

Fisher Funds TWO KiwiSaver Scheme Governing Document

Trustees Executors Limited (Supervisor)
Fisher Funds Management Limited (Manager)

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Parties

Trustees Executors Limited (Supervisor)

Fisher Funds Management Limited (Manager)

Background

- A The Fisher Funds TWO KiwiSaver Scheme (the **Scheme**) is a KiwiSaver scheme registered under the KiwiSaver Act 2006 (the **KiwiSaver Act**) which was established by a trust deed dated 26 March 2007.
- B The Scheme is currently governed by a trust deed dated 29 January 2014 (the **Existing Deed**).
- C Fisher Funds Management Limited (the **Manager**) is the manager of the Scheme.
- D Trustees Executors Limited (the **Supervisor**), a corporation licensed as a supervisor under the Financial Markets Supervisors Act 2011 is the trustee of the Scheme.
- E The Manager and the Supervisor wish to amend the Existing Deed by substituting this Governing Document for the Existing Deed in order to comply with the requirements of the FMCA, the KiwiSaver Act and all other relevant legislation, and to make a number of other amendments to the Existing Deed as a consequence of the introduction of the FMCA and the amendments to other legislation or for the more efficient operation of the Scheme.

BY THIS DEED:

In accordance with the power of amendment contained in clause 20 of the Existing Deed, it is declared that on and with effect from the Effective Date, the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Governing Document so that, from the Effective Date, the Scheme will be operated, administered, and governed in accordance with the provisions of this Governing Document.

1 Interpretation

- 1.1 Words and expressions used in this Governing Document shall be interpreted in accordance with clause 63.

2 Continuation of the Scheme

- 2.1 The Scheme is continued as a KiwiSaver Scheme, on the basis set out in this Governing Document, with effect from the Effective Date.
- 2.2 The purpose of the Scheme is to provide retirement benefits directly to individuals in accordance with the FMCA and the KiwiSaver Act¹.
- 2.3 As at the Effective Date, the name of the Scheme is the Fisher Funds TWO KiwiSaver Scheme. The Scheme and each of the Funds shall be known by such name or names as the Manager shall decide from time to time.
- 2.4 Subject to clause 7, the Supervisor will continue holding all Contributions to and other assets of the Scheme on trust in accordance with the terms of the Governing Document and all Relevant Law².
- 2.5 The Scheme will be governed and administered in accordance with Relevant Law and the provisions of this Governing Document.
- 2.6 The Supervisor, the Manager, Employers and all Beneficiaries shall be bound by the provisions of this Governing Document.
- 2.7 The Scheme consists of:
 - 2.7.1 all Assets vested in:
 - (a) the Supervisor;
 - (b) any Custodian appointed by the Supervisor in accordance with clause 7.1; and
 - (c) any sub-custodian appointed by the Custodian in accordance with clause 7.2;
 - 2.7.2 all Contributions paid to the Manager by or on behalf of Members; and
 - 2.7.3 any money or Assets transferred from another Retirement Scheme.
- 2.8 If the Scheme ceases to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take (and may require the Supervisor to take) such action as the Manager thinks fit (including re-establishing the trusts of the Scheme and paying over the assets of the Scheme to a new Supervisor) in order to prevent the operation of any rule of law relating to perpetuities which might otherwise invalidate any of the trusts of the Scheme.

¹ Section 128(1)(b) of the FMCA.

² Sections 152(1)(c), 156 and 157 of the FMCA.

3 Admission of Members

Admission

- 3.1 A natural person may become a Member of the Scheme:
 - 3.1.1 in accordance with section 52 of the KiwiSaver Act, in respect of any period during which the Scheme is a Default KiwiSaver Scheme;
 - 3.1.2 by completing an application for membership of the Scheme (in such form and in such manner as the Manager prescribes or otherwise requires from time to time) and contracting directly with the Manager to become a Member of the Scheme in accordance with section 45 or section 55 of the KiwiSaver Act, as applicable; or
 - 3.1.3 in accordance with section 48 of the KiwiSaver Act, by reason of the Scheme being an Employer's Chosen KiwiSaver Scheme; or
 - 3.1.4 by way of a transfer into the Scheme effected under subpart 3 of Part 2 of the KiwiSaver Act or otherwise in accordance with the KiwiSaver Act,

provided that only persons who meet the New Zealand criteria set out in sections 128(2) and (3) of the FMCA shall be admitted to membership of the Scheme³.
- 3.2 Any conditions of eligibility for a Participating Member will be contained in the relevant Participation Agreement.
- 3.3 As regards a Member who joins under clause 3.1.2, the Manager may refuse any application without giving reasons for any refusal.

Deemed acceptances

- 3.4 On admission to membership of the Scheme pursuant to clause 3.1.1, clause 3.1.3 or clause 3.1.4, a Member shall be deemed to have consented to the Supervisor and the Manager obtaining, holding, using and disclosing personal information in respect of the Member in the same manner, and to the same extent, as if the Member has been admitted to membership of the Scheme pursuant to clause 3.1.2.

Cessation of Membership

- 3.5 Without limiting any other provision of this Governing Document or Relevant Law, a person shall cease to be a Member on the first to occur of the person:

³ Section 128(1)(d), (2) and (3) of the FMCA.

- 3.5.1 receiving from the Scheme the Member's Accumulation in accordance with the KiwiSaver Scheme Rules (which are implied in the Governing Document under section 116 and Schedule 1 of the KiwiSaver Act);
- 3.5.2 transferring from the Scheme to another KiwiSaver Scheme in accordance with the requirements of subpart 3 of Part 2 of the KiwiSaver Act, or to another Retirement Scheme in accordance with the requirements of the KiwiSaver Act; and
- 3.5.3 receiving notice from the Manager under rule 4(5)(b) of the KiwiSaver Scheme Rules.

Continuation of Membership

- 3.6 A Participating Member will remain a Member of the Scheme if their Participating Employer ceases to participate in the Scheme and the Manager decides to partially wind up the Scheme in respect of that Participating Employer.
- 3.7 A Member who is a Participating Member will remain a Member in the Scheme if the Member ceases to be eligible to be a Participating Member under the terms of the relevant Participation Agreement. In such an event the vested balance of such Member's Member Employer Account will be credited to the Member Account.
- 3.8 A Member who is not already a Participating Member may, subject to meeting the eligibility criteria as specified in the relevant Participation Agreement, apply to become a Participating Member if:
 - 3.8.1 they start new employment with a Participating Employer; or
 - 3.8.2 their employer becomes a Participating Employer of the Scheme by:
 - (a) signing a Participation Agreement as required under clause 34.1.3; or
 - (b) in accordance with clause 34.4.
- 3.9 From the date a Member becomes a Participating Member, all Member Contributions will be applied as required under clause 36.

Offer of Units

- 3.10 The Manager must not make a Regulated Offer of Units or membership of the Scheme unless:
 - 3.10.1 The Scheme is registered under the FMCA;
 - 3.10.2 A PDS has been prepared and lodged on the Disclose Register in respect of the Scheme;

- 3.10.3 All of the information that the Register Entry is required to contain under the FMCA has been lodged on the Disclose Register with respect to the Scheme and each Fund.
- 3.11 Each Disclosure Document must comply with Relevant Law at the time and, subject to clause 3.13, otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 3.12 The Manager must use reasonable commercial endeavours to ensure that the Disclosure Documents for the Scheme and each Fund at all times comply with Relevant Law.
- 3.13 The Manager shall provide to the Supervisor, unless agreed otherwise with reasonable notice, drafts of all proposed Disclosure Documents (other than Fund Updates, drafts of which will be provided to the Supervisor on request) in respect of the Scheme and each Fund so as to allow the Supervisor to review and provide comments on the draft (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).

4 Appointment and removal of Supervisor

Appointment

- 4.1 The Scheme shall have a single Supervisor who:
 - 4.1.1 must not be an Associated Person of the Manager; and
 - 4.1.2 must be a Licensed Supervisor whose licence covers the Scheme.
- 4.2 The Supervisor continues as the trustee of the Scheme and is the supervisor of the Scheme for the purposes of the FMCA. The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA.⁴

Removal

- 4.3 Subject to clause 4.6, the Manager may remove the Supervisor from office with the FMA's prior consent:
 - 4.3.1 with immediate effect, by giving the Supervisor written notice of such removal, if the Manager reasonably believes that the Scheme will be adversely affected if the Supervisor continues to hold office (such notice to specify the grounds on which the Manager has formed this belief); and

⁴ Section 152 of the FMCA.

- 4.3.2 otherwise upon giving the Supervisor no fewer than 90 Business Days' written notice of such removal;

and in either case the Manager shall ensure that a replacement Supervisor is appointed with effect immediately following that Supervisor's removal from office.

- 4.4 The Supervisor may be removed from office otherwise in the circumstances prescribed in the FMCA or Part 2 of the Financial Markets Supervisors Act 2011.

Retirement

- 4.5 Subject to clause 4.6 and Relevant Law, the Supervisor may retire at any time upon giving the Manager no fewer than 90 Business Days' written notice of such retirement.

Restrictions on removal/retirement

- 4.6 No removal or retirement under clause 4.3 or clause 4.5 will take effect unless:
- 4.6.1 the requirements for such removal or retirement, and for any new supervisor under the FMCA or any other Relevant Law have been met;
 - 4.6.2 any new supervisor has executed the deed referred to in clause 4.8; and
 - 4.6.3 all of the investments of the Scheme have been vested in the new supervisor (or in any Custodian).

New appointment

- 4.7 The power of appointing a new supervisor is vested in the Manager, provided that no person shall be appointed as a new supervisor unless qualified for appointment under clause 4.1.

Restrictions on new appointment

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

Release of Supervisor

- 4.9 From the date of execution by a new supervisor of a deed in accordance with clause 4.8, the former Supervisor is absolved and released from all such covenants (except in respect of prior breach) and the new supervisor must exercise all the powers and enjoy and exercise all the rights, and is subject to all

the duties and obligations, of the Supervisor under this Governing Document in all respects as if it had been originally named as a party to this Governing Document.

5 Powers and duties of Supervisor

- 5.1 The Supervisor in exercising its functions as the trustee and supervisor of the Scheme, must comply with the general duties under the FMCA, and in exercising its powers and performing its duties as supervisor, comply with the professional standard of care under the FMCA⁵.
- 5.2 In addition to any other powers granted under the Governing Document or by Relevant Law, but subject to the FMCA and to the limitations set out in clause 7, the Supervisor may:
 - 5.2.1 appoint and remove any person (including the Manager or an Associated Person of the Manager) as an advisory trustee or agent on such terms and conditions and with such powers, duties, discretions, indemnities and remuneration as are agreed by the Supervisor and the other person (provided that where the appointee is not the Manager or an Associated Person of the Manager the Supervisor shall give the Manager reasonable prior written notice of the appointment and all relevant terms); and
 - 5.2.2 do anything the Supervisor, acting reasonably, considers necessary to enable it to discharge its statutory duties in relation to the Scheme.

6 Establishment of Funds

- 6.1 The Manager may establish separate Funds within the Scheme as and when and on such terms and conditions as it sees fit, provided such terms and conditions are not otherwise inconsistent with the Governing Document and any Relevant Law. Those terms and conditions must include a written SIPO for the Scheme that is developed in consultation with the Supervisor, which covers each Fund and complies with the requirements of Relevant Law.
- 6.2 The Manager shall provide the Supervisor with at least 14 days' prior written notice of its intention to establish a new Fund and the proposed terms of that new Fund. Each Fund shall be established by entry into a deed of establishment between the Manager and the Supervisor.
- 6.3 The Existing Funds established as at the Effective Date are set out in clause 6.6 below.

⁵ Section 152 to 155 of the FMCA.

- 6.4 Each Fund will invest in Assets consistent with the SIPO that covers such Fund. The Manager may alter the SIPO from time to time on prior written notice to the Supervisor and subject to the requirements of the FMCA. The Manager shall provide a copy of the proposed SIPO, or any alteration to that SIPO, to the Supervisor and must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by the FMCA.⁶
- 6.5 The Manager shall ensure that while the Scheme is a Default KiwiSaver Scheme, a Fund is specified to be the Default Investment Product as described in the Instrument of Appointment.
- 6.6 As at the Effective Date, the following Funds have been established:
- 6.6.1 Fisher Funds TWO KiwiSaver Scheme Cash Enhanced Fund;
 - 6.6.2 The Fisher Funds TWO KiwiSaver Scheme Preservation Fund.
 - 6.6.3 The Fisher Funds TWO KiwiSaver Scheme Conservative Fund;
 - 6.6.4 The Fisher Funds TWO KiwiSaver Scheme Balanced Fund;
 - 6.6.5 The Fisher Funds TWO KiwiSaver Scheme Growth Fund; and
 - 6.6.6 The Fisher Funds TWO KiwiSaver Scheme Equity Fund.
- 6.7 In order to perform its function under clause 10.2, the Manager may, subject to clauses 6.8 to 6.10, direct the Supervisor to:
- 6.7.1 purchase, acquire, sell, transfer or dispose of the Assets of a Fund;
 - 6.7.2 enter into any commitments or liabilities in respect of the Assets of a Fund;
 - 6.7.3 execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing; and
 - 6.7.4 take any other action which may be required in respect of the Assets of a Fund,
- and the Supervisor will from time to time, to the extent of the respective Assets in its possession or control (including by procuring a Custodian), do all things necessary on its part to act as directed in writing by the Manager.

Supervisor's limited duty to refuse to act

- 6.8 The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on a direction of the Manager in the circumstances where such a refusal is required by the FMCA⁷ and the Supervisor (and the Custodian) shall not be liable

⁶ Sections 165 and 166 of the FMCA.

to Members or the Manager for so refusing to act (or for directing any Custodian to refuse to act) on any such direction by the Manager.

- 6.9 If the Supervisor refuses to act (or directs any Custodian to refuse to act) on a direction of the Manager in the circumstances described in clause 6.8, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for the refusal or direction.
- 6.10 Subject to clause 18.7, neither the Manager nor the Supervisor shall be responsible to any Member for the investment performance of the Scheme or a Fund arising as a result of the Scheme or a Fund being invested in accordance with the SIPO for the Scheme.

Exclusive assets and liabilities

- 6.11 The Assets of each Fund are the exclusive property of that Fund, and all liabilities incurred in relation to a Fund shall be the exclusive liabilities of that Fund, and the Supervisor and the Manager shall in all respects act so as to give effect to these intentions. Without prejudice to the generality of the foregoing:
 - 6.11.1 the Assets of a Fund shall not be available to meet the liabilities of any other Fund;
 - 6.11.2 all investments made with the moneys of a Fund shall be held by or on behalf of the Supervisor as the exclusive property of that Fund and for the exclusive benefit of the Members who have an interest in that Fund pursuant to this Governing Document;
 - 6.11.3 subject to clause 8 and the duties of the Supervisor and any Custodian under the FMCA, the Manager shall keep separate records and accounts in respect of each Fund; and
 - 6.11.4 without limiting the generality of this clause 6.11, but subject to clause 18.7, the provisions of this Governing Document relating to the indemnities in favour of the Supervisor and the Manager, the fees payable to the Supervisor and the Manager and the reimbursement of the Supervisor and the Manager shall be construed in a manner consistent with this clause where separate Funds have been established, that is to say:
 - (a) any amounts payable to the Supervisor or the Manager shall be payable from the Fund or Funds to which the matter giving rise to the amount relates; and
 - (b) where the amount payable to the Supervisor or the Manager relates to more than one Fund, that amount shall

⁷ Section 160 of the FMCA.

be apportioned between those Funds on such fair and equitable basis as may be determined by the Manager.

Termination of Funds

- 6.12 Subject to Relevant Law, the Manager may close, alter or terminate any Fund, as and when, and on such terms and conditions as, it sees fit, save that the Manager shall give the Supervisor at least 60 days' prior written notice of its intention to close or terminate the Default Investment Product. The Manager may not close or terminate the Default Investment Product where the Supervisor considers that doing so would cause the Supervisor or the Manager to be in breach of its obligations under any Relevant Law.
- 6.13 All Members affected by the closure, alteration or termination of a Fund under clause 6.12 shall be notified by the Manager in writing and given the option to elect to transfer that part of the Member's Account invested in, the relevant Fund to such other Fund(s) as the Manager may offer to the Member.
- 6.14 If a Member does not make an election under clause 6.13 to transfer to a different Fund, then subject to Relevant Law their Contributions to, and that part of the Member's Account invested in, the relevant Fund will be invested into such other Fund as the Manager may from time to time advise.

Member entitled to choose Fund(s)

- 6.15 Subject to clauses 6.17 and 6.18, a Member shall be entitled to choose the Fund or Funds in which the Member's Contributions will be invested.
- 6.16 The following provisions shall apply if a Member does not choose a Fund or Funds:
 - 6.16.1 In the case of a Default Member, their Contributions will be invested into the Default Investment Product; and
 - 6.16.2 In the case of a Preferred Member, their Contributions will be invested into the Balanced Fund or such other Fund as the Manager may from time to time advise.

Restrictions on choosing Fund(s)

- 6.17 In exercising their choice under clause 6.15, Members shall comply with all rules prescribed by the Manager from time to time regarding:
 - 6.17.1 the maximum number of Funds that may be chosen in respect of any Member;
 - 6.17.2 which Funds may be made available to Members or particular groups or classes of Members;
 - 6.17.3 the minimum amounts that may be invested in any Fund in respect of any Member provided that any rules prescribed by the Manager regarding such minimum amounts must be consistent with Relevant Law;

- 6.17.4 changing their choice of Funds (either in relation to amounts already invested or amounts to be invested in the future);
 - 6.17.5 the manner in which choices should be communicated;
 - 6.17.6 the Fund in which any Crown Contribution must be invested; and
 - 6.17.7 any other matters relating to the choice of Funds, or participation in the Scheme, by Members.
- 6.18 In the case of a Participating Member, the choice of Funds may be set out in the Participation Agreement.

Effect of Fund choice

- 6.19 All monies available for investment in a Fund shall be invested in accordance with the SIPO that covers such Fund.
- 6.20 The establishment of Funds by the Manager and the choice of a Fund by a Member shall, to the extent that the Supervisor has any power of investment under this Governing Document, be a direction given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956. Any direction given by a Member will not exempt the Manager or Supervisor from their obligations under the FMCA.

Suspension or deferral of contributions or withdrawals

- 6.21 Subject to Relevant Law, if by reason of:
 - 6.21.1 a decision to terminate the Scheme or investment in a Fund; or
 - 6.21.2 financial, political or economic conditions applying in respect of any financial market in which investments may be sold; or
 - 6.21.3 the nature of any investments of a Fund; or
 - 6.21.4 a suspension or deferral of or other circumstances relating to any fund into which Assets of a Fund are invested; or
 - 6.21.5 the occurrence or existence of any other circumstances or events,

the Manager shall in good faith form the opinion that it is or would be materially prejudicial to the Scheme, the interests of Members of the Scheme or Members who have invested in the relevant Fund as the case may be, to permit withdrawals then the Manager, having first advised the Supervisor, may give notice (a "**Suspension Notice**") to that effect to the Members of the Scheme or the Members who have invested in the relevant Fund as the case requires. A Suspension Notice shall have the effect of suspending the operation of all existing and future withdrawal requests and payments in respect of Members who have invested in the Scheme or the relevant Fund as the case may be until

the Manager gives notice to such Members to the effect that the relevant Suspension Notice is cancelled either in whole or in part.

- 6.22 Subject to clause 6.25, the KiwiSaver Requirements and the FMCA, the Manager may at any time in its absolute discretion, having first advised the Supervisor, determine that no further Contributions shall be accepted into a particular Fund for a specified period of up to 90 days. The following provisions shall apply in respect of any such determination by the Manager:
- 6.23 The Manager shall give notice (a "**Closure Notice**") to affected Members advising them:
 - 6.23.1 of the period of closure of the Fund; and
 - 6.23.2 that during the period of closure, the Manager must nominate an alternative Fund into which Contributions will be invested (subject to any contrary direction by a Member).
- 6.24 The period of closure may be extended at the discretion of the Manager subject to notice of that extension being provided to affected Members.
- 6.25 Clause 6.22, does not apply to any Member who joins under clause 3.1.1.

7 Appointment of Custodians

- 7.1 The Supervisor may, from time to time (having consulted with the Manager), appoint, in writing, any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any of the investments or property of the Scheme are to be vested. The Custodian must meet the external custodianship requirements for such person under the FMCA⁸. The Supervisor shall be jointly and severally liable with the Custodian for the performance by the Custodian of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 7.1, the FMCA with respect to the Scheme.
- 7.2 If authorised in writing by the Supervisor, subject to the Supervisor giving the Manager prior written notice, a Custodian appointed under clause 7.1 may itself appoint one or more sub-custodian (other than the Manager or an Associated Person of the Manager) in which any of the investments or property of the Scheme are to be vested. Any sub-custodian appointed under this clause 7.2 must meet the requirements for such a person under the FMCA⁹. The Supervisor and the Custodian which appointed that sub-custodian shall be jointly and severally liable with the sub-custodian for the performance by the sub-custodian

⁸ Sections 127(1)(f) and 156 of the FMCA.

⁹ Section 156 of the FMCA.

of all the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 7.2 and the FMCA with respect to the Scheme.

- 7.3 Where the Supervisor appoints a Custodian, the Supervisor shall take all reasonable steps to ensure that the custodial functions for the Scheme are performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Supervisor were performing the custodial functions itself and in a manner which complies with all of the obligations relating to holding the Assets as supervisor or custodian expressed or implied in this Governing Document and any applicable legislation.
- 7.4 The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to this clause 7, the fees that may be charged and the extent to which expenses will be reimbursed.

8 Investment records

- 8.1 The Supervisor or Custodian must keep, or ensure that there are kept, complete, accurate and separate records of all Investments constituting each of the Funds in accordance with the applicable requirements of Relevant Law.
- 8.2 The Supervisor or Custodian must keep the records required by clause 8.1, or ensure that they are kept, in a manner that enables those records to be conveniently inspected and used by the Manager and the Supervisor or its agents and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with the applicable requirements of Relevant Law.
- 8.3 The Manager is entitled to assume that the Supervisor's or Custodian's records of Investments are complete and accurate and may rely upon them accordingly.

9 Appointment and removal of Manager

Appointment of Manager

- 9.1 The Scheme must have a manager, who:
 - 9.1.1 must not be an Associated Person of the Supervisor; and
 - 9.1.2 must be a Licensed Manager.
- 9.2 The Manager continues to act as the manager of the Scheme for the purposes of Relevant Law and is responsible for performing the functions for which responsibility is attributed to it as manager of the Scheme under Relevant Law¹⁰.

¹⁰ Section 142 of the FMCA.

Removal of Manager

- 9.3 The Manager shall be removed from office in the circumstances set out in the FMCA¹¹.

Manager may retire

- 9.4 Subject to clause 9.6 and all Relevant Law, the Manager may retire and be discharged from its obligations and duties under this Governing Document at any time, on at least three months' prior written notice to the Supervisor.

Restrictions on removal/retirement

- 9.5 Any removal or retirement under clause 9.3 or clause 9.4 shall be conditional upon and not be effective until a new manager that is qualified for appointment under clause 9.1 has been appointed pursuant to clause 9.6 or clause 9.7 and has executed the deed referred to in clause 9.9.

Power to appoint new manager

- 9.6 The power to appoint a temporary manager under the FMCA¹² shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.
- 9.7 Subject to Relevant Law, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, provided that no new manager shall be so appointed without the prior written approval of the Supervisor (which shall not be unreasonably withheld).
- 9.8 Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

Restrictions on new appointment

- 9.9 Any new manager must forthwith upon being appointed, execute a deed undertaking to be bound by the terms set out in this Governing Document from the date of such appointment. The form of such deed will be as required by the Supervisor.

Release of Manager

- 9.10 Subject to Relevant Law¹³, from the date of appointment of a new Manager, the new Manager assumes, and the former Manager is absolved and released from all obligations and liabilities under this Governing Document (except in respect of

¹¹ Sections 185, 209 and 210 of the FMCA.

¹² Sections 186, 187, 189 and 191 of the FMCA.

¹³ Section 191 of the FMCA.

prior breach) and the new Manager must exercise all the powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the Manager under this Governing Document in all respects as if it had been originally named as a party to this Governing Document.

Manager's entitlements preserved

- 9.11 Nothing in this clause 9 shall prevent the Manager from receiving a payment, or a benefit, which has accrued to the Manager pursuant to the terms of this Governing Document on or before the Manager's retirement or removal from office (and the Manager shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date when it ceases to hold office and subsequently where further assistance is required under clause 9.12).

Former Manager must hand over records and give reasonable assistance

- 9.12 The former Manager must hand over records and give reasonable assistance to the new Manager in accordance with the requirements of the FMCA.¹⁴

10 Powers and duties of Manager

- 10.1 The Manager, in exercising its functions as the manager of the Scheme, must comply with the general duties applicable to it under the FMCA, and in exercising any powers or performing any duties as manager, comply with the relevant professional standard of care under the FMCA¹⁵.
- 10.2 Without limiting the generality of the foregoing, the Manager shall be responsible for the following specific functions:
- 10.2.1 establishing and maintaining the Register, and maintaining records for all Accounts, in accordance with the requirements of the FMCA and this Governing Document;¹⁶
 - 10.2.2 acquiring and disposing of investments for each Fund in accordance with the SIPO which covers the Fund;
 - 10.2.3 arranging for the receipt and acceptance of Contributions and other monies payable to the Scheme;
 - 10.2.4 providing Members with information, notices and disclosures required to be given to them under the FMCA¹⁷;

¹⁴ Section 190 of the FMCA.

¹⁵ Sections 133 and 142 of the FMCA.

¹⁶ Subpart 4 of Part 4 of the FMCA.

¹⁷ Sections 96, 97 and 100 of the FMCA and Regulations 56, 62 and 65 of the FMC Regulations.

- 10.2.5 effecting transfers between Funds;
- 10.2.6 discharging all functions and duties with respect to unitisation, valuations and benefit calculations;
- 10.2.7 subject to the requirements of the KiwiSaver Act, determining whether benefits are payable and arranging for the payment of benefits (or, where applicable, refunds) to or in respect of Members, and for transfers to other Retirement Schemes;
- 10.2.8 taking all actions and making all determinations, decisions or elections relevant to the taxation treatment or status of the Scheme;
- 10.2.9 entering into Participation Agreements and completing any filings required by Relevant Law in respect of the same, within any timeframes required by Relevant Law;
- 10.2.10 appointing and engaging solicitors and other consultants and advisers, investment managers, and administration managers on such terms as the Manager determines, and the Auditor, subject to the terms in clause 54;
- 10.2.11 ensuring compliance by the Scheme with the requirements of Relevant Law;
- 10.2.12 giving and receiving all notices and other information in accordance with the KiwiSaver Act;
- 10.2.13 maintaining all accounting records for the Scheme and allowing for inspection of those records to the extent required by the FMCA¹⁸;
- 10.2.14 discharging all of the obligations of the scheme provider under the Scheme Provider Agreement and the Instrument of Appointment;
- 10.2.15 determining the terms of all contracts to be entered into in respect of the Scheme, provided that the Manager must ensure that at all times (to the extent possible having regard to Relevant Law) the liability of the Supervisor in relation to any contract is limited to the assets of the Scheme or the relevant Fund(s) as applicable;
- 10.2.16 arranging for the preparation, audit and lodgement of the financial statements for the Scheme and each Fund, and the preparation of the Scheme's annual reports in accordance with the requirements of the FMCA¹⁹;
- 10.2.17 making available to the Supervisor or to the Custodian or the Auditor the whole of the records of the Manager kept pursuant or in relation to this

¹⁸ Section 459 of the FMCA.

¹⁹ Sections 461A, 461D and 461H of the FMCA, and Regulations 62 and 63 of the FMC Regulations.

Governing Document whether kept at the Manager's registered office or elsewhere;

- 10.2.18 without limiting sections 147 to 151 of the FMCA, giving the Supervisor or the Custodian or the Auditor such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by Relevant Law or requested by the Supervisor under Relevant Law in order for the Supervisor to perform its duties under the FMCA (such agreement shall not be unreasonably withheld),²⁰
- 10.2.19 at the request of the Supervisor, giving the Supervisor or the Custodian or the Auditor such oral or written information as may be required with respect to matters relating to the Manager as the manager of the Scheme provided that the Supervisor shall only request such information in the following circumstances:
 - (a) after consultation with the Manager; and
 - (b) if the Supervisor reasonably believes that the Manager is unable or is likely to become unable to carry out its obligations under this Governing Document and the Supervisor certifies its belief and the reasons for such request in writing to the Manager;
- 10.2.20 providing to the Supervisor on request such information or access to employees or board members of, and (where practical) service providers to, the Manager as the Supervisor reasonably requires;
- 10.2.21 notifying the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Investors or the Manager's licence under the FMCA; and
- 10.2.22 exercising all such other powers, authorities, functions, duties and discretions as are incidental to the above.
- 10.3 The Manager, in exercising its powers and performing its duties as the Manager, shall act in accordance with the terms of this Governing Document and Relevant Law.

11 Manager's power to delegate

- 11.1 Subject to Relevant Law, the Manager may, on notice to the Supervisor, delegate the performance of all or any of the powers, authorities, functions,

²⁰ Section 148 of the FMCA.

duties and discretions exercisable by the Manager under Relevant Law and/or this Governing Document) to any other person nominated by the Manager including any Associated Person of the Manager. Any delegation by the Manager must be in writing.

- 11.2 The Manager shall remain responsible and will be liable for the acts or omissions of any Person appointed under clause 11.1.

12 Manager may appoint investment managers and administration managers

- 12.1 The Manager may appoint in respect of the Scheme:

- 12.1.1 one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of the Scheme;
- 12.1.2 one or more investment managers (including any Associated Person of the Manager) to manage the Scheme's property; and
- 12.1.3 any other experts for the provision of services relevant to the Scheme, and (subject to clause 21 in relation to Related Party Benefits) agree with such party the fees that may be charged and the extent to which expenses will be reimbursed.²¹

13 Absolute and uncontrolled discretion

- 13.1 Each of the Manager and the Supervisor in the exercise of the trusts, authorities, responsibilities, powers and discretions conferred on it by this Governing Document shall have total discretion, subject to clause 6 and Relevant Law. Each of the Manager and the Supervisor may at any time exercise or enforce any of the trusts, authorities, powers and discretions or may refrain from exercising all or any of them.

14 Reliance upon advice of experts

- 14.1 The Supervisor and/or the Manager may engage an expert in accordance with the requirements of the FMCA.²²
- 14.2 The Supervisor or the Manager may act on the advice or opinion of any accountant, actuary, barrister, solicitor, stock broker, consultant, medical practitioner, investment advisor, auditor or other professional person or expert and shall not be responsible for any loss occasioned by so acting. The cost of

²¹ Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

²² Section 155 of the FMCA.

obtaining such advice shall form part of the expenses incurred by the Supervisor or the Manager in connection with the Scheme.

15 Unit pricing errors

- 15.1 Where there is a unit pricing error, the Manager has the power to alter a Member's Accumulation to the extent reasonably practicable in the circumstances to address partly or entirely the impact of any unit pricing error²³ provided such alteration does not adversely affect the relevant Member's Accumulation or the position of other Members, as compared with the position such Member or Members would have been in had the unit pricing error not occurred.
- 15.2 The Manager must report to the Supervisor in relation to any material error in the calculation of a Unit Price or material non-compliance with any methodology for pricing Units in a Fund set out in this Governing Document or notices issued by the FMA, and must correct such error or non-compliance and take prescribed steps to the extent required by the Relevant Law.²⁴
- 15.3 If, under Relevant Law, a reimbursement and compensation is payable to a Member or a former Member, the Manager must comply with all its obligations under those requirements except that the Manager may, in consultation with the Supervisor, choose not to pay any reimbursement or compensation to a Member or a former Member for a dollar amount less than \$20 or such other amount as the Manager and the Supervisor may agree from time to time.

16 Register of Members

- 16.1 The Manager shall maintain or cause to be maintained a Register of Members for the Scheme. There should be entered in the Register such information as may be required by Relevant Law.
- 16.2 Such Register shall:
 - 16.2.1 be kept in the manner;
 - 16.2.2 contain the content;
 - 16.2.3 be audited; and
 - 16.2.4 be available for inspection;

²³ Section 168(2) of the FMCA.

²⁴ Section 168 of the FMCA and Regulation 99 of the FMC Regulations.

as required by the FMCA.²⁵

- 16.3 The Register may be kept in the form of an electronic register²⁶.
- 16.4 Each of the Supervisor and the Manager shall be entitled to rely absolutely upon entries in the Register for the Scheme being correct if it reasonably believes that the Register has been adequately maintained and neither the Supervisor, the Manager nor any of the Supervisor's or the Manager's agents, shall incur any liability or responsibility on account of any mistake in respect of the Register.

17 No personal liability of Supervisor and Manager

- 17.1 Subject to clause 18.7, the Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Governing Document for or in connection with the Scheme or a Fund, are and are deemed to be each acting for and on behalf of the Scheme and not in their own respective capacities, and neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation or claim relating to the Scheme (and only the assets of the Scheme are available for that purpose).

18 Indemnity of Supervisor and Manager

Indemnification from Scheme assets

- 18.1 Subject to the indemnity limitations under the FMCA²⁷ and clause 18.7, if, contrary to the provisions of clause 17, either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Scheme or a Fund or any action taken or omitted in connection with the Scheme or a Fund, then the Supervisor or the Manager (as applicable) is entitled to indemnity and reimbursement out of the assets of the Scheme to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined (including, without limitation, legal fees and disbursements).
- 18.2 Subject to the indemnity limitations under the FMCA,²⁸ this indemnity shall extend to any payments made to any Person whom the Supervisor or the Manager in good faith believes to be entitled to receive the payment although it may be subsequently found the Person was not entitled.

²⁵ Sections 215 to 223 of the FMCA and FMC Regulations 109 and 110.

²⁶ Section 216(2)(a) of the FMCA.

²⁷ Sections 135(1)(f) and 136(1)(b) of the FMCA.

²⁸ Sections 135(1)(f) and 136(1)(b) of the FMCA.

- 18.3 The Supervisor and the Manager shall have lien or charge over all Assets in the Scheme for the indemnity and may retain and pay out of the Assets in the Scheme all sums and amounts necessary to give effect to the indemnity.
- 18.4 Subject to the indemnity limitations under the FMCA, if a Member's Account balances are insufficient to meet any liability for Tax payable by the Scheme, the Manager or the Supervisor (whether current or deferred) which is:
- 18.4.1 attributed under the Tax Act to the Beneficiary; or
 - 18.4.2 determined by the Manager to be attributable to the Beneficiary;
- then the Beneficiary shall indemnify the Supervisor and the Manager for that shortfall.

Power to indemnify investment managers and administration managers

- 18.5 The Manager may agree:
- 18.5.1 to limit the liability (in connection with its services in respect of the Scheme) of; and/or
 - 18.5.2 to indemnify and reimburse out of the Scheme's property,
- any investment manager or administration manager appointed in respect of the Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including, without limitation, legal fees and disbursements).²⁹

Power to indemnify Custodians

- 18.6 The Supervisor may agree:
- 18.6.1 to limit the liability (in connection with its services in respect of the Scheme), of: and/or
 - 18.6.2 to indemnify and reimburse out of the Scheme's property,
- any Custodian appointed in respect of the Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including without limitation, legal fees and disbursements).³⁰

²⁹ Sections 135(1)(f) and 136(1)(b) of the FMCA.

³⁰ Sections 135(1)(f) and 136(1)(b) of the FMCA.

Indemnity limitations

- 18.7 No provision of clauses 17 and 18.1 to 18.6 has the effect of exempting the Supervisor or the Manager or any director, officer or employee of the Supervisor or of the Manager from, and no provision of this Governing Document has the effect of indemnifying the Supervisor or the Manager or any such director, officer or employee against, any liability to the extent that doing so would be void under Relevant Law.
- 18.8 Except to the extent to which the Supervisor or the Manager is liable pursuant to clause 17, the liability of the Supervisor or the Manager under this Governing Document and any Relevant Law, shall at all times be limited to the Assets of the relevant Fund(s).

19 Remuneration and reimbursement of the Supervisor and Manager**Remuneration of the Manager and the Supervisor**

- 19.1 Subject to rule 2 of the KiwiSaver Scheme Rules, the Supervisor is entitled to be paid out of the Scheme (whether from income or capital or both), or by any Member or Members, and to retain, a reasonable fee consistent with the services it performs, as agreed between the Manager and the Supervisor from time to time. The fee may be deducted from the Assets of the Scheme or paid by cancelling Units in Accounts. The fee is payable on a 'plus GST (if any)' basis, such that if the Supervisor is liable to account for GST on the fee, the Supervisor is entitled to be paid the GST amount in addition to the fee.
- 19.2 Subject to rule 2 of the KiwiSaver Scheme Rules, the Manager is entitled to be paid out of the Scheme (whether from income or capital or both), or by any Member or Members, and to retain, a reasonable fee consistent with the services it performs, as notified to the Supervisor from time to time. . The fee may be deducted from the Assets of the Scheme or paid by cancelling Units in Accounts. The fee is payable on a 'plus GST (if any)' basis, such that if the Manager is liable to account for GST on the fee, the Manager is entitled to be paid the GST amount in addition to the fee.

Reimbursement of Supervisor and Manager

- 19.3 Subject to the indemnity limitations under the FMCA³¹ and clause 18.7, the Supervisor and the Manager are each entitled to be reimbursed out of the Assets of the Scheme (whether from income or capital or both), and to the extent applicable from particular Funds, for and in respect of all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as applicable) under this Governing Document

³¹ Sections 135(1)(f) and 136(1)(b) of the FMCA.

(including, without limitation, any expense, cost or liability which may be incurred by the Supervisor or the Manager (as applicable) in bringing or defending any action or suit in respect of the Scheme).

Reimbursement of expenses of the Scheme

- 19.4 All costs, expenses, fees and premiums payable by or to the Supervisor or the Manager in relation to the supervision or the management and administration of the Scheme and all Tax payable in connection with the Scheme of the relevant investments, and which are to be paid out of the Assets of the Scheme may be charged to a particular Member Account or a Member Employer Account, in such manner as the Manager considers fair and equitable. Where those amounts payable from the assets of the Scheme relates to more than one Fund, that amount shall be apportioned between those Funds on such fair and equitable basis as the Manager determines.
- 19.5 The amount the Manager or the Supervisor may be paid to cover the fees and the costs, charges and expenses of administering and managing the Scheme under clauses 19.1, 19.2 and 19.3 or Tax payable in connection with the Scheme or the relevant Assets must be consistent with any limitations set out in the Relevant Law.

20 Borrowing powers

- 20.1 Subject to the SIPO and clauses 6.8 to 6.10, the Manager may direct the Supervisor to:
 - 20.1.1 borrow or raise money from any Person; or
 - 20.1.2 enter into any form of credit facility or other accommodation or sell, discount and deal with bills of exchange; or
 - 20.1.3 charge the Assets of the Scheme or any of them as security for any moneys borrowed or raised or for the purposes of acquiring further Assets for the Scheme.

21 Related Party Benefits

- 21.1 The Manager and any Related Party must not enter into a transaction that provides for a Related Party Benefit to be given except as permitted by the FMCA.³²
- 21.2 The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit.

³² Sections 172 to 175 of the FMCA.

- 21.3 Neither the Manager nor any such Related Party shall be liable to account to the Supervisor or any Member for any profit arising from any such transaction.
- 21.4 A failure to comply with clause 21.1 does not affect the validity of a transaction (subject to any Court order to the contrary).³³

22 Power to alter Governing Document

- 22.1 Subject to Relevant Law, this Governing Document may be amended by a deed executed by the Manager and the Supervisor.

23 Winding up of the Scheme

Triggering wind-up

- 23.1 Subject to Relevant Law, the Scheme can be wound up if:
- 23.1.1 the Manager notifies the Supervisor in writing of the date the Scheme is to be wound up; or
 - 23.1.2 a Special Resolution of Members is passed to wind up that Scheme; or
 - 23.1.3 the Scheme is required to be wound up pursuant to Relevant Law.³⁴
- 23.2 The provisions of Relevant Law³⁵ relating to the winding up of KiwiSaver Schemes shall apply to the winding up of the Scheme.
- 23.3 Immediately after the date that the winding up takes effect (**Winding-Up Date**):
- 23.3.1 no further Persons shall be admitted as Members to the Scheme; and
 - 23.3.2 no further Contributions shall be accepted from Members or the Employers or other person to the Scheme, except Contributions that accrued before the Winding Up Date; and
 - 23.3.3 the Manager shall direct the Supervisor to realise the Assets of the Scheme as soon as practicable, applying reasonable commercial common sense.

Notification of wind up

- 23.4 The Supervisor shall, to the extent required by Relevant Law, notify relevant parties of any winding up resolution or order.

Application of the Assets of the Scheme

³³ Section 173(6) of the FMCA.

³⁴ Sections 195 and 211 of the FMCA.

³⁵ Sections 171, 212 and 213 of the FMCA, and sections 50 to 52 and subpart 3 of Part 2 of the KiwiSaver Act.

- 23.5 Subject to clause 23.9 and any Relevant Law, when the proceeds obtained from realising the Assets of the Scheme have been received, the Supervisor shall allocate the proceeds in the following order of priority:
- 23.5.1 first, in allowing, to the extent permitted by clause 19.5 if applicable, for all reasonable costs, fees, liabilities and expenses that have been incurred or will accrue in the winding up of the Scheme and the administration of the Scheme up to the Winding Up Date and any Tax of the Scheme or of the Members (including for the avoidance of doubt fees payable to the Supervisor and the Manager and the reasonable executive time attributable to the discharge of their obligations on a winding up);
 - 23.5.2 secondly, in providing for benefits payable under this Governing Document which had become payable prior to the Winding Up Date and then remain unpaid;
 - 23.5.3 thirdly, in respect of each Member who at the Winding Up Date has any sum in their Member Account and Member Employer Account at that date a benefit equal in value to the sum of the Member Account and Member Employer Account;
 - 23.5.4 fourthly, after consultation with the relevant Principal Participating Employer, in augmenting all or any of the benefits under clauses 23.5.2 to 23.5.3 above in an equitable manner as determined by the Supervisor and the Manager with any money in the Scheme relating to the Relevant Reserve Fund.
- 23.6 If in following the priorities of payment there is insufficient money to satisfy all the obligations above the amount of each benefit shall be reduced equitably and proportionately among all Members entitled to the benefits.
- 23.7 None of the Assets of the Scheme may revert to any of the Participating Employers on the winding up of the Scheme.
- 23.8 No Assets held in respect of the Member Account, Member Employer Account or Reserve Fund relating to the Participating Members in respect of a particular Participation Agreement shall be used to pay any benefit or liability for any Member apart from the Member in respect of whom the Accounts are held and who are Participating Members or former Participating Members in respect of the Participation Agreement.
- 23.9 All benefits payable to Members of the Scheme on a windup shall, to the extent required by Relevant Law, be paid by way of transfer to another KiwiSaver Scheme.
- 23.10 The Supervisor and the Manager shall, to the extent required by Relevant Law, provide reports to all relevant parties following a wind up.

24 Unitisation

Scheme unitised

- 24.1 The Manager shall operate the Scheme (and each Fund) on a unitised basis, with the beneficial interests in each Fund divided into Units.

Equal but not specific interests

- 24.2 Units referable to a Fund shall:
- 24.2.1 be of one class and confer identical rights and interests;
 - 24.2.2 confer on each Member an equivalent interest in all of the investments comprised in the relevant Fund corresponding to the Member's Interest (or the relevant portion of the Member's Interest), but shall not confer any interest, to the exclusion of any other Member, in any particular investment comprised in the Scheme or the relevant Fund (with the result that no Member will be entitled to require the transfer of any investment to the Member); and
 - 24.2.3 not confer any right or interest in the assets of any other Fund.

Unit Price

- 24.3 Each Unit Price shall be determined on each Valuation Day by dividing the Net Value of the relevant Fund by the number of Units then on issue in respect of that Fund, and rounding the product in the manner, and to the number of decimal places, as the Manager may decide in its absolute discretion. For the avoidance of doubt, the Net Value used to determine the Unit Price on a Valuation Day shall not include amounts received for which Units are to be but have not been issued, and shall include amounts debited, transferred or withdrawn from Accounts for which Units are to be but have not been cancelled, at the time of such determination.

Unitising Contributions

- 24.4 Subject to clause 24.5, in respect of:
- 24.4.1 each Contribution and other amount accepted into the Scheme under clauses 36 to 38;
 - 24.4.2 any other amount accepted into the Scheme which the Manager considers should give rise to the issue of Units; and
 - 24.4.3 any amount switched from one Fund to another Fund;
- the Manager shall issue Units in the relevant Fund or Funds:

- 24.4.4 by the next Valuation Day after the acceptance of a valid Contribution, valid application, or valid request to switch (as determined by the Manager); or
- 24.4.5 if (and to the extent that) the Manager determines that it is not reasonably practicable for it to issue such Units by the next Valuation Day and advises the Supervisor accordingly, by what the Manager considers to be the next reasonably practicable Valuation Day.

Units issued under this clause 24.4 shall be based upon the amount accepted, payable or transferred (net of any amount that the Manager considers appropriate to deduct for fees, expenses, Taxes or other liabilities) and the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on the day when the Units are issued.

Delaying unitisation

- 24.5 Without limiting clause 24.4, the Manager may delay converting into Units under clause 24.4 any Contributions accepted into the Scheme in respect of any Member or group of Members until such time as the Manager is reasonably satisfied that those Contributions do not exceed the amount required to be paid to the Scheme in respect of that Member (or those Members collectively) under the KiwiSaver Act and this Governing Document and have not otherwise been paid in error.

Ceasing to issue Units

- 24.6 Without limiting clause 24.4 or any other provision of this Governing Document (but subject at all times to the provisions of the KiwiSaver Act) the Manager, after consulting with the Supervisor, may determine at any time or times that from a specified date no further Units will be issued pursuant to this Governing Document (or, if applicable, in relation to a specified Fund or Funds) either:

- 24.6.1 for a specified period; or
- 24.6.2 until the Scheme (or the relevant Fund or Funds) is (or are) terminated;

and in that case the Manager shall not, after the date specified and for the period contemplated by subclause 24.6.1 or subclause 24.6.2 (as applicable), issue any further Units under this Governing Document or in relation to such Fund or Funds.

Cancelling Units

- 24.7 In respect of amounts debited, transferred or withdrawn from Accounts pursuant to clauses 27 to 29, the Manager shall cancel the number of Units determined by dividing the amount debited by the relevant Unit Price or Unit Prices applying on a day no later than the next Valuation Day after the Manager determines that the debit, transfer or withdrawal shall be made (provided that,

for amounts debited on account of Tax payable, the Manager may use the Valuation Day on which the Manager finally determines the amounts of Tax payable).

Uncleared funds

- 24.8 Units issued against uncleared funds may be cancelled if the funds are not subsequently cleared.

Units issued in error

- 24.9 Subject to Relevant Law, Units that the Manager determines have been issued in error may be treated as void unless a Member has altered his or her position in good faith to the Member's detriment in reliance on the validity of those Units (in circumstances where Relevant Law does not require the Units to be treated as void).

Part Units

- 24.10 For the purposes of this clause 24, the Manager may at any time and from time to time:
- 24.10.1 create and cancel part Units; and
 - 24.10.2 consolidate or divide Units;
 - 24.10.3 in each case in such manner as the Manager (acting reasonably) determines.

25 Valuations³⁶

- 25.1 The market value of each Asset of or to be acquired by a Fund shall be such of the following as the Manager determines from time to time:
- (a) the latest sale price, or such other market convention, of the Asset on any recognised exchange at the time of valuation;
 - (b) the amount certified by an independent or suitably qualified person to be the fair value of the Asset; and
 - (c) the amount agreed upon between the Manager and the Supervisor on the basis of an agreed methodology as the fair value after taking account of the most recent material sales, valuations, and other information that the Manager and the Supervisor consider to be appropriate.

³⁶ Section 135(1)(c) of the FMCA.

- 25.2 On each Valuation Day in respect of each Fund the Manager shall calculate the Net Value of the Assets of each relevant Fund by adding the aggregate of the market value of the Assets of that Fund on the relevant Valuation Day and the amount of any income that is due to be received by the Fund and deducting the aggregate of all Liabilities of that Fund determined on an accruals basis up to the time of the day (if any) determined by the Manager on the relevant Valuation Day. The amount determined by the Manager must be calculated in accordance with generally accepted accounting practice where it is appropriate and reasonable to do so.
- 25.3 The Net Value shall be calculated by using a methodology determined by the Manager (after consulting with the Supervisor) from time to time, details of which are set out in a separate document lodged on the Disclose Register.
- 25.4 The Net Value ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and any Member or Beneficiary.

26 Establishment of Accounts

- 26.1 When a Member joins the Scheme, the Manager will open an Account or Accounts (as applicable) for the Member with respect to the Scheme.

27 Member Account

- 27.1 The Manager shall establish and maintain for each Member a Member Account, denominated in Units and comprising Units issued in respect of:
- 27.1.1 Contributions paid by the Member;
 - 27.1.2 Contributions paid by any other person in respect of the Member;
 - 27.1.3 amounts transferred into the Scheme from another Retirement Scheme in respect of the Member;
 - 27.1.4 transfers from the Member Employer Account in respect of that Member;
 - 27.1.5 transfers from the Relevant Reserve Fund;
 - 27.1.6 Crown Contributions or other amounts received in respect of that Member in accordance with Relevant Law;
 - 27.1.7 any amounts representing Tax Benefits in respect of that Member;
 - 27.1.8 any other amount which the Manager considers is appropriate to pay to the Member Account.

less Units cancelled in respect of:

- 27.1.9 benefit payments or other Permitted Withdrawals made to or in respect of a Beneficiary;
- 27.1.10 any amount transferred from the Scheme to another Retirement Scheme;
- 27.1.11 fees charged by the Manager or the Supervisor that are to be paid by the Member and deducted from the Member Account pursuant to this Governing Document;
- 27.1.12 subject to clause 50.2, payment of the Member's share of any other fees, costs, expenses, liabilities, insurance premiums or Tax which are to be payable by the Member and deducted from the Member Account pursuant to this Governing Document;
- 27.1.13 the payment of any amount required by Relevant Law, any statute, or order of any court under any statute;
- 27.1.14 any adjustments for Tax under clause 44;
- 27.1.15 subject to Relevant Law, any other amount payable from the Member Account under this Governing Document or that the Manager considers is appropriate.

28 Member Employer Account

- 28.1 The Manager may establish and maintain for a Member a Member Employer Account, denominated in Units and comprising Units issued in respect of:
 - 28.1.1 Contributions paid by the Employer for the benefit of the Member;
 - 28.1.2 amounts transferred into the Scheme from another KiwiSaver Scheme or a Complying Superannuation Fund in respect of the Member in accordance with Relevant Law;
 - 28.1.3 any amounts received in respect of that Member in accordance with Relevant Law;
 - 28.1.4 transfers from the Relevant Reserve Fund;
 - 28.1.5 any amounts representing Tax Benefits in respect of that Member;
 - 28.1.6 any other amount which the Manager determines is appropriate to pay to the Member Employer Account.
- less Units cancelled in respect of:
 - 28.1.7 benefit payments or other Permitted Withdrawals to a Beneficiary;
 - 28.1.8 any amount transferred from the Scheme to another Retirement Scheme in accordance with Relevant Law;

- 28.1.9 fees charged by the Manager or the Supervisor that are to be paid by the Member and deducted from the Member Employer Account pursuant to this Governing Document;
- 28.1.10 subject to clause 50.2, payment of the Member's share of any other fees, costs, expenses, liabilities, insurance premiums or Tax which are to be deducted from the Member Employer Account pursuant to this Governing Document;
- 28.1.11 any payment to the Relevant Reserve Fund when a Member is paid a benefit but is not entitled to receive all of their Member Employer Account balance;
- 28.1.12 any payment to a Member Account;
- 28.1.13 the payment of any amount required by Relevant Law, any statute, or order of any court under any statute;
- 28.1.14 any adjustment for Tax under clause 44;
- 28.1.15 subject to Relevant Law, any other amount payable from the Member Employer Account under this Governing Document or that the Manager considers is appropriate.

29 Reserve Fund

- 29.1 The Manager may establish and maintain for a Participating Employer an Employer Reserve Account, denominated in Units, comprising Units issued in respect of:
 - 29.1.1 any amounts contributed to a Member Employer Account of a Participating Member by a Participating Employer that are not required to meet the benefits of the Participating Member from the Scheme;
 - 29.1.2 any amounts representing Tax Benefits;
 - 29.1.3 any other amount which the Manager and the Principal Participating Employer agree is appropriate to pay to the Reserve Fund.
- 29.2 The Manager will at all times treat each Reserve Fund as a distinct trust with its separate Assets and liabilities and held on the terms of this Governing Document.
- 29.3 The Manager may, in consultation with the Principal Participating Employer, debit or cancel Units previously credited to the Employer Reserve Account in any one or more of the following ways:
 - 29.3.1 to provide benefits, other than retirement benefits, on an equitable basis for each Member who is a Participating Member under the relevant Participation Agreement;

- 29.3.2 to augment retirement benefits for each Member who is a Participating Member under the relevant Participation Agreement on an equitable basis;
- 29.3.3 to increase all Member Accounts or Member Employer Accounts of Participating Members under the relevant Participation Agreement on an equitable basis;
- 29.3.4 to pay costs, expenses and fees for Members who are Participating Members under the relevant Participation Agreement, on an equitable basis among those Members;
- 29.3.5 to pay Employer Contributions;
- 29.3.6 to pay insurance premiums for Members who are Participating Members under the relevant Participation Agreement, on an equitable basis among those Members;
- 29.3.7 to make any adjustment for Tax under clause 44,

provided that notwithstanding anything to the contrary contained in this Governing Document or in the Participation Agreement, no payment may be made to the Participating Employer from the Reserve Fund without the prior written consent of the FMA (for so long as such consent is required by any Relevant Law).

30 Individual transfers to another KiwiSaver scheme

- 30.1 Members shall be entitled to transfer their interests in the Scheme to another KiwiSaver Scheme in accordance with Relevant Law.
- 30.2 Members in respect of whom a transfer is made shall not be entitled to any other benefit under the Scheme.
- 30.3 The receipt from an authorised person for the receiving KiwiSaver Scheme shall be a complete discharge to the Supervisor and the Manager.
- 30.4 The amount of a transfer is made net of any Tax payable in respect of the Member.

31 Bulk transfers to another KiwiSaver scheme

- 31.1 To the extent permitted by Relevant Law³⁷, a Participating Employer may elect to transfer that part of the Scheme that is applicable to its participation in the Scheme to another KiwiSaver Scheme.

³⁷ Section 180 of the FMCA.

- 31.2 Any transfer that is made to another KiwiSaver Scheme under this clause 31 must be made in accordance with the procedural and other requirements of Relevant Law. The transfer of a substantial number of Members with Member consent, or without Member consent but with the consent of the FMA, in accordance with the FMCA is authorised for this purpose.³⁸
- 31.3 Subject to Relevant Law, a Participating Employer transferring under clause 31.1 will be responsible for payment of reasonable costs incurred by the Scheme, the Supervisor and the Manager in relation to such a transfer.
- 31.4 Members in respect of whom a transfer is made shall not be entitled to any other benefit under the Scheme.
- 31.5 The receipt from an authorised person for the KiwiSaver Scheme to which the transfer is made shall be a complete discharge to the Manager and the Supervisor.
- 31.6 The amount of a transfer is made net of any Tax payable in respect of the Member.

32 Scheme mergers

The Manager may merge the Scheme with another Scheme by transferring the assets in the Scheme to the new Scheme in return for the issuance of Units in the new Scheme equal to the value of the Members' Units in the Scheme (as adjusted in accordance with this Governing Document), in accordance with Relevant Law.³⁹ The transfer of a substantial number of Members with Member consent, or without Member consent but with the consent of the FMA, in accordance with the FMCA is authorised for this purpose.⁴⁰

33 Transfers from another Retirement Scheme

- 33.1 If any Member is entitled to transfer an amount from any other Retirement Scheme the Manager shall, at its discretion, accept a transfer amount from that other scheme.
- 33.2 The transfer amount is the amount of money which the manager, trustee or supervisor (as applicable) of the transferor scheme transfers to the Scheme on behalf of the Member.
- 33.3 If any transfer amount is paid into the Scheme it shall be added to the relevant Member Account or Member Employer Account in respect of the Member unless

³⁸ Sections 179 to 182 of the FMCA.

³⁹ Sections 179 to 181 of the FMCA. See clause 28 of Schedule 4 of the FMCA regarding the amalgamation of schemes.

⁴⁰ Sections 179 to 181 of the FMCA.

there are legitimate specific requirements from the transferor scheme's manager, trustee or supervisor (as applicable) that are agreed to by the Manager.

- 33.4 The Manager shall have regard to any restrictions or limitations or conditions imposed by the transferor scheme manager, trustee or supervisor (as applicable) and the requirements of Relevant Law on the amount transferred.

34 Participating Employers

Participation Agreement

- 34.1 Any employer or Association who is invited to join by the Manager may join the Scheme as a Principal Participating Employer. Any person who applies to participate in the Scheme as a Principal Participating Employer shall:
 - 34.1.1 provide all relevant information requested by the Manager;
 - 34.1.2 agree with the Manager, subject to Relevant Law, the terms governing the membership of the Scheme for Participating Members in respect of that Principal Participating Employer; and
 - 34.1.3 complete and sign a Participation Agreement.
- 34.2 The Participation Agreement shall, subject to Relevant Law, contain the following:
 - 34.2.1 the conditions of eligibility for Membership;
 - 34.2.2 the Contributions to be paid by Members and the Participating Employer;
 - 34.2.3 the options available for investment of Contributions;
 - 34.2.4 the vesting schedule for Participating Employer Contributions;
 - 34.2.5 any fees payable;
 - 34.2.6 any other provisions or rules for Members who are Participating Members in respect of that Participating Employer.
- 34.3 From the date specified in the Participation Agreement the Employer or Association shall become a Principal Participating Employer participating in this Scheme and shall be bound by this Governing Document.
- 34.4 A Principal Participating Employer may, with the consent of the Manager, invite an Associated Employer or Associated Participant to participate in the Scheme as an Associated Participating Employer. The following provisions shall apply to an Associated Participating Employer:

- 34.4.1 The Associated Participating Employer shall enter into an agreement with the Manager whereby it agrees to be bound by the terms of the Participation Agreement entered into by the Principal Participating Employer and by the terms of this Governing Document.
- 34.4.2 If the Principal Participating Employer ceases to participate in the Scheme, an Associated Participating Employer may, subject to consent of the Manager, continue to participate in the Scheme provided that the Associated Participating Employer signs a Participation Agreement on the same terms and conditions as the Participation Agreement entered into by the Principal Participating Employer. On signing of the Participation Agreement, the Associated Participating Employer will become a Principal Participating Employer.
- 34.4.3 An Associated Participating Employer who commits a breach of any of the terms of the Participating Agreement or the terms of this Governing Document (and not the Principal Participating Employer) shall be liable for that breach as provided for by the terms of the relevant Participating Agreement.

Terms of Participation Agreement prevail

- 34.5 Subject to clause 34.6, in the event of any conflict or inconsistency between the terms of a Participation Agreement and the other terms contained in this Governing Document, the terms of the Participation Agreement shall prevail.

KiwiSaver Act prevails

- 34.6 Notwithstanding any other term in this Governing Document, no term in a Participation Agreement may be contrary to the requirements of the KiwiSaver Act and any such term shall be void to the extent that it is contrary.

Termination of Participation Agreement

- 34.7 A Participating Employer shall cease to participate in the Scheme if:
 - 34.7.1 the Participating Employer gives 90 days prior notice in writing to the Manager of the effective date that it intends to cease to continue participating in the Scheme for any reason; or
 - 34.7.2 an order is made or resolution is passed for the liquidation or bankruptcy of the Participating Employer except for the purposes of amalgamation or reconstruction; or
 - 34.7.3 the Manager gives at least one months' notice in writing to the Participating Employer of the effective date on which the Participating Employer's participation shall cease.
- 34.8 Subject to clause 34.9, if written notice is given under clauses 34.7.1 or 34.7.3 or an order is made or a resolution is passed for the liquidation or bankruptcy of

the Participating Employer under clause 34.7.2 there will be a partial wind-up of the Scheme.

34.9 Where a Principal Participating Employer ceases to participate in the Scheme, and an Associated Participating Employer enters into a Participation Agreement under clause 34.4.2 above:

34.9.1 The partial wind-up provisions set out in clause 35 will not apply to the Accounts of Participating Members in respect of that Associated Participating Employer; and

34.9.2 An equitable part of the Relevant Reserve Fund shall, from the date of execution of the new Participation Agreement, be held as a new Relevant Reserve Fund on the terms of the new Participation Agreement.

35 Partial wind-up

35.1 Where a Member's Participating Employer ceases to participate in the Scheme, then:

35.1.1 the Member shall continue to contribute, subject to Relevant Law, to the Scheme in a manner agreed to by the Manager;

35.1.2 the Member Employer Account in respect of that Member will be transferred or credited to the Member Account;

35.1.3 a prorated portion of the Relevant Reserve Fund will be transferred or credited to the Member Account after any expenses of partially winding up have been paid or deducted from the Reserve Account; and

35.1.4 the Participating Employer will be under no obligation whatsoever to make any future Contributions to the Scheme and will have no rights or powers whatsoever in respect of the Scheme.

36 Member Contributions

36.1 Members and Participating Employers shall contribute to the Scheme in accordance with Part 3 of the KiwiSaver Act and the Manager shall accept:

36.1.1 Contributions that are payable to the Scheme by or in respect of a Member via the Commissioner under the KiwiSaver Act, unless the Manager has reasonable cause to believe that:

(a) those Contributions have not been correctly deducted or remitted to the Scheme in terms of Part 3 of the KiwiSaver Act; or

- (b) the Commissioner has not provided, with respect to those Contributions, the information required under section 79 of the KiwiSaver Act;

- 36.1.2 Member Tax Credits and any other Crown Contributions;
- 36.1.3 Contributions required to be made to the Scheme by or in respect of a Member, by way of salary or wage deductions, under a Participation Agreement; and
- 36.1.4 amounts transferred from another KiwiSaver Scheme or Retirement Scheme in respect of a Member in accordance with subpart 3 of Part 2 of the KiwiSaver Act.
- 36.2 The Manager may accept, but shall not be required to accept, Contributions and monies payable to the Scheme by or in respect of a Member other than those referred to in clause 36.1, including amounts transferred from another Retirement Scheme in respect of the Member. Subject to Relevant Law, the Manager may impose such terms and conditions for such acceptance (including, without limitation, as to the amount and mode of payment) as the Manager determines.
- 36.3 Subject to Relevant Law, the Manager may set minimum Contribution amounts.

37 Employer Contributions

- 37.1 A Participating Employer shall contribute the amount of each Participating Member's salary provided for in the Participation Agreement as a Contribution to the Scheme, subject to any minimum requirements under the KiwiSaver Act.
- 37.2 Subject to any minimum requirements under the KiwiSaver Act, a Contributing Employer shall contribute such amounts as it chooses.
- 37.3 Before paying any Contributions to the Scheme the Employer shall deduct any Tax or deductions required to be paid to any regulatory or governmental authority.
- 37.4 Unless the Participation Agreement provides otherwise and subject to the requirement to maintain the minimum Contribution required from Members under the KiwiSaver Act, the Employer may at any time:
 - 37.4.1 stop Contributions;
 - 37.4.2 reduce Contributions;
 - 37.4.3 increase Contributions; or
 - 37.4.4 make additional Contributions.

- 37.5 Subject to Relevant Law, the Manager may set minimum Contribution amounts.
- 37.6 If the Participating Employer is entitled to alter Contribution amounts the Participating Employer must give prior notice in writing to both the Manager and the Participating Members before changing the Contribution amounts under this clause.
- 37.7 To the extent that any Contributions by an Employer form part of the Contribution rate specified and paid under section 64 of the KiwiSaver Act, these Contributions shall vest fully in the Member immediately after the Contributions are made.

38 Other Contributions

- 38.1 At the Managers discretion, any other Person may make Contributions in respect of a Member of the Scheme to the extent such Contribution is permitted under Relevant Law.

39 Investment of Contributions

- 39.1 Any money received by or on behalf of the Manager in respect of Contributions:
 - 39.1.1 shall be paid by the Manager on receipt into a separate bank account and held until Units for those Contribution amounts are issued. Such bank account shall be maintained for the Scheme or the relevant Fund in accordance with any Relevant Law⁴¹; and
 - 39.1.2 is subject to the trusts governing the Scheme as set out in this Governing Document and the FMCA.
- 39.2 The Manager shall invest Member's Contributions as soon as is practicable by acquiring Units or other interests in a Fund in accordance with either a direction given under clause 6.15, or if no direction is given, in accordance with clause 6.16.

40 Suspension of Contributions

- 40.1 The following provisions shall apply to a Member who is not a Participating Member:
 - 40.1.1 The Member may stop and recommence making Contributions to the Scheme at any time and for any period provided that any requirements contained in the KiwiSaver Act, which relate to Contributions holidays, have been complied with.

⁴¹ Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

40.1.2 A Member who stops or recommences making Contributions under clause 40.1.1, must advise the Manager, or the Manager's agent, provided however that the Member shall not be required to advise the Manager if the Member makes Contributions to the Scheme via the Commissioner of Inland Revenue in accordance with the KiwiSaver Act.

40.2 A Participating Member may only suspend Contributions to the extent provided for under the KiwiSaver Act and the relevant Participation Agreement.

41 Termination of Contributions

41.1 When a Member stops being a Member all Contributions shall cease.

42 Benefits and other Permitted Withdrawals⁴²

Calculation of Member's Accumulation

42.1 Benefits shall be payable from the Scheme in accordance with the KiwiSaver Scheme Rules (which are implied in the Governing Document under section 126 and Schedule 1 of the KiwiSaver Act).

42.2 Subject to clause 42.3, when the Manager is required under the KiwiSaver Scheme Rules to calculate an amount representing a Member's Accumulation the Manager shall calculate that amount by:

42.2.1 multiplying the Units held in each Fund attributable to the Accounts maintained for the Member by the relevant Unit Price (or, if relevant, the Unit Prices) applying on a day no later than the next Valuation Day after the Manager makes a final determination that a benefit should be paid;

42.2.2 deducting an amount equal to the portion of any Member Employer Account maintained for the Member under clause 28 which is referable to unvested Participating Employer Contributions; and

42.2.3 deducting any further amount that the Manager considers appropriate to deduct with respect to costs, expenses, fees or Tax payable pursuant to this Governing Document or the relevant Participation Agreement, except that if the Scheme is a PIE and the Manager in its complete discretion considers it appropriate not to do so, no deduction shall be made from a benefit on account of any income tax liability.

Different method of calculation

42.3 Subject to clause 42.4, the Manager:

⁴² Section 135(1)(e) of the FMCA.

- 42.3.1 must adopt a method of calculating the amount representing the Member's Accumulation that is different from that set out in clause 42.2 if the Manager determines that the method does not comply with the KiwiSaver Act; and
- 42.3.2 may adopt a method of calculating that amount that is different from that set out in clause 42.2 if the Manager considers it appropriate to do so.

Different method of calculation must meet certain requirements

- 42.4 Any different method adopted by the Manager under clause 42.2 must comply with the KiwiSaver Act and must not be adopted until after the Manager has consulted with the Supervisor.

Partial withdrawals after KiwiSaver End Payment Date

- 42.5 Where a Member has reached the KiwiSaver End Payment Date the Manager may:
 - 42.5.1 allow the Member to withdraw an amount or amounts less than the Member's Accumulation in one or more lump sums and/or at regular intervals; and
 - 42.5.2 subject to the KiwiSaver Act, determine from time to time the minimum amount for each such withdrawal, the permitted manner and frequency of such withdrawals and the minimum balance that must remain in the Scheme and/or any Fund after each such withdrawal.

Withdrawals of Member's Accumulation

- 42.6 Withdrawals of all or part of a Member's Account must only be made in accordance with the KiwiSaver Act and the KiwiSaver Scheme Rules⁴³.

Minimum balance

- 42.7 Subject to Relevant Law, the Manager may from time to time prescribe rules regarding the minimum balance to be held by a Member in their Accounts following any Permitted Withdrawal. If a Member requests a Permitted Withdrawal which would result in that Member having less than any minimum balance prescribed by the Manager under this clause 42.7, the Manager shall be entitled to treat the request as a request by the Member to withdraw the balance of their Accounts, which the Manager may pay or direct the Supervisor to pay as a lump sum.

43 Deferment of benefit

- 43.1 A Member is not required to withdraw that Member's interest in the Scheme on the KiwiSaver End Payment Date.

⁴³ Section 128(1)(c) of the FMCA.

- 43.2 Where a Member has a right to elect to defer receipt of any benefit which they are entitled to receive, the Manager shall inform the Member in writing of that right.

44 Tax and Member Tax Credits

PIE Tax compliance

- 44.1 The Manager may elect that the Scheme be a PIE, or cease to be a PIE, at its complete discretion. The Manager shall have the following additional powers and discretions in respect of the Scheme for so long as the Scheme is a PIE:
- 44.1.1 to select from the available options under the Income Tax Act the method for paying the Scheme's PIE Tax liability and to make any elections provided for in the Income Tax Act required to give effect to that selection;
 - 44.1.2 to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner pursuant to the Income Tax Act;
 - 44.1.3 to make any other elections as to the method of calculation, allocation or attribution of Tax, having regard to the requirements of the Income Tax Act;
 - 44.1.4 to allocate Tax Benefits received by the Scheme or anticipated to be received by the Scheme to Members;
 - 44.1.5 to carry out any other Tax calculations, allocations or attributions required by the Income Tax Act;
 - 44.1.6 to adjust a Member's Accumulation, whether in accordance with the Income Tax Act or otherwise to the extent permitted by Relevant Law, at any time (including immediately prior to paying any benefit or accepting a request to switch from one Fund to another), having regard to the effect of:
 - (a) the Member's Prescribed Investor Rate; and
 - (b) the income (and the losses and associated Tax liabilities and rebates) allocated to the Member under the Income Tax Act, as adjusted for any expenses which the Manager considers it appropriate to charge to the particular Member;
 on the Scheme's PIE Tax liability, and the amount of any rebate or refund, under the Income Tax Act;
 - 44.1.7 to elect to offset Tax liabilities and rebates in respect of more than one Fund or more than one Member to the extent permissible by the Income Tax Act, and to make such adjustments;

- 44.1.8 to allocate the costs associated with the Scheme being a PIE among Members and Funds (to the extent practical);
- 44.1.9 to take all steps as the Manager considers necessary or desirable to ensure the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Income Tax Act relating to PIEs, including declining Contributions or switching some or all of a Member's Accumulation from one Fund to another as if the Manager had received a request to that effect from the relevant Member;
- 44.1.10 to require that before a Member is accepted into the Scheme he or she provides their Tax File Number, Prescribed Investor Rate and any other information required by the Income Tax Act, and that at any time a Member must confirm such details or provide such other information as required by the Income Tax Act on request from the Manager;
- 44.1.11 to value Tax losses of the Scheme for the purpose of determining the Net Value of a Fund in such manner as the Manager thinks fit having regard to the Income Tax Act, generally accepted accounting practice as defined by the Financial Reporting Act 2013 and the Scheme's stated policies (if any) from time to time;
- 44.1.12 to adjust a Member's Unit holding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Income Tax Act or otherwise to the extent permitted by Relevant Law, at any time (including immediately prior to the redemption of the Member's Units); and
- 44.1.13 to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition a Fund to and from being a PIE or to administer the Fund as a PIE.

Withholding Tax from benefits

- 44.2 If the Manager is obliged by Relevant Law to make, or may make and determines to make, any deduction or withholding on account of Taxes from any payment to be made to a Beneficiary, the Manager shall make such deduction or withholding and pay such amount to the relevant taxing authority. On payment of the net amount to the relevant Beneficiary, the full amount payable to the relevant Beneficiary shall be deemed to have been duly paid and satisfied.

Member Tax Credit

- 44.3 For the purposes of obtaining and administering Member Tax Credits payable to the Scheme in respect of Members, the Manager shall have the following additional powers and discretions in respect of the Scheme:

- 44.3.1 to make claims for Member Tax Credits in accordance with the Tax Administration Act 1994;
- 44.3.2 in the case of a Member with units in two or more Funds, to credit any Member Tax Credit paid in respect of the Member to the Member's Account on a pro rata basis between the Funds; and
- 44.3.3 to require a Member (or his or her personal representative, or another relevant person for the purposes of the Administration Act 1969) wishing to withdraw from the Scheme any amount arising from a Member Tax Credit to provide a statutory declaration stating the periods for which the Member has had his or her principal place of residence in New Zealand.

Changes in Tax legislation

- 44.4 Without limiting clause 63.7, following any amendment to or re-enactment of the Income Tax Act (a *Revision*):
 - 44.4.1 all of the discretions and powers available to the Manager where the Scheme is a PIE, whether under this clause 44 or otherwise, shall continue to apply with such modifications as are necessary to reflect the Revision;
 - 44.4.2 the Manager shall have the discretion to apply all of the requirements of the Revision to the Scheme and the Members on such basis as it considers appropriate, taking into account such factors as the Manager considers relevant; and
 - 44.4.3 to the extent reasonably possible taking into account the nature of the Revision, any references in this Governing Document to terms defined in the Income Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

45 Proofs

- 45.1 Any Person claiming to be entitled to a benefit from the Scheme shall on request produce to the Manager any evidence or information that may be reasonably required by the Supervisor or the Manager.
- 45.2 Until that evidence or information is produced the Supervisor or the Manager may withhold payment of any benefit.

46 Receipts

- 46.1 The payment by the Manager or the Supervisor of any benefit in respect of a Member to a Beneficiary shall completely discharge any liability the Manager or the Supervisor may have in respect of that benefit.
- 46.2 Neither the Manager nor the Supervisor shall be under any obligation to see how any benefit paid is used.
- 46.3 Any person to whom a benefit is payable shall, if requested, give to the Manager or the Supervisor at the time of payment a receipt and release in the form required by the Manager or the Supervisor.
- 46.4 In the event of any Member or any Person being paid any amount in error in excess of the Member's proper entitlement then that Person will immediately upon demand by the Manager refund that amount as a debt due to the Scheme.

47 Unclaimed benefits

- 47.1 If the Manager is unable to trace a Beneficiary, the relevant provisions of Relevant Law shall apply.

48 Payment of benefits on death

- 48.1 If a Member dies the Manager must on application by the Member's Personal Representative, pay to that person an amount equal to the value of the Member's Accounts (net of any Tax payable), at the date on which the application is accepted, as part of that Member's estate.
- 48.2 The Manager is entitled to insist on receiving death certificates, probate, letters of administration or any other information it may require before making payment of a death benefit.
- 48.3 If no Personal Representative is appointed in relation to the estate of the deceased Member and no application to the Manager for payment of the Member's Death Benefit is made within seven years of the Member's death, then the Manager may forfeit the benefit and apply it under section 77 of the Trustee Act 1956.

49 Benefits not assignable

- 49.1 Except as expressly provided in Relevant Law, a Member's Accumulation and any future benefits that will or may become payable to a Member under the Scheme

must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.⁴⁴

50 Insured benefits

- 50.1 The Manager may, in its absolute discretion, provide death, disability or other similar benefits in respect of a Member or Members. The Manager may enter into any insurance arrangements with an insurer to make these benefits available for a Member or Members.
- 50.2 The Manager shall, subject to the KiwiSaver Act, be authorised to deduct from a Member Account, a Member Employer Account or Reserve Fund the premiums or cost of providing insured benefits. Subject to the KiwiSaver Act, the insured benefits shall only continue to be offered to a Member if the relevant Member continues to hold interests sufficient to enable the payment of all premiums in respect of the insured benefits. The Manager shall, unless an alternative arrangement is agreed with the Member, be entitled to require the relevant Member to make additional Contributions to the Scheme to cover the premiums or cost of providing insured benefits to that Member. In particular, so long as the KiwiSaver Act so requires, no premiums shall be payable from Contributions that form part of the contribution rate specified and paid under section 64 of the KiwiSaver Act.
- 50.3 Any insured benefits provided to Members will be subject to any conditions imposed by the insurer. The Manager shall be authorised to make payment of any insured benefits subject to the approval and payment of the claim by the relevant insurer.
- 50.4 The Manager shall not be liable for payment of any insured benefits that are not approved or paid by the relevant insurer in accordance with clause 50.3 above.

51 Adjustment to Member's Accounts

- 51.1 As provided for in Relevant Law, the Manager shall be authorised to adjust Member Accounts as required as a result of any underpayment or overpayment of Contributions.

52 Infancy or incapacity of Member

- 52.1 If any benefit is for a Member who is:
 - 52.1.1 an infant; or

⁴⁴ Section 127(1) of the KiwiSaver Act and 135(1)(a) of the FMCA.

- 52.1.2 under a legal incapacity; or
 - 52.1.3 in the opinion of the Manager incapable of managing their own affairs,
- the Manager may pay the benefit to another person for the benefit of that Member on those terms the Manager thinks appropriate.

53 Relationship property

- 53.1 The Manager shall give effect to any court order regarding an arrangement or deed of covenant under Property (Relationships) Act 1976.
- 53.2 A certified copy of any arrangement or deed between the Member and his or her spouse, civil union partner or de facto partner (**Partner**) must be provided to the Manager before the Manager can give effect to any such order of the Court. The Manager shall give effect to such an arrangement or deed only if the Manager is satisfied that the arrangement or deed has been approved by the Court as meeting the requirements of the Property (Relationships) Act 1976.
- 53.3 The Manager shall not pay an amount to the Member and/or Partner which would be greater in value than the benefits to which the Member would have been otherwise entitled to receive.

54 Auditor

Appointment and remuneration

- 54.1 A Qualified Auditor selected by the Manager, in consultation with the Supervisor and entitled by Relevant Law to act as such⁴⁵ must be appointed as Auditor of the Scheme and the Register. The Manager and the Supervisor must agree upon the services to be performed and reports to be provided by the Auditor and their scope having regard to requirements under the FMCA⁴⁶. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

Removal/retirement

- 54.2 The Auditor may at any time and from time to time be removed by the Manager with notice to the Supervisor. The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Scheme and/or Members and instructs the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' written notice.

Power to appoint Auditor

⁴⁵ Section 461E of the FMCA.

⁴⁶ Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.

- 54.3 The power to appoint a new Auditor shall be vested in the Manager, subject to the consultation with the Supervisor in accordance with clause 54.1.

Restrictions on Auditor

- 54.4 The Auditor may be the auditor of the Manager, or of the Supervisor, or of an Associated Person of either the Manager or the Supervisor or of any other trust whether of a similar nature to the Scheme or otherwise.

Compliance with FMCA auditor requirements

- 54.5 The Manager must comply with the requirements of Relevant Law relating to the appointment of the Auditor and the Auditor's opportunity to report to the Supervisor.⁴⁷

55 Meetings

- 55.1 The Manager may call a meeting of Members and at time and, when required by the FMCA, the Manager must call a meeting of Members, in each case, in the manner and on the basis set out in the FMCA and the FMC Regulations.⁴⁸ A meeting of Members shall be conducted in accordance with the requirements of the FMCA.

56 Members bound by this Governing Document

- 56.1 Except where this Governing Document expressly provides otherwise or the context otherwise requires, the terms and conditions of this Governing Document are for the benefit of and binding on each Member and legally enforceable as between the Manager, the Supervisor and Members (including, for the avoidance of doubt, any Member admitted to membership of the Scheme pursuant to clause 3.1.1 or clause 3.1.3) and all persons claiming through each Member as if the Member had been party to and had executed this Governing Document.
- 56.2 Subject to the rights created for Members by this Governing Document, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon them or any of them by this Governing Document or in respect of all or any of the assets of the Scheme, or to exercise any right, power or privilege in respect of any investment comprised in the Scheme.

⁴⁷ Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

⁴⁸ Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.

57 Notice to Beneficiary

- 57.1 Subject to Relevant Law, any notice given to any Beneficiary of the Scheme shall be considered served if:
- 57.1.1 it is delivered to that Beneficiary personally or to the Beneficiary's normal home address; or
 - 57.1.2 it is sent by post to the address of the Beneficiary last known to the Manager; or
 - 57.1.3 sending it to the information system specified by the Member for the purpose of receiving notices by electronic means; or
 - 57.1.4 sent by electronic mail in accordance with the provisions of the Electronic Transactions Act 2002.
- 57.2 A Member must notify the Manager of any change to the Member's registered address or to the information system to be used for the purpose of the Member's receipt of notices by electronic means, and the Manager must ensure that the Register is altered accordingly.
- 57.3 Any notice sent by post to a Beneficiary shall be considered served three days after the date it was posted. Any notice sent to the information system specified by the Member for the purpose of receiving that notice by electronic means will be deemed to have been received once it has left the sender's information system. Any notice sent by email shall be deemed to have been served provided no non delivery answer back is received by the sender within 1 hour of sending.

58 Service of notice to parties to Governing Document

- 58.1 Any notice required to be given to the Supervisor, the Manager, or any Employer may be:
- 58.1.1 sent by registered mail to such address or Person as the Supervisor, the Manager or the Employer (as the case may be) may specify in writing; or
 - 58.1.2 delivered personally; or
 - 58.1.3 made by facsimile; or
 - 58.1.4 made in any other manner as may be agreed between the Manager and the Supervisor or the Employer (as the case may be).
- 58.2 A notice given to the Supervisor, the Manager, or an Employer shall be considered to have been duly given or made:
- 58.2.1 three days after being deposited in the mail by the sender with mail postage pre-paid;

- 58.2.2 on delivery when delivered by hand by the sender;
- 58.2.3 if sent by facsimile when a completed transmission report is received by the sender unless a verifiable query as to material eligibility is properly raised; or
- 58.2.4 if made in any other manner then as agreed between the Manager and the Supervisor or the Employer (as the case may be).

59 Confidentiality

- 59.1 The Supervisor and the Manager must treat all information disclosed to it in connection with the Scheme in a confidential manner. They may however pass on information to those concerned with the Scheme's administration or as required by law. In these circumstances the Supervisor or the Manager (as the case may be) shall obtain assurances from those Persons that all information will be treated by them in the same way. For the avoidance of doubt, this clause does not prevent the Manager from communicating information disclosed to it in connection with the Scheme to any Group Company.

60 New Zealand law

- 60.1 This Governing Document shall be construed according to the laws of New Zealand.

61 Delivery

- 61.1 For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Governing Document will be delivered by each party on the earlier of:
 - 61.1.1 physical delivery of an original of this Governing Document, executed by the relevant party, into the custody of the other party or the other party's solicitors; or
 - 61.1.2 transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a facsimile, photocopied or scanned copy of an original of this Governing Document, executed by the relevant party, to the other party or the other party's solicitors.

62 General

- 62.1 The parties acknowledge that this Deed may be executed in several counterparts, will be binding on the parties upon each having executed an identical copy and will be treated as having been made upon the execution of it by the last party to execute a copy.

63 Definitions

In this Governing Document unless the context sensibly requires otherwise:

Account means a Member Account or Member Employer Account.

Assets means any money, property or other assets of any kind including:

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

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

Associated Employer means any employer who is a subsidiary or associated company of a Principal Participating Employer.

Associated Participant means any employer who is a member or affiliate or employs individuals who are members or affiliates of an Association that is a Principal Participating Employer.

Associated Participating Employer means an Associated Employer or Associated Participant who has agreed to participate in the Scheme under clause 34.4.

Associated Person has the meaning given to it by the FMCA⁴⁹.

Association means a partnership, professional association, union or credit union.

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

Business Day means any day, other than a Saturday or Sunday, or a public holiday (as defined in the Holidays Act 2003) as observed in Auckland or Wellington.

Complying Superannuation Fund has the meaning given to it by the FMCA.

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

Custodian means a person appointed by the Supervisor to hold the Scheme property under clause 7.1 and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Scheme property under clause 7.2.

Default Investment Product means the Fund specified as the default investment product of the Scheme in an Instrument of Appointment, and as described under clause 6.5.

⁴⁹ Section 12(1) of the FMCA.

Default KiwiSaver Scheme means a KiwiSaver Scheme specified in an Instrument of Appointment as a default KiwiSaver Scheme under the KiwiSaver Act.

Default Member means any Member who became a Member in accordance with sections 50 to 52 of the KiwiSaver Act and who has not chosen a Fund.

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

Disclosure Document has the meaning given to it by the FMCA and includes any PDS, Register Entry or Fund Update.

Effective Date means in relation to the Scheme, the date that the Manager elects under clause 19(1)(a) of Schedule 4 to the FMCA to be the date the Scheme is treated as a registered Scheme under FMCA.

Employer means any Contributing Employer or Participating Employer and any related company that is deemed to be related as defined by sub-section 2(3) of the Companies Act 1993.

Existing Fund means a Fund set out in clause 6.6.

FMA means the Financial Markets Authority, or any successor entity.

FMCA means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Fund means an Existing Fund or a Fund established under clause 6.1.

Fund Update has the meaning set out in regulation 5 of the FMC Regulations.

Governing Document means this trust deed as amended from time to time.

Group Company means the Manager and any Related Party of the Manager.

GST means goods and services tax imposed under the Goods and Services Tax Act 1985 or any similar goods and services or value added tax.

Instrument of Appointment means the instrument of appointment, if any, under which the Scheme is specified as a Default KiwiSaver Scheme under the KiwiSaver Act.

KiwiSaver Act means the KiwiSaver Act 2006 as amended from time to time.

KiwiSaver Requirements means requirements imposed by the following:

- (a) the KiwiSaver Act;
- (b) any legislation enacted under the KiwiSaver Act;
- (c) the Instrument of Appointment in relation to the Scheme; and

(d) the Scheme Provider Agreement in relation to the Scheme.

Licensed Manager means a person who holds a licence under the FMCA to act as a manager of a managed investment scheme.

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

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

Member means a natural person who is a member of the Scheme.

Member Account means the member account in respect of a Member as described in clause 27.

Member Employer Account means at any date the Member Employer Account in respect of a Member under clause 28.

Member Tax Credit means the member tax credit provided for in subpart MK of the Income Tax Act and paid to the Scheme in respect of a Member.

Membership means in respect of a Member that Member's membership of the Scheme.

Net Value means in respect of a Fund in the Scheme, the aggregate net value of the Assets of the Fund calculated in accordance with clause 25.2.

Participation Agreement means, in respect of an employer or Association who wishes to participate in the Scheme, the Participation Agreement entered into between the employer or Association and the Manager in such form as is prescribed by the Manager and as is required under clause 34.1.3 of this Governing Document.

Participating Employer means a Principal Participating Employer or Associated Participating Employer.

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

Participating Member means a Member who joins the Scheme under the terms of a Participation Agreement.

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

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

PDS means the product disclosure statement or PDS, as defined by the FMCA.

Preferred Member means any Member of the Scheme who is not a Default Member.

Qualified Auditor has the meaning given to it by the FMCA.

Register means the register of Members maintained for the Scheme pursuant to the FMCA.

Register Entry has the meaning given to it by the FMCA.

Regulated Offer has the meaning given to it by the FMCA.

Related Party has the meaning given to it by the FMCA⁵⁰.

Related Party Benefit has the meaning given to it by the FMCA⁵¹.

Relevant Law means, as appropriate, all laws applicable to the Manager (including compliance with the terms of its manager licence from the FMA), the Supervisor, the Scheme or a Fund at applicable points in time and which may include, without limitation, the FMCA, the FMC Regulations, the KiwiSaver Requirements, and any frameworks or methodologies issued by the FMA under such legislation.

Relevant Reserve Fund means the appropriate Reserve Fund as the context requires.

Reserve Fund means at any date the reserve fund in respect of a Participation Agreement as described in clause 29.

Retirement Scheme means a KiwiSaver Scheme, superannuation scheme or workplace savings scheme (each as defined in the FMCA), a superannuation scheme registered under the Superannuation Schemes Act 1989 or any overseas superannuation scheme, in respect of which transfers to or from the Scheme are permissible under Relevant Law⁵².

SIPO has the meaning given to it by the FMC Regulations⁵³.

Special Resolution has the meaning given to it in relation to a KiwiSaver Scheme by the FMCA⁵⁴.

Supervisor means Trustees Executors Limited or such other person who is appointed as the Supervisor for the time being of the Scheme and, where the context requires or allows, this term includes any Custodian.

Tax means any income tax (including tax payable by a Portfolio Investment Entity), capital gains tax, withholding tax, GST, withdrawal or other transactional tax, duties and

⁵⁰ Section 172(2) of the FMCA.

⁵¹ Section 172(1) of the FMCA.

⁵² Section 6 of the FMCA.

⁵³ Regulation 5 of the FMC Regulations.

⁵⁴ Section 6 of the FMCA.

other levies, imposts, deductions and charges, together with interest, penalties, fees or charges made on or in respect of such amounts.

Tax Act means the Income Tax Act 2007.

Tax Benefits means any rebates, refunds, credits or other Tax benefit or relief from Tax, together with any interest thereon.

Unit means a unit in a Fund as referred to in clause 24.

Unit Price means the price for a Unit calculated under clause 24.3.

Valuation Day means a day on which a Fund is valued under clause 25, being each Business Day or at such other intervals (not exceeding 31 days) as the Manager may determine.

Terms defined in KiwiSaver Act

- 63.1 Each of the terms *Commissioner, Contribution, Crown Contribution, Default KiwiSaver Scheme Employer's Chosen KiwiSaver Scheme, Instrument of Appointment, KiwiSaver End Payment Date, KiwiSaver Scheme, KiwiSaver Scheme Rules, Member's Accumulation, Member's Interest* and *Permitted Withdrawal* has the meaning given to that term by the KiwiSaver Act, and is capitalised for ease of reference.

Terms defined in Income Tax Act

- 63.2 Each of the terms *Portfolio Investment Entity or PIE, Prescribed Investor Rate* and *Tax File Number* has the meaning given to that term by section YA 1 of the Income Tax Act and is capitalised for ease of reference.

Interpretation

- 63.3 The headings and margin notes in this Governing Document are only for convenience of reference and shall not affect its interpretation.
- 63.4 In this Governing Document where the context permits words describing any gender include all genders.
- 63.5 This Governing Document is binding upon the parties and their respective successors, Personal Representatives and permitted assigns.
- 63.6 In this Governing Document where the context permits words describing the singular include the plural and vice versa.
- 63.7 Reference to any statute, statutory regulations or other statutory instrument includes all amendments and re-enactments of that statute, statutory regulations or instrument and, in addition, reference to any statute includes all statutory regulations or instruments from time to time made and in force under that statute.

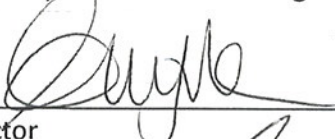
- 63.8 References to legislation or any provision of that legislation include all amendments or replacements or additions to that legislation or provision of that legislation.
- 63.9 The terms of the KiwiSaver Scheme Rules and the provisions implied into the Governing Document under Relevant Law will apply for so long as they are implied in the Governing Document under Relevant Law despite anything to the contrary in the Governing Document, and any provision in the Governing Document that is contrary to any such implied term will be void to the extent that it is contrary.
- 63.10 Footnotes used in this Governing Document do not form part of this Governing Document, are a guide only and, where they refer to legislative provisions, they are not intended to incorporate those provisions in this Governing Document or affect the interpretation of this Governing Document. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Governing Document to comply with a particular Act or legislation generally.
- 63.11 Where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, which would be applicable to the Scheme or a Fund and are inconsistent with this deed, this deed shall be deemed to be modified to the extent necessary to be consistent with such frameworks or methodologies in respect of the Scheme or that Fund.

Execution and date

Executed and delivered as a deed.

Date: 13 OCTOBER 2016

Signed by Fisher Funds Management Limited:




Director



Director

Signed by Trustees Executors Limited:



Director/Authorised signatory

Robert Gatward




Director/Authorised signatory

Melanie Lyn Hewitson



2016/202 (1 of 1)

in the presence of:

Witness signature: 

Witness name:

Occupation: Adesh Kaur
Business Analyst

Address: Auckland