

**[Insert name of Trustee]**

(Trustee)

and

**[Insert name of Manager]**

(Manager)

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**ASFA TEMPLATE INVESTMENT MANAGEMENT AGREEMENT  
UPDATED JANUARY 2022**

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**SUPERANNUATION TRUSTEE VERSION**

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## INVESTMENT MANAGEMENT AGREEMENT

THIS AGREEMENT is dated \_\_\_\_\_ between:

1. [Insert name, address and ABN] (**Trustee**); and
2. [Insert name, address and ABN] (**Manager**).

### RECITALS

- A The Trustee is the trustee of the Fund and enters into this Agreement only in that capacity.
- B The Manager has represented to the Trustee that it has the skills, facilities, abilities and staff to carry out the duties of investment manager pursuant to this Agreement.
- C In reliance on the representations of the Manager set forth in these recitals and in this Agreement, the Trustee wishes to appoint the Manager to provide investment management and other services in relation to certain assets of the Fund under the terms of this Agreement.
- D The Manager has agreed to such appointment as evidenced by its execution of this Agreement.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

<b>Affiliate</b>	means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that Controls directly or indirectly, the person or any entity directly or indirectly under common Control with the person or any entity which ordinarily acts under the direction of the person and without limiting the foregoing includes a Related Body Corporate and an Associate of the person.
<b>Agreement</b>	means this investment management agreement as amended from time to time.
<b>Anti-Money Laundering and Counter-Terrorism Financing Laws</b>	means all laws relating to money laundering, terrorism financing or other proscribed conduct applicable to the Manager or the Trustee as the case requires including, but not limited to, the <i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i> (Cth).
<b>APRA</b>	means the Australian Prudential Regulation Authority established under the <i>Australian Prudential Regulation Authority Act 1998</i> (Cth) or its successor.
<b>Associate</b>	has the meaning it is given in the Corporations Act.
<b>ASIC</b>	means the Australian Securities and Investments Commission established under the <i>Australian Securities and Investments Commission Act 1989</i> (Cth) and continued in existence under the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) or its successor.

<b>AUSTRAC</b>	means the Australian Transaction Reports and Analysis Centre established under the <i>Financial Transactions Reports Act 1988</i> (Cth) and continued in existence by the <i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i> (Cth) or its successor.
<b>Australian Financial Services Licence</b>	means a licence granted under section 913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services.
<b>Authority</b>	means any administrative, fiscal, governmental, semi-governmental, judicial, quasi-judicial authority or body or agency, department, commission, tribunal, or stock exchange.
<b>Authorised Person</b>	means each person identified in <b>Schedule 5</b> and any other person appointed as an authorised person under <b>clause 14.2</b> from time to time.
<b>Block-Booked Transaction</b>	means entering into a trade on behalf of one or more clients of the Manager and allocating part of the trade among those clients before, at the time of, or after the trade has been entered into.
<b>Business Continuity Plan</b>	means the plan developed in accordance with <b>clause 16.2</b> .
<b>Business Day</b>	means a day on which the Trustee is open for business, but excluding Saturday and Sunday.
<b>Business Hours</b>	means from 9.00am to 5.00pm on a Business Day.
<b>Call-back</b>	means a phone call to a person authorised to make or verify any written communication to the Manager in relation to a transaction where the instruction is received by means of untested facsimile or email.
<b>Clearing House</b>	means a person who provides facilities for the transfer, clearing or settlement of either securities or Derivatives Contracts in the ordinary course of trading in securities or Derivatives Contracts.
<b>Code of Professional Conduct</b>	has the meaning it is given in <b>clause 4.7(a)</b> .
<b>Commencement Date</b>	means the date specified in paragraph 3 of <b>Schedule 1</b> .
<b>Commissioner of Taxation</b>	means the person holding the office of Commissioner of Taxation under the <i>Taxation Administration Act 1953</i> (Cth).
<b>Confidential Information</b>	means all Information (whenever and however it was obtained) relating to the business, technology or other affairs of a party including: <ul style="list-style-type: none"> <li>(a) Information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of a party or any of its Affiliates or a third party to whom the party owes an obligation of confidentiality; and</li> <li>(b) Information derived or produced partly or wholly from the Confidential Information including, without limitation, any calculation, conclusion, summary or computer modelling; and</li> <li>(c) Information which is capable of protection at law or in equity as confidential information; and</li> <li>(d) the Trustee Data,</li> </ul>

whether the Information was disclosed:

- (e) orally, in writing or in electronic or machine readable form;
- (f) before, on or after the date of this Agreement;
- (g) as a result of discussions between the parties concerning or arising out of the subject matter of this Agreement; or
- (h) by a party, any of its Representatives, any of its Affiliates, or any Representatives of its Affiliates or by any third person.

**Conflicts Management Policy** has the meaning it is given in **clause 5.5(b)**.

**Control** For the purposes of this Agreement, effective control of the Manager or an Affiliate includes (but without derogating from the generality thereof):

- (a) control of the composition of the board of directors;
- (b) control of more than one-half of the voting power of its board of directors;
- (c) control of more than one-half of the voting power of its issued share capital;
- (d) control of more than half of its share capital (excluding any part thereof which carries no right to participate beyond a specified amount in the distribution of either profit or capital); or
- (e) control of its management.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPI** refers to the year ended percentage change of the Consumer Price Index excluding volatile items (Series ID: A2330841L of publication 6401) sourced from the Australian Bureau of Statistics.

**Custodian** means:

- (a) if paragraph 2 of **Schedule 1** identifies a body corporate as the Custodian of the Portfolio, that body corporate; or
- (b) if the Trustee has appointed some other body corporate to be the Custodian of the Portfolio, that body corporate, as notified to the Manager in writing,

and includes any sub-custodian appointed by the Custodian.

**Custodian Services Manual** means both:

- (a) any document designated as a "Custodian Services Manual" by the Trustee and provided by the Trustee (or the Custodian on direction by the Trustee) to the Manager which specifies the Custodian's requirements in relation to the Portfolio or Title Documents (or both); and
- (b) any revision or update to a Custodian Services Manual which is provided by the Trustee (or the Custodian on direction by the Trustee) to the Manager.

<b>Derivative Contracts</b>	has its ordinary meaning from time to time and includes, without limitation, swaps, futures, forward rate agreements and options.
<b>Developed IP</b>	means all Intellectual Property Rights developed by or on behalf of the Manager which incorporate or modify the Trustee Intellectual Property.
<b>Disengagement Period</b>	means the period set out in <b>clause 11.5(a)</b> or as otherwise agreed in writing between the parties.
<b>Disaster Recovery Event</b>	means a problem, event or disaster (including without limitation, problems arising within the Manager's organisation (such as the breakdown of the Manager's computing system) or externally to the Manager's organisation (such as a power failure)) which interrupts the Manager's performance of its obligations under this Agreement.
<b>Dispute</b>	includes any dispute, controversy, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement, including any question concerning its formation, validity, interpretation, performance, breach, termination and the calculation of amounts payable under it.
<b>Dispute Notice</b>	has the meaning it is given in <b>clause 23.1</b> .
<b>Excluded Agent</b>	means an agent of the Manager who: <ul style="list-style-type: none"> <li>(a) is a clearing house or broker appointed in accordance with clause <b>5.4(b)</b>; or</li> <li>(b) is an agent, or one of a class of agents, nominated in writing by the Manager for this purpose and which is agreed to by the Trustee; or</li> <li>(c) acts in accordance with the direction of the Trustee in respect of the particular matter to which reference is made.</li> </ul>
<b>Excluded Information</b>	means Confidential Information which: <ul style="list-style-type: none"> <li>(a) is publicly available otherwise than through breach of this Agreement or an obligation of confidence owed to a party; or</li> <li>(b) a party can prove by contemporaneous written documentation was already known to it or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or</li> <li>(c) a party acquires from a source other than the other party or any Affiliate or Representative of the other party where such source is entitled to disclose it.</li> </ul>
<b>Excluded Taxes</b>	means Taxes which: <ul style="list-style-type: none"> <li>(a) would not be payable, assessable or deducted if the Manager provided the Trustee with any of its name, address, registration number or similar details or any relevant tax exemption or similar details;</li> <li>(b) are imposed on, or calculated having regard to, the net income of the Manager;</li> </ul>

- (c) are imposed as a result of the Manager being a resident of, or organised or doing business in, the jurisdiction imposing that Tax;
- (d) are imposed arising out of, or in connection with, any action or omission of the Manager; or
- (e) are assessed or payable on any fees earned by the Manager or its agents pursuant to this Agreement (other than GST).

**Financial Year**

means:

- (a) the period commencing on the commencement of the Manager's appointment in respect of the Portfolio under this Agreement and ending on the next 30 June;
- (b) a subsequent period of 12 months ending on 30 June during the term of the Manager's appointment in respect of the Portfolio under this Agreement; or
- (c) the period ending on the date of termination of the Manager's appointment in respect of the Portfolio under this Agreement and commencing on the preceding 1 July.

**Force Majeure Event**

means an event or circumstance beyond the Manager's reasonable control, including nationalisation, expropriation, currency restrictions, disruptions of normal procedures and practices of any securities markets, acts of war, terrorism, riots, revolution, act of god or other similar event or act.

**Fund**

means the fund named in paragraph 1 of **Schedule 1**.

**GST**

has the meaning it is given in the GST Act.

**GST Act**

means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information**

means all information, regardless of its Material Form, relating to or developed in connection with:

- (a) the business, technology or other affairs of a party or any Affiliate of a party;
- (b) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is marked "confidential" or is otherwise indicated to be subject to an obligation of confidence, owned or used by or licensed to a party or an Affiliate of a party; or
- (c) the subject matter of this Agreement.

**Intellectual Property Rights**

means all intellectual property rights, including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

<b>Investment Instructions</b>	means an instruction given by the Trustee to the Manager under <b>clause 4.2</b> .
<b>Key Persons</b>	means such of the employees of the Manager as are agreed between the Trustee and the Manager from time to time in writing.
<b>Manager Mandate</b>	means the investment mandate set out in <b>Schedule 2</b> as amended from time to time by an Investment Instruction.
<b>Material Business Activity</b>	has the same meaning as in APRA <i>Prudential Standard SPS 231</i> , as amended or replaced from time to time.
<b>Material Form in relation to Information</b>	includes any form (whether visible or not) of storage from which the Information can be reproduced and any form in which the Information is embodied or encoded.
<b>Offshoring</b>	means the conduct of any part of the Services by the Manager under this Agreement outside Australia.
<b>Personal Information</b>	means information which is personal information in accordance with the Privacy Act.
<b>Portfolio</b>	means such assets of the Fund, including any Derivative Contracts, which the Trustee notifies the Manager by Proper Instructions to be managed by the Manager under this Agreement, including all income and accretions in respect of them.
<b>Portfolio Value</b>	means, on any day, the market value as determined by the Custodian of the Portfolio.
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Laws</b>	means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information including, but not limited to, the Privacy Act.
<b>Proper Instructions</b>	means any instruction, direction, demand, request or approval made or given in accordance with <b>clause 14</b> .
<b>Quarterly Period</b>	means each three month period ending on 31 March, 30 June, 30 September and 31 December.
<b>Regulator</b>	means, as relevant: <ul style="list-style-type: none"> <li>(a) APRA;</li> <li>(b) ASIC;</li> <li>(c) AUSTRAC;</li> <li>(d) the Commissioner of Taxation;</li> <li>(e) any other Australian government authority responsible for administering the laws or any rules governing the operation of the Fund or the activities of the parties in relation to the Fund; and</li> <li>(f) their successors.</li> </ul>
<b>Regulatory Standard</b>	means any determination, reporting standard, prudential standard or policy statement issued by a Regulator with which the Trustee is obliged to comply.

<b>Related Body Corporate</b>	has the meaning it is given in the Corporations Act.
<b>Relevant Law</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any requirement of the Corporations Act, the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth), the <i>Financial Sector (Collection of Data) Act 2001</i>, the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth), the <i>Australian Securities and Investments Commission Act 2001</i> (Cth), the <i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i> (Cth), the <i>Income Tax Assessment Act 1936</i> (Cth), the <i>Income Tax Assessment Act 1997</i> (Cth) and the <i>Competition and Consumer Act 2010</i> (Cth);</li> <li>(b) any regulations and rules made pursuant to the Acts set out in paragraph (a);</li> <li>(c) any Regulatory Standards;</li> <li>(d) any instrument, policy or interpretative document issued by a Regulator, including any guidance note and any policy statement; and</li> <li>(e) any other present or future law with which the Trustee, Manager or the governing rules of the Fund must comply or which the Trustee, Manager or governing rules of the Fund must satisfy in order: <ul style="list-style-type: none"> <li>(i) to secure imposition at a concessional rate of any income tax which, in the opinion of the Trustee, is or may become payable in connection with the Fund; or</li> <li>(ii) for the Trustee to avoid a relevant penalty, detriment or disadvantage.</li> </ul> </li> </ul>
<b>Representative of a party</b>	includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer or sub-contractor of that party.
<b>RSE Licensee</b>	means an RSE licensee as defined in the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>Schedule</b>	means a schedule to this Agreement agreed by the parties from time to time.
<b>Services</b>	means all investment management and other services to be provided by the Manager under this Agreement.
<b>Taxes</b>	means all taxes of whatever nature lawfully imposed including income tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, GST, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duties and other taxes, charges, duties and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority, including any interest, penalty or fee imposed in connection with any tax, rates, duties, charges or levies.
<b>Termination Date</b>	means the date on which termination of this Agreement under <b>clause 11</b> becomes effective.

<b>Title Documents</b>	means the certificates, warrants, receipts, acknowledgments (including, without limitation, of uncertificated holdings), scrip and other written evidence of title to or interest in any of the assets forming part of the Portfolio for the time being.
<b>Transition Manager</b>	has the meaning it is given in clause <b>11.6(a)</b> .
<b>Trustee Data</b>	has the meaning it is given in <b>clause 21.5</b> .
<b>Trustee Intellectual Property</b>	means all Intellectual Property Rights owned by, or licensed to, the Trustee.

## **1.2 Interpretation**

Headings are for convenience only and do not affect interpretation. In this Agreement, unless the context otherwise requires:

- (a) **(singular includes the plural)** The singular includes the plural and vice versa;
- (b) **(meaning not limited)** The meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (c) **(person)** A reference to a person includes a reference to a body corporate, a government organisation, body or instrumentality, an unincorporated body and any other entity;
- (d) **(executors, administrators, successors)** A particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) **(clauses, annexures and schedules)** Each clause, annexure and schedule of this Agreement and direction and instruction under this Agreement forms part of this Agreement;
- (f) **(variations or replacements or novation)** A document (including this Agreement) includes any variation, replacement or novation of it;
- (g) **(reference to statutes)** A reference to a statute, ordinance, code or other law includes regulations, Regulatory Standards and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) **(reference to a thing)** A reference to a thing includes a reference to any part of that thing;
- (i) **(dollars)** A reference to dollars, AUD, A\$ or \$ is a reference to Australian currency;
- (j) **(corresponding meaning)** Where a word or phrase is defined, its other grammatical terms have corresponding meanings;
- (k) **(conduct)** A reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing;
- (l) **(calculation of time)** If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (m) **(reference to a day)** A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) **(jointly and severally)** An agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (o) **(construction)** No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it; and

- (p) **(notification)** An obligation to notify another party of a matter, event or occurrence is, unless a contrary intention is expressed in this Agreement, an obligation to notify the other party promptly upon becoming aware of the matter, event or occurrence and in any event within one (1) Business Day.

## 2 APPOINTMENT

### 2.1 *Manager*

The Trustee appoints the Manager as agent of the Trustee to provide the Services to the Trustee in relation to the Portfolio on and from the Commencement Date on the terms and conditions contained in this Agreement and the Manager accepts the appointment.

### 2.2 *Custodian*

- (a) The Trustee, and not the Manager, may appoint a Custodian at any time for any part of the Portfolio or Title Documents.
- (b) The Trustee warrants that, subject to the Manager's compliance with **clause 2.2(c)**, a Custodian will be obliged to:
- (i) open and maintain safe custody of ownership records;
  - (ii) receive all distributions of income forming part of the Portfolio; and
  - (iii) if applicable, promptly advise the Manager of cash and securities movements of the Portfolio in an electronic format consistent with industry practice.
- (c) If a Custodian is appointed at any time for the Portfolio or the Title Documents, the Manager must:
- (i) ensure that the assets comprising the Portfolio are vested as soon as practicable in the Custodian, unless otherwise agreed by the Trustee that it is not reasonably practicable to do so;
  - (ii) communicate with and instruct the Custodian in accordance with the protocols in the Custodian Services Manual or as otherwise instructed by the Custodian;
  - (iii) advise the Custodian on a daily basis of all trades and other transactions relating to the management and investment of the Portfolio;
  - (iv) give the Custodian instructions in relation to transactions concerning the Portfolio;
  - (v) provide to the Custodian, upon reasonable request, such information as the Custodian requires in relation to the Portfolio from time to time, together with advice relating to any issues of securities, takeover bids, offers, rights, entitlements and meetings (and in particular, the manner in which any proxies are to be voted) in relation to securities included in the Portfolio;
  - (vi) ensure that any notice to be given to the Custodian is given to the address specified by the Trustee and otherwise given by Authorised Persons of the Manager in accordance with the provisions of this Agreement;
  - (vii) use best endeavours to ensure that all notices, instructions and directions are given as are necessary to ensure that all income of and accretions to the Portfolio and all proceeds of sale of assets of the Portfolio are paid to the Custodian;

- (viii) provide to the Custodian and keep up to date a written authorisation signed by the Manager in accordance with the Custodian's requirements specifying the Authorised Persons of the Manager authorised to instruct the Custodian;
  - (ix) notify the Custodian in writing immediately upon becoming aware that the Portfolio has ceased, or may cease, to comply with the Investment Instructions, and promptly provide the Custodian with such information about the non-compliance as the Custodian reasonably requests; and
  - (x) on a daily basis reconcile its records regarding the previous Business Day's securities trades placed by the Manager and the Custodian's previous Business Day's opening securities holding balances to the Custodian's previous Business Day's closing securities holding balances. The Trustee acknowledges the Manager is not responsible to oversee or supervise the Custodian's performance in reconciling the Portfolio's assets.
- (d) If no Custodian is appointed at any time in respect of a part or all of the Portfolio, the Manager must ensure that the assets of the Portfolio are vested as soon as practicable in the Trustee or in another person nominated by the Trustee.
  - (e) The Manager consents to the Custodian recording any telephone conversations between the Manager and the Custodian in connection with the Portfolio.

### **3 ALLOCATION OF MONEYS**

#### **3.1 Allocation of Portfolio**

The Trustee will from time to time give notice to the Manager by Proper Instructions of which moneys, investments and assets standing to the credit of the Fund are to comprise the Portfolio and the Manager acknowledges that, subject to this Agreement, the Manager is not entitled to require the allocation to it of any particular portion or amount of the moneys, investments and assets of the Fund.

#### **3.2 Transfer of Portfolio**

The Manager acknowledges and agrees that the Trustee may in its sole and absolute discretion at any time and from time to time require the Manager by Proper Instructions to transfer or cause or permit to be transferred the whole of the Portfolio or any part of it to the Trustee or to such other person as the Trustee directs by the giving of Proper Instructions.

#### **3.3 Ceasing to act**

If the Manager receives a Proper Instruction to cease to act in respect of the whole or any part of the Portfolio, the Manager agrees to cease acting on behalf of the Trustee, at such time as is specified by the Trustee in the Proper Instruction.

### **4 DUTIES OF THE MANAGER**

#### **4.1 Manager**

The Manager must:

- (a) invest and manage the Portfolio for the Trustee in accordance with this Agreement;
- (b) do all things and execute all documents necessary for the purpose of properly investing and managing the Portfolio in accordance with this Agreement;

- (c) ensure that its duties and powers under this Agreement, including engaging in a transaction for the account of the Portfolio, are performed and exercised in good faith and in the best interests of the management of the Portfolio both when viewed in isolation and, where necessary, viewed in the context of earlier transactions;
- (d) act honestly and exercise all due care, skill, diligence and vigilance that a reasonable and professional investment manager (that was experienced in undertaking the duties under this Agreement) would exercise in carrying out its functions, powers and duties under this Agreement;
- (e) keep the Portfolio under review at all times and:
  - (i) confer regularly with representatives of the Trustee regarding the investment and management of the Portfolio at such intervals as the Trustee reasonably requests; and
  - (ii) attend board and investment committee meetings of the Trustee to discuss the performance of the Portfolio's investment strategies at such intervals as the Trustee reasonably requests;
- (f) keep data in relation to the Portfolio in a readily usable and readable form;
- (g) provide data and information in relation to the Portfolio or the Services requested by the Trustee to assist the Trustee or the Custodian, or their auditors, in the preparation of reports required under the Relevant Law;
- (h) upon request, inform the Trustee as to the Manager's internal guidelines concerning the Services and the Manager's capability and capacity to manage the investments of the Portfolio;
- (i) notify the Trustee of any significant shifts in investment process, strategy or philosophy of the Manager which would affect the management of the Portfolio;
- (j) notify the Trustee of any Proper Instructions given to it by the Trustee which have not been complied with;
- (k) notify the Trustee of any material change in ownership, management or organisational structure of the Manager;
- (l) ensure that the person responsible at all times for the day to day control of the Portfolio is suitably qualified and advise the Trustee of the name of that person from time to time;
- (m) adequately monitor and supervise staff who are responsible for the performance of the Services;
- (n) have internal control processes and procedures appropriate for the provision of the Services and ensure that staff who have charge of conduct of the Services are trained in their use;
- (o) notify the Trustee of any change in the positions or responsibilities of any Key Persons of the Manager;
- (p) present a statement of fees calculated in accordance with **Schedule 4** to the Trustee in writing as soon as possible after the end of the relevant period;
- (q) comply with any reasonable requests for information or assistance from any auditor appointed by the Trustee to conduct an audit of the performance by the Manager of the Manager's obligations under this Agreement;
- (r) with the prior written consent of the Trustee, or under force of law and as advised to the Trustee, give any information and assistance and make available any records relating to the Portfolio and the Manager's risk management systems reasonably required by the auditors of the Fund or a Regulator;

- (s) deliver within 30 Business Days of the end of each Financial Year a report provided by an independent audit firm that summarises the annual internal controls review conducted on the Manager's assets under management. The scope of such report shall include a review of both operational and accounting procedures performed by third parties that provide services to the Manager;
- (t) exercise the standard of care and diligence required by **clause 4.1(d)** in selecting, appointing and reviewing the performance of any agent of the Manager (including a broker) in connection with the Portfolio;
- (u) adequately monitor the performance of any agent appointed by the Manager in connection with the Portfolio to ensure compliance with this Agreement as if they were a party to this Agreement;
- (v) prior to appointing any delegate under **clause 5.3** to provide any services in respect of the Portfolio, as a result of which fees charged by the delegate may be deducted from the Portfolio, notify the Trustee of any arrangement or understanding in respect of which the Manager or any Affiliate will be entitled to receive a benefit or advantage (whether monetary or otherwise) as a result of that appointment;
- (w) account to the Trustee or into the Portfolio any monetary benefits, fees or commissions received by the Manager or any agent, employee, officer or Affiliate of the Manager in relation to the investment of the Portfolio, other than fees and commissions referred to in **clauses 8.1 or 8.2**;
- (x) except as permitted under the Investment Instructions, not direct the Custodian to dispose of any part of that Portfolio which the Manager is aware (or should reasonably have been aware) is subject to any security interest or encumbrance of any nature;
- (y) allocate any securities from a Block-Booked Transaction to the Portfolio in good faith and on terms no less favourable than to any other client of the Manager. The Trustee acknowledges that the effect of aggregation may work on some occasions to its disadvantage. The Manager must allocate aggregated trades promptly and fairly;
- (z) in the event of a merger or association of the Fund with another superannuation fund (the "**other superannuation fund**"), the Trustee shall be entitled at its sole discretion to direct the Manager:
  - (i) in the event that the Manager also manages a portfolio for the other superannuation fund, to amalgamate the Portfolio and the portfolio of the other superannuation fund in the Fund, the other superannuation fund or such other entity formed as a result of the merger or association; or
  - (ii) in the event that the Manager only manages the Portfolio, to transfer the Portfolio to the other superannuation fund or to such other entity formed as a result of the merger or association,

provided that in the event of the merger or association, the Manager shall not be entitled to charge any buy-sell or other management fees associated with the merger or association, other than any government fees and charges. The Trustee shall also be entitled to request a review of the management fees paid by the Trustee as are set out in **Schedule 4**; and
- (aa) not disclose or advertise the fact that APRA has conducted an on-site visit at its premises, except as necessary to coordinate with other entities regulated by APRA that are existing clients of the Manager or as otherwise permitted under the Relevant Law.

## **4.2 Investment Instructions**

- (a) Without limiting **clause 4.1** the Manager must comply with the Manager Mandate in investing and managing the Portfolio.
- (b) The Trustee may amend or supplement the Manager Mandate at any time by a Proper Instruction to the Manager.
- (c) Subject to the following provisions of this **clause 4.2**, the Manager must:
  - (i) comply with the amended Investment Instructions within the timeframe agreed between the parties or, in the absence of agreement between the parties, in an effective and timely manner having regard to liquidity, transactions costs and market impact; and
  - (ii) consult with the Trustee throughout the planning process and at all stages of implementation of the amended Investment Instructions.
- (d) If the Manager reasonably considers that an Investment Instruction is:
  - (i) inconsistent with the Manager Mandate but is not expressed to amend the Manager Mandate; or
  - (ii) ambiguous or unclear in any respect,the Manager must promptly clarify the Investment Instruction with the Trustee and the Manager will not be obliged to comply with the Investment Instructions until the Trustee has clarified the Investment Instruction.
- (e) If the Manager reasonably considers that its compliance with an Investment Instruction would breach or cause the Trustee to breach a Relevant Law, the Manager must:
  - (i) not comply with that Investment Instruction; and
  - (ii) notify the Trustee accordingly, giving it reasons why compliance would breach or cause the Trustee to be in breach of a Relevant Law,and on receipt of that notice the Trustee must withdraw the Investment Instruction.
- (f) If **clause 4.2(e)** does not apply but the Manager is unable to comply with an Investment Instruction, it must immediately notify the Trustee giving reasons for that inability. Upon receipt of such notice the Trustee must either:
  - (i) withdraw the Investment Instruction; or
  - (ii) terminate the Agreement pursuant to **clause 11.2**.
- (g) Unless withdrawn under either **clause 4.2(e)** or **4.2(f)**, an Investment Instruction will be effective to amend the Manager Mandate in accordance with that instruction and this Agreement.

## **4.3 Investment objectives**

The investment objectives set out in Part B of **Schedule 2** are guidelines and are not legally binding on the Manager but the Manager must use its best endeavours to comply with them in investing and managing the Portfolio.

## **4.4 Compliance with Relevant Law**

The Manager must comply with any Relevant Law to the extent that it concerns the functions, powers and duties of the Manager under this Agreement. However, the Trustee acknowledges that the Manager:

- (a) is not responsible for monitoring the total position of the Fund where the Portfolio does not represent the whole Fund;
- (b) is not required to comply with any Relevant Law which relates to in-house assets unless the Trustee or an Authorised Person of the Trustee has given a specific direction in writing to the Manager as to which specific investments must not form part of the Portfolio or a part in excess of a certain specified level in order to ensure that the Fund complies with the Relevant Law;
- (c) may act on Proper Instructions given by the Trustee without investigating whether the act will comply with the Relevant Law, but must not comply with any direction which it is aware or ought reasonably to be aware may cause a breach of the Relevant Law; and
- (d) has no obligation to ensure that it complies with any Relevant Law applicable to the Trustee or any constitutional documents or legislation regulating the Trustee to the extent it does not directly concern the functions, powers and duties of the Manager under this Agreement.

#### **4.5 Trustee may vary decision of Manager**

- (a) The Trustee may, at any time by Proper Instruction, vary any decision of the Manager in the performance of the Manager's duties under this Agreement.
- (b) If the Trustee does so, the Trustee has the sole responsibility for the consequences of that variation.
- (c) Nothing in **clause 4.5(a)** will affect the right of the Manager to complete any transaction which it has commenced and is legally obliged to complete.

#### **4.6 Portfolio Changes**

If by reason of:

- (a) market movements;
- (b) contributions to or withdrawals from the Portfolio;
- (c) a change in the nature of any investment (whether through change in business activity or otherwise); or
- (d) a change in the Relevant Law,

the Portfolio ceases to comply with the Manager Mandate, the Manager must remedy the non-compliance, to the extent possible, within the time specified in Part A of Schedule 2 in respect of the particular restriction or, if no time is specified, as soon as practicable after the Manager becomes aware of the non-compliance. If remedied in accordance with this **clause 4.6**, the non-compliance will not constitute a breach of this Agreement nor will it give rise to any right or remedy in the Trustee. If not remedied in accordance with this clause, the non-compliance will constitute a breach of this Agreement and the Manager will be liable to the Trustee for such non-compliance.

#### **4.7 Code of Professional Conduct**

- (a) The Manager must have in place at the Commencement Date and thereafter maintain a code of professional conduct so as to ensure the Manager provides the Services in a professional and fair manner and makes full disclosure to the Trustee of key issues ("**Code of Professional Conduct**").
- (b) The Manager must give the Trustee a certified copy of the Code of Professional Conduct on the Commencement Date.
- (c) The Manager must implement and comply with the Code of Professional Conduct at all times.

- (d) The Manager must notify the Trustee of any breach of, or variation to, its Code of Professional Conduct.

#### **4.8 Best execution**

The Manager must place any orders for the purchase and sale of securities in such manner, as in its reasonable judgement, offers the best price and market for the execution of each transaction. In determining best price, the Manager will consider the reliability of broker services.

#### **4.9 Call-backs**

The Manager may make a Call-back to the Trustee to confirm a communication or instruction from an Authorised Person, being a different Authorised Person from whom such communication or instruction was made in accordance with Schedules 5 and 6.

#### **4.10 Obligations to notify**

- (a) Separately to its obligations in **clause 4.2**, the Manager must notify the Trustee in writing as soon as practicable upon becoming aware of:
- (i) any Proper Instructions given to it which have not been complied with;
  - (ii) any event having a significant effect on the financial position of the Portfolio;
  - (iii) any event which is, or causes, a breach of the Relevant Law;
  - (iv) a breach of any of the Manager's licences, approvals, certifications and registrations which must be reported to a Regulator and which relates to the Services; or
  - (v) any event which is, or causes, a breach of the terms of this Agreement or a failure to comply with an undertaking, or which has or will result in any misrepresentation (in each case) by it under this Agreement

with sufficient particulars that the Trustee can report to the relevant Regulator in accordance with the Relevant Law.

- (b) The Manager's notice to the Trustee under this **clause 4.10** must outline the nature of and reason for the breach, failure to comply or misrepresentation, and the action taken or recommended by the Manager to rectify it.

#### **4.11 Financial and capacity problems**

Separately to its obligations in **clauses 4.2** and **4.10**, the Manager must notify the Trustee of any financial or capacity problems with the Manager that may impact on the ability of the Manager to perform its duties and obligations under this Agreement (including but not limited to capacity issues potentially restricting investment performance and arrangements in the event that the Manager becomes subject to voluntary administration or becomes insolvent) and, at the Trustee's request, provide such information and put in place such arrangements as may be necessary to ensure that the Manager's duties and obligations are still performed.

## **5 POWERS OF THE MANAGER**

### **5.1 Powers and Limitations**

For the purpose of carrying out its functions and duties under this Agreement, the Manager has, subject to the limitations in this Agreement including those in **clause 5.2**, the powers of a natural person to deal with the Portfolio and to do all things and execute all documents necessary for the purpose of performing the Services and managing the Portfolio in accordance with this Agreement (including, without limitation, entering into a Block-Booked Transaction).

## 5.2 **Limitations**

The Manager must not do anything prohibited under a Relevant Law or the Investment Instructions and must not without the prior written consent of the Trustee (which may be expressed in this Agreement):

- (a) hold Derivative Contracts (provided that, if the Trustee consents to the holding of Derivative Contracts, the terms and conditions applicable shall include those contained in **Schedules 2 and 7**) unless there are at all times, in the case of each contract, sufficient assets in the Portfolio to support the underlying liability of the Trustee, Custodian or any other nominee under the contract in the form of one or more of the following:
  - (i) assets of the kind required to be delivered under the contract;
  - (ii) other contracts or assets which substantially offset the underlying liability under the contract;
  - (iii) cash or immediately realisable assets of sufficient value either to discharge the maximum contingent liability or effect an offset as described in **clause 5.2(a)(ii)**;
- (b) except as disclosed in paragraph 4 of **Schedule 1**, delegate or sub-contract any of its discretionary management powers under this Agreement;
- (c) retain any monetary benefits, fees or commissions received by the Manager or any employee or officer or Affiliate of the Manager in relation to the investment of the Portfolio, other than the fees and commissions referred to in **clauses 8.1 or 8.2**;
- (d) charge or encumber in any way any asset in the Portfolio other than as arises by lien in the ordinary course of business, by statutory charge or in relation to derivative margin and collateral accounts, (in each case, to the extent permitted by the Relevant Law);
- (e) perform any broking function in relation to the Portfolio;
- (f) make any significant shifts in investment process, strategy or philosophy of the Manager which would affect the management of the Portfolio;
- (g) conduct any part of the Services at a location outside Australia;
- (h) engage in securities lending in relation to the Portfolio (if consent is provided, the Manager must promptly provide the Trustee with a copy of the agreed policy and any set limits); or
- (i) borrow any money or incur any other liability by way of financial accommodation on behalf of the Trustee or the Fund other than short term borrowing to settle a transaction in circumstances permitted by the Relevant Law or as permitted under the Investment Instructions,

provided always that to the extent of any inconsistency between this clause and the Schedules to this Agreement, this clause prevails.

## 5.3 **Delegation**

- (a) The Trustee has agreed to the Manager's delegation to the entity or entities named in **Schedule 1**.
- (b) The Manager must obtain the prior written consent of the Trustee for any other delegation.
- (c) The Manager will use the same standard of care, skill and diligence as a prudent investment manager would in the selection and continued appointment of entities to which it intends to, or has, delegated one or more of the Services and shall provide the Trustee with evidence in this regard as requested.

- (d) The Manager will not in any way be relieved from any of its obligations and liabilities under this Agreement as a consequence of any delegation and remains responsible for all acts or omissions of any delegate whether or not the Trustee has approved the Manager's appointment of, or agreement with, the delegate. A breach of, or failure of the delegate to perform, any agreement the Manager has with the delegate shall not excuse the Manager from its obligations to comply with this Agreement.
- (e) The Manager must require in each agreement with a delegate (which must be a written agreement) that, with respect to any activities undertaken or records held for the Fund:
  - (i) the delegate will be subject only to the instruction of the Trustee, the Manager or their agents;
  - (ii) the agreement by which the delegate is engaged by the Manager is consistent with this Agreement and describes the outsourced activities in equivalent terms to this Agreement;
  - (iii) the delegate shall be liable to both the Trustee and the Manager where any acts or omissions of the delegate will result in the Manager becoming liable to the Trustee under this Agreement for any damage or loss suffered by the Trustee or the Fund; and
  - (iv) the terms of the agreement comply with the outsourcing standards contained in the Relevant Law including APRA *Superannuation Prudential Standard 231* and any other Regulatory Standard made by APRA in relation to outsourcing.
- (f) The Trustee is entitled to inquire and communicate with delegates to whom the Manager's responsibilities have been outsourced.
- (g) The Manager will be responsible from its own monies for the payment of any remuneration to any delegate which it appoints under this **clause 5.3**.
- (h) The Trustee may, at any time, rescind its consent to the appointment of a delegate.
- (i) For the avoidance of doubt, the Trustee acknowledges that this **clause 5.3** does not apply to any person who acts a broker or clearing house in relation to the Portfolio.

#### **5.4 Brokers**

- (a) Nothing in **clause 5.3** precludes the Manager from engaging or commissioning as its agent:
  - (i) subject to **clause 5.4(b)**, brokers to provide broking services; or
  - (ii) a clearing house to provide clearing house services,
 to the Manager for the purpose of providing the Manager's Services under this Agreement.
- (b) The Manager must not appoint any broker to provide broking services for the Portfolio unless:
  - (i) the Manager has used its best endeavours to conduct an appropriate due diligence of the resources, expertise and ethical standards of the broker and as a result is satisfied that:
    - (A) the broker has the resources and expertise to promptly and efficiently (including as to cost) provide broking services for the Portfolio;
    - (B) is of high ethical standing in the securities market; and
    - (C) the broker has sufficient protocols in place to ensure the security of any information that may be acquired under this Agreement; and

- (ii) in the case of an order to be placed with a broker in Australia, a claim can be made in respect of the broker's conduct under the National Guarantee Fund established by the Australian Stock Exchange and *National Guarantee Fund Act 1987* (Cth).

## **5.5 Conflicts of interest and duty**

- (a) The Trustee acknowledges that the Manager may on behalf of other clients have a relationship such as to place it in a position where its duty or interest in relation to the other person conflicts or may conflict with its duty to the Trustee.
- (b) The Manager must have in place adequate arrangements for the management of conflicts of interest and conflicts of duty that may arise wholly, or partially, in relation to the Services ("**Conflicts Management Policy**").
- (c) The Manager is required to provide to the Trustee its Conflicts Management Policy. The Trustee will keep confidential the content of any such policy.
- (d) The Manager must implement and comply with its Conflicts Management Policy and advise the Trustee within a reasonable period of time of any material breach of the Policy.
- (e) In managing the Portfolio, the Manager may arrange for the purchase and sale of investments for the Portfolio to, or from, its Affiliates or other clients of the Manager if and only if the sale or purchase is made as a bona fide arm's length transaction and for proper and adequate consideration in the best interests of the Trustee and the Fund.
- (f) Subject to **clauses 5.5(e)**, the Manager may, without reference to the Trustee, effect any transaction for the Portfolio in which it has:
  - (i) sold the investment to or bought the investment from any Affiliate or other client of the Manager as principal or agent;
  - (ii) acted in the same transactions both as an agent for the Trustee and also as the counter-party or an agent for the counter-party; or
  - (iii) directly or indirectly, a material interest of any description.
- (g) Where the Manager, or any of its employees, officers, agents or Affiliates, are or are contemplating providing services to third parties (whether or not such services are similar in nature to those set out in this Agreement) and the provision of these services may in the reasonable opinion of the Manager cause a conflict with the interests of the Trustee or the Fund, the Manager must immediately provide an appropriately detailed notice of the conflict to the Trustee, seek instructions from the Trustee in connection with how to proceed and act in accordance with the instructions of the Trustee unless unable to do so by operation of law (in which case the Manager will immediately notify the Trustee of such inability and the basis thereof and the Trustee shall have the right to terminate the Agreement in the manner set out in **clause 11.2**).
- (h) Notwithstanding anything in this **clause 5.5** the Manager must obtain, maintain and enforce appropriate rules, protocols and safeguards which are designed to preserve and protect the confidentiality of the Trustee's Confidential Information.

## **5.6 Competitive Activity**

The Manager covenants to the Trustee that in participating in competitive behaviour the Manager will:

- (a) act in full accordance with any code of ethics, standards or behaviour with which the Manager is legally bound to comply or which it has voluntarily adopted including the Code of Professional Conduct and the Conflicts Management Policy; and

- (b) not do or omit to do anything the doing or not doing of which:
  - (i) gives a benefit or advantage to any person to the detriment of the Trustee, the Fund or the Portfolio;
  - (ii) denies the Trustee an opportunity to participate in any investment which the Manager knows or should have reasonably known, would be, appropriate for and beneficial to the Portfolio;
  - (iii) causes the Manager to be in breach of any of its obligations to the Trustee under this Agreement; or
  - (iv) cause the Trustee to be in breach of the Relevant Law.

### **5.7 Common investment of funds**

Subject to the Relevant Law and the Investment Instructions, the Portfolio may be invested with funds managed by the Manager on behalf of other persons. The Trustee consents to the Manager acting in the acquisition and disposal of assets on behalf of other persons and authorises the Manager to deal with the Portfolio and any other funds managed by the Manager as an undivided whole, to the extent necessary for the efficient management or administration of the Portfolio, subject to the Manager maintaining systems and records that distinguish the Portfolio from the property of any other person.

### **5.8 Non-exclusivity**

Provided that it does not prejudice or otherwise derogate from its responsibilities specified in this Agreement, the Manager may from time to time perform investment and management services for itself and other persons similar to the Services performed for the Trustee under this Agreement.

### **5.9 Derivative Contracts**

- (a) If the Manager is authorised to enter into Derivative Contracts under the Investment Instructions, the Manager will:
  - (i) promptly arrange for the payment of the net proceeds received in respect of Derivative Contracts to the Custodian;
  - (ii) comply with the Relevant Law as may be applicable from time to time on the use of derivatives and in the engagement with and instruction of any parties executing or undertaking Derivative Contracts in connection with the Portfolio;
  - (iii) monitor all derivative positions on a daily basis to ensure compliance with this Agreement;
  - (iv) maintain within the Portfolio at all times sufficient securities or assets to be used for collateral or margining purposes under any Derivative Contract;
  - (v) as required, arrange for the periodic movement of any such securities or other assets for the purposes of meeting any collateral and / or margin requirements under any Derivative Contracts; and
  - (vi) provide to the Trustee a risk management statement in such form as is required by the Trustee.
- (b) The Trustee will use its best endeavours to ensure that the Custodian will comply with authorised directions of the Manager in relation to payment of liabilities under or settlement of Derivative Contracts.

## 6 INDEMNITIES

### 6.1 *Manager*

The Trustee must and does indemnify the Manager against any losses or liabilities reasonably incurred by the Manager arising out of, or in connection with, and any costs, charges and expenses (which, in each case, the Trustee is liable to pay in accordance with **clause 9.1**) incurred in connection with the Manager or any of its officers, employees, delegates or agents acting in accordance with this Agreement up to a maximum liability in the aggregate of the amount of the Portfolio Value except insofar as any loss, liability, cost, charge or expense is caused by the negligence, default, breach, fraud or dishonesty or breach of duty of the Manager or its officers, employees, Affiliates or agents other than Excluded Agents (except any of the persons identified in clauses **6.2(a)** and **6.2(b)**). The Trustee is not otherwise liable to the Manager for any loss or liability, cost, charge or expense.

### 6.2 *Trustee*

The Manager must and does indemnify the Trustee against any losses or liabilities incurred by the Trustee or the Fund arising out of, or in connection with, and any costs, charges and expenses incurred in connection with any negligence, default, fraud, dishonesty or breach of duty of the Manager or any of its officers, employees, delegates or agents other than Excluded Agents except where:

- (a) the Excluded Agent is a broker or clearing house which is an Affiliate of the Manager; or
- (b) the Excluded Agent is not an Affiliate of the Manager and without the Trustee's consent, the Manager made the appointment on terms which excluded or limited the liability of the Manager for wrongful acts or omissions.

### 6.3 *Action against agents*

- (a) The Manager must provide assistance to the Trustee, in any action of the Trustee against any agent or other person, arising out of or in connection with;
  - (i) any negligence, default, fraud or dishonesty of any agent of the Manager appointed or used pursuant to this Agreement; or
  - (ii) any breach of this Agreement, default or failure by any counter-party or other third party to fulfil its obligations to the Manager.
- (b) In order to give effect to **clause 6.3(a)**, if the Manager enters into a contract with such broker, third party service provider or agent, the Manager must disclose in its contract with each broker, third party service provider or agent the fact that the Manager enters into the contract on behalf of and for the benefit of the Trustee.
- (c) If the Manager has rights of action against any person referred to in **clause 6.3(a)**, then for the purpose of providing reasonable assistance to the Trustee pursuant to **clause 6.3(a)**, the Manager must at the request of the Trustee:
  - (i) commence and conduct proceedings against that person; or
  - (ii) assign any such rights of action to the Trustee; or
  - (iii) if such rights are incapable of assignment, permit the Trustee to commence proceedings against that person in the name of the Manager and control and direct the conduct of those proceedings and the Manager must do all such acts, matters and things as the Trustee may reasonably and lawfully require in that regard.

- (d) The Trustee will indemnify the Manager in respect of all reasonable costs and expenses incurred by the Manager relating to the performance of the Manager's obligations under **clauses 6.3(a) and 6.3(b)**.
- (e) The obligations in this clause continue to apply following termination of this Agreement.

#### **6.4 Mitigation of losses**

An indemnified party must inform the other as soon as practicable if it becomes aware of an event that would allow it to make a claim under this **clause 6** and must take all commercially reasonable steps to mitigate or avoid the other party incurring losses, expenses, costs and damages and judgements.

#### **6.5 Litigation**

An indemnified party must not settle with any third party without the consent of the indemnifying party if it intends to make a claim under this **clause 6**.

#### **6.6 Set off**

Subject to the Relevant Law, the Trustee may set off any amounts the Manager owes the Trustee against any amounts the Trustee owes the Manager.

#### **6.7 Damages**

If damages are payable under this Agreement by the Manager to the Trustee as a result of a breach of this Agreement then:

- (a) the Trustee may deduct the damages from any amounts the Trustee owes to the Manager;
- (b) the Manager's payment of damages will not relieve the Manager from any other liability or from performing or complying with any other obligation under this Agreement;
- (c) the Manager is not relieved from its obligation to provide the Services; and
- (d) if the Trustee waives its right to recover damages, that waiver is not a waiver of other remedies available to the Trustee arising out of the breach or in relation to other breaches.

#### **6.8 Indemnities**

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after the Agreement ends.

#### **6.9 Trustee's capacity**

- (a) The Manager acknowledges that the Trustee enters into this Agreement in its capacity as trustee of the Fund and not in any other capacity.
- (b) Except where the Trustee has lost its right of indemnity from the Fund as a result of the Trustee's breach of trust, breach of duty, negligence or fraud:
  - (i) the Trustee is not required (despite any other clause to the contrary) to pay to or satisfy any obligation of the Trustee to the Manager under this Agreement (or in any way connected with any related representation, warranty, conduct, act, omission, agreement or transaction) unless the Trustee is entitled to the amount, and does receive the amount or pay the amount out of the assets of the Fund in the exercise of its right of indemnity against the assets of the Fund;
  - (ii) the Manager waives all rights and releases the Trustee from all other liability (including, but not limited to, personal liability); and

- (iii) the Trustee has no obligation to meet any liability under this Agreement out of any assets held by the Trustee in its own right nor in any circumstances out of assets held in any other capacity.

## **7 WITHDRAWALS AND DEPOSITS**

### **7.1 Request**

The Trustee may, in its absolute discretion at any time and from time to time, make a withdrawal of money from the Portfolio, or give the Manager Proper Instructions to authorise the Custodian to make a withdrawal from or deposit to the Portfolio in accordance with the procedures set out in **Schedule 6**.

### **7.2 Satisfaction of request**

The Manager, in respect of a withdrawal instruction for cash, must use its best endeavours to satisfy the instruction promptly and, in any event, within 5 Business Days or such longer period as the Trustee agrees having regard to advice from the Manager regarding market conditions and the any other matters that may impact the price achieved upon realising assets of the Portfolio.

### **7.3 Withdrawal by transfer of assets**

A withdrawal pursuant to **clause 7.1** may be made by transfer of assets, property or investments comprised in the Portfolio as agreed by the Manager and the Trustee.

### **7.4 Deposits**

The Trustee may add moneys to the Portfolio at any time. The Trustee must advise the Manager in accordance with the procedures set out in **Schedule 6** of the amount and date of availability of any additional money to be advanced prior to transfer to the Custodian in accordance with **Schedule 6**.

### **7.5 Cleared funds**

The Trustee must advise the Manager of any additional money made available for investment and management pursuant to this Agreement. The Manager may not deal with any additional money for investment and management unless and until the Manager receives confirmation that the money has been transferred to the Custodian and is available in cleared funds.

## **8 MANAGEMENT FEES**

### **8.1 Fee**

In consideration for the Manager providing the Services in accordance with this Agreement, the Manager is entitled to a management fee payable in accordance with **Schedule 4**.

### **8.2 Payment of management fees**

The Manager shall present a statement of fees, calculated in accordance with **Schedule 4**, to the Trustee in writing as soon as possible after the end of the relevant period and such fees shall be payable in accordance with **Schedule 4**.

### **8.3 Method of payment**

The Trustee may pay management fees by electronic funds transfer or such other method of payment agreed between the Trustee and the Manager.

#### **8.4 Record**

The Manager must record the management fee in the reports provided pursuant to **clause 10.1**

#### **8.5 Audit**

The Trustee may at its cost and expense at any reasonable time audit, or require the Manager to conduct an audit of, the pricing of the Services.

#### **8.6 Management fees to Affiliates**

Where:

- (a) an Affiliate of the Manager has received or is entitled to receive any management fee (howsoever described) for Services it provides in relation to the management of the Portfolio; or
- (b) the Manager itself receives a management fee (howsoever described) for managing any investment company, unit trust, partnership, joint venture, managed investment scheme, a pooled superannuation trust, or other investment vehicle in which the Portfolio is invested,

the management fee otherwise payable under this Agreement will be reduced by the amount of that fee, except where the Manager bears that fee itself.

#### **8.7 Use of Affiliates**

- (a) The Manager may, with the written consent of the Trustee, invest in, deal with or engage the services of the Manager's Affiliates engaged in separate business activities which are entitled to charge fees, brokerage and commissions provided that they are in the ordinary course of business and on arm's length terms. No adjustment to the management fee paid under this Agreement is to be made for any fee, brokerage or commission paid to an Affiliate of the Manager in compliance with this clause, unless otherwise agreed with the Trustee.
- (b) The Manager and the Trustee agree that any obligation fulfilled or disclosure made by any of the Manager's agents or Affiliates in connection with this Agreement is taken to be fulfilled or made by the Manager itself, such that the Manager's relevant obligations are discharged accordingly and in respect of which the Manager shall remain liable to the Trustee.

#### **8.8 GST**

- (a) Words and expressions used in this **clause 8.8** which are not defined in this Agreement have the meanings given to those words and expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) References to 'GST payable' and 'input tax credit entitlement' include GST payable by, and the tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (c) All sums payable or consideration to be provided under, or in accordance with, this Agreement are exclusive of GST.
- (d) If GST is payable on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- (e) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that

loss, cost or expense. The party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

- (f) If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the additional amount payable by the recipient under this clause will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (g) The supplier must provide to the recipient a valid tax invoice or an adjustment note, as appropriate, before the supplier is entitled to payment of an additional amount under this clause.

## **9 TAXES, EXPENSES AND PAYMENTS**

### **9.1 Trustee liable for Taxes and expenses**

- (a) The Trustee must pay all Taxes (other than Excluded Taxes), costs, charges and expenses properly incurred in connection with the investment and management of the Portfolio or the acquisition, disposal or maintenance of any investment of the Portfolio (including all Custodian and Clearing House fees and excluding in-house administration costs of the Manager in the nature of rent for Manager's premises, computer charges, salaries, research costs and like expenses) or in acting under this Agreement.
- (b) The Manager can allocate expenses incurred in connection with an asset acquired or to be acquired on behalf of several clients between those clients proportionately to their interest in the asset.
- (c) The Trustee can, from time to time, request that the Manager disclose details (on a no-names basis) of any allocation of expenses between the Trustee and other clients of the Manager and subject to the Relevant Law, the Manager must comply with any such reasonable request.

### **9.2 Taxes**

The Manager may, or may authorise (in a manner consistent with the Custodian Services Manual) the Custodian to, make any payment from the Portfolio and transfer all or any part of the Portfolio to the Trustee without deduction of any Tax, provided that the Manager is entitled to or to authorise the Custodian to pay from the Portfolio any Taxes (other than Excluded Taxes) which are incurred in connection with the proper performance of this Agreement. The Trustee must indemnify the Manager and keep the Manager indemnified after termination of this Agreement against any liability for Tax (other than Excluded Taxes) properly incurred in connection with this Agreement.

### **9.3 Brokers**

The Trustee is responsible to any broker appointed by the Manager pursuant to **clause 5.4** for all brokerage and other charges arising from the implementation by the broker of any authorised transaction initiated by the Manager. The Trustee authorises the Manager to approve any deduction from the Portfolio in respect of brokerage and the Trustee shall indemnify the Manager in respect of payment of any such brokerage or other charges. If the Trustee so requests, the Manager must promptly provide information about brokerages and other charges rendered by third parties.

### **9.4 Regulatory costs**

The Trustee must bear any costs associated with complying with **clauses 19.1 to 19.4** or with the provision of information and other assistance to the Regulator relating to the Portfolio, if the

Regulator requires the information or other assistance under the Relevant Law unless those costs are referable to an inquiry by the Regulator into the particular conduct of the Manager, its officers, employees, delegates, agents or its Affiliates.

## **9.5 Payments**

The parties agree that, in accordance with Schedule 4, in relation to all payments under this Agreement:

- (a) the payee will provide the payer an itemised tax invoice;
- (b) the payer will pay each undisputed tax invoice within 45 calendar days of receipt of the invoice;
- (c) payment will be made by electronic funds transfer or such other method of payment agreed between the Trustee and the Manager, into the relevant nominated bank account specified in paragraph 5 of **Schedule 1**;
- (d) if the payer disputes a tax invoice, it will pay the undisputed portion of the tax invoice and dispute the balance;
- (e) if the payer disputes the whole or part of any tax invoice, that dispute will be resolved in accordance with **clause 23** of this Agreement; and
- (f) will be made in cleared funds.

## **10 REPORTS, INFORMATION AND RECORDS**

### **10.1 Regular reports and information**

- (a) Unless the Trustee notifies the Manager that the Custodian will provide reports to the Trustee, the Manager must provide the Trustee, the Custodian and any other persons nominated by the Trustee and advised to the Manager in writing with the reports specified in this Agreement (including in **Schedule 3**) in the timeframe specified (or, if no timeframe is specified, as soon as reasonably practicable) and in a form acceptable to the Trustee. The Manager must ensure that those reports are complete and accurate in all material respects.
- (b) The Manager will also as soon as reasonably practicable provide, upon request by the Trustee, additional information or documentation which is complete and accurate in all material respects to the extent the necessary information is within the possession or control of the Manager:
  - (i) as to the making of, and return on, the investments in the Portfolio;
  - (ii) about the markets in which the Portfolio is invested;
  - (iii) as is reasonably necessary to enable the Trustee to assess the capability of the Manager to manage the investments of the Portfolio;
  - (iv) as is necessary to enable the Trustee to comply with its reporting and other disclosure obligations under the Relevant Law; and
  - (v) as is otherwise reasonably requested by the Trustee.
- (c) The Manager must ensure that the reports and information provided pursuant to this Agreement:
  - (i) are complete and accurate in all material respects; and
  - (ii) contain sufficient information to enable the Trustee to meet its reporting and other disclosure obligations under the Relevant Law

to the extent the information is within the control of the Manager, and unless the context otherwise requires, are promptly supplied.

#### **10.2 Keeping of records**

- (a) The Manager must properly gather, collate and maintain adequate and proper books, records, data and reports relating to the Portfolio to enable it to properly perform its obligations under this Agreement.
- (b) All such books, records, data and reports are to:
  - (i) comply with any statutory and audit requirements applicable to the Fund, the Trustee and the Custodian (of which the Manager has been given notice by the Trustee) and the Manager;
  - (ii) enable the reports by the Manager to be prepared in accordance with **Schedule 3**; and
  - (iii) clearly distinguish the transactions undertaken by the Manager in relation to the Portfolio from transactions undertaken on its own account or for other clients or in relation to other assets of the Fund under any other agreement.

#### **10.3 Additional Information**

Where the Trustee requires information to complete returns and provide information to Regulators, the Manager, if requested by the Trustee, will promptly provide the information, that is within the control of the Manager, required by the Trustee to fulfil its obligations.

#### **10.4 Separate records**

The Manager must keep all books, records, data and reports in relation to the Portfolio required to be maintained under this Agreement separately from all other books, accounts, records, data and reports kept by the Manager including, without limiting the generality of the foregoing, those books, accounts, records, data and reports relating to any other assets of the Fund held for or on behalf of the Trustee by the Manager under any other agreement.

#### **10.5 Access**

The Trustee, or any other person duly authorised by the Trustee, shall be entitled during Business Hours to inspect and take copies of the books, accounts, records, data and reports of the Portfolio kept by the Manager.

#### **10.6 Retention of records**

The Manager must in relation to its activities on behalf of the Trustee retain all books, accounts, records, data and reports maintained by it in accordance with this Agreement for a period of ten (10) years or such other period as shall be agreed in writing by the Trustee. Such records and reports are to be maintained in a place and form of safekeeping as agreed between the Trustee and the Manager.

#### **10.7 Trustee right to use data or information**

Subject to **clause 22**, the Manager agrees that at all times during the term of this Agreement and after termination of this Agreement, the Trustee has irrevocable and unlimited rights to use all data and information provided or acquired by the Manager under, or in performance of its obligations under, this Agreement. For the avoidance of doubt, subject to **clause 22**, the Trustee has irrevocable and unlimited rights to use the contents of any report provided to the Trustee or the Custodian by the Manager under this Agreement.

## **10.8 Presentation of reports**

Upon giving reasonable notice to the Manager, the Trustee may request the Manager to attend meetings with the Trustee to present the reports specified in this Agreement, including in **Schedule 3**, and the Manager, if requested by the Trustee, shall attend such meetings and present such reports.

## **11 TERMINATION**

### **11.1 Term**

This Agreement commences on and from the Commencement Date and remains in force until terminated pursuant to **clauses 11.2 or 11.3**.

### **11.2 Right to terminate**

This Agreement may be terminated by the Trustee giving to the Manager not less than 5 Business Days' written notice of termination or by the Manager giving to the Trustee not less than 90 Business Days' written notice of termination or such lesser period of notice as the parties agree. Following termination, the parties will act pursuant to **clause 11.5**.

### **11.3 Default of Manager**

The Trustee may terminate this Agreement at any time by written notice to the Manager if:

- (a) a receiver, receiver and manager, administrative receiver or similar person is appointed with respect to the assets and undertakings of the Manager;
- (b) the Manager:
  - (i) goes into liquidation (other than for the purposes of a solvency reconstruction or amalgamation on terms previously approved in writing by the Trustee);
  - (ii) ceases to carry on business in relation to its activities as an investment manager;
  - (iii) breaches any provision of this Agreement, or fails to observe or perform any representation, warranty or undertaking required of the Manager under this Agreement and the Manager fails to correct such breach or failure within 10 Business Days of receiving notice in writing from the Trustee specifying such breach or failure;
  - (iv) ceases to be a member of the group named in paragraph 6 of **Schedule 1**;
- (c) the Manager creates or purports or attempts to create or knowingly allow to exist or subsist any security, charge, mortgage, pledge, lien or encumbrance of any kind whatsoever on the Portfolio unless expressly permitted to do so under this Agreement;
- (d) the Manager uses the Portfolio for any purpose other than the purposes contemplated by this Agreement;
- (e) any Key Persons of the Manager leave the employ of the Manager;
- (f) the Manager has made any representation or warranty or provided any information to the Trustee or the Regulator which is incorrect, untrue or ceases to be true (in each case) in any material respect;
- (g) the Manager sells or transfers or makes any agreement for the sale or transfer of the main business and undertaking of the Manager or of a beneficial interest therein, other than to an Affiliate for purposes of solvent corporate reconstruction on terms previously approved in writing by the Trustee;

- (h) without the consent in writing of the Trustee, effective Control of the Manager changes in any respect which, in the opinion of the Trustee, may be detrimental to the interests of the Trustee or the Fund; or
- (i) Relevant Law requires the Agreement to terminate or any circumstance occurs giving rise to a breach of section 126 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

#### **11.4 Claims and transactions**

The termination of this Agreement does not affect any:

- (a) transaction properly entered into prior to termination;
- (b) claim by the Manager in respect of accrued management fees and expenses incurred in respect of the period to termination; or
- (c) other claim which a party may have against another party.

#### **11.5 Continuation of Services on termination**

- (a) If the Trustee so directs, the Manager may deal with the Portfolio for up to 30 Business Days from the expiry of the notice period set out in the relevant notice of termination in order to vest control of it in the Trustee (or as the Trustee may otherwise direct in writing) (“**Disengagement Period**”) and during that time the Manager:
  - (i) subject to the consent of the Trustee, may enter transactions to settle or otherwise extinguish or offset obligations incurred by the Manager in relation to the Portfolio before that date;
  - (ii) must, with respect to obligations not capable of settlement before transfer of the Portfolio, create provision for such contingent liability as will arise, notify the Trustee of that provision, and the Trustee must procure that the Custodian holds sufficient assets of the Portfolio to satisfy that liability;
  - (iii) may, with the prior consent of the Trustee, instruct the Custodian to deduct from the Portfolio the fees, charges and expenses due to the date on which the transfer of the Portfolio is effected if all charges and expenses have been incurred in the actions envisaged by this clause;
  - (iv) must deliver to the Trustee (or as the Trustee reasonably directs) all Trustee Data, Developed IP and all other records kept by Manager in respect of the Portfolio which may reasonably be required by the Trustee or any nominee of the Trustee such as a Transition Manager;
  - (v) may, after consultation with the Trustee, pay or cause to be paid to the Trustee the net realisable value of:
    - (A) any shares listed on a foreign exchange;
    - (B) any interest in a managed investment scheme;
    - (C) any interest in a managed investment scheme promoted by the Manager; or
    - (D) the proportion of any asset which is held jointly and is indivisible; and
  - (vi) may deal with the Portfolio in accordance with instructions from a new manager appointed by the Trustee.
- (b) The Trustee must take all necessary steps to facilitate the transfer of the Services from the Manager including advising promptly of the appointment of a Transition Manager.

## **11.6 Transition Manager**

- (a) The Trustee may by notice to the Manager, appoint a transition manager for the Portfolio (**Transition Manager**).
- (b) If the Trustee appoints a Transition Manager then:
  - (i) the Transition Manager will act on behalf of the Trustee in all things necessary to vest the Portfolio in the Trustee or the Custodian; and
  - (ii) the Manager must comply with all instructions and directions issued by the Transition Manager as if those instructions were written instructions from the Trustee.

## **11.7 Disengagement**

- (a) The objectives of the Disengagement Period are to:
  - (i) enable the Trustee or its nominated replacement manager to invest or manage the Portfolio from the end of the Disengagement Period; and
  - (ii) eliminate or minimise any disruption to the investment and management of the Portfolio as a result of the termination of this Agreement.
- (b) The Manager must ensure that it is able to deploy all reasonably necessary resources to complete disengagement within the Disengagement Period.
- (c) During the Disengagement Period, the Manager must:
  - (i) provide the Trustee (or its nominee, such as a transition manager) with all reasonably necessary access to the Manager's software and hardware for the purpose of effecting disengagement;
  - (ii) take all necessary steps to facilitate the transfer of the Portfolio from the Manager, and the Manager must use all reasonable efforts to assist in the orderly transfer of the Portfolio to the Trustee (or otherwise, as directed by the Trustee in writing). The Manager shall continue to receive a Management Fee in respect of the period to the expiry of the Disengagement Period, for its services during the Disengagement Period to the extent the Agreement is not terminated pursuant to **clause 11.3**;
  - (iii) promptly assist with the delivery of any investments held on behalf of the Trustee (and shall take such steps as are otherwise reasonably required to vest each investment of the Portfolio in the Trustee or its Custodian as of and from the date of termination) after deduction of all fees, costs and expenses reasonably and properly incurred in relation to the Portfolio (including fees in relation to the transfer of investments under this clause);
  - (iv) comply with any reasonable requests by the Trustee to cease providing the Services and/or to transition the Services to a third party or the Trustee;
  - (v) do all things reasonably necessary to effect disengagement;
  - (vi) ensure that the Manager's Representatives comply with this **clause 11.7**; and
  - (vii) continue to comply with all of its obligations under this Agreement until the earlier of the end of the Disengagement Period and such earlier date as the Trustee specifies that the disengagement is complete.
- (d) The Manager must use its best endeavours to ensure disengagement is complete by the end of the Disengagement Period.

### **11.8 Report**

The Manager must, within the period specified in paragraph 7 of **Schedule 1**, provide the Trustee with a termination report that is complete and accurate in all material respects on the Portfolio and all investment transactions conducted since the last report.

### **11.9 Costs of exit**

If this Agreement is terminated due to a breach by the Manager, the Manager shall be responsible for all costs, expenses, loss and outgoings (including all Taxes, imposts and charges) reasonably incurred by the Trustee as a result of the termination.

## **12 WARRANTIES AND ACKNOWLEDGEMENT FROM TRUSTEE AND MANAGER**

### **12.1 Warranties of Trustee**

The Trustee warrants and represents to the Manager that during the term of this Agreement:

- (a) the Trustee is the trustee of the Fund and it has the power to enter into and perform its obligations under this Agreement, subject only to those express limitations that have been advised to the Manager in writing before the execution of this Agreement;
- (b) there are no other trustees of the Fund;
- (c) the Trustee will advise in writing of any change of trustee of the Fund or of the status for taxation purposes of the Fund; and
- (d) either:
  - (i) the Fund:
    - (A) is constituted by or under a law of the Commonwealth or of a State, Territory or foreign country; or
    - (B) controls an amount of not less than \$10,000,000; or
  - (ii) the Trustee is not a retail client for the purpose of section 761G(6) of the Corporations Act.

### **12.2 Warranties of Manager**

The Manager warrants and represents to the Trustee that:

- (a) it has the power to enter into and perform its obligations under this Agreement, subject only to those express limitations that have been advised to the Trustee in writing before the Commencement Date;
- (b) it has and will at all times during the term of this Agreement have the skill, facilities, capacity and staff necessary to perform its duties and obligations under this Agreement;
- (c) at all times during the term of this Agreement, sufficient competent staff experienced in investment management will have charge of the conduct of, and will maintain close supervision of, the investment and management of the Portfolio;
- (d) it will, at all times during the term of this Agreement, comply with the requirements of Chapter 7 of the Corporations Act that relate to Australian Financial Services Licence requirements and all other licences to be held under all applicable legislation governing the activities of the Manager;
- (e) it will, at all times during the term of this Agreement, cooperate with the Custodian whenever requested to ensure that investments forming part of the Portfolio are in good and

proper form with free and clear title in favour of the Trustee or any permitted nominee and not subject to any express lien, charge or encumbrance of any nature other than as permitted or imposed by the Relevant Law;

- (f) it is a body corporate, has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets, carry on any business it conducts and be sued in its name;
- (g) the entry by it into, its compliance with its obligations and the exercise of its rights under, this Agreement does not and will not, during the term of this Agreement, conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (h) it is not, and none of its responsible officers (as defined in the *Superannuation Industry (Supervision) Industry Act 1993* (Cth)) are disqualified persons under the Relevant Law;
- (i) there are no documents or agreements binding on or applicable to the Manager or its assets which include a review event, event of default, termination, cash cover requirement, prepayment or similar event (each however described under any such document or agreement) where this has had or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) it will, at all times during the term of this Agreement, invest and manage the Portfolio at all times to perform its obligations under this Agreement and in accordance with the directions of the Trustee; and
- (k) it will, at all times during the term of this Agreement, provide all information, documentation and general assistance reasonably requested by the Trustee for the purposes of the Trustee's compliance with any laws or monitoring of the Manager's performance and compliance with its obligations under this Agreement.

### **12.3 Reliance on representations and warranties**

- (a) The Manager acknowledges that the Trustee has entered into this Agreement to appoint the Manager to manage the Portfolio in reliance on the representations and warranties in this **clause 12** and otherwise in this Agreement.
- (b) The representations and warranties in this **clause 12** shall be repeated on each day during the continuance of the term of the Manager's appointment pursuant to this Agreement.

### **12.4 No derogation of Manager's other duties**

Nothing in this **clause 12** will derogate from the duties of the Manager under any other provision of this Agreement.

### **12.5 Inaccurate warranty**

- (a) If a warranty given by a party to this Agreement ceases to be accurate, that party must immediately advise the other parties in writing.
- (b) For the purposes of this Agreement, if a warranty ceases to be accurate the party giving the warranty will be deemed to have failed to perform the warranty on and from the date it becomes inaccurate.

## 13 VOTING

### 13.1 *Exercise of voting rights*

- (a) The Trustee authorises the Manager to exercise any right to vote attached to a share or other security forming part of the Portfolio, to attend and speak at any meeting at which those rights may be exercised, to appoint directors on behalf of the Trustee where the Trustee has an entitlement to make such appointments or to so direct the Custodian by Proper Instructions given in accordance with **clause 14** except in the circumstance where:
- (i) the exercise of the right to vote is likely to attract publicity of a kind the Trustee reasonably believes is likely to be adverse to the interests of the Fund or the Trustee; or
  - (ii) the Manager might reasonably be regarded as having a conflict of interest or of interest and duty in exercising the right to vote.
- (b) The Manager must implement any Proper Instructions given to it by the Trustee regarding any of the matters described in **clause 13.1(a)**.
- (c) In the absence of any such direction the Manager may exercise or not exercise the right to vote as it sees fit, having regard to any general direction contained in **Schedule 2**.

### 13.2 *Notices of meeting*

The Manager is required to despatch to the Trustee or its appointee any notice of meeting relating to any person, company or unit trust in which the Portfolio is invested.

### 13.3 *Voting policy*

The Manager must provide a copy of its proxy voting policy to the Trustee on the Commencement Date and on any amendment to the policy thereafter. The Manager must inform the Trustee of any change to the Manager's proxy voting policy and any departure in practice from the policy.

### 13.4 *Voting record*

- (a) The Manager must provide the Trustee with a record of any action taken by the Manager under **clause 13.1** in the format and at the intervals requested by the Trustee.
- (b) The record of action must contain sufficient information to enable the Trustee to meet its obligations under the Relevant Law to make that information publicly available.

## 14 AUTHORISED PERSONS AND PROPER INSTRUCTIONS

### 14.1 *Authorised Person*

The Authorised Persons as at the Commencement Date are each person identified in **Schedule 5**.

### 14.2 *Variation of Authorised Persons*

The Trustee and the Manager may vary their respective Authorised Persons by notice to the other.

### 14.3 *Proper Instructions*

- (a) A Proper Instruction is any instruction, direction, demand, request or approval (including a request to cease an activity as well as a request to commence an activity) given by an Authorised Person in accordance with **clause 14.9**.
- (b) A Proper Instruction (including a standing instruction) must be signed by any two Authorised Persons.

#### **14.4 Proper Instructions from the Trustee**

Authorised Persons of the Trustee may give Proper Instructions to the Manager on behalf of the Trustee.

#### **14.5 Proper Instructions from the Manager**

- (a) Authorised Persons of the Manager may give Proper Instructions to the Trustee on behalf of the Manager.
- (b) Authorised Persons of the Manager may give Proper Instructions to the Custodian in relation to the Portfolio at any time during the term of this Agreement. A Proper Instruction from the Manager to the Custodian must include the information required by the Custodian Services Manual.

#### **14.6 Manager's action**

The Manager is not obliged to take any action if a communication or action is not made by an Authorised Person of the Trustee nor to enquire as to the identity of any person if it reasonably believes such person is an Authorised Person.

#### **14.7 Trustee's action**

The Trustee is not obliged to take any action if a communication or action is not made by an Authorised Person of the Manager nor to enquire as to the identity of any person if it reasonably believes such person is an Authorised Person.

#### **14.8 Manager's reliance on instruction**

If the Manager receives an instruction in circumstances where it is reasonable for the Manager to assume it was from an Authorised Person, the Manager is not liable to the Trustee for any properly performed action or omission by the Manager in reliance on that instruction.

#### **14.9 Giving of Proper Instructions**

Proper Instructions can be given in any of the following media:

- (a) in writing delivered in person or by prepaid post to the address of the addressee;
- (b) in a facsimile transmission to the facsimile number of the addressee; or
- (c) in an email transmission to the email address of the addressee which has been opened by the recipient and who is an Authorised Person followed up by a telephone call.

### **15 INSURANCE**

- (a) The Manager must maintain at its own expense or at the expense of an Affiliate during the term of this Agreement and, in respect of any policy written on a "claims made/losses discovered" basis or "claims made/loss discovered or notified" basis, also for a period of eight years after the termination of this Agreement, with a reputable insurance company:
  - (i) fidelity guarantee and electronic and computer crime insurance in an amount appropriate for a prudent investment manager of the size and carrying on the same business of the Manager and having regard to the Manager's obligations under this Agreement;
  - (ii) professional indemnity insurance:
    - (A) covering the Manager's legal liability, however arising, in connection with the provision of the Services by the Manager, in performing the Manager's obligations, functions and responsibilities under this Agreement and which

includes or extends to any liability the Manager may have to the Trustee as a result of, or in respect of, any failure on the part of the Manager to exercise due skill and care in performing any of the Manager's obligations, functions and responsibilities under this Agreement or otherwise in providing services in relation to them;

- (B) in an amount appropriate for a prudent investment manager of the size and with the range of products and strategies managed by the Manager; and
  - (iii) any other insurance covering such risks and for such amounts as would be prudent business practice in relation to its investment management business having regard to the Manager's obligations, functions and responsibilities under this Agreement or as required by Relevant Law.
- (b) The Manager also agrees, in relation to each such insurance:
- (i) upon written request from the Trustee, to promptly give the Trustee any information it may reasonably require concerning the scope of the insurance including a renewal certificate and/or a certificate of currency, unless to do so is precluded by the relevant insurance contract in which case the Manager must provide evidence of such exclusion from its insurer to the Trustee;
  - (ii) to ensure that the insurance is only effected and maintained with an appropriate international insurer which is, or with insurers which are, of a suitable creditworthiness for insurance cover of the size and complexity required by the Manager;
  - (iii) to ensure that the insurance is on terms (including as to any exclusion or condition, however described) which are reasonably standard or better (for an insured) amongst insurers underwriting the relevant type of insurance who, as at the time the policy was, or was required to be, effected or last renewed, satisfied the requirements set out in **clause 15(b)(ii)**;
  - (iv) without limiting **clause 15(b)(i)**, to promptly on commencement of this Agreement, and annually thereafter, give the Trustee certified copies of the certificates of currency pertaining to the insurances listed above; and
  - (v) promptly notify the Trustee of any of the following:
    - (A) any lapse of the insurance (other than by expiry of the period of cover where the relevant insurance is renewed such that cover is continuously maintained or renewal is no longer required under this **clause 15**);
    - (B) other termination of the insurance; or
    - (C) any variation of the insurance or other event, which does or might materially adversely affect the amount or validity of the insurance or the risks covered,and provide to the Trustee a copy of any notice provided by the insurer giving effect to or in respect of anything set out in **clause 15(b)(v)(A), (B) or (C)**.

## 16 BUSINESS CONTINUITY AND DISASTER RECOVERY

### 16.1 Data and back-up

The Manager will:

- (a) advise the Trustee of the physical location at which the Trustee Data is stored;

- (b) ensure all Trustee Data is separately identifiable to any other data or information of the Manager or third parties; and
- (c) perform a backup of the Trustee Data and all software used by the Manager to provide Services under this Agreement, at least once each day consisting of a full-backup of the Trustee Data.

### **16.2 Business Continuity Plan**

- (a) The Manager must at all times have and maintain a documented business continuity plan (“**Business Continuity Plan**”) that complies with the Relevant Law. The Business Continuity Plan may be in the same document or in separate documents.
- (b) The Business Continuity Plan must:
  - (i) specify how the Manager will respond to problems or events (whether incurring internally or externally) which may cause destruction or loss of data, equipment, software, facilities, materials or assets or any interruption or disruption of the Services, so that there is no or minimal disruption to the Services and the Trustee’s business;
  - (ii) specify how the Manager will test the measures set out in the Business Continuity Plan;
  - (iii) specify the backup procedures of the Manager (including the procedures relating to both software and data);
  - (i) reflect best industry practice in relation to the planned continued provision of the Services to the Trustee where there is a Disaster Recovery Event; and
  - (ii) enable the back-up server to be utilised immediately following a Disaster Recovery Event.

### **16.3 Update plan**

The Manager must ensure at all times that the Business Continuity Plan is up-to-date and reflects the current Services provided under this Agreement.

### **16.4 Provision of information regarding the Business Continuity Plan**

The Manager must promptly provide the Trustee with information reasonably requested by the Trustee for the purpose of the Trustee satisfying itself as to the adequacy of the Manager’s Business Continuity Plan, and to consider any dependencies between the Manager’s Business Continuity Plan and the Trustee’s own business continuity plan.

### **16.5 Test plan**

- (a) The Manager must review and test the Business Continuity Plan at least annually from the date of this Agreement (and more frequently if there are material changes to the Manager’s business operations or the Relevant Law otherwise requires) against the Trustee’s business continuity management objectives as notified to the Manager by the Trustee.
- (b) The Manager will provide the Trustee with a certificate as soon as practicable after such testing which indicates the results of the testing (including any changes to the Business Continuity Plan), if there were any problems or difficulties identified by such testing and the steps and measures being taken to rectify such problems or difficulties.

### **16.6 Disaster Recovery Event**

- (a) On the occurrence of a Disaster Recovery Event, the Manager must:

- (i) immediately notify the Trustee (which notice must include an explanation of the nature of the disruption, the action being taken by the Manager, and the likely effect and timeframe for returning to normal operations);
  - (ii) implement the Business Continuity Plan; and
  - (iii) continue to provide the Services in accordance with this Agreement.
- (b) The Manager must, in consultation with the Trustee, take all reasonable steps to resolve the Disaster Recovery Event and restore normal service operations as soon as possible.

## **17 INTERNAL CONTROL FRAMEWORK**

- (a) In performing the Services, the Manager must maintain, document and comply with:
- (i) adequate internal control systems and procedures;
  - (ii) adequate risk management systems and procedures; and
  - (iii) adequate internal procedures to address the risk of human error and fraud, ensuring that where the Manager holds an Australian Financial Services Licence authorising it to perform the Services, or is otherwise authorised under the laws of another country to conduct its business, those systems and procedures also comply with any condition of the Manager's Australian Financial Services Licence or authority to operate.
- (b) In performing the Services, the Manager must have its internal control framework audited by a qualified independent expert in accordance with generally accepted accounting principles at least annually.
- (c) The Manager must, upon the reasonable written request of the Trustee, provide a summary to the Trustee of its internal control systems and procedures and/or its risk management systems and procedures to enable the Trustee to assess the adequacy of those systems and procedures.

## **18 ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING**

### **18.1 Compliance with laws**

The Manager undertakes to strictly comply, and ensure its Representatives strictly comply, with:

- (a) Anti-Money Laundering and Counter-Terrorism Financing Laws;
- (b) any record handling and keeping requirements notified by the Trustee from time to time for the purposes of the Trustee's compliance with the Anti-Money Laundering and Counter-Terrorism Financing Laws as it applies to the Trustee;
- (c) any other relevant policies or procedures issued by the Trustee;
- (d) any replacement or replacements of the documents or information referred to in paragraphs (b) and (c) of this clause; and
- (e) any reasonable direction given by the Trustee in relation to compliance with the matters referred to in paragraphs (b) to (d) of this clause.

### **18.2 Dealing with prohibited persons etc**

The Manager must not deal with:

- (a) a person, entity, asset, class of assets where to do so would cause it, the Custodian or the Trustee, to breach any Anti-Money Laundering and Counter-Terrorism Financing Law or any other law applicable to it; or
  - (b) any person, entity, asset or class of assets notified to it by the Trustee,
- and will cease dealing with any of these immediately upon receiving the Trustee's Proper Instructions where this is reasonably necessary for the Trustee's compliance with any laws.

## **19 ACCESS, INSPECTION AND AUDIT**

### **19.1 Provide documents and information as requested**

The Manager must, upon the written request of either the Trustee or APRA and within a time and at a place specified in the request that is reasonable in the circumstances, provide the Trustee or APRA (as applicable) with any documents or information in the possession of the Manager relating to this Agreement or the Services.

### **19.2 Allow access and inspection**

Subject to any legal or regulatory requirements and any reasonable confidentiality undertakings, the Manager must, on the written request of the Trustee or APRA and at a time that is reasonable in the circumstances, allow the Trustee or APRA access to the premises of the Manager and access to any of the books, records, property and affairs of the Manager relating to its obligations under this Agreement or the Portfolio, including in relation to its internal risk management strategies (except those which the Manager, acting reasonably, determines are related to matters other than its obligations under this Agreement).

### **19.3 Appoint auditor to review performance**

- (a) The Manager must, on the written request of the Trustee or APRA, appoint a person to audit, or make all documents and information available to a person appointed by the Trustee or APRA to audit, the Manager's performance of the Services and its other obligations under this Agreement.
- (b) The Trustee is entitled to appoint a person to carry out any other audit of the Portfolio considered necessary or desirable by the Trustee.
- (c) The Manager is not responsible for the costs of an audit conducted at the request of the Trustee or APRA, unless such regulatory enquiry or audit by APRA arises in relation to, or is concerned with, the affairs of the Manager.

### **19.4 Cooperation**

The Manager must cooperate with the Trustee and APRA in connection with any access or visit conducted under **clauses 19.1, 19.2 or 19.3**.

### **19.5 Results of audit**

If the result of an audit under this Agreement reveals any anomalies or inaccuracies in the provision of the Services, the Manager must:

- (a) prepare and provide the Trustee with an action plan and timetable to address any findings set out in an audit report that pertains to the provision of the Services;
- (b) rectify such anomalies or breaches in accordance with the action plan and timetable; and

- (c) make the necessary changes to any of its practices and procedures identified in the audit report for the Manager to perform the Services accurately and otherwise to remain in compliance with this Agreement.

## **20 OFFSHORING**

### **20.1 Offshoring**

The Manager:

- (a) acknowledges that the Trustee must consult with APRA prior to allowing the Manager to effect any Offshoring of a Service that amounts to a Material Business Activity; and
- (b) will provide to the Trustee any information and assistance reasonably requested by the Trustee in connection with such consultation by the Trustee with APRA.

## **21 INTELLECTUAL PROPERTY AND DATA**

### **21.1 Ownership and use of Intellectual Property Rights**

The Trustee and Manager agree that other than provided in this **clause 21**, nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party. Neither party may use the name or logo of the other party or that of any Affiliate of the other party without the prior written approval of the other party.

### **21.2 Trustee Intellectual Property**

If the Trustee provides any material to the Manager that contains any Trustee Intellectual Property, then the Trustee grants to the Manager a non-transferable, non-exclusive, royalty-free licence to use the Trustee Intellectual Property during the term of this Agreement solely for the purpose of the Manager meeting its obligations to the Trustee under this Agreement.

### **21.3 Manager Intellectual Property**

The Manager grants the Trustee an irrevocable, royalty-free licence to use the Manager's Intellectual Property Rights for the purpose of obtaining the benefit of the Services during the term of this Agreement.

### **21.4 Assignment of Developed IP**

The Manager:

- (a) assigns all Developed IP to the Trustee on the earlier of its creation and the date of this Agreement; and
- (b) will deliver any or all of the Developed IP to the Trustee and delete all copies in the Manager's possession or control of the Manager or its Representatives on termination or expiry of this Agreement or upon an earlier request from the Trustee.

The Manager must execute, and procure that any of its Representatives execute, all documents as the Trustee may consider reasonably necessary to give effect to this clause.

### **21.5 Trustee Data**

- (a) To the extent there is data held, stored or generated relating to the Services under this Agreement ("**Trustee Data**"), it is owned by the Trustee and is the Trustee's Confidential Information. Nothing in this Agreement is intended to give the Manager any rights (including

Intellectual Property Rights) in, or other rights in respect of, the Trustee Data. The Manager must only use the Trustee Data in accordance with this Agreement.

- (b) The Trustee acknowledges that the Manager may want to use the Trustee Data together with data held in respect of other clients of the Manager to conduct certain portfolio risk analyses on an aggregated basis. The Trustee confirms that subject to the Manager obtaining its prior approval to using the Trustee Data to conduct this kind of analysis, the Manager can do so but only during the term of this Agreement.

### **21.6 Protection**

The parties agree, when exercising their respective rights under this Agreement, not to take any action which would adversely affect the value of the Intellectual Property Rights of the other party without first obtaining its written consent.

## **22 CONFIDENTIALITY, PRIVACY AND SECURITY**

### **22.1 Disclosure of Confidential Information**

No Confidential Information may be disclosed by the Manager to any person except:

- (a) Representatives of the Manager or its Affiliates requiring the information for the purposes of this Agreement;
- (b) with the prior consent of the Trustee, which consent may be given or withheld in its absolute discretion;
- (c) subject to **clause 22.3** if the Manager is required to do so by Relevant Law or by a Regulator; or
- (d) if the Manager is required to do so in connection with legal proceedings relating to this Agreement.

### **22.2 Disclosure by Manager of Confidential Information**

If the Manager discloses information under **clause 22.1**, it must use its best endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in **clause 22.1** and that they agree to deliver to the Manager on demand all documents or other materials containing or referring to Confidential Information which are in its possession, power or control.

### **22.3 Disclosure by Manager as required by Relevant Law or an Authority**

Where disclosure of Confidential Information is required by **clauses 22.1(c)** or **22.1(d)** (including pursuant to an order, rule, regulation or policy of an Authority) the Manager may disclose Confidential Information if:

- (a) the Manager informs the Trustee prior to disclosure (unless immediate disclosure is required by law, in which case as promptly as possible) that it has been requested to make disclosure or anticipates or has cause to anticipate that it will become subject to such disclosure obligation;
- (b) the Manager consults with the Trustee, prior to disclosure, as to the form and content of any disclosure, unless immediate disclosure is required by law, in which case consultation will not be required; and
- (c) the Manager gives all reasonable assistance and co-operation which the Trustee considers necessary to prevent or minimise the disclosure of Confidential Information

and such disclosure shall not constitute a breach of this Agreement.

#### **22.4 Use of Confidential Information**

The Manager must not use Confidential Information except for the purpose of exercising its rights or performing its obligations under this Agreement.

#### **22.5 Excluded Information**

Clauses 22.1, 22.2 and 22.3 do not apply to Excluded Information.

#### **22.6 Manager acknowledgments**

The Manager acknowledges that:

- (a) the consequences of a breach of this **clause 22** may result in damages either at general law or as a result of a breach of warranty or pursuant to an indemnity provision; and
- (b) a breach by the Manager of this **clause 22** may result in the Trustee exercising its rights to terminate this Agreement.

#### **22.7 Return of Confidential Information**

The Manager must on termination of this Agreement or otherwise on the request of the Trustee, immediately deliver to the Trustee all documents or other materials containing or referring to Confidential Information which are in the Manager's possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under **clause 22.1** except the Manager may retain such copies as required by Relevant Law but must maintain the confidentiality of such retained copies in the manner set out in this **clause 22**.

#### **22.8 Announcements or releases**

The Manager may not make any media or other announcement or release any advertisement or promotional material or other form of publicity relating to this Agreement and the transactions the subject of this Agreement without the prior written consent of the Trustee as to the form and manner of the announcement or release unless, and to the extent that, the announcement or release is required to be made by the Manager by law or by a stock exchange in which case the Manager will use its best endeavours to ensure that the Trustee has prior written notification of such requirement and the proposed disclosure.

#### **22.9 No disclosure of terms of this Agreement**

Except as otherwise agreed or duly required by the Relevant Law or any regulatory authority, the Manager may not disclose the terms of this Agreement to any person other than its employees, accountants, auditors, or legal advisers on a confidential basis.

#### **22.10 Privacy**

In performing the Services, the Manager must comply, and ensure that its Representatives comply, with their respective obligations under all applicable Privacy Laws.

#### **22.11 Security**

- (a) The Manager must have security policies and standards which are in accordance with industry best practice to protect Confidential Information within its control (which either relates to the Services or was otherwise received pursuant to this Agreement) from unauthorised access and will ensure that its Representatives and Supervised Agents comply with those policies and standards.
- (b) The Manager must notify the Trustee of any suspected or actual unauthorised use, copying or disclosure of information referred to in **clause 22.11(a)**.

- (c) The Manager must, give the Trustee:
  - (i) on the Commencement Date and on any amendment thereafter, a copy of the Manager's security policy and standards; and
  - (ii) any information reasonably required by the Trustee concerning the scope of the Manager's security policy and standards.

## **23 DISPUTE RESOLUTION**

### **23.1 Direct negotiation**

- (a) If a Dispute arises out of this Agreement, a party must comply with this **clause 23** before starting arbitration or court proceedings (except proceedings for interlocutory relief),
- (b) If a Dispute arises between the parties to this Agreement, a party may give written notice to the other that the Dispute exists ("**Dispute Notice**"). The Dispute Notice must designate a Representative with the appropriate authority to negotiate the Dispute on behalf of the party giving the Dispute Notice.
- (c) Within 5 Business Days of receipt of the Dispute Notice, the recipient must designate a Representative with similar authority.
- (d) The Representatives must promptly discuss the Dispute, following whatever investigation each considers appropriate.
- (e) At least one meeting of the authorised Representatives must take place within 10 Business Days of service of a Dispute Notice.
- (f) If the Representatives are unable to resolve the Dispute within 10 Business Days after meeting, the Dispute will be escalated.
- (g) Once escalated, the parties have 7 Business Days to reach a resolution or the Dispute will be submitted to mediation or some other form of alternative dispute resolution procedure.

### **23.2 Mediation**

If there is no resolution or agreement, or there is a submission to mediation or some other form of alternative dispute resolution procedures but there is no resolution within 15 Business Days of the submission (or such extended time as the parties may agree in writing before the expiration of the 15 Business Days) then either party may issue proceedings in a court.

### **23.3 Costs**

The cost of any mediation or alternative form of dispute resolution will be borne equally by the parties (unless otherwise determined by the mediator or conciliator) but each party will bear its own costs for legal or other representation.

### **23.4 Injunctive or interim relief and continued performance**

- (a) Nothing in this **clause 23** prevents a party:
  - (i) from seeking urgent interlocutory relief or other remedies; or
  - (ii) terminating this Agreement in accordance with the other provisions of this Agreement.
- (b) Despite the existence of a Dispute, each party must continue to perform this Agreement.

## 24 NOTICES AND OTHER COMMUNICATIONS

Any notice, demand, consent, approval or other communication required or permitted to be given by a party under this Agreement:

- (a) must be sent to the address, facsimile number or email address as set out in **Schedule 5** or to any other address, facsimile number or email address that a party may specify in writing to the other parties;
- (b) will be taken to have been given:
  - (i) (in the case of hand delivery) on delivery;
  - (ii) (in the case of delivery by prepaid post) on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
  - (iii) (in the case of delivery by facsimile) on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the number of the recipient;
  - (iv) (in the case of telephone) at the time the call is ended;
  - (v) (in the case of delivery by email address) on production of an email receipt from the recipient to the sender which indicates that the email was sent to the email address of the recipient and has been opened by the recipient and the recipient is an "Authorised Person",

but if delivery or receipt occurs on a day which is not a Business Day or is later than 2 pm (local time) it will be taken to have been duly given at the commencement of the next Business Day; and

- (c) is subject to the provisions of **clause 14**.

## 25 FORCE MAJEURE

### 25.1 *No liability for failures outside party's control*

Neither the Manager nor the Trustee is liable for any failure to perform or delay in performance under this Agreement if:

- (a) the failure or delay is due to a Force Majeure Event which it could not have avoided by the exercise of reasonable diligence;
- (b) any delay is of no greater scope or of no longer duration than required by the circumstances; and
- (c) the party claiming such delay uses its best endeavours to mitigate the adverse effects of the Force Majeure Event and resume performance of its obligations under this Agreement as quickly as possible.

### 25.2 *Notification of delay*

The party whose performance is delayed must promptly notify the other party of the cause of the delay.

### 27.3 *Payment obligations*

A Force Majeure Event does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

## 26 FURTHER ASSURANCES

The Manager and the Trustee each agree to enter into and perform any instrument or agreement necessary to give effect to this Agreement.

## 27 NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

## 28 ASSIGNMENT

A party may not assign any of its rights and obligations under this Agreement without the prior written consent of the other party except in the case of the Trustee to another entity which is the replacement trustee of the Fund.

## 29 AMENDMENT

This Agreement (other than Part A of **Schedule 2**) may only be amended in writing signed by all parties. Part A of **Schedule 2** may be amended in accordance with **clause 4.2(b)**.

## 30 GOVERNING LAW AND JURISDICTION

- (a) This Agreement is governed by the laws of the State or Territory referred to in paragraph 8 of **Schedule 1**.
- (b) Each party irrevocably submits to the exclusive jurisdiction of Courts exercising jurisdiction there and any courts which have jurisdiction to hear appeals from any of those courts and waives any rights to object to any proceedings being brought in those courts.

## 31 GENERAL

### 31.1 Severance

- (a) The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- (b) If, despite the application of **clause 31.1(a)**, a provision of this Agreement is illegal or unenforceable:
  - (i) if the provision would be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
  - (ii) in any other case, the whole provision is severed,and the remainder of this Agreement continues in force.

### 31.2 Discretion in exercising of rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

**31.3 Remedies cumulative**

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

**32 COUNTERPARTS**

This Agreement may be executed in any number of counterparts. All counterparts taken together will be deemed to constitute one document.

**33 SURVIVAL**

The provisions of **clauses 6** (indemnities), **15** (insurance), **21** (intellectual property and data), **22** (confidentiality, privacy and security), **23** (dispute resolution) survive termination of this Agreement.

# Schedule 1

## Additional details

**1** **CLAUSE 1.1, DEFINITION OF FUND**

Name of the Fund: *[Insert]*

**2** **CLAUSE 1.1, DEFINITION OF CUSTODIAN**

Name of Custodian: *[Insert]*

**3** **CLAUSE 1.1, DEFINITION OF COMMENCEMENT DATE**

Commencement Date: *[Insert]*

**4** **CLAUSE 5.2(b)**

Discretionary management powers which may be delegated:

Notwithstanding the foregoing, the Trustee's prior written consent is required to any delegation by the Manager that would involve a Material Business Activity of the Trustee being conducted outside Australia.

**5** **CLAUSE 9.5(c)**

Manager's Nominated Bank Account: *[Insert]*

**6** **CLAUSE 11.3(b)(iv)**

Name of Manager's group: *[Insert]*

**7** **CLAUSE 11.8**

Period for termination report: *[Insert]*

**8** **CLAUSE 30**

State or Territory: *[Insert]*

# Schedule 2

## Part A - Investment Instructions (Clauses 4.2 and 5.2)

### 1 **Overview**

The Manager is instructed to invest the Portfolio in accordance with these Investment Instructions.

*[The Trustee should include the purpose of the mandate with a covering statement, whether the mandate is passive or active and the goal.]*

### 2 **Authorised Investments**

The Manager may only invest the assets of the Portfolio in the following:

*[Insert]*

subject to the Manager's compliance with this Agreement including consideration of:

*[The Trustee should name the benchmark and list all the authorised investments by type. They must be recognisable so the Custodian can report against it.]*

### 3 **Mandate Limitations**

#### 3.1 **Geographic Exposure**

*[The Trustee should list the relevant geographic regions and limits.]*

#### 3.2 **Sector Exposure**

*[The Trustee should consider whether there are other relevant limitations, including:*

- *Exchange type;*
- *Type of securities – define using standard names, avoid general comments that can be misconstrued;*
- *Derivatives – gaining indirect exposure, not for speculation, cash to pay margins;*
- *FX to settle transactions, not speculate;*
- *Whether securities lending is allowed;*
- *Cash limits;*
- *Liquidity limits;*
- *Tenor limits;*
- *Credit and issuer limits; and*
- *Tracking errors.]*

### 4 **Borrowings**

The Portfolio may be exposed to borrowings only to the extent that underlying ownership vehicles may employ leverage to optimise the capital structure, provide liquidity and improve transactional efficiency.

The Portfolio will not be leveraged either by direct borrowing or through the use of Derivative Contracts. Sufficient cash will be held in the Portfolio such that the Portfolio is not leveraged through the acquisition or sale of Derivative Contracts.

**5 Derivatives**

The Manager is/is not authorised to hold Derivatives Contracts.

**6 Portfolio Managers**

*[The Trustee should name the portfolio managers and consider what the notice of termination/resignation should be.]*

**7 Exercise of voting rights**

*[If the Trustee wants to give any general directions in relation to the exercise of voting rights pursuant to clause 13.1, the relevant directions should be included in this clause 7.]*

## Schedule 2

**Part B - Investment Objectives  
(Clause 4.3)**

**OBJECTIVE**

*[The Trustee might consider an objective which adopts the following structure:*

The performance objective for each Portfolio is to [insert] the return of the relevant Benchmark [before] fees and over [insert] year periods in a tax effective manner. The tax efficiency of the Portfolio and the Manager will be assessed against an after-tax Benchmark as calculated by [insert] or its advisers on a regular basis.]

**BENCHMARK**

*[Trustee to make it clear whether the benchmark is before or after tax.]*

## Schedule 3

### Reports (Clause 10)

#### 1 **Financial Statements**

The Manager will deliver the following to the Trustee:

*[Trustee to insert].*

#### 2 **Other Reporting**

- (a) Within sixty (60) calendar days after the end of each Quarterly Period, the Manager will provide a Quarterly Portfolio Summary Report that includes the following:

*[The Trustee should consider what reports it requires and whether any of the following are suitable:*

*Details of the Portfolio Value at the end of the Quarterly Period (and showing the calculation of the Portfolio Value;*

*A calculation of the total percentage return on the Portfolio for the Quarterly Period including details of any changes in the methods and assumptions used in calculation of the return;*

*A subdivision of Portfolio Value at the end of the month into each major investment class showing market value in AUD and as a percentage of total Portfolio Value as at the end of the Quarterly Period;*

*Details of all transactions effected by the Manager during the Quarterly Period;*

*A listing of all payments of brokerage or fees made to brokers or agents in the course of managing the Portfolio during the Quarterly Period;*

*The name and location of the person who may be contacted by the Trustee regarding details in the report;*

*A description of corporate issues arising during the Quarterly Period including a statement of how the Manager directed the Custodian to vote on any shares or securities held in the Portfolio; and*

*Any other matters that the Trustee or the Custodian may reasonably require to be dealt with in the report.]*

- (b) On an annual basis within 25 Business Days after the close of each Financial Year, the Manager will provide:

- (i) the information, prepared on an annualised basis, required by paragraphs 2(a), (b) *[insert as relevant]*;
- (ii) a commentary on the performance of the Portfolio in the Financial Year and the general outlook for the Portfolio for the next Financial Year;
- (iii) a copy of the Manager's current derivative risk statement and a copy of the latest annual audit certification for the derivative risk statement. Where the Manager does not trade Derivative Contracts, the Manager will provide a written statement to this effect;

- (iv) copies of the Manager's [*Insert Policies which Trustee requires from the Manger*] to the extent such policies have been amended, supplemented or modified within the previous 12 month period; and
- (v) annual compliance attestation in the form reasonably required by the Trustee.
- (c) The Manager agrees to also provide any additional financial statements, reports and any other information as the Trustee may reasonably request from time to time.
- (d) [*Trustee to insert any other matters in respect of which the Trustee requires the Manager to report.*]

## Schedule 4

### Management Fee (Clause 8)

#### 1 Fees

1.1 The Trustee agrees to pay the management fees ("**Fees**") payable pursuant to this **schedule 4** quarterly in arrears as calculated on the last day of each of the months of March, June, September and December or otherwise on the date of termination ("**Calculation Date**").

1.2 The Fees will be based on the Australian dollar value of the average daily Portfolio Value over the quarter and will be calculated as at each Calculation Date according to the following scale:

*[Insert].*

1.3 The fees payable for the quarter in which commencement or termination takes effect will be a proportion of normal quarterly fees calculated as follows:

(a) in the case of commencement, the number of days from the Commencement Date to the end of the quarter divided by the number of days in the quarter;

(b) in the case of termination, the number of days from the beginning of the quarter to the date on which termination takes effect divided by the number of days in the quarter,

except that in the case of termination the fees will be based on the Portfolio Value at the end of the previous quarter.

1.4 The fee payable has been calculated excluding GST.

#### 2 Automatic Base Fee Review

The Manager and the Trustee agree that the Fees shall be reviewed if the Portfolio Value exceeds \$*[insert]*

# Schedule 5

## Authorised Persons (Clause 14) and Notices (Clause 24)

**1 TRUSTEE**

Attention:

Address:

Facsimile:

Email:

Copy (if required):

Authorised Persons:

**2 MANAGER**

Attention:

Address:

Facsimile:

Email:

Copy (if required):

Authorised Persons:

## Schedule 6

### **Withdrawals and Deposits (Clause 7.1)**

Procedures for Withdrawals

Number of Authorised Persons required to authorise withdrawals and deposits:

Payment details:

Direction method:

# Schedule 7

## Derivatives Trading (Clause 5.2)

### 1 Application to Derivative Contracts

1.1 Subject to **paragraph 1.2** below, the provisions of this **Schedule 7** apply to all Derivative Contracts which the Manager is authorised to enter into under this Agreement.

1.2 The Trustee may agree in writing that the provisions of this **Schedule 7** will not apply to any specific Derivative Contract or class of Derivative Contracts. The parties will agree the terms on which the Manager will enter into such Derivative Contracts or class of Derivative Contracts.

### 2 Principles

As a general principle, Derivative Contracts should not be used to create a position that could otherwise only have been achieved by the use of borrowings. The following principles will apply in relation to Derivative Contracts:

#### **(a) Statement**

Before first investing in a Derivative Contract, the Manager will provide the Trustee with a derivative risk statement which complies with the rules for such documents under the Relevant Law (and promptly provide any amended derivative risk statement).

#### **(b) Gearing**

The Portfolio is not to be geared.

#### **(c) Derivative Exposure**

Derivative exposure combined with physical or actual exposure to asset classes must not result in a net exposure which is inconsistent with the Fund's investment strategy. No derivative position is to be or to be allowed to become 'uncovered'.

#### **(d) APRA Prudential Statements and Guidance**

The Manager must at all times operate within any Prudential Standards and guidelines established by APRA (if any) relating to risk management.

#### **(e) Audit**

The Manager will ensure that there are regular audits of internal control of its management of Derivative Contracts and that there are procedures in place to ensure that issues raised by the audits are resolved. These procedures must be documented and a copy provided to the Trustee within one (1) month of the audit being conducted. Written notification of any adverse audit findings must be given to the Trustee within ten (10) Business Days of the audit report being finalised.

A copy of the annual external auditor's report issued to the Manager pertaining to the Portfolio must be forwarded to the Trustee within one (1) month of issuance.

### 3 Liability

In the event of a material breach of the above restrictions which leads to either a cost or forgone earnings of the Fund, the Manager will be liable for recovery of such cost or forgone earnings.

#### **4 Compliance Statement and Reporting**

A formal compliance statement covering the above restrictions must be provided monthly to the Custodian. If a breach of the restrictions has occurred during the month, the Manager must advise the Trustee in writing what steps have been taken to rectify the breach and the impact that this has had on the performance of the Portfolio.

#### **5 Risk Management Process**

The Manager shall provide an annual statement to the Trustee which confirms that it has risk management processes in place in relation to the use of derivatives and the purposes for which they are used.

#### **6 Leverage Assessment**

For the purposes of determining whether or not the Portfolio is leveraged or whether Derivative Contracts are covered or uncovered, the Manager shall not take into account any assets of the Fund not held within the Portfolio.

#### **7 General**

7.1 The Manager must promptly advise the Trustee if it becomes aware of any breach by the Manager of an obligation under this **Schedule 7**.

7.2 This **Schedule 7** applies in addition to the other provisions of this Agreement.

7.3 Nothing in this **Schedule 7** authorises the Manager to enter into Derivative Contracts beyond the authority set out in this Agreement.

**EXECUTED** as an agreement

**Signed** by [*Insert name and ABN of the Trustee*]  
pursuant to section 127(1) of the *Corporations Act 2001* by:

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Signature of director/company secretary

---

Signature of director

---

Print name

---

Print name

**Signed** by [*Insert name and ABN of the Manager*]  
pursuant to section 127(1) of the *Corporations Act 2001* by:

---

Signature of director/company secretary

---

Signature of director

---

Print name

---

Print name