



Deed of Amendment and Restatement

in relation to the Generate KiwiSaver Scheme

—

Generate Investment Management Limited (**Manager**)
Public Trust (**Supervisor**)

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Deed of Amendment and Restatement

Generate Kiwisaver Scheme

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Signing page

Details

Date 10th MAY 2023.

Parties

Name **Generate Investment Management Limited**
Short form name **Manager**
Notice details Address: Level 9, Jarden House, 21 Queen Street, Auckland 1010
Email: henry@generatekiwisaver.co.nz
Attention: Henry Tongue

Name **Public Trust**
Short form name **Supervisor**
Notice details Address: SAP Tower, Level 16, 151 Queen Street Auckland 1010
Email: CTS.Enquiry@PublicTrust.co.nz
Attention: Client Services Manager

Background

- A The Generate KiwiSaver Scheme (the **Scheme**) was established by Trust Deed dated 14 December 2012 (the **Original Deed**) and is currently governed by a Trust Deed originally dated 25 August 2016, which was amended and restated on 17 December 2020 and further amended on 11 May 2022 (the **Existing Deed**).
- B Public Trust, a trustee corporation licensed under the Financial Markets Supervisors Act 2011 to act as a Licensed Supervisor for KiwiSaver schemes, is the trustee and Licensed Supervisor of the Scheme.
- C The Manager and the Supervisor wish to amend the Existing Deed and replace it with this deed in order to (among other things) consolidate amendments made under a Deed of Amendment dated 11 May 2022, broaden the Manager's powers to implement liquidity management tools (i.e. swing pricing) and to clarify its rights to charge a performance fee and the payment of third party adviser fees.
- D The Manager and the Supervisor are satisfied that these amendments will comply with clause 17 of the Existing Deed. Accordingly, the Manager and the Supervisor are satisfied that all of the amendments as contained in this deed do not have a material adverse effect on Scheme members and the Supervisor has certified to that effect as required by section 139(2) of the Financial Markets Conduct Act 2013.
- E The Existing Deed is amended and restated in its entirety by deleting all of its provisions and replacing them with the provisions of this deed as set out below.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Assets means, in relation to a Fund or the Scheme, all property, rights and assets of that Fund or the Scheme, as the case may be.

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.

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

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

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

Financial Year means a year ending on 31 March (or such other date as the Manager may determine and notify in writing to the Supervisor from time to time) where the Scheme has been and is in existence, provided that the last Financial Year shall end on the date as at which the Scheme is wound up.

FMA means the Financial Markets Authority.

Effective Date means the date of this deed.

Establishment Deed means a deed executed by the Manager and the Supervisor by which a Fund is established in a form similar to that set out in Schedule 1, that is entered into in accordance with clause 3.1(a).

Financial Advice Provider and **financial adviser** have the meaning given to those terms under the FMCA.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

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

Fund means any fund established and maintained by the Manager under clause 3.

Fund Update has the meaning given to that term by the FMCA.

Generate Group means Generate Investment Management Limited and all those companies which are related companies (as defined in the Companies Act 1993) or any of them.

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

Initial Funds means the following Funds established under the Original Deed:

- (a) Generate KiwiSaver Moderate Fund;
- (b) Generate KiwiSaver Growth Fund; and
- (c) Generate KiwiSaver Focused Growth Fund.

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

KiwiSaver Act means the KiwiSaver Act 2006.

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), but excluding any amount which results from treating Member's Interests or Units as liabilities and, where the Scheme is a PIE, where the Manager in its complete discretion considers it appropriate to do so, 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 Generate Investment Management Limited or such other person who is appointed as the manager for the time being of the Scheme in accordance with clause 19.

Manager Reporting Agreement means the 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.

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 shall 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 or Units which results from treating Units as liabilities;

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, (ii) any amount which results from treating Member's Interests or Units as liabilities and (iii) where the Scheme is a PIE, where the Manager in its complete discretion considers it appropriate to do so, any income Tax Liability;

Number of Units on Issue means, in relation to a Fund, the total of all Units issued in that Fund which have not been redeemed or cancelled after all fractional Units have been consolidated as far as possible into whole Units.

Participating Employer means an employer which has entered into a Participation Agreement.

Participation Agreement means an agreement entered into in accordance with clause 10, as amended from time to time.

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

Register means the register maintained by the Manager pursuant to clause 6.1.

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

Scheme means the Generate KiwiSaver Scheme established pursuant to this deed.

Scheme Provider Agreement means the scheme provider agreement applying from time to time with respect to the Scheme under the KiwiSaver Regulations 2006.

SIPO means a statement of investment policy and objectives.

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

Superannuation Scheme means a superannuation scheme registered under the FMCA, or any Overseas superannuation scheme, in respect of which transfers to or transfers from the Scheme (as applicable) are permissible.

Supervisor means Public Trust or such other person who is appointed as the supervisor of the Scheme for the time being in accordance with clauses 11.1 and 18.1 and, where the context requires or allows, this term includes any Custodian and/or any sub-Custodian appointed in accordance with clause 13.3(c).

Swing Factor Adjustment means the adjustment, if any, to a Fund's Unit Price under Swing Pricing as determined by the Manager in accordance with the Swing Pricing Policy.

Swing Pricing means the anti-dilution measure involving adjustments to a Fund's Unit Price based on net fund flows into or out of that Fund on any given Valuation Date in accordance with the Swing Pricing Policy.

Swing Pricing Policy means the policy, if any, adopted by the Manager in relation to Swing Pricing whereby, if net fund flows for a Fund on a Valuation Date exceed a threshold specified in the policy, a Swing Factor Adjustment may be applied to the Fund's Unit Price for that Valuation Date as determined by the Manager in accordance with the policy.

Switch means changing the Fund or Funds in which all or part of a Member's savings have been invested in accordance with clause 13.5(a).

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 subpart HM of the Tax Act, or any other similar credit.

Trust Act means the Trusts Act 2019.

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

Unit means a unit in the Scheme, or if there is more than one Fund, the Fund, as provided in this deed and means, in relation to a Fund, a unit in that Fund.

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:

$$\frac{\text{NAV} + / - \text{TC}}{N}$$

N

where:

$$\text{UP} = \text{Unit Price};$$

- 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 the Assets or such lesser amount, including zero, as the Manager determines, but where the Manager has adopted Swing Pricing for a Fund and has, in accordance with the Swing Pricing Policy, determined that a Swing Factor Adjustment is to apply to that Fund for that Valuation Date, plus or minus the Swing Factor Adjustment (as applicable), rounded in accordance with the Swing Pricing Policy;
- 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.

Unit Value means, in relation to a Fund at the Valuation Date, the amount ascertained by the Manager by dividing the Net Asset Value of the Fund, as applicable, by the Number of Units on Issue at the Valuation Date, rounded down if necessary to the fourth decimal place of a dollar.

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.

1.2 Terms defined in KiwiSaver Act

Each of the terms **Benefit, Commissioner, 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 are specified in notices issued by the FMA under the FMCA, are applicable to the Scheme and relate to any matter which is required to be provided for adequately in this deed by the FMCA, the provisions of this deed which deal with such matters shall 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 and any provision of this deed that is contrary to the implied provisions is void to the extent it is contrary.

1.6 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 currency.

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.

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

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 principles 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 principles 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.

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.

Statutes and Regulations: a reference to an enactment, any regulations or other statutory instruments is a reference to that enactment, those regulations or statutory instrument as amended, or to any enactment, regulations or statutory instruments substituted for that enactment, regulations or statutory instrument.

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.

1.7 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 shall, unless otherwise agreed in writing by the Supervisor either generally or in any particular case, 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 provided always that 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.

1.8 Relationship with the Trusts Act

- (a) Any provision in this deed that is contrary to the Trusts Act will, to the extent permitted by that Act, modify or exclude the relevant Trusts Act provision(s). Where modification or exclusion of the relevant provision of the Trusts Act is not permitted, any provision in this deed that is contrary to that provision of the Trusts Act is void to the extent that it is contrary.
- (b) For the avoidance of doubt, the duties reflected in sections 31, 33, 34, 36 and 37 of the Trusts Act will not apply to the Supervisor or the Manager.
- (c) In order to comply with the KiwiSaver Scheme Rules under the KiwiSaver Act, sections 62 to 66 of the Trusts Act will not apply to this Deed.

2. Constitution of the scheme

2.1 Continuation of Scheme on the terms of this deed

- (a) Effective on and from the Effective Date, the Existing Deed is amended by revoking all of its provisions and replacing them with the provisions set out in this deed.

- (b) To avoid doubt, before and after the Effective Date the Scheme will continue as the same KiwiSaver scheme, but on the basis set out in this deed.
- (c) The trusts established in accordance with the Original Deed continue after the Effective Date on the terms contained in this deed.
- (d) All contributions and other assets of the Scheme shall be held on trust in accordance with the terms of this deed and the FMCA.

2.2 Principal purpose

The principal purpose of the Scheme is to provide retirement benefits to natural persons in accordance with the KiwiSaver Act and the FMCA.

2.3 Contributions and other assets held on trust

Subject to clause 13.3, the Supervisor will hold all Contributions to and other Assets of the Scheme on trust for Members in accordance with the terms of this deed.

2.4 Name

The Scheme is known as the Generate KiwiSaver Scheme. The Manager may change the name of the Scheme by written notice to the Supervisor. The Manager shall 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.

2.5 No Maximum Duration

Pursuant to section 16(6)(d) of the Trusts Act and section 155A(4) of the FMCA, but subject to clause 20 of this Deed, there shall be no restriction on the duration of the trusts created for the Scheme.

2.6 Registration Requirements

The Manager and the Supervisor shall ensure that the Manager, the Supervisor and the Scheme meet the initial and on-going registration requirements applicable to the Scheme in accordance with the requirements of the FMCA.

3. Establishment of separate funds

3.1 Separate Funds

- (a) The Manager shall establish and maintain separate Funds within the Scheme, at any time by executing an Establishment Deed in which all parts of the form set out in Schedule 1 (or such other form the Manager determines) are completed, subject to consultation with the Supervisor. Such Funds are designed to enable Members to have their savings invested by reference to particular asset classes or mixes of asset classes.
- (b) The Manager shall prepare a SIPO for each Fund, which the Manager may amend from time to time. The SIPO for a Fund may form part of a single SIPO for the Scheme. This clause 3.1(b) is subject to clauses 3.1(c) to (e).
- (c) The Manager shall 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, for review by the Supervisor.
- (d) If the Supervisor considers that the relevant SIPO does not comply with section 164 of the FMCA, then the Supervisor shall give the Manager not less than 14 days' prior written notice (outlining the reasons for that view).
- (e) If the Supervisor invokes clause 3.1(d) then the Manager shall consult with the Supervisor and if, after consultation with the Supervisor, the Supervisor advises within a further 7 days that it still considers clause 3.1(d) applies, give the Supervisor a copy of an amended SIPO. Provided the Supervisor (acting reasonably) is then satisfied that clause 3.1(d) will not apply to the relevant SIPO, the Supervisor will confirm in writing within a further 14 days that the Manager may establish the Fund or alter the SIPO.

- (f) All monies available for investment in a Fund shall be invested in accordance with the SIPO for that Fund.
- (g) This clause 3.1 shall not be construed so as to prohibit the Manager (subject to clause 24.1) transferring value between Funds to accommodate the Scheme being a single taxpayer.

This clause 3.1 expressly modifies the power of a trustee under section 58 of the Trusts Act.

3.2 Exclusive assets and liabilities

Although the Scheme is intended to be treated as one registered KiwiSaver scheme for the purposes of the KiwiSaver Act and the FMCA, with the statutory and other obligations applicable to it construed accordingly, where two or more Funds are established pursuant to clause 3.1 then (subject to clauses 24.1(q), (s) and (t)) the Assets of each Fund shall be the exclusive property of that Fund, and all Liabilities incurred in relation to a Fund shall be the exclusive liabilities of that Fund, and the Manager and Supervisor shall in all respects act so as to give effect to these intentions. Without prejudice to the generality of the foregoing:

- (a) the Assets held for a Fund shall not be available to meet the Liabilities incurred in relation to any other Fund;
- (b) all investments made with the monies of a Fund shall be held by or on behalf of the Supervisor as the exclusive property of that Fund and for the exclusive benefit of the Members who have an interest in that Fund pursuant to this deed;
- (c) the Manager shall keep separate records and accounts in respect of each Fund, and shall not permit the property, Assets or Liabilities of any Fund to become intermingled with those of any other Fund (provided that nothing in this subclause shall prevent the Assets of any Fund being lent to, deposited with or invested in another Fund); and
- (d) without limiting the generality of this clause 3.2, 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, shall 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 shall be 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 shall be apportioned between those Funds on such fair and equitable basis as may be determined by the Manager.

3.3 Winding up or alteration of Funds

The Manager shall 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, and if the Supervisor so requires following receipt of such notice, the Manager must consult with the Supervisor in relation to the proposed closure, winding up or alteration.

3.4 Winding up a Fund

If a Fund is wound up under clause 3.3, the Manager must notify each Member holding Units in that Fund 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.

3.5 Member entitled to choose Fund(s)

Where there is more than one Fund, a Member shall be entitled to choose the Fund or Funds in which the Member's savings will be invested from time to time. In exercising their choice under this clause 3.5, Members shall comply with all rules prescribed by the Manager from time to time regarding:

- (a) changing their choice of Funds (in relation to either amounts already invested or amounts to be invested in the future);

- (b) the manner in which choices should be communicated; and
- (c) any other matters relating to the choice of Funds by Members.

3.6 Contrary intention

The choice of a Fund or Funds by a Member under clause 3.5 shall be a binding direction to the Manager with respect to the investment of trust funds. However, no direction by an employer or a Member in terms of this clause 3.6 shall exempt the Manager from its responsibilities under the FMCA.

4. Admission of members and cessation of membership

4.1 Admission

Natural persons shall be admitted to membership of the Scheme:

- (a) 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
- (b) in accordance with section 48 of the KiwiSaver Act, by reason of the Scheme being an Employer's Chosen KiwiSaver Scheme;

and in each case the Manager may (or, if required by the KiwiSaver Act, shall) 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.

4.2 Deemed acceptances

On admission to membership of the Scheme pursuant to clause 4.1(b), a Member shall be deemed to have consented to the Supervisor and the Manager obtaining, holding, using and disclosing personal information in respect of the Member in the same manner, and to the same extent, as if the Member has been admitted to membership of the Scheme pursuant to clause 4.1(a).

4.3 Cessation of membership

Without limiting any other provision of this deed, the relevant Establishment Deed, the KiwiSaver Act or the FMCA, a person shall 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 (which are implied in the Trust Deed under section 116 and Schedule 1 of the KiwiSaver Act) and ceasing to have an entitlement under the Scheme;
- (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 Superannuation Scheme in accordance with the requirements of the KiwiSaver Act and ceasing to have an entitlement under the Scheme; and
- (c) receiving notice from the Manager under rule 4(5)(b) of the KiwiSaver Scheme Rules.

4.4 Compliance with legislation

The Manager shall, in accepting Member applications under clause 4.1(a), and accepting any offer to become a member under clause 4.1(b), comply with all applicable laws, including the requirements of the KiwiSaver Act, the FMCA and the FMC Regulations.

4.5 Regulated offers

Without limiting clause 4.4, the Manager must not make a Regulated Offer of interests in the Scheme unless:

- (a) the Scheme is registered under the FMCA;
- (b) a PDS has been prepared and lodged as a Register Entry in respect of the Scheme; and

- (c) 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.

4.6 Manager's reasonable endeavours

The Manager must use reasonable commercial endeavours to ensure that the Disclosure Documents for the Scheme at all times comply with all applicable laws including the FMCA.

4.7 Supervisor review

The Manager shall provide to the Supervisor, with reasonable notice, drafts of all proposed PDSs, SIPOs, Fund Updates and Annual Reports in respect of the Scheme so as to allow the Supervisor time to review and provide comments on the draft (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).

5. Contributions

5.1 Contributions that must be accepted

Members and employers shall contribute to the Scheme in accordance with Part 3 of the KiwiSaver Act and the Manager shall 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 (if any) of the KiwiSaver Act, 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 in respect of a Member in accordance with subpart 3 of Part 2 of the KiwiSaver Act.

5.2 KiwiSaver Member Tax Credits

Any KiwiSaver Member Tax Credit paid to the Scheme in respect of a Member shall vest in the Member immediately after it is paid to the Scheme.

5.3 Contributions that may be accepted

The Manager may accept, but shall not be required to accept, Contributions and monies payable to the Scheme by or in respect of a Member other than those referred to in clause 5.1, including amounts transferred from a Superannuation Scheme in respect of the Member. Subject to the KiwiSaver Act, the Manager may impose such terms and conditions for such acceptance (including, without limitation, as to the amount and mode of payment) as the Manager determines.

5.4 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 shall be treated as a Contribution to be invested in the Scheme (or, if applicable, the relevant Fund) on behalf of the Member.

5.5 Manager's duty 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) shall 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 13.3); and
- (b) shall be subject to the trusts governing the Scheme that are set out in this deed.

6. Registry

6.1 Register to be maintained

The Manager shall keep and maintain or cause to be kept and maintained in respect of the Scheme an up-to-date register of Members. The register may comprise a printout of information kept by computer or other equipment, so long as a printout is available to the Supervisor from time to time.

6.2 Appointment of registrar

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

6.3 Content of Register

There shall be entered in the Register for the Scheme:

- (a) the names and addresses of the Members of the Scheme;
- (b) where the Scheme is a PIE, the Tax File Number and Prescribed Investor Rate of each Member;
- (c) the number of Units that each Member holds in the Scheme (or where there is more than one Fund, the Funds);
- (d) details of the Fund(s) chosen by the Member and any Switches completed;
- (e) Contributions to the Scheme by or on behalf of each Member;
- (f) amounts transferred into or out of the Scheme in respect of each Member;
- (g) amounts received by or payable to the Scheme in respect of each Member, including (for the avoidance of doubt) any Tax rebates attributable to each Member;
- (h) amounts transferred to the Scheme in respect of the Member and which the Manager determines to allocate to the Member;
- (i) the Crown Contributions paid under section 226 (if any) of the KiwiSaver Act, KiwiSaver Member Tax Credits and any other Crown Contributions paid in respect of each Member;
- (j) amounts paid by each Member with respect to costs, expenses, fees or Tax payable in respect of each Member pursuant to this deed or any Participation Agreement;
- (k) amounts withdrawn by each Member as a Permitted Withdrawal and the nature of each Permitted Withdrawal;
- (l) the date on which the name of every person was entered in the Register as a Member, ceased to be a Member and of all other transactions in respect of that Member;
- (m) amounts forfeited by each Member to the relevant Participating Employer's reserve when a Member leaves a Participating Employer's employment;
- (n) amounts allocated to each Member from the relevant Participating Employer's reserve; and
- (o) any other particulars that the Manager or the Supervisor may consider desirable to include or are required by law.

6.4 Participating Employer's reserve

Amounts which have been allocated to a Participating Employer's reserve pursuant to a Participation Agreement shall, at the Participating Employer's direction (subject to the Manager's consent, which shall 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.

6.5 Register deemed to be accurate

Except as otherwise expressly required by law, where the Manager has appointed a registrar to maintain the Register, the Supervisor and the Manager (provided in the case of the Manager that the Manager has exercised reasonable care in appointing a registrar):

- (a) shall be entitled to rely absolutely on the Register as being correct; and
- (b) shall not be required to enquire into the authenticity of the Register; and
- (c) shall not incur any liability or responsibility on account of any mistake in the Register.

6.6 Members to notify changes

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

6.7 Audit of the Register

The Manager shall cause the register to be audited by the Auditor at annual intervals as required by the FMCA. Such audit shall be completed in accordance with the FMCA and shall include an affirmation from the Auditor that the Auditor considers subpart 4 of Part 4 of FMCA has been complied with. The Supervisor may at any time for a specified and reasonable purpose request the Manager to cause the register to be audited.

6.8 Inspection

Any Member having an interest in the Scheme, and the Supervisor and the Auditor, shall be entitled to inspect the register on giving prior written notice to the Manager in respect of their interests in the Scheme free of charge at any time during normal working hours of the Manager in accordance with the requirements of the FMCA.

7. Unitisation

7.1 Scheme unitised

The Manager shall operate the Scheme (or, if applicable, each Fund) on a unitised basis, with the beneficial interests in the Scheme (or each Fund) divided into Units.

7.2 Equal but not specific interests

Units referable to the Scheme (or, where there is more than one Fund, a Fund):

- (a) shall be of one class and shall confer identical rights and interests;
- (b) shall, for the purpose of the definition of Investor Class, confer on each Member an equivalent interest in all of the investments comprised in the Scheme, or (where there is more than one Fund) the relevant Fund, corresponding to the Member's Interest (or the relevant portion of the Member's Interest), but shall not confer any interest, to the exclusion of any other Member, in any particular investment comprised in the Scheme or the relevant Fund (with the result that no Member will be entitled to require the transfer of any investment to the Member);
- (c) shall not (where there is more than one Fund) confer any right or interest in the Assets of any other Fund.

7.3 Unit Price

Each Unit Price shall be determined on each Valuation Date. For the avoidance of doubt, the Assets used to determine the Unit Price on a Valuation Date shall not include amounts received

for which Units are to be but have not been issued, and shall include amounts debited, transferred or withdrawn from the Scheme for which Units are to be but have not been cancelled, at the time of such determination.

7.4 Unitising Contributions

Subject to clause 7.5, 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 3.5(a);

the Manager shall, 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.

Units issued under this clause 7.4 shall be based upon the amount accepted, payable or transferred (net of any amount that the Manager considers appropriate to deduct for fees, expenses, Taxes or other liabilities) and the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on the date when the Units are issued.

7.5 Delaying unitisation

Without limiting clause 7.4, the Manager may delay converting into Units under clause 7.4 any Contributions accepted into the Scheme in respect of any Member or group of Members until such time as the Manager is reasonably satisfied that those Contributions 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 Trust Deed and have not otherwise been paid in error.

7.6 Ceasing to issue Units

Without limiting clause 7.4 or any other provision of this Trust Deed (but subject at all times to the provisions of the KiwiSaver Act and the FMCA) the Manager may determine at any time or times that from a specified date no further Units will be issued pursuant to this Trust Deed (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 or are terminated;

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

7.7 Cancelling units

In respect of amounts debited, transferred or withdrawn from the Scheme, the Manager shall cancel the number of Units determined by dividing the amount debited by the relevant Unit Price or Unit Prices applying on a day no later than the next Valuation Date after the Manager determines that the debit, transfer or withdrawal shall be made (provided that, for amounts debited on account of Tax payable, the Manager may use the Valuation Date on which the Manager finally determines the amounts of Tax payable).

7.8 Suspensions

Subject to the requirements of the KiwiSaver Act and the FMCA, but notwithstanding the foregoing provisions, and subject to prior written notification to the Supervisor, if for any good reason reasonably determined by the Manager, the Manager shall form 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 a

transfer of schemes, then the Manager may suspend the payment of all benefits or the making of all Switches or transfers of schemes relating to the Scheme or the relevant Fund until the Manager decides that the suspension is cancelled.

Where the Manager has suspended payment of benefits, or making Switches or transfers of schemes in respect of the Scheme, and not cancelled that suspension within 14 days of such decision, the Manager shall 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 shall expire 6 months after the last notice to the relevant Members has been given pursuant to this clause 7.8 unless the Supervisor approves the continuance of such suspension.

7.9 Uncleared funds

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

7.10 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).

7.11 Part Units

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

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

in each case in such manner as the Manager (acting reasonably) determines from time to time.

7.12 Pricing errors

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, then no reimbursement or compensation shall be required to be provided.

8. Valuations

8.1 Net Asset Value

The Manager shall calculate the Net Asset Value of the Assets 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.

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 shall 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 Assets of the Scheme (or, if there is more than one Fund, of each Fund,) under clause 8.1 the Manager shall 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 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 in doing so may (subject to clause 3.2):

- (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 24.1, 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. Benefits

9.1 Calculation of member's accumulation

Benefits shall be payable from the Scheme in accordance with the KiwiSaver Scheme Rules (which are implied in the Trust Deed under section 116 and Schedule 1 of the KiwiSaver Act) and the FMCA and, subject to clause 9.2, when the Manager is required under the KiwiSaver Scheme Rules to calculate an amount representing a Member's Accumulation, the Manager shall calculate that amount by:

- (a) multiplying the Units attributable to the Member by the relevant Unit Value (or, if relevant, the Unit Values) applying on a day no later than the next Valuation Date after the Manager makes a final determination that a benefit should be paid;
- (b) deducting an amount equal to the portion of any unvested Participating Employer Contributions referable to the Member;
- (c) deducting any further amount that the Manager considers appropriate to deduct with respect to costs, expenses, fees or Tax payable pursuant to this Trust Deed or the relevant Participation Agreement, except that if the Scheme is a PIE and the Manager in its complete discretion considers it appropriate not to do so, no deduction shall be made from a Benefit on account of any income Tax liability; and
- (d) where the Manager has adopted Swing Pricing for a Fund and has, in accordance with the Swing Pricing Policy, determined that a Swing Factor Adjustment is to apply to that Fund for that Valuation Date, adding or deducting the Swing Factor Adjustment (as applicable), rounded in accordance with the Swing Pricing Policy.

9.2 Different method of calculation

Subject to clause 9.3, 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 9.1 if the Manager or Supervisor determines that the method set out in clause 9.1 does not comply with the KiwiSaver Act; and
- (b) may adopt a method of calculating that amount that is different from that set out in clause 9.1 if the Manager considers it appropriate to do so.

9.3 Different method of calculation must meet certain requirements

Any different method adopted by the Manager under clause 9.2 must comply with the KiwiSaver Act and must not be adopted until after the Manager has consulted with the Supervisor.

9.4 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 and the relevant Establishment Deed, 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.

9.5 Amounts transferred from overseas Superannuation 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 Accumulations of any amounts transferred to the Scheme from an overseas Superannuation Scheme.

10. Participating employers

10.1 Participation Agreement

The Manager and an employer may enter into an agreement (which shall form part of the Trust Deed) prescribing certain conditions on which the employer's employees may become Members of the Scheme, including conditions relating to:

- (a) any Contributions payable by the employer in addition to those required under subpart 3A of Part 3 of the KiwiSaver Act;
- (b) the vesting of those additional Contributions to Members and the treatment of unvested Contributions;
- (c) the Fund or Funds applicable to those Members; and
- (d) such other matters as the Manager and employer consider appropriate, including the manner (and consequences) of terminating the employer's obligations under the agreement;

and the Manager and the employer may amend that 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 Trust Deed, the terms of the Participation Agreement shall prevail.

10.3 KiwiSaver Act prevails

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

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 shall 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 Execution of Participation Agreements

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

10.6 Participating Employer's indemnity

By its entry into a Participation Agreement, each Participating Employer shall indemnify the Supervisor and the Manager against any costs, expenses or other liabilities of any type whatsoever that are incurred as a result of any breach by the Participating Employer of the KiwiSaver Act, the Trust Deed or the relevant Participation Agreement. This indemnity shall survive termination of the Participation Agreement.

10.7 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 shall 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 Trust Deed, in such manner and to such extent as the Manager considers appropriate.

11. Supervision and management of the scheme

11.1 Appointment of Supervisor and Supervisor's responsibilities

The Supervisor is appointed, and accepts appointment, as trustee and supervisor of the Scheme for the purposes of the KiwiSaver Act and the FMCA and will be designated as such. The Supervisor will continue in office as supervisor for the purposes of the FMCA and 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 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 they are 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 and in good faith in acting as Supervisor of the Scheme;

- (ii) act in the best interests and for the benefit 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 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
- (c) it will provide to the Manager as soon as possible 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 shall 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 such Fund. Notwithstanding the preceding references to the provisions of this deed, the Supervisor shall 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 shall cause investments and property held for the Scheme to be vested in the Supervisor or in any Custodian duly appointed under clause 13.3 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, and 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 13.3 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 shall determine the persons authorised to operate such bank accounts.

11.7 Appointment of Manager and Manager's functions and duties

- (a) The Manager is appointed, and accepts appointment, as manager of the Scheme for the purposes of the KiwiSaver Act and the FMCA and will be designated as such.
- (b) The Manager will continue in office as manager for the purposes of the FMCA, namely performing the following functions:
 - (i) offering interests in the Scheme for subscription;

- (ii) issuing interests in the Scheme;
 - (iii) managing Scheme investments and property including each Fund; and
 - (iv) administering the Scheme.
- (c) Without limiting the generality of clauses 11.7(a) and 11.7(b) above (or the Manager's power of management under this deed and all applicable legislation) the Manager shall perform each of the following specific duties in relation to the Scheme:
- (i) act honestly and in good faith in acting as Manager of the Scheme;
 - (ii) promote the Scheme to prospective Members and other relevant interested persons;
 - (iii) in exercising any powers or performing any duties as Manager:
 - (A) act in the best interests and for the benefit of Members;
 - (B) treat the Members equitably; and
 - (C) 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;
 - (iv) not make use of information acquired through being the Manager in order to:
 - (A) gain an improper advantage for itself or any other person; or
 - (B) cause detriment to Members;
 - (v) carry out its functions in accordance with this deed, the SIPO and all other Issuer Obligations;
 - (vi) admit Members and Participating Employers;
 - (vii) establish and maintain Member records, including a Register which meets the requirements of the FMCA;
 - (viii) arrange for the receipt and acceptance of Contributions and other monies payable to the Scheme;
 - (ix) liaise with Members;
 - (x) 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 Portfolio Investment Entities apply to the Scheme under the Tax Act then the Manager may not act pursuant to this clause 11.7(c)(x) 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;
 - (xi) keep complete and accurate records of all investments of the Scheme (and, if applicable, each Fund);
 - (xii) where there are two or more Funds, effect Switches between Funds pursuant to clause 3.5(a);
 - (xiii) discharge all functions and duties with respect to unitisation, valuations and benefit calculations;
 - (xiv) 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 KiwiSaver Schemes and Superannuation Schemes;
 - (xv) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;
 - (xvi) ensure compliance by the Scheme with the requirements of the KiwiSaver Act, the FMCA, the Financial Reporting Act 2013 and other applicable legislation;

- (xvii) 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;
- (xviii) give and receive all notices and other information in accordance with the FMCA;
- (xix) maintain all accounting records for the Scheme;
- (xx) discharge all of the obligations of the scheme provider under the Scheme Provider Agreement;
- (xxi) 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;
- (xxii) acquire or sell Assets for cash or upon terms;
- (xxiii) instruct persons to act in relation to investments of the Scheme or the proposed acquisition or disposal of investments;
- (xxiv) underwrite offers of securities out of the Assets of the Scheme;
- (xxv) participate in joint ventures in relation to real properties;
- (xxvi) 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; and
- (xxvii) 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 shall act in accordance with the terms of this Trust Deed, the KiwiSaver Act, the FMCA and other relevant laws applying to the Manager.

11.8 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).

11.9 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 Trust Deed to its officers and employees or to any other person nominated by the Manager, provided the Manager will remain liable to the Supervisor 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 shall 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.

11.10 Information and reports to Supervisor

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

11.11 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 shall include the following periodic reports required under the FMCA:

- (a) Fund Updates;
- (b) calculations of net tangible assets under the special conditions of the Manager's licence;
- (c) reports on limit breaks and pricing errors;
- (d) a quarterly report on any Related Party transaction certificates; and
- (e) annual reports for a registered scheme.

11.12 Payment of Fees and reimbursement of expenses

- (a) In respect of the Scheme, and subject always to rule 2 of the KiwiSaver Scheme Rules, the Manager and the Supervisor are entitled to 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, all such charges must comply with the Tax regime applicable to a PIE.
- (b) The Manager may deduct from a Member's account, to the extent permitted by the KiwiSaver Act, the KiwiSaver Scheme Rules or the FMCA, any fees charged directly or indirectly in respect of the Member's membership of the Scheme, that arise in relation to advice and other administration provided by a Financial Advice Provider or financial adviser, to the extent the Financial Advice Provider or financial adviser has entered into an agreement with the Manager to provide advice to Members, and the fees have been authorised by the Member for payment to the Financial Advice Provider or financial adviser. For the avoidance of doubt, the Financial Advice Provider may be a Related Party of the Manager.

11.13 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 11.12 or clause 16 to one or more Members or to a particular employer reserve, in such manner as the Manager considers equitable.

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 shall 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 of the Scheme, shall 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.

- (c) Subject to clause 16.5, neither the Manager nor the Supervisor shall be responsible to any Member for the investment performance of the Scheme (or, if applicable, a Fund) arising as a result of a SIPO.

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.

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 under clause 12.6; 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 of the relevant Investment Portfolio 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 shall 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.

13. Powers of the supervisor

13.1 Supervisor's general powers

In addition to any other powers granted under this Trust Deed or by law, but subject to the FMCA and to the limitations set out in clauses 11.4 and 13.3, the Supervisor may (and shall 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 and 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 shall 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 Exercise of Supervisor's powers

Subject to the other provisions of the Trust Deed 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;
- (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.

This clause 13.2 expressly excludes the duties of a trustee under section 32 of the Trusts Act.

13.3 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) in which any of the investments or property of the Scheme are to be vested, provided that person complies with the eligibility requirements of the FMCA. The Supervisor shall be jointly and severally liable with the nominated person for the due and faithful performance and observance by the nominated person of all the duties and obligations imposed on it pursuant to this clause 13.3(a) and otherwise by law.
- (b) In appointing a Custodian the Supervisor shall 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 13.3(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 which appointed that sub-Custodian shall be jointly and severally liable with the sub-Custodian for the due and faithful performance and observance by the sub-Custodian of all the duties and obligations imposed on it pursuant to this clause 13.3(b) and otherwise by relevant law.

13.4 Custodian reports

The Supervisor shall 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.

13.5 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.

13.6 Manager's obligations in relation to experts

If the Supervisor engages an expert under clause e:

- (a) the Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 13.5;
- (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 16.5.

14. Remuneration of supervisor

Subject to rule 2 of the KiwiSaver Scheme Rules, 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. The Supervisor may be paid additional fees for non-routine matters, as the Supervisor and the Manager may agree from time to time. The fees may be deducted from the Assets of the Scheme or paid by cancelling Units in respect of one or more Members. The Supervisor is entitled to receive, in addition to the fees referred to in this clause 14, any GST or similar Tax payable in respect of such fees.

15. Remuneration of manager

15.1 Fees charged by Manager

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, performance, 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. The method of paying such fees shall be determined by the Manager from time to time and notified to the Supervisor in writing. The Manager is entitled to receive, in addition to the fees referred to in this clause 15.1, any GST or similar Tax payable in respect of such fees.

15.2 Alteration or waiver of fees

The Manager may waive part or all of any fee or decrease any fee and (subject to rule 2 of the KiwiSaver Scheme Rules) 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 not prohibited under this Trust Deed, commence charging a fee which is not currently being charged.

16. Liability and indemnities

16.1 Personal liability of Supervisor and Manager

- (a) The Supervisor and the Manager will be personally liable for any expenses or liabilities incurred by them in the performance of their duties under this deed.
- (b) Despite (a), the Supervisor and the Manager will be entitled to indemnity and reimbursement out of the Assets of the Scheme, to the extent permitted under clause 16.2 of this deed.

16.2 Indemnification from Scheme assets

Subject to clause 16.5 if, either the Supervisor or the Manager (or any director, board member or officer 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, without limitation, legal fees and disbursements).

16.3 Reimbursement of Supervisor and Manager

Subject to clause 16.5, 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 Trust Deed (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).

16.4 Reliance by Manager or Supervisor

Subject to the provisions of the FMCA 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 or any agent of the other party or for checking any information, document, form or list supplied to it by the other party or by any agent of the other party 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).

16.5 Breach of duty

The rights of the Manager and the Supervisor to the indemnities set out in this deed shall be limited to the extent required by section 136(1)(b) of the FMCA and 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.

16.6 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.

16.7 Reliance upon documents

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

- (a) by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof 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 thereof 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.

16.8 Manager's discretion and authority

Except as otherwise expressly provided in this Trust Deed 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 Trust Deed, 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 shall not have failed to comply with the requirements of the FMCA the Manager shall 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 shall have no liability for any loss suffered by a Member as a result of any action taken or adjustment made pursuant to clause 24.1.

16.9 No conflicts of interest for Supervisor or Manager

Nothing in this deed or any rule of law shall 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 redeeming Units; or
- (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; or
- (c) being interested in any such contract, transaction or otherwise; or
- (d) acting as supervisor or manager of any other scheme; or
- (e) holding any Asset jointly with the Scheme;

and none of them shall 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 thereby or in connection therewith.

16.10 Supervisor's discretion and authority

Except as otherwise expressly provided in this Trust Deed 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 Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise.

16.11 Supervisor's limited liability to Members

Notwithstanding anything contained in this Trust Deed, 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 Trust Deed.

16.12 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.

16.13 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 shall indemnify the Supervisor and the Manager for that shortfall.

16.14 Indemnity by Manager

The Supervisor shall be 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 16.1 and 16.2 are not available.

17. Amendments

Subject to the applicable requirements of the FMCA, this Trust Deed may at any time be amended by deed executed by the Manager and the Supervisor, provided that the Manager and the Supervisor may not make any amendment that would result in any provision of paragraphs (a) to (g) of section 84B of the State Sector Act 1988 ceasing to apply to the Scheme.

18. Appointment and removal of supervisor

18.1 Eligibility to be Supervisor

The Scheme shall 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 Manager may remove the Supervisor from office as trustee and supervisor:
 - (i) 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) 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
- (c) 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).

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 shall 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 Trust Deed 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 Trust Deed in all respects as if it had been originally named as a party to this Trust Deed.

18.8 Appointment not exclusive

Nothing contained in this Trust Deed shall be construed to prevent the Supervisor from establishing, or acting as the Supervisor in relation to another KiwiSaver Scheme, Superannuation Scheme or similar scheme.

18.9 Notice of Change of Supervision

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

19. Appointment and removal of manager

19.1 Eligibility to be Manager

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

19.2 Removal of Manager

- (a) The Supervisor may remove the Manager by written direction after the Supervisor certifies that it is in the best interests of the Members that the Manager be removed.
- (b) The Manager may be removed by a Special Resolution of the Members.
- (c) The High Court may substitute the Manager in accordance with its powers under the FMCA.
- (d) 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), or of its intention to apply to the High Court to substitute the Manager under clause 19.2(c).

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 shall be vested in the manager that is retiring or being removed, provided that:

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

19.6 Restrictions on new appointment

Any new manager shall forthwith 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 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 shall prevent 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 shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date when it ceases to hold office).

19.9 Transfer of management to members of Generate 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 Generate Group. Where such transfer occurs, the Manager, the Supervisor and new manager shall 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 Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new manager had been originally named as a party hereto.

19.10 Retirement or removal of Generate Investment Management Limited

Notwithstanding any other provision of, or amendment to, this deed, if Generate Investment 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 Generate Investment Management Limited agrees otherwise in writing) the Manager shall be irrevocably deemed to have resolved that the Scheme is to be wound-up.

19.11 Benefit to Generate Group

It is hereby declared, for the purposes of the Contracts (Privity) Act 1982, that clause 19.10 shall be enforceable by any member of the Generate Group. However, the benefit extended to members of the Generate 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 Generate Group other than Generate Investment Management Limited.

20. Winding up of the scheme

20.1 Triggering wind-up

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

20.2 Procedure for wind-up

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

20.3 Termination of Participation Agreements

If the Scheme is wound up, then each Participating Employer shall be treated as having terminated that Participating Employer's obligations under the relevant Participation Agreement on the effective wind-up date (and the relevant balances shall be dealt with accordingly).

21. Members bound by this trust deed

21.1 Provisions benefit Members

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

21.2 No interference in management

Subject to the rights created for Members by this Trust Deed, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon them or any of them by this Trust Deed 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.

22. Limitation of liability of members

22.1 No personal obligation to indemnify

Except as expressly provided by this Trust Deed no Member is, by reason solely of being a Member or of the relationship hereby created 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.

22.2 Limited recourse to Assets of the Scheme

Subject to clause 16.3, 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.

22.3 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.

23. Notices and information to members

23.1 Notices

- (a) A notice under this Trust Deed, 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; or
 - (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 shall be altered accordingly. Any notice given to Members by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Members in substantially the same form but with personalised details in respect of each Member, it shall be sufficient to provide the Supervisor with a sample of such a notice.

23.2 Manner of notice

Any notice or document sent by post will be deemed to have been given at the expiration of 2 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).

23.3 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 Electronic Transactions Act 2002.

23.4 Calculation of notice periods

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

23.5 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 Trust Deed 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 shall for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators.

24. Taxation and Kiwisaver member tax credits

24.1 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 shall have the following additional powers and discretions in respect of the Scheme for so long as the Scheme is a PIE:

- (a) to determine, on such basis as the Manager thinks appropriate at its complete discretion, classes of Members, applying the definition of Investor Class in section HM 5 of the Tax Act;
- (b) to determine how to attribute and calculate income for the purposes of subpart HM of the Tax Act;
- (c) to determine, on such basis as the Manager thinks appropriate at its complete discretion, the assessable income (for Tax purposes) of the Scheme for an Attribution Period and to allocate (in such manner and on such basis as the Manager considers appropriate at its complete discretion having regard to section HM 35B of the Tax Act) such income to each Investor Class for that Attribution Period, for the purposes of section HM 35(3) of the Tax Act;
- (d) to determine, on such basis as the Manager thinks appropriate at its complete discretion, the deductions incurred in deriving the assessable income allocated to an Investor Class for an Attribution Period for the purposes of section HM 35(3) of the Tax Act;
- (e) to determine, on such basis as the Manager thinks appropriate at its complete discretion, the net income or the net loss, as the case may be, for each Investor Class for an Attribution Period for the purposes of section HM 35 of the Tax Act;
- (f) to determine, on such basis as the Manager thinks appropriate at its complete discretion, taxable income or the tax loss, as the case may be, for each Investor Class:
 - (i) for an Attribution Period, for the purposes of section HM 35 of the Tax Act; and
 - (ii) for an income year, for the purposes of section HM 36 of the Tax Act;
- (g) to determine each Member's Investor Interest for any period, based on what that Member's proportionate interest in any distribution by the Scheme to Members would be in that period, if such a distribution were to be made;
- (h) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Scheme's income Tax liability or credit, as the case may be, for the applicable Calculation Period, for the purposes of section HM 47 of the Tax Act;
- (i) to elect (taking into account such factors as the Manager considers relevant at its complete discretion) whether to determine the Scheme's income Tax liability pursuant to section HM 42 or section HM 43 or section HM 44 of the Tax Act, and to make any elections required to give effect to such determination;
- (j) to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner pursuant to section HM 42(4) of the Tax Act;
- (k) to make any other elections or exercise any options as to the method of calculation, allocation, attribution or payment of Tax as the Manager thinks fit having regard to the interests of Members generally and the requirements of the Tax Act;
- (l) to determine, on such basis as the Manager considers appropriate at its complete discretion, the amount of any Tax credit available to the Scheme under subpart LS 1 of the Tax Act;
- (m) to determine, on such basis as the Manager considers appropriate at its complete discretion, the amount of any Tax credit referred to in paragraph (l) that is attributable to a Member and to make available to the Member the benefit of that Tax credit in such manner as the Manager considers appropriate at its complete discretion;
- (n) to determine, on such basis as the Manager considers appropriate at its complete discretion, the amount of any credit against income Tax payable by the Scheme that is available to the Scheme by virtue of sections HM 49 to HM 55 of the Tax Act;
- (o) to determine, on such basis as the Manager considers appropriate at its complete discretion, subject to the requirements of the Tax Act, the amount of any Tax paid or payable by the Scheme that is attributable to a Member;
- (p) to carry out any other Tax calculations, allocations or attributions required by the Tax Act;

- (q) to adjust a Member's Interest in such manner as the Manager thinks necessary or desirable at its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to paying any benefit or Switching a Fund), having regard to the effect of:
 - (i) the Member's Notified Investor Rate; and
 - (ii) the Member's attributed PIE income or loss and associated Tax Credits as adjusted for any expenses and any other amount required by the Tax Act from time to time which the Manager determines it is appropriate to charge to the particular Member, on the Scheme's income Tax liability and the amount of any credit under subpart HM of the Tax Act;
- (r) to allocate Tax rebates received by the Scheme or anticipated to be received by the Scheme to Members in accordance with clause 5.4;
- (s) to elect to offset Tax liabilities and refunds in respect of more than one Fund (where there are two or more Funds) or more than one Member, and make such adjustments as the Manager thinks fit at its complete discretion to the extent permitted by the Tax Act;
- (t) where there are two or more Funds, to make a payment to one Fund from another in order to compensate for:
 - (i) any loss suffered by the relevant Fund in respect of which the other Fund has obtained a benefit as a result of the two Funds not being separate entities for Tax purposes; or
 - (ii) any benefit which the relevant Fund would have obtained if it was a separate entity for Tax purposes;but which the Fund has not obtained because the two Funds are not separate entities for Tax purposes;
- (u) to allocate the costs associated with the Scheme being a PIE between Members (and, where applicable, Funds) on such basis as the Manager (in consultation with the Supervisor) thinks appropriate, to the extent practical, at its complete discretion;
- (v) to take all steps that the Manager considers necessary or desirable to ensure that the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to PIEs, including (at the Manager's complete discretion):
 - (i) declining Contributions; or
 - (ii) treating Units issued to a Member as void ab initio to the extent to which the Member's Interest exceeds the Investor Interest size requirement prescribed in section HM 15 of the Tax Act; or
 - (iii) where there are two or more Funds, Switching some or all of a Member's Interest from one Fund to another as if the Manager had received a Switching request to that effect from the relevant Member;
- (w) to require that before being accepted into the Scheme a Member provides his or her Tax File Number, Prescribed Investor Rate and any other information required by the Tax Act or other applicable legislation, and that at any time a Member must confirm such details on request from the Manager or the Supervisor;
- (x) to disclose any information, including issuing any statements and providing any information to Members as required by the Tax Act in respect of their Tax position in relation to the Scheme, and provide any information (including personal information) to the Commissioner or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Scheme's taxation obligations;
- (y) to value Tax losses of the Scheme or a Fund, for the purpose of valuing Units, in such manner as the Manager thinks fit at its complete discretion; and
- (z) to elect to be a foreign investment zero-rate PIE or a foreign investment variable-rate PIE (as each of these terms is defined in section YA 1 of the Tax Act);

and the Manager may take all other steps and do all things that the Manager thinks necessary or desirable from time to time at its complete discretion to convert the Scheme to or from being a PIE in accordance with this Trust Deed, or to carry out functions relating to the Scheme or a Fund as a result of the Scheme being a PIE.

24.2 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 shall 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 shall be deemed to have been duly paid and satisfied.

24.3 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 shall have 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.

24.4 Changes in tax legislation

Without limiting the construction of the words Statutes and Regulations ascribed in clause 1.4, 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, shall continue to apply with such modifications as are necessary to reflect the Revision;
- (b) the Manager shall have the discretion to apply all of the requirements of the Revision to the Scheme and the Members on such basis as it considers appropriate, taking into account such factors as the Manager considers relevant; and
- (c) to the extent reasonably possible taking into account the nature of the Revision, any references in this Trust Deed to terms defined in the Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

25. Auditor

25.1 Appointment and remuneration

A person or firm of chartered accountants selected by the Manager, approved by the Supervisor and entitled by law to act as such must be appointed 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 shall be determined by the Manager on an arm's length basis.

25.2 Removal/retirement

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

25.3 Power to appoint Auditor

The power to appoint a new Auditor shall be vested in the Manager, subject to the approval of the Supervisor in accordance with clause 25.1.

25.4 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 25.1.

25.5 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.

25.6 Auditor's report to Supervisor

The Manager shall 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.

26. Payments to members

26.1 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 Trust Deed may be direct credited to any bank account nominated by the Member or other recipient.

26.2 Satisfaction of moneys payable

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).

27. Minimum economic amount

Neither the Supervisor nor the Manager shall be 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.

28. Governing law

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

29. 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.

30. 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.

31. Counterparts

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

32. Meetings

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

Schedule 1 - Form of Establishment Deed

Draft
Date: []

[] - Establishment
Deed

[] (Manager)
[] (Supervisor)

Details

Date

Parties

Name []
Short name **Manager**
Notice details [Address]
[Email]
Attention: []

Name []
Short name **Supervisor**
Notice details [Address]
[Email]
Attention: []

Background

- A The Manager and the Supervisor are parties to a master trust deed dated [●] (**Master Trust Deed**) for the Generate KiwiSaver Scheme (the **Scheme**), which sets out the terms and conditions on which Units in funds managed by the Manager will be offered for subscription.
- B The Master Trust Deed provides that a new Fund within the Scheme may be established by the Manager and the Supervisor entering into an Establishment Deed setting out the specific terms and conditions relating to that Fund.
- C The Manager has resolved to establish a new Fund within the Scheme to be known as the [●] (**Fund**) and the Supervisor and the Manager have entered into this deed for that purpose.
- D This deed and the Master Trust Deed, read together, form the Governing Document for the Fund.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires, capitalised terms have the meaning given to them in the Master Trust Deed, except that:

Effective Date means, in this deed, the date which the Manager notifies in writing to the Supervisor that this deed will enter into force, expected to be on or around [●].

Fund means the Fund constituted under this deed and the Master Trust Deed as a Fund within the Scheme.

[]

1.2 General construction

The provisions of clauses 1.1 to 1.8 of the Master Trust Deed apply in this deed.

2. Creation of Fund

2.1 Establishment of the Fund

The Fund will commence on and from the Effective Date, on the terms and conditions set out in this deed.

2.2 Constitution of the Fund

The Fund will be constituted by the Manager lodging the sum of \$100 with the Supervisor.

2.3 Name of Fund

The name of the Fund will be the [●] Fund.

3. Investments

3.1 SIPO

The SIPO for the Fund will be established in accordance with clause 3.1(b) of the Master Trust Deed and may be changed in accordance with the Master Trust Deed.

3.2 Authorised Investments

The SIPO will specify Authorised Investments for the Fund from time to time.

4. Issue of Units

The initial Units to be issued under the Disclosure Documents will be issued at an initial Unit Price of NZ\$1.00 per Unit. Any other Units to be issued by the Fund will be issued at a Unit Price determined in accordance with the Master Trust Deed.

5. Withdrawal of Units

5.1 Withdrawals

Units may be redeemed in accordance with the provisions of clause 9.4 of the Master Trust Deed.

6. Switching of Units

Units may be switched under clause 3.5 of the Master Trust Deed.

7. Transfer of Units

Units may be transferred in accordance with the provisions of clause 4.3 of the Master Trust Deed.

8. Limitation on borrowing

For the purposes of clause 12.9 and 13.1(b) of the Master Trust Deed, the Manager may specify from time to time in the SIPO any limitation on borrowing.

9. Transaction values

The Manager may specify from time to time in the Disclosure Documents minimum or maximum Transaction values.

10. Master Trust Deed

10.1 Master Trust Deed applies

Except as modified by the terms of this deed, all the terms and conditions set out in the Master Trust Deed must apply to the Fund.

10.2 Inconsistency with the Master Trust Deed

If there is any inconsistency between the terms of this deed and the terms of the Master Trust Deed, this deed will prevail for the purposes of the Fund.

Signing page

EXECUTED as a deed

GENERATE INVESTMENT MANAGEMENT by:

Signature of director

Name of director

Signature of director

Name of director

SIGNED on behalf of the **PUBLIC TRUST** by its attorney in the presence of:

Signature of Attorney

Signature of witness

Name of witness

Occupation of witness

City/town of residence

[Insert Certificate of Non-Revocation of Power of Attorney for Public Trust]

Signing page

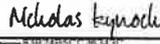
EXECUTED AS A DEED

GENERATE INVESTMENT MANAGEMENT LIMITED by:

DocuSigned by:

4F249A44748B0

Signature of director
Henry Tongue

Name of director

53B24B5CC2B343C

Signature of director
Nicholas Kynoch

Name of director

SIGNED for and on behalf of **PUBLIC TRUST** by its attorney:


Signature of attorney

Elena Vinton

Name of attorney


Signature of witness

Name of witness
Brian Cheow Hin See
Senior Manager Client Services
Public Trust, Auckland

Occupation of witness

City/town of residence

**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, Elena Vinton, of Auckland, hold the office of Head of Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 9 June 2021, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number 12148123.1; and
- 2 at the date hereof I hold the position of Head of Client Services with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 9 May 2023



Signature of attorney