

Trust Deed

relating to

the Resolution Life Australasia NZ Trust Fund

Resolution Life New Zealand Limited

Trustee

and

Resolution Life Australasia Limited

Initial Unitholder

**1 July 2020 as amended and restated with effect from 1 October
2026**

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This **Trust Deed** is made on 1 July 2020 and amended and restated with effect from 1 October 2026

between (1) **Resolution Life New Zealand Limited** as trustee (**Trustee**)

and (2) **Resolution Life Australasia Limited ACN 079 300 379** as initial unitholder (**Initial Unitholder**)

Introduction

A. The Trustee is a New Zealand incorporated company with New Zealand company number 7855398. The Initial Unitholder is an Australian incorporated company with life insurance operations and assets in Australia and New Zealand. It is regulated in Australia by APRA in accordance with the Life Act and in New Zealand by the RBNZ in accordance with IPSA.

B. The Initial Unitholder wishes to establish a trust in New Zealand, the purpose and objective of which is to provide:

(i) a mechanism:

(a) to identify and hold a pool of assets with a value referable to the Initial Unitholder's policy liabilities in respect of NZ Participating Policyholders and NZ Non-Participating Policyholders as a group;

(b) to invest and manage those assets in accordance with investment mandates of AMP Life's Statutory Fund 1*; and

(c) which seeks to ensure no detriment to the interests of Policyholders as a group, nor to the interests of New Zealand Policyholders as a group or Australian Policyholders as a group; and

(ii) the RBNZ with greater visibility of those assets.

(Now called Resolution Life's Statutory Fund 1.)*

C. Accordingly:

(i) the Initial Unitholder proposes to transfer to the Trustee legal title to investment assets with an aggregate Net Asset Value at least equal to the Opening Balance as at the Commencement Date, together with such other investment assets as the Initial Unitholder may determine from time to time;

(ii) the Trustee will hold those assets, comprising the Fund, on trust for, and for the benefit of, the Unitholders only, in accordance with the terms of this Trust Deed (governed by New Zealand law) and the duties imposed upon the Trustee by this Trust Deed, the Trustee Act 1956, the Trusts Act 2019 and principles of equity and common law, in furtherance of the purpose and objective noted above;

(iii) the initial Unit Price will be \$1.00 per Unit. Therefore the Trustee will issue to the Initial Unitholder Units equal to the dollar value of the assets transferred to the Trustee as referred to in paragraph C(i);

(iv) the Manager will be appointed by the Trustee pursuant to this Trust Deed to, under the supervision of the Trustee:

(a) invest and manage the assets of the Fund as the Trustee's agent; and

- (b) perform various delegated administrative and operational tasks in respect of the Fund,

and thereby to support the Trustee in satisfaction of its duties referred to above, with its powers limited to those expressly set out in this Trust Deed and any delegation given to it by the Trustee;

- (v) this Trust Deed provides for a periodic reconciliation of the Net Asset Value of the Fund to the Required Balance of the Fund and an obligation on the Initial Unitholder to ensure that the Net Asset Value of the Fund is at least equal to the Required Balance. The Initial Unitholder has notified the Trustee that, based on current circumstances, the initial contribution of investment assets to the Fund on or prior to the Commencement Date will be greater than the Opening Balance, it being recognised that this additional contribution may fluctuate over time to enhance the efficient management of the Fund (subject to the obligations in respect of maintaining the Required Balance); and
 - (vi) the Initial Unitholder, and any other Unitholders from time to time, will only be able to request redemptions of their Units (and thereby make withdrawals from the Fund) in the limited circumstances, and in accordance with the procedures, set out in this Trust Deed, such that the purpose and objective of the trust established by this Trust Deed are met.
- D. The Initial Unitholder will be the sole Unitholder upon establishment of the Fund. For the purposes of ensuring compliance by the Initial Unitholder with its obligations under the Life Act, the Initial Unitholder will hold (through its custodian or nominee) its Units in the Fund as an asset of Resolution Life's Statutory Fund 1 or, from 1 October 2026 as an asset of Resolution Life's Statutory Fund 5.
- E. The Trustee and the Initial Unitholder agree and acknowledge that the Fund does not, and is not intended to, create any preference in respect of the assets of the Fund in favour of Policyholders in Australia or New Zealand, nor does it, or is it intended to, confer on any Policyholder any right or interest (in equity or otherwise) under this Trust Deed or otherwise in the Fund.
- F. Resolution Life Australasia Limited (which was called, at the relevant time, AMP Life Limited) signed the original Trust Deed dated 1 July 2020 solely in its capacity as the Manager and the Initial Unitholder respectively, and in no other capacity.

It is agreed

1. Interpretation

1.1 Definitions

In this Trust Deed, unless the context otherwise requires:

Adjusted Coverage Ratio means the ratio of the shareholder capital base (as defined by APRA's Life Prudential Standards), less the Variable Addition component of Target Surplus (as defined by the Initial Unitholder's ICAAP Summary Statement) if and to the extent applicable in the context of a particular calculation under this Trust Deed, to the Prudential Capital Requirement.

Adjusted Policy Liabilities means either the risk-free best estimate liability or the termination value, whichever is the greater amount when determined at Resolution Life's Statutory Fund 5 level, in accordance with APRA Prudential standard LPS 112.

Administrator means any liquidator, judicial or statutory manager, receiver, controller, administrator or any other similar insolvency officer, trustee or manager.

APRA means the Australian Prudential Regulatory Authority.

Auditor means the person for the time being appointed as auditor of the Fund pursuant to this Trust Deed (who must be entitled by law to act in such capacity).

Authorised Persons has the meaning given to that term in clause 7.1.

business day means a day other than Saturday or Sunday on which registered banks are open for general banking business in Sydney and Auckland.

Cashflow Reconciliation has the meaning given to that term in clause 2.5(a).

Commencement Date means a date on or prior to 31 October 2020 agreed in writing between the Trustee and the Initial Unitholder.

Companies Act means the Companies Act 1993 (New Zealand).

Contributed Assets means investment assets contributed to the Fund by or on behalf of the Initial Unitholder or any other Unitholder.

Custodian means a person appointed to hold Fund property under clause 9.2(a) or clause 9.2(b) and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Fund property under clause 9.2(e).

Deed Poll means the deed poll dated on or about the date of this Trust Deed given by the Initial Unitholder in favour of the Trustee and the RBNZ relating to this Trust Deed or the Fund.

Financial Year means each period of 12 months ending on 31 December, or such other period ending on such other date as the Trustee may determine and notify to the Manager and to the Unitholders from time to time, provided that:

- (a) the first Financial Year commences on the date on which the first contribution of assets is made to the Fund and ends on the next 31 December, unless this period is three months or less, in which case the first Financial Year ends on the second 31 December occurring after the date on which the first contribution of assets is made to the Fund; and
- (b) the last Financial Year will end on the date as at which the Fund is wound up in accordance with this Trust Deed.

Fund means the assets held by the Trustee from time to time under this Trust Deed, including investment earnings earned on, or derived from, those assets, as described in clause 2.7.

Fund Financial Statements means financial statements of the Fund for a Financial Year prepared in accordance with NZ GAAP.

Income Distribution has the meaning given to that term in clause 5.5(a).

Income Tax Act means the Income Tax Act 2007 (New Zealand), and where the context requires, includes the Tax Administration Act 1994 (New Zealand).

Insolvency Event means the happening of any of the following events:

- (a) the Trustee is, or states that it is, unable to pay its debts as and when they become due and payable, or is deemed to be unable to pay its debts under any law; or
- (b) the Trustee is presumed to be unable to pay its debts within the meaning of section 287 of the Companies Act; or
- (c) a court order is made that the Trustee be put in liquidation; or
- (d) a court order is made appointing a liquidator or provisional liquidator in respect of the Trustee, or one of them is appointed, whether or not under an order; or
- (e) a court order is made for a payment by the Trustee and payment of the full amount is not made, or the judgement is not appealed, by the Trustee within five business days; or
- (f) an Administrator is appointed in respect of the Trustee or the property or undertaking of the Trustee, including the Fund, or any part of that property or that undertaking; or
- (g) the Trustee is declared at risk under the Corporations (Investigation and Management) Act 1989 (New Zealand), or a statutory manager is appointed or any step taken with a view to any such appointment in respect of it under that Act; or
- (h) the Trustee enters into, or resolves to enter into, a composition with, or assignment for the benefit of, all or any class of its creditors, a scheme of arrangement conducted for the same purpose as such composition or assignment, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (i) the Trustee resolves to go into liquidation, or otherwise dissolve itself, or gives notice of intention to do so; or
- (j) anything having a substantially similar effect to any of the events specified above happens under any law of any applicable jurisdiction.

IPSA means the Insurance (Prudential Supervision) Act 2010 (New Zealand).

Life Act means the Life Insurance Act 1995 (Cth) and includes any standards in relation to prudential matters made by APRA under that Act.

life policy has the meaning given to that term in the Life Act.

Majority Unitholder means the Unitholder, from time to time, who holds more than 50% of the Units in the Fund.

Manager means Resolution Life Australasia Limited ACN 079 300 379 in its capacity as delegate or agent of the Trustee (but not in its capacity as the Initial Unit Holder or a Unitholder) and includes any other manager appointed to that role by the Trustee pursuant to clause 8.10 of this Trust Deed.

Net Asset Value means the value of the Fund as calculated on any business day in accordance with clause 4.1.

Net Income means the sum of:

- (a) the net profit of the Fund attributable to a relevant Quarter, determined in accordance with NZ GAAP; and
- (b) any additional amount (the **Amount**) which, if distributed to Unitholders by the Trustee, would result in the Trustee not being liable for Australian and New Zealand income tax on income derived by the Fund for any relevant fiscal or income year (applied on the basis that the Amount includes any amount on account of income deemed to arise under any applicable tax law).

Non-Investment Assets means:

- (c) assets of Resolution Life's Statutory Fund 5 backing the liabilities to NZ Participating Policyholders and NZ Non-Participating Policyholders which fall outside of the custodial arrangements of the Fund, including policy loans, premium arrears, reinsurance recoverable, and any other non-custodial assets as determined by the Initial Unitholder, provided that the value of such Non-Investment Assets may only exceed 5% of the Opening Balance or Required Balance (as applicable) with the prior written approval of the Trustee; and
- (d) the tax assets relating to the investment assets in the Fund (and the tax assets can be negative if the investment is in tax liability position).

Non-Participating Policyholder means a person holding a non-participating benefit (as defined in section 15 of the Life Act) under a life policy issued or underwritten by the Initial Unitholder which is referable to Resolution Life's Statutory Fund 5, provided that where such person also holds a participating benefit, references in this Trust Deed to such Non-Participating Policyholder shall be limited to their non-participating benefits.

NZ GAAP means generally accepted accounting practice in New Zealand as defined in section 8 of the Financial Reporting Act 2013 (New Zealand), including New Zealand equivalents of International Financial Reporting Standards (NZIFRS).

NZ Non-Participating Policyholder means a Non-Participating Policyholder under a life policy designated by the Initial Unitholder as a policy relating to the Initial Unitholder's New Zealand Branch.

NZPAC means the New Zealand Policyholder Advisory Committee established by the Initial Unitholder's board and governed by a charter or terms of reference adopted by the Initial Unitholder's board from time to time.

NZ Participating Policyholder means a Participating Policyholder under a life policy designated by the Initial Unitholder as a policy relating to the Initial Unitholder's New Zealand Branch.

Opening Balance means, as at the Commencement Date, an amount equal to the sum of:

- (a) the policy liabilities (determined in accordance with APRA Prudential Standard LPS 340) in respect of the life insurance policies and contracts of NZ Participating Policyholders;
- (b) the amount of any PRP allocated by the Initial Unitholder in respect of policyholder reasonable expectation obligations to NZ Participating Policyholders;
- (c) the amount of any SRPP allocated by the Initial Unitholder in respect of policyholder reasonable expectation obligations to NZ Participating Policyholders;

- (d) the Adjusted Policy Liabilities in respect of the life insurance policies and contracts of NZ Non-Participating Policyholders; and
- (e) an allocated shareholder capital amount such that the New Zealand non-participating assets within the Fund, when viewed against an allocation of the Prudential Capital Requirement for the Initial Unitholder's non-participating sub-fund of Resolution Life's Statutory Fund 1 in respect of NZ Non-Participating Policyholders, provides a ratio that is greater than or equal to the Adjusted Coverage Ratio of the Initial Unitholder's non-participating sub-fund of Resolution Life's Statutory Fund 1. The allocation of a component of Prudential Capital Requirement to the NZ Non-Participating Policyholders shall be allocated in proportion to the Adjusted Policy Liabilities of that business,

less the Non-Investment Assets supporting these balances, as at a date not more than 10 business days prior to the Commencement Date.

Participating Policyholder means a person holding a participating benefit (as defined in section 15 of the Life Act and including insurance riders where the profits on those riders are deemed to be in respect of participating business) under a life policy issued or underwritten by the Initial Unitholder which is referable to Resolution Life's Statutory Fund 5, provided that where such person also holds a non-participating benefit, references in this Trust Deed to such Participating Policyholder shall be limited to their participating benefits.

Policyholders means:

- (a) Participating Policyholders; and
- (b) Non-Participating Policyholders.

Proper Instructions means instructions given to the Trustee by the Initial Unitholder in accordance with clause 7.3.

PRP means "overseas policy owners' retained profits", as that term is defined in the Life Act.

Prudential Capital Requirement means the capital requirement prescribed by APRA for life companies.

Quarter means each of the three month periods ending on 31 March, 30 June, 30 September and 31 December, or such other period ending on such other date as the Trustee may determine.

RBNZ means the Reserve Bank of New Zealand, in its capacity as prudential regulator under IPSA.

Register means the register maintained for the Fund pursuant to clause 8.1(a)(x).

Regulatory Undertaking means:

- (a) the Deed Poll; or
- (b) any condition of the Initial Unitholder's or the Trustee's licence issued under section 19 of IPSA or any condition of an exemption granted to the Initial Unitholder pursuant to section 119 of IPSA which requires the approval of the RBNZ in relation to an action proposed to be taken by the Initial Unitholder or the Trustee (except where the approval of the RBNZ is not required under the Deed Poll).

Related Company means a “related company” as defined in section 2(3) of the Companies Act, read as if the expression “company” in that section included any body corporate wherever incorporated or established.

Relevant Person or Persons means a Unitholder or former Unitholder and that Unitholder's or former Unitholder's personal representatives or successors.

Required Balance means, on the last day of each Quarter after the Commencement Date:

- (a) an amount equal to the sum of:
 - (i) the policy liabilities (determined in accordance with Life Act requirements, excluding PRP and SRPP) in respect of the life insurance contracts and policies of NZ Participating Policyholders;
 - (ii) the amount of any PRP allocated by the Initial Unitholder in respect of policyholder reasonable expectation obligations to NZ Participating Policyholders;
 - (iii) the amount of any SRPP allocated by the Initial Unitholder in respect of policyholder reasonable expectation obligations to NZ Participating Policyholders;
 - (iv) the Adjusted Policy Liabilities in respect of the life insurance policies and contracts of NZ Non-Participating Policyholders; and
 - (v) an amount of shareholder capital equal to Prudential Capital Requirement retained within Resolution Life's Statutory Fund 5 in respect of NZ Non-Participating Policyholders;
- (b) less the Non-Investment Assets supporting these balances as at the relevant date,

provided that the Required Balance may be determined more frequently than on the last day of each Quarter if the Manager considers that is necessary or desirable.

Required Balance Reconciliation has the meaning given to that term in clause 2.4(a).

Resolution Life means Resolution Life Australasia Limited ACN 079 300 379 (formerly AMP Life Limited).

Resolution Life's Statutory Fund 1 means the statutory fund under the Life Act within the Initial Unitholder called Resolution Life's Statutory Fund 1 (formerly known as AMP Life's Statutory Fund 1).

Resolution Life's Statutory Fund 5 means the statutory fund under the Life Act within the Initial Unitholder called Resolution Life Statutory Fund No.5.

SRPP means “shareholders' retained profits (overseas and non-participating)” as that term is defined in the Life Act.

Target Surplus means the target capital requirement determined in accordance with the Target Surplus policy of Resolution Life.

Tax includes all taxes, duties, levies and other charges including penalties and interest (including, but not limited to, any tax liability paid or payable by the Manager or the Trustee in respect of the Fund).

Taxation Amount means, in relation to a Relevant Person:

- (a) any Tax payable by or on account of that Relevant Person or in respect of that Relevant Person's Units or the income attributable to that Relevant Person's Units; or
- (b) any withholding tax or similar amounts required to be held or deducted by the Manager or the Trustee from amounts payable to that Relevant Person in accordance with this Trust Deed.

Trust Deed means this trust deed, as amended from time to time.

Unit means a unit in the Fund, as referred to in clause 3.

Unit Price means the price of a Unit which is from time to time determined under clause 3.3.

Unitholder means the holder of a Unit and includes the Initial Unitholder.

Valuation Date means the date on which the Trustee values the Fund under clause 4.

1.2 **Construction**

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

- (a) headings appear as a matter of convenience and do not affect construction;
- (b) references to clauses are to clauses of this Trust Deed;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) references to any statutes, regulations and other statutory instruments include all amendments, re-enactments and replacements thereof and, when the context requires, any regulations made under them;
- (f) references to any deed, agreement or other instrument must be read as referring to that deed, agreement or other instrument as from time to time modified, supplemented or novated;
- (g) if an action is to be taken or an amount is to be determined under this Trust Deed on a day which is not a business day, that action must be taken or amount must be determined (as the case may be) on the next business day thereafter;
- (h) the word "including" and other similar words do not imply any limitation; and
- (i) a reference to an approval of an action by a person includes a confirmation to the effect that the person has no objection to the action.

1.3 **Currency**

Where, for the purposes of any provision of this Trust Deed, it is necessary to determine the New Zealand currency equivalent at any date of a sum expressed in a non-New Zealand currency, that sum will be converted to New Zealand currency on the basis of a rate of exchange prevailing as at that date as the Trustee, after consultation with the Manager, may

select. The Trustee will take account of any contractual arrangement in force for covering the risk of currency fluctuations in making that conversion.

1.4 Accounting and actuarial practices and standards

- (a) Unless otherwise specifically provided under this Trust Deed, where any accounting matter is to be or may be interpreted pursuant to any provision of this Trust Deed, it will be determined by reference to NZ GAAP provided that the Trustee, after consultation with the Manager, may, at its discretion, elect not to follow NZ GAAP where it considers it more appropriate to adopt an alternative basis of calculation.
- (b) Without prejudice to the generality of paragraph (a) of this clause 1.4, each defined term used in this Trust Deed (or a word or term used in such definition) which references a term defined, interpreted or used in an actuarial standard (having currency in Australia or New Zealand, as the case may be) applicable to Resolution Life's Statutory Fund 1 or Resolution Life's Statutory Fund 5 (as applicable) or in NZ GAAP or other applicable accounting standard (including Adjusted Coverage Ratio, Adjusted Policy Liabilities, Opening Balance, Prudential Capital Requirement, Required Balance, Required Balance Reconciliation, SRPP and Target Surplus) shall be interpreted by reference to such actuarial standard as the same may be modified, supplemented or replaced from time to time. In the event of any inconsistency between Australian or New Zealand actuarial or accounting standards, the relevant Australian standard will apply.

2. Constitution of the Fund

2.1 Trustee

Until its appointment has been terminated in accordance with this Trust Deed, the Trustee is appointed and agrees to act as the trustee of the Fund and that appointment will take effect from the Commencement Date on the terms and conditions contained in this Trust Deed.

2.2 Declaration of trust

- (a) The Trustee:
 - (i) acknowledges (including for the purposes of section 21 of the Trusts Act 2019) the context in which the trust established by this Trust Deed has been established, and the purpose and objective of the trust as set out in the Introduction section of this Trust Deed; and
 - (ii) declares that it will act as trustee in respect of the Fund with, and subject to, the powers and conditions contained in this Trust Deed and taking into account at all times the purpose and objective of the trust.
- (b) The Trustee must, in respect of the Fund, hold the assets of the Fund on trust for the Unitholders, on and subject to this Trust Deed.

2.3 Vesting of the Fund

- (a) The Fund and the trust arising pursuant to this Trust Deed is created by the Initial Unitholder by the settlement of assets in accordance with this clause 2.3.
- (b) The Initial Unitholder will, no later than the Commencement Date, procure the transfer to the Trustee of legal title to investment assets with an aggregate Net Asset Value at least equal to the Opening Balance (which may be determined in the same manner as the calculation of the Required Balance Reconciliation (and the Required Balance) as contemplated by clause 2.4 below) as at the Commencement Date.

- (c) The parties acknowledge and agree that the Initial Unitholder may, in order to comply with its obligations under clause 2.3(a), transfer to the Trustee all of the shares of AMP Life (NZ) Investment Holdings Limited.

2.4 Required Balance Reconciliation and transfers

- (a) The Trustee must ensure that a reconciliation of the Net Asset Value of the Fund to the Required Balance of the Fund (for the avoidance of doubt, with such Required Balance of the Fund being determined as at the last day of the most recent Quarter (or, if the Required Balance is determined more frequently than as at the end of each Quarter, on the most recent date as at which it was determined)) (**Required Balance Reconciliation**) is performed at least on a monthly basis. For that purpose, the Trustee will:
 - (i) as at the last date of each month (and on any other date determined by the Trustee or requested by the Manager), calculate the Net Asset Value of the Fund; and
 - (ii) within 20 business days thereafter, perform the Required Balance Reconciliation.
- (b) The Manager shall:
 - (i) provide the determination of the Required Balance to the Trustee such that the Trustee can perform the Required Balance Reconciliation at the times and in the manner required by this Trust Deed;
 - (ii) provide a comparison of the Net Asset Value of the Fund relative to the Required Balance to the Trustee within 20 business days after the end of each Quarter (or, if the Required Balance is determined more frequently than as at the end of each Quarter, within 20 business days after the most recent date as at which it is determined);
 - (iii) provide all supporting information in relation to the Required Balance, as may be requested by the Trustee from time to time; and
 - (iv) co-operate with the Trustee in relation to any requests by the Trustee for information about or explanations of the preparation of the Required Balance.
- (c) If a Required Balance Reconciliation shows that the Net Asset Value of the Fund is more or less than the Required Balance:
 - (i) unless an Administrator has been appointed in respect of the Initial Unitholder, if the Net Asset Value is less than the Required Balance, the Initial Unitholder will procure the transfer to the Trustee of legal title to sufficient investment assets to ensure that immediately thereafter the Net Asset Value of the Fund will be at least equal to the Required Balance (and the Trustee will issue the relevant number of Units to the Initial Unitholder in accordance with clause 3.5);
 - (ii) if the Net Asset Value is more than the Required Balance, the Trustee will procure the transfer to the Initial Unitholder (by way of one or more redemptions of Units in accordance with clause 5) from the Fund of an aggregate amount up to the excess (if directed in writing (including with notification of the amount to be transferred) by the Initial Unitholder at any time, and on more than one occasion, during the period until the earlier to occur of the date on which the Trustee provides the Manager and the Initial Unitholder with the succeeding Required Balance Reconciliation or the due date thereof, in each case in accordance with clause 2.4(a) above) (and the Trustee will redeem the relevant number of Units in accordance with clause 3.6).

- (d) The Trustee and the Initial Unitholder will each notify the other in writing upon any transfer being made under this clause 2.4 and provide details of the investment assets which have been transferred.

2.5 Cashflow Reconciliation

- (a) Within 20 business days of the first date of each month, the Manager will provide the Trustee and the Initial Unitholder a statement (with relevant supporting information) showing a reconciliation of the movements of the Net Asset Value of the Fund during the previous month (**Cashflow Reconciliation**). This Cashflow Reconciliation will detail all items affecting the Net Asset Value of the Fund over that period, including:
 - (i) aggregate net cash flows attributable to NZ Participating Policyholders and NZ Non-Participating Policyholders (divided into categories of payments or receipts specified by the Trustee acting reasonably);
 - (ii) investment returns and income of the Fund;
 - (iii) costs, expenses and other outgoings payable from the Fund; and
 - (iv) movement in Tax liabilities for the relevant month.
- (b) Any discrepancies in the Cashflow Reconciliation statement shall be discussed as between the Trustee and Manager to seek to resolve those items (subject to any materiality threshold set by the Trustee, acting reasonably). Any dispute concerning unresolved discrepancies will be resolved in accordance with clause 26.

2.6 Other contributions to the Fund

The Initial Unitholder may, at any time, make further contributions of investment assets to the Fund by notice in writing to the Trustee and the Manager.

2.7 Fund assets

The assets of the Fund from time to time will comprise all of the cash, property, assets and rights held from time to time by the Trustee under this Trust Deed, including:

- (a) all Contributed Assets;
- (b) the proceeds of sale of any investments;
- (c) derivative financial instruments entered into in accordance with clause 10.6;
- (d) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, income, premium, rebates in respect of any Tax or distribution, or which are otherwise received and are for the time being retained by or on behalf of the Trustee or Custodian in respect of the Fund;
- (e) all other amounts contributed by the Initial Unitholder to the Fund from time to time by notice in writing to the Trustee and to the Manager and the legal title to which is transferred by the Initial Unitholder or its custodian or nominee to the Trustee for holding by the Trustee on the terms of this Trust Deed; and
- (f) all amounts or assets contributed to the Fund pursuant to clauses 2.6 or 3.8,

less any withdrawals made from the Fund pursuant to the terms of this Trust Deed.

2.8 Contributions and other assets held on trust

All Contributed Assets and other assets of the Fund will be held on trust by the Trustee in accordance with the terms of this Trust Deed and all applicable legislation.

2.9 No obligation on Trustee to contribute

The Trustee is under no obligation to contribute any amounts or assets to the Fund.

2.10 Certain assets not part of the Fund

The parties acknowledge and agree that part of the assets of Resolution Life's Statutory Fund 5, including the global sharing pool in Resolution Life's Statutory Fund 5 and any Non-Investment Assets will not form part of the Fund, unless a portion of the global sharing pool or any Non-Investment Assets are to be contributed to the Fund as agreed between the Trustee and the Unitholders from time to time.

2.11 Initial Unitholder's responsibilities

Without limiting any other responsibility or obligation of the Initial Unitholder under this Trust Deed or any applicable law, the Initial Unitholder undertakes that it will:

- (a) comply fully with the requirements of this Trust Deed, and all applicable laws in giving Proper Instructions to the Trustee, and otherwise when dealing with the Trustee and the Manager in respect of the Fund; and
- (b) request a withdrawal of Fund assets only by giving Proper Instructions in accordance with clause 7.3.

3. Unitisation

3.1 Fund unitised

This Trust Deed provides facilities for Unitholders to participate, as beneficiaries under the Fund, in income and capital gains arising from the property that is subject to the Fund. The Trustee will operate the Fund on a unitised basis, with the beneficial interests in the Fund divided into Units.

3.2 Equal but not specific interests

Notwithstanding anything to the contrary in this Trust Deed, Units will:

- (a) be of one class and will confer identical rights and interests, including in relation to participation in the income and capital of the Fund and redemption of Units; and
- (b) not confer any interest in any particular investment comprised in the Fund (with the result that no Unitholders will be entitled to require the transfer of any of the investments to that Unitholder).

3.3 Determining Unit Prices

The Unit Price at the Commencement Date will be \$1.00 per Unit. At all other times, the Trustee will determine the Unit Price for the Fund on any date required under this Trust Deed, by dividing the Net Asset Value of the Fund by the number of Units on issue and rounding the

product in the manner, and to the number of decimal places, as the Trustee may decide in its absolute discretion.

3.4 Unit Prices binding

In the absence of a manifest error, Unit Prices determined pursuant to this Trust Deed will be final and binding on all Unitholders and all other persons claiming beneficial interests in the assets of the Fund.

3.5 Unitising Contributions

- (a) The Trustee must issue Units in the Fund in respect of Contributed Assets (including without limitation any assets transferred under clause 2.3), and any other amount accepted or payable into the Fund which the Trustee considers should give rise to the issue of Units:
 - (i) by the next Valuation Date; or
 - (ii) if and to the extent that the Trustee determines that (for administrative or other reasons) it is not reasonably practicable to issue Units in the Fund by the next Valuation Date, by what the Trustee considers to be the next reasonably practicable Valuation Date.
- (b) Units will be issued at the Unit Price applicable to the day when the Units are issued.
- (c) The number of Units to be issued will be determined by the Trustee by dividing:
 - (i) the fair value of the relevant assets (as determined in accordance with clause 4) (including Contributed Assets if applicable) net of any amount that the Trustee considers appropriate to deduct for expenses, Taxes or other liabilities; by
 - (ii) the Unit Price applicable to the day when the Units are issued.
- (d) The parties agree and acknowledge that any Units which are to be issued to the Initial Unitholder under the terms of this Trust Deed will be held on its behalf by and registered in the name of such custodian or nominee as is notified by the Initial Unitholder to the Trustee at the time of subscription.

3.6 Redeeming Units

- (a) In respect of amounts withdrawn from the Fund pursuant to clause 5, the Trustee will redeem the number of Units determined by dividing:
 - (i) the amount withdrawn from the Fund; by
 - (ii) the Unit Price applicable to the day when the Units are redeemed.
- (b) The price payable to the Unitholder for each Unit redeemed will be the Unit Price on the day when the Units are redeemed.

3.7 Part Units etc.

For the purposes of this clause 3, the Trustee may at any time and from time to time:

- (a) issue and cancel part Units; and

- (b) consolidate or divide Units,

in each case in such manner as the Trustee may determine from time to time.

3.8 Other Unitholders

- (a) Subject to clauses 3.2 and 3.8(c), and having regard to the interests of all Unitholders, the Trustee may:
 - (i) accept contributions of assets from persons other than the Initial Unitholder, provided that such person is a member of the same wholly-owned group of companies (as defined in section YA 1 of the Income Tax Act) as the Initial Unitholder, to facilitate the holder of those Units' participation in any income or gains arising from the Fund; and
 - (ii) issue Units to such persons in consideration for the contribution of those assets.
- (b) If the Trustee issues Units under clause 3.8(a):
 - (i) the Trustee shall specify the terms attaching to such Units in a terms of issue notice and such notice shall be deemed to form part of this Trust Deed; and
 - (ii) any provision of this Trust Deed which refers to the Initial Unitholder in its capacity as a Unitholder shall have application in respect of the holder of those Units, unless otherwise stated in this Trust Deed or in the terms of issue notice.
- (c) The Trustee shall not issue any Units as contemplated by clause 3.8(a) unless the Trustee has obtained the prior written approval of the Unitholders.

4. Valuations

4.1 Net Asset Value of the Fund

The Trustee will calculate the Net Asset Value of the Fund when required under this Trust Deed and otherwise as frequently as the Trustee may consider necessary or desirable from time to time (but at least once every calendar month) by deducting the liabilities attributable to the Fund from the fair value of the Fund assets.

4.2 Determining fair value

For the purpose of determining the Net Asset Value of the Fund under clause 4.1, the Trustee will determine the fair value of each asset in the Fund on such basis as the Trustee considers to be fair and equitable having regard to NZ GAAP (except to the extent that the Trustee elects (acting reasonably) not to have regard to NZ GAAP) and may from time to time engage any valuer or other suitably qualified person for the purpose of fixing the fair value of any such asset (but is not under any duty to do so).

4.3 Determining liabilities

- (a) For the purpose of determining the Net Asset Value of the Fund under clause 4.1, the Trustee will determine the liabilities attributable to the Fund on such basis as the Trustee considers to be fair and equitable having regard to NZ GAAP (except to the extent that the Trustee (acting reasonably) elects not to have regard to NZ GAAP) and, in doing so, may take account of each debt, liability, provision, cost, charge, expense, outgoing, Tax obligation or other matter as the Trustee considers appropriate.

- (b) For the avoidance of doubt, the Trustee does not assume responsibility for meeting obligations or liabilities to Policyholders, including NZ Participating Policyholders and NZ Non-Participating Policyholders, in its capacity as trustee of the Fund or through the exercise of any powers, duties or responsibilities of the Trustee under this Trust Deed.

5. Withdrawals from the Fund

5.1 Withdrawals

Withdrawals from the Fund may only be made in the following circumstances and subject to the Trustee receiving Proper Instructions:

- (a) to allow the Initial Unitholder to conduct the business of Resolution Life's Statutory Fund 5, including to make payments to Policyholders in accordance with the terms of their life policies and other liabilities and expenses incurred for the purposes of the business as a statutory fund;
- (b) to enable the Initial Unitholder, the directors of the Initial Unitholder and any officer, employee or other person nominated by the Initial Unitholder, or any Administrator to comply with their respective statutory obligations or duties;
- (c) to allow the Initial Unitholder to make distributions to its shareholders in line with and corresponding to the appropriate proportion of the bonuses and crediting rates declared in respect of Policyholders;
- (d) to enable payments to be made by the Initial Unitholder or any Administrator to Policyholders and to any other creditors of the Initial Unitholder which the Initial Unitholder or any Administrator is authorised or required to make payments to in accordance with the Life Act (having regard to the Initial Unitholder's duties to keep assets of Resolution Life's Statutory Fund 5 separate and distinct from assets of other statutory funds and the permitted application of statutory fund assets under the Life Act), the Corporations Act 2001 (Cth), IPSA, the Companies Act and any other applicable law; and
- (e) any transfer by the Trustee as provided in clause 2.4(c)(ii).

5.2 Withdrawal amounts

- (a) Subject to clause 5.2(b), the Initial Unitholder or an Administrator will only request a withdrawal from the Fund:
 - (i) in the case of clause 5.1(e), when, and for up to an amount, permitted by clause 2.4(c)(ii); and
 - (ii) in any of the other circumstances referred to in clause 5.1, for an amount which is no greater than the amount which the Initial Unitholder or Administrator determines (acting reasonably) on the date the Proper Instructions are given, is then required or desirable to enable it to make any payments, comply with its obligations or duties or make distributions as referred to in clauses 5.1(a) to 5.1(d).
- (b) Without limiting clause 5.1(a), the Initial Unitholder may give Proper Instructions to the Trustee to request a withdrawal from the Fund to be made to Resolution Life's Statutory Fund 5 to enable the Initial Unitholder to fund forecast cash flow requirements with respect to payments expected to be made by the Initial Unitholder in the normal course of its business under clause 5.1(a) over the period (not

exceeding six weeks) commencing on the date the Proper Instructions are given under this clause 5.2(b).

5.3 **Payment of Fund assets**

Upon payment to the Initial Unitholder as a Unitholder, or to a third party at the Initial Unitholder's direction in its capacity as a Unitholder, of any Fund assets in accordance with this clause 5, legal title (and, for the avoidance of doubt, beneficial title) to the relevant Fund assets will no longer form part of the Fund assets.

5.4 **Administrator payments**

- (a) Subject to any prohibition or limitation under applicable law and receipt of all relevant information under clause 5.4(b), the Trustee will, upon receipt of Proper Instructions from an Administrator, pay funds, which are permitted to be withdrawn from the Fund by the Initial Unitholder or an Administrator in accordance with clause 5.1, directly to Policyholders in accordance with the terms of their life policies on behalf of the Initial Unitholder. Any payment made in accordance with this clause will discharge the Initial Unitholder's obligation to make such payment.
- (b) Proper Instructions provided by the Administrator under clause 5.4(a) shall include reasonable evidence to support the entitlement of the relevant Policyholder to receive the payment from the Initial Unitholder. The Initial Unitholder shall also provide the Trustee with all other information reasonably requested by the Trustee to complete the relevant payments.
- (c) Nothing in this clause 5.4 or otherwise in this Trust Deed is intended to, or does, confer any right or interest in the assets of the Fund under this Trust Deed.

5.5 **Income distributions**

- (a) A Unitholder which holds Units at the end of a Quarter has a present entitlement to receive a distribution of the Net Income (an **Income Distribution**) and the amount of the Net Income will vest absolutely in interest in the Unitholder immediately prior to the end of the relevant Quarter.
- (b) The amount of an Income Distribution for a Unitholder is to be calculated by multiplying the Net Income by a fraction, being the number of Units held by the Unitholder at the end of that Quarter over the total number of Units on issue.
- (c) The entitlement of a Unitholder arising under this clause 5.5 shall only be satisfied by:
 - (i) the Trustee paying a withdrawal from the Fund if, and to the extent, permitted under clause 5.1; and
 - (ii) to the extent the Unitholder's entitlement is not satisfied in accordance with clause 5.5(c)(i), by the Trustee issuing Units in the Fund in consideration for the Unitholder contributing their entitlement to the Income Distribution to the Fund in accordance with clause 2.6 (and such contribution shall be deemed to be Contributed Assets of the Fund for the purposes of this Trust Deed).

6. Payments to Unitholders

6.1 Method of payment

Subject to clause 6.3, any moneys payable by the Trustee to a Unitholder under the provisions of this Trust Deed may be paid by direct credit to any bank account nominated by the Unitholder, the Unitholder's relevant agent or authorised person.

6.2 Satisfaction of moneys payable

The giving by the Trustee of the encoded payment instructions to the paying bank will be due satisfaction of the moneys payable and will be good discharge to the Trustee.

6.3 In specie transfers

- (a) The Trustee may, with the agreement of the relevant Unitholder, instead of satisfying a redemption of Units following a request for a withdrawal from the Fund made by Proper Instructions by way of a cash payment, satisfy the withdrawal request in whole or in part by way of an in specie transfer of investments from the Fund.
- (b) For the purposes of clause 6.3(a), the value of the investments to be transferred will be determined on the same basis as if the investments were being valued for the purpose of calculating the Net Asset Value at the relevant time.
- (c) The provisions of this Trust Deed must be read with such modifications as are necessary in relation to any such in specie transfer.

7. Authorised Persons and Proper Instructions

7.1 Authorised Persons

The Initial Unitholder will, on execution of this Trust Deed and from time to time thereafter, provide to the Trustee a written notice setting out the names and specimen signatures of all persons authorised to give Proper Instructions on behalf of the Initial Unitholder under this Trust Deed (**Authorised Persons**).

7.2 Reliance on Authorised Persons and Proper Instructions

The Trustee is entitled to rely on:

- (a) the identity and authority of any Authorised Person until it receives a replacement notice from the Initial Unitholder to the contrary in accordance with clause 7.1;
- (b) the genuineness and authenticity of a Proper Instruction which purports to be that of an Authorised Person; and
- (c) Proper Instructions given by email or other communication as if they were an original.

7.3 Proper Instructions

- (a) The Initial Unitholder must only provide Proper Instructions for lawful and proper purposes and in accordance with this Trust Deed. The Trustee may, at its discretion, verify the purpose for which any Proper Instruction is given and, subject to its rights to seek clarification of any Proper Instruction under clause 7.3(b), it will act in accordance

with any Proper Instruction given to it, except where it has actual knowledge that the Proper Instruction is not in accordance with this Trust Deed.

- (b) If the Trustee seeks clarification of any Proper Instructions it must do so as soon as practical and the Initial Unitholder will promptly respond to the Trustee and provide all information reasonably requested by the Trustee. The Trustee is not required to act on any Proper Instruction for which it has sought clarification in accordance with this clause 7.3(b) until the Proper Instruction is clarified to the satisfaction of the Trustee (acting reasonably in the circumstances).
- (c) The Trustee and the Initial Unitholder will establish, from time to time, the format and other protocols for the delivery and receipt of Proper Instructions applicable at that time.
- (d) The Initial Unitholder undertakes to the Trustee that all Proper Instructions given to the Trustee will comply with the Initial Unitholder's licence under IPSA, this Trust Deed, the Life Act and all other applicable Australian and New Zealand laws. For the avoidance of doubt, the Trustee may bring a claim against the Initial Unitholder or seek relevant relief from a court for any breach by the Initial Unitholder of this clause 7.3(d) or any Proper Instruction given by the Initial Unitholder other than as permitted by this Trust Deed.
- (e) The Trustee shall not incur any liability to the Initial Unitholder in respect of any act or omission performed or not performed in accordance with a Proper Instruction (including Proper Instructions which it is seeking clarification of in accordance with clause 7.3(b)).
- (f) A Proper Instruction may only direct the Trustee to undertake the following:
 - (i) transfer Fund assets in accordance with clause 5.1;
 - (ii) transfer the whole of the Fund assets upon the termination of the Fund in accordance with clause 18; or
 - (iii) act in accordance with any other direction by the Initial Unitholder as expressly provided for in this Trust Deed.

8. Management and administration of the Trust

8.1 Trustee's responsibilities

- (a) The Trustee must, at all times:
 - (i) hold the Fund in accordance with appropriate safekeeping practices, including by keeping the Fund segregated from its other assets and clearly identifying and maintaining accurate records in respect of the Fund, provided that, unless prohibited by law, the Trustee may maintain or allow a Custodian to maintain all or any of the assets of the Fund in a pooled account with other clients of the Custodian provided proper records are maintained of the Fund's entitlement to assets in that pooled account;
 - (ii) register or hold the Fund at all times in the name of the Trustee or with any Custodian;
 - (iii) not grant any guarantee required to be satisfied in whole or in part out of the Fund, or grant any security interest (excluding any right of set-off, netting, or combination of accounts) in respect of, or borrow against, the Fund, nor otherwise deal with the Fund except as is expressly permitted by this Trust Deed;

- (iv) arrange for the receipt and acceptance of Contributed Assets and other monies payable to the Fund in accordance with clauses 2.3 to 2.5;
 - (v) keep complete and accurate records of all investments of the Fund and keep accounting records which correctly record and explain all amounts paid and received by the Trustee;
 - (vi) subject to clause 10.1, determine the terms of all contracts to be entered into by the Trustee in respect of the Fund;
 - (vii) ensure compliance by the Fund with any applicable requirements of the Financial Reporting Act 2013 (New Zealand) and other applicable legislation;
 - (viii) ensure compliance by the Fund with all Tax obligations;
 - (ix) maintain all accounting records for the Fund;
 - (x) keep and maintain, or cause to be kept and maintained, an up to date Register of Unitholders in respect of the Fund;
 - (xi) arrange for the preparation and audit of the financial statements for the Fund in accordance with this Trust Deed;
 - (xii) act honestly, in good faith and in the best interests of Unitholders in the performance of its duties and in the exercise of its discretions under this Trust Deed, only exercise its powers for a proper purpose and shall in the exercise of its powers of investment, exercise the care, diligence and skill that a prudent person engaged in the profession of investing money on behalf of others would exercise in managing the affairs of others;
 - (xiii) act continuously as trustee of the Fund until the Fund is terminated as provided by this Trust Deed or the Trustee has retired from office in the manner provided under this Trust Deed; and
 - (xiv) exercise such other powers, authorities, functions and discretions as are incidental to the above functions.
- (b) In performing the above functions, the Trustee will act in accordance with the terms of this Trust Deed.

8.2 **Protection of assets**

- (a) The Trustee undertakes not to do anything which may prejudice in any material respect the assets of the Fund or the Trustee's ability to enforce its rights under or arising from the assets of the Fund.
- (b) If the Trustee is aware of any defect in the Trustee's title to any part of the assets of the Fund, to the extent that a prudent trustee would do the same in the relevant circumstances, the Trustee must use all reasonable endeavours to remedy such defect or procure the remedy of such defect.
- (c) The Trustee must take, defend, settle or compromise all legal proceedings for the protection or recovery of any of the assets of the Fund to the extent that a prudent trustee would do the same in the relevant circumstances.

8.3 Delegation by Trustee

The Trustee may delegate the performance of all or any of its powers, authorities, functions and discretions under this Trust Deed to its officers and employees or to any other person nominated by the Trustee (including to the Manager in accordance with the terms of this Trust Deed), but the Trustee remains liable for the acts and omissions of any such officer, employee or person whether or not the delegate is acting within the terms of the delegated authority.

8.4 Trustee may appoint administration managers

- (a) The Trustee may engage, in respect of the Fund, one or more service providers and administration managers to assist with the administration of the Fund, and any other experts for the provision of services relevant to the Fund, and agree with such party the fees that may be charged and the extent to which expenses will be reimbursed.
- (b) The Trustee shall act on the recommendation of the Manager in appointing a service provider or administration manager in accordance with clause 8.4(a), provided that the Trustee is satisfied that making an appointment on the recommendation of the Manager would be consistent with the purpose and objective of the trust established pursuant to this Trust Deed as set out in the Introduction section to this Trust Deed.

8.5 Manager's duty

The Manager must take reasonable care and exercise due diligence in exercising any powers or performing any duties or obligations under this Trust Deed, including as agent for or on behalf of the Trustee, relating to the investment, administration and management of the Fund.

8.6 Service levels and performance requirements

- (a) The Trustee and the Manager may from time to time agree service levels and performance requirements in connection with services in respect of the Fund provided by the Trustee or the Manager under this Trust Deed.
- (b) Unless and until otherwise agreed by the Trustee and the Manager, this Trust Deed will constitute the agreed service levels and performance requirements for the purposes of clause 8.6(a).

8.7 Oversight and assurance

The Manager will, and will procure that any person that it engages on behalf of the Trustee under this Trust Deed to provide services in respect of the Fund will, provide such information as the Trustee may reasonably require to satisfy itself that:

- (a) the services are being performed to a standard reasonably expected of a professional service provider of the type appointed; and
- (b) the Fund is being managed in a manner consistent with each party's respective duties and obligations under this Trust Deed and applicable law.

8.8 Manager's responsibilities

Without limiting any other responsibility or obligation of the Manager under this Trust Deed or any applicable law, the Manager undertakes that it will comply fully with the requirements of this Trust Deed, and all other applicable laws in performing its duties or obligations under this Trust Deed and in giving instructions on behalf of the Trustee, and otherwise when dealing with, or acting on behalf of, the Trustee in respect of the Fund.

8.9 Conflicts

- (a) The Manager must at all times have in place and maintain adequate arrangements for the management of conflicts that may arise wholly or partially in relation to the performance of its obligations under this Trust Deed or when dealing with the Fund.
- (b) If, when performing its obligations under this Trust Deed or when dealing with the Fund, the Manager acts in circumstances where it has a conflict, the Manager must:
 - (i) ensure that any transactions are effected on arm's length terms, unless reasonable in the circumstances given the Trustee and the Manager are related parties; and
 - (ii) otherwise act in good faith in consultation with the Trustee.

8.10 Revocation of appointment of Manager

- (a) The Trustee may revoke the appointment of the Manager at any time by written notice to the Manager if:
 - (i) an order of the court is made that the Manager be wound up in accordance with section 180 of the Life Act;
 - (ii) the Manager is in wilful breach of any of its material obligations under this Trust Deed and fails to remedy that breach within 20 business days after notice in writing from the Trustee requiring the Manager to do so;
 - (iii) the Manager ceases to hold such registrations, licences or authorisations required in order to carry out its obligations under this Trust Deed; or
 - (iv) the Life Act or other applicable statute requires the appointment of the Manager to be revoked.
- (b) Before revoking the appointment of the Manager under clause 8.10(a), the Trustee must enter into good faith discussions with the Manager for a period of not less than 10 business days in relation to the implications for the Fund of revoking the appointment of the Manager and, in making its decision, the Trustee must have regard to the following:
 - (i) whether a suitable replacement Manager can be appointed;
 - (ii) the interests of Unitholders in continuing the appointment of the Manager; and
 - (iii) the purpose and objective for which the Trust has been established as set out in the Introduction section to this Trust Deed.
- (c) The Trustee must appoint in writing a suitably qualified replacement Manager, with effect from the revocation of the appointment of the then Manager. In selecting a replacement Manager the Trustee must have regard to the interests of Unitholders and the purpose and objective for which the Trust has been established as set out in the Introduction section to this Trust Deed. The replacement Manager must forthwith upon appointment execute a deed of accession in such form as the Trustee in its absolute discretion may require under which it undertakes to the Trustee to be bound by all the covenants on the part of the former Manager under this Trust Deed from the date of such appointment as if it had originally been a party to it as the Manager.
- (d) The Manager must do all things reasonably necessary or reasonably requested by the Trustee to enable the Trustee to appoint a replacement Manager, and to enable the Trustee or a replacement Manager to invest and manage the Fund, whilst eliminating

or minimising any disruption to the investment and management of the Fund as a result of the revocation of its appointment.

9. Powers of the Trustee

9.1 General powers

In addition to any other powers granted under this Trust Deed or by law, the Trustee may do anything the Trustee considers necessary or expedient to enable it to discharge the Trustee's duties in relation to the Fund provided that it would not be inconsistent with or otherwise in contravention of any provision of this Trust Deed or applicable law.

9.2 Appointment of Custodians

- (a) On the Commencement Date, all assets of the Fund will be held by BNP Paribas Securities Services (or one of its sub-custodians or nominees) as Custodian.
- (b) After the Commencement Date, the Trustee may, in consultation with the Majority Unitholder, appoint, in writing, any one or more persons (other than a Unitholder) to be Custodians in which any of the investments or property of the Fund are to be vested to hold on the Trustee's behalf as nominee and bare trustee. Any person appointed under this clause 9.2(b) must be a professional custodian with appropriate and suitable expertise in the markets in which it is to be appointed to hold assets of the Fund. Each appointment must be in writing and include provisions required to be included in custodian agreements entered into by life companies under the Life Act.
- (c) Without limiting the Manager's powers under clause 10.1(d), the Trustee shall act upon the recommendation of the Manager in providing instructions to the Custodian, in accordance with the terms of this Trust Deed, provided that the Trustee is satisfied that so acting would be consistent with the purpose and objective of the trust established pursuant to this Trust Deed as set out in the Introduction section to this Trust Deed.
- (d) The Manager shall:
 - (i) notify the Trustee as soon as reasonably practicable if it becomes aware of any breach, or potential breach, of the terms of the engagement of the Custodian; and
 - (ii) notify the Trustee immediately if it becomes aware of any actions carried out by the Custodian which may cause the Trustee or the Manager or the Initial Unitholder to be in breach of the terms of this Trust Deed, or any applicable law.
- (e) A Custodian appointed under this clause 9.2 may, subject to any restrictions in the terms of its appointment, itself appoint one or more sub-custodians in which any of the investments or property of the Fund are to be vested.
- (f) The Trustee may, in consultation with the Manager, agree with the Custodian or sub-custodian(s) appointed pursuant to this clause 9.2 the fees that may be charged and the extent to which expenses will be reimbursed.

9.3 Exercise of Trustee powers

Subject to the other provisions of this Trust Deed and to a court deciding otherwise, no decision or exercise of a power by the Trustee will be invalidated on the ground that the Trustee (or any director, officer or agent of the Trustee) had a direct or indirect interest in the result of that decision or in the exercise of that power.

9.4 Power to indemnify investment managers, administration managers and custodians

The Trustee may agree:

- (a) to limit the liability (in connection with its services in respect of the Fund) of; and/or
- (b) to indemnify and reimburse out of the Fund's assets,

any investment manager, administration manager or Custodian appointed in respect of the Fund, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager, administration manager or Custodian in respect of the Fund or any action taken or omitted to be taken in connection with the Fund (including legal fees and disbursements), other than (unless the Majority Unitholder agrees otherwise in writing) to the extent to which such limitation of liability, or indemnification or reimbursement right, relates to expenses, losses, costs, debts or liabilities incurred as a result of the manager, administration manager or Custodian (as the case may be) failing to properly perform its duties or otherwise as a consequence of that person's negligence, dishonesty or wilful misconduct.

9.5 Indemnity and reimbursement of Trustee

The Trustee is entitled to indemnity and reimbursement out of the assets of the Fund (whether from income or capital or both) for and in respect of all expenses, costs, debts, Taxes, losses or liabilities properly incurred by it in respect of any action taken or omitted for or in connection with the Fund, including any expense, cost, Tax, loss or liability which may be incurred by the Trustee in bringing or defending any action or suit in respect of the Fund, provided that it is not entitled to indemnity and reimbursement to the extent that any expenses, losses, costs, debts or liabilities have been incurred as a result of the Trustee failing to properly perform its duties or otherwise as a consequence of the Trustee's negligence, dishonesty or wilful misconduct.

9.6 Reliance upon advice

- (a) The Trustee may accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants employed by or on behalf of the Trustee or instructed by or on behalf of the Trustee and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Trustee and believed by the Trustee or its delegate in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. The Trustee is not liable for anything done or suffered by it in good faith in reliance upon any such opinion, advice, statement or information.
- (b) In discharging its obligations and duties under this Trust Deed, the Trustee will give due consideration to when it is appropriate to seek the written advice of the appointed actuary of the Trustee as to the likely consequences of any action by the Trustee.

9.7 Reliance upon documents

Whenever pursuant to any provision of this Trust Deed any certificate, notice, instruction, direction or other communication must be given:

- (a) by the Trustee to the Manager or to a Unitholder, the Manager and each Unitholder may accept as sufficient evidence thereof, a document signed on behalf of the Trustee by any one of its directors or by any other person or persons duly authorised by the Trustee; and
- (b) by the Manager or a Unitholder to the Trustee, the Trustee may, subject to clause 7, accept as sufficient evidence thereof, a document signed on behalf of the Manager or

the relevant Unitholder by any one of its directors or by any other person or persons duly authorised by the Manager or the relevant Unitholder.

9.8 Trustee's discretion and authority

- (a) Except as otherwise expressly provided in this Trust Deed or required by law, the Trustee has absolute and uncontrolled discretion as to the exercise of all the powers, authorities and discretions vested in it by this Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise subject to the giving of any notice to Unitholders and the approval by Unitholders whenever required under this Trust Deed.
- (b) For the avoidance of doubt, the Trustee has no discretion to deal with the Fund assets or take action in respect of the Fund assets, except as expressly permitted in this Trust Deed.

9.9 Reliance upon apparently genuine documents

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

10. Trustee's powers to invest

10.1 Investment directions by the Manager

- (a) Subject to this clause 10, each Manager is appointed by the Trustee as its agent to invest and manage the investments of the Fund and must do so in accordance with the investment mandates which apply to Resolution Life's Statutory Fund 5.
- (b) The Trustee appoints the Manager as its agent to engage on its behalf, in respect of the Fund, one or more investment managers who are responsible for investing and managing the investments of the Fund in accordance with the investment mandates for the Fund. The Manager must exercise due care in selecting, appointing and reviewing the performance of any investment manager engaged by the Manager.
- (c) The Manager must not subcontract the performance of its obligations under this Trust Deed in respect of the investment of the Fund other than to an appropriately qualified and experienced investment manager whose appointment is made in writing and is in compliance with applicable laws. The Manager shall not be relieved from any liability or obligation under this Trust Deed by subcontracting the performance of its obligations to a third party.
- (d) The Manager (on behalf of the Trustee) may, or may procure a Custodian to:
 - (i) purchase, acquire, sell, transfer or dispose of investments and property;
 - (ii) enter into any commitments or liabilities in respect of investments and property;
 - (iii) execute and deliver such contracts or other instruments as may be necessary in respect of the foregoing; and
 - (iv) take any other action which may be required in respect of investments and property of the Fund,

in each case provided that such action is not inconsistent with, or a contravention of, any express provision of this Trust Deed or the duties of the Manager owed under this Trust Deed.

- (e) The Trustee must (and, when a Custodian has been appointed, must procure that the Custodian will) from time to time, to the extent of the respective funds in its hands or control, do all things necessary on its part to facilitate and give effect to any of the actions referred to in clause 10.1(d) as requested in writing by the Manager or such investment manager.
- (f) The Manager must, on request by the Trustee, provide to the Trustee such reports of the Manager's investment activities and actions taken pursuant to this clause 10.1 to enable the Trustee to reasonably determine that the Manager is acting and the Fund is being managed and dealt with in accordance with this Trust Deed and all applicable laws.

10.2 Advisers

In relation to the purchase or sale of, or any other dealing with, any asset of the Fund, the Manager may determine the time and mode of, and the consultants, agents, brokers and professional advisors (if any) for, the purchase, sale or other dealing. The Trustee will agree to pay out of the assets of the Fund or reimburse to the Manager all reasonable expenses of such advisers whether engaged by or on behalf of the Trustee or the Manager, subject to receipt of evidence of such expenses being properly incurred in connection with the Fund.

10.3 Investments in Trustee's or Custodian's name

The Trustee must ensure that all assets of the Fund are:

- (a) vested in the Trustee or a Custodian; and
- (b) registered in the name of the Trustee (or, if applicable, such Custodian),

in each case as soon as reasonably practicable, and, if requested by the Trustee, the Manager shall use reasonable endeavours to assist the Trustee in this respect.

10.4 Bank accounts

A separate bank account or accounts in the name of the Trustee or a Custodian appointed in accordance with clause 9.2 must be opened and maintained for the Fund. All moneys held for the Fund must be paid to the credit of such bank account or bank accounts. The Trustee will determine the persons authorised to operate such bank accounts.

10.5 Trustee's right to limit liability

Before the Trustee enters into any transaction, security or liability of or in connection with the Fund, the Trustee may require that its liability is restricted or limited to its satisfaction to the assets for the time being of the Fund.

10.6 Derivative financial instruments

For the avoidance of doubt, the Manager may direct the Trustee enter into derivative financial instruments (including forward exchange contracts, swap agreements, futures contracts, options and any form of agreement creating a contingent liability) for the purpose of investment or for the purpose of risk management in respect of the Fund.

10.7 Notifying the Trustee

- (a) The Manager shall make available to the Trustee all information about the investment mandates which it has entered into with investment managers as agent of the Trustee, or which it has directed the Custodian to enter into, and any direction given to such an investment manager, upon reasonable request by the Trustee.
- (b) The Manager must notify the Trustee:
 - (i) as soon as reasonably practicable when it becomes aware of any breach, or potential breach, of the terms of the engagement of any investment manager; and
 - (ii) immediately when it becomes aware of any actions carried out by any investment manager which may cause the Trustee or the Manager to be in breach of the terms of this Trust Deed, or any applicable law.
- (c) The Initial Unitholder must notify the Trustee and the Manager of any material changes to the investment mandates which apply to Resolution Life's Statutory Fund 5.

11. Reporting and review

11.1 Requested information from the Manager

- (a) Within 5 business days of any request in writing by the Trustee, the Manager will provide to the Trustee any information reasonably requested by the Trustee in relation to the Fund, including to enable the Trustee to establish or verify the following:
 - (i) the Required Balance of the Fund at the time it was most recently determined;
 - (ii) compliance with the undertaking in clause 2.4(c)(i) of this Trust Deed in respect of transfers to maintain the Required Balance of the Fund; and
 - (iii) any additions to, or withdrawals from, the Fund and a reconciliation of any movements in the Required Balance.
- (b) The Manager will promptly, following receipt of a request in writing by the Trustee, provide to the Trustee:
 - (i) all documents, records and information relating to the Manager and the Fund (including those held by an investment manager or administration manager) reasonably requested by the Trustee which are relevant to the performance of the Manager's obligations under this Trust Deed; and
 - (ii) such other information and assistance as may be reasonably requested by the Trustee from time to time:
 - (A) for the purposes of the Trustee monitoring, assessing and reviewing the conduct and performance of the Manager in connection with this Trust Deed and the Fund; or
 - (B) to the extent required for the Trustee to respond to any request or direction of any governmental or regulatory body or to comply with its statutory obligations or obligations under this Trust Deed.

11.2 Additional reporting to Trustee

Without limiting the Manager's or the Initial Unitholder's obligations under this Trust Deed and at law, each of the Manager and the Initial Unitholder must immediately notify the Trustee of the occurrence of any breach or default by it (as the case may be) of any of its obligations under this Trust Deed.

11.3 Requested information from Trustee

- (a) Within 5 business days of any request in writing by a Unitholder, the Trustee will provide to that Unitholder any information reasonably requested by the Unitholder, including to enable the Unitholder to establish or verify the following:
 - (i) confirmation of the assets held in trust within the Fund;
 - (ii) compliance with the undertaking in clause 2.4(c)(i) of this Trust Deed in respect of transfers to maintain the Required Balance in the Fund; and
 - (iii) the Net Asset Value of the Fund at the time it was most recently determined.
- (b) The Trustee will promptly, following receipt of a request in writing by a Unitholder, provide to the Unitholder or the Manager (at the Unitholder's or Manager's cost, as applicable):
 - (i) details of any underlying investments supporting the assets in the Fund as available from any Custodian or investment manager;
 - (ii) all documents, records and information relating to the Trustee and the Fund (including those held by an investment manager or administration manager) reasonably requested by the Unitholder or the Manager which are relevant to the performance of the Trustee's functions under this Trust Deed; and
 - (iii) such other information as may be reasonably requested by the Unitholder, the Manager or an Administrator from time to time:
 - (A) for the purposes of the Unitholder, the Manager or an Administrator monitoring, assessing and reviewing the conduct and performance of the Trustee in connection with this Trust Deed and the Fund; or
 - (B) to the extent required for the Unitholder and the directors of the Unitholder and any officer, employee or other person nominated by the Initial Unitholder, or an Administrator to comply with their respective statutory obligations or duties.

11.4 Additional reporting by Trustee to Unitholders

Without limiting the Trustee's obligations under this Trust Deed and at law, the Trustee must:

- (a) deliver a report each month for the Fund in the form agreed between the Trustee and the Majority Unitholder from time to time, by the end of the last day of the month following the relevant month and, on request by the RBNZ, provide a copy to the RBNZ;
- (b) for each Financial Year for the Fund, provide a copy of the Fund Financial Statements to the Unitholders not later than four months after the close of the Financial Year together with a copy of the auditor's report on those statements as required by clause 21.1;

- (c) if the Trustee becomes aware of any Insolvency Event having occurred, or being expected to occur, in relation to the Trustee, immediately notify the Unitholders and the RBNZ of the Insolvency Event;
- (d) immediately notify the Unitholders and the RBNZ:
 - (i) of the occurrence of any breach or default by the Trustee of any of its obligations under this Trust Deed; or
 - (ii) upon becoming aware of any litigation, arbitration or administration proceedings or insolvency proceedings being taken or threatened against the Trustee or all or any part of the Fund;
- (e) immediately notify the RBNZ as soon as it becomes aware of the occurrence of any breach or default by the Initial Unitholder of any of its obligations under this Trust Deed;
- (f) on request by the RBNZ, and within the time and in the manner (which must be reasonable in the circumstances) specified by the RBNZ, provide to the RBNZ any information held by or under the control of the Trustee to monitor, assess and review the conduct and performance by the Trustee in connection with this Trust Deed; and
- (g) promptly, provide the Unitholders with a copy of any information that is provided to the RBNZ or APRA by the Trustee in relation to the Fund or this Trust Deed.

12. Trustee remuneration

The Trustee will not be entitled to receive a fee in relation to the management and administration of the Fund or in performing its obligations or exercising its powers under this Trust Deed.

13. Liability and insurance

13.1 No personal liability of Trustee

The Trustee, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Trust Deed for or in connection with the Fund, is and is deemed to be acting for and on behalf of the Fund and not in its own capacity, and the Trustee is not under any personal liability, nor may resort be had to its private property, for the satisfaction of any obligation or claim relating to the Fund and only the assets of the Fund are available for that purpose, provided that this clause 13.1 shall not apply to the extent of liability incurred by the Trustee as a result of the Trustee failing to properly perform its duties or otherwise as a consequence of the Trustee's negligence, dishonesty or wilful misconduct.

13.2 No set-off where contribution sought

In the event that the Initial Unitholder brings a breach of trust claim against the Trustee and the Trustee seeks contribution or indemnity from the Manager, the Trustee shall not be entitled to set off any such contribution or indemnity against any amount payable to the Initial Unitholder.

13.3 Insurance

The Trustee must maintain at its own expense or at the expense of a Related Company, appropriate insurance on such terms and for such amounts as would be prudent business practice, having regard to the Trustee's obligations, functions and responsibilities under this Trust Deed.

14. Tax

14.1 Deduction for Payment of Unitholder's Taxation

- (a) The Trustee may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Trustee or from the Fund (including any amount payable or anticipated to become payable pursuant to the indemnity in clause 14.3).
- (b) The Trustee is not liable to account to any Relevant Person or otherwise for any payment made or suffered by the Trustee in good faith notwithstanding that such payments ought not to be or need not have been made or suffered.
- (c) For the avoidance of doubt, the Trustee is not required to (and will not) make any additional payment by way of gross up or otherwise with respect to any deduction pursuant to clause 14.1(a).

14.2 Application of Deductions

Amounts deducted under clause 14.1 are to be applied in:

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

14.3 Indemnity in favour of Trustee

Each Relevant Person must indemnify the Trustee in respect of any Taxation Amount paid or payable by the Trustee in respect of a Relevant Person or a Relevant Person's Units or interest in or income of the Fund attributable to that Relevant Person.

14.4 Information from Unitholders

Each Unitholder must provide information to the Trustee on request sufficient to enable the Fund's obligations under any law relating to Tax to be satisfied.

14.5 Slice rule or ordering rule

For such time as the Fund is not a portfolio investment entity for the purposes of the Income Tax Act, it shall be a term of issue of all Units that the ordering rule does not apply, and that instead the slice rule applies to the redemption or other cancellation of those Units, for the purposes of section CD 22(4) of the Income Tax Act. In this clause, "slice rule" and "ordering rule" each have the meaning given to those terms in the Income Tax Act.

14.6 Tax elections and notifications

The Trustee shall be permitted to make any tax elections or notifications with respect to the Trustee, the Fund and any other matters contemplated by this Trust Deed determined by the Trustee, provided that the Trustee has obtained the prior written consent of the Majority Unitholders (such consent not to be unreasonably withheld or delayed).

15. New Zealand GST

15.1 Consideration GST exclusive

Unless expressly stated, all consideration to be provided under this Trust Deed is exclusive of GST. If GST is payable on any supply made under this Trust Deed, for which the consideration is not expressly stated to include GST, the recipient will pay to the supplier an amount equal to the GST payable on the supply in addition to and at the same time that the consideration for the supply is to be provided under this Trust Deed, provided that the supplier must first deliver a tax invoice to the recipient.

15.2 Adjustment

If the amount of GST shown in a tax invoice issued in accordance with clause 15.1 differs from the amount of GST payable on that supply, the supplier will issue a debit note or credit note as required by the GST Act, and within 30 days of the debit or credit note being issued, a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

15.3 Reimbursements

Where a party to this Trust Deed is required to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any deductions from output tax in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

15.4 Construction

Words and expressions used in this clause 15 which have a defined meaning in the Goods and Services Tax Act 1985 (New Zealand) (the **GST Act**) will have the meaning given in the GST Act and "GST" shall mean "**tax**" as defined in the GST Act.

16. Amendments

This Trust Deed may at any time be amended by deed executed by the Trustee and the Majority Unitholder, provided that the parties have first obtained the prior written approval of the RBNZ if required under any Regulatory Undertaking in respect of the proposed amendment.

17. Retirement of Trustee

17.1 Retirement

Subject to clause 17.2 and to all applicable laws, the Trustee may retire at any time upon giving the Manager, the Unitholders, the RBNZ and APRA not less than six months' written notice of such retirement.

17.2 Restrictions on retirement

No retirement under clause 17.1 will take effect unless:

- (a) the requirements for such retirement, and for any new trustee under any applicable legislation have been met;
- (b) any new trustee has executed the deed referred to in clause 17.4; and
- (c) all of the investments of the Fund have been transferred to the new trustee, or a Custodian(s), which holds all of the investments of the Fund in its capacity as Custodian for the Fund, and has acknowledged that it is acting for the new trustee.

17.3 New appointment

Subject to any approval required from the RBNZ under any instrument in writing entered into by the Initial Unitholder, the power of appointing a new trustee of the Fund (in place of a trustee which has retired, been removed or otherwise ceased to hold the office of trustee) is vested in the Initial Unitholder.

17.4 Restrictions on new appointment

Any new trustee must forthwith upon appointment execute a deed in such form as the Initial Unitholder may require whereby the new trustee undertakes to the Unitholders to be bound by all the obligations on the part of the former trustee under this Trust Deed from the date of such appointment.

17.5 Requirements on retirement of trustee

On its retirement, the Trustee must:

- (a) give to the new trustee all books, documents, records and other property relating to the Fund in the Trustee's possession or control;
- (b) do all things necessary to transfer the legal title in the assets of the Fund to the new trustee;
- (c) sign authorities and give directions reasonably required by the new trustee to give possession or control of any part of the Fund in the hands of third parties; and
- (d) give any other reasonable assistance to the new trustee to facilitate the change of trustee and put the new trustee into full knowledge of the affairs of the trust.

17.6 Release of trustee

From the date of appointment of the new trustee of a deed in accordance with the deed referred to in clause 17.4, the retiring trustee is absolved and released from all such covenants under this Trust Deed (except in respect of prior breach) and the new trustee must thereafter exercise all powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the trustee under this Trust Deed in all respects as if that new trustee had been originally named as a party to this Trust Deed.

17.7 Appointment not exclusive

Nothing contained in this Trust Deed shall be construed as preventing the Trustee from establishing, or acting as trustee in relation to, any other trust or fund or similar scheme.

18. Winding up of the Fund

18.1 Triggering wind-up

The Fund, and the trust over the Fund created under this Trust Deed, terminates immediately on whichever of the following dates first occurs:

- (a) the date specified in a written notice of termination provided by the Initial Unitholder to the Trustee, provided that before giving such notice, the Initial Unitholder must:
 - (i) deliver to the Trustee and the RBNZ, written confirmation from the chair of the NZPAC that the members of the NZPAC have passed a resolution supporting the termination of the Fund as proposed by the Initial Unitholder; and
 - (ii) obtain the prior written approval of the RBNZ if such approval is required under any Regulatory Undertaking; or
- (b) the date falling 80 years less two days from the date of creation of the Fund (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964 (New Zealand)).

18.2 Following termination

- (a) Subject to any approval required from the RBNZ under any Regulatory Undertaking, the Trustee must immediately, upon a termination notice delivered under clause 18.1, comply promptly and fully with all reasonable instructions from the Initial Unitholder in relation to:
 - (i) redeeming all Units on issue and transferring all of the Fund assets and liabilities to Unitholders or custodians or nominees thereof notified by each Unitholder to the Trustee; and
 - (ii) the performance of appropriate disengagement services.
- (b) The provisions of clauses 7, 13, 14, 18, 20, 23 and 24 of this Trust Deed are continuing obligations and will survive termination of this Trust Deed for any reason.

19. Unitholders bound by this Trust Deed

19.1 Provisions benefit Unitholders

Except where this Trust Deed expressly provides otherwise or the context otherwise requires, the terms and conditions of this Trust Deed are for the benefit of and binding on each Unitholder and legally enforceable as between the Trustee, the Manager and Unitholders and all persons claiming through each Unitholder, as if the Unitholder had been party to and had executed this Trust Deed.

19.2 No interference in management

Subject to the rights created for Unitholders by this Trust Deed and subject to the provisions applicable to the Initial Unitholder or the Manager, no Unitholder shall be entitled to interfere with or question the exercise or non-exercise by the Trustee, the Manager or the Initial Unitholder of any of the rights, powers, authorities or discretions conferred upon them or either of them by this Trust Deed or in respect of all or any of the assets or liabilities of the Fund, or

to exercise any right, power or privilege in respect of any asset or liability comprised in the Fund.

20. Limitation of liability of Unitholders

20.1 No personal obligation to indemnify

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

20.2 Limited recourse to assets of the Scheme

The rights (if any) of the Trustee or of any creditor to seek indemnity are limited to having recourse to the assets of the Fund and do not extend to a Unitholder personally in such person's capacity as a Unitholder.

21. Fund Financial Statements and Auditor

21.1 Fund Financial Statements

The Trustee must ensure that, for each Financial Year, Fund Financial Statements are prepared by or on behalf of the Trustee and audited by the Auditor and a copy provided to the RBNZ no later than four months after the close of the Financial Year.

21.2 Appointment and remuneration

A licensed auditor or registered audit firm selected by the Trustee, after consultation with the Majority Unitholder and taking into account all applicable legal and regulatory guidelines or standards, must be appointed as Auditor of the Fund. The remuneration of the Auditor shall be determined by the Trustee on an arm's length basis.

21.3 Removal/retirement

- (a) The Auditor may at any time and from time to time be removed by the Trustee with notice to the Unitholders. The Trustee must remove the Auditor if the Trustee believes it to be in the best interests of the Fund and/or Unitholders.
- (b) The Auditor may retire upon giving the Trustee 30 days' notice in writing.

21.4 New appointment

Any vacancy in the office of Auditor must be filled by the Trustee, appointing as Auditor a licensed auditor or registered audit firm in accordance with the procedure for appointment under clause 21.2.

21.5 Restrictions on Auditor

Subject to compliance with applicable independence requirements imposed by law, auditing standards or professional obligations, the Auditor may be the auditor of the Trustee, or of a Unitholder, or of an associated person of either the Trustee or a Unitholder.

21.6 Reports

The Trustee may require the Auditor, as part of each annual audit carried out by the Auditor in relation to the Fund, to provide a written report to the Trustee as to:

- (a) the nature and extent of the audit performed (as specified by the Trustee to the Auditor);
- (b) any breaches of the obligations of the Manager, the Initial Unitholder or the Trustee identified by the Auditor within the parameters of the audit conducted by the Auditor; and
- (c) any errors in or omissions from any reports or information provided by one party to the other party identified by the Auditor within the parameters of the audit conducted by the Auditor, and

that report is to be in the form determined by the Trustee.

22. Security and business continuity

22.1 Security and data

- (a) The Trustee must implement measures it considers appropriate to prevent:
 - (i) unauthorised or unlawful use or disclosure of information and documents in the possession of the Trustee or within the Trustee's control; and
 - (ii) accidental loss or destruction of, or damage to, information and documents in the possession of the Trustee or within the Trustee's control.
- (b) The Trustee will maintain information and documents in electronic form, using such systems and software as the Trustee maintains for this purpose from time to time. The Trustee will provide Unitholders with such reasonable information requested by a Unitholder regarding the format in which documents and information is maintained by the Trustee in respect of the Fund from time to time.
- (c) The Trustee, the Manager and the Initial Unitholder acknowledge and agree that all asset, investment dealings and financial information, data, policies, reports and records which the Trustee maintains in relation to the Fund or disclosed pursuant to this Trust Deed, including all information held in electronic, photographic or hard copy form, are the property of the Trustee.
- (d) The Trustee, the Manager and the Initial Unitholder acknowledge and agree that the Initial Unitholder does not have ownership of any processes, software and hardware used by the Trustee to fulfil its obligations under this Trust Deed, except to the extent that:
 - (i) the Manager or Initial Unitholder (as the case may be) provided such processes, software or hardware to the Trustee; or
 - (ii) the processes, software and hardware used by the Trustee were invoiced by the Trustee and paid for by the Manager or Initial Unitholder (as the case may be).

22.2 Business continuity plan

- (a) The Trustee must at all times have an appropriate disaster recovery and business continuity plan in place to ensure that acceptable service levels are restored as soon as practicable in the event of problems occurring with the Trustee.
- (b) The Trustee will provide a copy of the disaster recovery and business continuity plan to Unitholders, on request.

23. Confidentiality

23.1 Confidentiality

Both parties must treat as confidential the terms of this Trust Deed and all information provided by the other party regarding the other party's business.

23.2 Exceptions

Neither party shall directly or indirectly disclose to any other person any such confidential information except:

- (a) to the extent necessary to comply with any request or direction of any governmental or regulatory body; or
- (b) to the extent required by law; or
- (c) to the extent permitted, authorised or expressly anticipated by this Trust Deed; or
- (d) to the extent necessary in connection with the performance of its obligations under this Trust Deed; or
- (e) where the information is publicly available (otherwise than by breach of this Trust Deed); or
- (f) with the prior written consent of the other party.

23.3 Clause survives termination

The provisions of this clause 23 shall survive the termination of this Trust Deed.

24. Notices and information

24.1 Notices

A notice under this Trust Deed, including any Proper Instructions, must be in writing and may be given by:

- (a) leaving it at the person's registered address; or
- (b) means of an electronic communication.

A Unitholder must notify the Trustee of any change to the Unitholder's registered or electronic address and the relevant Register shall be altered accordingly.

24.2 Manner of notice

Without limiting section 11(a) of the Electronic Transactions Act 2002 (New Zealand), a notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a business day, or the transmission is sent after 5.00 pm in the place of receipt on a business day, then the notice will be deemed to have been given on the next business day after the date of confirmation of transmission).

24.3 Signature of notice

The signature to any notice to be given by the Trustee, the Manager or a Unitholder may be written or printed or otherwise provided in accordance with the Electronic Transactions Act 2002 (New Zealand).

24.4 Calculation of notice periods

Where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.

24.5 Receipt of notice

Any notice or document delivered or sent by post or electronic communication to or left at the registered address for service of a Unitholder under this Trust Deed will be deemed to have been duly given until some other person is registered in the place of the Unitholder.

25. Representations and warranties

Each party represents to the other party that:

- (a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) it has full authority and power to enter into, and exercise its rights and perform and comply with its obligations under, this Trust Deed;
- (c) it has obtained all necessary actions, authorisations and consents to enter into and comply with the terms of this Trust Deed;
- (d) its obligations under this Trust Deed are its valid, binding and enforceable obligations (except to the extent limited by equitable principles and laws affecting creditors' rights generally); and
- (e) neither the execution and delivery of this Trust Deed nor the exercise of any right or the performance or observance of any obligation under this Trust Deed by it, will:
 - (i) violate or contravene any law to which it is subject;
 - (ii) conflict with, or result in a breach of, any agreement to which it is party or by which it or any of its assets may be bound; or
 - (iii) violate any of the documents constituting it or cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers, to be exceeded.

26. **Dispute resolution**

- (a) If a dispute arises between a party to this Trust Deed, any party may give written notice to the other that the dispute exists (**dispute notice**).
- (b) The dispute notice must designate a representative with the appropriate authority to negotiate the dispute on behalf of the party giving the notice.
- (c) Within 10 business days of receipt of the dispute notice, the recipient must designate a representative with similar authority. The representatives must promptly discuss the dispute with a view to resolving any issues in good faith, following whatever investigation each considers appropriate.
- (d) A party may not begin legal proceedings in connection with a dispute under this Trust Deed unless that dispute has first been through the process contemplated by clauses 26(a) to 26(c) or unless the proceedings are to seek urgent injunctive or other interlocutory relief or other remedies or take any action in respect of its rights under the Deed Poll.
- (e) Despite the existence of a dispute, each party must continue to perform its obligations under this Trust Deed.

27. **Governing law**

27.1 **Governing law**

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

27.2 **Submission to jurisdiction**

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand. Each party waives any right it has to object to an action being brought in these courts, including without limitation by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

27.3 **Service**

Without preventing any other mode of service, any document in any action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices given in accordance with clause 24.

28. **Privity with RBNZ**

For the purposes of subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (New Zealand), the Trustee and the Initial Unitholder acknowledge and agree that clauses 11.4(a), 11.4(c), 11.4(d), 11.4(e), 11.4(f), 16, 18 and 21.1 are for the benefit of, and are enforceable by, the RBNZ in its capacity as prudential regulator under IPISA.

29. Miscellaneous

29.1 Remedies

In the event of any breach or threatened breach of this Trust Deed by any party, damages may not be an adequate remedy and a party may seek specific performance of the terms of this Trust Deed or injunctive relief or any other similar remedy, in addition to any other remedies available at law or in equity under or independently of this Trust Deed. In any proceeding brought by a party seeking such equitable relief for a breach or threatened breach of this Trust Deed, the other party may not claim that the breach or threatened breach is one which may not or ought not be the subject of equitable relief.

29.2 Rights cumulative

The rights, powers and remedies provided in this Trust Deed are cumulative and not exclusive of the rights, powers or remedies provided by law independently of this Trust Deed.

29.3 Severance

Any provision of this Trust Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this Trust Deed or the validity or enforceability of that provision in any other jurisdiction.

29.4 No implied waivers

No failure on the part of any party to exercise, and no delay on its part in exercising, any right, power or remedy under this Trust Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

29.5 Counterparts

This Trust Deed may be executed in two or more counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this Trust Deed by signing a counterpart copy and sending it to the other parties (including by email).

29.6 Delivery

For the purposes of section 9 of the Property Law Act 2007 (New Zealand) (and without limiting any other mode of delivery) this Trust Deed will be delivered by each party on the earlier of:

- (a) physical delivery of an original of this Trust Deed, executed by the relevant party, into the custody of the other party or the other party's solicitors; or
- (b) transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a photocopied or scanned copy of an original of this Trust Deed, executed by the relevant party, to the other party or the other party's solicitors.

