

Dated

19 August 2016

**BNZ KIWISAVER SCHEME
GOVERNING DOCUMENT**

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GOVERNING DOCUMENT

DATED 19 August 2016

BETWEEN BNZ Investment Services Limited at Level 4, 80 Queen Street, Auckland 1010 (the "**Manager**")

AND The New Zealand Guardian Trust Company Limited at Level 14, 191 Queen Street, Auckland 1010 (the "**Supervisor**")

BACKGROUND

A. The BNZ KiwiSaver Scheme (the "**Scheme**") was established by a trust deed 8 January 2013 (as amended by a deed of amendment dated 1 July 2014) (the "**Existing Deed**").

B. The Scheme is a KiwiSaver Scheme registered under the KiwiSaver Act.

C. Five Establishment Deeds dated 28 January 2013 established the following funds within the Scheme:

- (i) Cash Fund;
- (ii) Conservative Fund;
- (iii) Balanced Fund;
- (iv) Moderate Fund; and
- (v) Growth Fund; and

a further Establishment Deed dated 16 September 2015 established the First Home Buyer Fund within the Scheme (collectively, the "**Existing Establishment Deeds**").

D. The Manager and the Supervisor wish to amend the Existing Deed and the Existing Establishment Deeds by substituting this Governing Document for them 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 minor 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:

The parties agree that with effect on and from the Effective Date, the Existing Deed and the Existing Establishment Deeds are amended by revoking all of their provisions and replacing

them with the following, so that from the Effective Date the Scheme will be operated, administered, and governed in accordance with the provisions of this Governing Document:

1. DEFINITIONS AND INTERPRETATION

1.1 Terms defined in the KiwiSaver Act: Each of the terms:

"Commissioner";

"Complying Superannuation Fund";

"Contribution";

"Crown Contribution";

"Default KiwiSaver Scheme";

"Employee";

"Employer";

"Employer Contribution";

"FMA";

"KiwiSaver End Payment Date"

"KiwiSaver Scheme";

"KiwiSaver Scheme Rules";

"Member";

"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.

1.2 Terms defined in Tax Act: Each of the terms:

"Attribution Period";

"Calculation Period";

"Investor Class";

"Investor Interest";

"Notified Investor Rate"; and

"Portfolio Investment Entity" (referred to in this Governing Document as **"PIE"**);

"Prescribed Investor Rate";

"Tax File Number";

has the meaning given to those terms by the Tax Act, and is capitalised for ease of reference.

1.3 Interpretation and Definitions: In this Governing Document, unless the context requires otherwise:

"Account" means a KiwiSaver account established and maintained by the Manager under clause 4;

"Application Form" means, subject to the Relevant Requirements, an application form for membership of the Scheme in such form as the Manager may determine, to be completed by or on behalf of a prospective Member, and which shall, in the case of a prospective Member that is a prospective Employee Member, be read in conjunction with the Participation Agreement entered into by the relevant Participating Employer and the Manager;

"Associated Person" has the meaning given to it by the FMCA;¹

"Auditor" means the person appointed as auditor of the Scheme pursuant to this Governing Document for the time being;

"Business Day" means "Working Day" as defined in the Interpretation Act 1999;

"Custodian" means a person appointed to hold the Scheme property under clause 14.8(a), and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Scheme property under clause 14.8(b);

"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 the FMCA;

"Employee Member" means a Member admitted to membership of the Scheme through a Participating Employer;

"Employer Account" means, in relation to an Employee Member, the account established in respect of that Employee Member under clause 4.1(a);

¹ Section 12(1) of the FMCA.

“Employer Reserve Account” means, in relation to a Participating Employer, the reserve account (if any) established in respect of that Participating Employer under clause 4.1(b);

“Establishment Deed” means any establishment deed referred to in clause 6.1 that sets out the terms and conditions of a Fund;

“Existing Deed” has the meaning given to it in Background A;

“Existing Establishment Deeds” has the meaning given to it in Background C;

“FMCA” means the Financial Markets Conduct Act 2013;

“FMC Regulations” means the Financial Markets Conduct Regulations 2014;

“Fund” means any separate investment fund established as a separate fund under the Scheme in accordance with clause 6;

“Governing Document” means this Governing Document and any Schedule to it (as may be amended from time to time); in relation to a Fund, the Establishment Deed for that Fund; and in relation to a Participating Employer, the relevant Participation Agreement;

“Gross Asset Value” means, in relation to the Scheme or a Fund, the amount determined in accordance with clause 8 for the Scheme or that Fund;

“Instrument of Appointment” means an instrument of appointment, if any, under which the Scheme is specified as a Default KiwiSaver Scheme;

“Intellectual Property Rights” includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

“KiwiSaver Act” means the KiwiSaver Act 2006;

“Management Deed” means any management deed between the Supervisor, BNZ and the Manager which sets out the Manager’s reporting obligations and other agreements in respect of the Scheme from time to time;

“Manager” means BNZ Investment Services Limited or its permitted successor or any other body corporate appointed as manager of the Scheme in accordance with clause 11.4;

"Member Account" means, in relation to a Member, the account established in respect of that Member under clause 4.1;

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

"Net Asset Value" means, in relation to the Scheme or a Fund, the amount determined in accordance with clause 8 for the Scheme or that Fund;

"Participation Agreement" means an agreement entered into by the Manager and a Participating Employer under clause 10;

"Participating Employer" means an Employer that has completed and signed a Participation Agreement;

"PDS" means, in relation to a Fund, the most recent product disclosure statement or PDS for that Fund, as defined in the FMCA;

"PIE Tax Liability" means the tax liability for the Scheme as calculated under the Tax Act;

"Register" means the register of Members maintained for the Scheme pursuant to the FMCA; ²

"Related Party" has the meaning given to it by the FMCA; ³

"Related Party Benefit" has the meaning given to it by the FMCA; ⁴

"Relevant Requirements" means the requirements of the KiwiSaver Act (including the KiwiSaver Scheme Rules), the FMCA (including the FMC Regulations) and any other relevant law, any Instrument of Appointment and any legally binding ruling, notice or approval given by the FMA, Commissioner or Registrar of Financial Service Providers;

"Retirement Scheme" means a KiwiSaver scheme, superannuation scheme or workplace savings scheme 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;⁵

"Scheme" means the KiwiSaver Scheme constituted by this Governing Document and known as at the date of this Governing Document as the BNZ KiwiSaver Scheme;

² Section 215 of the FMCA.

³ Section 172(2) of the FMCA.

⁴ Section 172(1) of the FMCA.

⁵ Section 6 of the FMCA.

"Scheme Provider Agreement" means the scheme provider agreement entered into by the Manager as scheme provider and Her Majesty the Queen in Right of New Zealand acting by and through the Commissioner or his or her duly authorised delegate dated 17 December 2012, or as amended from time to time and applying to the Scheme under the KiwiSaver Regulations 2006;

"SIPO" has the meaning given to it by the FMC Regulations;⁶

"Subscription Account" means, in relation to the Scheme, the account established for the Scheme in the name of Supervisor or its Custodian, in accordance with clause 5.13;

"Subscription Account Balance" means, in relation to a Subscription Account, the balance of the Subscription Account at the time;

"Supervisor" means The New Zealand Guardian Trust Company Limited or any other body corporate appointed as Supervisor of the Scheme in accordance with this Governing Document and, where the context requires or allows, this term includes any Custodian;

"Tax" or **"Taxation"** means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties (including, but not limited to, any tax liability paid or payable by the Supervisor or the Manager on behalf of or in respect of a Member under the Tax Act);

"Tax Account" means in relation to the Scheme, the bank account established for the Scheme by the Supervisor or its Custodian and managed by the Manager in accordance with clause 12.10;

"Tax Account Balance" means in relation to a Tax Account, at any time, the balance of the Tax Account at that time;

"Tax Act" means the Income Tax Act 2007 and, where relevant, the Tax Administration Act 1994;

"Unit" means a unit in the Scheme (or, if applicable, a Fund) as referred to in clause 7;

"Unit Price" means the price for a Unit in a Fund, calculated under clause 7.3;

"Valuation Day" means the day on which the Scheme (or, if applicable, a Fund) is valued under clause 8; and

"Winding Up Date" means one of the following dates where the Scheme is to be wound up in accordance with clause 26.1:

⁶ FMC Regulation 5.

- (a) where the Manager has resolved to wind up the Scheme, the date specified in that resolution as the date from which the Scheme's wind up will take effect; or
- (b) the date on which the Manager receives notice from the FMA that the Scheme must be wound up under the KiwiSaver Act.

1.4 Construction: In the construction of the Governing Document, unless the context otherwise requires:

- (a) headings appear as a matter of convenience and shall not affect construction;
- (b) footnotes 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;
- (c) references to clauses and Schedules are to clauses and Schedules of the Governing Document;
- (d) references to money are references to New Zealand currency;
- (e) the singular includes the plural and vice versa;
- (f) references to any statutes, regulations and other statutory instruments include all amendments, re-enactments and replacements thereof and when the context requires, any regulations made under them;
- (g) references to any deed, agreement or other instrument shall be read as referring to such deed, agreement or other instrument as from time to time modified, supplemented or novated;
- (h) notwithstanding any provision of this Governing Document, Units are not to be treated as liabilities for any purpose under this Governing Document; and
- (i) the word "including" and other similar words do not imply any limitation.

1.5 Prescribed frameworks or methodologies: Where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, which would be applicable to a Fund and are inconsistent with this Governing Document,

this Governing Document shall be deemed to be modified to the extent necessary to be consistent with such frameworks or methodologies in respect of that Fund.

1.6 Inclusion of Relevant Requirements: If any Relevant Requirement must be implied in this Governing Document from time to time, including in order for the Scheme to be a KiwiSaver Scheme or a Default KiwiSaver Scheme, those provisions are deemed to be implied in this Governing Document for so long as they are required to be implied, to the extent necessary for the purpose. Any provision of this Governing Document which is contrary to such an implied provision shall be null and void to the extent that it is contrary.

1.7 Inconsistency with Relevant Requirements: If there is any inconsistency between any part of this Governing Document and the Relevant Requirements, the Relevant Requirements will prevail over the Governing Document.

2. CONTINUATION OF THE SCHEME

2.1 Continuation of the Scheme: The Scheme continues after the Effective Date on the terms contained in this Governing Document.

2.2 Purpose: The purpose of the Scheme is to provide retirement benefits directly to individuals in accordance with the FMCA and the KiwiSaver Act.⁷

2.3 Contributions and other assets held on trust: Subject to clauses 6.3 and 14.8, the Supervisor will hold all Contributions and other assets of the Scheme on the trusts established in accordance with the terms of the Governing Document and all applicable legislation.

2.4 Perpetuities: If the Scheme ceases to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take such action as it thinks fit (including directing the Supervisor to re-establish the trusts of the Scheme and pay 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.

3. MEMBERSHIP

3.1 Admission: Natural persons shall be admitted to membership of the Scheme:

- (a) in respect of any employees of any employer who has agreed with the Manager that the Manager will provide access to the Scheme for the

⁷ Section 128(1)(b) of the FMCA.

employer's employees under section 47 of the KiwiSaver Act, in accordance with section 48 of the KiwiSaver Act;

- (b) subject to the Relevant Requirements, by completing an Application Form and contracting directly with the Manager to become a Member of the Scheme in accordance with section 45 (as a natural person who has chosen to join the Scheme) or section 55 (as a natural person who has chosen to transfer from another KiwiSaver Scheme or a Complying Superannuation Fund to the Scheme) of the KiwiSaver Act;
- (c) if the Scheme is a Default KiwiSaver Scheme, in accordance with section 52 (as an Employee allocated to the Scheme by the Commissioner) of the KiwiSaver Act, as applicable; or
- (d) 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 the FMCA and the KiwiSaver Act shall be admitted to membership of the Scheme.⁸

3.2 Discretion to refuse: Subject to the Relevant Requirements, the Manager may in its absolute discretion accept or refuse to admit any natural person as a Member, and shall not be bound to give reasons for any refusal. The Manager must refuse to admit any natural person as a Member if acceptance would contravene the Relevant Requirements.

3.3 Deemed consent: On admission to membership of the Scheme pursuant to clause 3.1(a), clause 3.1(c) or clause 3.1(d), 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(b).

3.4 Employer: Any Employer may apply to the Manager to become a Participating Employer. The Manager may accept or refuse any application for admission as a Participating Employer in its absolute discretion, and shall not be bound to give reasons for any refusal. The Manager must refuse to accept any such application if acceptance would contravene the Relevant Requirements. To become a Participating Employer an Employer must enter into a Participation Agreement.

3.5 Ceasing of Membership: A person shall cease to be a Member on the first to occur of the person:

⁸ Section 128(1)(d), (2) and (3) of the FMCA.

- (a) if the person has died, his or her personal representative receiving from the Scheme the Member's Accumulation in accordance with the KiwiSaver Scheme Rules;
- (b) the person receiving the person's full benefit from the Scheme and ceasing to have any further entitlement under the Scheme;
- (c) transferring from the Scheme to another KiwiSaver Scheme, or to any other Retirement Scheme, in accordance with the Relevant Requirements and ceasing to have an entitlement under the Scheme; and
- (d) receiving notice from the Manager under rule 4(5)(b) of the KiwiSaver Scheme Rules.

4. ACCOUNTS

4.1 Establishment: The Manager shall establish and maintain a Member Account for each Member, which shall be denominated in Units. In addition the Manager shall establish and maintain, in accordance with the terms and conditions of the relevant Participation Agreement and with the Relevant Requirements:

- (a) an Employer Account for each Employee Member, which shall be denominated in Units; and
- (b) an Employer Reserve Account for each Participating Employer which shall be denominated in Units.

4.2 Member Accounts: Each Member Account shall be credited with:

- (a) Units issued in respect of the Member's Contributions and Employer Contributions in respect of the Member;
- (b) Units issued in respect of any amount received from another KiwiSaver Scheme, or any other Retirement Scheme, in respect of the Member which are to be credited to that Member Account;
- (c) any Units transferred or issued in respect of amounts transferred from any relevant Employer Reserve Account which the Manager considers should be credited to that Member Account;
- (d) Units issued in respect of any Crown Contribution paid in respect of the Member (except to the extent that the Crown Contribution amount is required, pursuant to KiwiSaver Act, to be credited to another or other Accounts);

- (e) where there are two or more Funds, any Units in one Fund issued in respect of the proceeds of realising Units switched from another Fund; and
- (f) Units issued in respect of any other amount received by or payable to the Scheme, or issued or allocated to the Member, which the Manager considers should be credited to the Member Account (including for the avoidance of doubt any rebates or refunds of Tax received by the Scheme which the Manager allocates to the Member Account).

The Manager shall be entitled to debit or cancel Units previously credited to a Member Account to pay or meet:

- (g) if permitted by the KiwiSaver Act, any fee, cost, charge, or expense which is to be charged to that Member Account pursuant to this Governing Document;
- (h) any negative adjustment to that Member Account under clause 5.10;
- (i) all Tax payable or potentially payable by the Supervisor or the Manager relating to Contributions applied in the issue of Units to be credited to that Member Account or any Units issued or allocated to the Member and credited to that Member Account;
- (j) any amount comprised in the Member Account that is transferred out of the Scheme to another KiwiSaver Scheme, or to any other Retirement Scheme, in accordance with the KiwiSaver Act;
- (k) the Permitted Withdrawal of any amount comprised in the Member Account;
- (l) where there are two or more Funds, any amount comprised in the Member Account that is switched from one Fund to another Fund;
- (m) any amount required to be paid to the Commissioner in respect of the Member pursuant to section MK 8 of the Tax Act; and
- (n) any other amount comprised in the Member Account which the Manager considers should be debited from the Member Account.

4.3 Employer Accounts: Each Employer Account shall be credited with:

- (a) Units issued in respect of the Employer Contributions relating to the Employee Member which are to be credited to that Employer Account in accordance with the Participation Agreement;
- (b) Units issued in respect of any amount received from another KiwiSaver Scheme, or any other Retirement Scheme, relating to the Employee

Member which are to be credited to that Employer Account in accordance with the Participation Agreement;

- (c) any Units transferred or issued from amounts transferred from any relevant Employer Reserve Account which the Manager considers should be credited to that Employer Account;
- (d) where there are two or more Funds, Units in one Fund issued in respect of the proceeds of realising Units switched from another Fund; and
- (e) Units issued in respect of any other amount received by or payable to the Scheme, or issued or allocated to the Participating Employer, which the Manager considers should be credited to the Employer Account (including for the avoidance of doubt any rebates or refunds of Tax received by the Scheme which the Manager allocates to the Employer Account).

The Manager shall be entitled to debit or cancel Units previously credited to an Employer Account to pay or meet:

- (f) if permitted by the KiwiSaver Act, any fee, cost, charge, or expense which is to be charged to that Employer Account pursuant to this Governing Document permitted by the KiwiSaver Act, or the relevant Participation Agreement;
- (g) any amount credited to the Employer Account that the Manager considers is to be transferred to an Employer Reserve Account when the Employee Member is no longer employed by a Participating Employer;
- (h) any negative adjustment to that Employer Account under clause 5.10;
- (i) all Tax payable or potentially payable by the Supervisor or the Manager relating to Contributions applied in the issue of Units to be credited to that Employer Account or any Units issued or allocated to the Employee Member and credited to that Employer Account;
- (j) benefits payable out of that Employer Account;
- (k) any amount comprised in the Employer Account that is transferred out of the Scheme to another KiwiSaver Scheme, or to any other Retirement Scheme, in accordance with the KiwiSaver Act;
- (l) the Permitted Withdrawal of any amount comprised in the Employer Account;
- (m) where there are two or more Funds, any amount comprised in the Employer Account that is switched from one Fund to another Fund; and

- (n) any other amount comprised in the Employer Account which the Manager considers should be debited from the Employer Account.

4.4 Employer Reserve Accounts: Each Employer Reserve Account shall be credited with:

- (a) Units issued in respect of any amount transferred from any Employer Account that was not payable to the Employee Member on his or her ceasing to be an Employee Member; and
- (b) Units issued in respect of any other amount received by or payable to the Scheme, or issued or allocated to the Participating Employer, which the Manager considers should be credited to the Employer Reserve Account (including for the avoidance of doubt any rebates or refunds of Tax received by the Scheme which the Manager allocates to the Employer Reserve Account).

The Manager shall be entitled to debit or cancel Units previously credited to an Employer Reserve Account to pay or meet:

- (c) any fee, cost, charge, expense or premium which is to be charged to that Employer Reserve Account pursuant to this Governing Document;
- (d) any negative adjustment to that Employer Reserve Account under clause 5.10; and
- (e) all Tax payable or potentially payable by the Supervisor or the Manager relating to Contributions applied in the issue of Units to be credited to that Employer Reserve Account or any Units issued or allocated to the Employee Member and credited to that Employer Reserve Account.

The Manager, with the consent of the Participating Employer, shall be entitled to debit or cancel Units previously credited to the Employer Reserve Account to:

- (f) meet Contributions payable by that Participating Employer;
- (g) pay or meet any fee, cost, charge, expense or premium which would otherwise be charged to a Member Account or Employer Account or deducted from Contributions;
- (h) increase Member Accounts and/or Employer Accounts of Employee Members of that Participating Employer on an equitable basis; or
- (i) subject to clause 10.9, pay to the Participating Employer any excess amounts held in the Employer Reserve Account,

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 Employer Reserve Account without the prior written consent of the FMA (for so long as such consent is required by the KiwiSaver Act).

4.5 Varying Accounts: The Manager may from time to time establish other accounts, establish sub-accounts within an Account or amalgamate two or more Accounts, in each case on such terms and conditions as the Manager considers appropriate.

4.6 Transferring Units between Accounts: The Manager may from time to time and with the written consent of the relevant Member if required by the KiwiSaver Act or the FMCA, transfer Units between Accounts on such terms and conditions as the Manager considers appropriate.

5. CONTRIBUTIONS⁹

5.1 KiwiSaver Contributions: Subject to clause 5.8, the Manager must accept amounts paid to the Scheme via the Commissioner by or in respect of any Member under the KiwiSaver Act (including any Contributions made by an Employer in respect of that Member), unless the Manager has reasonable cause to believe that:

- (a) such amounts 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 such amounts, the information required under section 79 of the KiwiSaver Act.

5.2 Participating Employer Contributions: Subject to clause 5.8, a Participating Employer:

- (a) must contribute to the Scheme such amounts as are set out in the Participation Agreement and, subject to clause 5.6, the Manager must accept such Contributions; and
- (b) may make additional Contributions to the Scheme in respect of any Member at any time.

5.3 Member Contributions: Subject to clause 5.8, a Member:

- (a) must contribute to the Scheme at least the minimum Contribution required by the KiwiSaver Scheme Rules and the KiwiSaver Act and, subject to clause 5.6, the Manager must accept such Contributions; and

⁹ Section 135(1)(c) of the FMCA.

- (b) may contribute directly to the Scheme such other amounts and at such times as that Member determines from time to time.

5.4 Crown Contributions: The Manager must accept any Crown Contribution paid to the Scheme in respect of a Member under the KiwiSaver Act.

5.5 Contributions by a third party: A third party may contribute directly to the Scheme in respect of a Member such amounts as may be agreed from time to time between the Manager and the third party, but only to the extent that the Contribution:

- (a) is permitted under the KiwiSaver Act; and
- (b) is not covered by a preceding provision of this clause 5.

5.6 Compliance with Relevant Requirements: The Manager must refuse to accept any Contribution if acceptance would contravene the Relevant Requirements.

5.7 Payments of Contributions:

- (a) Contributions will be paid in the manner determined by the Manager, subject to the Relevant Requirements.
- (b) The Manager may accept, but shall not be required to accept, Contributions paid to the Scheme by or in respect of a Member under clause 5.2(b), clause 5.3(b) or clause 5.5, and may impose such terms and conditions for such acceptance (including, without limitation, as to the amount and manner of payment) as the Manager may determine from time to time.

5.8 Minimum Contribution amounts: Subject to the Relevant Requirements, the amount of any Contribution to the Scheme must not be less than any minimum amount determined by the Manager from time to time. The Manager may waive any minimum Contribution amount either generally or in respect of a particular Member or Members provided that, for the avoidance of doubt, no such waiver may operate in a manner that is inconsistent with section 66 of the KiwiSaver Act or any other Relevant Requirements.

5.9 Contributions other than in cash: A Contribution may be made other than in cash or its equivalent, but only with the consent of the Manager and subject to the Relevant Requirements. Any Contribution made other than in cash or its equivalent will be valued in accordance with clause 8.

5.10 Contributions paid by mistake: The Manager must cancel Units and repay Contributions which:

- (a) it determines were paid by mistake, unless:
 - (i) the Relevant Requirements prevent that repayment; or
 - (ii) the person who mistakenly paid the Contributions and the Manager agree otherwise; or
- (b) the Manager should have refused to accept under clause 5.6,

and the Manager may, subject to the Relevant Requirements, adjust either or both of:

- (c) the amount of; and
- (d) the conditions relating to,

any withdrawal, transfer or Contribution as a result of repaying any such Contributions.

5.11 Other Contributions that may be accepted: The Manager may accept, but shall not be required to accept, Contributions payable to the Scheme by or in respect of a Member other than those referred to in this clause 5, and may impose such terms and conditions for such acceptance (including, without limitation, as to the amount and manner of payment) as the Manager may determine from time to time.

5.12 Transfer from another scheme: Subject to the Relevant Requirements, if any Member is entitled to a benefit or to otherwise transfer an amount from any other KiwiSaver Scheme or Retirement Scheme (whether in New Zealand or otherwise) (the "Transferor Scheme") the Manager shall on such terms and conditions as the Manager shall (to the extent permitted by the Relevant Requirements) determine from time to time, accept a transfer from that Transferor Scheme of an amount notified to the Manager by the trustee(s) or manager (or equivalent) of that Transferor Scheme. Any amount so received shall be treated as if it were a Contribution by the Member pursuant to clause 5.3(b).

5.13 Contributions received by Manager to be paid into a separate Subscription Account: All money received by the Manager in respect of Contributions must be, upon receipt by the Manager, or its agent or delegate, credited to a separate Subscription Account and held until Units for those subscription amounts are issued. The Subscription Account shall be in the name of the Supervisor or its Custodian appointed in accordance with clause 14.8, and will remain subject to the terms of this Governing Document.¹⁰

¹⁰ Section 87 of the FMCA and FMC Regulation 49.

6. SEPARATE FUNDS

6.1 Establishment of Funds: The Manager shall continue to maintain the separate Funds within the Scheme that are listed in Background C, and the Manager may from time to time establish and maintain separate new Funds within the Scheme on such terms and conditions determined by the Manager, by entering into an Establishment Deed. Any terms and conditions of a Fund that are not elsewhere in this Governing Document will be provided for in the Establishment Deed of that Fund.

6.2 Assets of each Fund: The assets of each Fund shall include Contributions, other assets in respect of which Units in the Fund have been issued, consequential investments and interest, dividends, rent and other income and assets arising from such investments.

6.3 Separate Funds: The Supervisor and Manager will be obliged to and will at all times treat each Fund as a separate and distinct trust with its separate property and liabilities governed by this Governing Document, and without prejudice to the generality of the foregoing:

- (a) all assets held for a Fund shall not be available to meet the liabilities incurred in relation to (or apportioned to) any other Fund;
- (b) all liabilities incurred in relation to (or apportioned to) a Fund shall be met from the assets held for that Fund;
- (c) except to the extent necessary pursuant to clause 6.3(b) to meet liabilities incurred in relation to (or apportioned to) the relevant Fund, all investments made with assets of a Fund shall be held by the Supervisor or on behalf of the Supervisor or a Custodian under clause 14.8:
 - (i) exclusively for that Fund; and
 - (ii) for the exclusive benefit of the Members (and, with respect to Employer Reserve Accounts, the relevant Participating Employers) who have interests in that Fund,

provided that the Manager may, subject to clause 12.9, transfer value between Funds to accommodate the Scheme being a single taxpayer;

- (d) pursuant to clause 12.2, the Manager shall keep separate records and accounts in respect of each Fund and, subject to this clause 6.3, shall not permit the assets or liabilities relating to any Fund to become intermingled with those relating to any other Fund;

- (e) 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 other costs, expenses, fees, premiums and Taxes payable in relation to the management and administration of the Scheme shall be construed such that:
- (i) any amount payable from the assets of the Scheme shall, subject to this clause 6.3, be payable from the assets held for the Fund or Funds to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Funds); and
 - (ii) where any amount 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; and
 - (iii) if at any time, and to the extent that, there are insufficient assets in a Fund to indemnify or reimburse the Supervisor or the Manager (as the case may be) in respect of any liability for Tax attributable to that Fund (but not otherwise), the remaining amount payable shall be apportioned between the other Funds on such fair and equitable basis as the Manager determines; and
- (f) if, when exercising its right of indemnity pursuant to clause 18.3 and 24.4 and/or its right of reimbursement pursuant to clause 18.5 and/or its right of deduction under clause 24.1, the Supervisor is uncertain whether and to what extent a particular liability, cost or expense incurred in respect of the Scheme, or any asset or other property receivable by the Scheme, is properly attributable to one or more specific Funds for the purposes of any of the foregoing sub-paragraphs (a)-(e) of this clause 6.3:
- (i) the Supervisor may make a written request to the Manager for a direction as to how that liability, cost, expense or asset or other property (as applicable) should be attributed;
 - (ii) the Manager must, upon receipt of such written request, respond with a written direction to the Supervisor as to how such amount should be attributed across the Funds as soon as is reasonably practical and, in any event, no later than three Business Days following receipt of such request;
 - (iii) when giving such a direction, the Manager must act in good faith and in accordance with the provisions of the Governing Document (including this clause 6.3), and any applicable enactment; and

- (iv) the Supervisor may rely upon any direction given by the Manager under this clause.

6.4 Member entitled to choose and switch between Fund(s): Subject to clause 6.5, a Member shall be entitled to choose the Fund or Funds in which the Member's Contributions will be or are invested from time to time.

6.5 Restrictions on choosing Fund(s): In exercising their choice under clause 6.4, Members shall comply with all rules prescribed by the Manager from time to time regarding:

- (a) the maximum number of Funds that may be chosen in respect of any Member;
- (b) the minimum amount 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 the requirements of the KiwiSaver Act;
- (c) switching their choice of Funds (in relation to either amounts already invested or amounts to be invested in the future);
- (d) the manner in which choices should be communicated;
- (e) the choice of a default Fund for a Member that has joined the Scheme but has not chosen a Fund; and
- (f) any other matters relating to the choice of Funds by Members.

6.6 Contrary intention: The establishment of Funds by the Manager, the choice of a Fund by an Employer and the choice of a Fund or Funds by a Member under clause 6.4 shall each be directions given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956, and the investment obligations of the Manager under this Governing Document shall constitute a contrary intention for the purposes of section 2(5) and section 2(5A) of the Trustee Act 1956. However, no direction by a Member in terms of this clause 6.6 shall exempt the Manager from its responsibilities under the FMCA¹¹.

6.7 Termination, closure, amalgamation or alteration of Funds: The Manager may from time to time, after giving the Supervisor 14 days prior written notice of its intention to do so, terminate, close, wind up or alter any Fund, or amalgamate two or more Funds, in each case on terms and conditions as decided by the Manager.

¹¹ Section 144 of the FMCA.

6.8 Winding up a Fund: If a Fund is wound up under clause 6.7, the Manager must notify each Member holding Units in that Fund that:

- (a) the Member may elect to switch their Units in that Fund to Units in another Fund;
- (b) if no choice of replacement Fund is exercised and notified to the Manager within the period prescribed in the notice, that the Member will be deemed to have elected to transfer the relevant amount to a replacement Fund selected by the Manager and specified in the notice.

6.9 Instrument of Appointment prevails: The provisions of this clause 6 shall, for the avoidance of doubt, be subject at all times to the provisions of any Instrument of Appointment (if applicable).

7. UNITISATION

7.1 Scheme unitised: The Manager shall operate the Scheme, and each Fund, on a unitised basis, with the beneficial interests in the Scheme, and each Fund, divided into Units.

7.2 Equal but not specific interests: Units in a Fund shall:

- (a) be of one class and shall confer identical rights and interests;
- (b) for the purpose of the definition of Investor Class, confer on each Member an equivalent interest in all of the investments comprised in the relevant Fund corresponding to the Member's Investor Interest (or the relevant portion of the Member's Investor Interest), but shall not confer any interest, to the exclusion of any other Member, in any particular investment comprised in the Fund (with the result that no Member will be entitled to require the transfer of any investment to the Member);
- (c) not confer any right or interest in the assets of any other Fund; and
- (d) for the purposes of section EX 53 of the Tax Act, and at the complete discretion of the Manager, confer on a Member the right to be treated as if there were assigned to that Member an interest in a proportion of the net returns from the investments comprised in the Fund corresponding to the Member's Investor Interest (or the relevant portion of the Member's Investor Interest).

7.3 Unit Price: Each Unit Price shall be determined on each Valuation Day by dividing the Net Asset Value of the relevant Fund by the number of Units then on issue in that Fund. For the avoidance of doubt, the assets used to determine the Unit Price

on a Valuation Day shall not include amounts received for which no Units have been issued, and shall include amounts debited, transferred or withdrawn from any Account for which Units have not been cancelled, at the time of such determination.

7.4 Unitising Contributions: Subject to clause 7.5, the Manager shall, upon the receipt, payment or transfer of any amount credited to any Account, issue Units in each relevant Fund or Funds on or before the next Valuation Day.

Units issued under this clause 7.4 shall be based upon the amount received, paid, payable or transferred divided by the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on that Valuation Day (which may be adjusted for an amount that the Manager considers appropriate to reflect fees, expenses, Taxes or other liabilities).

7.5 Delaying unitisation: Without limiting clause 7.4 and subject to the KiwiSaver Act, the Manager may delay converting into Units under clause 7.4 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 are not those referred to in clause 5.10.

7.6 Ceasing to issue Units: Without limiting clause 7.5 or any other provision of this Governing Document (but subject at all times to the provisions of the KiwiSaver Act) the Manager may, after consulting with the Supervisor, 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:

- (a) for a specified period; or
- (b) until the Scheme, or the relevant Fund(s), is or are wound up or terminated,

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

7.7 Cancelling Units: In respect of Units debited from any Account either:

- (a) pursuant to clause 4;
- (b) for any PIE Tax Liability paid or payable by the Scheme as determined by the Manager to be attributable to the Member; or

- (c) for any other amounts required to be paid by the Scheme to the Commissioner under the Tax Act as a result of a transfer or withdrawal by a Member,

the Manager shall cancel the number of Units determined by dividing the amount debited by the relevant Unit Price or Unit Prices applying on the next Valuation Day after the Manager determines that the debit shall be made (provided that, for Units debited on account of PIE Tax Liability payable, the Manager may use the Valuation Day on which the Manager finally determines the amount of PIE Tax Liability payable).

7.8 Delaying redemption of Units: Subject to the requirements of the KiwiSaver Act, the Manager may defer giving effect to any withdrawal or any transfer out of the Scheme, or any switch between Funds pursuant to clause 6.4 if (and for so long as) the Manager determines that, having regard to the realisation of assets required in order to make the withdrawal, transfer or switch, or due to the occurrence or existence of any other circumstance or event relating to the Scheme or generally, earlier withdrawal or transfer would not be in the best interests of the Members, provided however that any such deferral shall not exceed a period of 10 Business Days without the prior written approval of the Supervisor.

7.9 Uncleared funds: Units issued against uncleared funds or the transfer of other consideration may be treated as void if the funds are not subsequently cleared or the transfer of the consideration has not been completed, or the consideration has been retrieved or reversed.

7.10 Units issued in error: Subject to the requirements of the KiwiSaver Act and the Scheme Provider Agreement, 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 the Relevant Requirements do not require the Units to be treated as void).

7.11 Part Units etc: For the purposes of this clause 7, the Manager may at any time and from time to time:

- (a) create and cancel part Units; and
- (b) consolidate or divide Units,

in each case in such manner as the Manager decides from time to time.

8. VALUATION

8.1 Net Asset Value: The Manager shall calculate, at least once every five Business Days, the amount expressed in New Zealand currency that fairly represents the following in respect of the Scheme and each Fund:

- (a) the Gross Asset Value by adding the market value of the assets attributable to the Scheme or the Fund, as applicable, but excluding, where the Scheme is a PIE, and the Manager, in its complete discretion, considers it appropriate to do so, any rebates or refunds of Tax, the Tax Account Balance, and/or the Subscription Account Balance; and
- (b) the Net Asset Value by deducting the liabilities (excluding, where the Scheme is a PIE, and the Manager, in its complete discretion, considers it appropriate to do so, any PIE Tax Liability and any negative Tax Account Balance) attributable to the Scheme or the Fund, as applicable, from the Gross Asset Value of the Scheme or the Fund, as applicable.

8.2 Determining market value: For the purpose of determining the Net Asset Value and the Gross Asset Value under clause 8.1, the Manager shall determine the market value of each asset, and the amount of each liability, on such basis as it considers to be fair and equitable in accordance with generally accepted accounting practice as defined in the Financial Reporting Act 2013.

8.3 Remain in force: Determinations of the Net Asset Value and Gross Asset Value pursuant to clause 8.1 shall remain in force from the time they take effect until the time determined by the Manager on the next Business Day that a determination of the Net Asset Value or the Gross Asset Value is made by the Manager. The Net Asset Value and Gross Asset Value will be determined on a consistently applied basis. However, the Manager will be entitled to, at any time, alter the basis of the determination of the Net Asset Value and/or the Gross Asset Value in consultation with the Supervisor.

9. BENEFITS

9.1 Benefits payable: A Member shall be entitled to receive a benefit only where and to the extent that the KiwiSaver Act allows. Notwithstanding anything to the contrary in this Governing Document, benefits shall be payable from the Scheme in accordance with the KiwiSaver Scheme Rules.

9.2 Calculation of Member's Accumulation: Subject to clauses 9.3 and 12.9, 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:

- (a) multiplying the Units attributable to the Accounts maintained for the Member by the relevant Unit Price or Unit Prices applying for the purpose of cancelling Units on the next Valuation Day after the Manager makes a final determination that a benefit should be paid;
- (b) deducting an amount equal to the portion of any Employer Account maintained for an Employee Member under clause 4.1(a) which comprises unvested Participating Employer Contributions as defined in the relevant Participation Agreement; and
- (c) deducting any further amount that the Manager considers appropriate to deduct with respect to any fee, cost, charge, expense, premium or Tax payable pursuant to this Governing Document or the relevant Participation Agreement.

9.3 Different method of calculation: Subject to clause 9.4, the Manager:

- (a) must adopt a method of calculating the amount representing the Member's Accumulation that is different from that set out in clause 9.2 if the Manager determines that the method set out in clause 9.2 does not comply with the Relevant Requirements; and
- (b) may adopt a method of calculating the amount representing the Member's Accumulation that is different from that set out in clause 9.2 if the Manager considers it appropriate to do so.

9.4 Different method of calculation must meet certain requirements: Any different method adopted by the Manager under clause 9.3 must comply with the Relevant Requirements and may be adopted only after the Manager has consulted with the Supervisor.

9.5 Transfers from the Scheme: The Manager shall effect transfers from the Scheme in accordance with the requirements of the KiwiSaver Act and the FMCA. ¹²

10. PARTICIPATING EMPLOYERS

10.1 Participation Agreement: If an Employer elects to become a Participating Employer, the Manager and the Employer must enter into a Participation Agreement in such form as agreed between the parties. The Participation Agreement will form part of this Governing Document, and may without limitation cover any or all of the following:

¹² Sections 179 to 182 of the FMCA.

- (a) payment of fees by the Participating Employer in respect of Employee Members;
- (b) deduction of Employee Member Contributions from payroll;
- (c) the making of Contributions by the Participating Employer in respect of Employee Members in addition to those required under subpart 3A of Part 3 of the KiwiSaver Act;

and the parties may, subject to clause 25 of this Governing Document, amend such Participation Agreement from time to time by an instrument in writing.

10.2 Terms of Participation Agreement prevail: Subject to clause 10.3, 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.

10.3 Relevant Requirements prevail: Notwithstanding any other term in this Governing Document, no term in a Participation Agreement may be contrary to the Relevant Requirements and any such term shall be void to the extent that it is contrary.

10.4 Employer Contributions: Unless otherwise specified in a Participation Agreement:

- (a) the rate of Contributions payable by the Participating Employer is gross of any Employer's superannuation contribution tax payable under the Tax Act;
- (b) the rate of Contributions payable by the Participating Employer is subject to the minimum rate of Contributions required under subpart 3A of Part 3 of the KiwiSaver Act;
- (c) the Participating Employer's Contributions shall, so far as reasonably practicable, be made at the same time as Contributions are deducted from the salary or wages of the relevant Employee Member; and
- (d) the Participating Employer's obligation to make Contributions in respect of an Employee Member under the Participation Agreement shall cease with effect from the date on which that Member ceases to be employed by the Participating Employer.

10.5 Vesting of Participating Employer Contributions: Subject to clause 10.3, where a Participation Agreement prescribes a vesting scale and an Employee Member has withdrawn a portion of the Employee Member's Interest that includes an amount representing vested Participating Employer Contributions (as determined in accordance with the KiwiSaver Act), the withdrawal shall not cause any other

Participating Employer Contributions in respect of the Member to vest earlier (or to a greater extent) than those Contributions would have vested had the withdrawal not occurred.

10.6 Execution of Participation Agreements: A Participation Agreement may be executed in any number of counterparts, each of which is to be deemed an original, but all of which taken together shall constitute the same instrument.

10.7 Participating Employer's indemnity: By its entry into a Participation Agreement, each Participating Employer shall indemnify the Supervisor and the Manager against any costs, expenses or other liabilities of any type whatsoever that are incurred as a result of any breach by the Participating Employer of the Relevant Requirements, this Governing Document or the relevant Participation Agreement. This indemnity shall survive termination of the Participation Agreement.

10.8 Modifying membership terms: If a Member ceases to be employed by a Participating Employer (without another Employer agreeing to assume the obligations of the former employer under the relevant Participation Agreement), then:

- (a) the provisions of any relevant Participation Agreement shall cease to apply to the Member;
- (b) the terms and conditions prescribed for the Member's continuing membership of the Scheme may be modified, subject to the KiwiSaver Act and this Governing Document, in such manner and to such extent as the Manager considers appropriate; and
- (c) if applicable, the Manager shall give written notice to the Member stating:
 - (i) the effective date from which the provisions of any relevant Participation Agreement have ceased to apply to the Member under clause 10.8(a); and
 - (ii) the manner and extent to which the terms and conditions prescribed for the Member's continuing membership of the Scheme have been modified under clause 10.8.

10.9 Cessation by Member's Participating Employer: If the Member's Employer ceases to participate in the Scheme as a Participating Employer pursuant to clause 10.10 (without another Employer agreeing to assume the obligations of the former employer under the relevant Participation Agreement), then subject to the terms of the relevant Participation Agreement:

- (a) the Employer Account in respect of that Member will be transferred or credited to the Member Account in respect of that Member;
- (b) a prorated portion of the relevant Employer Reserve Account will be transferred or credited to the Member Account in respect of that Member after any relevant expenses have been paid or deducted from that Employer Reserve Account;
- (c) the Participating Employer will be under no obligation whatsoever to make any future contributions to the Scheme pursuant to the Participation Agreement in respect of that Member; and
- (d) the Participating Employer will have no rights or powers whatsoever in respect of the Scheme in respect of that Member.

10.10 Cessation by Participating Employer: If any Participating Employer:

- (a) ceases to operate or an order is made or resolution is passed for its liquidation or receivership;
- (b) breaches the terms of the Participation Agreement and the breach is not remedied to the satisfaction of the Manager; or
- (c) gives the Manager at least three months' notice in writing (or such lesser period as the Manager may in its absolute discretion accept) that it wishes to revoke a Participation Agreement,

then the Participating Employer shall be treated as having terminated its obligations under the relevant Participation Agreement (and the relevant Account balances shall be dealt with in accordance with clause 10.9).

11. APPOINTMENT, RETIREMENT AND REMOVAL OF THE MANAGER

11.1 Continued Appointment of Manager: The Manager continues to act as the manager of the Scheme for the purposes of the KiwiSaver Act and subject to the terms and conditions contained or implied in or prescribed pursuant to this Governing Document, the FMCA and any other applicable legislation, and is responsible for performing the functions for which responsibility is attributed to it as manager of the Scheme under the FMCA. ¹³Nothing contained in this Governing Document shall be construed to prevent the Manager from establishing or acting as manager of any other scheme or fund, whether of a nature similar to or different from the Scheme or any Fund.

¹³ Section 142 of the FMCA.

11.2 Removal of Manager: Subject to, and without prejudice to, the Relevant Requirements, the Manager shall cease to hold office as manager, administration manager and investment manager of the Scheme in the circumstances set out in the FMCA¹⁴, provided that no such retirement shall take effect until a new Manager has been appointed in relation to the Scheme pursuant to clause 11.4.

11.3 Retirement of Manager: Subject to the Relevant Requirements, the Manager may retire as manager of the Scheme without giving any reason upon giving 90 days prior written notice to the Supervisor of its intention to do so (or such lesser period as the Manager and the Supervisor agree) provided that no such retirement shall take effect until a new Manager has been appointed in relation to the Scheme pursuant to clause 11.4.

11.4 Appointment of new Manager: Where the Manager for the Scheme has been removed or retired pursuant to clauses 11.2 or 11.3:

- (a) the power to appoint a temporary manager under the FMCA¹⁵ shall apply upon the occurrence of a vacancy in the office of manager of the Scheme;
- (b) subject to any Relevant Requirements, a new permanent manager may be appointed by the previous Manager (subject to obtaining the approval of the Supervisor, which shall not be unreasonably withheld); or
- (c) 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.

No person shall be appointed as a new manager unless that person is entitled in accordance with the FMCA¹⁶ and otherwise by law to act as manager of the Scheme and is not an Associated Person of the Supervisor.

11.5 Retiring Manager released: Subject to the Relevant Requirements,¹⁷ from the date of appointment of any new Manager appointed pursuant to clause 11.4 the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

¹⁴ Sections 185, 209 and 210 of the FMCA.

¹⁵ Sections 186, 187, 189 and 191 of the FMCA.

¹⁶ Sections 127(1)(c) and 135(1)(h) of the FMCA.

¹⁷ Section 191 of the FMCA.

11.6 Manager's entitlements preserved: Nothing in this clause 11 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this Governing Document prior to the date of or arising on the Manager's retirement or removal from office.

11.7 Former Managers must hand over records and give reasonable assistance: A former manager must hand over records and give reasonable assistance to the new manager in accordance with the requirements of the FMCA.¹⁸

12. ADMINISTRATION AND POWERS OF THE MANAGER

12.1 Manager's general powers: The Manager has the power to administer the Scheme and each Fund, and the Manager hereby agrees to carry out and perform the duties and obligations contained in the Relevant Requirements.

12.2 Manager's specific duties: Without limiting clause 12.1, the Manager hereby agrees to carry out and perform the duties and obligations on its part contained in this Governing Document, and the Relevant Requirements. The Manager's duties shall include exercising the following powers, authorities, functions, duties and discretions in relation to the Scheme and the Members:

- (a) promoting the Scheme to prospective Members and other relevant interested persons;
- (b) admitting Members and Participating Employers to membership of the Scheme;
- (c) maintaining the Register, and maintaining records for all Accounts, in accordance with the requirements of the FMCA;¹⁹
- (d) arranging for the receipt and acceptance of Contributions and other amounts payable to the Scheme, such Contributions and other amounts (if accepted into the Scheme) to be placed in a separate bank account in the name of the Supervisor or a person nominated by the Supervisor under clause 14.8;
- (e) providing Members with information, notices and disclosures required to be given to them under the FMCA;²⁰
- (f) managing and making all decisions relating to investments including the investment, reinvestment or realisation of any investment and the exercise of any voting rights associated with any investment (provided that if the

¹⁸ Section 190 of the FMCA.

¹⁹ Subpart 4 of Part 4 of the FMCA.

²⁰ Sections 96, 97 and 100 of the FMCA and FMC Regulations 56, 62 and 65.

Scheme is a PIE then the Manager may not act pursuant to this clause 12.2(f) in a manner which contradicts the rules for PIEs under the Tax Act) and ensuring that, if the Scheme is a PIE, the investments of the Scheme are such that the Scheme meets the eligibility requirements for PIE status;

- (g) keeping complete and accurate records of all investments of the Scheme and each Fund;
- (h) where there are two or more Funds, effecting switches between Funds;
- (i) discharging obligations with respect to unitisation, valuations and benefit calculations;
- (j) 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 the KiwiSaver Act, the FMCA and the law relating to trusts and trustees, the liability of the Supervisor in relation to any such contracts is limited to the assets of the Scheme or the relevant Fund or Funds (as applicable);
- (k) determining whether benefits are payable, subject to the Relevant Requirements, and arranging for the payment of benefits to or in respect of Members;
- (l) facilitating transfers between the Scheme and other KiwiSaver Schemes and Retirement Schemes (whether in New Zealand or overseas);
- (m) appointing and engaging solicitors and other consultants, advisers, investment managers and administration managers on such terms as the Manager determines, and the Auditor, subject to the terms of clause 19;
- (n) altering a Member's Accumulation to the extent reasonably practicable in the circumstances to address partly or entirely the impact of any unit pricing error²¹ 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;
- (o) correcting any Unit pricing errors or non-compliances with a pricing methodology for Units in a Fund, to the extent required by the FMCA, provided that where (after all relevant Unit adjustments and set offs have been made under clause 12.2(n) or otherwise) the amount of any reimbursement or compensation required is less than any minimum level of

²¹ Section 168(2) of the FMCA.

reimbursement or compensation which is determined in accordance with the Management Deed, then no reimbursement or compensation shall be required to be provided;²²

- (p) ensuring the Scheme meets, and continues to meet, the initial and ongoing registration requirements applicable to the Scheme under FMCA;²³
- (q) ensuring compliance by the Scheme with the Relevant Requirements;
- (r) ensuring compliance by the Scheme with all Taxation obligations, and with any Taxation related requirements prescribed in any Instrument of Appointment;
- (s) maintaining all accounting records for the Scheme and each Fund and allowing for inspection of those records to the extent required by the FMCA²⁴;
- (t) arranging for the preparation, audit and lodgement of the financial statements for the Scheme, and the preparation of the Scheme's annual accounts (to be audited) and half year accounts in accordance with the requirements of the FMCA²⁵;
- (u) reporting and providing information to the Supervisor (including, for the avoidance of doubt, in relation to SIPO limit breaks, unit pricing errors and non-compliances with the applicable unit pricing methodology for Units in a Fund) in respect of the Scheme as required by and in accordance with the Relevant Requirements and complying in all respects with the Manager's obligations under the Management Deed as to frequency and content of such reports²⁶) and, if the Scheme is a PIE, the rules for PIEs under the Tax Act;
- (v) entering into the Scheme Provider Agreement as scheme provider and discharging or procuring the discharge of all of the obligations of the scheme provider under the Scheme Provider Agreement;
- (w) complying in all respects with its obligations under the Management Deed;
- (x) exercising such other powers, authorities, functions and discretions as are granted or imposed by the FMCA or incidental to the above functions or may be agreed from time to time in writing between the Supervisor and the

²² Section 168 of the FMCA and FMC Regulation 99.

²³ Sections 127, 128 and 133 of the FMCA.

²⁴ Section 459 of the FMCA.

²⁵ Sections 461A, 461D and 461H of the FMCA, and FMC Regulations 62 and 63.

²⁶ Sections 147 to 151, 167 and 168 of the FMCA and FMC Regulations 83, 94 to 98 and 100.

Manager, including the provision of any other information relating to the Scheme that the Supervisor may reasonably require from time to time;

- (y) providing to the Supervisor for review, with reasonable notice, drafts of the PDS required to be prepared under the FMCA in respect of the Scheme,

and in performing the above functions, the Manager shall act in accordance with the terms of this Governing Document, the FMCA and the KiwiSaver Act.

12.3 Manager's duties: The Manager must:

- (a) use its best endeavours and skill to exercise its powers, authorities, functions and discretions under this Governing Document in a proper, timely and efficient manner;
- (b) in the exercise and performance of its functions, powers and duties as Manager, comply at all times with the requirements of its duties under the FMCA²⁷; and
- (c) comply, in the exercise and performance of its functions, powers and duties as Manager, with the Instrument of Appointment, Scheme Provider Agreement and the SIPO for the Scheme (and, if applicable, each Fund as set out in the relevant Establishment Deed).

For the avoidance of doubt the Manager has the same liability for its acts and omissions in the performance of its functions and duties, and exercise of its powers, as it would if it performed those functions or duties, or exercised those powers, as a trustee.

12.4 Manager's power to delegate: Subject always to the provisions of any law to the contrary, the Manager shall have full power to upon giving the Supervisor 14 days prior written notice of its intention to do so delegate to its or an Associated Person's officers, franchisees, employees and agents or any other attorney, agent or person nominated by the Manager, all or any of the powers, authorities or discretions exercisable by the Manager (including the same power to sub-delegate) under the FMCA, KiwiSaver Act or provisions of this Governing Document (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions) but without in any way releasing the Manager from its obligations under this Governing Document²⁸. Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing its duties and obligations and in

²⁷ Sections 143 to 151 of the FMCA.

²⁸ Section 146 of the FMCA.

exercising its powers, authorities and discretions pursuant to this Governing Document:

- (a) by power of attorney appoint a person to be attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Manager of documents bearing facsimile signatures on behalf of the Manager or of the attorney or agent either with or without proper manuscript signatures of its officers thereon and the Manager in any such power of attorney and the attorney or agent by the terms of any sub-delegation may insert such provisions for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as it may think fit;
- (b) appoint by writing or otherwise any person to be agent or sub-agent of the Manager as the Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit and to supersede or suspend any such agent or sub-agent for such cause or reason as the Manager may in its sole discretion think sufficient with or without assigning any cause or reason and either absolutely or for such time as it may think proper; and
- (c) appoint and engage any investment or portfolio managers, managing agents, investment advisers, qualified advisers and such other experts as may be necessary, useful or desirable for the purpose of exercising its powers and performing its obligations,

and the Manager shall be liable for the acts and omissions of any such officer, franchisee, employee, person, attorney, agent or other delegate, sub-delegate or sub-agent.²⁹ The Manager may (subject to clause 15.5 in relation to Related Party Benefits) agree with such delegate the fees that may be charged and the extent to which expenses will be reimbursed.

12.5 Manager may appoint Investment Managers and Administration Managers:

The Manager may appoint in respect of the Scheme:

- (a) one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of the Scheme;

²⁹ Sections 135(1)(f) and 146 of the FMCA.

- (b) one or more investment managers (including any Associated Person of the Manager) to manage the Scheme's property; and
- (c) any other experts for the provision of services relevant to the Scheme;

and (subject to clause 15.5 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.³⁰

12.6 Manager's good faith determination: Subject to clause 6.3, all borrowings, raising of money, granting of security interests, or other similar transactions entered into or undertaken pursuant to clause 14.5 shall only be entered into or made where the Manager in good faith determines that such transactions would not be in breach of this Governing Document (including, without limitation, its obligations pursuant to clause 6.3) or an enactment and are in the best interests of Members and are necessary or desirable in the general interests of the Members in the relevant Fund or the Scheme as a whole or for the purpose of conducting the investment or management or other operation of the Fund or the Scheme pursuant to this Governing Document including the repurchase or redemption of any Units from time to time. The Supervisor may rely upon a certificate given by the Manager as to any determination made by the Manager in respect thereof.

12.7 Manager's power to change the name of the Scheme and each Fund: Subject to compliance with the Relevant Requirements, the Manager shall (notwithstanding any other provisions of this Governing Document) be entitled to change the name of the Scheme and each Fund, upon giving the Supervisor notice of such change.

12.8 Mandatory name change of the Scheme and each Fund upon retirement of the Manager: Subject to compliance with the Relevant Requirements and notwithstanding any other provisions of this Governing Document, if BNZ Investment Services Limited ceases for any reason to be the Manager of the Scheme then (except to the extent that BNZ Investment Services Limited otherwise agrees in writing):

- (a) if on the date of such cessation or action the name of the Scheme, or any of the Funds, includes the expression "BNZ", from that date the name of the Scheme and the relevant Fund(s) shall be the name arrived at by removing the expression of "BNZ" if lawful, and if not lawful, the name of the Scheme and the relevant Fund(s) shall be a name without the expression of "BNZ"; and
- (b) the Manager shall each ensure that, from the date of such cessation or action, the expression "BNZ", along with any other Bank of New Zealand or

³⁰ Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

BNZ Investment Services Limited Intellectual Property Rights, does not appear in any promotional documents, publications or advertisements relating to the Scheme or any Fund, and that all registers and records are amended to record the change of name of the Manager, the Scheme and the relevant Fund(s).

12.9 Manager's powers if the Scheme is a PIE: The Manager, in consultation with the Supervisor, 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:

- (a) to determine, on such basis as the Manager thinks appropriate at its complete discretion, classes of Members, applying the definition of Investor Class;
- (b) to determine, taking into account such factors as the Manager thinks appropriate at its complete discretion, the Attribution Period and the Calculation Period for the Scheme under the Tax Act, and to make any elections required to give effect to such determination;
- (c) to determine, on such basis as the Manager thinks appropriate at its complete discretion, the assessable income (for Tax purposes) of the Scheme, and the deductions incurred by the Scheme in deriving assessable income, for an Attribution Period, and to allocate (in such manner and on such basis as the Manager considers appropriate in its complete discretion) such income and deductions to each Investor Class for that Attribution Period, for the purposes of the Tax Act;
- (d) to make any elections or exercise any options as to the method of calculation, allocation, attribution of Tax and the basis for payment of Tax as the Manager thinks fit having regard to the interests of Members generally, the requirements of the Tax Act and any other factors as the Manager considers relevant at its complete discretion;
- (e) to determine the Tax payable by, or the rebates or refunds of Tax that are available to (as the case may be), the Scheme (whether current or deferred) which are attributable to Members under the Tax Act, in such manner and on such basis as the Manager considers appropriate at its complete discretion, under the method and basis permitted under the Tax Act, and having regard to the effect of:
 - (i) assessable income or Tax losses allocated to the Investor Class of the Member for that Attribution Period;

- (ii) the amount of any rebates or refunds of Tax available to offset against the Tax payable by the Scheme under the Tax Act;
 - (iii) the percentage of the Member's Investor Interest in relation to income attributable to the relevant Investor Class; and
 - (iv) the Member's Notified Investor Rate;
- (f) to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner upon a withdrawal under the Tax Act;
- (g) to reduce the amount of any distribution and to adjust a Member's Unit holdings by debiting and crediting Member's Account with Units in such manner as the Manager thinks necessary or desirable at its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to paying any benefit or accepting a switching request) for the Scheme's Tax and the amount of any rebates or refunds of Tax, as the case may be, attributable to the Member;
- (h) where there are two or more Funds that are not separate entities for Tax purposes, to make a payment to one Fund from another Fund in order to compensate for:
- (i) any loss suffered by the relevant Fund in respect of which the other Fund has obtained a benefit as a result of the two Funds not being separate entities for Tax purposes; or
 - (ii) any benefit which the relevant Fund would have obtained if it was a separate entity for Tax purposes;
- but which the Fund has not obtained because the two Funds are not separate entities for Tax purposes;
- (i) to take all steps that the Manager considers necessary or desirable to ensure that the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to PIEs including (at the Manager's complete discretion but subject to the Relevant Requirements):
- (i) declining Contributions;
 - (ii) treating Units issued to a Member as void ab initio to the extent to which the Member's Investor Interest exceeds the relevant

requirement in relation to investor interest size as prescribed under the Tax Act; or

- (iii) where there are two or more Funds, switching some or all of a Member's Investor Interest from one Fund to another Fund as if the Manager had received a switching request to that effect from the relevant Member;
- (j) to require that before being accepted into the Scheme a Member provides his or her Tax File Number, Prescribed Investor Rate and any other information required by the Tax Act or other applicable legislation, and that at any time a Member must confirm such details on request from the Manager;
- (k) to elect to offset Tax liabilities and rebates or refunds of Tax in respect of more than one Member and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act;
- (l) to allocate the costs associated with being a PIE between Members and the Scheme on such basis as the Manger thinks appropriate (to the extent practical) in its complete discretion;
- (m) to disclose any information, including issuing any statements and providing any information to Members as required by the Tax Act in respect of their Tax position in relation to the Scheme, and providing any information (including personal information) to the Commissioner or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Scheme's Taxation obligations;
- (n) to value Tax losses of the Scheme for the purpose of determining the Net Asset Value of a Fund in such manner as the Manager thinks fit having regard to the 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;

and the Manager may take all other steps and do all things that the Manager thinks necessary or desirable from time to time at its complete discretion to convert the Scheme to or from being a PIE in accordance with this Governing Document, or to administer the Scheme as a PIE.

12.10 Tax Account: The Supervisor may, or may instruct a Custodian to establish or maintain an account outside of the Scheme for the purpose of managing Taxation obligations in relation to the Scheme. While the Scheme is a PIE, the Tax Account will be operated as follows:

- (a) any amounts deducted from distributions or other sums and any proceeds of Units redeemed under clause 12.9 or otherwise on account of the Scheme's PIE Tax Liability, and any rebates or refunds of Tax received from the Commissioner that are attributable to Members, will be paid into the Tax Account pending payment to the Commissioner or the relevant Member, as applicable;
- (b) payments will be made from the Tax Account, as and when directed by the Manager, for the following purposes only:
 - (i) to the Commissioner, in respect of the Scheme's PIE Tax Liability;
 - (ii) to the extent that a particular Member is entitled to a rebate or refund of Tax, to or for the benefit of that Member in accordance with clause 12.9; and
 - (iii) to the extent of any surplus Tax Account Balance from time to time after making adequate provision for the purposes of paragraphs (i) and (ii) above, to the Supervisor on account of the Scheme;
- (c) the Manager will maintain, or cause to be maintained, records for the Tax Account for the purpose of being able to determine if required, for each Member, the PIE Tax Liability of the Scheme in respect of the income allocated to that Member and any rebate attributable to that Member;
- (d) the Tax Account Balance will not otherwise be segregated into individual entitlements and is expressly permitted to be co-mingled and no Member shall have any interest or rights in relation to the Tax Account or any part of it except to the extent expressly provided for in clause 12.10(b); and
- (e) any costs incurred in operating the Tax Account will be met by the Scheme.

12.11 Member Tax Credits: 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:

- (a) to make claims for Member Tax Credits in accordance with section 68C of the Tax Administration Act 1994;
- (b) 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
- (c) to require a Member wishing to withdraw from the Scheme any amount arising from a Member Tax Credit to comply with any conditions or restrictions imposed by the Relevant Requirements.

13. APPOINTMENT, RETIREMENT AND REMOVAL OF THE SUPERVISOR

13.1 Appointment of Supervisor:

- (a) The Scheme shall have a single supervisor which:
 - (i) must be a person entitled by law to act as the supervisor of the Scheme³¹; and
 - (ii) must not be an Associated Person of the Manager.
- (b) The Supervisor continues as trustee of the Scheme for the purposes of the KiwiSaver Act and is the supervisor 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.³².

13.2 Retirement of the Supervisor: Subject to the Relevant Requirements, the Supervisor may retire as Supervisor of the Scheme without giving any reason upon giving 120 Business Days' prior written notice to the Manager of its intention to do so (or such lesser period as the Supervisor and the Manager agree) provided that such retirement shall not take effect until:

- (a) the requirements for such retirement under the FMCA and any other applicable legislation have been met; ³³
- (b) a new Supervisor has been appointed by the Manager and has executed the deed referred to in clause 13.5; and
- (c) all the assets of the Scheme have been transferred to the new Supervisor or its Custodian(s).

13.3 Removal of the Supervisor:

- (a) Subject to the Relevant Requirements, the Manager may remove the Supervisor from office with the FMA's prior consent:
 - (i) 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

³¹ Section 127(1)(d) of the FMCA.

³² Section 152 of the FMCA.

³³ Section 193(2) of the FMCA.

(specifying in this notice the grounds on which the Manager has formed this belief); or

- (ii) otherwise upon giving the Supervisor no less than 90 days prior written notice (or such lesser period as the Supervisor and the Manager agree) of such removal,

provided that such removal shall not take effect until:

- (iii) the requirements for such removal under the FMCA or any other applicable legislation have been met³⁴;
- (iv) a new Supervisor has been appointed by the Manager and has executed the deed referred to in clause 13.5; and
- (v) all the assets of the Scheme have been transferred to the new Supervisor or its Custodian.

- (b) The Manager may not discharge or remove the Supervisor unless the Manager does so:

- (i) under Part 2 of the Financial Markets Supervisors Act 2011; or
- (ii) with the approval of the High Court.

13.4 Appointment of new Supervisor: The power of appointing a new supervisor (in place of a Supervisor which has retired pursuant to clause 13.2 or been removed from office pursuant to clause 13.3) shall be vested in the Manager. Such an appointment is subject to any Relevant Requirements. The new supervisor must be qualified for appointment under clause 13.1(a).

13.5 Retiring Supervisor released: Any new Supervisor appointed pursuant to clause 13.4 shall forthwith on appointment execute a deed in such form as the Manager may require whereby the new Supervisor consents to being appointed as Supervisor of the Scheme 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 and from such date the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such new Supervisor had been originally named as a party hereto.

³⁴ Section 193(2) of the FMCA.

14. ADMINISTRATION AND POWERS OF THE SUPERVISOR

14.1 Supervisor's responsibilities:

- (a) The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA.³⁵.
- (b) Where the Supervisor appoints a Custodian in respect of a Fund in accordance with clause 14.8, 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 legislation³⁶.

14.2 Supervisor's powers and duties: The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions as supervisor of the Scheme, it must comply at all times with its duties under the FMCA.³⁷

14.3 Confidentiality: Subject to the Relevant Requirements, the Supervisor and the Manager shall regard as confidential, information disclosed to it in connection with the Scheme's administration, planning or related matters provided that relevant information may be passed to those directly concerned with the administration of the Scheme or payment of benefits under the Scheme including any Participating Employer.

14.4 Power in relation to legal proceedings: The Manager and the Supervisor may institute, prosecute, defend, settle and compromise legal proceedings in order to secure compliance with the provisions of this Governing Document, or the Relevant Requirements, and may recover any loss suffered by Members in respect of their Units.

14.5 Power to borrow: The Supervisor shall have power for the purposes of a Fund to, if so instructed by the Manager, borrow or raise moneys from any person (including a Member) by way of fixed loan or by way of bank overdraft or other running, continuing or fluctuating current account or by any other form of credit facility or accommodation and to sell, discount and otherwise deal in or with bills of exchange, and to grant a security interest over any asset of a Fund or otherwise charge or encumber any asset of a Fund, provided that the total principal amount borrowed or raised (whether secured or unsecured) in relation to the Fund does not exceed 20%

³⁵ Section 152 of the FMCA.

³⁶ Section 158 of the FMCA.

³⁷ Section 152 to 155 of the FMCA.

of the Fund's Net Asset Value and further provided that nothing in this clause 14.5 shall require the Supervisor to take any action which it reasonably believes would cause it to breach the Relevant Requirements or this Governing Document or place a liability or obligation on the Supervisor personally or would be manifestly not in the best interests of Members.

14.6 Supervisor may apply for a court order: Subject to the Relevant Requirements, if the Supervisor is satisfied that:

- (a) there is a significant risk that the interests of Members will be materially prejudiced; or
- (b) the provisions of the Governing Document are no longer adequate to give proper protection to Members,

the Supervisor may apply to the High Court for an order as permitted under the FMCA³⁸.

14.7 Supervisor's power to delegate: Subject always to the Relevant Requirements, the Supervisor shall have the power to delegate to its officers, employees and agents or any of them or to any attorney, agent or person nominated by the Supervisor all or any of the powers, authorities or discretions exercisable by the Supervisor under the provisions of this Governing Document, except that the Supervisor may not delegate its responsibilities under clause 14.1 to any person other than the officers and employees of the Supervisor, but without in any way releasing the Supervisor from its obligations under this Governing Document. Without in any way affecting the generality of the foregoing, the Supervisor may in carrying out and performing its duties and obligations and in exercising its powers, authorities and discretions pursuant to this Governing Document:

- (a) by power of attorney appoint a person to be attorney or agent of the Supervisor for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Supervisor) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Supervisor of documents bearing facsimile signatures on behalf of the Supervisor or of the attorney or agent either with or without proper manuscript signatures of its officers thereon and the Supervisor in any such power of attorney and the attorney or agent by the terms of any sub-delegation may insert such provisions for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as it may think fit; and

³⁸ Sections 207 and 208 of the FMCA.

- (b) appoint by writing or otherwise any person to be agent or sub-agent of the Supervisor as the Supervisor may think necessary or proper for such purposes and with such powers, authorities and discretions (not excluding those vested in the Supervisor) as it thinks fit and to supersede or suspend any such agent or sub-agent for such cause or reason as the Supervisor may in its sole discretion think sufficient,

and the Supervisor shall be liable for the acts and omissions of any such person, other than (as between the Supervisor and the Manager) the actions of the Manager or any person appointed or authorised by the Manager to carry out any of the powers, authorities or discretions exercisable by the Manager in relation to the Scheme.

14.8 Appointment of Custodians:

- (a) The Supervisor may after notifying the Manager nominate, 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 requirements for such person under the FMCA.³⁹ 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 14.8(a) and the FMCA⁴⁰ with respect to the Scheme.
- (b) If authorised in writing by the Supervisor (after the Supervisor has notified the Manager), a Custodian appointed under clause 14.8(a) may itself appoint one or more sub-custodians (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 14.8(b) must meet the requirements for such a person under the FMCA.⁴¹ 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 of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 14.8(b) and the FMCA⁴² with respect to the Scheme.
- (c) The Manager may agree with the Custodian or sub-custodian appointed pursuant to this clause 14.8, the fees that may be charged and the extent to which expenses will be reimbursed.

³⁹ Sections 127(1)(f) and 156 of the FMCA.

⁴⁰ Sections 157 to 159 of the FMCA.

⁴¹ Section 156 of the FMCA.

⁴² Sections 157 to 159 of the FMCA.

14.9 Exercise of Supervisor power: Subject to the KiwiSaver Act, the FMCA and to the other provisions of this Governing Document and to a Court of law deciding otherwise:

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

15. POWER TO INVEST

15.1 Investment Duties

Subject to the FMCA:⁴³

- (a) the Manager shall prepare a written SIPO for the Scheme which covers each Fund and complies with the requirements of the FMCA.⁴⁴ A SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA⁴⁵, and all moneys available for investment in a Fund shall be invested in accordance with the SIPO for the Scheme;
- (b) the Manager shall provide a copy of the proposed SIPO (or any alteration to that SIPO) to the Supervisor prior to the SIPO or alteration taking effect within the timeframes set out in the Management Deed and must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by the FMCA;⁴⁶
- (c) all money belonging to the Scheme (or, if applicable, each Fund) and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds and the Scheme's SIPO. The SIPO shall prevail over any requirement the Manager might otherwise have to dispose of or diversify investments. This investment obligation of the Manager shall (in addition to the provisions of clause 6.6) constitute a contrary intention for the purposes of section 2(5)

⁴³ Sections 164 to 167 of the FMCA.

⁴⁴ Section 164 of the FMCA.

⁴⁵ Section 164 of the FMCA.

⁴⁶ Sections 165 and 166 of the FMCA.

of the Trustee Act 1956, notwithstanding the provisions of section 2(5A) of the Trustee Act 1956.

15.2 Investment directions by the Manager: The Manager shall manage the investment of the assets of the Scheme (and, if applicable, each Fund) and, as necessary (and subject always to the Relevant Requirements, the Scheme's SIPO and the rules for PIEs under the Tax Act if the Scheme is a PIE), may in order to perform its functions under this Governing Document and the FMCA⁴⁷, direct the Supervisor or a Custodian on behalf of the Supervisor to:

- (a) purchase, acquire, invest, reinvest, lend, sell, transfer, dispose of or realise any investment;
- (b) enter into any commitment or liability in respect of any investment;
- (c) execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing;
- (d) exercise or refrain from exercising any voting right associated with any investment; and
- (e) take any other action which may be required in respect of any investment,

and the Supervisor shall (and, when a Custodian has been appointed, shall procure that the Custodian shall) from time to time, to the extent of the respective funds in its hands or control, act as directed in writing by the Manager.

15.3 Directions of the Manager:

- (a) The Manager shall invest the assets attributable to the Scheme (or, if there is more than one Fund, to a Fund) in accordance with the SIPO for the Scheme or that Fund.
- (b) Notwithstanding clause 15.2, the Supervisor must refuse to act (and must direct any Custodian to refuse to act) on any direction of the Manager to invest in, acquire or dispose of any investment in the circumstances where such a refusal is required by the FMCA⁴⁸. The Supervisor shall not be liable to the Members or the Manager for acting or refusing to act (or for directing any Custodian to so refuse to act) on any such direction by the Manager in respect of the investment, acquisition or disposal of any investment in accordance with the provisions of this Governing Document.

⁴⁷ Section 142 of the FMCA.

⁴⁸ Section 160 of the FMCA.

- (c) If the Supervisor refuses pursuant to clause 15.3(b) to act (or directs any Custodian to refuse to act) on a direction from the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for refusal or direction.⁴⁹
- (d) 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, if applicable, a Fund) arising as a result of investment in accordance with the SIPO for that Scheme.

15.4 Advisers: In relation to the purchase or sale of, or any other dealing with, any investment, the Manager may determine the time and mode of, and the consultants, agents, brokers and professional advisers (if any) for, the purchase, sale or other dealing. The Manager may agree to pay out of the assets of the Scheme all reasonable expenses of such advisers.

15.5 Dealing with related parties:

- (a) 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 FMCA⁵⁰.
- (b) The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit, in accordance with the Management Deed.
- (c) Neither the Manager nor any such Related Party shall be liable to account to the Supervisor or to any Member for any profit arising from any such transaction, provided the relevant transaction is on commercial arm's length terms (or terms which are better than commercial arm's length terms) from the Scheme's perspective.
- (d) A failure to comply with clause 15.5(a) does not affect the validity of a transaction (subject to any court order to the contrary).⁵¹

15.6 Investments in the Supervisor's or Custodian's name: The Manager shall cause investments to be vested in the Supervisor or its Custodian appointed in accordance with clause 14.8 and to be registered in the name of the Supervisor or such Custodian, in each case as soon as reasonably practicable after receipt of the necessary documents.

⁴⁹ Section 160 of the FMCA.

⁵⁰ Sections 172 to 175 of the FMCA.

⁵¹ Section 173(6) of the FMCA.

- 15.7 Bank accounts:** A separate bank account or accounts in the name of the Supervisor or its Custodian appointed in accordance with clause 14.8 must be opened and maintained by the Manager for the Scheme or each Fund. All moneys held for the Scheme (or the relevant Fund, if applicable) and coming into the hands of the Manager or an agent of the Manager must be paid to the credit of such bank account. The Supervisor shall determine the persons authorised to operate such bank accounts.
- 15.8 Derivative financial instruments:** For the avoidance of doubt, the Supervisor may, at the direction of the Manager, enter into derivative financial instruments (including without limitation forward exchange contracts, swap agreements, futures contracts, options and any form of agreement creating a contingent liability) for the purpose of investment or for the purpose of risk management.
- 15.9 Supervisor's right to limit liability:** The Supervisor may, before entering into any transaction, security, arrangement or liability of or in connection with the Scheme or a Fund, require that its liability is restricted or limited (to its satisfaction) to the assets for the time being of the Scheme or such Fund.

16. REMUNERATION OF SUPERVISOR⁵²

- 16.1 Supervisor fee:** Subject to rule 2 of the KiwiSaver Scheme Rules and the KiwiSaver Act, the Supervisor is entitled to be paid an annual fee for its services with respect to the Scheme, the amount of which and the basis of calculation to be agreed between the Supervisor and the Manager from time to time. The Supervisor is also entitled to receive, in addition to the annual fee, any GST payable in respect of the annual fee. In addition, the Supervisor is entitled to charge in respect of the Scheme, and to retain, such special fees on a time cost (to be calculated on the basis of the normal hourly rates applicable to the relevant personnel of the Supervisor) and disbursements basis as the Manager and the Supervisor may agree upon from time to time. The fee may be deducted from the assets of the Scheme or paid by cancelling Units in the relevant Members' Accounts and Employer Reserve Accounts.

17. REMUNERATION OF MANAGER

- 17.1 Manager fee:** Subject to rule 2 of the KiwiSaver Scheme Rules and the KiwiSaver Act, the Manager may charge for its services with respect to the Scheme such annual or other administration, management, membership, transaction and other fees as the Manager determines from time to time. The method of paying such fees shall be determined by the Manager from time to time and notified to the Supervisor in writing. The Manager is also entitled to receive, in addition to the fees referred to in this clause 17.1, any Tax payable in respect of such fees. The fee may be

⁵² Section 135(1)(f) of the FMCA.

deducted from the assets of the Scheme or paid by cancelling Units in the relevant Members' Accounts and Employer Reserve Accounts.

17.2 Alteration or waiver of fees: The Manager may waive part or all of, or decrease any of, its fees. The Manager may:

- (a) increase its fees payable in respect of the Scheme or any Fund or Funds or by the relevant Members; or
- (b) provided that any such fee is not prohibited under this Governing Document, commence charging any such fee which is not currently being charged,

subject in each case to rule 2 of the KiwiSaver Scheme Rules, the KiwiSaver Act⁵³, compliance with the FMCA and FMC Regulations, and to the Supervisor's written approval (such approval not be unreasonably withheld or delayed), and to providing Members with 30 Business Days' prior notice of each such increase.

18. SUPERVISOR'S AND MANAGER'S INDEMNITIES AND LIABILITY

18.1 Supervisor and Manager in representative capacity: 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 affairs of the Scheme, are each, and shall each be deemed to be, acting for and on behalf of the Members and not in their own respective capacities.

18.2 No personal liability: Neither the Manager nor the Supervisor shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Scheme, and the assets of the Scheme (or, subject to clause 6.3, where there is more than one Fund and the obligation relates solely to a particular Fund or Funds, those Funds) only shall be liable or subject to execution.

18.3 Indemnity: Subject to the limits on permitted indemnities under the FMCA⁵⁴, if contrary to the provisions of clause 18.1 and clause 18.2 either the Manager or the Supervisor shall be held personally liable to any other person in respect of any action taken or omitted, or any debt, liability (including any Tax paid or payable) or obligation incurred by or on behalf of the Scheme or any Member, including in respect of its establishment, then, unless the liability falls within clause 18.4, the Manager or the Supervisor (as the case may be), subject to clause 6.3 shall be entitled to be indemnified out of the assets of the Scheme (or where there is more than one Fund and the obligation relates solely to a particular Fund or Funds, solely

⁵³ Section 117 to 119 of the KiwiSaver Act.

⁵⁴ Sections 135(1)(f), 136(1)(b), 143, 144, 153 and 154 of the FMCA.

out of those Funds except as required by clause 6.3(e)(iii)) to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined.⁵⁵

18.4 Liability for default: The Manager and the Supervisor shall each be liable for any loss arising out of wilful default or wilful breach of trust but otherwise and subject to clause 6.3 and clause 18.7 neither the Manager nor the Supervisor shall be liable to the Scheme or to any Member as a result of acting as Manager or Supervisor (as the case may be) under this Governing Document or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Scheme.

18.5 Reimbursement: Without limiting the generality of the indemnity provided at clause 18.3 and their other powers, but subject to clause 6.3 and to the indemnity limitations under the FMCA⁵⁶, the Manager and the Supervisor shall each be entitled to be reimbursed out of the assets of the Scheme (or where there is more than one Fund and the obligation relates solely to a particular Fund or Funds, solely out of those Funds except as required by clause 6.3(e)(iii)) for all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Manager or Supervisor (as the case may be) under this Governing Document. Without prejudice to the generality of the foregoing (and subject to clause 6.3), the Manager and the Supervisor shall (subject to the Relevant Requirements) be indemnified against:

- (a) any expense or liability which may be incurred by the Manager or the Supervisor (as the case may be) in bringing or defending any action or suit in respect of the Scheme or the provisions of this Governing Document;
- (b) all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with the assets of the Scheme, including commission, bank charges and stamp duty;
- (c) all Taxation, financial institutions duties and bank account debits, or any other duty, or impost properly charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other person) in connection with the Scheme, a Fund or the Members;
- (d) costs of postage in respect of all cheques, accounts, notices, reports and other documents posted to all or any Members;
- (e) costs of convening and holding any meeting of Members;

⁵⁵ Sections 135(1)(f) and 136 of the FMCA.

⁵⁶ Sections 135(1)(f) and 136(1)(b) of the FMCA.

- (f) costs of preparing and printing accounts, cheques and all other documents required to be prepared in connection with the Scheme, pursuant to this Governing Document or any relevant law;
- (g) fees and expenses of the Auditor or any auditor, solicitor, actuary, barrister, computer expert or other person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties and the exercise of their powers under this Governing Document including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 12.4;
- (h) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Register;
- (i) the costs of complying with legislative requirements, including (but not limited to) the Relevant Requirements in connection with the Scheme, a Fund or the Members;
- (j) all costs, charges and expenses incurred in the advertising and promotion of the Scheme; and
- (k) any underwriting commission, brokerage, expenses, costs and disbursements in respect of the underwriting of an issue of Units.

18.6 Limitation on liability: Without prejudice to the generality of clauses 18.1 to 18.5:

- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager in its capacity as Manager;
- (b) the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor in its capacity as Supervisor;
- (c) the Supervisor shall be entitled to rely on the Manager's calculations under clause 8, and will not be required to verify those calculations or the methods and procedures used by the Manager in relation to them, except to the extent that such verification is required in order for the Supervisor to

meet its obligations under the KiwiSaver Act or other Relevant Requirements;

- (d) the Manager and the Supervisor may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, auditor, broker or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted (whether by the Manager or the Supervisor) and neither the Supervisor nor the Manager shall be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (e) whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, secretary, officer or responsible employee of the Manager or by any other person or persons appearing to be authorised by the Manager;
- (f) except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regards all the trusts, powers, authorities and discretions vested in each of them by this Governing Document have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of or time for the exercise thereof;
- (g) nothing in this Governing Document shall be deemed to prohibit the Manager or any shareholder or officer of the Manager ("**Relevant Persons**") from being a Member or from acting in any representative capacity for a Member. In particular and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Member and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Governing Document or imposed or implied by law;
- (h) the Supervisor shall be at liberty to deposit all documents evidencing any assets of the Scheme, or evidencing title to any assets of the Scheme with any person considered by the Supervisor to be of good repute, and the Supervisor and the Manager shall not be responsible for any loss incurred by the Scheme as a result of any such documents being held by any such person; and

- (i) the Members of the Scheme may by majority consent further release the Supervisor or the Manager or both from any liability incurred in relation to the Scheme and indemnify the Supervisor or Manager or both from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Supervisor or Manager ceasing to act in relation to the Scheme.

18.7 Indemnity limitations: For the avoidance of doubt, no provision of clauses 18.1 to 18.6 or clause 15.3 shall have the effect of exempting or indemnifying the Manager or the Supervisor or any such director or officer, to the extent that doing so would be void under the FMCA⁵⁷, the KiwiSaver Act or any other statute.

18.8 Power to indemnify investment managers and administration managers: The Manager may agree:

- (a) to limit the liability (in connection with its services in respect of the Scheme) of; and/or
- (b) 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).⁵⁸

18.9 Power to indemnify custodians: The Supervisor may agree:

- (a) to limit the liability (in connection with its services in respect of the Scheme), of; and/or
- (b) 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).⁵⁹

⁵⁷ Sections 136, 143, 144, 153 and 154 of the FMCA.

⁵⁸ Sections 135(1)(f) and 136 of the FMCA.

⁵⁹ Sections 135(1)(f) and 136(2) of the FMCA.

19. AUDITOR

- 19.1 Appointment and remuneration:** A licensed auditor or registered audit firm selected by the Manager, with the consent of the Supervisor, and entitled by law to act as such⁶⁰, must be appointed as Auditor of the Scheme. The Manager and the Supervisor must agree upon the services to be performed, and the reports to be provided, by the Auditor and their scope having regard to requirements under the FMCA⁶¹ and in accordance with the Management Deed. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.
- 19.2 Removal/retirement:** 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 the Members and instructs the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' notice in writing.
- 19.3 New appointment:** Any vacancy in the office of Auditor must be filled by the Manager, subject to the approval of the Supervisor, in accordance with clause 19.1.
- 19.4 Restrictions on Auditor:** The Auditor may be the Auditor of the Manager, or of the Supervisor, or of any other scheme whether of a similar nature to the Scheme or otherwise.
- 19.5 Compliance with FMCA auditor requirements:** The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's obligation to report to the Supervisor.⁶²

20. REGISTER

- 20.1 Evidence of entitlement:** The Manager shall, unless to do so would be inconsistent with the Relevant Requirements, be entitled, at its absolute discretion before giving effect to any redemption or other dealing with any Units, to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the relevant Register as the holder of the Units in question. If certificates have been issued in respect of the Units in question, such evidence may (but need not) be the production by that person of a certificate relating to those Units.
- 20.2 Register to be maintained:** The Manager shall keep and maintain or cause to be kept and maintained in New Zealand in respect of the Scheme an up-to-date register of Members. The Register shall:

⁶⁰ Section 461E of the FMCA.

⁶¹ Section 218 of the FMCA and FMC Regulations 108 and 109.

⁶² Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

- (a) be kept in the manner;
- (b) contain the content;
- (c) be audited; and
- (d) be available for inspection;

as required by the FMCA.⁶³

The Supervisor and the Manager shall be entitled to treat the Register as being correct if it reasonably believes that the Register has been adequately maintained.

20.3 Electronic register: The Register may be kept in the form of an electronic register.⁶⁴

20.4 Appointment of Registrar: The Manager may appoint a registrar to maintain a Register at the expense of the Scheme.

20.5 Tax information: The following information shall also be kept by the Manager or any Registrar in respect of any period where the Scheme is a PIE:

- (a) the Tax File Number and notified Prescribed Investor Rate of the Members; and
- (b) such details as the Manager considers are necessary or desirable for the Scheme to comply with, and to enable the Manager to administer the Scheme in accordance with, all relevant PIE rules under the Tax Act.

20.6 Members to notify changes: Any change of name or address, Tax File Number or Prescribed Investor Rate of any Member shall be notified by the Member in writing, or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

21. LIMITATION OF LIABILITY OF MEMBERS

21.1 No personal obligation to indemnify: Except as expressly provided by this Governing Document no Member is, by reason solely of being a Member or of the relationship hereby created between that Member and the Supervisor or the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of any of them in the event of there being any deficiency

⁶³ Sections 215 to 223 of the FMCA and FMC Regulations 109 and 110.

⁶⁴ Section 216(2)(a) of the FMCA.

in the assets of the Scheme or, where there is more than one Fund, of a Fund as compared with the liabilities to be met from those assets.

21.2 Limited recourse to assets of the Scheme: Subject to clause 24.4, the rights (if any) of the Supervisor or the Manager or of any creditor to seek indemnity are limited to having recourse to the assets of the Scheme (or of a Fund, where required by, and subject to, clause 6.3) and do not extend to a Member personally in such person's capacity as a Member.

21.3 No liability to contribute to any shortfall: On the winding up of the Scheme, no Member will have any liability to contribute to any shortfall in the assets of the Scheme or, where there is more than one Fund, of a Fund.

22. NOTICES AND INFORMATION TO MEMBERS

22.1 Notices

- (a) **Members:** A notice under this Governing Document, and any other Scheme-related communication intended for a Member, may be given to the Member personally by:
- (i) leaving it at the Member's registered address;
 - (ii) sending it addressed to the Member at the Member's registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, or prepaid post; or
 - (iii) subject to the Member having given his or her electronic address to the Manager (as contemplated by section 219 of the KiwiSaver Act) or having otherwise consented to accept Scheme-related information in an electronic form, by means of an electronic communication.

A Member must notify the Manager of any change to the Member's registered or electronic address and the Register shall be altered accordingly. Any notice given to Members by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Members in substantially the same form but with personalised details in respect of each Member, it shall be sufficient to provide the Supervisor with a sample of such a notice.

- (b) **Supervisor or Manager:** Any notice and any other Scheme-related communication required by this Governing Document to be given:

- (i) to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice or in such other manner as the Supervisor and the Manager may agree; and
- (ii) to the Supervisor or Manager by any other person shall be in writing and may be given in person, by post at the principal place of business in New Zealand of the intended recipient or such other address as the recipient may have notified or in such other manner as the Supervisor or the Manager, respectively, may agree.

22.2 Manner of notice: Any notice sent by post will be deemed to have been given at the expiration of three Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. A notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a Business Day, or the transmission is sent after 5 p.m. on a Business Day, then the notice will be deemed to have been given on the next Business Day after the date of confirmation of transmission).

22.3 Signature of notice: The signature to any notice to be given by the Manager or the Supervisor may be written or printed or otherwise provided in accordance with the Electronic Transactions Act 2002.

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

22.5 Receipt of notice: Any notice or document delivered or sent by post or electronic communication to or left at the registered address for service of any Member pursuant to the provisions of this Governing Document will (notwithstanding that the Member is then deceased and whether or not the Manager has notice of such deceased Member's death) be deemed to have been duly given.

23. PAYMENTS TO MEMBERS

23.1 Method of payment: Subject to the KiwiSaver Act, any amounts payable by the Supervisor or the Manager to a Member or the Member's personal representative or another person pursuant to section 65 of the Administration Act 1969 under the provisions of this Governing Document may be paid by cheque or direct credited to any bank account nominated by the Member or the Member's personal representative, relevant agent or authorised person.

23.2 Satisfaction of amounts payable: Payment of every cheque, if duly presented and paid, and in respect of direct credits, the giving by the Manager of the encoded payment instructions to the paying bank, will be due satisfaction of the amounts payable and will be good discharge to the Supervisor and to the Manager.

23.3 Deferral of benefits: A Member is not required to withdraw any amount comprised in that Member's Account on the KiwiSaver End Payment Date, as that term is defined in the KiwiSaver Scheme Rules.

23.4 Partial withdrawals after KiwiSaver End Payment Date: Where a Member has reached the KiwiSaver End Payment Date the Manager may:

- (a) 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
- (b) subject to the Relevant Requirements, determine from time to time:
 - (i) the minimum amount for each such withdrawal;
 - (ii) the permitted manner and frequency of such withdrawals; and
 - (iii) the minimum balance which must remain in the Scheme and/or any Fund after each such withdrawal;

and the Manager may make different determinations under this clause 23.4 with respect to particular Funds.

23.5 Unclaimed benefits: If the Manager is unable to trace a Member, the provisions of the Relevant Requirements relating to unclaimed money shall apply.

24. LIABILITY FOR TAX

24.1 Deductions: The Supervisor shall be entitled to deduct from any amount received or payable under this Governing Document a sum equal to the amount of any Tax for which the Supervisor may directly or indirectly become liable in consequence of such payment or receipt.

24.2 Attribution to Members: Pursuant to clause 12.1, if the Scheme is a PIE, the Manager shall ensure that all Taxes payable out of the assets of the Scheme or attributable to any Fund, and all rebates or refunds of Tax available to the Scheme or attributable to a Fund, are attributed to Members and Participating Employers in accordance with any Tax rules for PIEs under the Tax Act, and may for that purpose:

- (a) make payments between Funds;

- (b) cancel or issue Units in Members' Accounts, Employer Accounts and Employer Reserve Accounts; and
- (c) from time to time make provision, from the assets of the Scheme or attributable to any Fund, for any PIE Tax Liability of, or to become payable from, the assets of the Scheme or any asset attributable to a Fund.

Each such provision shall be of the amount which the Manager determines is appropriate and (except where the amount is determined by law) equitable and shall be made in such manner as the Manager determines from time to time.

24.3 Withholding Tax from benefits: If the Manager or the Supervisor is obliged by 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 Member, the Manager shall make such deduction or withholding and pay such amount to the Commissioner or other taxing authority, as applicable. On payment of the net amount to the relevant Member, the full amount payable to the relevant Member shall be deemed to have been duly paid and satisfied.

24.4 Indemnity: If the sum of the balances of the Member Account and Employer Account of a Member is insufficient to meet any liability for Tax payable by the Scheme, a Fund, the Manager or the Supervisor (whether current or deferred) which is:

- (a) attributed under the Tax Act to that Member; or
- (b) determined by the Supervisor or the Manager to be attributable to that Member,

then the Member shall indemnify the Supervisor and the Manager for that shortfall, and any penalties or use of money interest imposed by the Commissioner under the Tax Act in connection with that shortfall.

25. AMENDMENTS

25.1 Amendments: Subject to Relevant Requirements, this Governing Document (which includes any Participation Agreement and any Establishment Deed) may at any time be amended by deed executed by the Manager and the Supervisor⁶⁵, provided that the Manager and the Supervisor may not make any amendment that would result in a breach of any applicable law.

⁶⁵ Section 139 of the FMCA.

26. WINDING UP

26.1 Resolution to wind-up: The Manager may wind up the Scheme by resolution in writing and shall wind up the Scheme if the Scheme is required to be wound up under the FMCA, this Governing Document, by the Courts or by operations of law⁶⁶. If the Manager resolves in writing that the Scheme is to be wound up, then the Manager shall, as soon as practicable after passing that resolution, provide a copy of the resolution to the Supervisor, and wind-up shall take effect on the date specified for that purpose in the resolution. The provisions of the FMCA and the KiwiSaver Act⁶⁷ relating to the winding up of the Scheme shall apply to the winding up of the Scheme.

26.2 Procedure for wind-up: Immediately after the Winding Up Date:

- (a) no further persons shall be admitted as Members to the Scheme;
- (b) no further Contributions shall be paid by Members or Employers to the Scheme, except Contributions that accrued before the Winding Up Date; and
- (c) the Manager shall direct the Supervisor to realise the assets of the Scheme as soon as reasonably practicable allowing for an orderly sale of the assets of the Scheme and on a best endeavours basis will obtain the best price possible in the circumstances, but in all regards complying with the Relevant Requirements.

In winding up the Scheme, the Manager and the Supervisor shall comply with the provisions of the KiwiSaver Act and the FMCA, which relate to the winding up of a KiwiSaver Scheme.

26.3 Distribution of assets: Subject to clause 26.7, when the proceeds obtained from realising the assets of the Scheme have been received, the Manager shall direct the Supervisor to allocate the proceeds in accordance with clause 6.3 and in the following order of priority:

- (a) first, in allowing for all reasonable costs, fees, liabilities, claims and expenses that have 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 liability of the Scheme or of the Members;

⁶⁶ Sections 195 and 211 of the FMCA.

⁶⁷ Sections 171, 212 and 213 of the FMCA, and sections 50 to 52 and subpart 3 of Part 2 of the KiwiSaver Act.

- (b) secondly, in providing for benefits payable under this Governing Document that had become payable prior to the Winding Up Date and then remain unpaid;
- (c) thirdly, in respect of each Member who at the Winding Up Date has an interest in the Scheme at that date, a benefit equal in value to the Member's Accumulation in the Scheme shall be transferred to another KiwiSaver Scheme in accordance with clause 26.7 below;
- (d) fourthly, after consultation with the relevant Participating Employer, in augmenting all or any of the benefits under clauses 26.3(b) and 26.3(c) above, in respect of the relevant Employee Members in an equitable manner as determined by the Manager with any money in the Scheme relating to the Employer Reserve account.

- 26.4 Insufficient assets:** If, in following the priorities of payment there is insufficient money in any Fund to satisfy all the obligations above, the amount of each benefit shall be reduced equitably and proportionately among all Members entitled to the benefits out of that Fund.
- 26.5 Assets may not transfer to Participating Employers:** None of the assets of the Scheme may revert to any of the Participating Employers on the winding up of the Scheme.
- 26.6 Assets may not transfer to another Member:** No assets held in respect of any Member Account, Employer Account or Employer Reserve Account of any Member or Participating Employer (as appropriate) shall be used to pay any benefit or liability for any other Member or Participating Employer apart from the Member or Participating Employer (as appropriate) in respect of whom these accounts are held.
- 26.7 Benefits paid by way of transfer:** All benefits payable to Members of the Scheme on a winding up shall be paid, subject to compliance with the KiwiSaver Act, by way of transfer to another KiwiSaver Scheme.
- 26.8 Final accounts:** The Manager shall provide copies of final accounts and advice as to the manner in which the assets of the Scheme are to be distributed to such persons and within such time frames as may be required by the Relevant Requirements.
- 26.9 Termination of Participation Agreements:** If the Scheme is wound up, then each Participating Employer shall be treated as having terminated that Participating Employer's obligations under the relevant Participation Agreement on the effective Winding Up Date (and the relevant Account balances shall be dealt with in accordance with clause 10.9).

27. NO ASSIGNMENT

27.1 No assignment: Except as expressly provided in the KiwiSaver Act or otherwise subject to the Relevant Requirements and clause 27.2, a Member's interest in the Scheme or 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.⁶⁸

27.2 Relationship property: Notwithstanding clause 27.1, a Member's interest in the Scheme or any future benefits that will or may become payable to a Member under the Scheme may be released, assigned, charged or passed to another person if required by the provisions of any enactment or by the order of a court under any enactment (including, by way of example only, an order made under section 31 of the Property (Relationships) Act 1976).

28. INFANCY, INCAPACITY AND BANKRUPTCY

28.1 Subject to the Relevant Requirements, the Manager may from time to time determine (in respect of some or all Members) that if in the opinion of the Manager a Member is subject to a Court order under the Protection of Personal and Property Rights Act 1998 or bankrupt, the Member shall (to the maximum extent permitted by law) forfeit his or her interest in the Scheme. The Supervisor or the Manager shall (subject to compliance with the Relevant Requirements) apply such forfeited interest for the benefit of the Member or his or her dependents in such manner as the Supervisor or the Manager shall in its discretion think fit. Neither the Supervisor nor the Manager shall be under any obligation to make enquiry as to whether circumstances exist in respect of any Member which may give rise to the operation of this clause.

29. GENERAL

29.1 Employment: Nothing contained in this Governing Document shall in any way restrict the rights of a Participating Employer to determine the employment of a Member at any time and without assigning any cause for such determination.

29.2 No claim: No Member shall have any claim against any Participating Employer or its property or funds in respect of any amounts payable by the Supervisor or the Manager pursuant to this Governing Document.

29.3 New Zealand currency: Nothing in this Governing Document shall require the Supervisor or the Manager to make any payments other than in New Zealand and in New Zealand currency.

⁶⁸ Section 127 of the KiwiSaver Act.

- 29.4 Information to Manager:** Every Participating Employer and Member under this Governing Document shall furnish to the Manager such information as it shall require in order to fulfil its duties under this Governing Document and the Relevant Requirements.
- 29.5 Notification to Manager:** Any notification to the Manager required under this Governing Document shall be sufficient if given to the address specified in clause 22.1(b).
- 29.6 Sign in counterpart:** The parties acknowledge that this Governing Document may be executed in several counterparts, and 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.
- 29.7 Governing law:** This Governing Document shall be interpreted and administered in accordance with New Zealand law.⁶⁹
- 29.8 Instrument of Appointment prevails:** In the event of any conflict or inconsistency between the terms of any Instrument of Appointment and the terms contained in this Governing Document, the terms of the Instrument of Appointment shall prevail.
- 29.9 Compliance with Instrument of Appointment:** Neither the Supervisor nor the Manager shall take, or omit to take, any action which results in a breach by it or the other of the terms of any Instrument of Appointment.
- 29.10 Members bound by this Governing Document:** This Governing Document binds (and is legally enforceable between) the Supervisor, the Manager, the Members, former Members and any person claiming through any of them as if each of them had been a party to this Governing Document⁷⁰.
- 29.11 Meetings:** When required by the FMCA, the Manager must call a meeting of Members in the manner and on the basis set out in the FMCA and the FMC Regulations.⁷¹ A meeting of Members shall be conducted in accordance with the requirements of the FMCA.
- 29.12 Delivery:** 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:


⁶⁹ Section 128(1)(a) of the FMCA.

⁷⁰ Section 137 of the FMCA.

⁷¹ Sections 161 to 163 of the FMCA and FMC Regulations 83 and 91.

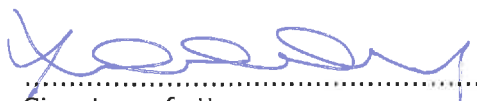
- (a) physical delivery of an original of this Governing Document, executed by the relevant party, into the custody of the other party or the other party's solicitors; or
- (b) transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a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

SIGNED for and on behalf of **BNZ**)
INVESTMENT SERVICES LIMITED)
in the presence of)



.....)
(Signature of witness))

RICHARD COX
.....)
(Name of witness))

Date **19/8/2016**)


.....)
Signature of attorney)

Sharon Mackay
.....)
Name of attorney)


.....)
Signature of attorney)

LOUIS NA.
.....)
Name of attorney)

Date **19/8/2016.**

Certificate of Non-Revocation of Power of Attorney

I, Louis Nel, of Auckland in New Zealand, Manager, W&PB Research, certify:

1. That by deed dated 4 August 2016, BNZ Investment Services Limited of Auckland, New Zealand appointed me its attorney.
2. That I have not received notice of any event revoking the power of attorney.

SIGNED AT AUCKLAND THIS

19th

DAY OF AUGUST 2016



Louis Nel

Certificate of Non-Revocation of Power of Attorney

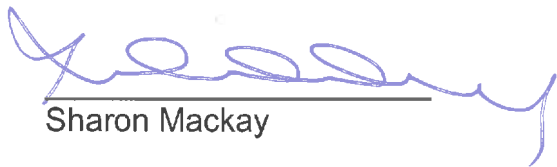
I, Sharon Mackay, of Auckland in New Zealand, Manager, W&PB Wealth Strategy & Products, certify:

1. That by deed dated 4 August 2016, BNZ Investment Services Limited of Auckland, New Zealand appointed me its attorney.
2. That I have not received notice of any event revoking the power of attorney.

SIGNED AT AUCKLAND THIS

19th

DAY OF AUGUST 2016


Sharon Mackay

**Certificate pursuant to Section 129(2)
of the KiwiSaver Act 2006 relating to
the BNZ KiwiSaver Scheme**

WE, BELL GULLY of Auckland, solicitors to the Trustee (to be the Supervisor under the Financial Markets Conduct Act 2013) of the BNZ KiwiSaver Scheme (the **Scheme**), certify that the Trust Deed of the Scheme dated 1 July 2014, when amended as proposed in accordance with the attached draft deed, will:

- (a) comply with section 119 of the KiwiSaver Act 2006; and
- (b) not contain any provision that is contrary to those implied in the Trust Deed by or under the KiwiSaver Act 2006 (including the KiwiSaver scheme rules).

DATED the 18th day of August 2016.



BELL GULLY
Rachel Paris
Partner