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a trustee would exercise in acting as the trustee of a KiwiSaver Scheme other than a restricted scheme (as defined in the KiwiSaver Act).

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 in the best interests of the Members; and
- (ii) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a manager would exercise in managing the affairs of others, unless the Manager is exercising a power of investment, in which case clause 8.5(c) applies.

(b) The Manager must use the Manager's best endeavours and skill to ensure that the affairs of the Scheme are conducted in a proper and efficient manner.

(c) The Manager must, in exercising the powers in clause 8.2(c) 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.

~~The Manager must use all reasonable endeavours and skill to ensure that it exercises the powers, authorities, functions and discretions in respect of which it is appointed as the Trustee's delegate under clause 8.2 or otherwise vested in the Manager under this Trust Deed in a proper and efficient manner, and that it complies with all relevant laws.~~

8.6 Delegation by Manager

All or any of the powers, authorities, functions and discretions exercisable by the Manager under this Trust Deed may be delegated by the Manager to its officers and employees or to any other person nominated by the Manager but the Manager remains liable for the acts and omissions of any such officer, employee or person whether or not the delegate is acting within the terms of its delegated authority.

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 KiwiSaver Schemes or Superannuation Schemes.

~~8.10 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 or Superannuation Scheme or similar scheme.~~

8.8 Compliance with Instrument of Appointment

Neither the Trustee nor the Manager shall take, or omit to take, any action which results in a breach by it or the other of the terms of any Instrument of Appointment.

8.9 Power of attorney for Manager

Each Member irrevocably and unconditionally appoints the Manager as the Member's attorney, in the Member's name and on the Member's behalf to execute, enter into and do all assurances, deeds, instruments and things which the Manager considers necessary or appropriate for the purposes of exercising any power of the Manager under this Trust Deed or any Offer Document or fulfilling any obligation of the Member under this Trust Deed or any Offer Document. No person dealing with the Manager shall be concerned as to the propriety or expediency of any act, deed, matter or thing which the Manager may do, perform or execute as attorney of a Member.

~~8.13 Resignation of Manager~~

~~The Manager may retire as manager of the Scheme at any time without assigning reason, upon not less than three months' notice to the Trustee (or immediately upon receipt of notice by the Trustee where the new manager is a Related Company of the Manager), provided that no such retirement shall take effect until a new manager of the Scheme has been appointed and executes a deed undertaking to the Trustee and Members to be bound by the Trust Deed. The power of appointing the new manager shall be vested in the retiring Manager, but no new manager shall be so appointed without the approval of the Trustee (such approval not to be unreasonably withheld). On the appointment of a new manager, the retired Manager shall be released and absolved from all obligations under this Trust Deed (except in respect of any prior breach) and the new manager may exercise and enjoy all rights and powers, and shall be subject to all duties and obligations, of the Manager under this Trust Deed. For the avoidance of doubt, the Manager shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date on which it ceases to hold office under this Trust Deed.~~

8.10 Cessation and suspension powers

To the extent permitted by the KiwiSaver Act and by law, if by reason of:

- (a) the suspension of trading on any stock exchange (whether generally or in respect of any specific investment); or
- (b) financial, political or economic conditions applying in respect of any financial market; or
- (c) the nature of any investment; or
- (d) the number of persons seeking admission to the Scheme, or a Portfolio, or the aggregate size of contributions being made to the Scheme, or a Portfolio at any time, or the aggregate size of any benefits to be paid to Members from the Scheme or Portfolio at any time, or the number of Members wishing to withdraw, or transfer to or from, the Scheme or a Portfolio; or
- (e) the occurrence or existence of any other circumstance or event,

the Manager in good faith forms the opinion that it is not practicable, or would be prejudicial to the interests of any Members:

- (f) for persons to be admitted to the Scheme or a Portfolio; or
- (g) for contributions (other than contributions made through the Inland Revenue) to be accepted by the Scheme or a Portfolio; or
- (h) for benefits to be paid from the Scheme or a Portfolio; or
- (i) for persons to withdraw, or transfer to or from, the Scheme or a Portfolio; or
- (j) to calculate the Net Asset Value of a Portfolio in accordance with clause 3.1 of Schedule 1,

then the Manager may (on notice to the Trustee), notwithstanding any provision of this Trust Deed, suspend any or all of the matters set out in paragraphs (f) to (j) for 10 days, and to the extent the Manager requires the suspension to continue after such 10 day period, it must consult with, and reach agreement with, the Trustee to extend the suspension for a further period or periods that they agree to be appropriate.

Notwithstanding that the Manager may have suspended any of the matters set out in paragraphs (f) to (j) above, the Manager may give effect to matters set out in (h) or (i) for a Member (the “Exempted Member”) if, in the Manager’s reasonable opinion, to suspend the operation of those matters would cause, or be likely to cause, financial hardship to the Exempted Member.

9. Information and reports to Trustee

The Manager shall supply the Trustee with the information and reports set out in Schedule 2 to this Trust Deed unless otherwise agreed between the Trustee and the Manager.

10. Establishment of Portfolios

10.1 Separate Portfolios

The ~~Trustee shall~~ Manager may establish on such terms and conditions as it thinks fit separate Portfolios within the Scheme (which Portfolios shall be listed in Schedule 3 hereto, as the same may be updated from time to time) designed to enable Members to have their savings invested by reference to particular asset classes or mixes of asset classes ~~as and when directed to do so by the Manager on terms and conditions directed by the Manager unless the Trustee reasonably considers that doing so would cause the Trustee to be in breach of its obligations under any rule of law.~~ The terms and conditions directed set by the Manager must include a written investment policy for the Portfolio, which policy may be altered by the Manager from time to time.

10.2 Exclusive assets and liabilities

Although the Scheme is intended to be treated as one registered KiwiSaver Scheme for the purposes of the KiwiSaver Act and the statutory and other obligations applicable to it construed accordingly, the assets of each Portfolio are the exclusive property of that Portfolio, and all liabilities incurred in relation to a Portfolio shall be the exclusive liabilities of that Portfolio, and the Trustee 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 of a Portfolio shall not be available to meet the liabilities of any other Portfolio;
- (b) all investments made with the moneys of a Portfolio shall be held by or on behalf of the Trustee as the exclusive property of that Portfolio and for the exclusive benefit of the Members who have an interest in that Portfolio pursuant to the Trust Deed;
- (c) the ~~Trustee and the~~ Manager shall keep separate records and accounts in respect of each Portfolio, and shall not permit the property, assets or liabilities of any Portfolio to become intermingled with those of any other Portfolio provided that nothing in this subclause shall prevent the assets of any Portfolio being lent to, deposited with or invested in another Portfolio; and
- (d) without limiting the generality of this clause 10.2, the provisions of this Trust Deed relating to the indemnities in favour of the Trustee and the Manager, the fees payable to the Trustee and the Manager and the reimbursement of the Trustee and the Manager shall be construed in a manner consistent with this clause where separate Portfolios have been established, that is to say:
 - (i) any amounts payable to the Trustee or the Manager shall be payable from the Portfolio or Portfolios to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Portfolios); and
 - (ii) where the amount payable to the Trustee or the Manager relates to more than one Portfolio, that amount shall be apportioned between those Portfolios on such fair and equitable basis as may be determined by the Manager.

10.3 Termination, closure, amalgamation or alteration of Portfolios

The ~~Trustee shall~~ Manager may terminate, close or alter the nature of any Portfolio, or amalgamate any two or more Portfolios, ~~as and when directed to do so by the Manager on such~~ terms and conditions as it thinks fit~~directed by the Manager, unless the Trustee reasonably considers that doing so would cause the Trustee to be in breach of its obligations under any rule of law.~~ Without limiting the foregoing sentence, such terms and conditions may provide that any Member not consenting within a reasonable period of time to such termination, closure, alteration or amalgamation, or to any consequential transfer to another Portfolio or Portfolios, shall be regarded as no longer eligible to be a Member of the Scheme and shall be required to transfer to another KiwiSaver Scheme in accordance with section 50(4) of the KiwiSaver Act.

10.4 Member entitled to choose Portfolio(s)

Subject to clause 10.6 and (where applicable) the terms of any Participation Agreement, a Member shall be entitled to choose the Portfolio or Portfolios in which the Member's savings will be invested, and shall be entitled to switch all or some of the Member's savings from one Portfolio to another if, and on such terms, determined by the Manager from time to time.

10.5 Switching fee

The Manager may charge a fee of such amount or such percentage of the amount switched between Portfolios, in each case that complies with the provisions of the KiwiSaver Act, as it may determine from time to time in respect of a Portfolio, class of Members investing in a Portfolio or type and nature of transaction.

10.6 Restrictions on choosing Portfolio(s)

Members shall comply with all rules prescribed by the Manager from time to time regarding:

- (a) the maximum number of Portfolios that may be chosen in respect of any Member;
- (b) the minimum or maximum amounts that may or must be invested in any Portfolio in respect of any Member, and the switching of savings from one Portfolio to another, including if necessary to maintain a minimum amount specified by the Manager in a Portfolio or ensure a maximum amount specified by the Manager in a Portfolio is not exceeded, provided that any rules prescribed by the Manager regarding such minimum or maximum amounts must be consistent with the requirements of the KiwiSaver Act and, where applicable, the PIE Rules;
- (c) any other obligation or power to switch all or some of the Member's savings from a Portfolio to another (whether on the termination of a Portfolio or otherwise and whether to ensure the Scheme's compliance with the PIE Rules or otherwise);
- (d) changing their choice of Portfolios (either in relation to amounts already invested or amounts to be invested in the future);
- (e) the manner in which choices should be communicated;
- (f) the Portfolio in which any contribution (including any Crown Contribution) or Fee Subsidy (if applicable) must be invested;
- (g) the Portfolio from which any or all fees of that Member shall be paid, or to which all Permitted Withdrawals shall be paid prior to release to a Member; and
- (h) any other matters relating to the choice of Portfolios by Members.

10.7 ~~Contrary intention~~ Effect of Portfolio choice

~~The establishment of Portfolios by the Trustee when directed by the Manager and the choice of a Portfolio 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 and the investment obligations of the Trustee under the Trust Deed constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956. However, any direction by a Member in terms of this clause will not exempt the Manager or Trustee from their responsibilities regarding the prudent investment of the Member's savings set out in sections 13B and 13C of the Trustee Act 1956.~~

11. ~~Manager's and Trustee's~~ powers to invest

11.1 Investment directions by the Manager

Subject to ~~clauses 8.4, 8.5 and~~ this clause 11, and, to the extent applicable, provided it does not threaten the eligibility for the Scheme to qualify as a PIE, the Manager ~~will manage the investments of the Scheme and each Portfolio and as necessary may, in order to perform its function under clause~~ 8.2(c), direct the Trustee to:

- (a) purchase, acquire, sell, transfer or dispose of Authorised Investments;
- (b) enter into any commitments or liabilities in respect of Authorised Investments;

- (c) execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing; and
- (d) take any other action which may be required in respect of Authorised Investments,

and the Trustee will from time to time, to the extent of the respective funds in its hands or control, do all things necessary on its part to act as directed in writing by the Manager.

11.2 **Directions of the Manager ~~Trustee's limited duty to refuse to act~~**

~~(a) Subject always to clauses 8.4 and 8.5, the Trustee shall act on any direction by the Manager to invest the assets attributable to the Scheme or a Portfolio in Authorised Investments in accordance with the investment policy for the Scheme or the Portfolio.~~

~~(a) The Trustee must refuse to act on a direction of the Manager under clause 11.1 relating to the acquisition or disposal of Assets if the Trustee considers that the proposed acquisition or disposal:~~

~~(a) would be in breach of the Trust Deed or an enactment; or~~

~~(b) would be manifestly not in the best interests of Members.~~

~~shall have the right not to act on any direction of the Manager under this clause 11 if in the reasonable opinion of the Trustee, conveyed in writing to the Manager within 5 Business Days of the determination being made by the Trustee, the proposed investment, acquisition or disposition is not in accordance with the investment policy of the Scheme or the Portfolio, as the case may be or is contrary to the provisions of this Trust Deed.~~ The Trustee shall not be liable to Members or the Manager for acting or refusing to act on any such direction by the Manager in respect of the investment, acquisition or disposal of any Authorised Investment in accordance with the provisions of this Trust Deed. If the Trustee refuses to act on a direction of the Manager, the Trustee must notify the Manager and the Financial Markets Authority in writing of the Trustee's reasons for refusing to do so.

11.3 **Compliance with investment policy**

The Manager will comply with the investment policy of the Scheme and each Portfolio, as applicable.

11.4 **No liability for investment performance**

Subject to clause 13.4 neither the Manager nor the Trustee shall be responsible nor liable to any Member for the investment performance of the Scheme or a Portfolio arising as a result of the investment policy.

11.5 **Advisers**

In relation to the purchase, sale and other dealings with any Authorised Investments, ~~by the Trustee,~~ the Manager may determine the time and mode and the consultants, agents, brokers and professional advisors (if any) for the purchase, sale and other dealing.

11.6 **Dealing with related parties**

Subject to any applicable laws, the Manager may sell, purchase or otherwise dispose of or acquire any asset or Authorised Investment to or from any group investment fund, unit trust, trust fund or scheme for which the Manager or any such Related Company is manager, trustee or responsible entity, without prior notice to the Trustee, and neither the Manager nor any such Related Company is liable to account

to the Trustee or any Member for any profit arising from such transaction, provided the relevant transaction is on arm's length terms (or terms which are better than arm's length).

Without limiting the foregoing, subject to any applicable laws and to the Manager providing 14 days' prior written notice to the Trustee (or where 14 days' prior notice is not reasonably practicable, such notice as is reasonably practicable), the Manager may:

- (a) cause any part of the Scheme or any of the Portfolios to be invested or lodged with the Manager or any Related Company of the Manager;
- (b) sell, purchase or otherwise dispose of or acquire, any asset or Authorised Investment to or from or in the Manager or any Related Company of the Manager; and
- (c) enter into any contract, agreement or other arrangement with any Related Company of the Manager to provide management or consultancy services or any other services that the Manager considers desirable,

and neither the Manager nor any such Related Company is liable to account to the Trustee or any Member for any profit arising from any such transaction, provided the relevant transaction is on arm's length terms (or terms which are better than arm's length).

11.7 Investments in Trustee's name

The Manager shall cause Authorised Investments to be vested in the Trustee or its nominee appointed in accordance with clause ~~8.2(n)~~ 2.3 and to be registered in the name of the Trustee or such nominee 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 Trustee.

11.8 Bank accounts

A separate bank account or accounts in the name of the Trustee or its nominee appointed in accordance with clause ~~8.2(n)~~ 2.3 must be opened and maintained for the Scheme and/or each Portfolio. All moneys belonging to the Scheme and/or relevant Portfolios and coming into the hands of the Manager or the Trustee must be paid to the credit of such bank account. The Trustee shall determine the persons authorised to operate such bank accounts, provided that any persons nominated by the Manager shall be authorised by the Trustee unless the Trustee reasonably determines that such authorisation would breach, or cause the Trustee to breach its obligations under any rule of law or under the Trust Deed.

~~11.7 Notice of investments to Trustee~~

~~The Manager may direct the Trustee by notice in writing of any transaction required to be entered into by the Trustee in relation to borrowing, the giving of security or the purchase, acquisition, sale or disposition of, or dealing with, the Authorised Investments. The Trustee shall take all steps necessary to give effect to that direction provided however the Trustee may request any additional information which it may reasonably require regarding any transaction including the obtaining of such valuations or other expert advice as the Trustee deems necessary or desirable. The Manager must as soon as reasonably practicable provide, or procure the provision of, such additional information to the Trustee.~~

11.9 Trustee's right to limit liability

The Trustee may, before entering into any transaction, security or liability of the Scheme or a Portfolio require that its liability is restricted or limited to its satisfaction to the Assets for the time being of the Scheme or such Portfolio.

11.10 Trustee may enter into derivative financial instruments

For the avoidance of doubt, the Trustee may, at the direction of the Manager, 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 for the purpose of risk management.

12. Powers of the Trustee

12.1 General powers

In addition to any other powers granted under the Trust Deed or by law, the Trustee may (and in the case of clause 12.1(c) only, shall if so directed by the Manager), subject to any applicable laws:

- (a) subject to the written approval of the Manager to the delegation (such approval not to be unreasonably withheld), delegate any of its powers, authorities, functions and discretions (including power to sub-delegate such powers, authorities, functions and discretions) from time to time to any person (including the Manager and its Related Companies) on terms and conditions agreed by the Trustee and the other person, ~~provided that such powers, authorities, functions or discretions have not already been delegated to the Manager under the Trust Deed,~~ provided that this clause does not authorise the Trustee to delegate its responsibilities under clause 8.1(a), which is a requirement of section 116D(3) of the KiwiSaver Act;
- (b) subject to the written approval of the Manager to the appointment or removal (such approval not to be unreasonably withheld), appoint and remove any person (including the Manager and its Related Companies) as advisory trustee or agent on terms and conditions and with such powers, duties, discretions, indemnity and remuneration agreed by the Trustee and the other person and approved in writing by the Manager (such approval not to be unreasonably withheld);
- (c) 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 charge over all or any of the assets of the Scheme, provided that nothing in this sub-clause (c) shall require the Trustee to take any action which it reasonably believes would cause it to breach its obligations under any rule of law or under the Trust Deed; and
- (d) waive any breach, or anticipated breach, of this Trust Deed by the Manager on such terms as it considers appropriate; ~~and~~
- ~~(e) do anything the Trustee considers necessary or expedient for the administration of the Scheme, provided that the Trustee shall not take any action which is a responsibility of the Manager under this Trust Deed (including a delegated responsibility) other than pursuant to clauses 8.4 and 8.5.~~

12.2 **Exercise of Trustee powers**

Subject to the other provisions of the Trust Deed and to a court of law deciding otherwise:

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

12.3 **Payment for services**

Subject to the written approval of the Manager, the Trustee (and any director, officer or agent of the Trustee) being a person engaged in any profession or business, may charge and be paid all usual charges for business done by that person (or that person's firm or company) in connection with the Scheme.

13. **Indemnities**

13.1 **No personal liability of Trustee and Manager**

Subject to clause 13.4, the Trustee 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, neither the Trustee nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation of the Scheme, but the assets of the Scheme only are available for that purpose.

13.2 **Indemnification of Trustee and Manager**

Subject to clause 13.4 if, contrary to the provisions of clause 13.1, either the Trustee or the Manager is held personally liable to any other person in respect of any debt, liability (including any taxation liability in respect of the Scheme) or obligation incurred by or on behalf of the Scheme or any action taken or omitted in connection with the Scheme then the Trustee 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 Trustee and Manager**

Subject to clause 13.4, the Trustee and the Manager are each entitled to be reimbursed out of the Scheme for all expenses, costs or liabilities (including any taxation liability in respect of the Scheme) incurred by them respectively in or about acting as Trustee or Manager (as applicable) under this Trust Deed including, without limitation, any expense, cost or liability which may be incurred by the Trustee 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 Trustee or Manager from, or indemnifying the Trustee or Manager against, any liability for fraud, gross negligence or wilful default or where it fails to meet the standard of care required of it by clause 8.4 (in the case of the Trustee) or 8.5 (in the case of the

~~Manager) show the degree of care and diligence required of it having regard to the provisions of, and the powers, authorities and discretions conferred by, this Trust Deed.~~

13.5 **Reliance on Manager by Trustee and vice versa**

Subject to the provisions of the Trustee Act 1956 and the KiwiSaver Act, neither of the Trustee 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 Trustee, for the avoidance of doubt and not by way of limitation, any decision of the Manager to invest any assets of the Scheme or any Portfolio 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 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 Trustee 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 Trustee or the Manager or instructed by the Trustee 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 Trustee or the Manager and believed by the Trustee or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Trustee 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, or the Trust Deed, shall prohibit or impede the Trustee 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 shall be given by the Manager to the Trustee, 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 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 Trustee and the approval of or supervision by the Trustee wherever required.

13.9 **Trustee's discretion and authority**

Except insofar as is otherwise expressly provided in this Trust Deed or required by law, the Trustee 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 **Trustee's limited liability to Members**

Notwithstanding anything contained in this Trust Deed, save and except in the case of fraud, gross negligence or wilful default, or unless the Trustee has failed to meet the standard of care required of it by clause 8.4~~show the degree of care and diligence required of a trustee having regard to the powers, authorities and discretions conferred on the Trustee by this Trust Deed and by the Trustee Act 1956~~, in no event is the Trustee bound to make any payment to a Member except out of the Portfolio or Portfolios in which that Member's Member's Investment Account and Employer's Reserve Account are invested or be liable to a Member to any greater extent than the Assets of the Portfolio or Portfolios in which that Member's Member's Investment Account and Employer's Reserve Account are invested, vested in or received by the Trustee in accordance with this Trust Deed.

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

Notwithstanding anything contained in this Trust Deed, save and 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~~show the degree of care and diligence required of it having regard to the powers, authorities and discretions conferred on the Manager by the Trust Deed~~, in no event is the Manager bound to make any payment to a Member except out of the Portfolio or Portfolios in which that Member's Member's Investment Account and Employer's Reserve Account are invested or be liable to a Member to any greater extent than, the Assets of the Portfolio or Portfolios in which that Member's Member's Investment Account and Employer's Reserve Account are invested, vested or received by the Trustee in accordance with this Trust Deed.

13.12 **Reliance upon apparently genuine documents**

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

14. **Remuneration of Trustee**

14.1 **Fees**

The Trustee is entitled to be paid out of the Scheme (whether from income or capital or both), or by any Member or Members, and to retain, the fees approved by the Manager from time to time. The fees shall be calculated on such basis as the Trustee may agree with the Manager and shall be paid monthly in arrears on the last Business Day of each month, or on such other time or times as the Trustee may agree with the Manager.

14.2 **Alteration of fees**

If the Manager does not, at any time, approve the Trustee's fees, or any proposed alteration to those fees, the matter shall be referred to the arbitration of a single arbitrator if one can be agreed on, otherwise to two arbitrators and their umpire, such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996. Any fee agreed or fixed by arbitration under this clause shall not exceed the quantum of fees charged by other trustees operating in the New Zealand market for the provision of similar services as are provided by the Trustee under this Trust Deed.

14.3 **Goods and services tax**

The Trustee is entitled to receive, in addition to the fees referred to in this clause 14, any GST payable in respect of such fee.

14.4 **Fees subject to KiwiSaver Act**

This clause 14 is subject to the KiwiSaver Act and any Instrument of Appointment in force from time to time.

15. **Remuneration of Manager**

15.1 **Management and administration fees**

The Manager is entitled to be paid out of the Scheme (whether from income or capital or both), or by any Member or Members, and to retain, the fees it notifies to the Trustee (which fees shall also be specified in the Offer Documents for the Scheme) from time to time. The fees shall be calculated on such basis as the Manager may determine and shall be paid monthly in arrears on the last Business Day of each month, or on such other time or times as the Manager determines.

15.2 **Waiver of fees**

The Manager may, in respect of the Scheme and either generally or in respect of any particular Member or Members, waive part or all of any management or administration fee.

15.3 **Goods and services tax**

The Manager is entitled to receive, in addition to the fees referred to in this clause 15, any GST payable in respect of such fees.

15.4 **Member's Accounts**

Without limiting clauses 14.1 and 15.1, the Manager may debit any fees or other amounts payable by a Member to the Manager, the Trustee or the Scheme from any Employer's Reserve Account or Member's Investment Account.

15.5 **Fees subject to KiwiSaver Act**

This clause 15 is subject to the KiwiSaver Act and any Instrument of Appointment in force from time to time.

16. **Reimbursement of expenses**

16.1 **Expenses of the Scheme**

In respect of the Scheme, subject to the KiwiSaver Act and any Instrument of Appointment in force from time to time, the Manager and the Trustee are entitled to be reimbursed out of the Scheme (whether from income or capital or both) for and in respect of any and all expenses incurred in relation to the proper performance of

their duties hereunder. This includes, but shall not be limited to, expenses connected with:

- (a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation of the Scheme, ~~(including~~ the negotiation and execution of this Trust Deed and any other transaction document in relation thereto), the preparation and registration of any Offer Document, the acquisition, registration, custody, disposal of or other dealing with Assets of the Scheme, including bank charges and stamp duty, and the expenses of any agents or nominee of the Trustee 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 Trustee;
- (b) all costs, charges and expenses (including legal, insurance, custody, administration and valuation fees) incurred in connection with the investigation and negotiation for the acquisition for the Scheme of any Authorised Investment, whether or not it is in fact acquired;
- (c) the fees and expenses of the Auditor relating to the audit of the Scheme, of the register of Members and any matters incidental thereto;
- (d) all Taxes, duties and imposts charged to or payable by the Trustee or Manager (whether by any taxing authority or any other person) in connection with the Scheme or the relevant Assets 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, monthly and other reports, communications 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 service provider in connection with the Scheme, including any administrative or management counterparty to any derivative transaction, guarantor, ~~custodian nominee of the Trustee appointed under clause 2.3,~~ and information technology or other system provider;
- (h) the fees and expenses of any solicitor, barrister, valuer, accountant or other person from time to time engaged by the Manager or by the Trustee in the discharge of their respective duties under this Trust Deed, including (without limitation) under clauses ~~8.2(n)~~8.2(p) and 11.6(c);
- (i) all costs of preparing, printing and distributing certificates, accounts, cheques, any Offer Document and any Member communications;
- (j) expenses in connection with the keeping of the register;
- (k) convening and holding meetings of Members or the implementation of any resolutions of Members;
- (l) marketing and promotion of the Scheme, including fees (if any) paid to investment advisers;
- (m) preparation, audit and lodgement of taxation returns and accounts for the Scheme;
- (n) termination of the Scheme, and the retirement or removal of the Trustee or the Manager and the appointment of a replacement;

- (o) any court proceedings, arbitration or other dispute concerning the Scheme including proceedings against the Trustee or the Manager in their capacity as such;
- (p) preparing and dealing with applications for membership, payment of benefits out of the Scheme, requests for redemption from or transfer out of the Scheme, and determining the issue price for Units;
- (q) establishing and maintaining the accounting and investment recording systems for the Scheme;
- (r) any application for relief or exemption from any provisions of the KiwiSaver Act or the Securities Act 1978 or any other relevant legislation; and
- (s) any other expenses properly and reasonably incurred by the Trustee or the Manager in connection with carrying out their respective duties under this Trust Deed and any other transaction document in relation to the Scheme.

Each reference in this clause to the Scheme shall include a reference to any Portfolio established or proposed under the Scheme.

17. Amendments

Subject to the KiwiSaver Act, this Trust Deed and any agreement of the nature referred to in clause 7 may be amended by deed executed by the Manager and the Trustee.

18. Appointment and removal of Trustee

18.1 Appointment

~~A corporate body shall be the sole trustee of the Scheme and, in respect of any period during which the Scheme is a default KiwiSaver Scheme for the purposes of the KiwiSaver Act, that corporate body shall be a trustee corporation as defined in that Act. The Scheme shall have a single trustee, who:~~

- (a) must not be an associated person (within the meaning of subpart YB of the Tax Act) of the Manager; and
- (b) must otherwise be a person entitled by law to act as the trustee of the Scheme.

Perpetual Trust Limited ~~shall~~ is be the first trustee of the Scheme.

18.2 Removal

Subject to clause 18.4, the Manager may with the approval of the High Court remove the Trustee from office:

- (a) with immediate effect by giving the Trustee written notice of such removal if the Manager reasonably believes that the Scheme will be adversely affected if the Trustee continues to hold office, such notice to specify the grounds on which the Manager has formed this belief; or
- (b) otherwise upon giving the Trustee not less than three months' written notice of such removal in other circumstances.

18.3 Retirement

Subject to clause 18.4, the Trustee may retire at any time upon giving not less than three months' (or such longer period as the Trustee and the Manager reasonably agree is required) notice in writing to the Manager of its intention to do so, if:-

(a) all functions and duties of the position have been performed; or

(b) the High Court consents.

18.4 **Restrictions on removal/retirement**

No removal or retirement under clause 18.2 or clause 18.3 will take effect until a new trustee that is qualified for appointment under clause 18.1 has been appointed pursuant to clause 18.5 and has executed the deed referred to in clause 18.6 and all of the Assets of the Scheme have been transferred to the new trustee or the new trustee's nominee appointed in accordance with clause 8.2(p).

18.5 **New appointment**

Subject to all applicable laws, ~~T~~the power of appointing a new trustee of the Scheme (in place of a trustee which has been removed from office or retired) is vested in the Manager.

18.6 **Restrictions on new appointment**

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

18.7 **Release of trustee**

Subject to all applicable laws, ~~F~~from the date of execution by the new trustee of a deed in accordance with clause 18.6, the retiring trustee is absolved and released from all such covenants under this Trust Deed (except in respect of prior breach) and the new trustee must thereafter exercise all powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the trustee under this Trust Deed in all respects as if such trustee had been originally named as a party to this Trust Deed.

18.8 **Appointment not exclusive**

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

19. **Appointment and removal of Manager**

19.1 **Appointment**

The Scheme shall have a manager, who:

(a) must not be an associated person (within the meaning of subpart YB of the Tax Act) of the Trustee; and

(b) must otherwise be a person entitled by law to act as the manager of the Scheme.

New Zealand Funds Management Limited is the first manager of the Scheme.

19.2 **Removal**

Subject to all applicable laws, the Trustee may apply to the High Court for an order to remove the Manager from office if the Trustee is satisfied that:

(a) there is a significant risk that the interests of Members will be materially prejudiced; or

(b) the provisions of the Trust Deed are no longer adequate to give proper protection to Members.

The Trustee will give prior notice to the Manager of its intention to apply to the High Court for an order to remove the Manager, including notifying the Manager of its reasons for seeking that order.

19.3 Retirement

Subject to clause 19.3, and to all applicable laws, the Manager may retire at any time upon giving not less than three months' notice in writing to the Trustee of its intention to do so (or immediately upon receipt of notice by the Trustee where the new manager is a Related Company of the Manager).

19.4 Restrictions on retirement

No retirement under clause 19.3 will take effect until a new manager that is qualified for appointment under clause 19.1 has been appointed pursuant to clause 19.5 and has executed the deed referred to in clause 19.6.

19.5 New appointment

Subject to all applicable laws, the power of appointing a new manager of the Scheme shall be vested in the retiring manager, but no new manager shall be so appointed without the approval of the Trustee (such approval not to be unreasonably withheld).

19.6 Restrictions on new appointment

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

19.7 Release of manager

Subject to all applicable laws, from the date of execution by the new manager of a deed in accordance with clause 19.6, the retiring manager is absolved and released from all such covenants under this Trust Deed (except in respect of prior breach) and the new manager must thereafter exercise all powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the trustee under this Trust Deed in all respects as if such manager had been originally named as a party to this Trust Deed. For the avoidance of doubt, the Manager shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date on which it ceases to hold office under this Trust Deed.

19.8 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.

20. Winding-up of the Scheme

20.1 By Manager's resolution

The Manager may, by resolution in writing, wind-up the Scheme. The Manager shall, as soon as practicable after passing such a resolution, provide a copy of that resolution to the Trustee.

20.2 By Trustee

If the Trustee gives a valid notice to the Manager under clause 18.3 and within 9 months after the date of the notice no new trustee has been appointed and the Trustee has not been released under clause 18.7, the Trustee may give notice to the Manager of its intention to pass a resolution to wind-up the Scheme.

The Manager may, within five Business Days of the Trustee giving notice of its intention to pass a resolution to wind-up the Scheme, deliver to the Trustee a certificate in writing (for the purposes of this clause only, a “**Manager’s Certificate**”) certifying that the Manager has in good faith commenced reasonable steps ~~to-for the~~ appointment of a new trustee, and outlining the steps that have been taken.

If a Manager’s Certificate is provided, and the Trustee is reasonably satisfied that the Manager has commenced reasonable steps ~~to-for the~~ appointment of a new trustee, the Trustee shall agree to defer exercising its power to wind-up the Scheme for such period as may be agreed by the Trustee and the Manager, the Trustee’s agreement not to be unreasonably withheld.

If:

- (a) the Manager does not deliver a Manager’s Certificate to the Trustee within five Business Days of the Trustee giving notice of its intention to pass a resolution to wind-up the Scheme; or
- (b) the Trustee has received a Manager’s Certificate and is not reasonably satisfied that the Manager has commenced reasonable steps ~~to-for the~~ appointment of a new trustee; or
- (c) the deferral period agreed between the Trustee and the Manager has expired and no new trustee has been appointed and the Trustee has not been released under clause 18.7,

the Trustee may, by resolution in writing, wind-up the Scheme. The Trustee shall, as soon as practicable after passing such a resolution, provide a copy of that resolution to the Manager.

20.3 Wind-up procedure

The provisions of the KiwiSaver Act relating to the winding-up of KiwiSaver Schemes (being sections 173 to 176) shall apply with effect from the date of a resolution passed under clause 20.1 or 20.2.

In accordance with clause 8.2, in winding up the scheme:

- (a) the Manager may postpone the sale, calling in and conversion of any part of any Portfolio of the Scheme, for the length of time it reasonably considers desirable in the interests of Members, and it shall not be responsible nor liable for any loss attributable to such postponement; ~~and-~~
- (b) the Manager may make any provision it considers necessary to provide for any outgoing or Liabilities (actual or contingent) of the Scheme, any PIE tax liabilities attributable to Members or any Assets of the Scheme.

21. Members bound by this Trust Deed

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

22. Limitation of liability of Members

22.1 No personal obligation to indemnify

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

22.2 Limited recourse to assets of the Scheme

Except as expressly provided by this Trust Deed, the rights (if any) of the Trustee or 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 No liability to contribute to any shortfall

On a winding-up of the Scheme, no Member has any liability to contribute to any shortfall in the Scheme.

23. Notices to Members

23.1 Notices

A notice may be given under this Trust Deed to any Member personally by:

- (a) leaving it at the Member's last known address recorded in the register of the Scheme referred to in clause 3.4;
- (b) sending it addressed to the Member at the Member's last known address recorded in the register, by ordinary prepaid post, or, if that address is outside New Zealand, by airmail or prepaid post;
- (c) by advertisement ~~with the prior written approval of the Trustee~~; or
- (d) by electronic communication sent to the last known electronic address notified by the Member to the Manager.

A Member must notify the Manager of any change of the Member's address and/or electronic address and the relevant register shall be altered accordingly. Any notice given to Members by the Manager must be copied to the Trustee 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 Trustee 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 48 hours 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. Any notice sent by electronic communication will be deemed to have been received on the date and time at which it leaves the sender's information system.

23.3 Signature of notice

The signature to any notice to be given by the Manager or the Trustee may be written or printed.

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 to or left at the last known address recorded in the register 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.

23.6 **Notices under KiwiSaver Act**

The provisions of this clause 23 are subject to the provisions of the KiwiSaver Act in relation to the giving of notices required under that Act.

24. **Notices between Manager and Trustee**

Any certificate, notice, communication or information required by this Trust Deed to be given by the Manager to the Trustee or by the Trustee to the Manager must be given in writing or by facsimile communication or electronic communication 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.

25. **Withholding and other taxes**

25.1 **Interpretation**

In this clause:

"Relevant Tax Person" means a Member and that Member's personal representatives and successors.

"Tax" includes any tax, levy, charge, deduction, withholding or duty of any nature (including GST, stamp or transaction duties) imposed at any time (and whether or not in New Zealand):

- (a) payable now or at any time in the future; or
- (b) required to be remitted to, or imposed, levied, collected, withheld or assessed by, any governmental agency,

and includes any interest, expense, fine, penalty or any other charge in relation to such amounts.

"Taxation Amount" means, in relation to a Relevant Tax Person:

- (a) any Tax payable by or on account of that person or in respect of that person's Units or on income allocated to that person under the PIE Rules (whether the payment of such Tax is required by law, or at the election of the Manager or the Trustee), to the extent that such Tax has not already been the subject of an adjustment in accordance with clause 25.6; and

- (b) any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Trustee in respect of a Relevant Tax Person, for or on account of Tax.

25.2 **Deduction or withholding**

The Trustee or Manager may deduct or withhold, or require to be deducted or withheld, from any amount otherwise payable to or to be applied in respect of a Relevant Tax Person an amount less than or equal to the Taxation Amount of that Relevant Tax Person where such amount is payable or anticipated to become payable by the Trustee or the Manager or by the Scheme. On payment of the net amount to the relevant Member and the amount deducted or withheld to the tax authorities, the full amount payable to the relevant Member shall be deemed to have been duly paid and satisfied.

25.3 **Application of amounts deducted**

Amounts deducted under clause 25.2 shall be applied in:

- (a) payment of the Taxation Amount to the person or authority entitled thereto; or
- (b) reimbursement of the Trustee or the Manager for any corresponding amount paid from their own funds; and
- (c) any balance shall be refunded to the Relevant Tax Person.

25.4 **Indemnification**

Each Relevant Tax Person shall indemnify the Trustee and the Manager in respect of any Taxation Amount paid or payable by the Manager or the Trustee in respect of a Relevant Tax Person or a Relevant Tax Person's Units or interest in the Scheme or the amount allocated to that person under the PIE Rules.

25.5 **Interest**

Any Taxation Amounts paid on behalf of or otherwise in relation to a Relevant Tax Person may, at the discretion of the Manager, carry interest calculated on a daily basis at a rate determined by the Manager and such interest shall be paid on demand by the Relevant Tax Person to the Trustee or the Manager as the case requires.

25.6 **Adjustment of Units**

Where the Scheme is a PIE, the Manager may, at any time, issue Units or redeem Units for no consideration to or from a Member:

- (a) to comply with the PIE Rules; or
- (b) where the Manager and the Member have agreed in writing, to reflect an income tax liability, right or benefit of one Portfolio in respect of that Member's current or prior interest in another Portfolio.

25.7 **Method of adjustment**

Where any adjustment is made under clause 25.6 pursuant to the PIE Rules, no Member shall have the choice of the method of adjustment.

25.8 **Compliance with tax legislation**

Subject to clause 25.9 below, the Trustee or the Manager (as the case may be) shall have the power to do anything the Manager considers necessary to comply with any requirement of the Tax Act and/or the TAA.

25.9 Compliance with PIE Rules

Where the Scheme is a PIE, the Manager shall have the power to:

- (a) subject to clause 17 in the case of an amendment to the Trust Deed, do anything the Manager considers necessary to manage and administer the Scheme as a PIE; and
- (b) take all steps necessary to ensure that the Scheme is eligible or continues to be eligible as a PIE or otherwise to comply with the requirements of the PIE Rules including switching some or all of a Member's Units from investment in one Portfolio to investment in another Portfolio as if the Manager had received a request to switch from the relevant Member;

If the Manager forms the view that a Member's holding puts the PIE tax status of the Scheme at risk, it ~~will~~ may notify the Commissioner of Inland Revenue that the Member's holdings are to be transferred to a default KiwiSaver scheme.

25.10 PIE requirements

Where the Scheme is a PIE, the Manager shall, within the time prescribed by and otherwise in accordance with the TAA:

- (a) provide all information and issue all notices required to be provided or issued by a PIE to Members and, where relevant, to former Members;
- (b) cause to be filed with the Inland Revenue all returns, statements, and other documents required to be filed by a PIE; and
- (c) request the prescribed investor rate and tax file number for each Member as required by law.

26. Auditor

26.1 Appointment and remuneration

A person or firm of chartered accountants selected by the Manager, ~~and~~ approved by the Trustee and ~~entitled by law to act as such as otherwise qualified under section 2C of the Securities Act 1978~~ must be appointed Auditor of the Scheme and of the register of Members. The Manager and the Trustee must agree upon the services to be performed by the Auditor and their scope. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

26.2 Removal/retirement

The Auditor may at any time and from time to time be removed by the Manager with notice to the Trustee. ~~The Manager must remove the Auditor if the Trustee, believing it to be in the best interests of the Scheme and/or members, instructs the Manager to do so. or if the Trustee believes it to be in the best interests of the Scheme and/or Members it may instruct the Manager to remove the Auditor.~~ The Auditor may retire upon giving the Manager 90 days' notice in writing.

26.3 New appointment

Any vacancy in the office of Auditor must be filled by the Manager and approved by the Trustee appointing a person or firm of chartered accountants ~~qualified under section 2C of the Securities Act 1978~~ entitled by law to act as such to be Auditor.

26.4 Restrictions on Auditor

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

27. Payments to Members

27.1 Method of payment

Subject to the KiwiSaver Act, any moneys payable by the Trustee 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 their respective agents or other authorised persons.

27.2 Delivery method

Subject to the KiwiSaver Act, the moneys may be given or sent through the post to the Member or their respective agents or other authorised persons or may be credited to any bank account nominated by the Member.

27.3 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 Trustee and to the Manager.

28. PIE Tax Bank Account

In this clause:

- (a) "**Tax Bank Account**" means the bank account in the Trustee's name established and managed by the Manager or its nominee on trust for the Trustee in accordance with this clause 28;
- (b) "**Tax Bank Account Balance**" means, at any time, the balance of the Tax Bank Account at that time after making allowance for any costs incurred in the operating of the Tax Bank Account.

The Manager or its nominee shall, where the Scheme is a PIE, establish the Tax Bank Account for the purpose of management of the Scheme as a PIE. The Tax Bank Account will be operated as follows:

- (c) any rebates, refunds or other amounts received from the Inland Revenue in respect of Members will be paid into the Tax Bank Account pending payment or allocation to or for the benefit of eligible Members (including by payment in respect of additional Units to be issued to those Members);
- (d) payments will be made by the Manager from the Tax Bank Account, in the manner it deems appropriate, for the following purposes only:
 - (i) to the Inland Revenue, in respect of the PIE tax liability of the Scheme; and
 - (ii) to the extent of any surplus Tax Bank Account Balance from time to time after making adequate provision for the purposes of paragraph (i) above, to the Members generally (including by payment in respect of additional Units to be issued to Members) on such basis as the Manager deems appropriate; and
- (e) notwithstanding clause 10.2, the Tax Bank Account Balance will not be segregated into individual entitlements and is expressly permitted to be co-mingled and no Members shall have any interest or rights in relation to the Tax Bank Account or any part of it except to the extent provided for in this clause 28. The Manager shall ensure that a record is kept of the individual entitlements of each Member.

29. Law applicable

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

Execution

Executed as a deed

**New Zealand Funds
Management Limited** by

Director

Director

Print Name

Print Name

Perpetual Trust Limited by

Authorised Signatory

Authorised Signatory

Print Name

Print Name

in the presence of:

Witness Signature

Print Name

Witness Occupation

Place of residence

Schedule 1: Calculation of amounts representing the "member's accumulation"

1. Establishment of Member's Accounts

- 1.1 The Manager ~~in its capacity as delegate under clause 8.2~~ must establish and maintain a Member's Investment Account for each Member, which may consist of one or more accounts, and that Member's Investment Account shall be denominated in Units.
- 1.2 A Member's Investment Account established under clause 1.1 of this Schedule 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, but excluding employer contributions which, pursuant to the terms of any Participation Agreement, have not vested in that Member);
 - (b) Units issued in respect of any amount transferred into the Scheme from another KiwiSaver Scheme or Superannuation Scheme in respect of the Member (excluding amounts that comprise unvested employer contributions);
 - (c) Units issued in respect of any Fee Subsidy (if applicable) in respect of the Member;
 - (d) Units issued in respect of any other amount received by the Scheme in respect of the Member and which the Manager considers should be credited to the Member's Investment Account, or credited to the Member's Investment Account in accordance with clause 1.3 of this Schedule;
 - (e) Units issued in respect of any amount relating to the Member that is transferred from a Portfolio to another; and
 - (f) Units issued for no consideration to comply with section HM 48 of the Tax Act;
- less:
- (g) Units cancelled in respect of any amount debited to the Member's Investment Account, including, without limitation, Units cancelled in respect of any fees that may be payable;
 - (h) Units cancelled in respect of any amount transferred out of the Scheme to another KiwiSaver Scheme in respect of the Member;
 - (i) Units cancelled in respect of any Permitted Withdrawal in respect of the Member;
 - (j) Units cancelled in respect of any amount relating to the Member that is transferred from one Portfolio to another; and
 - (k) Units cancelled for no consideration to comply with section HM 48 of the Tax Act.

- 1.3 If, in relation to any contribution made by an employer on behalf of a Member (including any amount transferred into the Scheme from another KiwiSaver Scheme or Superannuation Scheme), the terms of the Participation Agreement relating to that employer provide that all or part of the employer's contribution other than the contribution, if any, required by law shall not immediately vest in that Member, the following provisions shall apply:
- (a) The Manager shall establish and maintain an Employer's Reserve Account for the employer and that Member, which may consist of one or more accounts. That account shall be denominated in Units. The Employer's Reserve Account shall comprise:
- (i) Units issued in respect of the employer's contributions that have not vested in that Member as provided in the Participation Agreement;
 - (ii) Units issued in respect of amounts transferred into the Scheme from another KiwiSaver Scheme or Superannuation Scheme in respect of that Member that comprise unvested employer contributions;
 - (iii) Units issued in respect of any other amount received by the Scheme in respect of the Member and which the Manager considers should be credited to the Employer's Reserve Account;
 - (iv) Units issued in respect of any amount relating to the Employer's Reserve Account that is transferred from a Portfolio to another; and
 - (v) Units issued in respect of any amount credited to the Employer's Reserve Account for no consideration to comply with section HM 48 of the Tax Act,
- less:
- (vi) Units cancelled in respect of any amount debited to the Employer's Reserve Account for that Member, or in accordance with clause 1.3(b) of this Schedule;
 - (vii) Units cancelled in respect of any amount transferred out of the Employer's Reserve Account to another KiwiSaver Scheme in respect of that Member;
 - (viii) Units cancelled in respect of any amount relating to the Employer's Reserve Account that is transferred from a Portfolio to another; and
 - (ix) Units cancelled in respect of any amount debited to the Employer's Reserve Account for no consideration to comply with section HM 48 of the Tax Act.
- (b) In order to recognise any subsequent vesting of employer contributions credited to an Employer's Reserve Account, Units in an Employer's Reserve Account in respect of a Member shall, subject to and in accordance with the Participation Agreement, be cancelled in that Employer's Reserve Account and credited to the Member's Investment Account at the times provided by the Participation Agreement (including as is necessary to calculate the "member's accumulation" in accordance with clause 4 of this Schedule).
- (c) Unless otherwise specified in a Participation Agreement, an employer in respect of which an Employer's Reserve Account is established for a Member may, subject to the approval of the Manager (such approval not to be unreasonably withheld), give the Trustee a direction from time to time that the whole or any portion of the aggregate amounts remaining in any Employer's

Reserve Account for that Member (after all amounts which could otherwise be debited to that account or transferred out of that account have been effected) should be:

- (i) applied in payment of fees, charges, costs, expenses, premiums or Tax payable under the Trust Deed or the relevant Participation Agreement in respect of the relevant Member;
- (ii) credited to the relevant Member's accounts (in which case the Trustee may implement that crediting, as appropriate, by cancelling and issuing Units or by transferring Units);
- (iii) subject to the KiwiSaver Act, transferred to a KiwiSaver Scheme nominated by the employer; and
- (iv) subject to the KiwiSaver Act, reverted to the employer,

and the Trustee shall, subject to the KiwiSaver Act and any other legal requirement, comply with any such direction.

2. Unitisation

- 2.1 The Manager shall operate each Portfolio on a unitised basis in accordance with this clause 2.
- 2.2 The beneficial interest in each such Portfolio shall be divided into Units. Fractions of Units may, if the Manager so elects, be issued on such terms as the Manager considers appropriate.
- 2.3 All Units referable to a Portfolio shall be of one class and confer identical rights and interests, unless the Manager determines to issue any class or classes of Units having any special rights and interests, and so notifies the Trustee.
- 2.4 A Unit does not confer any interest in any particular part of the Portfolio to which it relates and no Member is entitled to require the transfer of any of the Assets to the Member.
- 2.5 A Unit of one Portfolio shall not confer any right or interest in the assets of any other Portfolio.
- 2.6 In the case of Units issued on establishment of each Portfolio, for so long as the Manager considers it appropriate, the initial Unit Price will be \$1 per Unit.
- 2.7 Thereafter the Unit Price for Units will be determined on each Valuation Day by dividing the Net Asset Value of the relevant Portfolio by the number of Units then on issue in respect of that Portfolio (rounded or truncated as the Manager considers appropriate), provided that, if the Manager considers it appropriate and subject to the KiwiSaver Act, the Manager may:
 - (a) in determining the Unit Price for the purposes of clause 2.8 of this Schedule, deem the Net Asset Value of the relevant Portfolio to be increased by an amount equal to the Manager's estimate of all costs and liabilities that would have been incurred if the Assets of the Portfolio had been acquired on the relevant Valuation Day (or any lesser amount); and
 - (b) in determining the Unit Price for the purposes of clause 2.9 of this Schedule, deem the Net Asset Value of the relevant Portfolio to be reduced by an amount equal to the Manager's estimate of all costs and liabilities that would have been incurred if the Assets of the Portfolio had been disposed of on the relevant Valuation Day (or any lesser amount).

2.8 The Manager will in respect of:

- (a) each contribution received by the Scheme from or in respect of a Member (including any Crown Contribution and employer contributions which, pursuant to the terms of any Participation Agreement, have not vested in that Member);
- (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 and which the Manager considers should give rise to the issue of Units;
- (e) any amount transferred from one Portfolio to another Portfolio; ~~and~~
- (f) any amount allocated to a Member pursuant to clause 1.2(f) of this Schedule; ~~and~~;
- (g) any amount allocated pursuant to clause 1.3(a)(v) of this Schedule,

issue Units in the relevant Portfolio or Portfolios based upon the amount received, allocated or transferred and the relevant Unit Price or Unit Prices on the next Valuation Day after the receipt, allocation or transfer (rounded as the Manager considers appropriate).

2.9 The Manager will in respect of:

- (a) amounts debited to Member's Investment Accounts;
- (b) amounts debited to Employer's Reserve Accounts;
- (c) amounts transferred out of the Scheme to another KiwiSaver Scheme;
- (d) permitted withdrawals;
- (e) any amount transferred from one Portfolio to another Portfolio; ~~and~~
- (f) any amount debited to Members' Investment Accounts pursuant to clause 1.2(k) of this Schedule; ~~and~~;
- (g) any amount debited to Employer's Reserve Accounts pursuant to clause 1.3(a)(ix) of this Schedule,

cancel the number of the Units determined by dividing the amount debited, transferred or withdrawn in respect of the relevant Portfolio or Portfolios 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 (rounded as the Manager considers appropriate).

3. Valuations

3.1 Subject to clause 8.10, the Manager ~~in its capacity as delegate under clause 8.2 will~~ shall calculate the Net Asset Value of each Portfolio at least once per week (or more or less frequently as the Manager may consider necessary or desirable) by deducting the Liabilities attributable to that Portfolio from the market value of its Assets.

- 3.2 The Manager will determine the market value of each Asset in the Portfolio on such basis as it considers to be fair and equitable 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). The Manager shall, in determining the Net Asset Value of each Portfolio, have regard to the requirements of generally accepted accounting practice (except to the extent that the Trustee and the Manager agree that the Manager need not have regard to that practice, provided no income shall be recognised, or accumulations shall be made to or from the amount of the income, for changes in the value of Units which result from treating Units as liabilities under that practice).
- 3.3 The Manager will determine the Liabilities attributable to a Portfolio on such basis as it considers to be fair and equitable having regard to the requirements of generally accepted accounting practice (except to the extent that the Trustee and Manager agree that the Manager need not have regard to that practice, including in relation to the exclusion of any amount which results from treating Units as liabilities under that practice) and in doing so may (subject to clause 10.2):
- (a) apportion the Liabilities of the Scheme generally amongst the Portfolios 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 The Trustee 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”**

Where the Trust Deed requires the Manager ~~in its capacity as delegate under clause 8.2~~ 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 Investment 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, and making any adjustments or deductions for Tax pursuant to clause 25.

Schedule 2: Information and reports to be supplied to the Trustee

1. Financial statements to be sent to the Trustee

At the end of each Financial Year, the Manager must prepare the relevant financial statements and arrange for them to be audited and sent to the Trustee not later than 5 months after the close of the Financial Year together with all documents and reports required by the Financial Reporting Act 1993 to be annexed to or to accompany such financial statements.

2. Information to Trustee

The Manager shall from time to time:

- (a) give or cause to be given to the Trustee copies of any financial statements, report, notice or circular issued to the Members at the time of such issue;
- (b) give to the Trustee such information as the Trustee requires with respect to all matters relating to the Scheme;
- (c) at the request of the Trustee by not less than 15 business days' notice in writing (which request shall only be made when the Trustee reasonably considers that special circumstances warrant such request and so certifies in writing to the Manager specifying such special circumstances), give to the Trustee:
 - (i) copies of the Scheme's financial statements, each 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 Trustee and the Manager agree, together with all documents and reports required by the Financial Reporting Act 1993 to be annexed to or to accompany such statements; and
 - (ii) a report by the Auditors setting out the information referred to in clause 3 of this Schedule 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 Trustee,

such financial statements and Auditors report to be provided within three months after the relevant accounting date, or within such longer period as the Trustee may in its discretion agree; and

- (d) at the request of the Trustee by notice in writing, give to the Trustee monthly bank statements for the Scheme.

3. Auditor's reports to Trustee

The Manager shall from time to time during the currency of the Scheme, give to the Trustee at the same time as the Manager gives the audited financial statements to the Trustee a separate report by the Auditor stating:

- (a) whether in the performance of their duties as auditors 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 Trustee by the Securities Act 1978 or by this Trust Deed or in any guidelines, policy statements or similar agreements entered into by the Manager and the Trustee in relation to this Trust Deed or any Offer Document

(copies of which have been provided to the Auditor) or by law and, if so, giving particulars thereof;

- (b) whether their audit has disclosed any matter (and, if so, particulars thereof) calling in their opinion for further investigation by the Trustee in the interests of the Members;
- (c) that they have perused the manager's certificates given pursuant to clause 4 of this Schedule since the last report by the Auditor and so far as matters which they have observed in the performance of their duties as auditors are concerned, they have no reason to believe that:
 - (i) the statements made in sub-clauses (k), (n), (o) and (p) of the certificates referred to in clause 4 of this Schedule are incorrect; and
 - (ii) the remaining statements made in such certificates are unreasonable;
- (d) whether or not from the normal audit tests they have conducted to issue an opinion on the financial statements as a whole, they are satisfied that all amounts due to the Members have been paid;
- (e) whether or not the method of valuation of the Assets and Liabilities of the Scheme has been in accordance with this Trust Deed; and
- (f) that for the relevant Financial Year, they have audited each register which has been maintained in accordance with the requirements of Section 51 of the Securities Act 1978.

4. Manager's report

By the end of the following month the Manager shall give to the Trustee a monthly certificate signed either by two directors or by one director of the Manager and an authorised signatory of the Board on behalf of the Manager setting out in detail as at the date to which the certificate relates (or in relation to the period from the date to which the last certificate relates up the date to which the present certificate relates) any matters which since the date of the last such certificate (or in the case of the first of such certificates since the date of this Trust Deed) have in the Manager's opinion occurred to adversely affect the interests of the Members and without prejudice to the generality thereof stating to the best of the Manager's knowledge and belief after having made all due enquiry whether or not in relation to the Scheme:

- (a) all amounts due and payable to the Members have been paid;
- (b) the Manager has duly maintained the register or has procured that the register has been duly maintained, in each case in accordance with this Trust Deed;
- (c) the Manager has duly observed and performed all covenants, conditions and agreements and provisions binding upon it under this Trust Deed and any guidelines, policy statements or other agreement between the Manager and the Trustee entered into in relation to this Trust Deed and any Offer Document;
- (d) there has been any deviation in the accounting method or method of valuation of Assets or Liabilities of the Scheme;
- (e) any material contingent liabilities have been incurred by the Scheme and if so the amount thereof and whether or not any contingent liability has or is likely to mature within the succeeding twelve months which will materially affect the Scheme;

- (f) any circumstances which affect the Scheme have occurred which materially and adversely affect the interests of the Members and whether any circumstances have arisen which render adherence to the existing method of valuation of any part of the Assets or Liabilities of the Scheme misleading or inappropriate and if so particulars of those circumstances;
- (g) the Manager has taken reasonable steps to comply with the PIE Rules and that the ~~Trust Scheme~~ has paid its PIE tax liabilities by the due dates;
- (h) appropriate procedures and systems are in place to monitor compliance with PIE Rules;
- (i) the Manager:
 - (i) has, in relation to the Scheme adhered to its current policies and investment strategy as contained in the relevant Offer Document;
 - (ii) considers that the Assets of the Scheme at all times have been dealt with or invested in accordance with any policies ~~agreed to developed~~ by the Manager and with other representations contained in the relevant Offer Document;
- (j) all moneys intended for the Scheme have been paid into the relevant bank account and no such moneys have been applied in any other way;
- (k) all Assets are vested in the name of the Trustee or its nominee;
- (l) all fees have been calculated in accordance with the provisions of this Trust Deed;
- (m) all calculations of the valuation of the Units have been carried out in accordance with the provisions of this Trust Deed;
- (n) all Members who have given appropriate notice of their desire to receive benefits have received payment of the amounts to which they are entitled in accordance with the provisions of this Trust Deed;
- (o) whether there have been any departures from the Trust Deed or accounting procedures that should be brought to the attention of the Trustee;
- (p) proper accounting and internal control processes have been maintained;
- (q) benefits paid have been paid in accordance with the Trust Deed and relevant law;
- (r) all notices, certificates and other documents required by the Securities Act 1978 have been issued;
- (s) all notices, returns, statements and other documents required by the TAA have been issued;
- (t) no other matters have arisen in respect of the Scheme which are or would be material to the interests of Members or the Trustee; and
- (u) that:
 - (i) a reconciliation of all bank accounts relating to the Scheme has been performed;
 - (ii) the reconciliation was complete and accurate; and
 - (iii) there were no material unreconciled items,

and also stating as at the monthly or other date to which the certificate relates:

- (v) a breakdown of the Authorised Investments held by each Portfolio;
- (w) the Net Asset Value of the Scheme and each Portfolio;
- (x) the number of Units on issue in relation to each Portfolio; and
- (y) the Unit Price in relation to each Portfolio.

Schedule 3: Name of Scheme and names of Portfolios

Name of Scheme: NZ Funds KiwiSaver Scheme

- Name of Portfolios:
1. Income Strategy
 2. Inflation Strategy
 3. Growth Strategy
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