

Consolidated Trust Deed

Kiwi Wealth Super Scheme

Kiwi Wealth Investments Limited Partnership

Public Trust

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Deed dated 28 January 2021

Parties

- 1 Kiwi Wealth Investments Limited Partnership ('Manager')
- 2 Public Trust at Wellington ('Supervisor')

Background

- A By trust deed dated 18 December 2008, as amended and consolidated by deeds dated 21 April 2011, 8 September 2011, 4 April 2012, 30 August 2016, 7 September 2017, and 8 December 2017 ('Existing Trust Deed'), the Kiwi Wealth Super Scheme ('Scheme') was established as a superannuation scheme by the Manager principally for the purpose of providing retirement benefits for natural persons and employees of employers participating in the Scheme.
- B The Manager is the manager, and the Supervisor is the trustee and supervisor, of the Scheme. The Scheme is registered as a superannuation and workplace savings scheme under the Financial Markets Conduct Act 2013 ('FMC Act') and the offer of membership in the Scheme is a Regulated Offer.
- C The terms and conditions set out in this Deed will govern all Funds established under this Deed.
- D Pursuant to clause 28.1 of the Existing Trust Deed, subject to that clause and the FMC Act, the Manager may by deed at any time, with the consent of the Supervisor (such consent not to be unreasonably withheld), vary or replace any part of the Existing Trust Deed provided that the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on Members.
- E The Manager wishes to amend the Existing Trust Deed by way of amendment and consolidation to:
 - a reflect the application of the Trusts Act 2019 to the Scheme and Funds; and
 - b make a number of other administrative changes the Manager and Supervisor consider appropriate.
- F The Supervisor has consented to the proposed amendments, and prior to executing this Deed the Supervisor:
 - a obtained a certificate from a lawyer that the Existing Trust Deed for the Scheme, as amended by this Deed, will comply with sections 135 to 137 of the FMC Act; and
 - b certified, for the purposes of clause 28.1 of the Existing Trust Deed and section 139 of the FMC Act, that it is satisfied that the amendments to be made by this Deed do not have a material adverse effect on Members.

Covenants

In accordance with the powers of amendment contained in clause 28.1 of the Existing Trust Deed, it is declared that with effect from the Effective Date, the Existing Trust Deed is amended and consolidated by substituting the provisions of the Existing Trust Deed with all of the provisions of this Deed so that from the Effective Date the Scheme will be operated, administered, and governed in accordance with this Deed.

PART 1: GENERAL PROVISIONS APPLYING TO ALL SECTIONS

Preliminary

1 Definitions and Interpretation

1.1 Defined terms

Most words and phrases that begin with capital letters have special meanings and are defined in clause 83.1.

1.2 Interpretation

Provisions governing the interpretation of this Deed are contained in clause 83.2.

1.3 Application of the Trusts Act

- a Notwithstanding any other provision of this Deed, to the maximum extent permitted by law, none of sections 31, 34, 36 or 37 of the Trusts Act apply to any of the Manager, the Supervisor, any Custodian, or any Sub-Custodian in relation to the Scheme or any Fund.
- b Except to the extent modified or excluded by clause 1.3a or any other term of this Deed in accordance with the Trusts Act, the Manager and the Supervisor each have the rights and powers of a trustee specified in the Trusts Act in relation to the Scheme and each Fund, including all rights and powers of a trustee in relation to the Courts under the Trusts Act.

2 Establishing the Scheme

2.1 Establishment of Scheme

The Scheme began on the Commencement Date. The trusts established in accordance with the Existing Trust Deed are confirmed and continue on the basis of the amendments contained in this Deed.

2.2 Manager and Supervisor agree

The Supervisor and the Manager agree to continue to act in accordance with the provisions of this Deed.

2.3 Name of the Scheme

The name of the Scheme is the Kiwi Wealth Super Scheme, or any other name chosen by the Manager with the Supervisor's consent (which must not be unreasonably withheld) from time to time.

2.4 Purpose of the Scheme

The Scheme is divided into three separate sections which have the following purposes:

- a The **Legacy Section**, which is closed to new members, the principal purpose of which is to provide retirement benefits directly or indirectly to individuals;
- b The **Employer Section**, the purposes of which are to provide:
 - i retirement benefits directly or indirectly to individuals; and
 - ii benefits to eligible individuals on ceasing employment or engagement with a Participating Employer; and
- c The **Personal Section**, the purpose of which is to provide retirement benefits directly or indirectly to individuals.

Together, the three Sections constitute the Scheme.

2.5 Scheme governed by FMC Act

The Scheme will be governed and administered in accordance with the FMC Act and all other applicable laws and the provisions of this Deed.

2.6 Terms and conditions of Participation Agreement prevail to extent Deed provides

The Scheme will be administered in accordance with this Deed provided that for so long as an Employer Member is employed or sponsored by a Participating Employer, the terms and conditions relating to that Employer Member's contributions and benefits specified in the relevant Participation Agreement will apply in accordance with this Deed.

2.7 Parties bound by Deed

The Supervisor, the Manager, Participating Employers and all Beneficiaries shall be bound by the provisions of this Deed.

2.8 The Trust Fund

The Scheme's Trust Fund consists of:

- a the Assets held by the Supervisor, Custodian, or Sub-Custodian for the Scheme;
- b contributions paid to the Scheme;
- c any money or Assets transferred to the Scheme from another Retirement Scheme or other superannuation scheme in accordance with the FMC Act (where relevant); and
- d all other Assets obtained by the Supervisor for the purposes of the Scheme.

2.9 Holding of Trust Fund

The Trust Fund is held by or on behalf of the Supervisor on trust as trustee on the terms of this Deed.

2.10 Implied provisions apply

The provisions of this Deed that apply to the Scheme are deemed to include the provisions implied by the FMC Requirements or at law for so long as those provisions are in force and any provision of this Deed that is contrary to the implied provisions is void to the extent it is contrary.

3 Joining the Scheme, contributions, and benefits

3.1 Conditions for becoming a Member

- a Any natural person who is eligible to do so may apply to join the Scheme as a Member of the relevant Section by completing an application in such form as may be prescribed from time to time by the Manager.
- b Any person or persons who are the trustees or manager (each term as defined in the FMC Act) of a Retirement Scheme may apply to join the Scheme as a Trustee Member of the Employer Section by completing an application in such form as may be prescribed from time to time by the Manager.

3.2 Conditions of eligibility contained in Participation Agreement

Any additional conditions of eligibility for an Employer Member will be contained in the relevant Participation Agreement.

3.3 Application for membership

Every natural person who applies to join the Scheme as a Member shall:

- a make written application to the Manager in the manner required;
- b provide personal details and any other information that is relevant and that may be reasonably required by the Manager; and
- c be bound by the terms of this Deed and any relevant Participation Agreement.

3.4 Manager may refuse application

The Manager may refuse any application without giving reasons for any refusal **provided that** where clause 14(f) of Schedule 8 of the Public Service Act 2020 applies the Manager shall be obliged to accept such application.

3.5 Acceptance of application to join

An eligible person becomes a Member of the Scheme when the Manager accepts the person's application.

3.6 Contributions

- a Subject to paragraph b, Members and Employers (where relevant) will contribute as set out in the relevant Part of this Deed applicable to the Member.
- b Where a Member's Employer is contributing to the Scheme on behalf of a Member under the Public Service Act 2020:
 - i the contributions to be made to the Scheme by the Member's Employer shall be set out in Schedule 1 to this Deed; and
 - ii that Employer may cease contributing to the Scheme on behalf of a person if that person ceases to be an officer or Employee of the Employer.

3.7 Suspension of contributions – general

- a Subject to clause 3.8, a Member may stop or recommence making contributions at any time and for any period.
- b A Member who stops or recommences making contributions under paragraph a must advise the Manager, or the Manager's agent in writing.

3.8 Employer Members employed by Participating Employers

If an Employer Member is subject to a Participation Agreement, the Employer Member may only suspend contributions to the extent provided for under that Participation Agreement.

3.9 Terminations of Contributions

When a Member stops being a Member all contributions to the Scheme under this Deed shall cease.

3.10 Benefits

- a Subject to paragraph b, a Member will become entitled to benefits from the Scheme in accordance with the relevant provisions of the Part of this Deed applicable to the Member.
- b Where a UK Transfer has been transferred to the Scheme pursuant to clause 38 (or any predecessor clause), any withdrawal benefits, to the extent they relate to the UK Transfer, shall only be paid to the relevant Member in accordance with the terms and conditions set out in clause 38. For the avoidance of doubt, the limits and restrictions set out in this paragraph and clause 38 have the purpose of ensuring that the Scheme complies with the requirements for a QROPS.

3.11 Benefits may be deferred until Employment ceases

- a If a Legacy Member or Employer Member who is an Employee continues in Employment with their Employer after their Normal Retirement Date they may elect to defer receiving any benefit until the date upon which they cease Employment with that Employer.

- b If a Personal Member who is an Employee continues in Employment with their Employer after they are entitled to a benefit under clause 79.2 they may elect to defer receiving any benefit until the date upon which they cease Employment with that Employer.
- c Where a Member has a right to elect to defer receipt of any benefit which they are entitled to receive, the Manager shall inform the Member in writing of that right.

3.12 Regular withdrawal facility

Subject to the FMC Requirements, the Manager may offer Members a regular withdrawal facility on terms determined by the Manager and set out in the PDS or Register Entry or otherwise agreed with a Beneficiary.

3.13 Beneficiary may request benefit

A Beneficiary entitled to make a withdrawal in accordance with this Deed may request payment of a benefit to which the Beneficiary is entitled by providing a withdrawal request ('**Withdrawal Request**'). That Withdrawal Request must:

- a be in writing or any other form acceptable to the Manager;
- b specify the amount to be withdrawn pursuant to the request; and
- c be accompanied by any evidence required in accordance with Relevant Law or this Deed.

The Manager may set rules for minimum partial withdrawal amounts, frequency of partial withdrawals and minimum account balances, as set out in the PDS or Register Entry.

3.14 Payment of benefits if eligible

If the Manager or Supervisor (as required by this Deed) makes a final determination that a benefit should be paid to a Beneficiary pursuant to this Deed, subject to clauses 3.15 to 3.22, the Manager will:

- a calculate the value of the relevant Member Account as at the next Valuation Day following that determination;
- b determine the portion of the Member Account which the Member is eligible to withdraw; and
- c pay the benefit to the relevant Beneficiary (or, if payments will be made pursuant to a regular withdrawal facility offered under to clause 3.12, pay the first instalment) within 20 Business Days of that final determination.

Any benefit payable pursuant to this Deed will be paid:

- d by one or more lump sums; and / or
- e if the Manager offers a regular withdrawal facility pursuant to clause 3.12 and the relevant Beneficiary requests payments pursuant to that facility, by regular payments.

3.15 **Withdrawal Suspension Notice**

Subject to Relevant Law, if the Manager in good faith determines with respect to the Scheme or a particular Fund that giving effect to Withdrawal Requests or transfers:

- a is not practicable;
- b would or may be prejudicial to the general interests of the Members of the Scheme or Members invested in the particular Fund; or
- c is not desirable for the protection of the Scheme or a particular Fund,

then the Manager must promptly notify the Supervisor that it has reached this determination and consult with the Supervisor regarding this, and thereafter may give a withdrawal suspension notice (**'Withdrawal Suspension Notice'**) to any affected Member or Members and the Supervisor. A Withdrawal Suspension Notice shall have the effect of suspending the operation of all transfers from the Scheme, Withdrawal Requests, and/or all Withdrawal Requests relating to the relevant Fund (as determined by the Manager and set out in the Withdrawal Suspension Notice) until the earlier of:

- d the Manager giving notice to the relevant Members to the effect that the Withdrawal Suspension Notice is cancelled; or
- e 90 days after the date of the notice or such shorter or longer period that is approved by the Supervisor, acting reasonably.

The Manager shall give as much notice as is practicable to the Supervisor of its intention to cancel any Withdrawal Suspension Notice.

3.16 **Calculation of benefits and transfers following Withdrawal Suspension Notice**

If a Withdrawal Suspension Notice is given and lapses (whether through the passing of time or by an earlier cancellation), then unless the Manager determines otherwise the Manager shall process transfers and Withdrawal Requests affected by the Withdrawal Suspension Notice as if a final determination as to eligibility for the benefit or request to transfer (as applicable) had been made on the Valuation Day following the date the Withdrawal Suspension Notice lapsed.

3.17 **Supervisor and Manager may side-pocket**

Subject to Relevant Law, where the Manager considers that it is in the interests of the Members in a Fund or Funds generally to do so (for example, to address liquidity or pricing issues in relation to a particular Asset that might lead to the Manager giving a Withdrawal Suspension Notice in respect of that Fund or those Funds), the Manager may with the approval of the Supervisor, with effect from a particular date (**'Record Date'**), without the agreement of, or consultation with, Members:

- a determine that particular Assets and Liabilities of a Fund or Funds should be quarantined in accordance with this clause 3.17 and clauses 3.18 to 3.22 (**'Side-Pocketed Assets and Liabilities'**); and

- b reclassify, divide or otherwise reconstruct the interests of Members in that Fund as at the Record Date so that those interests consist of:
 - i interests that relate to the Assets and Liabilities of the Fund that are not Side-Pocketed Assets and Liabilities ('**Non-Side-Pocketed Assets and Liabilities**'); and
 - ii interests that relate to the Side-Pocketed Assets and Liabilities ('**S Interests**'),
 all on a pro rata basis.

3.18 Notice to Members

The Manager must give written notice to the Members with interests in a Fund in relation to which side-pocketing has occurred under clause 3.17 as soon as reasonably practicable after the Record Date stating that side-pocketing has occurred in relation to the Fund and including such other information as the Manager, in consultation with the Supervisor, may consider necessary (including details of any arrangements in respect of the items set out in clause 3.19).

3.19 Side-Pocketed Assets and Liabilities

The provisions of this Deed will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the S Interests as if the relevant Fund consisted solely of the Side-Pocketed Assets and Liabilities and the S Interests provided that the Manager and the Supervisor may agree special arrangements relating to the Side-Pocketed Assets and Liabilities and the S Interests ('**Arrangements**'). Without limiting the generality of the proviso to the previous sentence, the Arrangements may include:

- a arrangements preventing Members from giving Withdrawal Requests in relation to the S Interests;
- b arrangements for the treatment of Withdrawal Requests that remain outstanding as at a Record Date (including the cancellation of any such Withdrawal Requests);
- c arrangements preventing further Members from obtaining any interests in a Fund relating to the Side-Pocketed Assets and Liabilities;
- d arrangements for the realisation or discharge (as applicable) of the Side-Pocketed Assets and Liabilities;
- e arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets;
- f arrangements relating to the dissolution of the side-pocketing arrangement;
- g arrangements relating to the fees and expenses associated with, and any further Liabilities that may be incurred in respect of, the Side-Pocketed Assets and Liabilities and the S Interests;
- h arrangements relating to the recovery of tax (including PIE Tax) from Members holding S Interests (including where applicable the recovery of tax relating to Side-Pocketed Assets and Liabilities from those Members by way of arrangements relating to interests (if any)

held by such Members that relate to the Non-Side-Pocketed Assets and Liabilities) and the payment of the Fund's tax liabilities;

- i approval for treating S Interests held by Members as a different class of interest in the Fund;
- j arrangements that the Manager, in consultation with the Supervisor, considers appropriate in relation to the Scheme's status as a PIE; and
- k such other arrangements as the Manager, in consultation with the Supervisor, considers to be appropriate and in the interests of Members with interests in the relevant Fund generally in relation to the side-pocketing arrangements contemplated by these clauses 3.17 to 3.22.

3.20 Conflicts

Where any conflict arises between the Arrangements and any other provision of this Deed, the Arrangements will prevail (other than those provisions setting out the Manager's duties to act in the interests of the Members generally and corresponding liability provisions).

3.21 No new Fund

For the avoidance of doubt, while the side-pocketing arrangements contemplated by these clauses 3.17 to 3.22 may involve the creation of a different class of interest in a Fund, they operate within the affected Fund and do not create a new and separate Fund. Unless required by law, the Manager need not prepare separate financial statements relating to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities provided that the Manager must prepare accounts in such form as necessary to provide adequate disclosure to Members.

3.22 Scheme's PIE status

Where the Scheme is a PIE, these clauses 3.17 to 3.22 will take effect subject to clause 40 and must be read accordingly. In addition, these clauses 3.17 to 3.22 will not apply to any adjustment of Member interests under clause 40.

The Supervisor and Manager

4 Appointment and removal of Supervisor

4.1 Appointment

The Scheme shall have a single Supervisor who:

- a must not be the Manager or an Associated Person of the Manager; and
- b must be a Licensed Supervisor whose licence covers supervision of the Scheme and otherwise be entitled by law to act as the Supervisor of the Scheme.

4.2 Confirmation of appointment

The Supervisor has been appointed and has agreed to act as supervisor for the Scheme for the purpose of the FMC Act and continues in office as supervisor for the purposes of section 127(1)(d) of the FMC Act.

4.3 Removal

The Supervisor will cease to hold office as supervisor of the Scheme if any of the following occur:

- a If, subject to clause 4.5:
 - i the Manager, with the approval of the FMA, removes the Supervisor, provided that the Manager must give the Supervisor at least 90 days' notice in writing (or such lesser period of notice as the Supervisor may agree) before removal under this clause 4.3ai (although the Manager is not required to give any reason for that removal);
 - ii the Members of the Scheme by Special Resolution remove the Supervisor from office; or
 - iii the Manager, with the approval of the FMA, removes the Supervisor with immediate effect by notice in writing to the Supervisor due to the fact that an order has been made or an effective resolution passed for the winding up of the Supervisor or it is placed in liquidation, receivership or statutory management.
- b The Supervisor is removed by the FMA if the FMA is satisfied that the Manager and the Supervisor no longer meets the requirements in section 127(1)(e) of the FMC Act.
- c The Supervisor is removed by the FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011.

4.4 Resignation

Subject to clause 4.5, the office of Supervisor shall become vacant if the Supervisor resigns from office by giving 90 days' notice (or such lesser period of notice as the Manager may agree) in writing to the Manager (although the Supervisor is not required to give any reason).

4.5 Restrictions on removal

The Supervisor may not be removed under clause 4.3a or resign under clause 4.4 unless:

- a all functions and duties of the position have been performed;
- b another Licensed Supervisor has been appointed to the position, and accepted the appointment, in its place; or
- c the High Court consents.

4.6 Conditions on removal or resignation

Any removal under clause 4.3 or resignation under clause 4.4 shall be conditional upon and not be effective until:

- a a new Licensed Supervisor has been appointed as supervisor pursuant to 4.7 and has executed the deed referred to in clause 4.8; and
- b the transfer to the new supervisor of the Scheme Assets, other Scheme property, and Scheme records and other relevant documentation (which on the direction of the Manager the Supervisor shall promptly procure).

4.7 **New appointment**

- a The power of appointing a new supervisor of the Scheme (in place of a supervisor which has resigned or been removed from office) is vested in the Manager.
- b If the Manager fails or refuses to appoint a new supervisor, a new supervisor may be appointed by a Special Resolution of the Members.

4.8 **New Supervisor to execute a deed**

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

4.9 **Retiring Supervisor released**

Subject to all applicable laws, from the effective date of the deed executed in accordance with clause 4.8, the retiring Supervisor is absolved and released from all covenants under this Deed, except to the extent that any such liability arose prior to that effective date in respect of which the retiring Supervisor is not indemnified for under this Deed. The new supervisor must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Supervisor under this Deed in all respects as if the new supervisor had been originally named as a party to this Deed.

4.10 **Application of Trusts Act to divesting and vesting of trust property**

Except to the extent inconsistent with this clause 4, Part 5 of the Trusts Act applies to the divesting and vesting of trust property pursuant to this clause 4.

5 **Functions, powers and duties of Supervisor**

5.1 **Supervisor's functions**

The Supervisor is responsible for the following functions in respect of the Scheme and each Fund:

- a acting on behalf of Members in relation to:
 - i the Manager;
 - ii any matter connected to this Deed or the terms of any Regulated Offer of membership of the Scheme;
 - iii any contravention or alleged contravention by the Manager of the Issuer Obligations; and

- iv any contravention or alleged contravention of the FMC Act by any other person in connection with the Scheme or any Fund;
- b supervising:
 - i the performance by the Manager of its functions and its Issuer Obligations; and
 - ii the financial position of the Manager, the Scheme, and each Fund, to ascertain that they are adequate;
- c holding the Assets and other property of the Scheme and each Fund, or ensuring that those Assets and other property are held, in accordance with clause 18 and sections 156 to 158 of the FMC Act; and
- d performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the FMC Act, the Financial Markets Supervisors Act 2011, or this Deed.

5.2 Supervisor's general powers

Subject to the provisions of this Deed and all Relevant Law, the Supervisor shall have all the powers in respect of the Scheme and over the Trust Fund which the Supervisor could exercise if the Supervisor was the absolute owner of the Trust Fund.

5.3 Supervisor's duties

The Supervisor must:

- a act honestly and in good faith in acting as the Supervisor of the Scheme;
- b in exercising its powers and performing its duties as Supervisor, act in the best interests of the Members;
- c exercise reasonable diligence in carrying out its functions as Supervisor;
- d do all things it has the power to do to cause any contravention referred to in clause 5.1a to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members); and
- e subject to any order of the High Court made under section 210 of the FMC Act, act in accordance with any direction given by a Special Resolution of Members that is not inconsistent with any enactment, rule of law, or this Deed in relation to:
 - i seeking a remedy to a contravention referred to in clause 5.1a; and
 - ii any other matter connected with the Supervisor's functions.
- f in performing the mandatory duties and default duties (except to the extent modified or excluded by the terms of this Deed) set out in the Trusts Act, have regard to the context and objectives of the Scheme and the terms of this Deed.

5.4 **Supervisor's standard of care**

The Supervisor must, in exercising its powers and performing its duties as Supervisor, exercise the care, diligence and skill that a prudent person engaged in the profession or business of acting as a Licensed Supervisor would exercise in the same circumstances.

5.5 **Supervisor's liability**

The Supervisor has the same duties and liability in the performance of its function as Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMC Act).

6 **Investment**

6.1 **Scheme must have Statement of Investment Policy and Objectives**

The Manager in consultation with the Supervisor must ensure that there is always a current Statement of Investment Policy and Objectives that complies with the FMC Requirements in relation to the Funds and the Scheme.

6.2 **Changes to Statement of Investment Policy and Objectives**

The Manager:

- a may only amend or replace a Statement of Investment Policy and Objectives with the Supervisor's consent; and
- b must lodge any change to the Statement of Investment Policy and Objectives as required by the FMC Act.

6.3 **Investment of Scheme money**

All money belonging to the Scheme and available for investment shall be invested in accordance with the Statement of Investment Policy and Objectives, the FMC Act, and the provisions of the law relating to trusts as to the investment of trust funds.

6.4 **Assets vested in Supervisor**

All Assets of the Scheme shall be vested in the Supervisor to hold on trust in accordance with this Deed. With the consent of the Manager, the Supervisor may appoint a Custodian or Sub-Custodian in accordance with clause 18 to hold any Assets of the Scheme (such consent not to be unreasonably withheld).

6.5 **Manager may direct Supervisor**

In order to perform its function under clause 12.1c the Manager may direct the Supervisor to:

- a purchase, acquire, sell, transfer or dispose of the Assets of a Fund;
- b enter into any commitments or Liabilities in respect of the Assets of a Fund;
- c execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing;

- d take any other action which may be required in respect of the Assets of a Fund; and
- e complete and deliver any proxies or related notices,

and, subject to clause 6.10 the Supervisor will from time to time, to the extent of the respective Assets in its hands or control, do all things necessary on its part to act as directed in writing by the Manager.

6.6 **Manager's powers in relation to Assets**

Subject to Relevant Law and this Deed, the Manager shall have full administrative powers in respect of all Scheme Assets, subject to the powers reserved or vested in the Supervisor under the provisions of this Deed. Without limiting the generality of the foregoing the Manager may:

- a make all decisions relating to the Scheme Assets, including the investment, reinvestment or realisation of any Scheme Assets, the investment of dividends and the exercise of voting rights associated with any Scheme Assets;
- b manage the Trust Fund;
- c determine the terms of all contracts, rights and other matters relating to the Scheme's Assets or Liabilities;
- d enter into any contract for the purpose of hedging against or providing for or spreading or reducing the risk of any loss in respect of any Scheme Asset or class of Asset or liability which might result from any circumstance whatsoever including fluctuations in any currency or currencies or interest rates or other financial risks;
- e without limiting clause 6.5, grant or take up options to purchase or sell any Asset; and
- f enter into any underwriting agreement or sub underwriting agreement to underwrite or sub underwrite any issue of securities which when issued would constitute an investment able to be invested in under the Statement of Investment Policy and Objectives,

and subject to the terms of this Deed and the FMC Act, the Supervisor shall give effect to all such decisions or the exercise of all such powers.

6.7 **Supervisor's borrowing powers**

Subject to clauses 6.8 and 6.10, the Supervisor has the power to and must, if so directed by the Manager:

- a borrow and raise money for any of the purposes of any Fund, on such terms and conditions as the Manager and the Supervisor think fit; and
- b leverage, mortgage, charge, pledge, or otherwise create a security interest over or encumber all or any of the Assets of the Scheme attributable to any Fund,

and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

6.8 **Borrowing must comply with Statement of Investment Policy and Objectives**

The power to borrow conferred by clause 6.7 is subject to the Manager's compliance with the terms of the Statement of Investment Policy and Objectives. The Manager will be liable for any loss to the Scheme or a Fund arising from a borrowed, encumbered or leveraged position not authorised by this Deed.

6.9 **Third parties need not enquire**

No Person lending or advancing moneys to the Supervisor in respect of a Fund or completing documents or securities in respect of any such borrowing needs to enquire as to whether or not the limitations set out at clause 6.8 have been observed or complied with.

6.10 **Supervisor's duty to refuse to act**

The Supervisor must refuse, and must direct any Custodian or Sub-Custodian to refuse, to act on a direction of the Manager under clause 6.6 relating to the acquisition or disposal of Assets (including as to borrowing in respect of such an acquisition or disposal) if the Supervisor considers that the proposed acquisition or disposal would be:

- a in breach of this Deed, any rule of law, or any enactment; or
- b manifestly not in the interests of Members.

6.11 **Custodian and Sub-Custodian to comply with direction**

Any Custodian or Sub-Custodian must comply with any direction given to it by the Supervisor under clause 6.10.

6.12 **No liability for refusing to act**

The Supervisor, and any Custodian or Sub-Custodian, is not liable to Members or the Manager for refusing, or directing any Custodian or Sub-Custodian to refuse, to act on any such direction by the Manager in accordance with clauses 6.10 or 6.11. If the Supervisor refuses, or directs a Custodian or Sub-Custodian to refuse, to act on a direction of the Manager, the Supervisor must notify the Manager and the FMA in writing of the Supervisor's reasons for the refusal or direction.

7 **Funds**

7.1 **Establishment of Funds**

The Manager may with the approval of the Supervisor operate separate Funds on terms and conditions the Manager prescribes from time to time and as set out in the Statement of Investment Policy and Objectives of the Scheme (to the extent required).

7.2 **Asset classes**

Each Fund will consist of such asset classes as agreed between the Supervisor and the Manager from time to time and as set out in the Statement of Investment Policy and Objectives of the Scheme (to the extent required).

7.3 Fund profits and losses

All profits and losses of a Fund will belong to the Members who invested in that Fund in proportion to each Member's interest, subject to any loss of each Member being limited at all times to the value of their interest in the Assets in such a Fund.

7.4 Record of each Fund

The Manager will maintain a record in respect of each Fund that enables the interests of each Member who invests in that Fund to be identified.

7.5 Power of investment

The Manager and any Investment Manager of the Scheme shall, in exercising their power of investment, exercise the care, diligence and skill that a prudent person engaged in the profession or business of acting as a manager or Investment Manager (as applicable) of a registered scheme (as defined in the FMC Act) would exercise in the same circumstances.

7.6 Manager may alter Funds

Subject to the FMC Requirements, the Manager may close, wind up, alter, or amalgamate any Fund or Funds (as applicable) on such terms and conditions as it thinks fit, subject to:

- a the Supervisor agreeing to the change; and
- b where a Fund is wound up under this clause 7.6, providing written notice to each Member invested in that Fund:
 - i confirming that the relevant Fund is to be wound up;
 - ii requesting that the Member provide, within a period prescribed in the notice, an amended Investment Direction specifying the proportion of their Member Account that will be invested in each remaining Fund following the wind up; and
 - iii specifying the Fund to which the Member will be deemed to have elected to transfer the relevant amount if no choice of replacement Fund is exercised within the period prescribed in the notice.

8 Investment Directions

8.1 Member may give Investment Direction

Each Member shall provide the Manager with an Investment Direction, indicating the proportion of their Member Account that will be invested in each Fund, subject to terms and conditions the Manager prescribes from time to time. Where a Member does not provide an Investment Direction the Member will be deemed to have provided an Investment Direction selecting the default Fund, as indicated on the application form that the Member submitted.

8.2 Member may amend Investment Direction

A Member may amend that Member's Investment Direction for the investment of the Member's Member Account. Such amendment shall be in writing and in a form prescribed by the Manager.

8.3 Manager to action amended Investment Direction

Subject to clause 8.4, the Manager will action a Member's amended Investment Direction within 15 Business Days:

- a if the amended Investment Direction is received prior to midnight on a Valuation Day, of that Valuation Day with effect on that Valuation Day; and
- b if the amended Investment Direction is received after midnight on a Valuation Day, of the next Valuation Day with effect on that next Valuation Day.

8.4 Manager may defer actioning

If the Manager in good faith determines that giving effect to Investment Directions or amended Investment Directions is not practicable, then the Manager must promptly notify the Supervisor that it has reached this determination and consult with the Supervisor regarding this, and thereafter may give a deferral notice ('**Deferral Notice**') to any Member or Members and the Supervisor. A Deferral Notice shall have the effect of suspending the operation of all affected Investment Directions.

8.5 Purpose of Fund election

Any Investment Direction given by a Member will not exempt the Manager from its duties under this Deed.

9 Valuations

9.1 Timing of valuations

The Manager will calculate the Fund Value of each Fund at each Valuation Day.

9.2 Valuation of Member Accounts

The Manager will calculate the value of each Member Account at each Valuation Day by:

- a multiplying the Fund Value of each Fund the Member is invested in by the Member's proportionate holding of that Fund (expressed as a percentage);
- b to the extent that such amounts are not included in clause 9.2a, adding the Market Value of any amounts described in clauses 35.3; less
- c to the extent that such amounts are not included in clause 9.2a, any amounts described in clause 35.4.

9.3 Values binding

Subject to clause 14, Fund Values and Member Account values determined pursuant to this Deed are, in the absence of manifest error, final and binding on all Members and any other Persons claiming a beneficial interest in the Scheme.

10 Manager's power to delegate

10.1 Manager may delegate

Subject to the FMC Requirements, the Manager may employ or contract with, any Investment Manager, Administration Manager, manager or agent (whether or not the delegate holds a managed investment scheme manager licence under the FMC Act covering the management of the Scheme) some or all of its functions as manager. Such Persons may be engaged on those terms and conditions as the Manager considers expedient (although any sub-delegation to its Associated Persons shall be at its own expense).

10.2 Terms of delegation

Where the Manager exercises its power of delegation under clause 10.1:

- a the Manager may in its sole discretion agree to the fees and expenses of any such delegation being payable out of the Scheme's Assets under clause 23.6;
- b the terms will be as agreed between the Manager and the appointee from time to time; and
- c the terms of appointment may indemnify the appointee for liabilities or expenses incurred in relation to its contracted functions; but
- d in the case of the appointment of an Investment Manager those terms may only indemnify the Investment Manager for liabilities or expenses incurred in relation to the performance of its contracted functions where the Investment Manager has, in exercising any powers or performing any duties, exercised the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances; and
- e the Manager must take all reasonable steps to:
 - i ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager was performing them directly; and
 - ii monitor the performance of those functions; and
- f the delegation or contracting out does not affect the liability of the Manager for the performance of those functions.

10.3 Manager may protect and assist

Subject to clause 20.2, the Manager may include provisions to protect and assist those dealing with the delegate in the authorisation as the Manager thinks fit. Subject to clause 27, the delegate or contracted party may be an Associated Person of the Manager or Supervisor.

11 Appointment and removal of Manager

11.1 Appointment

The Scheme shall have one manager who:

- a must not be the Supervisor or an Associated Person of the Supervisor; and
- b must hold a licence under the FMC Act that covers management of the Scheme and otherwise be entitled by law to act as the manager of the Scheme.

Kiwi Wealth Investments Limited Partnership is the manager of the Scheme as at the date of this Deed.

11.2 Removal

The Manager will cease to hold office as manager of the Scheme if:

- a the Manager is removed by written direction of the Supervisor after the Supervisor certifies that it is in the best interests of Members that the Manager be removed;
- b the Manager is removed by a Special Resolution of Members; or
- c the Manager is substituted by the High Court under section 209 of the FMC Act.

11.3 Retirement

The Manager may resign on at least ninety (90) days prior written notice to the Supervisor. No such retirement will take effect until a new manager has been appointed pursuant to clauses 11.5 to 11.7 and the new manager has executed the deed referred to in clause 11.8. On retirement, the Manager will be discharged from its obligations and duties under this Deed, provided that such discharge of obligations and duties shall relate only to obligations and duties incurred after the effective date of the discharge.

11.4 Effect of removal

If the Manager ceases to hold office pursuant to clauses 11.2 or 11.3, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Scheme unless the Supervisor agrees to the contrary.

11.5 Powers of appointment of new Manager

A replacement Manager will be appointed:

- a where clause 11.3 applies, by the retiring Manager provided that the Manager ensures that the effective date of the retiring Manager's retirement is the same as the effective date of the new Manager's appointment; or
- b where clause 11.2 applies, by the Supervisor or FMA in accordance with clauses 11.6 and 11.7.

11.6 Temporary Manager

Subject to the powers of the FMA under the FMC Act, the power of appointing a temporary manager of the Scheme where the Scheme does not have a manager is vested in the Supervisor. No Person can be appointed as a temporary manager unless that Person meets the requirements of section 186(3) of the FMC Act.

11.7 Appointment of New Manager

- a Upon any vacancy occurring in the office of manager, the Supervisor (or the FMA if there is no supervisor) must take all reasonable steps to secure, in accordance with this Deed, the appointment of a new manager in place of the temporary manager.
- b The Supervisor must summon a meeting of Members and must take such steps as that meeting or any subsequent meeting of Members may require to secure the appointment of any new manager of the Scheme. Any meeting of Members may ratify the appointment of any temporary manager appointed by the Supervisor or FMA or may appoint a new manager. Any directions given to the Supervisor by any such meeting of Members must be given by way of a Special Resolution. Any new manager must be qualified to act under clause 11.1.

11.8 New Manager to execute a deed

Any new Manager must upon appointment execute a deed in such form as the Supervisor may require whereby the new manager undertakes to the Supervisor and the relevant Members to be bound by the covenants on the part of the Manager under this Deed from the date of appointment.

11.9 Outgoing Manager

Where the Manager ceases to hold office for any reason, the retiring Manager must as soon as practicable provide the new permanent Manager with all of the information held or controlled by the retiring Manager that is reasonably necessary to allow the new Manager to hold the office, and give the new Manager all reasonable assistance to facilitate the change. The Manager may withhold information in the circumstances outlined in the FMC Act.

11.10 Application of Trusts Act to divesting and vesting of trust property

Except to the extent inconsistent with this clause 11, Part 5 of the Trusts Act applies to the divesting and vesting of trust property pursuant to this clause 11.

12 Manager's functions, powers, and duties

12.1 The Manager's functions

The Manager is responsible for performing the following functions:

- a offering interests in the Scheme for subscription;
- b issuing interests in the Scheme;
- c managing and investing the Scheme Assets; and
- d administering the Scheme and the Funds.

12.2 Manager's other functions

Without limiting the generality of the foregoing, the Manager shall perform the following specific functions (which where applicable will require direction to the Supervisor):

- a keep full and accurate records of contributions, Member Accounts held by Members, Member's entry and withdrawal dates to the Scheme, and all other matters required to be recorded in terms of this Deed;
- b value Assets and quantify Liabilities of the Scheme and the Member Accounts in accordance with the terms of this Deed (including clause 9) and accepted industry practice at the relevant time and applied on a consistent basis over time and that if the Manager intends to depart from the previously applied valuation method, such departure follows timely notice to and consultation with the Supervisor;
- c prepare and file all relevant tax returns and deal with any taxation issues arising in respect of the Scheme and take all actions and make all determinations, decisions or elections relevant to the taxation treatment or status of the Scheme;
- d exercise all reasonable care to comply with any statutory requirements under the FMC Requirements, the Fair Trading Act 1986, the Financial Reporting Act 2013, the Income Tax Act 2007 and any other statutory or regulatory requirement regarding the administration and management of the Scheme;
- e administer and effect Withdrawal Requests in accordance with this Deed and the FMC Requirements;
- f determine and distribute benefits and to calculate and distribute benefit entitlements in accordance with the FMC Requirements and this Deed;
- g deduct from payments to Members amounts required to be deducted to pay costs, fees, tax and charges under this Deed or the FMC Requirements;
- h arrange, receive and monitor the collection of all income and other distributions or entitlements arising out of Assets held in Funds;
- i prepare and issue each Member confirmation of the Assets held in each Member Account and the appropriate Market Value after the end of the accounting period of the Scheme in writing or by way of email if the Member has supplied his or her email address;
- j accept or reject applications to invest in the Scheme and to deal with all Members of the Scheme in accordance with this Deed, including the determination and deduction or payment as the case may be of penalties, fees, charges, benefits and withdrawals and all other enquiries and requests from time to time received from Members;
- k maintain all computer, electronic and other records necessary to carry out its obligations under this Deed;
- l maintain and update the Register in accordance with the FMC Requirements; and
- m monitor and manage the Scheme's Assets in accordance with this Deed and the Statement of Investment Policy and Objectives.

12.3 Manager's treatment of money

The Manager must:

- a pay all cash and other moneys from time to time held on behalf of the Scheme into a separate bank account or accounts opened by and in the name of the Supervisor, Custodian, or Sub-Custodian and designated for the Scheme promptly after receipt thereof, with such accounts at all times maintained in credit unless the Supervisor provides its prior consent in writing to an overdraft;
- b ensure that cash and other moneys is held in trust and subsequently applied or repaid in accordance with the FMC Requirements; and
- c otherwise administer such cash and other moneys from time to time received subject to the trusts governing the Scheme as set out in this Deed.

12.4 The Manager's duties

The Manager must:

- a act honestly and in good faith in acting as manager;
- b in exercising its powers or performing any duties as a manager:
 - i act in the best interests of Members; and
 - ii treat the Members equitably;
- c in performing the mandatory duties and default duties (except to the extent modified or excluded by the terms of this Deed) set out in the Trusts Act, have regard to the context and objectives of the Scheme and the terms of this Deed;
- d not make use of information acquired through being manager of the Scheme in order to:
 - i gain an improper advantage for itself or any other Person; or
 - ii cause detriment to the Members;
- e ensure that no director or senior manager of the Manager makes use of information acquired through being a director or senior manager of the Manager, in order to:
 - i gain an improper advantage for himself, herself, or any other Person; or
 - ii cause detriment to the Members; and
- f ensure that no director or senior manager of the Manager makes improper use of their position as a director or senior manager of the Manager, to gain, directly or indirectly, an advantage for himself, herself, or any other person or to cause detriment to Members.

12.5 The Manager's standard of care

In exercising any powers, or performing any duties, the Manager and any Investment Manager must exercise the care, diligence and skill that a prudent person engaged in the

profession or business of acting as a manager or Investment Manager (as applicable) of a registered scheme (as defined in the FMC Act) would exercise in the same circumstances.

12.6 Compliance with relevant requirements

The Manager must carry out its functions as manager of the Scheme in accordance with this Deed, the Statement of Investment Policy and Objectives, and all other Issuer Obligations.

12.7 The Manager's liability

The Manager has the same duties and liability in the performance of its functions as Manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMC Act).

12.8 Manager's obligation to provide information and reports to Supervisor

- a The Manager must, on the request of the Supervisor (or other authorised person) and within the time and in the manner specified by the Supervisor (or other authorised person) (which must be reasonable in the circumstances):
 - i make available to the Supervisor (or other authorised person) all documents and records relating to the Manager and the Scheme (including those held by an Investment Manager or Administration Manager); and
 - ii provide the Supervisor (or other authorised person) with any other reports or information it requires,

about any matter relevant to the performance of the Supervisor's functions.
- b The Manager shall provide to the Supervisor such reports, containing such information and at such frequency, as agreed in writing with the Supervisor in writing from time to time.
- c The Manager must give to the Supervisor any other reports or information required by the FMC Act within the time and in the manner required by the FMC Act.
- d The Manager shall advise the Supervisor immediately if it becomes aware of the Scheme or a Fund incurring any contingent liabilities, impending disputes or court proceedings or other matters that may adversely affect the Scheme or a Fund or Members' or the Supervisor's interests.

12.9 Fiduciary

The Manager acknowledges that in respect of its role as manager of the Scheme, it is a fiduciary for the Scheme's Members and in carrying out its obligations under this Deed will be subject to fiduciary duties.

13 Compliance with Relevant Law

13.1 Manager must comply with Relevant Law

The Manager must not make a Regulated Offer of membership of the Scheme unless:

- a the Scheme is registered under the FMC Act;
- b a PDS has been prepared and lodged with the Registrar in respect of the Scheme; and
- c all of the information that the Register Entry is required to contain under the FMC Act has been supplied to the Registrar.

13.2 Documents must comply with FMC Requirements on lodgement or supply

Each PDS and Register Entry must comply with the FMC Requirements at the time of lodgement or supply (as applicable). Each PDS and Register Entry will be provided to the Supervisor in accordance with clause 13.3.

13.3 Process for ensuring documents comply

In connection with discharging its obligations under clause 13.2, the Manager will:

- a update the schemes register entry in respect of the Scheme and each of the Funds held by the Registrar in accordance with the FMC Requirements;
- b prepare application forms, PDSs, information to be included on the Register Entry, and promotional material in respect of the Scheme in accordance with all Relevant Law; and
- c in order for the Supervisor to satisfy its statutory obligations, provide the Supervisor with:
 - i each draft PDS, application form, and information to be included on the Register Entry (other than Fund Updates and any other information to be lodged under regulations 40, 50, and 51 of the FMC Regulations, unless the Supervisor reasonably requests otherwise in writing) prior to the proposed lodgement date of the relevant document providing the Supervisor with a reasonable period of time to provide comments on the drafts, which the Supervisor will provide in a timely manner; and
 - ii notice (and, if the Supervisor requests in writing, a copy) of Fund Updates and any other material that has been prepared and lodged and/or distributed under this paragraph c as soon as reasonably practicable after lodgement and/or distribution.

13.4 Ongoing compliance

The Manager must maintain and implement appropriate processes and procedures to ensure that at all times each PDS and Register Entry complies with the FMC Requirements.

14 Limit breaks and pricing errors

14.1 Manager to take required action

The Manager must take any action required by the FMC Act if a limit break (within the meaning of section 167 of the FMC Act) or material pricing error or non-compliance (in terms of section 168 of the FMC Act) occurs.

14.2 Minimum reimbursement or compensation level

For the purposes of section 168 of the FMC Act and regulation 99 of the Financial Markets Conduct Regulations 2014, the minimum reimbursement or compensation level for pricing errors or non-compliance is an amount determined on a case-by-case basis by the Manager after consultation with the Supervisor based on relevant industry guidelines which take into account the size, type, and /or frequency of the issue and the costs of reimbursement or compensation.

15 Supervisor's power to delegate

15.1 Supervisor's delegates

Subject to the FMC Act, the Financial Markets Supervisors Act 2011, and this Deed (including clauses 15.2 and 15.3), in addition to the Supervisor's powers to appoint a Custodian or Sub-Custodian in accordance with clause 18, the Supervisor may:

- a delegate any of its duties or powers or discretions under this Deed to any Person; or
- b appoint any Person to be attorney or agent for the Supervisor.

Any delegation or appointment must be in writing. The Supervisor may specify the purposes of any appointment and the authority that any attorney or agent is to have.

15.2 Supervisor unable to delegate certain responsibilities

The Supervisor must not delegate any function described in clause 5.1, except to the extent permitted by the FMC Act or the Financial Markets Supervisors Act 2011.

15.3 Supervisor remains liable

The Supervisor shall remain responsible and will be liable for the acts or omissions of any Person appointed under clauses 15.1.

16 Absolute and uncontrolled discretion

16.1 Supervisor and Manager discretion

Each of the Supervisor and the Manager, in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed, shall have total discretion, subject to clause 8 and the FMC Requirements. They may each at any time exercise or enforce any of the trusts, authorities, powers and discretions or may refrain from exercising all or any of them.

16.2 No interference etc

Subject to the rights of Members created by this Deed, the FMC Requirements, and any order of a court, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Supervisor or the Manager of any rights, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of the Trust Fund or any parts thereof.

17 Power to appoint advisers, experts, and Auditor

17.1 Power to appoint and obtain advice

Each of the Supervisor and the Manager may, after consultation with each other, appoint and obtain the advice or opinion of any accountant, actuary, barrister, solicitor, stock broker, consultant, medical practitioner, investment advisor, auditor or other professional person or expert and, subject to clause 20.2, shall not be responsible for any loss occasioned by so acting. The reasonable cost of obtaining such advice shall form part of the expenses incurred by the Supervisor and the Manager in connection with the Scheme, in accordance with clause 23.6.

17.2 Auditor

Notwithstanding clause 17.1 above, a qualified auditor in terms of the FMC Act who is not precluded by the FMC Act from acting as auditor of the Scheme selected by the Manager and acceptable to the Supervisor must be appointed Auditor of the Scheme and the Register. The terms of the audit, including the services to be performed by the Auditor and their scope and the remuneration of the Auditor is to be determined by the Manager on an arm's length basis following consultation with the Supervisor and in the manner required by the FMC Requirements. Those terms will:

- a include the Auditor's remuneration and any matters required by the FMC Act; and
- b require the Auditor to, in addition to its functions as set out in this Deed, perform any other functions required by the FMC Act and comply with any obligations it has under the FMC Act.

17.3 Removal and retirement of Auditor

- a The Auditor may at any time and from time to time be removed by the Manager with the approval of the Supervisor or if the Supervisor believes it to be in the best interests of the Members instructs the Manager to remove the Auditor.
- b The Auditor may retire upon giving the Manager one month's notice in writing.

17.4 Appointment of replacement Auditor

Any vacancy in the office of Auditor must be filled by the Manager with the approval of the Supervisor by appointing a qualified auditor in terms of the FMC Act in accordance with clause 17.2.

17.5 Supervisor may engage expert

Notwithstanding clause 15.2, in accordance with the FMC Requirements, the Supervisor is entitled to engage an expert in the performance of the Supervisor's functions if the Supervisor considers on reasonable grounds that it requires the assistance of the expert to:

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

17.6 Manager's obligations in relation to expert

If the Supervisor engages an expert under clause 17.5 the Manager:

- a must provide reasonable assistance to the expert to allow the expert to provide the required assistance;
- b must pay the fees and expenses of the expert (which must be reasonable in the circumstances); and
- c is entitled to be indemnified for those fees and expenses out of the Assets in accordance with clause 23.6.

17.7 Proceedings

The Supervisor may institute, prosecute, defend and compromise legal proceedings in order to secure compliance with the provisions of this Deed and may recover any loss suffered by any Members on behalf of or in respect of their interest in the Scheme.

18 Custody

18.1 Supervisor may appoint Custodian

The Supervisor, with the written consent of the Manager, such consent not to be unreasonably withheld, may appoint one or more nominated persons (a '**Custodian**') in whose name the Assets of the Scheme are to be vested on the Supervisor's behalf, provided that the Custodian:

- a is a body corporate that the Supervisor believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Scheme's Assets; and
- b is not the Manager, or an Associated Person of the Manager.

Any such nomination must be made in writing. The Supervisor will be jointly and severally liable for the due and faithful performance and observance by the Custodian of all duties and obligations imposed by the FMC Requirements, this Deed and otherwise by law.

18.2 Custodian may be authorised to appoint Sub-Custodian

If authorised in writing by the Supervisor (and consented to by the Manager), a Custodian may itself appoint one or more nominees in whose name the Assets of the Scheme are to be vested on the Supervisor's behalf (a '**Sub-Custodian**'), provided that the Sub-Custodian:

- a is a body corporate that the Custodian believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Scheme's Assets; and
- b is not the Manager, or an Associated Person of the Manager.

The Supervisor and the Custodian will be jointly and severally liable with the Sub-Custodian for the due and faithful performance and observance by the Sub-Custodian of all duties and obligations imposed by the FMC Requirements, this Deed and otherwise by law.

18.3 Obligations of person contracting out

If a person contracts out the holding of the Assets of the Scheme to another person under clauses 18.1 or 18.2 (in this clause, the '**nominee**'), the person contracting out that function must take all reasonable steps to:

- a ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person had performed them directly; and
- b monitor the performance of that function.

The Supervisor shall also cause any Custodian or Sub-Custodian to comply with the relevant covenants and obligations on the part of the Supervisor expressed or implied in the FMC Act (including sections 157 to 160 of the FMC Act) and this Deed.

18.4 Terms of appointment

Subject to clause 23.6, the Supervisor may agree to the terms of payment of any Persons employed as the Supervisor and Manager considers appropriate. The fees and expenses of a Custodian or Sub-Custodian may be payable out of the Assets of the Scheme if the Manager agrees. The terms of appointment of a Custodian or Sub-Custodian may indemnify the Custodian or Sub-Custodian for liabilities or expenses incurred in relation to the performance of its contracted functions.

19 Register of Members and Employers

19.1 Maintenance of Register

The Manager shall maintain a register of Members of the Scheme into which the information required by the FMC Act shall be entered (the '**Register**'), including:

- a the name and address of each Member;
- b the name of the Employer of each Member (if any);
- c a record of the Member Account for each Member;
- d the date the Member will be entitled to a benefit under this Deed;
- e the date on which the name of every Person was entered into the Register as a Member and the date on which any Person ceased to be entered on the Register; and
- f any other information required to be included on the Register by the FMC Requirements.

The Register is prima facie evidence of the matters required by the FMC Act to be entered on it.

19.2 Requirements for Register

The Register:

- a must be kept in New Zealand;
- b may be:

- i an electronic register; or
 - ii kept in any other reasonable manner that the Manager thinks fit; and
- c must otherwise comply with the FMC Requirements.

19.3 **Audit of Register**

The Manager will arrange an audit of the Register as required by the FMC Act (being within four months of its balance date in each year or as otherwise required by the FMC Act). The Manager will comply with all other FMC Requirements in respect of the audit of the Register. The Auditor, in completing its audit of the register, shall perform any other functions required by the FMC Requirements, and comply with any obligations it has under the FMC Requirements.

19.4 **Inspection of Register**

By written notice to the Manager, the Supervisor (and any other person so entitled by the FMC Act) is entitled to inspect the full Register during the business hours of the Manager. Any Member is entitled to inspect that part of the Register that concerns that Member during the business hours of the Manager. The Supervisor, a Member, and any other person so entitled by the FMC Act may require a copy of, or an extract from, a Register that is available for inspection by the person in accordance with the FMC Act.

19.5 **Supervisor may rely on Register**

The Supervisor shall be entitled to rely absolutely upon entries in the Register being correct and neither the Supervisor nor any of the Supervisor's agents, except the Manager, shall incur any liability or responsibility on account of any mistake in respect of the Register.

19.6 **Evidence of entitlement**

Notwithstanding clause 19.5, the Manager shall be entitled, at its absolute discretion before giving effect to any transfer, redemption or other dealing with a Member Account to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in a Register as the owner of the Member Account in question.

19.7 **No notice of trust etc**

No notice of any trust, expressed, implied, or constructive, may be entered on the Register (except as required by the FMC Requirements). Except as required by law or to the extent the Manager and the Supervisor determine to the contrary, neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express, implied, or constructive) or of any charge, pledge, or equity to which a Member Account or any interest therein are or may be subject, or to recognise any person as having any interest in any Member Account except for the person recorded in the Register as the Member.

20 Liability of Supervisor and Manager

20.1 Limitation of liability

Subject to law and clause 20.2, the Supervisor and the Manager shall not be liable for:

- a any losses or liability except those arising from its own wilful or negligent act or default, breach of trust or the dishonesty of its directors or officers; or
- b the neglect or default of any professional advisor or any other agent engaged in good faith by the Supervisor or the Manager pursuant to this Deed.

20.2 Situations where Supervisor and Manager liable

This clause 20 does not have the effect of exempting the Supervisor or the Manager from, or indemnifying the Supervisor or the Manager against, liability incurred in relation to the performance of the Manager's Issuer Obligations or the Supervisor's licensee obligations (within the meaning of the FMC Act) where either fails to properly perform the duties set out in clauses 5.1a to 5.1c and 5.4 (in the case of the Supervisor) or clauses 12.4a to 12.4d and 6.3 (in the case of the Manager) of this Deed.

20.3 Supervisor giving effect to direction

The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Members.

21 Indemnity of Supervisor and Manager

21.1 Supervisor and Manager's indemnity

Subject to law, the Supervisor and the Manager shall be indemnified and reimbursed out of the Trust Fund for any claims, costs, damages, liabilities and expenses which the Supervisor and the Manager may reasonably pay or incur, provided that where any such claims, costs, damages, liabilities, or expenses are incurred in relation to the performance of the Manager's Issuer Obligations or the Supervisor's licensee obligations (within the meaning of the FMC Act), the right to indemnity and reimbursement is available only in relation to the proper performance of their duties under clauses 5.1a to 5.1c and 5.4 (in the case of the Supervisor) or clauses 12.4a to 12.4d and 6.3 (in the case of the Manager) of this Deed. The Supervisor and the Manager shall each have a first claim on the Trust Fund for this indemnity.

21.2 Extension of indemnity to recipients of payments

This indemnity shall extend to any payments made to any Person whom the Supervisor or the Manager in good faith believes to be entitled to receive the payment although it may be subsequently found the Person was not entitled.

21.3 Effect of indemnity

Subject to law, the Supervisor and the Manager shall have a lien or charge over all Assets in the Trust Fund for the indemnity and may retain and pay out of the Assets in the Trust Fund all sums and amounts necessary to give effect to the indemnity.

21.4 Benefit extends to agents

Except as expressly provided in this Deed, any agent of the Supervisor or the Manager, acting for or on behalf of the Supervisor or the Manager shall have the benefit of any exclusions or indemnities given to the Supervisor and the Manager in this Deed.

21.5 Liability limited to Assets

Except to the extent to which the Supervisor or the Manager is liable pursuant to clause 20.2, the liability of the Supervisor and the Manager under this Deed or at law, shall at all times be limited to the Assets of the Trust Fund.

22 Limitation of liability of Members

22.1 No liability for Members

Except as expressly provided by this Deed, no Member is, by reason solely of being a Member or of the relationship created between that Member and the Supervisor or the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of any of them in the event of there being insufficient Assets of the Scheme as compared with the Liabilities to be met from those Assets.

22.2 Indemnity not personal

Subject to clause 22.1, the rights (if any) of the Supervisor or the Manager to seek an indemnity are limited to having recourse to the Assets of each relevant Fund and do not extend to a Member in his or her personal capacity.

22.3 No contribution to shortfall in Assets

On the winding up of the Scheme, no Member will have any liability to contribute to any shortfall in the Assets of each relevant Fund.

23 Manager's and Supervisor's fees, costs, charges, and expenses

23.1 Annual fees

Subject to clause 23.3, each of the Manager and the Supervisor shall be entitled to be paid a reasonable annual fee in respect of each Member for their respective routine duties and responsibilities that it performs in respect of the Scheme as agreed between the Supervisor and Manager from time to time and set out in the PDS or Register Entry.

23.2 Disclosure of fees

Any fees, costs, charges and expenses payable to the Manager and/or Supervisor must be disclosed in writing to all Members and Participating Employers before they join the Scheme provided that such disclosure may take the form of a general description of the ability of the Manager and/or Supervisor (as applicable) to charge or incur fees, costs, charges and expenses which complies with the FMC Requirements.

23.3 Amount of fees

Unless agreed otherwise in a Participation Agreement, the total aggregate amount that the Supervisor and Manager shall be paid in respect of a Member for the fees described in clause 23.1 shall be up to 1.5% per annum of the aggregate value of the Member's Member Account, subject to a minimum fee per member of \$120 per annum. Any fee shall be calculated monthly during each Scheme Year on a day agreed between the Supervisor and the Manager (plus GST, if any).

23.4 Deduction of fees

The Manager and Supervisor may deduct the fees described in clause 23.1 from a Member's Member Account in a manner agreed by the Supervisor and Manager and set out in the PDS or Register Entry.

23.5 Supervisor and Manager may charge a lower fee

Notwithstanding anything else in this Deed, the Supervisor and Manager may agree to charge any Member, or any group of Members, fees at a lower rate or amount than what is expressed anywhere in this Deed, or waive or rebate such fees to such Members.

23.6 Reimbursement of expenses

The Manager and the Supervisor shall be entitled to be reimbursed, for all other costs, charges and expenses properly incurred in connection with or in relation to Scheme and that are not covered by clause 23.1 in the following circumstances:

- a the relevant party has consulted with the other party prior to incurring such cost, charge or expense; and
- b a prudent professional manager or supervisor (as applicable) would consider it reasonable to incur such cost, charge or expense in order to assist the Supervisor or the Manager to comply with its obligations and duties under this Deed and at law.

Such costs, charges and expenses may be deducted from the Member Account of the Member in respect of whom the costs were incurred or in accordance with clause 24.

24 Power of apportionment

24.1 Power of apportionment

The Manager shall determine whether any costs, expenses or charges incurred by the Scheme shall be apportioned between any two or more Member Accounts. The Manager shall in its discretion equitably apportion such costs, expenses or charges and every determination or apportionment shall be final and binding on all Members.

25 Accounts

25.1 Manager to keep accounts and records

The Manager shall ensure that, in accordance with the FMC Act:

- a proper accounts and records are kept in respect of the Scheme;
- b such accounts and records are kept at a suitable secure location accessible by the Supervisor and the Auditor;
- c annual financial statements are prepared in respect of the Scheme in accordance with this Deed and the FMC Requirements;
- d those annual financial statements are audited by the Auditor;
- e once signed, the financial statements are sent or made available to the Supervisor; and
- f the Manager complies with the provisions of Part 7 of the FMC Act.

25.2 Inspection by the Auditor

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

26 Reporting and other information

26.1 Annual report

At the end of each Scheme Year the Manager must:

- a prepare an annual report and return on the Scheme as required by the FMC Act; and
- b arrange for the annual report (or any notice permitted to be provided in place of the annual report under the FMC Act) to be lodged and sent to Members and the Supervisor in the time and manner required by the FMC Act.

26.2 Fund Update

The Manager shall:

- a prepare quarterly Fund Updates as required by the FMC Act;
- b if required in accordance with clause 13.3ci, before finalising provide a draft of each Fund Update to the Supervisor with a reasonable period of time to provide comments, which the Supervisor will provide in a timely manner; and
- c arrange for the Fund Updates to be lodged with the Registrar and made available to Members and the Supervisor in the time and manner required by the FMC Act, and provide a copy to the Supervisor and notify the Supervisor that this has occurred in accordance with clause 13.3cii.

26.3 Confirmation information

The Manager shall provide Confirmation Information to each Member in accordance with the FMC Requirements and advise the Supervisor.

26.4 **Manager and Supervisor to comply with reporting obligations**

The Manager and Supervisor shall each, by the date specified in the relevant requirement:

- a file, lodge, or report or cause to be filed, lodged, or reported with or to the relevant authority; and
- b send or otherwise make available to each Member,

any information required by the FMC Requirements or any other law to be filed, lodged, reported, sent, or made available.

26.5 **Requirements for reporting**

The annual report and any reports or other information, shall include such matters and be provided to such persons and within such timeframes as may be required by the FMC Act and/or any other relevant legislation.

26.6 **Other reports**

The Manager must from time to time in respect of the Scheme and each Fund give to the Supervisor such other reports or information as the Supervisor reasonably requires with respect to:

- a all matters relating to the Scheme and the Funds; or
- b any business of the Manager or any property of the Manager (whether acquired before or after the date of this Deed) or otherwise relating to the affairs of the Manager or the performance of the Manager's functions.

26.7 **QROPS reporting**

The Manager shall provide HMRC with all required information with respect to Members who have made a UK Transfer to the Scheme in accordance with the QROPS Rules.

27 **Related party transactions**

27.1 **Related Party Benefits prohibited**

The Manager (and any Investment Manager, Administration Manager, or other person to whom the Manager has contracted out some or all of its functions as a manager) must not enter into a transaction that provides for a Related Party Benefit to be given.

27.2 **Permitted Related Party Benefits**

However, clause 27.1 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:

- a the Manager obtains the Supervisor's consent to the transaction or transactions; or

- b section 174 of the FMC Act applies to the transaction or transactions or all Related Party Benefits to be given and the Manager certifies to that effect in accordance with the FMC Act.

27.3 Requirements for consent

The Supervisor must not consent to a transaction or transactions under clause 27.2a unless one of the following applies and the Supervisor certifies to that effect:

- a the Supervisor considers that the transaction or transactions are in the best interests of the Members; or
- b the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Members that are affected or potentially affected by the transaction or transactions.

27.4 Effect of permitted Related Party Benefits

Subject to clause 20.2, the Manager, the Supervisor or any Associated Person of the Manager as the case may be shall not be liable to account to the Scheme or any Member for any profit or loss arising from any transaction entered into in accordance with this clause.

27.5 Manager to report

The Manager shall report to the Supervisor on all Related Party Benefits in accordance with the FMC Act.

Alteration of Trust Deed

28 Power to alter Trust Deed

28.1 Manager may amend or replace Trust Deed

Subject to this clause and the FMC Act, the Manager may by Deed at any time, with the consent of the Supervisor, such consent not to be unreasonably withheld, vary or replace any part of this Deed provided that:

- a the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on Members; or
- b the amendment or replacement has been approved by (or is contingent on approval by):
 - i in the case of an amendment or a replacement that reduces, postpones, or otherwise adversely affects the benefits, whether vested, contingent, or discretionary, that may in due course flow from, or are attributable to, membership of the Scheme up to the date the amendment or replacement is made, the written consent of all Members who would be adversely affected by the amendment or replacement; or
 - ii in any other case, a Special Resolution of Members (or, if applicable, each class of Members) that is or may be adversely affected by the amendment or replacement.

28.2 Other amendments

This Deed may also be rescinded, altered, modified or added to in any other manner permitted by the FMC Act, the Financial Markets Supervisors Act 2011, or any other enactment.

28.3 Schedule 8 of the Public Service Act 2020

Subject to law, no variation may be made if it will result in any provision of clause 14(a) to (f) of Schedule 8 of the Public Service Act 2020 ceasing to apply, where relevant.

29 Certificate of compliance

29.1 Supervisor's certificate

Before any variation is made to this Deed the Supervisor shall give a certificate or obtain a certificate from the Supervisor's lawyer as required by the FMC Act.

30 Copy to Registrar

30.1 Lodgement of certificate

The Manager shall ensure that a copy of the certificate under clause 29 and a copy of any variation is lodged with the Registrar as required by the FMC Act. The Supervisor will provide a copy of the certificate under clause 29 to the Manager so as to enable the Manager to discharge its obligations under this clause 29.

Winding up of the Scheme

31 Winding up of the Scheme

31.1 Scheme may be wound up

The Scheme shall be wound up if:

- a the Manager notifies the Supervisor in writing that the Scheme is to be wound up;
- b the Supervisor is of the opinion that the Scheme is or will be unable to fulfil its purpose and resolves that the Scheme should be wound up;
- c the Scheme ceases to have any Beneficiaries and the Supervisor resolves that the Scheme should be wound up;
- d the High Court orders that the Scheme be wound up in any of the circumstances specified under the FMC Act; or
- e the winding-up of the Scheme is otherwise required by any law and the Supervisor accordingly resolves that the Scheme should be wound-up.

31.2 Effect of wind up

Immediately after the Winding Up Date:

- a no further Persons shall be admitted as Members of the Scheme;
- b no further contributions shall be paid by Members or the Employers to the Scheme, except contributions that accrued before the Winding Up Date;
- c the Supervisor shall realise the Assets of the Trust Fund so far as they relate to the Scheme, as soon as practicable, applying reasonable commercial common-sense; and
- d sections 212 and 213 of the FMC Act shall apply.

32 Advice to FMA

32.1 Supervisor to notify FMA

The Manager shall immediately notify the Supervisor of a winding up resolution or Court order and the Supervisor shall give a copy of the winding up resolution or Court order to the FMA in accordance with and within the timeframes required by the FMC Act and/or any other relevant legislation.

33 Application of Trust Fund

33.1 Application of Trust Fund on wind-up

When the proceeds obtained from realising the Assets of the Trust Fund have been received the Supervisor shall allocate the proceeds in the following order of priority:

- a first, in allowing for all reasonable costs, fees, Liabilities and expenses that have or will accrue in accordance with this Deed in the winding up of the Scheme and the administration of the Scheme up to the Winding Up Date and any tax of the Scheme or of the Members;
- b secondly, subject to the requirements of clause 33.2, in providing for benefits payable under this Deed which had become payable prior to the Winding Up Date and then remain unpaid; and
- c thirdly, subject to the requirements of clause 33.2, in respect of each relevant Member who at the Winding Up Date has not become entitled to receive benefits under this Deed a benefit equal in value to the sum of the Member Account at that date.

33.2 UK Transfers

Where any proceeds are payable to a Member in accordance with 33.1b or 33.1c, that part of the proceeds which relate to a UK Transfer received on and after 6 April 2012 shall be applied by the Manager by way of:

- a a transfer of such amount to another Retirement Scheme or other superannuation scheme elected by that Member, provided such scheme is recognised by HMRC as a QROPS; or
- b in such manner that satisfies any requirements imposed by the HMRC on such UK Transfers from time to time and / or any terms and conditions applicable to the UK Transfer pursuant to clause 38.

Any residual proceeds shall be paid to the Member in accordance with clauses 33.1b or 33.1c as applicable.

33.3 Reductions to be equitable and proportionate

If in following the priorities of payment there is insufficient money to satisfy all the obligations above, the amount of each benefit shall be reduced equitably and proportionately among all Members entitled to the benefits.

33.4 Limits on reversion of Assets

None of the Assets of the Trust Fund may revert to any of the Employers on the winding up of the Scheme except as provided for in the FMC Act.

33.5 Limited on use of Assets

No Assets held in respect of the Member Account shall be used to pay any benefit or liability for any Member apart from the Member in respect of whom the Member Account is held.

33.6 Notification

The Supervisor must:

- a ensure that final financial statements of the Scheme are prepared and filed;
- b ensure that a copy of those financial statements is sent to the FMA, all Employers and to every Member and Beneficiary who was a Member or Beneficiary immediately before the Winding Up Date; and
- c ensure the FMA, the relevant Employers and the relevant Members and Beneficiaries are advised in writing as to the manner in which the Assets of the Scheme are to be distributed,

in accordance with the requirements of the FMC Act.

33.7 Partial distribution may be made

The Supervisor may make a partial distribution of Assets at any time before a copy of the final financial statements is sent to the FMA under 33.6.

33.8 Completion of distribution

The Supervisor shall, to the extent required by any relevant legislation, inform the FMA of the date on which the distribution following a wind-up is completed.

33.9 Liability in relation to distributions on wind up

Without prejudice to the other provisions of this Deed, sections 79 and 149 of the Trusts Act apply to, and may be relied on by the Supervisor or the Manager in respect of, the distribution of all or any portion of a Trust Fund pursuant to this clause 33.

34 Winding up of Section

A Section of the Scheme may be wound up on any of the grounds set out in clause 31.1, with references in that clause to 'Scheme' being read as references to the relevant Section.

Clauses 32 to 33 will apply to any such wind up, with all necessary modifications.

Accounts

35 Member Account

35.1 Manager to establish Member account

When a Member joins the Scheme, the Manager will open a Member Account for the Member with respect to the Scheme.

35.2 Member account records

- a The Manager shall keep and update at such intervals as the Manager may determine a record in respect of each Member of all contributions made by the Member and in respect of the Member, including Employer Contributions, and all Assets in Funds invested from such contributions in the Member's Member Account.
- b A Member's Member Account at any given date lists all money held with regard to the Member and all investments held in Funds with regard to such Member at that time.

35.3 Increases to Member Account

Money comes to a Member's Member Account and it is increased by:

- a contributions paid by the Member or in respect of the Member including Employer Contributions that have not been used by way of acquisition of investments in a Fund; plus
- b amounts transferred into the Scheme from another Retirement Scheme or other superannuation scheme in respect of the Member that have not been used in the acquisition of investments; plus
- c money received following the realisation of investments in a Fund; plus
- d income and cash returns from investments in a Fund and on money in the Member Account, not yet invested; plus
- e any taxation rebates, refunds or other amounts received from the Inland Revenue or a taxation authority of another jurisdiction; plus
- f any other rebate, refund or amount received by or payable to a Fund which the Manager determines should be credited to the Member Account.

35.4 Decreases to Member account

Money leaves a Member Account and it is reduced by:

- a withdrawal or benefit payments made to a Beneficiary; plus

- b benefits transferred from the Scheme to another Retirement Scheme or other superannuation scheme at the request of the Member; plus
- c amounts paid in the acquisition of investments in a Fund; plus
- d fees charged by the Supervisor and Manager that are to be paid by the Member and deducted from the Member Account; plus
- e payment of the Member's share of any other fees, costs, expenses, liabilities or tax which are to be payable by the Member and deducted from the Member Account; plus
- f payment of any tax under clause 40.

Transfers in and out of the Scheme

36 Transfers to another scheme

36.1 Transfers out of the Scheme

Subject to clauses 3.15 to 3.22 and the FMC Act, if a Member on leaving Employment or leaving the Scheme joins another Retirement Scheme, the Manager shall at the Member's request, transfer the benefits to which the Member is entitled to receive under this Deed to that other scheme.

36.2 Participating employers

Subject to clause 3.15 to 3.22, 67, and the FMC Act, a Participating Employer may elect to transfer that part of the Trust Fund that is relevant to its participation in accordance with the FMC Act to another Retirement Scheme or other superannuation scheme ('**Transferee Scheme**').

36.3 Transfer procedure

The following provisions shall apply to a transfer under clause 36.2:

- a Employer Members need not cease Employment with the Participating Employer for clause 36.2 to apply;
- b following transfer Employer Members will cease to be Members of the Scheme;
- c the Manager shall:
 - i with the approval of the manager (as defined in the FMC Act) or supervisor of the Transferee Scheme transfer assets equivalent in value to the amount in the relevant Members' Member Accounts to the Transferee Scheme; or
 - ii with the approval of the manager (as defined in the FMC Act) or the supervisor of the Transferee Scheme realise all investments of the relevant Members' Member Accounts and as soon as the proceeds are received by the Manager transfer an amount equivalent in value to the amount in that Member Account to the Transferee Scheme.

- d A Participating Employer transferring under clause 36.2 will be responsible for payment of reasonable costs incurred by the Scheme, the Supervisor, and the Manager in response to such a transfer.
- e Employer Members in respect of whom a transfer is made shall not be entitled to any other benefit under the Scheme.
- f The receipt from an authorised person for the Transferee Scheme shall be a complete discharge of all obligations the Manager and the Supervisor have with regard to the transfer.
- g The Manager and Supervisor shall be under no obligation to see to the application of any amount transferred to a Transferee Scheme.

36.4 Other transfers

A Member may also transfer or be transferred to another Retirement Scheme or Equivalent Overseas Retirement Scheme in accordance with the FMC Act.

36.5 Compliance with requirements

Any transfers from the Scheme must be in accordance with the relevant requirements of the FMC Requirements (including clause 12 of the Superannuation Scheme Rules, in the case of a Personal Member) and the QROPS Rules in the case of UK Transfers.

37 Transfers from another scheme

37.1 Transfers into the Scheme

Subject to clauses 37.4 and 38 and the FMC Act, if any Member is entitled to a benefit from any other Retirement Scheme or other superannuation scheme the Manager may, at its discretion, accept a transfer amount from that other scheme.

37.2 Transfer amount

The transfer amount is the amount which the manager (as defined in the FMC Act) or supervisor of the transferor scheme transfers to the Scheme on behalf of the Member.

37.3 Transfers added to Member's account

If any transfer amount is paid into the Scheme it shall be added to the relevant Member's Member Account.

37.4 Restrictions and limitations

The Manager shall have regard to any restrictions or limitations or conditions imposed by the transferor scheme manager (as defined in the FMC Act) or supervisor on the amount transferred including the imposition of any requirement for all or part of the transfer amount to be locked in or withdrawn in the form of an annuity, or other form of income for life. Any transfers to the Scheme must be in accordance with the relevant requirements of the FMC Requirements and the QROPS Rules in the case of UK Transfers.

38 UK Transfers

38.1 Acceptance of UK transfers

- a Notwithstanding clause 37 above, a Personal Member may, subject to the FMC Act, any other applicable laws, and any requirements imposed by the HMRC on such transfers from time to time, at any time apply to the Manager to accept a UK Transfer (either directly from a Registered Pension Scheme pursuant to the QROPS Rules or from a Retirement Scheme from which transfers are permitted under New Zealand legislation). For the avoidance of doubt, the Manager may decline to accept any UK Transfer in its sole discretion.
- b Any UK Transfer transferred into the Scheme on or after 6 April 2012 shall be credited to the Member Account of the relevant Member and shall be accepted subject to the following terms and conditions:
 - i notwithstanding any other provision of this Deed, the benefits payable to the Member under the Scheme, to the extent that they consist of the Member's relevant transfer fund or ring-fenced transfer funds (as those terms are used in the Finance Act):
 - A shall be payable no earlier than they would be if pension rule 1 in section 165 of the Finance Act applied; or
 - B if payable earlier than the time specified in paragraph A, are only payable in circumstances in which they would be authorised member payments (as that term is used in the Finance Act) if they were made by a Registered Pension Scheme;
 - ii any other terms and conditions required for a transfer to a QROPS under applicable laws and HMRC requirements; and
 - iii such other terms and conditions as are agreed between the scheme manager of the Registered Pension Scheme or other current or former QROPS from which the UK Transfer is to be transferred and the Manager and/or such other terms and conditions (including the purchasing of an annuity) as the Manager may determine as being necessary or desirable or in the interests of the relevant Personal Member or the Scheme, having regard to applicable laws and HMRC requirements (including limits or restrictions that have the purpose of ensuring that the Scheme complies with the requirements for a QROPS).

38.2 Withdrawal of UK Transfer amounts

- a Subject to clauses 38.1 and 38.3, a Member (or, in the case of paragraph iv, the Member's legal personal representatives) may only apply in accordance with clause 3.13 to withdraw some or all of any remaining amount of a UK Transfer accepted into the Scheme on or after 6 April 2012 and credited to that Member's Member Account in the following situations:
 - i *On reaching Normal Minimum Pension Age*

If the Member has attained normal minimum pension age, as that term is defined in the Finance Act.

ii *Withdrawal due to ill health*

If the Member meets the ill-health condition set out in paragraph 1 of Schedule 28 to the Finance Act.

iii *Withdrawal due to serious ill health*

If the Member meets the serious ill-health condition set out in paragraph 4 of Schedule 29 to the Finance Act.

iv *Withdrawal on death*

If the Member dies.

- b Any Member (or, in the case of the Member's death, the Member's legal personal representatives) may apply in accordance with clause 3.13 to withdraw some or all of any remaining amount of a UK Transfer accepted into the Scheme before 6 April 2012 and credited to that Member's Member Account in accordance with the terms on which that UK Transfer was accepted into the Scheme or any alternative terms agreed between the Member and the Manager.

38.3 Other matters relating to withdrawals

Subject to Relevant Law, a Member may only withdraw a UK Transfer in accordance with this clause 38. Notwithstanding any other provision of this Deed, if a UK Transfer was accepted into the Scheme subject to additional specific withdrawal restrictions in accordance with clause 37.4, 38.1biii, or any predecessor to either clause, then the UK Transfer will be paid to the Member only in compliance with those additional restrictions.

General provisions affecting benefits

39 Benefits fully funded

39.1 Benefits to be fully funded

The benefits of the Scheme provided pursuant to this Deed shall be fully funded as they accrue.

40 Payment of tax

40.1 Tax to be deducted

- a The Manager shall, if required by law, deduct, or where necessary direct the Supervisor to deduct, from any Beneficiary's benefit or from the relevant Member Account the amount of any tax assessed against or payable by or in respect of the Beneficiary or the Beneficiary's interest in the Scheme, including PIE Tax.
- b Without limiting paragraph a, if the Manager, Supervisor or a Member becomes liable for the payment of any duty, tax or other money to any governmental authority in respect of

any benefit or transfer in respect of a Post-9 March 2017 Member's UK Tax-Relieved Scheme Funds (including any tax or other money which may be payable to HMRC under United Kingdom law) the Manager may:

- i deduct such amount from the benefit otherwise payable to the Member, the amounts in the Post-9 March 2017 Member's UK Tax-Relieved Scheme Funds or any amount to be transferred from that Post-9 March 2017 Member's UK Tax-Relieved Scheme Funds (as applicable); and
- ii pay the remainder of the benefit in full satisfaction of the Member's entitlement in respect of the UK Transfer, or transfer or retain the remainder of the Post-9 March 2017 Member's UK Tax-Relieved Scheme Funds (as applicable) in accordance with this Deed,

and if the Member's Member Account is insufficient to pay any such amounts payable then the Member will indemnify the Manager and the Supervisor for that shortfall.

40.2 **Supervisor may realise investments**

The Manager is authorised to direct the Supervisor to realise investments to the extent necessary to make payment of any such tax.

40.3 **Payment of tax**

The Manager shall direct the Supervisor to pay those deducted amounts to the relevant authority. A benefit payable to a Beneficiary shall be the net amount after any deductions have been made.

40.4 **Indemnity from Beneficiaries**

Each Beneficiary shall indemnify the Manager, and where applicable, the Supervisor, in respect of any tax payable in respect of that Beneficiary or Beneficiary's interest in the Scheme.

40.5 **Scheme as a PIE**

Pursuant to clause 12.2c but subject to Relevant Law, the Manager may elect that the Scheme will be a PIE, or will cease to be a PIE, in its complete discretion. Where the Scheme is a PIE, subject to Relevant Law, the Manager shall have the additional powers and discretions (having regard, in each case, to the best interests of Members generally and to the requirements of the Income Tax Act 2007 and Tax Administration Act 1994) to take all steps and to do all things that the Manager considers necessary or desirable to administer the Scheme as a PIE or convert the Scheme from being a PIE.

41 **Deduction of other charges**

The Supervisor or Manager may deduct any other fees, costs, expenses or other liabilities payable in respect of a Member under this Deed from the Member Account of that Member.

42 Proofs

42.1 Manager or Supervisor may require evidence or further information

Any Person claiming to be entitled to a benefit from the Scheme shall on request produce to the Supervisor or the Manager any evidence or information that may be reasonably required by the Supervisor or the Manager.

42.2 Benefits may be withheld

Until that evidence or information is produced the Supervisor or the Manager may withhold payment of any benefit.

43 Receipts

43.1 Discharge of obligations

The payment by the Supervisor or the Manager of any benefit in respect of a Member to a Beneficiary or a transferee scheme shall completely discharge any liability the Supervisor or the Manager may have in respect of that benefit.

43.2 No obligation to see how benefit is used

The Supervisor and the Manager shall be under no obligation to see how any benefit paid is used.

43.3 Receipt and release

Any person to whom a benefit is payable shall, if requested, give to the Supervisor or the Manager at the time of payment a receipt and release in the form required by the Supervisor or the Manager.

43.4 Amounts paid in error

In the event of any Member or any Person being paid any amount in error in excess of the Member's proper entitlement then that Person will immediately upon demand by the Supervisor or the Manager refund that amount as a debt due to the Scheme.

44 Unclaimed benefits

44.1 Benefit may be forfeited

If the Supervisor or the Manager is unable to trace a Beneficiary within six years after the date on which the benefit was due then the Supervisor may forfeit the benefit and apply it under section 149 of the Trusts Act. If the benefit is forfeited the missing person's benefit and right to any other benefits under the Scheme shall be cancelled.

45 Payment of benefits on death

45.1 Payment on death

If a Member dies the Manager must:

- a on application by all of the Member's Personal Representatives, pay to that person an amount equal to the value of the Member's Member Account, at the date on which the application is accepted, as part of that Member's estate; or
- b in the case of any amounts payable in respect of a Personal Member pursuant to Part 4 of this Deed, if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.

45.2 Death certificates and other information

The Manager is entitled to insist on receiving death certificates, probate, letters of administration or any other information it may require before making payment of benefits on death.

45.3 No Nominated Beneficiary

Subject to clause 45.1b, if a Member dies without leaving any Nominated Beneficiary, and no executor or administrator is appointed in relation to the estate of the deceased Member, then the Supervisor shall forfeit payment of benefits on death in respect of the Member and apply such payment of benefits under section 149 of the Trusts Act.

46 Benefits not assignable

46.1 Rights personal

The benefits and rights under the Scheme belong only to the Member.

46.2 Benefits may not be assigned

No Member or Beneficiary may assign, charge, pass to any other person or mortgage their benefits in any way.

46.3 No notice of other interests

Subject to clause 49 and the FMC Requirements, the Supervisor may not recognise the interests of any other Person even if it has notice of that Person's interest.

47 Bankruptcy of Beneficiary

47.1 Benefits forfeited

To the maximum extent permitted at law, where the Supervisor has reason to believe a Member is likely to or has committed an act of bankruptcy the Member shall forfeit entitlement to all that Member's benefits under this Deed.

47.2 Application of forfeited benefits

To the maximum extent permitted at law, the Supervisor shall hold and may apply the benefits which would otherwise have been payable to the Member for the benefit of the Member or any Dependents of the Member in such manner as it thinks fit.

48 Beneficiaries who are incapacitated or minors

48.1 Infancy or incapacity

Subject to the FMC Requirements, if any benefit is for a Beneficiary who is:

- a a minor;
- b under a legal incapacity; or
- c in the opinion of the Manager incapable of managing their own affairs,

the Supervisor or the Manager may pay the benefit to another person for the benefit of that Beneficiary on those terms the Supervisor or the Manager thinks appropriate.

49 Relationship property

49.1 Court orders or arrangements

The Supervisor and Manager shall give effect to any court order or other legislative provision requiring them to give effect to an agreement entered into by a Member to make a relationship property settlement with his or her spouse, civil union partner or de facto partner ('Partner').

49.2 Proofs

A certified copy of the documentation between the Member and the Partner must be provided to the Supervisor before they can give effect to any legislative provision or order of the Court. In the case of a relationship property agreement, the Manager shall give effect to such an agreement only if Manager is satisfied that the agreement has been approved by the Court as meeting the requirements of the Property (Relationships) Act 1976.

49.3 Benefit not to be increased

The Manager shall not pay an amount to the Member and/or Partner which would be greater in value than the benefits to which the Member would have been otherwise entitled to receive.

50 Meetings of Scheme Members

50.1 Manager must call meeting

The Manager will call a meeting of Members upon the written request of:

- a the Supervisor;
- b Members whose Member Account balances (calculated in accordance with this Deed) have a combined value of no less than 5% of the value of all Member Accounts in that class;
- c no less than 5% of the number of Members who hold managed investment products in that class; or
- d any other person or persons entitled by the FMC Act to summon a meeting.

50.2 **Manager may call meeting**

The Manager may at any time of its own volition convene a meeting of Members.

50.3 **Proceedings at meetings**

Meetings of the Members shall be conducted in accordance with the provisions of Schedule 2 or as otherwise prescribed by law. Those provisions shall apply notwithstanding anything to the contrary in the FMC Act.

50.4 **Restrictions on voting**

Except where permitted by the FMC Act, the Manager and its Associated Persons are not entitled to, and must not, vote their interest on a resolution of Members if they have an interest in the resolution or matter other than as a Member.

50.5 **Members may direct Supervisor**

By means of a Special Resolution passed at a meeting of Members, the Members have the power to give such directions to the Supervisor as they think proper concerning the Scheme, being directions that are consistent with the provisions of this Deed, any enactment, or rule of law, including, where applicable, the FMC Requirements.

50.6 **Supervisor must comply with direction**

Where any direction is given to the Supervisor pursuant to clause 50.5 in respect of any matter, the Supervisor must comply with the direction and is not liable for anything done or omitted to be done in good faith in accordance with that direction. Where applicable, the Supervisor may also at its discretion in accordance with section 207 of the FMC Act apply to the High Court for an order in respect of any matter.

50.7 **Meetings of class of Members**

The Manager may, and shall on the request in writing of those entitled to request a meeting pursuant to clause 50.1 (with references in that clause to Members read as if they were references to the particular class of Members), summon a meeting of any class of Members, such meeting to be governed by this clause 50.7. Unless otherwise provided, or the context otherwise requires, all the provisions of this Deed relating to meetings of Members shall apply with all necessary modifications to any such meeting.

50.8 **Written resolution in lieu of Members' meeting**

A written resolution is valid as if it has been passed at a meeting if it is signed in accordance with the Act by no less than 75% of the number of Members who are entitled to vote on the resolution at a meeting of the class of Members.

Miscellaneous

51 **Notice to Beneficiary**

51.1 **Deemed receipt**

Any notice given to any Beneficiary of the Scheme shall be considered served if:

- a it is delivered to that Beneficiary personally or to the Beneficiary's normal home address;
- b it is sent by post to the address of the Beneficiary last known to the Manager;
- c it is sent by email to the address designated by that Beneficiary; or
- d in respect of documents or information that are legally permitted to be available in this manner, where the document or information is made available through an electronic facility on a substantially continuous basis in accordance with the FMC Requirements.

51.2 **Receipt of posted notice**

Any notice sent by post to a Beneficiary shall be considered served three days after the date it was posted.

51.3 **Receipt of emailed notice**

Any notice sent by email to a Beneficiary shall be deemed to be served when received by the Beneficiary in accordance with the Contract and Commercial Law Act 2017.

52 **Service of notice to parties to Deed**

52.1 **Method of giving notice**

Any notice required to be given to the Supervisor, the Manager or any Employer may be:

- a sent by registered mail to such address or Person as the Supervisor, the Manager or the Employer (as the case may be) may specify in writing;
- b delivered personally;
- c made by facsimile; or
- d made in any other manner as may be agreed between the Supervisor, the Manager and the Employers.

52.2 **Deemed receipt**

A notice given to the Supervisor, the Manager or an Employer shall be considered to have been duly given or made:

- a three days after being deposited in the mail by the sender with mail postage pre-paid;
- b on delivery when delivered by hand by the sender;
- c if sent by facsimile when a completed transmission report is received by the sender unless a verifiable query as to material eligibility is properly raised; and
- d if made in any other manner then as agreed between the Supervisor, the Manager and the Employers.

53 Confidentiality

53.1 Information to be treated in confidential manner

The Supervisor and Manager must treat all information disclosed to them in connection with the Scheme in a confidential manner. They may however pass on information to those concerned with the Scheme's administration or as required by law. In these circumstances the Supervisor or Manager (as applicable) shall obtain assurances from those Persons that all information will be treated by them in the same way.

54 Authorisation to enter deed

54.1 Manager and Supervisor warranties and representations

The Supervisor and the Manager warrant and represent to each other that they are each authorised by law to enter, and have taken all necessary action to authorise their entry into and performance of their obligations under this Deed.

55 New Zealand law

55.1 New Zealand law applies

This Deed shall be construed, interpreted, and administered according to the laws of New Zealand.

PART 2 – RULES APPLICABLE TO LEGACY MEMBERS

56 Legacy Section

56.1 Legacy Super Scheme

The Scheme is a legacy superannuation scheme (as defined in the FMC Act) in respect of the Legacy Section only.

56.2 Closed to new members

The Legacy Section of the Scheme is closed to new Members with effect from the Effective Time.

56.3 Legacy Members

Natural persons who were Members of the Scheme (other than Participating Members) at the Effective Time are Legacy Members for the purposes of this Deed and are bound by the Rules set out in this Part 2.

56.4 Cessation of membership

A Legacy Member stops being a Member of the Scheme when the Legacy Member receives all benefits the Legacy Member is entitled to receive under the Scheme or when a Legacy Member transfers to another scheme pursuant to clause 36.

57 Legacy Members' contributions

57.1 Contributions specified in application

Each Legacy Member will make contributions in the manner specified in the Legacy Member application, or as otherwise agreed with the Manager from time to time.

57.2 Additional contributions

A Legacy Member may make additional contributions on the basis prescribed from time to time by the Manager and notified to Legacy Members.

57.3 Minimum Contribution Amounts

The Manager may set Minimum Contribution Amounts, as notified to Legacy Members from time to time.

58 Employer contributions

58.1 Contributing Employers may contribute

Any Contributing Employer may contribute to the Scheme on behalf of a Legacy Member, as agreed with the Legacy Member and advised to the Manager from time to time.

58.2 Deductions

Before paying any contributions to the Scheme a Legacy Member's Employer shall deduct any withholding or other taxes or deductions required to be paid to any regulatory or Government authority.

58.3 Minimum Contribution Amounts

The Manager may set Minimum Contribution Amounts as notified to Legacy Members' Employers from time to time.

58.4 Contributing Employers may contribute

Any Contributing Employer may contribute to the Scheme on behalf of a Legacy Member, as agreed with the Legacy Member and advised to the Manager from time to time.

58.5 Contributions vest in Legacy Member

Any contributions paid to the Scheme on behalf of a Legacy Member by that Legacy Member's Employer shall vest immediately in the Legacy Member.

59 Suspension of contributions

59.1 Legacy Member may stop or recommence making contributions

The following provisions shall apply to a Legacy Member:

- a The Legacy Member may stop and recommence making contributions to the Scheme at any time and for any period.
- b A Legacy Member who stops or recommences making contributions under paragraph a, must advise the Manager, or the Manager's agent in writing.

60 Termination of contributions

60.1 Contributions will stop

When a Legacy Member stops being a Legacy Member all contributions to the Scheme under Part 2 of this Deed shall cease.

61 Legacy Member's benefits

61.1 General

The benefits payable to Legacy Members are as set out below.

61.2 Payment on Normal Retirement Date

Subject to clause 3.10b, the Legacy Member will be entitled to elect to receive any remaining value of their Member Account on their Normal Retirement Date.

61.3 **Payment on redundancy**

Subject to clause 3.10b, if a Legacy Member who is an Employee leaves Employment as a result of the Legacy Member's job being declared redundant by the Employer the Legacy Member will be entitled to receive the full value of their Member Account. The Employer shall provide a certificate to the Manager whenever a Legacy Member's job is declared redundant.

61.4 **Payment on death**

If a Legacy Member dies before obtaining a benefit under any of the above clauses the benefit payable is the full value of the Member Account of the deceased Legacy Member.

61.5 **Payment on Total and Permanent Disability**

Subject to clause 3.10b, where the Supervisor is of the opinion that a Legacy Member who is an Employee has ceased to be Employed as a result of Total and Permanent Disablement the Legacy Member will be entitled to elect to receive the full value of their Member Account.

61.6 **Legacy Members must provide information to Manager**

In determining whether a Legacy Member has ceased to be Employed as a result of Total and Permanent Disablement the Manager will be entitled to obtain all medical and other evidence it may require and the Legacy Member will be required to provide such information to the Manager.

61.7 **Withdrawal of UK Transfer**

Any Legacy Member who has had a UK Transfer accepted into the Scheme may make a withdrawal in respect of that UK Transfer if eligible to do so in accordance with clause 38.

62 **Hardship benefit**

62.1 **Benefit in the case of Hardship**

Subject to clause 3.10b, the Manager may, at any time in the case of Hardship pay a benefit to a Legacy Member where the Manager in its sole discretion determines payment of all or part of the Member Account of a Legacy Member to the Legacy Member as a benefit is justified.

63 **Withdrawal benefit**

63.1 **Pre-21 April 2011 Legacy Members may withdraw**

Subject to clause 3.10b, a Legacy Member who joined the Scheme prior to 21 April 2011 shall be entitled to withdraw part of the value of their Member Account by payment of a lump sum from time to time on such terms and conditions as may be determined by the Manager at its absolute discretion. Unless the Manager determines otherwise the minimum monthly lump sum withdrawal that may be made by a Legacy Member who is aged 55 years or over is \$500.

63.2 Other Legacy Members may withdraw

Subject to clause 3.10b, a Legacy Member who has joined the Scheme on or after 21 April 2011 who is aged 55 or over, but who has not reached their Normal Retirement Date, shall be entitled to apply to the Manager to withdraw part of the value of their Member Account by payment of a lump sum. Approval of such a request is at the Manager's absolute discretion. Unless the Manager determines otherwise the minimum monthly lump sum withdrawal that may be made under this clause by a Member who is aged 55 years or over is \$500.

63.3 Withdrawals not permitted in certain circumstances

No Legacy Member may make a withdrawal under clause 63.1 or 63.2 in the following circumstances:

- a where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Scheme, or to any Member of the Scheme or to any contribution made by or in respect of a Member under the Scheme under any law (including tax status or treatment); or
- b where the total amount withdrawn during a 12 month period will exceed 20% of the total value of the Legacy Member's Member Account at the beginning of the period.

63.4 Annuity may be purchased

Where it is a requirement under clause 37.4 or clause 38 of any transfer, the Manager shall, instead of paying to a Legacy Member all or part of the value of their Member Account payable under this Deed arrange for any annuity to be purchased on such terms and conditions as shall be agreed between the Manager and the provider of the annuity in consultation with the Legacy Member.

PART 3 – RULES APPLICABLE TO EMPLOYER MEMBERS

64 Employer Section

64.1 Scheme is Workplace Savings Scheme in respect of Section

The Scheme is a Workplace Savings Scheme in respect of the Employer Section only.

64.2 Participating Members

Natural persons who were Participating Members of the Scheme at the Effective Time and any other natural person who joins the Scheme under this Part 3 are Employer Members for the purposes of this Deed and are bound by the Rules set out in this Part 3.

64.3 Participating Employers

Persons who were Participating Employers of the Scheme at the Effective Time and any other person who becomes a Participating Employer in accordance with clause 65.2 are Participating Employers for the purposes of this Deed and are bound by the Rules set out in this Part 3.

64.4 Trustee Members

Persons who were Trustee Members of the Scheme at the Effective Time and any other trustees or manager (as each term is defined in the FMC Act) of a Retirement Scheme who applies to be a Trustee Member pursuant to this Deed are Trustee Members of the Employer Section for the purposes of this Deed and are bound by the Rules set out in Part 5.

65 Eligibility

65.1 Employer Members

Any natural person may apply to join the Scheme as an Employer Member as set out in clause 3.3.

65.2 Participating Employers

Any person may apply to participate in the Scheme as a Participating Employer in accordance with clause 66.1.

65.3 Eligibility for membership

Any natural person is eligible to join the Scheme as an Employer Member if:

- a he or she is an employee or director of a Participating Employer; or
- b he or she provides personal services (other than as an employee) principally to a Participating Employer; and
- c he or she meets any additional conditions of eligibility contained in the relevant Participation Agreement.

65.4 Cessation of membership

An Employer Member stops being a Member of the Scheme when the Employer Member receives all benefits the Employer Member is entitled to receive under the Scheme or when an Employer Member transfers to another scheme pursuant to clause 36.

66 Participating Employers may join

66.1 Manager may invite employers to become Participating Employers

Any employer who is invited to join by the Manager may join the Scheme as a Participating Employer. Any person who applies to participate in the Scheme as a Participating Employer shall if required by the Manager:

- a provide all relevant information requested by the Manager;
- b agree with the Manager the terms governing the membership of the Scheme for Employer Members in respect of that Participating Employer; and
- c complete and sign a Participation Agreement.

66.2 Contents of Participation Agreement

The Participation Agreement shall contain the following:

- a any conditions of eligibility for Membership which are additional to the conditions set out in clause 65.3;
- b the contributions to be paid by Employer Members and the Participating Employer;
- c the options available for investment of contributions;
- d any fees payable; and
- e any other provisions or rules for Employer Members in respect of that Participating Employer provided that such provisions or rules do not jeopardise the Employer Section's status as a Workplace Savings Scheme.

66.3 Participating Employers bound by this Deed

From the date specified in the Participation Agreement the employer shall become a Participating Employer participating in this Scheme and shall be bound by this Deed and the Participation Agreement.

67 Participating Employers cease to participate

67.1 Participating Employer ceases to participate

A Participating Employer shall cease to participate in the Scheme if:

- a the Participating Employer gives 90 days prior notice in writing to the Manager of the effective date that it intends to cease to continue participating in the Scheme for any reason;

- b an order is made or resolution is passed for the liquidation or bankruptcy of the Participating Employer except for the purposes of amalgamation or reconstruction; or
- c the Manager gives at least one months' notice in writing to the Participating Employer of the effective date on which the Participating Employer's participation shall cease.

67.2 **Decision on partial wind-up of the Scheme**

If written notice is given under clauses 67.1a or 67.1c or an order is made or a resolution is passed for the liquidation or bankruptcy of the Participating Employer under clause 67.1b the Manager shall decide after consultation with the Participating Employer whether:

- a there will be a partial wind-up of the Scheme; or
- b the Scheme will continue in respect of the Employer Members who are employees of the Participating Employer.

67.3 **Continuation of Scheme**

If the Manager decide that the Scheme will continue in respect of the Employer Members who are employees of the Participating Employer:

- a the Manager will release the Participating Employer from all future obligations under the Scheme; and
- b the Participating Employer will no longer have any rights or powers in respect of the Scheme.

67.4 **Employees of Participating Employers may continue to be Employer Members**

Employer Members who are employees of the Participating Employer may continue to be Employer Members of the Scheme if the Participating Employer ceases to participate in the Scheme.

67.5 **Manager is responsible for making decisions**

From the effective date that the Participating Employer ceases to participate in the Scheme:

- a the Manager will make all decisions relating to the administration and investment of the Scheme for those Employer Members who are employees of that Participating Employer without any obligation to consult with or obtain the consent of that Participating Employer; and
- b the Participating Employer will be under no obligation whatsoever to make any future contributions to the Scheme and the Participating Employer will no longer have any rights or powers in respect of the Scheme.

67.6 **Contribution of lump sums**

An Employer Member who is an employee of that Participating Employer may continue to contribute lump sums to the Scheme in a manner agreed to by the Manager.

67.7 Payment of benefits

If the Scheme continues in respect of an Employer Member in accordance with clause 67.2b, Benefits will be paid to Employer Members according to the provisions of clause 72 as if there was never a Participation Agreement applicable to that Member.

67.8 Members leaving Employment with Participating Employers remain Members

An Employer Member will remain an Employer Member in the Scheme if the Employer Member leaves the Employment of their Participating Employer. The Employer Member will become subject to the terms of this Deed as if there was never a Participation Agreement applicable to that Member. Such Members may continue to make voluntary contributions to their Member Account. The Employer will not be required to continue making Employer Contributions.

68 Partial wind-up**68.1 Manager will notify Employer Members**

If the Participating Employer stops participating in the Scheme and the Manager decides that the Scheme will be partially wound up the Manager shall give written notification to the Employer Members who are the Employees of the Participating Employer. An Employer Member may choose by giving written notice to the Manager within one month from the date of receiving the written notification from the Manager whether he or she wishes to withdraw from the Scheme.

68.2 Failure to give written notice

If an Employer Member does not give written notice within the period of one month the Manager shall proceed on the basis that the Employer Member wishes to remain in the Scheme.

68.3 Contributions may continue

Where an Employer Member chooses or is deemed to have chosen to remain an Employer Member, then the Employer Member will continue as an Employer Member as if there was never a Participation Agreement applicable to that Member, and may continue to contribute to the Scheme in a manner agreed to by the Manager and:

- a the Participating Employer will be under no obligation whatsoever to make any future contributions to the Scheme and will have no rights or powers whatsoever in respect of the Scheme; and
- b the Employer Member will be entitled to a benefit under clause 73.

68.4 Manager to realise Member Accounts

If any Employer Members choose to withdraw from the Scheme the Manager will as soon as possible realise the Member Account that relates to the Employer Members withdrawing from the Scheme.

68.5 Manager to allocate proceeds

Once the Manager has realised the Assets of the Scheme under clause 68.4 the Manager shall allocate the proceeds following realisation and the provisions of clause 31 shall apply.

69 Employer Members' contributions

69.1 Contributions specified in application and Participation Agreement

Each Employer Member must make contributions as required under the relevant Participation Agreement (if any).

69.2 Additional contributions

An Employer Member may make additional contributions on the basis prescribed from time to time by the Manager and set out in the PDS or Register Entry.

69.3 Minimum Contribution Amounts

The Manager may set Minimum Contribution Amounts, as set out in the PDS or Register Entry.

70 Employer contributions

70.1 Contribution of Participating Employers

Participating Employers shall contribute the amount of each Employer Member's Salary provided for in the Participation Agreement entered into by the Participating Employer as a contribution to the Scheme.

70.2 Deductions

Before paying any contributions to the Scheme an Employer Member's Employer shall deduct any withholding or other taxes or deductions required to be paid to any regulatory or Government authority.

70.3 Participating Employer may stop or change contributions

Unless the Participation Agreement provides otherwise a Participating Employer may at any time:

- a stop contributions;
- b reduce contributions;
- c increase contributions; or
- d make additional contributions.

70.4 Minimum Contribution Amounts

The Manager may set Minimum Contribution Amounts, as set out in the PDS or Register Entry.

70.5 Participating Employer must give prior notice

If a Participating Employer is entitled to alter contribution amounts the Participating Employer must give prior notice in writing to both the Manager and its employees who are Participating Employer Members before changing the contribution amounts under this clause.

70.6 Participating Employer may cease contributing

A Participating Employer may cease contributing to the Scheme on behalf of a person if that person ceases to be an officer or Employee of the Participating Employer.

70.7 Contributing Employers may contribute

Any Contributing Employer may contribute to the Scheme on behalf of an Employer Member.

70.8 Contributions vest in Employer Member

Any contributions paid to the Scheme on behalf of an Employer Member by that Employer Member's Employer shall vest immediately in the Employer Member.

71 Termination of contributions

71.1 Contributions will stop

When an Employer Member stops being an Employer Member all contributions to the Scheme under Part 3 of this Deed shall cease.

72 Employer Members' benefits

72.1 General

If the Employer Member is an Employee of a Participating Employer the benefits payable to the Employer Member will be as provided below unless, subject to clause 3.10b, otherwise provided for in the relevant Participation Agreement. The benefits payable to Employer Members who are not Employees of a Participating Employer are as set out below.

72.2 Payment on Normal Retirement Date

Subject to clause 3.10b and unless otherwise provided for in a Participation Agreement, the Employer Member will be entitled to elect to receive any remaining value of their Member Account on their Normal Retirement Date.

72.3 Payment on redundancy

Subject to clause 3.10b and unless otherwise provided for in a Participation Agreement, if an Employer Member who is an Employee leaves Employment as a result of the Employer Member's job being declared redundant by the Employer the Employer Member will be entitled to receive the full value of their Member Account. The Employer shall provide a certificate to the Supervisor whenever an Employer Member's job is declared redundant.

72.4 Payment on death

Unless otherwise provided for in a Participation Agreement, if an Employer Member dies before obtaining a benefit under any of the above clauses the benefit payable is the full value of the Member Account of the deceased Employer Member.

72.5 Payment on Total and Permanent Disability

Subject to clause 3.10b and unless otherwise provided for in a Participation Agreement, where the Manager is of the opinion that an Employer Member who is an Employee has ceased to be Employed as a result of Total and Permanent Disablement the Employer Member will be entitled to elect to receive the full value of their Member Account.

72.6 Employer Members must provide information to Manager

In determining whether an Employer Member has ceased to be Employed as a result of Total and Permanent Disablement the Manager will be entitled to obtain all medical and other evidence it may require and the Employer Member will be required to provide such information to the Manager.

72.7 Payment on resignation

Subject to clause 3.10b and unless otherwise provided for in a Participation Agreement, if an Employer Member's Employment with a Participating Employer ends in circumstances where none of the above benefits are payable and that Employer Member elects to leave the Scheme the Employer Member shall be entitled to receive the benefit (if any) specified in the relevant Participation Agreement.

72.8 Withdrawal of UK Transfer

Any Employer Member who has had a UK Transfer accepted into the Scheme may make a withdrawal in respect of that UK Transfer if eligible to do so in accordance with clause 38.

73 Benefit following partial wind-up

73.1 Employer Member may request payment

Subject to clause 3.10b, if an Employer Member chooses to remain an Employer Member of the Scheme under clause 68.1, the Employer Member may request the Manager to pay to the Employer Member at any time the total value of the Employer Member's Member Account.

73.2 Partial withdrawals permitted

The Manager will also allow the Employer Member to make partial withdrawals from the Employer Member's Member Account.

73.3 Restrictions on withdrawals

No Employer Member may make a withdrawal under clauses 68.1, 73.1, or 73.2 where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Scheme, or to any Member of the Scheme or to any contribution made by or in respect of a Member under the Scheme under any law (including tax status or treatment).

74 Hardship benefit

74.1 Benefit in the case of Hardship

Subject to clause 3.10b and unless otherwise provided for in a Participation Agreement, the Manager may, at any time in the case of Hardship pay a benefit to an Employer Member where the Manager in its sole discretion determines payment of all or part of the Member Account of an Employer Member to the Employer Member as a benefit is justified.

75 Withdrawal benefit

75.1 Pre-21 April 2011 Employer Members may withdraw

Subject to clauses 3.10b and 75.3, and unless otherwise provided for in a Participation Agreement, an Employer Member who joined the Scheme prior to 21 April 2011 shall be entitled to withdraw part of the value of their Member Account by payment of a lump sum from time to time on such terms and conditions as may be determined by the Manager at its absolute discretion. Unless the Manager determines otherwise the minimum monthly lump sum withdrawal that may be made by an Employer Member who is aged 55 years or over is \$500.

75.2 Other Employer Members may withdraw

Subject to clauses 3.10b and 75.3, unless otherwise provided for in a Participation Agreement, an Employer Member who has joined the Scheme on or after 21 April 2011 who is aged 55 or over, but who has not reached their Normal Retirement Date, shall be entitled to apply to the Manager to withdraw part of the value of their Member Account by payment of a lump sum. Approval of such a request is at the Manager's absolute discretion. Unless the Manager determines otherwise the minimum monthly lump sum withdrawal that may be made under this clause by an Employer Member who is aged 55 years or over is \$500.

75.3 Withdrawals not permitted in certain circumstances

No Employer Member may make a withdrawal under clauses 75.1 or 75.2 in the following circumstances:

- a where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Scheme, or to any Member of the Scheme or to any contribution made by or in respect of a Member under the Scheme under any law (including tax status or treatment); or
- b where the total amount withdrawn during a 12 month period will exceed 20% of the total value of the Employer Member's Member Account at the beginning of the period.

75.4 Annuity may be purchased

Where it is a requirement under clause 37.4 or clause 38 of any transfer, the Manager shall, instead of paying to an Employer Member all or part of the value of their Member Account payable under this Deed arrange for any annuity to be purchased on such terms and conditions as shall be agreed between the Manager and the provider of the annuity in consultation with the Employer Member.

PART 4 – RULES APPLICABLE TO PERSONAL MEMBERS

76 Personal Section

76.1 Personal Section

The Scheme is treated as a superannuation scheme (as defined in the FMC Act) in respect of the Personal Section only. Persons joining the Personal Section are Personal Members for the purposes of this Deed and are bound by the Rules set out in this Part 4.

76.2 Incorporation of Superannuation Scheme Rules

The Superannuation Scheme Rules set out in Schedule 12 of the FMC Regulations (as amended from time to time) are incorporated into Part 4 of this Deed. In the event of any inconsistency between the Superannuation Scheme Rules and this Deed, the Superannuation Scheme Rules prevail.

77 Personal Members' contributions

77.1 Contributions specified in application

Each Personal Member will make contributions in the manner specified in the Member application.

77.2 Additional contributions

A Personal Member may make additional contributions on the basis prescribed from time to time by the Manager and set out in the PDS or Register Entry.

77.3 Minimum Contribution Amounts

The Manager may set Minimum Contribution Amounts, as set out in the PDS or Register Entry.

78 Employer contributions

78.1 Contributing Employers may contribute

Any Contributing Employer may contribute to the Scheme on behalf of a Personal Member, as agreed with the Personal Member and advised to the Manager from time to time.

78.2 Deductions

Before paying any contributions to the Scheme a Personal Member's Employer shall deduct any withholding or other taxes or deductions required to be paid to any regulatory or Government authority.

78.3 Minimum Contribution Amounts

The Manager may set Minimum Contribution Amounts, as set out in the PDS or Register Entry.

78.4 Contributions vest in Personal Member

Any contributions paid to the Scheme on behalf of a Personal Member by that Personal Member's Employer shall vest immediately in the Personal Member.

78.5 Cessation of membership

A Personal Member stops being a Member of the Scheme when the Personal Member receives all benefits the Personal Member is entitled to receive under the Scheme or when a Personal Member transfers to another scheme pursuant to clause 36.

79 Personal Members' benefits

79.1 Permitted withdrawals

A Personal Member may only make a withdrawal from the Scheme in accordance with the Superannuation Scheme Rules and this clause 79.

79.2 Withdrawal on reaching New Zealand Superannuation Qualification Age

Subject to any other withdrawals permitted under this clause 79 in accordance with the Superannuation Scheme Rules, a Personal Member may only make a withdrawal from the Scheme on or after the earlier of the following dates:

- a the date on which the Personal Member reaches the New Zealand Superannuation Qualification Age; or
- b subject to clause 3.10b of this Deed, the date that is five years before the date referred to in paragraph a, provided that the Personal Member meets the requirements of clause 3 of the Superannuation Scheme Rules on the basis that the Supervisor is reasonably satisfied that the Personal Member has:
 - i permanently retired from business or employment; and
 - ii reached an age that is five years before the New Zealand Superannuation Qualification Age.

79.3 Withdrawal for transition to retirement

Subject to clause 3.10b, a Personal Member may make a withdrawal for transition to retirement in accordance with clause 4 of the Superannuation Scheme Rules of an amount agreed with the Supervisor, subject to the maximum amount set out in clause 4(4) of the Superannuation Scheme Rules.

79.4 Withdrawal in cases of significant financial hardship

Subject to clause 3.10b, a Personal Member may make a withdrawal in cases of significant financial hardship in accordance with clause 8 of the Superannuation Scheme Rules up to the total value of the Personal Member's Member Account.

79.5 Withdrawal in cases of serious illness

Subject to clause 3.10b, a Personal Member may make a withdrawal in cases of serious illness in accordance with clause 10 of the Superannuation Scheme Rules up to the value of total value of the Personal Member's Member Account.

79.6 Other permitted withdrawals

A Personal Member may make other permitted withdrawals (as defined in the Superannuation Scheme Rules) in accordance with clauses 6 and 7 of the Superannuation Scheme Rules.

79.7 Withdrawal of UK Transfer

Any Personal Member who has had a UK Transfer accepted into the Scheme may make a withdrawal in respect of that UK Transfer in accordance with clause 11B of the Superannuation Scheme Rules in the manner and circumstances set out in clause 38.

79.8 Annuity may be purchased

Where it is a requirement under clause 37.4 or clause 38 of any transfer, the Manager shall, instead of paying to a Personal Member all or part of the value of their Member Account payable under this Deed arrange for any annuity to be purchased on such terms and conditions as shall be agreed between the Manager and the provider of the annuity in consultation with the Personal Member.

PART 5 – RULES APPLICABLE TO TRUSTEE MEMBERS OF EMPLOYER SECTION

80 Trustee Members

80.1 Joining the Scheme

Where the trustees or manager (as each term is defined in the FMC Act) of a Retirement Scheme (in this clause, each an '**Applicant**') joins the Scheme as a Trustee Member, they will be deemed to be one Member for the purposes of this Deed and the following provisions will (subject to the Member Application) apply in respect of them:

- a each Applicant will be jointly and severally liable in respect of all contributions and other amounts payable by the Trustee Member under this Deed;
- b any one of the Applicants may give receipts for any benefit or other amounts payable to the Trustee Member under this Deed;
- c the Applicants will give the Manager a common address to be used for all notices to the Trustee Member under this Deed;
- d the Applicants will immediately advise the Manager in writing of any change in the Applicants of the Trustee Member's scheme;
- e the Applicants will immediately advise the Manager in writing if the Trustee Member's scheme ceases to be a Retirement Scheme and will indemnify the Manager and Supervisor against any losses, costs and expenses incurred by the Manager as a result of the Trustee Member's scheme ceasing to be a Retirement Scheme; and
- f it is the responsibility of the Trustee Member (and not the Manager) to ensure that the Trustee Member's scheme's funds are invested in accordance with legislative requirements and the trust deed of the Trustee Member's scheme.

81 Termination benefits for Trustee Members

81.1 Termination of membership

A Trustee Member's membership of the Scheme:

- a will terminate if the scheme of which the Trustee Member is trustee or manager ceases to be a Retirement Scheme; or
- b may be terminated by one month's written notice given by the Trustee Member to the Manager or vice versa.

81.2 Termination benefit payable

On termination of membership the Trustee Member will be paid a termination benefit.

81.3 Value of termination benefit

The termination benefit will be the Trustee Member's Member Account balance at the date of payment.

81.4 Transfer of termination benefit

The termination benefit will be paid to the Trustee Member or transferred to another scheme or fund as agreed between the Manager and Trustee Member.

82 Withdrawal by Trustee Member

82.1 Trustee Members may withdraw benefit

Trustee Members may request a withdrawal of all or part of their benefit in the Scheme at any time upon giving 30 days' notice in writing to the Manager.

PART 6 – DEFINITIONS AND INTERPRETATION

83 Definitions and interpretation

83.1 Defined terms

In this Deed unless the context sensibly requires otherwise:

'Administration Manager' means a person to whom the Manager has contracted some or all of the administration of the Scheme.

'Arrangements' has the meaning given to that term in clause 3.19.

'Assets' means any money, property or other assets of any kind and includes:

- a real and personal property;
- b any debt; and
- c any right or interest or other benefit,

and any interest in any of the foregoing whether in possession or not.

'Associated Person' means an associated person as defined in the FMC Act.

'Auditor' means the Person for the time being holding the office of auditor in accordance with clause 17.2.

'Beneficiary' means any Member or any other person entitled to any benefit from the Scheme.

'Business Day' means a day on which registered banks are open for business in Wellington, other than a Saturday or Sunday.

'Commencement Date' means 18 December 2008, being the date that the Scheme commenced in accordance with the Existing Trust Deed.

'Confirmation Information' has the meaning given to that term in the FMC Act.

'Contributing Employer' means an employer who makes contributions in respect of an employee but has not entered into a Participation Agreement.

'Custodian' has the meaning given to the term in clause 18.1.

'Deferral Notice' has the meaning given to that term in clause 8.4.

'Dependant' means any person whom the Supervisor determines is or has been dependant on a Member.

'Effective Date' means 30 January 2021.

'Effective Time' means immediately prior to the date that the Manager elected under clause 19(1)(a) of Schedule 4 to the FMC Act in respect of the Scheme.

'Employed' means employed by an Employer.

'Employee' means any person Employed by an Employer or nominated by an Employer to join the Scheme.

'Employer' means any Contributing Employer or Participating Employer.

'Employer Contributions' means contributions paid by a Participating Employer under a Participation Agreement.

'Employment' means continuous full-time or part-time permanent employment under a contract of employment with an Employer and including any probationary period. In the event of any doubt as to whether the requirements of Employment have been fulfilled the decision of the Employer shall be final.

'Employer Member' means any natural person who was a Participating Member of the Scheme at the Effective Time and any other natural person who joins the Scheme under Part 3 of this Deed.

'Employer Section' means the workplace savings section of the Scheme administered in accordance with Parts 1, 3, and 5 of this Deed.

'Equivalent Overseas Retirement Scheme' has the meaning given to that term in the FMC Regulations.

'Exchange' means any official or formally constituted share, security, unit, or other equity ownership interest, futures, or options exchange on which a relevant Asset is quoted in any country.

'Finance Act' means the Finance Act 2004 (UK), any regulations made thereunder and any amending or successor legislation.

'FMA' means the Financial Markets Authority and includes any Person lawfully delegated to exercise or perform any of the powers or functions of the Financial Markets Authority.

'FMC Act' means the Financial Markets Conduct Act 2013.

'FMC Regulations' means the Financial Markets Conduct Regulations 2014.

'FMC Requirements' means all requirements imposed by the FMC Act and any legislation enacted under the FMC Act (including the applicable requirements of the financial markets legislation, as defined in the FMC Act).

'Fund' means a Fund established under clause 7.

'Fund Update' means a fund update within the meaning of the FMC Act, prepared in accordance with that Act for each Fund.

'Fund Value' means, in relation to any Fund and any Valuation Day, such sum as is ascertained and fixed by the Manager in respect of that Fund for that Valuation Day by deducting from the aggregate of:

- a the amount of cash forming part of the Assets attributable to that Fund;

- b the Market Value of all of the other Assets of the Scheme attributable to that Fund (including for the avoidance of doubt accrued and unpaid income of the Scheme attributable to that Fund on that Valuation Day);
 - c the benefit of recoveries made from Members on account of PIE Tax,
- the aggregate of:
- d the Liabilities of the Scheme attributable to that Fund; and
 - e all costs, charges, and other outgoings (other than those which in the opinion of the Manager are not material) incurred, accrued, or otherwise payable in connection with the Scheme which are attributable to that Fund for the time being have not been paid (including an appropriate proportion of any such costs, charges, or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment).

'GST' means goods and services tax payable under the Goods and Services Tax Act 1985.

'Hardship' means:

- a a Member's inability to meet minimum living expenses;
- b a Member's inability to meet mortgage repayments on his or her principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence;
- c the cost of modifying a residence to meet special needs arising from a disability of a Member or Member's Dependant;
- d the cost of medical treatment for an illness or injury of a Member or a Member's Dependant;
- e the cost of palliative care for a Member or a Member's Dependant;
- f the cost of a funeral for a Member's Dependents; or
- g the Member suffering from a serious illness.

'HMRC' means Her Majesty's Revenue and Customs (United Kingdom).

'Investment Manager' means the person to whom the Manager has contracted the investment of some or all of the Assets.

'Investment Direction' means the direction by a Member, in such a form as the Manager may prescribe, as to the investment of money held in a Member Account or as otherwise provided for in a Participation Agreement, in a Fund.

'Issuer Obligations' has the meaning given that term by the FMC Act.

'KiwiSaver Scheme' means a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme.

'Legacy Member' means a natural person who was a Member of the Scheme (other than a Participating Member) at the Effective Time.

'Legacy Section' means the legacy superannuation section of the Scheme administered in accordance with Parts 1 and 2 of this Deed.

'Liabilities' means, in relation to the Scheme (or where applicable any Fund), each liability which should be classified as such by NZ GAAP but does not include:

- a a contingent liability (other than any fee or other charge properly accrued by the Manager and except to the extent the Manager, with the approval of the Auditor, decides that an allowance shall be made for contingent liabilities);
- b a benefit payable under this Deed; or
- c PIE Tax, except for PIE Tax recovered from a Member and held pending payment to Inland Revenue.

'Licensed Supervisor' means a person who holds a licence to act as a supervisor of a managed investment scheme under the Financial Markets Supervisors Act 2011.

'Manager' means Kiwi Wealth Investments Limited Partnership or any person appointed as Manager from time to time in accordance with the Deed.

'Market Value' means, in relation to any Asset as at any Valuation Day:

- a in respect of fixed interest Assets and any other Asset not falling within subclauses b, c, or d, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or, failing such agreement, according to principles of valuation determined by a Valuer;
- b in respect of Assets which are listed on an Exchange the value determined by the Manager, by reference to the price quoted for the last sale of that investment on the relevant Exchange on or before that Valuation Day, or if there has been no such sale, or if, in the Manager's opinion, use of the last sale as a measure of the value of that Asset is not accurate or appropriate (whether in respect of a particular Valuation Day or generally), the value determined by the Manager, acting reasonably, having regard to such information as the Manager considers appropriate and agreed to by the Supervisor, including the advice of a Valuer;
- c in respect of Assets which are valued by or for the issuer of those Assets, the most recent valuation made of those Assets of which the Manager is aware on or prior to the Valuation Day, provided that if, in the Manager's opinion, that valuation is not an accurate measure of the value of that Asset, the value determined using some other form of appropriate determination as to the value in respect of any specific Asset from time to time as the Manager, acting reasonably, determines and which is agreed to by the Supervisor; and
- d in respect of real property Assets, the most recent value of that property fixed by a Valuer as at a date not more than twelve months preceding that Valuation Day, provided that if, in the Manager's opinion, that valuation is not an accurate measure of the value of that Asset, some other form of appropriate determination as to value in respect of any specific Asset from time to time as the Manager, acting reasonably, determines and which is agreed to by the Supervisor,

and where in respect of an Asset to which sub-paragraph a or b applies the relevant information as to value is not received within two Business Days of the time fixed on a Valuation Day for determination of the Fund Value, means the value of that Asset which applied on the preceding Valuation Day.

'Member' means a natural person, who is or who are a member of the Scheme, and where the context requires, includes a Trustee Member.

'Member Account' means the member account in respect of a Member as described in clause 35.

'Membership' means in respect of a Member that Member's membership of the Scheme as the context requires including any period of leave of absence.

'Minimum Contribution Amount' means a minimum amount that may be contributed to the Scheme and includes regular and lump sum contributions, Member contributions and Employer contributions.

'New Zealand Superannuation Qualification Age' has the same meaning as in the FMC Regulations.

'Nominated Beneficiary' means those Persons whom a Member has last nominated in writing to the Manager to receive a benefit from the Scheme in the event of the death of the Member.

'Non-Side-Pocketed Assets and Liabilities' has the meaning given to that term in clause 3.17.

'Normal Retirement Date' means in respect of a Legacy Member or an Employer Member:

- a the later of:
 - i the date of that Member's 55th birthday; or
 - ii the date on which the Member has been a Member of the Scheme for 5 years; or
- b any other date later than that Member's 55th birthday specified in the relevant Participation Agreement or agreed to by the Manager.

'NZ GAAP' means generally accepted accounting practice, as defined in the Financial Reporting Act 2013.

'Participating Employer' means an employer who has entered into a Participation Agreement and participates in this Scheme.

'Participating Member' means a Member who joined the Scheme under the terms of a Participation Agreement at or prior to the Effective Time.

'Participation Agreement' means, in respect of an employer who wishes to participate in the Scheme, the Participation Agreement entered into between the employer and the Supervisor or Manager in such form as is prescribed by the Supervisor or Manager (as applicable) and as is required under clause 66.1 of this Deed (or any predecessor clause).

'PDS' has the meaning given to that term in the FMC Act.

'Person' includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, society, trust, state or agency of state in each case whether or not having a separate legal personality.

'Personal Member' means any natural person who joins the Scheme under Part 4 of this Deed.

'Personal Section' means the superannuation section of the Scheme administered in accordance with Parts 1 and 4 of this Deed.

'Personal Representative', in relation to a deceased Member, means a person to whom probate of the will of the deceased Member, letters of administration of the estate of the deceased Member, or any other similar grant, has been granted, whether in New Zealand or anywhere else.

'PIE' means a portfolio investment entity as defined in the Income Tax Act 2007.

'PIE Tax' means, in relation to the Scheme, tax payable by the Scheme in respect of one or more Funds, the Supervisor, or the Manager (whether provisional, deferred, or current) which is determined by reference to prescribed investor rates (as defined in the Income Tax Act 2007) of Members or is otherwise determined by the Manager or the Supervisor to be payable on income attributed to Members.

'Post-9 March 2017 Member' means a Member who requests a transfer into the Scheme under clause 38 on or after 9 March 2017.

'QROPS' means a Qualifying Recognised Overseas Pension Scheme under the laws of the United Kingdom.

'QROPS Rules' means the applicable United Kingdom legislation, regulations, and statutory instruments applicable to a QROPS, including the Finance Act, as amended from time to time.

'Record Date' has the meaning given to that term in clause 3.17.

'Register' means each register kept by the Manager under clause 19.

'Register Entry' has the meaning given to that term in the FMC Act.

'Retirement Scheme' has the meaning given to that term in the FMC Act.

'Registered Pension Scheme' means a registered pension scheme for the purposes of Part 4 of the Finance Act.

'Registrar' means the Registrar of Financial Service Providers.

'Regulated Offer' has the meaning given to that term in the FMC Act.

'Related Party' has the meaning given to that term in the FMC Act.

'Related Party Benefit' has the meaning given to that term in the FMC Act.

'Relevant Law' means any requirement or any law of New Zealand with which the Supervisor or the Manager or the Scheme must comply.

'Rules' means the rules set out in Part 2, Part 3, Part 4, and Part 5 of this Deed in accordance with the context of this Deed as amended from time to time.

'S Interests' has the meaning given to that term in clause 3.17.

'Scheme' means the Kiwi Wealth Super Scheme governed by this Deed.

'Scheme Year' means a period commencing on 1 April of one year and ending on 31 March of the next year. Subject to the FMC Act, the Manager may at any time with the approval of the Participating Employers determine that Scheme Year means another period commencing and ending on other dates.

'Section' means whichever of the Personal Section, Legacy Section and Employer Section is relevant in the context.

'Side-Pocketed Assets and Liabilities' has the meaning given to that term in clause 3.17.

'Special Resolution' means a resolution approved by no less than 75% of the number of Members who are entitled to vote and who vote on the question.

'Statement of Investment Policy and Objectives' means, in relation to a Fund and/or the Scheme, a written statement of investment policy and objectives from time to time proposed by the Manager and consented to by the Supervisor.

'Sub-Custodian' has the meaning given to that term in clause 18.2.

'Superannuation Scheme' means a scheme that is registered on the register of managed investment schemes as a superannuation scheme (or, if the scheme is registered as a superannuation scheme in respect of only a section of the scheme, means the scheme in respect of that section).

'Superannuation Scheme Rules' means the provisions set out in Schedule 12 of the FMC Regulations.

'Supervisor' means Public Trust or any person appointed as Supervisor from time to time in accordance with the provisions of this Deed.

'Total and Permanent Disablement' in respect of a Member means:

- a a Member has suffered the total and permanent loss of the use of two limbs, or the total and permanent loss of sight of both eyes, or the total and permanent loss of the use of one limb and the total and permanent loss of sight of one eye, where 'limb' means the whole hand or foot; or
- b a Member is wholly disabled by bodily injury, illness or disease (including a mental condition) and is because of it permanently unable to follow that Member's own or any other occupation for which that Member is reasonably suited by education, training or experience; or
- c any alternative definition contained in an applicable Participation Agreement,

and **'Totally and Permanently Disabled'** has an equivalent meaning.

'Trusts Act' means the Trusts Act 2019.

'Trust Deed' and **'this Deed'** mean this deed of trust as varied from time to time.

'Trust Fund' means the Assets for the time being held by or on behalf of the Supervisor in accordance with this Deed for the purposes of the Scheme.

'Trustee Member' means a Person who is or becomes a Member of the Employer Section as contemplated by clause 64.4.

'UK Tax-Relieved Scheme Funds' has the meaning given to that term by the Finance Act.

'UK Transfer' means, in respect of any relevant Member:

- a a transfer value received by the Scheme in respect of the relevant Member's entitlements under a Registered Pension Scheme (being money that was transferred from, or otherwise has previously been invested in, a Registered Pension Scheme), whether received into the Scheme directly from a Registered Pension Scheme or via a current or former QROPS; but
- b for the purposes of the withdrawal provisions of this Deed, as they relate to such amounts, excludes any returns on those amounts.

'Valuation Day' means, in respect of each Fund, the last day of each calendar month or some other date or dates notified by the Manager to the Supervisor in writing.

'Valuer' means an appropriately qualified person nominated by the Manager and agreed to by the Supervisor.

'Winding Up Date' means immediately after the date of any of the events described in clause 31.1.

'Withdrawal Request' means a request made in accordance with clause 3.13.

'Withdrawal Suspension Notice' means a notice given in accordance with clause 3.15.

'Workplace Savings Scheme' means a scheme that is registered on the register of managed investment schemes as a workplace savings scheme (or, if the scheme is registered as a workplace savings scheme in respect of only a section of the scheme, means the scheme in respect of that section).

83.2 Interpretation

- a The headings and margin notes in this Deed are only for convenience of reference and shall not affect its interpretation.
- b In this Deed where the context permits words describing any gender include all genders.
- c This Deed is binding upon the parties and their respective successors, Personal Representatives and permitted assigns.

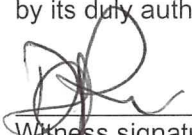
- d In this Deed where the context permits words describing the singular include the plural and vice versa.
- e Reference to any statute includes all amendments and re-enactments of that statute and all regulations and Orders in Council made under it and, in the case of the FMC Act, includes any framework or methodology issued by FMA under the FMC Act.
- f This Deed includes the Rules.
- g Where FMA has published frameworks or methodologies that require certain matters to be calculated, determined, fixed, or carried out in a particular way, the Manager and the Supervisor (as applicable) shall comply with the requirements of those frameworks or methodologies. Any such frameworks or methodologies shall apply notwithstanding, and prevail over, anything to the contrary in this Deed and the provisions of this Deed shall be construed accordingly.
- h Where:
 - i a provision of this Deed replicates a specific compulsory requirement of the FMC Requirements (whether or not in its entirety); but
 - ii such requirement of the FMC Requirements is subsequently repealed, replaced, or amended, or an exemption or other regulatory relief from that requirement subsequently applies to the Scheme,

the provisions of this Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make the Trust Deed consistent with such amended requirement other than to the extent that doing so would be void under the FMC Requirements (including section 139 of the Act).
- i Any use of '**including**', '**for example**' or similar expressions does not imply any limitation.

Execution

Executed as a deed.

Kiwi Wealth Investments General Partner Limited
on behalf of
Kiwi Wealth Investments Limited Partnership
by its duly authorised attorney in the presence of:



Witness signature

Davina Rowan

Print name

Occupation

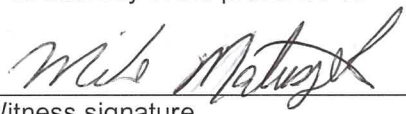


Occupation

WELLINGTON

Address


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



Witness signature

Print name **Mike Matuszek**
Manager Client Services
Corporate Trustee Services
Occupation **Public Trust**
Wellington

Address



Attorney

I.D. BURNS.

Print name



Attorney

Print name

Ireen Muir
Head of Client Services
Corporate Trustee Services
Public Trust
Wellington

Schedule 1 Contributions

1 Member Contributions

- 1.1 Pursuant to clause 3.6a, the Member shall contribute at a minimum rate set out in the relevant Participation Agreement.

2 Employer Contributions

- 2.1 Pursuant to clause 3.6b, the Employer shall contribute at a minimum rate set out in the relevant Participation Agreement.

3 Variation of contributions

- 3.1 Subject to clause 69.3, the Member is entitled to alter contribution rates with the agreement of the Manager and the Employer.
- 3.2 Subject to clause 70.4, the Employer is entitled to alter contribution amounts **provided that** the Employer gives prior notice in writing to both the Manager and its employees who are Members before changing the contribution amounts under this clause.

Schedule 2 Meetings

1 Venue of meetings

- 1.1 A meeting of the Members of the Scheme shall be held at such place and at such time in New Zealand as the Manager determines.

2 Notice of meetings

- 2.1 Notice of every meeting shall be given in the manner provided in this Deed to every Member entitled to receive notice of the meeting who is entered on the Register and who has supplied to the Manager an address for the giving of notices to him or her.
- 2.2 At least 15 working days' notice of every meeting shall be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.
- 2.3 The notice shall specify:
- a the place, day, and hour of the meeting;
 - b the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it;
 - c the text of any Special Resolution to be submitted to the meeting (but it is not necessary to state the text of any Ordinary Resolution to be submitted to the meeting); and
 - d the right of a Member to appoint a proxy.
- 2.4 An irregularity in a notice of meeting is waived if:
- a all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver; or
 - b the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Members.
- 2.5 A copy of the notice and any other communications that a Member receives in connection with the meeting shall be sent to the Supervisor, the Manager, every director of the Manager, and an auditor of the Manager.
- 2.6 The accidental omission to give notice to, or the failure to receive notice of a meeting by, any Member, does not invalidate proceedings at any meeting.
- 2.7 A notice of meeting that contains a Special Resolution to approve a Related Party Benefit must contain, and be accompanied by, the matters required by the FMC Act.

3 Quorum

- 3.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum necessary for a meeting at which:

- a a Special Resolution is to be submitted, shall be not less than 25% of the number of Members entitled to vote on the business to be transacted by the meeting present in person or by proxy or attorney; and
 - b any other resolution is to be submitted, shall be five Members present in person or by proxy or attorney.
- 3.3 If within 30 minutes after the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Members shall be dissolved. In any other case it shall stand adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint and at such adjourned meeting if a quorum is not present within 30 minutes after the time appointed for the meeting the Members present in person or by proxy or by attorney and entitled to vote shall be a quorum.
- 3.4 To avoid doubt, a Member participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.
- 3.5 If a meeting of Members is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned. Notice of any other adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting.
- 4 Supervisor and Manager may attend and speak**
- 4.1 Any director, officer or solicitor of the Supervisor and any other Person authorised for that purpose by the Supervisor or the Manager may attend any meeting and all such persons shall have the right to speak at the meeting in that capacity.
- 5 Chairperson**
- 5.1 A Person nominated in writing by the Supervisor ('Chairperson') shall preside at every meeting.
- 6 Adjournment of Meetings**
- 6.1 The Chairperson may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- 6.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.
- 7 Voting rights**
- 7.1 The only Persons entitled to vote in person or by proxy or by attorney shall be the Members of the Scheme registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- 7.2 Each Member present in person or by proxy or attorney has one vote, regardless of the value of their interest in the Scheme.

8 Proxies

- 8.1 Votes may be given either personally or by proxy or by attorney. An instrument of proxy shall be in such form as the Manager shall stipulate from time to time and need not be witnessed.
- 8.2 Whenever the Chairperson of the meeting or an officer of the Supervisor is appointed a proxy for a Member and the Member has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll or show of hands the manner in which the proxy is to vote upon any resolution coming before the meeting the vote shall be used in favour of the resolution.
- 8.3 The instrument appointing a proxy shall be in writing under the hand of the appointer or of an attorney duly authorised in writing.
- 8.4 A Person appointed to act as a proxy need not be a Member.
- 8.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a notary public or in such manner as the Manager shall approve shall be deposited at such place as the Manager may in the notice convening the meeting appoint or (if no such place is appointed) then at the Manager's registered office not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid provided that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.
- 8.6 A proxy shall unless the contrary is stated thereon be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of 12 months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney otherwise than by an instrument of proxy.
- 8.7 An instrument of proxy in favour of the Chairperson of the meeting or the Chairperson (howsoever expressed) shall be valid and effective as though it were in favour of a named Person and shall constitute the Chairperson for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer.
- 8.8 A Person appointed proxy shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Member concerned.
- 8.9 A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed provided that no intimation in writing of such death, mental disorder, revocation is received by the Manager at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

9 Power of attorney

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

10 Procedure

- 10.1 A Special Resolution must be taken as a poll. Any other resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- a the Chairperson;
 - b the Supervisor or any representative of the Supervisor; or
 - c not less than two Members having the right to vote at the meeting.
- 10.2 Unless a poll is so demanded a declaration by the Chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.3 If a poll is required or is duly demanded it shall be taken in such manner as the Chairperson may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 10.4 To the extent permitted by law, in the case of an equality of votes whether on a show of hands or on a poll the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which the Chairperson may be entitled as a Member or on behalf of Members.
- 10.5 A poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the Chairperson may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 10.6 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 10.7 On a poll votes may be given either personally or by proxy or by attorney.

11 Resolutions

- 11.1 When a particular majority is not required by this Deed or by law, any matter arising at any meeting of Members shall be determined by Ordinary Resolution.

11.2 Subject to Relevant Law, a meeting of Members shall have the following powers exercisable by Special Resolution:

- a power to sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement in respect of the rights of the Members howsoever such rights shall arise;
- b power to give any sanction, assent, release, or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
- c power to discharge, release, or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
- d the powers set out in clauses 4.3a(ii), 4.7b, 5.3e, 11.2b, 11.7b, 27.3b, 28.1b(ii), and 50.5.

provided that no such sanction, assent, release, or waiver shall be effective if it materially and adversely affects the interests of one class of Members in a manner different from that in which it affects the interest of other Members, without the approval of a separate Special Resolution of the Members of the first mentioned class.

12 Special Resolution binds all Members

12.1 Subject to the proviso to paragraph 11.2 of this Schedule 2 and Relevant Law, a Special Resolution passed at a meeting duly convened and held in accordance with this Deed shall be binding upon all Members whether present or not present at the meeting.

12.2 Each of those Members, the Supervisor, and the Manager shall be bound to give effect thereto accordingly and the passing of any such resolution shall as between the Manager, the Supervisor, and those Members be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution provided that a resolution which adversely affects a Member or a class of Members only as opposed to the interests of the Members generally shall not be binding on such Member or Members unless such Member or Members agree to be bound by the terms of such resolution.

13 Minutes to be kept

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

Certificate of non-revocation of power of attorney

I, Ian Douglas Burns of Wellington, New Zealand, Chief Executive Officer, Kiwi Wealth Investments Limited Partnership, certify:

1. That by deed dated 4 July 2019, Kiwi Wealth Investments Limited Partnership of Wellington, New Zealand appointed me its attorney.
2. That I have not received notice of any event revoking the power of attorney.

Signed at Wellington, this 28th day of January, 2021.

A handwritten signature in dark ink, appearing to read 'ID Burns', written over a horizontal line.

Signature of attorney

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

I, Ireen Muir, of Wellington, hold the office of Head of Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 6 October 2020, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number 11885045.1; and
- 2 at the date hereof I hold the position of Head of Client Services with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date:

28/01/2024

Signature of attorney

**SUPERVISOR'S CERTIFICATE PURSUANT TO SECTION 139 OF THE FINANCIAL
MARKETS ACT 2013**

(Deed Amendment)

1. Public Trust (Supervisor) is the Supervisor of the Kiwi Wealth Super Scheme ("Scheme").
2. The Scheme is currently governed by a trust deed dated 8 December 2017 ("Existing Deed").
3. The Supervisor is amending the Existing Deed for the Scheme by entering into a Deed Amending the Trust Deed for the Kiwi Wealth Super Scheme ("Deed").
4. Pursuant to Clauses 139 (2)(a)(ii) and 139 (2)(b) of the Financial Markets Conduct Act 2013 ("Act") we certify:
 - a. that the amendments do not have a material adverse effect on the Scheme participants (within the meaning of the Act); and
 - b. that the Existing Deed when amended in accordance with the Deed complies with sections 135 to 137 of the Financial Markets Conduct Act on the basis that we have received a certificate from a lawyer confirming compliance.

Signed for Public Trust by an authorised signatory:



.....
Authorised signatory's signature

Date 28 January 2021

The Directors
Kiwi Wealth Investments Limited Partnership
PO Box 10068
Wellington 6143

The Board
Public Trust
C/- Corporate Trustee Services
Level 2, 22 Willeston Street
Wellington 6011

27 January 2021

Kiwi Wealth Super Scheme – Certificate under section 139(2) of the Financial Markets Conduct Act 2013

We hereby certify that the trust deed for the Kiwi Wealth Super Scheme dated 8 December 2017, when amended by the amended and consolidated trust deed to be dated on or about 28 January 2021, in accordance with the terms of that deed, will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013.

Yours faithfully



Catriona Grover
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Dentons Kensington Swan

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