

Deed of Amendment and Restatement

in relation to Pie KiwiSaver Scheme Governing Document

Pie Funds Management Limited (**Manager**)

Trustees Executors Limited (**Supervisor**)

Deed of Amendment and Restatement

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Details

Date 27 November 2023

Parties

Name **Pie Funds Management Limited**
Short form name **Manager**
Notice details Attention: Head of Product & Operations
Email: dl_ops@piefunds.co.nz
Address: Level 1, One Byron Avenue, Takapuna, Auckland 0622

Name **Trustees Executors Limited**
Short form name **Supervisor**
Notice details Attention: Senior Client Manager
Email: CTS@trustees.co.nz
Address: Level 11, 51 Shortland Street, Auckland 110

Background

- A The Supervisor and the Manager are parties to a governing document dated 5 July 2018 (**Governing Document**), which sets out the terms and conditions by which the Juno KiwiSaver Scheme (**Scheme**) is constituted and administered.
- B The parties wish to make the following amendments to the Governing Document:
- (i) change the name of the Scheme from the Juno KiwiSaver Scheme to the Pie KiwiSaver Scheme; and
 - (ii) remove the reference to the now-repealed State Sector Act 1988 from clause 33 of the Governing Document
- and accordingly amend and restate the Governing Document to reflect these changes.
- C Pursuant to clause 33 of the Governing Document, the Manager and the Supervisor agree, subject to the requirements of the Financial Markets Conduct Act 2013 (**FMCA**), to amend and restate the Governing Document to reflect the changes set out in recital B above.
- D For the purposes of section 139(2)(b) of the FMCA, the Supervisor is satisfied that the amendments made by this deed do not have a material adverse effect on the Scheme participants and has certified that the Governing Document (as amended and restated in the form set out in this deed) will comply with sections 135 to 137 FMCA.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

- (a) Capitalised terms used but not defined in this deed have the meanings given to them in the Governing Deed.
- (b) Unless the context otherwise requires, for the purposes of this deed:
 - (i) **Effective Date** means 5 December 2023.

2. Amendment and restatement

Pursuant to clause 33 of the Governing Document and section 139(2) of the FMCA, with effect on and from the Effective Date, the Manager and the Supervisor agree that the Governing Document is amended and restated in the form set out in the Schedule.

3. Continuation

Each of the parties to this deed agrees that, on and from the Effective Date, the Governing Document, as amended and restated by clause 2 of this deed, will continue in full force and effect.

4. Counterparts

- (a) This deed may be signed in any number of counterparts (including electronically), all of which, when taken together, constitute one and the same instrument.
- (b) A party may enter into this deed by executing any counterpart (including electronically).

5. Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each party (each a **Delivering Party**) to the other immediately on the earlier of:

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

6. Entire Agreement

This deed constitutes the entire agreement between the parties in relation to the amendments made by this deed as referred to in clause 2 above.

7. Governing Law


- (a) This deed is governed by, and is to be construed in accordance with, New Zealand law.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

Signing page

EXECUTED as a Deed

SIGNED by PIE FUNDS MANAGEMENT LIMITED


Signature of director

Matthew Blackwell
Name of director


Signature of director

ANA-MARIE LOCKYER
Name of director

SIGNED by TRUSTEES EXECUTORS LIMITED

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signing page

EXECUTED as a Deed

SIGNED by PIE FUNDS MANAGEMENT LIMITED

Signature of director

Name of director

Signature of director

Name of director


SIGNED by TRUSTEES EXECUTORS LIMITED



Signature of authorised signatory

Stuart Howard


Name of authorised signatory



Signature of authorised signatory

Johnny Lane

Name of authorised signatory



Signature of witness

Natalie Greig-Low

Name of witness

Operations Analyst

Occupation of witness

Auckland

City/town of residence

Schedule 1 – Amended and restated Pie KiwiSaver Scheme governing document

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Governing Document, unless the context otherwise requires:

Assets means, in relation to the Scheme, the Scheme Property, and in relation to each Fund, the separate Scheme Property comprising that Fund.

Associated Person has the meaning given to that term by the FMCA.

Auditor means the person for the time being holding office as auditor of the Scheme as appointed under clause 26.

Business Day means a day other than Saturday or Sunday or a public holiday on which registered banks are open for general banking business in Auckland.

Custodian has the meaning given to that term by the FMCA and includes any sub-custodian appointed under clause 14.1 (to the extent the context permits).

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

Effective Date means 1 August 2018.

Establishment Deed means, in relation to each Fund, the deed agreed between the Manager and the Supervisor for the establishment of a Fund (if any).

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

FMCA means the Financial Markets Conduct Act 2013 and, where the context permits, includes the FMC Regulations.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Fund means each fund of the Scheme established under this Governing Document and the relevant Establishment Deed.

Fund Update has the meaning given to that term by the FMC Regulations.

Governing Document or this deed means this trust deed which is a governing document for the purposes of the FMCA and, where relevant, the Establishment Deed of a Fund.

GST means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.

Initial Funds means the initial Funds at the time of establishment of the Scheme, listed in clause 3.1(b).

Issuer Obligations has the meaning given to that term by the FMCA.

KiwiSaver Act means the KiwiSaver Act 2006 and, where the context permits includes any regulations made under that Act.

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

Liabilities means, in relation to a Fund or the Scheme, all liabilities of the Fund or the Scheme (as the case may be), including liabilities accrued but not yet paid, and any provision which the Manager decides in consultation with the Auditor should be taken into account in determining the liabilities of the Fund or the Scheme (as the case may be) and, where the Scheme is a PIE and the Manager in its complete discretion considers it appropriate to include, including any income Tax Liability.

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

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

Manager means Pie Funds Management Limited or such other person who is appointed as the manager for the time being of the Scheme, in accordance with clauses 2.3 and 19.

Manager Reporting Agreement means an agreement between the Manager and the Supervisor setting out the reporting obligations of the Manager to the Supervisor as agreed from time to time.

Member means a natural person who has been admitted to membership of the Scheme and who is, or may become, entitled to benefits under the Scheme, and for completeness also includes Participating Members.

Net Asset Value has the meaning given to that term in clause 8.1(b).

Participating Employer means an employer who is a party to a Participation Agreement.

Participating Employer's Reserve means the reserve created by the Manager in relation to a Participating Employer pursuant to clause 10.7.

Participating Member means a Member who joins the Scheme under the terms of a Participation Agreement following the operation of section 48 of the KiwiSaver Act.

Participation Agreement means an agreement entered into in accordance with clause 10.

Pie Funds Group means Pie Funds Management Limited and all companies that are related companies (as defined in the Companies Act 1993) or any one of them.

Product Disclosure Statement or **PDS** has the meaning given to that term by in the FMCA.

Register means the register of Members maintained by the Manager under clause 9.

Register Entry has the meaning given to that term by the FMCA.

Register of Offers of Financial Products has the meaning given to that term by the FMCA.

Registered Scheme means a managed investment scheme that is a registered scheme under the FMCA.

Registrar has the meaning given to that term by the FMCA.

Regulated Offer has the meaning given to that term by the FMCA.

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993.

Related Party has the meaning given to that term by the FMCA.

Related Party Benefit has the meaning given to that term by the FMCA.

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;

Scheme means the Pie KiwiSaver Scheme established by this deed and including all of the various Funds.

Scheme Property has the meaning given to that term in the FMCA.

Scheme Provider Agreement means the scheme provider agreement entered into in respect of the Scheme in accordance with the KiwiSaver Regulations 2006.

SIPO means the statement of investment policy and objectives for the Scheme and each Fund.

Special Resolution has the meaning given to that term by the FMCA.

Supervisor means Trustees Executors Limited or such other person who is appointed as the supervisor of the Scheme for the time being in accordance with clauses 2.2 and 18.

Switch means changing the Fund or Funds in which all or part of a Member's savings have been invested as contemplated by clause 4.5.

Tax means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties.

Tax Act means the Income Tax Act 2007 and, as the context requires, the Tax Administration Act 1994.

Tax Credit means a credit against a person's Tax liability provided for under the Tax Act, including under subpart HM.

Unit means a unit in a Fund (and included a part of a unit), and represents the Member's (or in respect of the Participating Employer's Reserve under clause 10.7, the Participating Employer's) undivided part or share of the beneficial interest in that Fund.

Unit Price has the meaning given to that term in clause 6.4(b).

Valuation Date means a date on which a Fund is valued under clause 8.

Value means, in relation to an Asset of or to be acquired by the Scheme, the value determined in accordance with clause 8.

Winding Up Date means the applicable following date on which the Scheme is to be wound up in accordance with clause 20.1:

- (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.

1.2 Terms defined in the KiwiSaver Act

Each of the terms **Benefit**, **Commissioner**, **Complying Superannuation Fund**, **Contribution**, **Crown Contribution**, **Employer's Chosen KiwiSaver Scheme**, **KiwiSaver End Payment Date**, **KiwiSaver Scheme**, **KiwiSaver Scheme Rules**, **Member's Accumulation**, **Member's Interest** and

Permitted Withdrawal has the meaning given to that term by the **KiwiSaver Act**, and is capitalised for ease of reference.

1.3 Terms defined in Tax Act

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

1.4 Frameworks and methodologies

Where any frameworks or methodologies specified in notices issued by the FMA under the FMCA are applicable to the Scheme, the provisions of this deed which deal with such matters will be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme.

1.5 Implied terms

The provisions of this deed that apply to the Scheme are deemed to include the implied provisions of the KiwiSaver Act, the FMCA and the FMC Regulations for so long as those provisions are in force. Any provision of this deed that is contrary to the implied provisions is void to the extent it is contrary.

1.6 Inconsistency

In the event of a conflict between the provisions of this deed and any Establishment Deed, the terms of the Establishment Deed will prevail. This deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA or the KiwiSaver Act.

1.7 Construction

In the construction of this deed, unless the context requires otherwise:

Business Days: anything required by this deed to be done on a day which is not a Business Day may be done effectually on the next Business Day.

Clauses: a reference to a clause is to a clause of this deed.

Currency: a reference to any monetary amount is to New Zealand dollars.

Defined terms: words or phrases appearing in this deed with capitalised initial letters are defined terms and have the meanings given to them in this deed.

Documents: a reference to any document, including this deed, includes a reference to that document as amended, supplemented (by supplemental deed or otherwise), replaced or novated from time to time.

Exemptions: where any exemption is available from compliance with any provision of applicable law, references to that applicable law in this deed will be deemed to be subject to such exemption.

Fees: where this deed provides that any fees, expenses, or other amounts are payable to the Supervisor, the Manager, or any other person, the amounts payable must be increased by the amounts of any GST or other Tax payable in respect thereof, unless specified otherwise.

Generally accepted accounting principles: notwithstanding any provision of this deed, where a matter is to be or may be interpreted pursuant to any provision of this deed by reference to generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets or net assets for any other purpose), the Manager may elect not to follow such generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards.

Headings: headings appear as a matter of convenience and do not affect the construction of this deed.

Parties: a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assigns.

Person: a reference to a person includes a company, corporation and a body of persons, whether corporate or unincorporated (including trustees acting jointly).

Related terms: where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

Singular, plural and gender: the singular includes the plural and vice versa, and words importing one gender include the other genders and vice versa.

Statutes and regulations: references to enactments, regulations or other statutory instruments include all amendments, re-enactments and replacements to those enactments, regulations or statutory instruments.

Time: a reference to time is to New Zealand time.

Without limitation: the word "including" and other similar words do not imply any limitation.

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.8 Exchange of currencies

Where, for the purposes of any provision of this deed, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency (or a non-New Zealand currency equivalent of a sum expressed in New Zealand currency) such sum will, unless otherwise agreed in writing by the Supervisor, be converted to New Zealand currency (or the non-New Zealand currency, as the case may be) on such basis as is from time to time acceptable to the Manager. In so determining a currency equivalent of any Asset or Liability, account may be taken of any contract or arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency in respect of the Asset or Liability.

2. Establishment of the Scheme

2.1 Establishment of the Scheme

The Scheme is established under this deed as a KiwiSaver scheme and, subject to clause 2.6, will be known as the Pie KiwiSaver Scheme. The principal purpose of the Scheme is to provide retirement benefits to Members in accordance with the KiwiSaver Act and the FMCA.

2.2 Appointment of Supervisor

The Supervisor agrees to act as supervisor for the Scheme and to hold (or arrange for the Custodian to hold) all Contributions and other Assets of each Fund and of the Scheme on trust for the Members in accordance with the terms of this deed and the FMCA.

2.3 Appointment of Manager

The Manager agrees to act as manager for the Scheme on and subject to the terms and conditions expressed or implied in this Governing Document, the FMCA and any relevant law.

2.4 Composition of the Scheme

The Scheme consists of all Funds, Assets of those Funds, and other amounts from time to time held by the Supervisor upon the trusts of this deed, subject to any Liabilities of the Scheme or Funds.

2.5 Registration requirements

The Manager must ensure that the Scheme meets the initial and on-going registration requirements applicable to the Scheme in accordance with the requirements of the FMCA.

2.6 Alteration of name

The Manager may alter the name of the Scheme subject to providing 10 Business Days' prior written notice to the Supervisor containing an explanation for doing so. The Manager will notify Members of any change of name of the Scheme when next convenient for the Manager, but in any event at the next time following the change of name that communication is sent by the Manager to all Members.

2.7 Commencement of the Scheme

The Scheme is established from the Effective Date and is governed and administered in accordance with the provisions of this deed.

3. Establishment of separate Funds

3.1 Creation of Funds

- (a) The Manager and Supervisor may establish separate Funds within the Scheme, designed to enable Members to have their savings invested by reference to particular asset classes or mixes of asset classes.
- (b) The following Initial Funds established by the execution of this deed are:
 - (i) Pie KiwiSaver Conservative Fund
 - (ii) Pie KiwiSaver Balanced Fund
 - (iii) Pie KiwiSaver Growth Fund
- (c) The Manager will deposit a sum of \$10 for each Initial Fund with the Supervisor to be held upon the trusts created by this deed and upon deposit of such sum the trusts will be deemed to have been established.
- (d) Additional Funds may be established by the Manager and the Supervisor entering into an Establishment Deed that will, together with this deed, form the Governing Document for the Fund.
- (e) This clause 3.1 must not be construed so as to prohibit the Manager (subject to clause 25.1) transferring value between Funds to accommodate the Scheme being a single taxpayer.

3.2 Unitisation

The Manager will operate each Fund on a unitised basis, with the beneficial interests of Members in each Fund divided into Units.

3.3 Constitution of the Funds

The investments of each Fund will consist of all the investments, cash, property, assets and rights for the time being held by the Supervisor (or the Custodian) on trust for the Members of the relevant Fund including:

- (a) the proceeds of sale or realisation of any investments;
- (b) all additions or accretions (if any) of the Fund;
- (c) all income from any investments held pending distribution or reinvestment; and
- (d) Contributions to the Fund that have been received and not yet invested.

3.4 Exclusive assets and liabilities

- (a) Although the Scheme is intended to be treated as one registered KiwiSaver Scheme for the purposes of the KiwiSaver Act and the FMCA, the Supervisor (or any Custodian) will hold the Assets of each Fund as a separate and distinct pool of separate assets for the benefit of Members of that Fund (and, with respect to any Participating Employer's Reserve under a Participation Agreement, the relevant Participating Employers). All Assets and Liabilities of each Fund are the exclusive assets and liabilities of the relevant Fund.
- (b) The Manager must keep separate records and accounts in respect of each Fund, and must not permit the Assets or Liabilities of any Fund to become intermingled with those of any other Fund (provided that nothing in this subclause will prevent the Assets of any Fund being lent to, deposited with or invested in another Fund).
- (c) Without limiting the generality of this clause 3.4, the provisions of this deed relating to indemnities in favour of the Supervisor and the Manager, and the fees payable to and the reimbursement of the Supervisor and the Manager, must be construed in a manner consistent with this clause where separate Funds have been established, namely:
 - (i) any amounts payable to the Supervisor or the Manager are payable from 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 the amount payable to the Supervisor or the Manager relates to more than one Fund, that amount must be apportioned between those Funds on such fair and equitable basis as may be determined by the Manager.

3.5 Equal but not specific interests

Units in a Fund:

- (a) are of one class and confer identical rights and interests;
- (b) confer, including for the purpose of the definition of Investor Class, on each Member an equivalent beneficial interest in all of the investments comprised in the relevant Fund, corresponding to the Member's Interest (or the relevant portion of the Member's Interest), but will not confer any interest in, right, claim or title to any particular investment or Asset of the relevant Fund; and
- (c) do not (where there is more than one Fund) confer any right or interest in the Assets of any other Fund.

3.6 Contrary intention

The establishment of Funds by the Manager, the choice of a default Fund by an employer and the choice of a Fund or Funds by a Member under clause 4.5 will each be directions given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956. The investment obligations of the Supervisor under this deed and the SIPO for each Fund constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956. However, no direction by an employer or a Member in terms of this clause 3.6 will exempt the Manager from its responsibilities under the FMCA.

3.7 Consolidation of Funds

Subject to clause 11.8, the Manager may consolidate Funds within the Scheme at any time by giving prior written notice of such consolidation to the Supervisor and Members. Where Funds are consolidated, the Assets and Liabilities of each Fund will be combined and Members will have Units in the combined Fund equal to the value of their interests in the Funds being combined at the time and date for such consolidation selected by the Manager at no cost to Members.

4. Membership

4.1 Admission

- (a) Subject to clause 4.1(b) below, natural persons will be admitted to membership of the Scheme:
 - (i) by completing an application for membership of the Scheme (in such form and in such manner as the Manager prescribes or otherwise requires from time to time) and contracting directly with the Manager to become a Member of the Scheme in accordance with section 45 or section 55 of the KiwiSaver Act, as applicable; or
 - (ii) in accordance with section 48 of the KiwiSaver Act, by reason of the Scheme being an Employer's Chosen KiwiSaver Scheme, provided the person meets any conditions of eligibility contained in the relevant Participation Agreement,
 - (iii) and in each case the Manager may (or, if required by the KiwiSaver Act, must) also effect transfers into the Scheme in respect of those persons under subpart 3 of Part 2 of the KiwiSaver Act or otherwise in accordance with the KiwiSaver Act.
- (b) Only persons who meet the New Zealand criteria set out in the FMCA, and who are entitled to be Members under the KiwiSaver Act, may be admitted to membership of the Scheme.

4.2 Compliance with legislation

The Manager must, when inviting Member applications or when accepting Member applications under clause 4.1 comply with the FMCA, the KiwiSaver Act, and all applicable law.

4.3 Deemed acceptances

On admission to membership of the Scheme pursuant to clause 4.1(a)(ii), a Member is deemed to have consented to the Supervisor, the Manager and the Custodian, if appointed, 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 4.1(a)(i).

4.4 Refusal of application

Subject to the KiwiSaver Act and the FMCA, the Manager may refuse any application for membership of the Scheme. The Manager must make a prompt decision on all applications and is not required to give grounds for any refusal. The Manager must as soon as is practicable refund or arrange for the Supervisor (or Custodian, if appointed) to refund any savings received in respect of any refused application. Application moneys received or held in respect of rejected applications will not constitute an investment in any Fund.

4.5 Member entitled to choose Fund(s)

Subject to clause 4.6, where there is more than one Fund, a Member may choose the Fund or Funds in which the Member's savings will be invested (unless the Member is a Participating Member who is restricted from doing so pursuant to a Participation Agreement).

4.6 Restrictions on choosing Fund(s)

In exercising their choice under clause 4.5, Members must 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.

4.7 Cessation of membership

Subject to the provisions of this deed, the KiwiSaver Act and the FMCA, a person will cease to be a Member on the first to occur of the person:

- (a) receiving (or the person's personal representatives or a relevant person for the purposes of section 65 of the Administration Act 1969 receiving) from the Scheme the Member's Accumulation in accordance with the KiwiSaver Scheme Rules and ceasing to have an entitlement under the Scheme and receiving notice from the Manager under rule 4(5)(b) of the KiwiSaver Scheme Rules as a result of the balance of all of a Member's accounts reaching zero; or
- (b) transferring from the Scheme to another KiwiSaver scheme in accordance with the requirements of subpart 3 of Part 2 of the KiwiSaver Act, or to a Retirement Scheme in accordance with the requirements of the KiwiSaver Act and ceasing to have an entitlement under the Scheme; or
- (c) in accordance with section 20(1) of the KiwiSaver Act (if applicable).

4.8 Conditions or restrictions on membership

Subject to the KiwiSaver Act and the FMCA, the Manager may at any time impose conditions or restrictions on the offer of Units, and the acceptance of new Members, at its discretion.

4.9 Rights in relation to management

Subject to the rights of Members created by this deed and by any relevant law, no Member will be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any rights, powers, authorities or discretions conferred upon them by this deed or in respect of a Fund or the Scheme.

5. Contributions

5.1 Member and employer contributions

- (a) Each Member will make Contributions in the manner specified in, and as required under, the KiwiSaver Act. A Participating Member must make Contributions as specified in the relevant Participation Agreement (subject to the requirements of the KiwiSaver Act).

- (b) A Member may make additional Contributions as permitted in the KiwiSaver Act.
- (c) Each employer must contribute such amounts as required under the KiwiSaver Act. Each Participating Employer must contribute at a percentage rate as provided for in the Participation Agreement (subject to the requirements of the KiwiSaver Act).
- (d) Any other person may make Contributions in respect of a Member of the Scheme.

5.2 Contributions that must be accepted

The Manager must accept:

- (a) Contributions that are payable to the Scheme by or in respect of a Member via the Commissioner under the KiwiSaver Act, unless the Manager has reasonable cause to believe that:
 - (i) those Contributions have not been correctly deducted or remitted to the Scheme in terms of Part 3 of the KiwiSaver Act; or
 - (ii) the Commissioner has not provided, with respect to those Contributions, the information required under section 79 of the KiwiSaver Act;
- (b) Crown Contributions paid under section 226 of the KiwiSaver Act (if any), KiwiSaver Member Tax Credits and any other Crown Contributions;
- (c) Contributions required to be made to the Scheme by or in respect of a Member, by way of salary or wage deductions, under a Participation Agreement; and
- (d) amounts transferred from another KiwiSaver Scheme or a Complying Superannuation Fund in respect of a Member in accordance with subpart 3 of Part 2 of the KiwiSaver Act.

5.3 Contributions that may be accepted

The Manager may, but is not required to, accept Contributions and monies payable to the Scheme by or in respect of a Member other than those referred to in clause 5.2. Subject to the KiwiSaver Act, the Manager may impose terms and conditions for such acceptance (including, without limitation, as to the amount and mode of payment).

5.4 Vesting of KiwiSaver Member Tax Credits and employer contributions

Any KiwiSaver Member Tax Credit and employer contributions paid to the Scheme in respect of a Member will vest in the Member immediately after they are paid to the Scheme.

5.5 Tax rebates

If the Scheme is a PIE and receives a Tax rebate for Tax credits or Tax losses in respect of Members or former Members, the Manager may allocate that Tax rebate among the Members or former Members in such manner as the Manager in its complete discretion considers appropriate (subject to the requirements of the Tax Act). Any amount allocated to a former Member may be paid to that former Member following receipt of the rebate or credit. Any amount allocated to a Member must be treated as a Contribution to be invested in the Scheme (or, if applicable, the relevant Fund) on behalf of the Member.

5.6 Manager's duty and obligations with respect to Contributions accepted

Without limiting clause 11.6, all money received by the Manager (or an agent of the Manager) in respect of Contributions that are accepted into the Scheme:

- (a) must be paid by the Manager into a separate bank account maintained for the Scheme or the relevant Fund in the name of the Supervisor (or of a nominee appointed by the Supervisor in accordance with clause 14.1);
- (b) will be subject to the trusts governing the Scheme that are set out in this deed; and
- (c) must be applied as a subscription for Units in such Fund or Funds as specified in the Member's investment election. Where the Member has made no investment election, the Manager will apply all money received in respect of Contributions as a subscription for Units in the default Fund of the Manager's choosing.

5.7 Suspension of Contributions

Members may only suspend Contributions to the extent provided for under the KiwiSaver Act and the relevant Participation Agreement (where applicable). Such Member must advise the Manager of the suspension, unless the Member makes Contributions to the Scheme via the Commissioner in accordance with the KiwiSaver Act.

5.8 Termination of Contributions

When a Member stops being a Member under clause 4.7, all Contributions to the Scheme will cease.

6. Units

6.1 Issue of Units

- (a) The Manager will issue Units with respect to Contributions received in accordance with clause 5.6.
- (b) Each Unit will be issued at the Unit Price on the day it is issued.
- (c) Where the Contributions are received before 12pm on a Business Day, the Units must be issued from the relevant Fund or Funds at the Unit Price on that day. Where the Contributions are received after 12pm on a Business Day or on a non-Business Day, the Units must be issued from the relevant Fund or Funds at the Unit Price on the next Business Day.
- (d) To the extent permitted by law, Units are not transferrable and can only be cancelled in accordance with clause 6.7.

6.2 Unitising Contributions

Subject to clause 6.5, in respect of:

- (a) each Contribution and other amount accepted into the Scheme under clause 5;
- (b) any other amount accepted or payable into the Scheme which the Manager considers should give rise to the issue of Units; and
- (c) where there is more than one Fund, any amount Switched from one Fund to another Fund pursuant to clause 4.5;

the Manager must issue Units in the Scheme (or, if there is more than one Fund, the relevant Fund or Funds):

- (d) by the next Valuation Date after the receipt or transfer; or

- (e) if (and to the extent that) the Manager determines that it is not reasonably practicable for it to issue such Units by the next Valuation Date and advises the Supervisor accordingly, by what the Manager considers to be the next reasonably practicable Valuation Date.

6.3 Unit Price

Units issued under clause 6.1 will be based upon the amount accepted, payable or transferred (net of any amount that the Manager considers appropriate to deduct for fees, expenses, Taxes or other liabilities) and the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on the date when the Units are issued. Units issued on the establishment of a Fund will be issued at a Unit Price of \$1.00.

6.4 Unit Price calculation

- (a) Each Unit Price will be determined on each Valuation Date. For the avoidance of doubt, the Assets used to determine the Unit Price on a Valuation Date will not include amounts received for which Units are to be but have not been issued, and will include amounts debited, transferred or withdrawn from the Scheme for which Units are to be but have not been cancelled, at the time of such determination.
- (b) Unit Price means, in relation to a Unit in the Scheme, or if there is more than one Fund, a Fund, an amount determined by the Manager as follows:

$$UP = \frac{NAV + TC}{N}$$

Where:

UP = Unit Price

NAV = the Net Asset Value of the Scheme or that Fund (as the case may be) calculated on the latest practical Business Day before Units are issued.

TC = the Manager's estimate of the total cost of acquiring or dispose of Assets or such lesser amount, including zero, as the Manager determines.

N = the aggregate number of Units in the Scheme or that Fund (as the case may be) on issue at the date of calculation of the NAV referred to above.

6.5 Delaying unitisation

Without limiting clause 6.1, the Manager may delay converting into Units under clause 6.1 any Contributions accepted into the Scheme in respect of any Member or group of Members until such time as the Manager is reasonably satisfied that those Contributions do not exceed the amount required to be paid to the Scheme in respect of that Member (or those Members collectively) under the KiwiSaver Act and this deed and have not otherwise been paid in error.

6.6 Ceasing to issue Units

Without limiting clause 6.2 or any other provision of this Governing Document (but subject at all times to the provisions of the KiwiSaver Act and the FMCA), the Manager may determine at any time 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 or Funds) is terminated;

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

6.7 Cancelling Units

- (a) Where Units are required to be withdrawn under this deed, the Units will be withdrawn by way of cancellation and on the basis of the Unit Price.
- (b) In respect of amounts debited, transferred or withdrawn from the Scheme, the Manager will cancel the number of Units determined by dividing the amount debited by the relevant Unit Price or Unit Prices applying on a day no later than the next Valuation Date after the Manager determines that the debit, transfer or withdrawal will be made (provided that, for amounts debited on account of Tax payable, the Manager may use the Valuation Date on which the Manager finally determines the amounts of Tax payable).

6.8 Suspensions by the Manager

- (a) Subject to the requirements of the KiwiSaver Act and the FMCA, but notwithstanding the above provisions, and subject to prior written notification to the Supervisor, if for any good reason reasonably determined by the Manager, the Manager forms the opinion that it is not desirable, or would be prejudicial to the interests of Members in a Scheme (or where there is more than one Fund, a Fund), as a whole, for the Manager to pay a Benefit or make a Switch or transfer to another scheme, then the Manager may suspend the payment of all Benefits or the making of all Switches or transfers relating to the Scheme or the relevant Fund until the Manager decides that the suspension is cancelled.
- (b) Where the Manager has suspended payment of Benefits, or making Switches or transfers in respect of the Scheme, and has not cancelled that suspension within 14 days of such decision, the Manager must consult with the Supervisor and provide written notification to the Supervisor and all Members in the Scheme or the relevant Fund (as the case may be) of the suspension. A suspension will expire 6 months after the notice to the relevant Members has been given pursuant to this clause 6.8 unless the Supervisor approves the continuance of such suspension in which case a further notice shall be provided to Members (which must stipulate the expiry period of the continuance, as agreed between the Manager and the Supervisor).

6.9 Uncleared funds

Units issued against uncleared funds may be treated as void if the funds are not subsequently cleared.

6.10 Units issued in error

Subject to the requirements of the KiwiSaver Act, the FMCA 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 relevant law does not require the Units to be treated as void).

6.11 Part Units

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 (acting reasonably) determines from time to time. Parts of Units may be denoted by figures up to four decimal places. Where such consolidation or division involves a part of a Unit in relation to any Member, the number of Units to which that Member is entitled to will be rounded down to the nearest whole number.

6.12 Pricing error

The Manager must take any action in respect of, and report to the Supervisor in relation to, any pricing errors as required by the FMCA and the Manager Reporting Agreement, provided that, where an amount of any reimbursement or compensation required to be provided to any Member is less than any minimum level of reimbursement or compensation which is agreed between the Manager and the Supervisor from time to time, then no reimbursement or compensation is required to be provided.

7. Benefits

7.1 Calculation of Member's Accumulation

- (a) Benefits are payable from the Scheme in accordance with the KiwiSaver Scheme Rules and the FMCA, by means of a withdrawal processed in accordance with clause 6.7.
- (b) Subject to clause 7.2, when the Manager is required under the KiwiSaver Scheme Rules to calculate an amount representing a Member's Accumulation, the Manager will calculate that amount by:
 - (i) multiplying the Units attributable to the Member by the relevant Unit Price (or, if relevant, the Unit Prices) applying on a day no later than the next Valuation Date after the Manager makes a final determination that a Benefit should be paid;
 - (ii) deducting an amount equal to the portion of any unvested Participating Employer Contributions referable to the Member; and
- (c) deducting any further amount that the Manager considers appropriate to deduct with respect to costs, expenses, fees or Tax payable pursuant to this Governing Document or the relevant Participation Agreement, except that if the Scheme is a PIE and the Manager in its complete discretion considers it appropriate not to do so, no deduction will be made from a Benefit on account of any income Tax liability.

7.2 Different method of calculation

Subject to clause 7.3, 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 7.1 if the Manager or Supervisor determines that the method set out in clause 7.1 does not comply with the KiwiSaver Act; and
- (b) may adopt a method of calculating the amount representing the Member's Accumulation that is different from that set out in clause 7.1 if the Manager considers it appropriate to do so.

7.3 Different method of calculation must meet certain requirements

Any different method adopted by the Manager under clause 7.2 must comply with the KiwiSaver Act and must not be adopted until after the Manager has consulted with the Supervisor.

7.4 Partial withdrawals after KiwiSaver End Payment Date

Where a Member has reached the KiwiSaver End Payment Date, the Member has the right, under the KiwiSaver Scheme Rules, to withdraw the full amount of the Member's Accumulation. Additionally, 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 KiwiSaver Act, determine from time to time the minimum amount for each such withdrawal, the permitted manner and frequency of such withdrawals and the minimum balance that must remain in the Scheme and/or any Fund (if there is more than one Fund) after each such withdrawal if the Member is not going to withdraw the full amount of the Member's Accumulation.

7.5 Amounts transferred from overseas Retirement Schemes

Subject to the KiwiSaver Act, the Manager may impose such conditions and restrictions (including without limitation, as to fees, amounts and frequency) as it considers appropriate from time to time on withdrawals from a Member's Accumulation of any amounts transferred to the Scheme from any Retirement Scheme.

7.6 Proofs

- (a) Any person claiming to be entitled to a Benefit from the Scheme must on request produce to the Supervisor and/or the Manager any evidence or information that may be reasonably required by the Supervisor and/or the Manager.
- (b) The Supervisor and/or the Manager may withhold payment of any Benefit until evidence or information required under clause (a) is produced.

8. Valuations

8.1 Net Asset Value

- (a) The Manager must calculate the Net Asset Value of the Scheme (or, if there is more than one Fund, of each Fund) each Business Day on which Units are issued or withdrawn, or at such other intervals (not exceeding 30 days) as the Manager may determine following consultation with the Supervisor.
- (b) Net Asset Value means, in relation to the Scheme, or where there is more than one Fund, a Fund, such amount as is from time to time ascertained by the Manager using the following formula:

$$\text{NAV} = \text{A} - \text{L}$$

Where:

NAV = Net Asset Value

A = the Value of all Assets of the Scheme or that Fund (as the case may be) and any other amounts which, in the opinion of the Manager (after consultation with the Supervisor) should be included for the purpose of making a fair and reasonable determination of the Net Asset Value of the Scheme or that Fund (as the case may be), provided that no income will be recognised or deductions made to or from the amount included in the Assets or the Value of the Assets for changes in the value of Member's Interests

L = all Liabilities of the Scheme or that Fund (as the case may be) and any other amounts which, in the opinion of the Manager (after consultation with the Supervisor) should be included in such aggregate for the purpose of making a fair and reasonable determination of the Net Asset Value of the Scheme or that Fund (as the case may be), but, for the avoidance of doubt, does not include:

- (i) any amount included in the term TC in the definition of Unit Price when NAV is being calculated to determine such price; and

- (ii) where the Scheme is a PIE and where the Manager in its complete discretion considers it appropriate to do so, any income Tax Liability.

8.2 Determining market value

For the purpose of determining the Net Asset Value of the Scheme (or, if there is more than one Fund, of each Fund) under clause 8.1, the Manager must determine the market value of each Asset in the Scheme or that Fund on such basis as it considers to be fair and equitable having regard to generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards (except to the extent that this deed requires otherwise or the Manager, after consulting with the Supervisor and the Auditor, determines that the Manager need not have regard to such principles or standards) and may from time to time engage any valuer or other suitably qualified person for the purpose of fixing the market value of any such Asset (but is not under any duty to do so).

8.3 Determining Liabilities

For the purpose of determining the Net Asset Value of the Scheme (or, if there is more than one Fund, of each Fund,) under clause 8.1, the Manager must determine the Liabilities attributable to the Scheme or that Fund on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards (except to the extent that this deed requires otherwise or the Manager, after consulting with the Supervisor and the Auditor, determines that the Manager need not have regard to such principles or standards) and in doing so may (subject to clause 3.4):

- (a) where there are two or more Funds, apportion the Liabilities of the Scheme generally among those Funds on such basis as the Manager considers appropriate; and
- (b) take account of each debt, Liability, provision, cost, charge, expense, outgoing, Tax obligation or other matter as the Manager considers appropriate;

and, for the avoidance of doubt, may exclude certain liabilities from the Liabilities taken into account, such as the amounts representing Members' Interests or expenses (whether or not those amounts are required to be treated as liabilities for accounting purposes) or, if the Scheme is a PIE, and the Manager considers it appropriate to do so, any income Tax liability.

8.4 Manager's decision is final

Subject to clause 25.1, the Net Asset Value ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and any Member.

9. Register

9.1 Register to be maintained

The Manager will 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 must:

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

as required by the FMCA.

9.2 Electronic Register

The Register may be kept in the form of an electronic register.

9.3 Appointment of registrar

The Manager may appoint a registrar to maintain the Register at the expense of the Scheme.

9.4 Register deemed to be accurate

The Supervisor and the Manager are entitled to rely upon entries in the Register as being correct, are not required to enquire as to the authenticity of the Register and will not incur any liability or responsibility on account of any mistake in the Register.

9.5 Tax information

The following information must also be kept by the Manager or any registrar in respect of any period where the Scheme is a PIE:

- (a) the name and address, 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.

9.6 Members to notify changes

Any change of name or address, Tax File Number or Prescribed Investor Rate of any Member must be notified by the Member in writing, or in any other manner approved by the Manager, to the Manager or any registrar who must alter the Register or cause the Register to be altered accordingly.

9.7 Audit of the Register

The Manager will cause the Register to be audited as required by, and in accordance with, the FMCA and FMC Regulations. The Supervisor may at any time for a specified and reasonable purpose request the Manager to cause the register to be audited.

9.8 Inspection

- (a) Any Member having an interest in the Scheme may inspect the part of the Register that concerns the interest of that Member in the Scheme, on giving prior written notice to the Manager, free of charge at any time during normal working hours, in accordance with the requirements of the FMCA.
- (b) The Supervisor and the Auditor may inspect the Register on giving prior written notice to the Manager free of charge at any time during normal working hours, in accordance with the requirements of the FMCA.

9.9 No trust or security interests to be entered upon a Register

No notice of any trust (express, implied or constructive) may be entered on the Register and neither the Manager nor the Supervisor will be bound to see to the performance of any security interest, charge, pledge or equity to which any of, or any interest in, the Units may be subject. The person recorded in the Register as Member is conclusive evidence of that person's interest in any Unit.

9.10 Copy or extract

The Manager must send a copy or an extract of the Register to a person upon written request in accordance with the FMCA and subject to the payment by that person of any prescribed fee.

10. Participating Employers

10.1 Participation Agreement

- (a) The Manager and an employer may enter into a Participation Agreement (which will form part of the Governing Document), whereby the employer will agree to become a Participating Employer, prescribing certain conditions on which the Participating Employer's employees may become Members of the Scheme, including conditions relating to:
- (i) any Contributions payable by the Participating Employer in addition to those required under subpart 3A of Part 3 of the KiwiSaver Act;
 - (ii) the vesting of those additional Contributions to Members and the treatment of unvested Contributions;
 - (iii) the Fund or Funds applicable to those Members; and
 - (iv) such other matters as the Manager and Participating Employer consider appropriate, including the manner (and consequences) of terminating the Participating Employer's obligations under the Participation Agreement.
- (b) The Manager and the Participating Employer may amend the Participation Agreement from time to time by 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 will prevail.

10.3 KiwiSaver Act prevails

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

10.4 Vesting of Participating Employer contributions

Where a Participation Agreement prescribes a vesting scale and a Member has withdrawn a portion of the Member's Interest that includes an amount representing vested Participating Employer Contributions (as determined in accordance with the KiwiSaver Act), the withdrawal will not cause any 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.

10.5 Participating Employer's indemnity

By its entry into a Participation Agreement, each Participating Employer indemnifies 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 KiwiSaver Act, the Governing Document or the relevant Participation Agreement.

This indemnity will survive termination of the Participation Agreement.

10.6 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), or if the Member's employer ceases to participate in the Scheme pursuant to the Participation Agreement, then:

- (a) the provisions of any relevant Participation Agreement will cease to apply to the Member; and
- (b) the terms and conditions prescribed for the Member's continuing membership of the Scheme may be modified, subject to the KiwiSaver Act, the FMCA and this Governing Document, in such manner and to such extent as the Manager considers appropriate.

10.7 Participating Employer's Reserve

The Manager will create a reserve for each Participating Employer (Participating Employer's Reserve). Amounts which have been allocated to a Participating Employer's Reserve (which will be denominated in Units) pursuant to a Participation Agreement will, at the Participating Employer's direction (subject to the Manager's consent, which must not be unreasonably withheld) be used for:

- (a) meeting all or part of the Participating Employer's Contribution obligations;
- (b) increasing the balances in the Scheme of all or any of the Members employed by the Participating Employer; or
- (c) meeting all or part of the costs, expenses, fees or Taxes payable with respect to the Participating Employer's participation in the Scheme or its employees' membership of the Scheme.

11. Supervision and management of the Scheme

11.1 Supervisor's responsibilities

The Supervisor is responsible for performing the following functions:

- (a) acting on behalf of Members in relation to:
 - (i) the Manager;
 - (ii) any matter connected to this deed or the terms of any Regulated Offer of units in the Scheme;
 - (iii) any contravention or alleged contravention of the Issuer Obligations; and
 - (iv) any contravention or alleged contravention of the FMCA by any other person in connection with the Scheme;
- (b) supervising:
 - (i) the performance by the Manager of its functions and its Issuer Obligations; and
 - (ii) the financial position of the Manager and the Scheme to ascertain that it is adequate;
- (c) holding the Assets of a Fund or the Scheme, or ensuring that the Assets of a Fund or the Scheme are held, in accordance with sections 156 to 158 of the FMCA; and
- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by or under the FMCA, the Financial Markets Supervisors Act 2011 and this deed.

11.2 Supervisor's duties

The Supervisor acknowledges and undertakes that:

- (a) it will comply with its duties as trustee and supervisor of the Scheme including to:
 - (i) act honestly in acting as Supervisor of the Scheme;

- (ii) act in the best interests of Members in exercising its powers and performing its duties as Supervisor;
 - (iii) exercise reasonable diligence in carrying out its functions as Supervisor;
 - (iv) do all the things it has the power to do to cause any contravention referred to in clause 11.1(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members);
 - (v) subject to an order of the court made under section 210 of the FMCA, act in accordance with any direction given by a Special Resolution of the Members that is not inconsistent with any enactment, rule of law, or this deed in relation to:
 - (A) seeking a remedy to a contravention referred to in clause 11.1(a); and
 - (B) any other matter connected with the Supervisor's functions; and
 - (vi) exercise the care, diligence and skill that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances in exercising its powers and performing its duties as Supervisor;
- (b) it will take such actions as may be reasonably required by the Manager to enable the Manager to comply with its obligations as licensed managed investment scheme manager under the FMCA;
 - (c) it has the same duties and liability in the performance of its functions as Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by, or are inconsistent with, the FMCA); and
 - (d) it will provide to the Manager as soon as reasonably practicable following receipt, copies of all notices or documents received by the Supervisor in relation to any Assets of a Fund or the Scheme.

11.3 Supervisor's general power as supervisor

In addition to any other powers granted under this deed or by law, but subject to the applicable requirements of the FMCA, the Supervisor will have the rights and powers in respect of the Scheme and each Fund and over and in respect of the Scheme and each Fund which it could exercise if it were the absolute and beneficial owner of the Scheme or the Fund. Notwithstanding the preceding references to the provisions of this deed, the Supervisor will have the power to settle and complete all transactions in respect of the Scheme and each Fund.

11.4 No delegation or agency

Except as may be permitted by the FMCA, the Financial Markets Supervisors Act 2011 and this deed, and then agreed in writing by the Manager and the Supervisor, no powers of the Supervisor are delegated to the Manager nor is the Manager appointed (or permitted to represent itself) as the agent of the Supervisor.

11.5 Investments in Supervisor's name

The Manager must cause investments and property held for the Scheme to be vested in the Supervisor or in any Custodian duly appointed under clause 14 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. The Manager must deliver all certificates or other documents of title for safe custody as directed by the Supervisor.

11.6 Bank accounts

A bank account or accounts in the name of the Supervisor or a Custodian duly appointed under clause 14 must be opened and maintained for the Scheme and/or each Fund. All monies held for the Scheme (or the relevant Fund, if applicable) and coming into the hands of the Manager or the Supervisor must be paid to the credit of such bank account. The Supervisor will determine the persons authorised to operate such bank accounts.

11.7 Manager's responsibilities

The Manager is responsible for the following functions:

- (a) offering interests in the Scheme for subscription;
- (b) issuing interests in the Scheme;
- (c) managing Scheme investments and property including each Fund; and
- (d) administering the Scheme.

11.8 Manager's duties

Without limiting the generality of the above clause 11.7 (or the Manager's power of management under this deed and all applicable legislation), the Manager must perform each of the following specific duties in relation to the Scheme:

- (a) act honestly in acting as Manager of the Scheme;
- (b) promote the Scheme to prospective Members and other relevant interested persons;
- (c) in exercising any powers or performing any duties as Manager:
 - (i) act in the best interests of Members;
 - (ii) treat the Members equitably; and
 - (iii) exercise the care, diligence and skill that a prudent person engaged in the profession of managing a Registered Scheme would exercise in the same circumstances;
- (d) not make use of information acquired through being the Manager in order to:
 - (i) gain an improper advantage for itself or any other person; or
 - (ii) cause detriment to Members;
- (e) carry out its functions in accordance with this deed, the SIPO and all other Issuer Obligations;
- (f) admit Members and Participating Employers;
- (g) establish and maintain Member records, including a Register which meets the requirements of the FMCA;
- (h) arrange for the receipt and acceptance of Contributions and other monies payable to the Scheme;
- (i) liaise with Members;
- (j) manage and make 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 rules for PIEs in the Tax Act apply to the Scheme, then the Manager may not act pursuant to this clause 11.8(j) in a manner which contradicts those rules) and ensuring that the investments of the Scheme are such that the Scheme meets the eligibility requirements for PIE status;

- (k) keep complete and accurate records of all investments of the Scheme (and, if applicable, each Fund);
- (l) where there are two or more Funds, effect Switches between Funds;
- (m) discharge all functions and duties with respect to unitisation, valuations and benefit calculations;
- (n) subject to the requirements of the KiwiSaver Act and the FMCA, determine whether Benefits are payable and arranging for the payment of Benefits (or, where applicable, refunds) to or in respect of Members, and for transfers to other Retirement Schemes;
- (o) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;
- (p) ensure compliance by the Scheme with the requirements of the KiwiSaver Act, the FMCA, the Financial Reporting Act 2013 and other applicable legislation;
- (q) do all things necessary or desirable to ensure compliance by the Scheme with all taxation obligations and procedures and (while the Scheme is a PIE) to ensure compliance with the Tax regime applicable to a PIE;
- (r) give and receive all notices and other information in accordance with the FMCA;
- (s) maintain all accounting records for the Scheme;
- (t) discharge all of the obligations of the scheme provider under the Scheme Provider Agreement;
- (u) determine 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 and the law relating to trusts and trustees) the liability of the Supervisor in relation to any contract is limited to the Assets of the Scheme or the relevant Fund(s) as applicable;
- (v) acquire or sell Assets for cash or upon terms;
- (w) instruct persons to act in relation to investments of the Scheme or the proposed acquisition or disposal of investments;
- (x) exercise such other powers, authorities, functions and discretions as are incidental to the above functions or may be agreed from time to time in writing between the Supervisor and the Manager;
- (y) subject to clause 6.12 of this deed, take such actions in respect of any errors in calculating a Unit Price as may be required by the FMCA;
- (z) take such actions reasonably required by the Supervisor to enable it to comply with its obligations as Licensed Supervisor;
- (aa) provide to the Supervisor on request such information and access to such employees and board members of the Manager and take all reasonable steps to assist the Supervisor to contact any service provider as the Supervisor reasonably requires, but only to the extent necessary for the Supervisor to comply with its obligations as a Licensed Supervisor; and

- (bb) provide to the Supervisor, as soon as practicable following receipt, copies of all notices or communications received from a regulatory authority which are material and/or affect the Manager's or the Supervisor's duties or obligations in relation to the Scheme.

In exercising and performing the above functions and duties, the Manager must act in accordance with the terms of this Governing Document, the KiwiSaver Act, the FMCA and other relevant laws applying to the Manager.

11.9 Exercise of the Manager's powers and performance of its duties

The Manager acknowledges that it has the same duties and liabilities in the performance of its functions as Manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMCA). Subject to the applicable requirements of the FMCA, the Manager has the rights and powers in respect of the Scheme and each Fund and each Fund's Assets which it could exercise if it was the absolute and beneficial owner of such Assets

11.10 Delegation by Manager

The Manager may delegate the performance of all or any of the powers, authorities, functions, duties and discretions exercisable by the Manager under the KiwiSaver Act, the FMCA, and this Governing Document to its officers and employees or, on notice to the Supervisor, to any other person nominated by the Manager. The Manager will remain liable for the acts and omissions of any such officer, employee or person whether or not the delegate is acting within the terms of the delegated authority. If the Manager delegates any of its functions under this clause, then the Manager must take all reasonable steps to:

- (a) ensure those functions are performed to the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
- (b) monitor the performance of those functions by the delegate.

The Manager must advise the Supervisor of any delegation under this clause 11.10 before any such delegation or contracting out is entered into.

11.11 Accounts

The Manager must keep or cause to be kept proper records and accounts of or relating to the Scheme and each Fund and arrange for the accounts to be audited in accordance with the provisions of Part 7 of the FMCA.

11.12 Information and reports to Supervisor

Without limiting the requirements under the FMCA and any relevant laws, the Manager must supply the Supervisor the information and reports set out in the Manager Reporting Agreement.

11.13 Statutory reports

The Manager will prepare reports and updates as required by relevant law and file or submit these as appropriate and consult with the Supervisor as required. These include the following periodic reports required under the FMCA:

- (a) Fund Updates;
- (b) reports on limit breaks and pricing errors (if any);
- (c) a quarterly report on any Related Party transaction certificates; and
- (d) annual reports for a Registered Scheme.

11.14 Reimbursement of expenses

Subject to section 135(1)(f) of the FMCA, the Manager and the Supervisor may be reimbursed out of the Assets of the Scheme for, and in respect of, all costs, expenses (including legal and valuation fees), fees and Tax payable by or to the Supervisor or the Manager in relation to the establishment, offer, distribution, management, operation, investment and administration of the Scheme or as otherwise properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this deed, provided that in any case, while the Scheme is a PIE all such charges must comply with the Tax regime applicable to a PIE.

11.15 Allocation of expenses

The Manager may charge any amount in relation to which the Manager or the Supervisor is entitled to be reimbursed under clause 11.14 or clause 17 to one or more Members or to a particular Participating Employer's Reserve, in such manner as the Manager considers equitable.

11.16 Duties of directors and senior managers of Manager

Each director or senior manager of the Manager:

- (a) must not make use of information acquired through being a director or senior manager of the Manager in order to:
 - (i) gain an improper advantage for himself or herself or any other person; or
 - (ii) cause detriment to Members; and
 - (iii) must not make improper use of the position as director or senior manager of the Manager to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the Members.

11.17 Regulated Offers

- (a) Without limiting clause 4.2, the Manager must not make a Regulated Offer of interests in the Scheme unless:
 - (i) the Scheme is registered under the FMCA;
 - (ii) a PDS has been prepared and lodged on the Register Entry in respect of the Scheme; and
 - (iii) all of the information that the Register of Offers of Financial Products is required to contain under the FMCA has been lodged as a Register Entry with respect to the Scheme.
- (b) Subject to complying with its obligations under the FMCA and the KiwiSaver Act, the Manager must provide to the Supervisor, with reasonable notice, drafts of all proposed Disclosure Documents (excluding Fund Updates and minor changes to Disclosure Documents) in respect of the Scheme so as to allow the Supervisor time to review and provide comments. The Supervisor will review and provide comments on the drafts in a timely manner or within any agreed timeframe between the Manager and the Supervisor.
- (c) The Manager must use all reasonable commercial endeavours to ensure that the Disclosure Documents for the Scheme at all times comply with the FMCA.

11.18 Perpetuities

If the Scheme ceases to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take (and may require the Supervisor to take) such action as the Manager thinks fit (including re-establishing the trusts of the Scheme and paying over the Assets 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.

12. Manager's powers to invest

12.1 Investment directions by the Manager

Subject to this clause 12 and to compliance with this deed, the SIPO for the Scheme (and, if applicable, each Fund), the KiwiSaver Scheme Rules, and applicable law (including, while the Scheme is a PIE, the requirements of the Tax Act), in order to perform its function of managing Scheme investments and property, the Manager may direct the Supervisor in writing as it sees fit from time to time to:

- (a) purchase, acquire, sell, transfer or dispose of investments and property;
- (b) enter into any commitments or liabilities in respect of investments and property;
- (c) execute and deliver such contracts or other instruments as may be necessary in respect of the foregoing; and
- (d) take any other action which may be required in respect of investments and property,

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

12.2 Supervisor's limited duty to refuse to act

- (a) The Supervisor must refuse, and must direct any other Custodian to refuse, to act on a direction of the Manager under clause 12.1 in the circumstances described in section 160 of the FMCA and the Supervisor, and any other Custodian, will not be liable to Members or the Manager for so refusing to act.
- (b) If the Supervisor refuses, or directs any other Custodian to refuse, pursuant to clause 12.2(a) to act on a direction from the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and of the Supervisor's reasons for the refusal or direction.

12.3 Advisers

In relation to the purchase or sale of, or any other dealing with, any investment for the Scheme, the Manager may determine the time and mode of, and the consultants, agents, brokers and professional advisors (if any) for, the purchase, sale or other dealing.

12.4 Dealing with related parties

The Manager and any person to whom the Manager has contracted out some or all of its function as manager, must not enter into a transaction or series of transactions that provide for a Related Party Benefit to be given except as permitted by the FMCA and clause 12.5.

12.5 Permitted transactions

Clause 12.4 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:

- (a) the Manager obtains the Supervisor's consent for the transaction or transactions; or
- (b) section 174 of the FMCA applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.

12.6 Restrictions on consent

The Supervisor must not consent to a transaction or transactions under clause 12.5(a) unless one of the following applies and the Supervisor certifies to that effect:

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

12.7 Certification

Before entering into a transaction or series of transactions under clause 12.5(b), the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate that complies with section 175 of the FMCA signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager.

12.8 Supervisor notification

The Manager must provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clause 12.5.

12.9 Notice of investments to Supervisor

The Manager must notify the Supervisor of any transaction required to be entered into by the Supervisor in relation to borrowing and the giving of security over investments or any other Assets, rights or property comprised in or relating to the Scheme.

12.10 Limit breaks

The Manager must take any action in respect of any breaches of any limits under the SIPO as required by the FMCA, and must report to the Supervisor in relation to any such limit breaks as required by the Manager Reporting Agreement.

12.11 Supervisor's right to limit liability

Before its entry into any transaction, security or liability of the Scheme (or, where there is more than one Fund, a Fund), the Supervisor may require that its liability is restricted or limited (to its satisfaction) to the investments for the time being of the Scheme (or such Fund).

12.12 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, future contracts, options and any form of agreement creating a contingent liability) for the purposes of investment or risk management.

12.13 SIPO

- (a) The Manager must prepare a SIPO for the Scheme and for each Fund that provides adequately for the investment policy and objectives of the Fund in accordance with section 164 of the FMCA. The SIPO for a Fund may form part of a single SIPO for the Scheme.
- (b) The Manager may amend the SIPO for a Fund from time to time on giving prior written notice to the Supervisor.
- (c) The Manager must provide a copy of the SIPO for a Fund, or any alteration to that SIPO, to the Supervisor as soon as reasonably practicable before the SIPO or alteration is scheduled

to take effect, and must lodge the SIPO or alteration (as applicable) with the Registrar to the extent required by the FMCA.

- (d) All monies available for investment in a Fund will be invested in accordance with the SIPO for that Fund.
- (e) Subject to clause 17.6, neither the Manager nor the Supervisor will be responsible to any Member for the investment performance of the Scheme (or, if applicable, a Fund) arising as a result of a SIPO.

13. Powers of the Supervisor

13.1 Supervisor's general powers

In addition to any other powers granted under this Governing Document or by law, but subject to the FMCA and to the limitations set out in clauses 11.4 and 14, the Supervisor may (and must, if so directed by the Manager under clause 13.1(b)):

- (a) appoint and engage solicitors and other consultants and advisers on such terms as the Supervisor determines;
- (b) at the direction of the Manager, borrow or raise money for any of the purposes of the Scheme or a Fund on such terms and conditions as the Manager directs. The Supervisor may, if directed by the Manager, secure the repayment of monies so borrowed, and interest on those monies, by mortgage over all or any of the Assets of the Scheme or that Fund provided that to do so is not inconsistent with the express terms of any SIPO relating to the Scheme or the relevant Fund at the relevant time (provided that no such direction will require the Supervisor to take any action which it reasonably believes would cause it to breach any of its obligations under any rule of law or under this deed); and
- (c) do anything the Supervisor, acting reasonably, considers necessary to enable it to discharge its statutory duties in relation to the Scheme.

13.2 Alternative course of action

Nothing in clause 13.1 shall require the Supervisor to take any action which it reasonably believes would cause it to breach this deed, any rule of law or any enactment, place a liability or obligation on the Supervisor personally or would be manifestly not in the best interests of Members. Having regard to the effect of the preceding sentence, the Supervisor will in good faith take all steps it considers reasonable to consult with the Manager and agree an alternative course of action when it believes it should not act on a direction of the Manager pursuant to this clause 13.2.

13.3 Exercise of Supervisor's powers

Subject 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 and other payments payable in respect of such business;
- (b) the Supervisor's powers, duties and discretions may be exercised at times and on terms and conditions and in such manner as it decides; and
- (c) 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.

14. Appointment of Custodian and experts

14.1 Appointment of a Custodian

- (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) as Custodian, in which any of the investments or property of the Scheme or Funds are to be vested, provided that person complies with the eligibility requirements of the FMCA. The Supervisor will be jointly and severally liable with the nominated person for the performance and observance by the nominated person of all the duties and obligations imposed on it pursuant to this clause 14.1(a) and otherwise by law.
- (b) In appointing a Custodian the Supervisor must take all reasonable steps to:
 - (i) ensure that the functions are performed by the Custodian in the same manner and subject to the same duties and restrictions as would be required if the Supervisor were performing those functions directly; and
 - (ii) monitor the performance of those functions.
- (c) If authorised in writing by the Supervisor (after the Supervisor has notified the Manager), a Custodian appointed under clause 14.1(a) may itself appoint one or more sub-Custodians (other than the Manager or an Associated Person of the Manager) who meet the eligibility requirements of the FMCA in which any of the investments or property of the Scheme are to be vested. The Supervisor and the Custodian who appointed that sub-Custodian are jointly and severally liable with the sub-Custodian for the performance and observance by the sub-Custodian of all the duties and obligations imposed on it pursuant to this clause 14.1(c) and otherwise by relevant law.

14.2 Custodian reports

The Supervisor must provide the Manager with copies of all reports received from the Custodian confirming all property held by the Custodian as soon as reasonably practicable following receipt.

14.3 Right of Supervisor to engage expert

The Supervisor may in the performance of its functions engage an expert if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

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

14.4 Manager's obligations in relation to experts

If the Supervisor engages an expert under clause 14.3:

- (a) the Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 14.3;
- (b) the Manager must pay the expert's reasonable fees and expenses; and
- (c) the Manager is entitled to indemnity and reimbursement out of the Assets of the Scheme to the full extent of any such fees and expenses, subject to clause 17.6.

15. Remuneration of Supervisor

- (a) Subject to section 135(1)(f) of the FMCA the Supervisor will be paid such annual fee, calculated daily and payable monthly in arrears, as the Supervisor and the Manager may agree from time to time. That fee may be determined and expressed as a percentage of the value of the Scheme's gross Assets.
- (b) The Supervisor may be paid additional fees for non-routine matters, as the Supervisor and the Manager may agree from time to time.
- (c) The fees may be deducted from the Assets of the Scheme or paid by cancelling Units in respect of one or more Members (or Participating Employers).
- (d) The Supervisor is entitled to receive, in addition to the fees referred to in this clause 15, any GST or similar Tax payable in respect of such fees.

16. Remuneration of Manager

16.1 Management fee

- (a) Subject to rule 2 of the KiwiSaver Scheme Rules and the provisions of this deed, the Manager may charge for its services with respect to the Scheme such annual or other administration, management, membership, transaction or other fees as the Manager determines and notifies to the Supervisor in writing from time to time. The fee may be deducted from the Assets of the Scheme or paid by cancelling Units in respect of one or more Members (or Participating Employers). The method of paying such fees will be determined by the Manager from time to time and notified to the Supervisor in writing.
- (b) The Manager is entitled to receive, in addition to the fees referred to in this clause 16.1, any GST or similar Tax payable in respect of such fees.

16.2 Alteration or waiver of fees

The Manager may waive part or all of any fee or decrease any fee and (subject to section 135(1)(f) of the FMCA) the Manager may:

- (a) increase or decrease a fee payable in respect of the Scheme (or, if applicable, any Fund), either generally or by any particular Member or Members; or
- (b) provided that any such fee is permitted under this Governing Document, commence charging a fee which is not currently being charged,

subject to the Manager providing Members and the Supervisor with 30 days' prior written notice of each such new fee or fee increase (but, to avoid doubt, the Manager is not required to provide prior notice of any fee decrease).

17. Liability and indemnities

17.1 No personal liability of Supervisor and Manager

Subject to clause 17.6, the Supervisor and the Manager and any director, board member or employee of the Manager or the Supervisor, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Governing Document for or in connection with the Scheme or a Fund, are and are deemed to be each acting for and on behalf of the Scheme or Fund and not in their own respective capacities, and neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation or claim relating to the Scheme or a Fund (and only the Assets of the Scheme or a Fund are available for that purpose).

17.2 Indemnification from Scheme or Fund Assets

Subject to clause 17.6, if, contrary to the provisions of clause 17.1, either the Supervisor or the Manager or any director, board member or employee of the Manager or the Supervisor is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Scheme or a Fund or any action taken or omitted in connection with the Scheme or a Fund, then the Supervisor or the Manager or any director, board member or officer of the Manager or the Supervisor (as applicable) is entitled to indemnity and reimbursement out of the Assets of the Scheme or a Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined (including legal fees and disbursements).

17.3 Reimbursement of Supervisor and Manager

Subject to clause 17.6, the Supervisor and the Manager are each entitled to be reimbursed out of the Assets of the Scheme (whether from income or capital or both), and to the extent applicable from particular Funds, for and in respect of all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as applicable) under this Governing Document (including, without limitation, any expense, cost or liability which may be incurred by the Supervisor or the Manager (as applicable) in bringing or defending any action or suit in respect of the Scheme).

17.4 Indemnification of investment manager

Subject to section 136 of the FMCA, the Manager may appoint one or more investment managers to manage the investments of a Fund or the Scheme and, subject to relevant law, the Manager may indemnify and reimburse out of the relevant Assets such investment manager in respect of any debt, liability, obligation incurred by or on behalf of the investment manager in respect of the Scheme or Fund, or any action taken or omitted to be taken in connection with the Scheme or Fund (including legal fees and disbursements).

17.5 Reliance by Manager or Supervisor

Subject to the provisions of the FMCA and the Trustee Act 1956, none of the Supervisor, the Manager or any director, board member or officer of the Manager or the Supervisor is or will be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the other party to this deed or any agent of the other party to this deed or for checking any information, document, form or list supplied to it by the other party to this deed or by any agent of the other party to this deed that is reasonably believed by it to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by it in any step taken by it).

17.6 Breach of duty

The rights of the Manager and the Supervisor to the indemnities set out in this deed are limited to the extent required by section 136(1)(b) of the FMCA. No provision of this deed has the effect of exempting the Supervisor or the Manager from, or indemnifying the Supervisor or the Manager against, any liability to the extent that doing so would be void under the FMCA or any other statute.

17.7 Reliance upon advice

The Supervisor and the Manager and any director, board member or officer of the Manager or the Supervisor may each accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Supervisor or the Manager or instructed by the Supervisor or the Manager and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, actuary, valuers or other persons appointed or approved by the Supervisor or the Manager and believed by the Supervisor or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. None of the Supervisor, the Manager nor any director, board member or officer of the Manager or the Supervisor is liable for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information. The reasonable cost of obtaining such advice shall

form part of the expenses incurred by the Manager and the Supervisor in connection with the Scheme in accordance with clause 11.14.

17.8 Reliance upon documents

Unless otherwise specified in this Governing Document, whenever pursuant to any provision of this Governing Document any certificate, notice, instruction, direction or other communication is given:

- (a) by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence of the same a document signed on behalf of the Manager by any one of its directors or by any other person or persons duly authorised by the Manager; and
- (b) by the Supervisor to the Manager, the Manager may accept as sufficient evidence of the same a document signed on behalf of the Supervisor by any one of its board members or by any other person or persons duly authorised by the Supervisor.

17.9 Manager's discretion and authority

Except as otherwise expressly provided in this Governing Document or required by law, the Manager has absolute and uncontrolled discretion as to the exercise or non-exercise of all the powers, authorities and discretions vested in it by this Governing Document, whether in relation to the manner or as to the mode of and time for their exercise, subject to supervision by the Supervisor (and, where expressly required, giving notice to or consulting with or obtaining the approval of the Supervisor) and, provided the Manager has not failed to comply with the requirements of the FMCA, the Manager will not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of its powers. The Manager will have no liability for any loss suffered by a Member as a result of any action taken or adjustment made pursuant to clause 25.1.

17.10 No conflicts of interest for Supervisor or Manager

Subject to clause 12.4, nothing in this deed or any rule of law will prevent the Supervisor, or any Related Party of the Supervisor or any shareholder, director, officer, or employee of the Supervisor or their Related Parties, or the Manager, or any Related Party of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Parties, from:

- (a) subscribing for, holding, or withdrawing Units;
- (b) otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for or entering into any sale or purchase, financial, banking, agency, or other transaction with either or both of the Supervisor or Manager (whether in respect of the Scheme or otherwise) or with any Member or any person whatsoever;
- (c) being interested in any such contract, transaction or otherwise;
- (d) acting as supervisor or manager of any other scheme; or
- (e) holding any Asset jointly with the Scheme,
- (f) and none of them will be in any way liable to account either to any other of them, the Scheme, or to the Member or any of them for any profits or benefits (including, without limitation, commission, brokerage and fees) made or derived from or in connection with any circumstance set out in paragraphs (a) to (e) above.

17.11 Supervisor's discretion and authority

Except as otherwise expressly provided in this Governing Document or required by law, the Supervisor has absolute and uncontrolled discretion as to the exercise of all the powers, authorities and discretions vested in it by this Governing Document, whether in relation to the manner or as to the mode of and time for their exercise.

17.12 Supervisor's limited liability to Members

Notwithstanding anything contained in this Governing Document, except where the Supervisor has failed to comply with the requirements of section 154 of the FMCA, in no event is the Supervisor or any director, board member or officer of the Supervisor bound to make any payment to Members except out of the Assets of the Scheme or a Fund or to be liable to the Members to any greater extent than the investments vested in or received by the Supervisor in accordance with this Governing Document.

17.13 Reliance upon apparently genuine documents

Neither the Manager nor the Supervisor nor any director, board member or officer of the Manager or the Supervisor is liable for any action taken or thing suffered by the Manager or the Supervisor or any director, board member or officer of the Manager or the Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.

17.14 Attributed Tax indemnity

If a Member's balance in the Scheme is insufficient to meet any liability for Tax payable by the Scheme (whether current or deferred) which is:

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

then the Member must indemnify the Supervisor and the Manager for that shortfall.

17.15 Indemnity by Manager

The Supervisor is indemnified by the Manager from and against any debt, liability or obligation owed by the Supervisor to a third party to the extent that such debt, liability or obligation (regardless of when it came to the Supervisor's attention) was caused by the failure of the Manager or any director or officer of the Manager to show the degree of care and diligence required by it or that director or officer under this deed in circumstances where the protections from liability for the Manager and the Supervisor under clauses 17.1 and 17.2 are not available.

18. Appointment and removal of Supervisor

18.1 Eligibility to be Supervisor

The Scheme must have a single Supervisor which:

- (a) is a Licensed Supervisor whose licence covers the supervision of the Scheme; and
- (b) is not the Manager or an Associated Person of the Manager.

18.2 Removal of Supervisor

- (a) Subject to clause 18.4, the Supervisor may be removed from office as trustee and supervisor:
 - (i) by the Manager with the FMA's consent upon providing written notice specifying the effective termination date; or
 - (ii) if removal is approved by a Special Resolution of the Members.
- (b) Subject to clause 18.4:

- (i) the FMA may remove the Supervisor from office as trustee and supervisor if it is satisfied that the Manager and the Supervisor no longer meet the requirements in section 127(1)(e) of the FMCA; or
- (ii) the FMA or the Manager may remove the Supervisor from office as trustee and Supervisor under Part 2 of the Financial Markets Supervisors Act 2011.

18.3 Retirement of Supervisor

Subject to clause 18.4, the Supervisor may retire at any time (upon giving the Manager no fewer than 120 Business Days' written notice of such retirement or such other period of notice as the Manager may agree).

18.4 Restrictions on removal/retirement

No removal or retirement under clause 18.2(a) or clause 18.3 will take effect unless:

- (a) all functions and duties of the Supervisor's position as supervisor of the Scheme have been performed;
- (b) another Licensed Supervisor has been appointed supervisor of the Scheme, and that person has accepted the appointment; or
- (c) the High Court consents.

18.5 New appointment

The power of appointing a new Supervisor (in place of a Supervisor which has been removed from office or retired) is vested in the Manager, provided that no person will be appointed as a new Supervisor unless qualified for appointment under clause 18.1.

18.6 Restrictions on new appointment

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

18.7 Release of Supervisor

From the date of execution by a new Supervisor of a deed in accordance with clause 18.6, the former Supervisor is absolved and released from all such covenants (except in respect of prior breach) and the new Supervisor must exercise all the powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the Supervisor under this Governing Document in all respects as if it had been originally named as a party to this Governing Document.

18.8 Appointment not exclusive

Nothing contained in this Governing Document will be construed to prevent the Supervisor from acting as the supervisor in relation to another Retirement Scheme or similar scheme.

18.9 Notice of change of supervision

The Manager will ensure that notice of change of the Supervisor is lodged with the Registrar in accordance with the requirements of the FMCA.

18.10 Supervisor's entitlements preserved

Nothing in this clause 18 prevents the Supervisor from receiving a payment, or a benefit, which has accrued to the Supervisor pursuant to the terms of this deed prior to the date of or arising on the

Supervisor's retirement or removal from office (and the Supervisor is entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date when it ceases to hold office).

19. Appointment and removal of Manager

19.1 Eligibility to be Manager

- (a) The Scheme must have a manager who:
 - (i) must not be the Supervisor or an Associated Person of the Supervisor; and
 - (ii) must be a Licensed Manager whose licence covers management of the Scheme.

19.2 Removal of Manager

- (a) Subject to clause 19.4, the Manager may be removed by:
 - (i) written direction by the Supervisor after the Supervisor certifies that it is in the best interests of the Members that the Manager be removed;
 - (ii) Special Resolution of the Members; or
 - (iii) the High Court substituting the Manager in accordance with its powers under the FMCA.
- (b) The Supervisor will give not less than 30 days' written notice to the Manager of its intention to remove the Manager by written direction under clause 19.2(a)(i), or of its intention to apply to the High Court to substitute the Manager under clause 19.2(a)(iii).

19.3 Manager may retire

Subject to clause 19.4 and to all applicable laws, the Manager may retire as manager of the Scheme at any time, without assigning any reason, upon giving 120 days' notice in writing to the Supervisor of its intention to do so.

19.4 Restrictions on removal/retirement

No removal or retirement under clause 19.2 or clause 19.3 will take effect until a new Manager has been appointed pursuant to clause 19.5 and has executed the deed referred to in clause 19.6.

19.5 Power to appoint a new manager

Subject to all applicable laws, the power of appointing a new Manager of the Scheme is vested in the Manager that is retiring or being removed, provided that:

- (a) no person may be appointed as a new Manager unless qualified for appointment under clause 19.1; and
- (b) no new Manager may be so appointed without the approval of the Supervisor (which must not be unreasonably withheld).

19.6 Restrictions on new appointment

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

19.7 Release of Manager

From the date of execution by a new Manager of a deed in accordance with clause 19.6, the former manager is absolved and released from all such covenants (except in respect of prior breach) and must immediately desist from all activities relating to the Scheme unless the Supervisor agrees to the contrary. The new Manager must exercise all the powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the Manager under this deed in all respects as if it had been originally named as a party to this deed.

19.8 Manager's entitlements preserved

Nothing in this clause 19 prevents the Manager from receiving a payment, or a benefit, which has accrued to the Manager pursuant to the terms of this deed prior to the date of or arising on the Manager's retirement or removal from office (and the Manager is entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date when it ceases to hold office).

19.9 Transfer of management to members of Pie Funds Group

Notwithstanding any other provision of this deed, the Manager may, upon giving 20 Business Days' written notice (or such shorter period of notice as the Supervisor may agree) of the proposed transfer date to the Supervisor, seek consent from the Supervisor (such consent not to be unreasonably withheld) to transfer its office of manager under this deed to any other member of the Pie Funds Group. Where such transfer occurs, the retiring Manager, the Supervisor and new manager will execute a deed in such form as the Supervisor may require whereby the new manager undertakes to the Supervisor and the Members to be bound by all the covenants on the part of the retiring Manager under this deed from the date of such appointment and from such date the retiring Manager is absolved and released from all such covenants under this deed (save in respect of any prior breach hereof) and the new manager must exercise all the powers and enjoy and exercise all the rights and will be subject to all duties and obligations of the Manager under this deed in all respects as if such new manager had been originally named as a party to this deed.

19.10 Retirement or removal of Pie Funds Management Limited

Notwithstanding any other provision of, or amendment to, this deed, if Pie Funds Management Limited ceases for any reason, other than because of a transfer under clause 19.9, to be the Manager of the Scheme, then (except to the extent that Pie Funds Management Limited agrees otherwise in writing) the Manager will be irrevocably deemed to have resolved that the Scheme will be wound-up.

19.11 Benefit to Pie Funds Group

For the purposes of the Contract and Commercial Law Act 2017, clause 19.10 is enforceable by any member of the Pie Funds Group. However, the benefit extended to members of the Pie Funds Group is intended to be limited by, and enforceable subject to, the rights of the parties to this deed to vary or discharge benefits or obligations as provided in this deed, without the consent of members of the Pie Funds Group (other than Pie Funds Management Limited).

19.12 Appointment not exclusive

Nothing contained in this Governing Document may be construed to prevent the Manager from establishing or acting as the manager in relation to another Retirement Scheme or similar scheme.

20. Wind up or alteration of a Fund

20.1 Ability to wind up or alter Funds

- (a) The Manager may close, wind up or alter (including alter the name of) any Fund as and when and on such terms and conditions as it determines subject to providing 10 Business Days prior written notice to the Supervisor containing an explanation for doing so.

- (b) If the Supervisor so requires following receipt of such notice under clause 20.1(a), the Manager must consult with the Supervisor in relation to the proposed closure, winding up or alteration.

20.2 Winding up a Fund

If a Fund is wound up under clause 20.1, the Manager must notify each Member holding Units in that Fund within 10 Business Days of giving notice to the Supervisor under clause 20.1(a), specifying the Fund to which the Member will be deemed to have elected to transfer the relevant amount if no choice of replacement Fund is exercised within the period prescribed in the notice.

21. Winding up of the Scheme

21.1 Triggering wind up

The Manager may wind up the Scheme by resolution in writing and must wind up the Scheme if it is required to be wound up under the FMCA, this Governing Document, by the Courts or by operation of law. If the Manager resolves in writing that the Scheme is to be wound up then the Manager must, as soon as practicable after passing that resolution, provide a copy of the resolution to the Supervisor, and the wind up will take effect on the date specified for that purpose in the resolution.

21.2 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 FMCA, KiwiSaver Act and all other applicable law.

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

21.3 Distribution of Assets:

Subject to clause 21.7, 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 21.7 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;
- (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 21.7 below;
- (d) fourthly, after consultation with the relevant Participating Employer, in augmenting all or any of the benefits under clauses 21.3(b) and 21.3(c) above, in respect of the relevant Members who are employees of the Participating Employer in an equitable manner as determined by the Manager with any money in the Scheme relating to any Participating Employer's Reserve.

21.4 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.

21.5 Assets may not transfer to Participating Employers

No Assets of the Scheme may revert to any of the Participating Employers on the winding up of Scheme.

21.6 Assets may not transfer to another Member

Subject to clause 21.4, no Assets held in respect 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 those Assets are held.

21.7 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.

21.8 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 KiwiSaver Act, the FMCA or any other applicable law.

21.9 Termination of Participation Agreements

If the Scheme is wound up, then each Participating Employer will be treated as having terminated that Participating Employer's obligations under the relevant Participation Agreement on the effective Winding Up Date (and the relevant Participating Employer's Reserve balances will be dealt with in accordance with 10.7. For the avoidance of doubt, the relevant Participating Employer can terminate its participation in the Scheme whilst the Scheme is ongoing.).

22. Members bound by this Governing Document

22.1 Provisions benefit Members

Except where this Governing Document expressly provides otherwise or the context otherwise requires, the terms and conditions of this Governing Document are for the benefit of and binding on each Member (including, for the avoidance of doubt, any Member admitted to membership of the Scheme pursuant to clause 4.1(a)(ii)) and all persons claiming through each Member as if the Member had been party to and had executed this Governing Document.

22.2 No interference in management

Subject to the rights created for Members by this Governing Document, no may interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon them or any of them by this Governing Document or in respect of all or any of the Assets of the Scheme, or to exercise any right, power or privilege in respect of any investment comprised in the Scheme.

23. Limitation of liability of Members

23.1 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 created under this deed with the Supervisor or with 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 in the Assets of the Scheme as compared with the liabilities to be met from those Assets.

23.2 Limited recourse to Assets of the Scheme

Subject to clause 17.4, 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 and do not extend to a Member personally in such person's capacity as a Member.

23.3 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.

24. Notices and information to Members

24.1 Notices

- (a) A notice under this Governing Document, and (without limiting any enabling provision in the KiwiSaver Act or the FMCA) any other Scheme-related communication intended for a Member, may be given to the Member personally by:
- (i) leaving it at the Member's last known address recorded in the Register;
 - (ii) sending it addressed to the Member at the Member's last known address recorded in the Register by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post or advertisement; 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.
- (b) A Member must notify the Manager of any change to the Member's address and/or electronic address and the Register must 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 will be sufficient to provide the Supervisor with a sample of such a notice.

24.2 Manner of notice

Any notice or document 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 or document was properly addressed and posted. A notice or document 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).

24.3 Signature of notice

The signature to any notice or document to be given by the Manager or the Supervisor or any Member may be written or printed by or on behalf of the Manager, Supervisor or any Member (as applicable) or by an officer, employee, agent, attorney or solicitor of the respective person or otherwise provided in accordance with the Contract and Commercial Law Act 2017.

24.4 Calculation of notice periods

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

24.5 Deemed service

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 until some other person is registered in the place of the Member, and such service will for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators.

25. Taxation and KiwiSaver Member Tax Credits

25.1 PIE tax compliance

The Manager may elect that the Scheme be a PIE, or cease to be a PIE, at its complete discretion. The Manager will 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 in its complete discretion, any matter which is necessary or desirable to be decided in order to operate the Scheme as a PIE;
- (b) to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to Inland Revenue pursuant to the Tax Act;
- (c) to make available to the Member the benefit of any Tax Credit in such manner as the Manager considers appropriate in its complete discretion;
- (d) to make any elections or exercise any options under the Tax Act as it thinks fit having regard to the interests of Members generally and the rules in the Tax Act;
- (e) to carry out any tax calculations, allocations or attributions required by the Tax Act for a PIE;
- (f) to adjust a Member's Unit holding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the redemption of the Member's Units);
- (g) to deduct any amount on account of Tax from, or to credit any amount on account of a Tax Credit to, a Member's Interest on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, and as the Manager thinks equitable in its absolute discretion, at any time (including immediately prior to the redemption of the Member's Units);
- (h) to elect to offset Tax liabilities and Tax Credits 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;

- (i) to allocate the costs associated with being a PIE between Members and Funds on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion;
- (j) to take all steps as the Manager considers necessary or desirable to ensure the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the PIE rules in the Tax Act, including (in the Manager's complete discretion):
 - (i) rejecting applications for Units;
 - (ii) treating Units issued to a Member as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Member acknowledges that any Units issued which exceed the Investor Interest size requirement prescribed in the Tax Act, will be deemed to be held by that Member on trust for the Manager and the Manager will have full powers of direction in relation to those Units including when, how and to whom they will be disposed of; or
 - (iii) redeeming Units where the relevant Member's Interest would threaten the Scheme's eligibility as, or cause the Scheme to be ineligible to be, a PIE, provided the Manager has given the Member one month's notice or such shorter notice as is necessary in order to maintain the Scheme's status as a PIE;
- (k) to require that, before accepting an application for Units, the applicant provides their Tax File Number, Prescribed Investor Rate, and any other information required by the Tax Act, and that at any time a Member must confirm such details or provide such other information as required by the Tax Act on request from the Manager;
- (l) to disclose any information, including issuing any statements and providing any information to Members as required by the Tax Act and in respect of their tax position in relation to the Scheme, and providing any information (including personal information) to Inland Revenue or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Scheme's Tax obligations;
- (m) to value Tax losses of the Scheme or a Fund for the purpose of determining the Unit Price as the Manager thinks fit in its complete discretion having regard to the Tax Act and to the Scheme or the Fund's stated policies (if any) from time to time;
- (n) to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition a Fund to and from being a PIE or to administer the Fund as a PIE; and
- (o) 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 carry out functions relating to the Scheme or a Fund as a result of the Scheme being a PIE.

25.2 Withholding Tax from Benefits

If the Manager 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 must make such deduction or withholding and pay such amount to the Commissioner or other taxing authority. On payment of the net amount to the relevant Member, the full amount payable to the relevant Member will be deemed to have been duly paid and satisfied.

25.3 KiwiSaver Member Tax Credit

For the purposes of obtaining and administering KiwiSaver Member Tax Credits payable to the Scheme in respect of Members, the Manager has the following additional powers and discretions in respect of the Scheme:

- (a) to make claims for KiwiSaver 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 KiwiSaver Member Tax Credit paid in respect of the Member on a pro rata basis between the Funds; and
- (c) to require a Member (or his or her personal representative, or another relevant person for the purposes of section 65 of the Administration Act 1969) wishing to withdraw from the Scheme any amount arising from a KiwiSaver Member Tax Credit to provide a statutory declaration stating the periods for which the Member has had his or her principal place of residence in New Zealand.

25.4 Changes in tax legislation

Without limiting the construction of the words “Statutes and regulations” ascribed in clause 1.7, following any amendment to or re-enactment of the Tax Act (a Revision):

- (a) all of the discretions and powers available to the Manager where the Scheme is a PIE, whether under this clause 24 or otherwise, will continue to apply with such modifications as are necessary to reflect the Revision;
- (b) the Manager will have the discretion to apply all of the requirements of the Revision to the Scheme and the Members on such basis as it considers appropriate, taking into account such factors as the Manager considers relevant; and
- (c) to the extent reasonably possible taking into account the nature of the Revision, any references in this Governing Document to terms defined in the Tax Act which are amended or replaced as a result of the Revision will be deemed to be references to those defined terms as amended by the Revision.

26. Auditor

26.1 Appointment and remuneration

The Manager must appoint a person or firm of chartered accountants, approved by the Supervisor and entitled by law to act, as Auditor of the Scheme and the Register. The Manager and the Supervisor must agree upon the services to be performed by the Auditor and their scope. The remuneration of the Auditor must be determined by the Manager on an arm’s length basis.

26.2 Removal or retirement

- (a) The Auditor may at any time and from time to time be removed by the Manager with notice to the Supervisor.
- (b) The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Scheme and/or Members, and instructs the Manager to remove the Auditor.
- (c) The Auditor may retire upon giving the Manager 30 days’ notice in writing.

26.3 New appointment

Any vacancy in the office of Auditor must be filled by the Manager with the approval of the Supervisor in accordance with clause 26.1.

26.4 Restrictions on Auditor

The Auditor may be the auditor of the Manager, or of the Supervisor, or of a Related Company of either the Manager or the Supervisor, or of any other trust whether of a similar nature to the Scheme or otherwise.

26.5 Auditor's report to Supervisor

The Manager must deliver to the Supervisor at the same time as the Manager provides to the Supervisor the annual financial statements, a separate report by the Auditor addressed to the Supervisor in the format agreed in the Manager Reporting Agreement.

27. Payments to Members

27.1 Method of payment

Subject to the KiwiSaver Act and the FMCA, any monies payable by the Manager (or by the Supervisor at the Manager's direction) to a Member or the Member's personal representative, or to another relevant person for the purposes of section 65 of the Administration Act 1969, under the provisions of this Governing Document may be paid by cheque that is crossed 'non-transferable' and made payable to the Member, the Member's personal representative or other relevant person for the purposes of section 65 of the Administration Act 1969 or direct credited to any bank account nominated by the Member or other recipient.

27.2 Satisfaction of moneys 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 moneys payable and will be good discharge to the Manager (and, to the relevant extent, the Supervisor).

28. Meetings

The Manager will call a meeting of the Members in the manner and on the basis set out in the FMCA, KiwiSaver Act and the FMC Regulations. Meetings of Members must be conducted in accordance with the requirements of the FMCA, FMC Regulations and the KiwiSaver Act.

29. Minimum economic amount

Neither the Supervisor nor the Manager is obliged to undertake any transaction for which a payment or transfer would be for an amount less than the out of pocket costs of effecting it.

30. Notices between Manager and Supervisor

Any certificate, notice, communication or information required by this deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager must be given in writing or by facsimile communication or electronic communication and addressed to the secretary, director, board member or principal officer of the party to whom it is intended to be given at its registered office or other usual place of business (or such other address as may from time to time be notified by one party to the other) and must be signed by a duly authorised officer on behalf of the party giving it.

31. Infancy, incapacity and bankruptcy

Subject to the FMCA, KiwiSaver Act and all applicable laws, 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 FMCA, KiwiSaver Act and all applicable laws) 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.

32. No assignment

32.1 No assignment:

Except as expressly provided in the KiwiSaver Act or otherwise subject to the FMCA, KiwiSaver Act and all applicable laws and clause 32.2, 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.

32.2 Relationship property

Notwithstanding clause 32.1, 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).

33. Amendments

Subject to the applicable requirements of the FMCA, this Governing Document may at any time be amended by deed executed by the Manager and the Supervisor.

34. Delivery

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

- (a) physical delivery of an original, executed by the relevant party, to the other party or its 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, executed by the relevant party, to the other party or its solicitors.

35. Counterparts

This deed may be executed in counterpart copies each of which, when taken together, will constitute one and the same instrument. The parties may execute this deed by signing any such counterpart copy.

36. Governing Law

This Governing Document must be interpreted and administered in accordance with New Zealand law.

Signing page

EXECUTED as a Deed

SIGNED by **PIE FUNDS MANAGEMENT LIMITED**

Signature of director

Name of director

Signature of director

Name of director

SIGNED by **TRUSTEES EXECUTORS LIMITED**

Signature of authorised signatory

Name of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Signature of witness

Name of witness

Occupation of witness

City/town of residence