



# Deed of Amendment and Restatement

in relation to the Generate Unit Trust Scheme

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

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# Deed of Amendment and Restatement

## Generate Unit Trust Scheme

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# Details

Date 10<sup>th</sup> MAY 2023.

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## 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](mailto: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](mailto:CTS.Enquiry@PublicTrust.co.nz)  
Attention: Client Services Manager

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## Background

- A The Manager established a managed investment scheme, the Generate Unit Trust Scheme (the **Scheme**) by Trust Deed dated 11 June 2019, which was amended and restated on 17 December 2020 (the **Existing Deed**), within which it operates certain unit trust funds (the **Funds**).
- B Public Trust, Licensed Supervisor under the Financial Markets Supervisors Act 2011 is the 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), broaden the Manager's powers to implement liquidity management tools and to clarify its right 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 19 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 participants and the Supervisor has certified to that effect and has certified that this deed will comply with sections 135 to 137 of the *Financial Markets Conduct Act 2013* on the basis set out in its certificate.
- E The Manager, the Supervisor and each Unitholder in the Scheme will have the benefits and be bound by the obligations of the Governing Document.
- F 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

**Accounting Policies** means the accounting policies applicable to the Scheme or a Fund as developed by the Manager and which comply with all applicable laws.

**Applicant** means a person who makes an Application for Units in accordance with clause 3 or pursuant to a Switching Notice in accordance with clause 10.

**Application** means an application for Units in accordance with clause 3 or pursuant to a Switching Notice in accordance with clause 10.

**Application Money** means the aggregate money paid or, where applicable, other property transferred by an Applicant, in relation to an Application.

**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.

**Authorised Investments** means, in respect of each Fund, the Investments which may be included in the relevant Fund as specified in the Fund's SIPO.

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

**Class** means a class of Units in accordance with clause 7.4.

**Commencement Date** means the date which the Manager determines as the commencement date for a Fund or, if no such notice is given, the date of the first invitation for subscriptions or applications for Units issued by the Manager in respect of that Fund.

**Commissioner of Inland Revenue** means the Commissioner of Inland Revenue in New Zealand and all authorised delegated officials of the Inland Revenue Department or any successor government agency.

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

**Disclosure Documents** has the meaning given to that term by the FMCA, and also includes any document on the Register Entry.

**Distribution Period** means, in relation to a Fund, each such period as the Establishment Deed or the Manager may fix from time to time for the purpose of determining distributions of Income from that Fund.

**Effective Date** means the date of this deed.

**Electronic Communication** means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone or other electronic medium approved by the Manager subject to such conditions as the Manager considers appropriate as to identification of the person making the communication or verification of the content of the communication.

**Entitlement** means, in relation to a Unit, the amount to be distributed to a Unitholder in respect of that Unit and includes, where the Fund is a PIE, the Unit's proportionate share in any income of the Fund which has not been allocated to Unitholders.

**Establishment Deed** means a deed executed by the Manager and the Supervisor by which a Fund is established in such form as the Supervisor and the Manager agree.

**Exchange** means any official or formally constituted exchange on which a relevant Investment is quoted in any country.

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

**Financial Statements** in relation to any Fund, has the meaning given to that term by the *Financial Reporting Act 2013*.

**Financial Year** means, 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 will end on the date as at which the Scheme is wound up;

**FMA** means the Financial Markets Authority.

**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 2.

**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 one of them.

**Governing Document** means this deed, and including, in respect of each Fund, the relevant Establishment Deed (if any).

**Gross Asset Value** means, in relation to a Fund, and in respect of each Business Day, such sum as is ascertained and fixed by the Manager being the aggregate of:

- (a) the Market Value of the Investments of that Fund; and
- (b) any income accrued or payable in respect of that Fund but not included in such Market Value.

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

**Holding** in respect of any Unitholder means in relation to each Fund at any particular time the total number of Units registered in the name of the Unitholder.

**Income** means, in relation to a Fund, the net income earned by that Fund, determined in accordance with the provisions of clauses 12.5 and 12.6.

**Interfund Custodian** means any person appointed as a trustee or custodian to invest in another Fund in accordance with clause 2.9.

**Investment** means, in relation to a Fund, any investment made or held at any relevant time by the Supervisor in respect of that Fund.

**Issue Price** means the issue price of a Unit determined in accordance with clause 7.5.

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

**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 Unitholder's 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 MIS.

**Licensed Supervisor** means a person who holds a licence to act as a supervisor of a MIS 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.

**Market Value** means the market value of any Investment or proposed Investment determined in accordance with clause 8.2 and the procedure (if any) set out in the relevant Establishment Deed.

**Minimum Application Amount** means in relation to each Fund the minimum Application amount of investment in the Fund by the Manager in respect of that Fund pursuant to clause 5.7.

**Minimum Holding Amount** means in relation to each Fund the minimum Holding amount for an investment for a Fund by the Manager in respect of that Fund pursuant to clause 5.7.

**MIS** means a managed investment scheme as defined in the FMCA.

**MIS Legislation** means the rules for establishing, operating and offering MIS (including unit trusts) in the FMCA, the FMC Regulations and any other acts or regulations, as applicable to the Scheme as a Registered 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 will be recognised or deductions made to or from the amount included in the Assets or the Value of the Assets for changes in the value of 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 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 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.

**Office** means the registered office from time to time of the Manager.

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

**PIE Rules** has the meaning set out section YA 1 of the Tax Act.

**PIE Tax** means tax paid or payable by the Manager or the Supervisor which is attributed under the Tax Act to a Relevant Tax Person if a Fund is a PIE.

**Portfolio Investment Entity** or **PIE** means a portfolio investment entity as that term is defined in section YA 1 of the Tax Act.

**Prescribed Investor Rate** or **PIR** means the rate of tax applicable to a Unitholder pursuant to the PIE Rules if a Fund is a PIE.

**Redemption Day** means, subject to the relevant Establishment Deed (if any):

- (a) in relation to Units to be redeemed on a fixed date, that fixed date; and
- (b) in relation to Units not redeemable on a fixed date, or redeemable on a fixed date but redeemed at the discretion of the Manager following a Withdrawal Notice given by the Unitholder, a day whether periodical or otherwise specified in the relevant Establishment Deed as a day on which such Units of a Fund may be redeemed by the Manager.

**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 MIS 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 it in section 41 of the FMCA.

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

**Related Party** has the meaning given to that term in section 172(2) of the FMCA.

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

**Relevant Tax Person** means a Unitholder and the Unitholder's personal representatives or successors.

**Relevant Time** means:

- (a) in respect of an issue or sale of Units for money the time immediately following (but on the same day as) the next Valuation Time after the receipt by the Manager of the payment for the Units to be sold or issued and the acceptance by the Manager of the relevant Application;
- (b) in respect of an issue of Units for the acquisition of an Authorised Investment by the relevant Fund the time immediately following (but on the same day as) the next Valuation Time after the settlement of the acquisition of the Authorised Investment and the acceptance by the Manager of the relevant Application; and
- (c) in respect of a Withdrawal of Units, the time on the next Redemption Day immediately following (which may, but need not, be on the same day as) the next Valuation Time after the receipt by the Manager of a Withdrawal Notice.

**Scheme** means the Generate Unit Trust Scheme established pursuant to the Governing Document.

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

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

**Standing Application** means an application for the issue of Units on a regular and periodic basis.

**Supervisor** means Public Trust or such other person who is appointed as the Licensed Supervisor of the Scheme for the time being in accordance with clauses 13.1 and 20.1 and, where the context requires or allows, this term includes any Custodian and/or any sub-Custodian appointed in accordance with clause 15.3(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.

**Switching Day** means, in relation to a Fund, a day whether periodical or otherwise specified by the Manager as a day on which Units of that Fund may be switched in accordance with clause 10.

**Switching Fee** means any fee the Manager may charge for issuing or selling Units paid to the Manager pursuant to a Switching Notice calculated in relation to the value of the amount obtained on the repurchase or redemption of the Units.

**Switching Notice** means a notice given in accordance with clause 10.1.

**Switch Fund** has the meaning specified in clause 10.1.

**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.

**Tax Relief** means any credit, rebate, offset, or refund in respect of Tax and any cost, deduction, expenditure or loss that is taken into account for tax purposes.

**Transaction** means the:

- (a) issue of Units;
- (b) Withdrawal of Units; or
- (c) switching of Units.

**Transaction Costs** means, in respect of each Fund, the amount (if any) to reflect or to be a proxy for the actual or estimated cost of investing Application Money in that Fund or the actual or estimated cost to that Fund of divesting the Fund's Assets to fund the withdrawal by a Unitholder from that Fund and other administrative costs relating to the sale, redemption or issue of Units. Where in respect of a Valuation Date the Manager has applied a Swing Factor Adjustment to the Unit Price of a Fund, Transaction Costs for that Valuation Date shall be deemed to be zero on Transactions in that Fund.

**Trust Act** means the Trusts Act 2019.

**Unit** means a unit in the Scheme, or, in relation to a Fund, a unit in that Fund.

**Unitholder** means, in relation to a Fund, the person for the time being entered on a Register as the holder of a Unit of 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:

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

where:

UP = Unit Price;

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

TC = the Manager's estimate of the total cost of acquiring 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 Relevant Time, 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 Relevant Time, 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.

**Valuation Time** in relation to a Fund has the meaning given in the Establishment Deed for that Fund.

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

**Withdrawal** means redemption of a Unitholder's Units under clause 9 or under the procedure (if any) in the Establishment Deed.

**Withdrawal Amount** means, in relation to a Withdrawal:

- (d) the aggregate Unit Value less any applicable Exit Fee or Transaction Costs but if the Manager has adopted Swing Pricing for a Fund, then the aggregate Unit Price, both calculated at the Relevant Time, of the number of Units specified in the relevant Withdrawal Notice or Switch Notice (as the case may be); or
- (e) where different, the Withdrawal Amount determined in accordance with the Establishment Deed of the relevant Fund.

**Withdrawal Notice** means a notice given in accordance with clause 9.2.

**Withdrawal Suspension Notice** means a notice given in accordance with clause 9.10.

**Withdrawal Fund** has the meaning specified in clause 10.1.

## 1.2 Terms defined in Tax Act

Each of the terms *Attribution Period*, *Calculation 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.

## 1.3 Frameworks and methodologies

Where any frameworks or methodologies are specified in notices issued by the FMA under MIS Legislation, are applicable to the Scheme and relate to any matter which is required to be provided for adequately in the Governing Document by MIS Legislation, the provisions of the Governing Document which deal with such matters will be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme.

#### 1.4 Implied terms

The provisions of the Governing Document that apply to the Scheme are deemed to include the implied provisions of MIS Legislation for so long as those provisions are in force and any provision of the Governing Document that is contrary to the implied provisions is void to the extent it is contrary.

#### 1.5 Construction

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

**Business Days** anything required by the Governing Document 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 the Governing Document.

**Currency** a reference to any monetary amount is to New Zealand currency.

**Defined Terms** words or phrases appearing in the Governing Document with capitalised initial letters are defined terms and have the meanings given to them in the Governing Document.

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

**Fees** where the Governing Document provides that any fees, expenses, or other amounts will be payable to the Supervisor, the Manager, or any other person, the amounts payable will be increased by the amounts of any GST or other Tax payable in respect thereof.

**Generally Accepted Accounting Principles** notwithstanding any provision of the Governing Document, where a matter is to be or may be interpreted pursuant to any provision of the Governing Document 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** appear as a matter of convenience and do not affect the construction of the Governing Document.

**Parties** a reference to a party to the Governing Document or any other document includes that party's personal representatives/successors and permitted assigns.

**Related Terms** where a word or expression is defined in the Governing Document, 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.

#### 1.6 Exchange of currencies

Where, for the purposes of any provision of the Governing Document, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency (or a non-New Zealand currency equivalent of a sum expressed in New Zealand

currency) such sum will, unless otherwise agreed in writing by the Supervisor 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.

### **1.7 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.

## **2. Creation of the Scheme and the Funds**

### **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 unit trust scheme, but on the basis set out in this deed.
- (c) The trusts established in accordance with the Existing 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 Establishment**

The Manager will 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.

### **2.3 Name**

The Scheme is known as the Generate Unit Trust Scheme. The Manager may change the name of the Scheme by prior written notice to the Supervisor. The Manager will notify Unitholders 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 Unitholders. Each Fund will be known by the name selected by the Manager from time to time.

### **2.4 Registration Requirements**

The Manager and the Supervisor must 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 MIS Legislation.

### **2.5 Exclusive assets and liabilities**

Although the Scheme is intended to be treated as one registered scheme for the purposes of the MIS Legislation, with the statutory and other obligations applicable to it construed accordingly, where two or more Funds are established pursuant to clause 2.2 then (subject to clauses 26.1(q), (s) and (t)) the Assets of each Fund will be the exclusive property of that Fund, and all Liabilities incurred in relation to a Fund will be the exclusive liabilities of that Fund, and the Manager and Supervisor must 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 will not be available to meet the Liabilities incurred in relation to any other Fund;
- (b) all investments made with the monies of a Fund will be held by or on behalf of the Supervisor as the exclusive property of that Fund and for the exclusive benefit of the Unitholders who have an interest in that Fund pursuant to the Governing Document;
- (c) the Supervisor and Manager will keep separate records and accounts in respect of each Fund, and will not permit the Assets or Liabilities of any Fund to become intermingled with those of any other Fund (provided that nothing in this subclause will prevent the Assets of any Fund being lent to, deposited with or invested in another Fund);
- (d) the creation of a new Fund will not in any way vary or affect any other Fund nor give rise to any resettlement of any other Fund; and
- (e) without limiting the generality of this clause 2.5, the provisions of the Governing Document 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, will 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 will 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 must be apportioned between those Funds on such fair and equitable basis as may be determined by the Manager.

## **2.6 Winding up or alteration of Funds**

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

## **2.7 Assets of each Fund**

Each Fund will consist of all Assets for the time being held by the Supervisor in respect of that Fund upon the trusts established under the Governing Document, including:

- (a) the proceeds of sale or realisation of any Investments of that Fund pending distribution or reinvestment;
- (b) all additions or accretions to Assets;
- (c) all income derived from the Assets referred to in paragraphs (a) and (b) above held pending distribution or reinvestment; and
- (d) Application Money that has been received but not yet invested.

## **2.8 Conflicts between this deed and an Establishment Deed**

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

## **2.9 Funds may invest in another Fund**

- (a) Subject to compliance with MIS Legislation, a Fund may invest in any other Fund, and may be issued Units in and may redeem Units from that other Fund where such investment is an Authorised Investment for the Fund making the investment.
- (b) Units issued in one Fund to another Fund must be issued in the name of an Interfund Custodian or Interfund Custodians. The Supervisor may be the person appointed as

an Interfund Custodian. A single Interfund Custodian may be appointed for all Funds investing in other Funds. An Interfund Custodian must be appointed by the Supervisor by instrument in writing. An Interfund Custodian must act as a custodian of the Units held by the Investing Fund in the other Fund. An Interfund Custodian may be removed at any time by the Supervisor by instrument in writing and a new Interfund Custodian may be appointed by the Supervisor in like manner.

- (c) All determinations by one Fund to invest in another Fund or to withdraw its investment by the redemption of Units must be made by the Manager on behalf of the Interfund Custodian.

### **3. Application for Units**

#### **3.1 Application procedure**

Every person wishing to apply for Units must:

- (a) complete and lodge with the Manager an Application for Units in a specified Fund or Funds in such form, within such timeframes and by such means as the Manager may prescribe from time to time in any Disclosure Document; and
- (b) forward or credit to the Supervisor or its appointed nominee or agent or to the Manager, for payment to the Supervisor, the Application Money in respect of the Units for which an Application is made.

#### **3.2 Standing Application**

- (a) Subject to the provisions of the relevant Establishment Deed, an application may be designated as a Standing Application for an amount per month (or such other period as the Manager determines) and may include an authorisation to the Manager to initiate direct debits from a bank account nominated by the Applicant for relevant application amounts to be credited to the Supervisor.
- (b) Any Standing Application may be varied from time to time by the relevant Unitholder by completing and lodging with the Manager a replacement application for Units in accordance with clause 3.1.
- (c) A Standing Application will cease to be binding if the Manager gives notice under clause 22.

#### **3.3 Manager's option**

The Manager may treat an Application for Units as:

- (a) a subscription for Units to be issued from the relevant Fund or Funds, at the Issue Price; or
- (b) a request for the purchase from a Unitholder nominated by the Manager of Units in the relevant Fund or Funds, at the Issue Price.

#### **3.4 Manager's discretion**

The Manager may refuse to accept in whole or in part any Application (including one made by virtue of a Standing Application) and the Manager is not required to give any reason or grounds for refusal. Without limiting the above, the Manager may refuse any Application for Units, or may, with the Applicant's agreement, accept only part of an Application for Units, if in the opinion of the Manager, acceptance of the Application in full would threaten a Fund's eligibility to be a PIE.

#### **3.5 Refunds**

The Manager will promptly notify the Supervisor of the rejection of any Application for Units in such manner as is from time to time agreed between the Supervisor and the Manager and will immediately refund or arrange for the Supervisor to refund that portion of the Application Money that is not applied to the subscription of Units. Any such money will be refunded without interest (except as required by law).

### **3.6 Notification to Supervisor; registration and issue of Units**

The Manager will:

- (a) hold all Application Money it receives on trust for the Applicant prior to payment to the Supervisor or its nominee or refunding to the Applicant under clause 3.5; and
- (b) on acceptance of an Application for Units:
  - (i) pay the relevant Application Money to the Supervisor or its nominee or to a bank account nominated by the Supervisor within seven days of receipt;
  - (ii) enter the name of the Unitholder on the appropriate Register as the holder of the relevant Units (or, where the Unitholder is already on such Register, cause such Register to be altered accordingly); and
  - (iii) where required by law, issue the Unitholder with a certificate.

### **3.7 Joint holders of Units**

The Manager is not obliged to accept more than two persons as joint holders of any Unit. Where two or more persons are registered as the holders of any Unit, for the purposes of the administration of the relevant Fund and not otherwise, they will be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- (a) the joint holders of any Unit will be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (b) on the death of a joint holder, the survivor or survivors will be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- (c) any one of such joint holders may make an Application (including a Standing Application), give Withdrawal Notices, or Switching Notices, execute a transfer of Units or give effectual receipts for any Withdrawal Amount or distribution payable to such joint holders and the Manager and Supervisor may act upon the same and will not be required to enquire as to the authority of the person giving that notice or receipt;
- (d) a notice from the Supervisor or Manager given to any one of the joint holders will be deemed notice to all the joint holders;
- (e) at any meeting of Unitholders any one and only one of such joint holders may vote either personally or by duly authorised representative or by attorney or proxy in respect of the relevant Units and in the event of any dispute between joint holders, the vote may be exercised by the person whose name appears first on the Register in respect of that Unit or those Units; and
- (f) where the Fund is a PIE, for the purposes of calculating the Tax payable by the Fund and attributing any such liability to any Relevant Tax Person and for all other purposes relating to the application of the Tax Act to the Fund, the Manager may either treat the Unitholders as separate Unitholders (in equal shares), or treat the joint Unitholders as a single person Unitholder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the joint Unitholders.

## **4. Consolidation and subdivision of Units**

### **4.1 Manager may consolidate or subdivide**

The Manager may at any time, with the prior approval of the Supervisor and by notice in writing to the affected Unitholders, consolidate or subdivide the Units of any Fund in such proportions as the Manager determines.

### **4.2 Notice of consolidation or subdivision**

The notice under clause 4.1 must specify:

- (a) the date on which such consolidation or subdivision is to take place (the **Operative Date**); and
- (b) the ratio which the number of Units of the relevant Fund after the consolidation or subdivision will bear to the number of Units of the Fund before the consolidation or subdivision (the **Ratio**).

#### **4.3 Effect of consolidation or subdivision**

- (a) From the Operative Date, each Unitholder of the relevant Fund will hold a number of Units in that Fund equivalent to the number of pre-consolidation or pre-division Units (as the case may be) held before the Operative Date multiplied by the Ratio.
- (b) For the purposes of any consolidation or subdivision, a Unit which is not a full Unit will be rounded down to two decimal places.

### **5. Offering Units**

#### **5.1 Manager may invite offers**

The Manager may, from time to time, invite offers, subscriptions or Applications for Units of any Fund upon and subject to the terms and conditions contained in the Governing Document.

#### **5.2 Compliance with legislation**

The Manager must, in accepting Unitholder Applications, comply with all applicable laws, including the requirements of MIS Legislation.

#### **5.3 Regulated offers**

Without limiting clause 5.2, 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 on the 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 MIS Legislation has been lodged on the Register Entry for the Scheme.

#### **5.4 Manager's reasonable endeavours**

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

#### **5.5 Supervisor review**

The Manager must 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).

#### **5.6 Issue may be underwritten**

The Manager may, with the consent of the Supervisor (which will not be unreasonably withheld or delayed), arrange for a proposed issue of Units to be underwritten by an underwriter, which may be a Related Company of the Manager. That underwriter and its nominees or any of them may take up the Units not otherwise subscribed for and charge underwriting commission and all costs and disbursements of the issue as agreed with the Manager.

#### **5.7 Minimum and maximum Holding and Transaction values**

- (a) The relevant Establishment Deed may specify any minimum or maximum Holding of Units or Transaction values in relation to a Fund (or specify a method through which the Manager may determine any such Holdings or Transaction values).

- (b) Despite the above, the Manager may permit Holdings or Transactions for a value less than any minimum or greater than any maximum amount.
- (c) Any minimum or maximum amount specified in (or determined under) an Establishment Deed may, if the Manager so decides, be determined in such a way that the Unitholder's investments in more than one Fund are aggregated for the purpose of determining whether the minimum or maximum is met.

## 6. Registry

### 6.1 Register to be maintained

The Manager must keep and maintain or cause to be kept and maintained, in New Zealand, in respect of the Scheme an up-to-date register of Unitholders. 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. The contents of the Register specified in clause 6.3 must, for any Fund, be kept for a minimum of seven years following the termination of that Fund.

### 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 will be entered in the Register for the Scheme:

- (a) the names and addresses of the Unitholders, or in the case of joint Unitholders the address of the Unitholder first named in the Register, of the relevant Fund;
- (b) where the Fund is a PIE, the Tax File Number and Prescribed Investor Rate of each Unitholder;
- (c) the number of Units that each Unitholder holds in the Scheme (or where there is more than one Fund, the Funds);
- (d) details of the Fund(s) chosen by the Unitholder and any Switches completed;
- (e) amounts received by or payable to the Scheme in respect of each Unitholder, including (for the avoidance of doubt) any Tax Relief attributable to each Unitholder;
- (f) amounts transferred to the Scheme in respect of the Unitholder and which the Manager determines to allocate to the Unitholder;
- (g) the date on which the name of every person was entered in the Register as a Unitholder, ceased to be a Unitholder and of all other transactions in respect of that Unitholder; and
- (h) any other particulars that the Manager or the Supervisor may consider desirable to include or are required by law.

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

### 6.5 Unitholders to notify changes

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

## **6.6 Audit of the Register**

The Manager must cause the register to be audited by the Auditor at intervals as required by MIS Legislation. Such audit must be completed in accordance with the FMCA and must 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.

## **6.7 Inspection**

Any Unitholder having an interest in the Scheme, and the Supervisor and the Auditor, will 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 MIS Legislation.

## **6.8 No notice of trust, etc.**

Except as required by law or to the extent the Manager and the Supervisor determine to the contrary, neither the Manager nor the Supervisor will be bound to see to the performance of any Fund (express implied or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in the Register as the Unitholder.

## **7. Unitisation**

### **7.1 Scheme unitised**

The Manager will 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) will be of one class and will confer identical rights and interests;
- (b) will, for the purpose of the definition of Investor Class, confer on each Unitholder an equivalent interest in all of the investments comprised in the Scheme, or (where there is more than one Fund) the relevant Fund, but will not confer any interest, to the exclusion of any other Unitholder, in any particular investment comprised in the Scheme or the relevant Fund (with the result that no Unitholder will be entitled to require the transfer of any investment to the Unitholder);
- (c) will 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 will be determined on each Valuation Date. For the avoidance of doubt, the Assets used to determine the Unit Price on a Valuation Date will not include amounts received for which Units are to be but have not been issued, and will include amounts debited, transferred or withdrawn from the Scheme for which Units are to be but have not been cancelled, at the time of such determination.

### **7.4 Classes of Units**

Different Classes of Units may be issued with such rights, terms of issue, obligations and restrictions as the Manager sets out in an Establishment Deed or otherwise, as the Manager determines and notifies to the Supervisor.

### **7.5 Issue Price**

Subject to clause 7.4, each Unit of a Fund will be issued at:

- (a) the Unit Price in respect of that Fund calculated at the Relevant Time; or

- (b) where the relevant Establishment Deed specifies or contains a mechanism for determining a different issue price, that price,

(the **Issue Price**).

## **7.6 Unitising Applications**

Subject to clause 7.7, in respect of:

- (a) each Application and other amount accepted into the Scheme under clause 3;
- (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 10;

the Manager will, 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 7.6 must 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.

## **7.7 Delaying unitisation**

Without limiting clause 7.6, the Manager may delay converting into Units under clause 7.6 any amounts accepted into the Scheme in respect of any Unitholder or group of Unitholders until such time as the Manager is reasonably satisfied that those amounts do not exceed the amount required to be paid to the Scheme in respect of that Unitholder (or those Unitholders collectively) under the Governing Document and have not otherwise been paid in error.

## **7.8 Ceasing to issue Units**

Without limiting clause 7.6 or any other provision of the Governing Document (but subject at all times to the provisions of the MIS Legislation) the Manager may, by giving notice in writing to the Supervisor, determine at any time or times that from a specified date given in the notice to the Supervisor no further Units will be issued pursuant to the Governing Document (or, if applicable, in relation to a specified Fund or Funds) either:

- (a) for a specified period (which period may subsequently be varied by the Manager by giving further notice in writing to the Supervisor); or
- (b) until the Scheme (or the relevant Fund or Funds) is or are terminated,

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

Where any determination is made by the Manager under this clause the Manager must forthwith give notice to all Unitholders in any Fund affected.

## **7.9 Cancelling Units**

In respect of amounts debited, transferred or withdrawn from the Scheme, the Manager will cancel the number of Units determined by dividing the amount debited by the relevant Unit Price or Unit Prices applying on a day no later than the next Valuation Date after the Manager determines that the debit, transfer or withdrawal must 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).

#### **7.10 Uncleared funds**

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

#### **7.11 Units issued in error**

Subject to the requirements of MIS Legislation, Units that the Manager determines have been issued in error may be treated as void unless a Unitholder has altered his or her position in good faith to the Unitholder'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).

#### **7.12 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.

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

#### **8.3 Determining Liabilities**

For the purpose of determining the Net Asset Value of the Scheme (or, if there is more than one Fund, of each Fund) under clause 8.1 the Manager must determine the Liabilities attributable to the Scheme or that Fund on such basis as it considers to be fair and equitable having regard to generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards (except to the extent that the Governing Document 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 2.5):

- (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, 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**

The Net Asset Value ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and any Unitholder.

### **9. Redemption of Units**

#### **9.1 Redemption of Units**

Units may be redeemed at the times and in the manner provided for in this clause 9 and the relevant Establishment Deed.

#### **9.2 Withdrawal otherwise than by redemption on a specified date**

Where the relevant Establishment Deed:

- (a) does not specify a date on which a Unit will be redeemed; or
- (b) permits a Unitholder to redeem any Unit on a date other than the date (if any) specified in the relevant Establishment Deed in certain circumstances,

then, subject to the provisions of the relevant Establishment Deed, if any Unitholder wishes to make a Withdrawal in respect of some or all of the Unitholder's Units, the Unitholder must give a notice to that effect (a **Withdrawal Notice**).

#### **9.3 Withdrawal Notice**

A Withdrawal Notice:

- (a) must be in such form and given in such manner as the Manager may prescribe from time to time;
- (b) must specify the number of Units to be withdrawn;
- (c) authorises the Supervisor to deduct and pay to the Commissioner of Inland Revenue from the amount otherwise payable to the Unitholder any Tax that arises as a result of or in connection with the Unitholder giving the Withdrawal Notice and pay the net amount to the Unitholder, whereupon the full amount payable to the Unitholder will be deemed to have been duly paid and satisfied; and
- (d) unless otherwise agreed by the Manager, is irrevocable once given (regardless of whether or not there is a suspension or deferral in place at the date at which the Withdrawal takes effect pursuant to this clause 9).

#### **9.4 Withdrawal subject to maintaining the PIE status of the Fund**

- (a) The Manager may defer or suspend any Withdrawal if that Withdrawal will or may threaten the Fund's eligibility to be a PIE and must give prior written notice of any such deferral or suspension to the Supervisor.
- (b) If the Manager defers or suspends a Withdrawal under this clause 9.4, then the Manager will make the Withdrawal at such other time that may be agreed between the Manager and the Unitholder and in such a manner so as to ensure that the Fund maintains its PIE status.

#### **9.5 Minimum investment**

- (a) No Withdrawal Notice may be given:

- (i) for an amount or number of Units which is less than any minimum investment for a Transaction specified in (or determined under) the relevant Establishment Deed, unless the Withdrawal Notice is to redeem all the Units which the Unitholder has in a Fund; or
  - (ii) if the Withdrawal has the effect of reducing the Unitholder's investment in a Fund below any minimum investment for a Transaction specified in (or determined under) the relevant Establishment Deed, unless the Withdrawal Notice is to redeem all the Units which the Unitholder has in the Fund.
- (b) The Manager may at any time waive the requirements of this clause 9.5, either generally or in any particular case.

## 9.6 Redemption

Subject to the provisions of the relevant Establishment Deed and to clauses 9.3(c), 9.7, 9.10 and 9.12, the Manager must, upon receipt of a Withdrawal Notice, procure that the number of Units specified in that Withdrawal Notice are:

- (a) redeemed and the holder of those Units is paid the Withdrawal Amount; or
- (b) purchased from the holder of those Units by some party nominated by the Manager for an amount equal to the Withdrawal Amount,

and to avoid doubt, and without limiting the generality of clause 18.1, the obligation of the Manager pursuant to this clause 9.6 is not a personal obligation of the Manager, but is an obligation of the kind referred to in clause 18.1.

## 9.7 Timing of Withdrawal

Subject to the terms of the relevant Establishment Deed, the Manager may treat a Withdrawal Notice received prior to 12.00 pm (or such other time determined by the Manager from time to time) on a Redemption Day as effective for that Redemption Day and a Withdrawal Notice received at or after 12.00 pm (or such other time determined by the Manager) on a Redemption Day, or received on a day that is not a Redemption Day, as having been received on the next Redemption Day.

## 9.8 Redemption funds

In connection with any Withdrawal, the Manager may:

- (a) direct the Supervisor pursuant to clause 14.1 to realise Investments of the relevant Fund; and/or
- (b) direct the Supervisor (subject to clause 15.1(b)) to borrow on behalf of the relevant Fund a sufficient amount to redeem those Units,

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of any such direction, subject to clause 18.10 the Supervisor will forthwith realise Investments and/or (subject to clause 14.1) borrow money in accordance with that direction and will hold the proceeds of that realisation and/or borrowing for the purposes of the relevant Fund.

## 9.9 Cancellation of Units redeemed

- (a) Units redeemed pursuant to this clause 9 will cease to exist and will be deemed to be cancelled.
- (b) The Manager must make an appropriate entry on the relevant Register in respect of any such cancellation.
- (c) Unless the Manager decides otherwise, the first Units issued to a Unitholder are the first to be redeemed.

## 9.10 Manager may suspend redemptions

If by reason of:

- (a) the suspension of trading on any Exchange (whether generally or in respect of any specific Investment);
- (b) financial, political or economic conditions applying in respect of any financial market;
- (c) the nature of any Investment; or
- (d) the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally,

the Manager forms the opinion, in good faith, that it is not practicable or that it would be materially prejudicial to the interests of Unitholders of the relevant Fund to permit the Withdrawal of Units or the switching of Units, then, without limiting clause 9.3, the Manager may, after giving prior notice to the Supervisor of its intention to do so, give notice (a **Withdrawal Suspension Notice**), in a form and manner acceptable to the Supervisor acting reasonably, to all Unitholders (including any Unitholder who has given a Withdrawal Notice or a Switching Notice) of the suspension of the Manager's obligations in respect of all Withdrawal Notices and Switching Notices in respect of that Fund (including in respect of all Withdrawal Notices and Switching Notices given prior to the Withdrawal Suspension Notice) until such time as the Manager gives to the relevant Unitholders notice to the effect that the Withdrawal Suspension Notice is cancelled in accordance with clause 9.11.

Where a Withdrawal Notice or a Switching Notice is suspended in accordance with this clause, the Withdrawal Amount payable to the Unitholders will be calculated on the last Business Day of the period of suspension.

#### **9.11 Cancellation of Withdrawal Suspension Notice**

- (a) The Manager will, unless the Supervisor otherwise agrees, give notice of cancellation of a Withdrawal Suspension Notice in a form and manner acceptable to the Supervisor (acting reasonably) to each original recipient of such Withdrawal Suspension Notice not later than 90 days (or such other period specified in a relevant Establishment Deed) after the date upon which that Withdrawal Suspension Notice is given.
- (b) The Supervisor may not unreasonably withhold its agreement to an extension of the operation of a Withdrawal Suspension Notice beyond that period of 90 days (or such other period specified in a relevant Establishment Deed).
- (c) Unless extended in accordance with the provisions of the Governing Document, a Withdrawal Suspension Notice will be deemed to be automatically cancelled upon the expiration of that 90 day period (or such other period specified in a relevant Establishment Deed). The cancellation of a Withdrawal Suspension Notice will not limit or otherwise fetter the Manager's discretion under clauses 9.4 and 9.10.

#### **9.12 Manager may defer redemptions**

- (a) Despite anything contained in the Governing Document (other than clause 9.12(c)) if:
  - (i) a Withdrawal Notice or Switching Notice is received or a series of Withdrawal Notices and/or Switching Notices are received in respect of a Fund within a period of three months that relate to more in total than five per cent (or such other percentage set out in the Establishment Deed for that Fund) of the number of Units on issue in that Fund at the time of the notice or (in the case of a series of Withdrawal Notices and/or Switching Notices) the last notice (or such other percentage set out in the Establishment Deed for that Fund); and
  - (ii) the Manager forms the opinion, in good faith, that it is in the general interests of all Unitholders in that Fund to defer immediate redemption of the total Units requested,

then the Manager may, after giving prior notice to the Supervisor of its intention to do so, procure that the relevant Units (excluding Units that have already been redeemed in accordance with clause 10.1) may be redeemed *pro rata* by instalments over a period determined by the Manager, in good faith, or in total at the expiration of a period approved by the Supervisor. Provided that the Manager may not take either of

these actions for a continuous period of more than 90 days in relation to a Fund without the consent of the Supervisor. In any such case the Withdrawal Amount will be calculated at the Business Day or respective Business Days on which such Units are redeemed.

- (b) Where such a Withdrawal Notice or Switching Notice is received or a series of Withdrawal Notices and/or Switching Notices are received within a period of three months that relate to more than 25 per cent (or such other percentage set out in the Establishment Deed for that Fund) of the number of Units on issue in that Fund at the time of the notice or (in the case of a series of Redemption Notices and/or Switching Notices) the last notice, then the Manager may suspend the right of Unitholders in that Fund to give Withdrawal Notices or Switching Notices provided that:
  - (i) the Manager notifies the Supervisor of its intention to suspend the right of Unitholders in the relevant Fund to give Withdrawal Notices or Switching Notices; and
  - (ii) the Manager immediately summons a meeting of Unitholders in the relevant Fund in the manner set out in the Governing Document to consider the winding up of the Fund.
- (c) This clause 9.12 will not apply to a Fund where the relevant Establishment Deed so provides.

### 9.13 Compulsory redemption

- (a) Notwithstanding anything contained elsewhere in the Governing Document, where:
  - (i) the total Holding of a Unitholder in any Fund is less than any minimum amount specified in the relevant Establishment Deed;
  - (ii) the Manager gives to that Unitholder not less than 30 days' notice in writing that the Manager intends, at the expiration of that period, to require the redemption of all the Unitholder's Units in that Fund; and
  - (iii) at the expiration of that period, that Unitholder still holds less than any minimum amount specified in (or determined under) the relevant Establishment Deed,

then the Manager will have the right to redeem that Unitholder's Units with effect as at the date of expiry of the Manager's notice as if a Withdrawal Notice had been received from the Unitholder.

- (b) If the Fund is a PIE, the Manager may at any time by notice to any Unitholder effect a compulsory redemption of any or all of the Units held by that Unitholder, where the Manager considers it is necessary to maintain the Fund's status as a PIE. The redemption will be dealt with on the same basis as if the Unitholder had given a Withdrawal Notice to the Manager on the date of the notice and subject to any other terms or conditions that the Manager may impose.

### 9.14 Other limitations

Notwithstanding any other provision of the Governing Document, the Manager may in its discretion determine from time to time, and specify in any Disclosure Document or the Establishment Deed for a Fund from time to time other limitations, restrictions or prohibitions on redemptions, switching or transfers of Units, which will take effect in accordance with their terms. The Manager must give prior written notice to the Supervisor where it makes any such determination under this clause 9.14.

## 10. Switching between Funds

### 10.1 Switching Notice

- (a) Subject to the terms of any relevant Establishment Deed, a Unitholder may at any time give a notice in writing or by Electronic Communication (a **Switching Notice**) to the

Manager to the effect that the Unitholder wishes to withdraw Units from one Fund (a **Withdrawal Fund**) and invest the proceeds of such withdrawal in one or more different Funds (each a **Switch Fund**).

- (b) The Manager may decline to action a Switching Notice for any reason, including if doing so would or could threaten the Fund's status or eligibility to be a PIE.
- (c) A Unitholder may not use a Switching Notice to invest into a Fund in which the Unitholder is not entitled to invest under applicable law or the terms of offer of that Fund.

## 10.2 Manager may transfer Unitholders

The Manager may transfer a Unitholder from one Fund (the **Withdrawal Fund**) to another Fund (the **Switch Fund**) with the written consent of the Unitholder, in accordance with MIS Legislation. All other clauses of this clause 10 will apply to such a transfer.

## 10.3 Contents of Switching Notice

A Switching Notice:

- (a) must be in such form and given in such manner as the Manager may prescribe from time to time;
- (b) must specify the number of Units in the Withdrawal Fund to be Withdrawn;
- (c) must specify the Switch Fund, and, if more than one Switch Fund is specified, specify the proportions in which the Unitholder wishes to invest in those Switch Funds;
- (d) unless otherwise agreed by the Manager, may not be revoked by the Unitholder;
- (e) must not be for a number of Units that would reduce the Unitholder's holding in the Withdrawal Fund below any minimum amount specified in the relevant Establishment Deed;
- (f) must result in an investment in a Switch Fund of neither less than any minimum investment nor more than any maximum investment specified in the relevant Establishment Deed; and
- (g) authorises the Supervisor to redeem such Units to pay any Tax that arises as a result of or in connection with the Unitholder giving the Switching Notice,

and the provisions of clause 9 will otherwise apply to a Switching Notice as if it were a Withdrawal Notice in respect of Units in the Withdrawal Fund, as the case may be.

## 10.4 Switching

The Manager must, subject to clause 9 and compliance with all relevant laws relating to disclosure of information, upon receipt of a Switching Notice, procure that the number of Units specified in that Switching Notice are dealt with in accordance with clause 9 except that the Withdrawal Amount must be applied in the acquisition of Units in the Switch Fund at a price determined in accordance with clause 7.5 and the relevant Establishment Deed (as if the Switching Notice were an application in respect of those Units) and (if more than one Switch Fund is involved) in the proportions specified in the Switching Notice.

## 11. Transfer and transmission of Units

### 11.1 Transfer generally

Subject to any restrictions or limitations in the Establishment Deed for a Fund, a Unitholder may transfer Units by instrument in writing in accordance with this clause 11.

### 11.2 Instrument of transfer

- (a) A Unitholder may transfer Units using any instrument of transfer approved by the Manager, which must be signed by the transferor.

- (b) Where a transfer is effected by the cancellation of Units and issue of new Units pursuant to clause 11.5 and an Establishment Deed provides for the issue of further fully paid Units on such a transfer of Units, the instrument of transfer will be deemed to include such Units.

### **11.3 Registration of transfers**

- (a) The Unitholder must deliver the instrument of transfer of Units to the Manager at the Office for registration, accompanied by any relevant Certificate.
- (b) Subject to clause 11.4, the Manager must register the transfer in the relevant Register.
- (c) A transfer is of no effect until it is registered.

### **11.4 Manager may decline to register transfers**

The Manager may decline to register any transfer, including in the following circumstances:

- (a) where the provisions of clause 11.3 or any applicable law have not been complied with;
- (b) (except where all Units held by a Unitholder in a Fund are to be transferred), if registration of the transfer would result in less than any minimum amount or more than any maximum specified in (or determined under) the relevant Establishment Deed standing in the name of the transferee or transferor in any Fund;
- (c) if registration of the transfer, in the opinion of the Manager, would or could threaten the Fund's status as, or eligibility to be, a PIE;
- (d) if any PIE Tax payable in respect of the Unitholder or the Unitholder's Units has not been paid;
- (e) if there are unpaid amounts owing from the transferor of the Units to the Supervisor or the Manager or there is any unpaid duty, Tax, commission, fees and charges in respect of the transaction or any other transaction; or
- (f) where any restrictions or limitations on the transfer of any Units of a Fund contained in the Establishment Deed for that Fund have not been complied with.

### **11.5 Transfers where the Fund is a PIE**

If the Manager receives an instrument of transfer for Units held by a Unitholder in a Fund which is a PIE, the Manager may adjust a Unitholder's Units in accordance with clause 13.7(c)(xiii), and may elect to effect the transfer either by registering a transfer of Units from the transferor to the transferee or by:

- (a) cancelling the number of Units sought to be transferred (less any Units redeemed to pay any Tax) without any payment to the Unitholder; and
- (b) issuing to the person named as transferee in the instrument of transfer such number of Units as are cancelled pursuant to paragraph (a) above, treating the transferee as having satisfied payment of the Issue Price by the cancellation of the Units referred to in paragraph (a) above.

### **11.6 Manager to retain transfer**

The Manager will retain every registered instrument of transfer of a Unit for such period as the Manager may determine but the Manager must return any instrument of transfer which the Manager declines to register to the person who lodged it within 10 Business Days after the date on which the transfer was lodged.

### **11.7 Suspension of registration**

The Manager may suspend registration of transfers at such times and for such periods as the Manager thinks fit, up to a maximum of 30 Business Days in any calendar year.

**11.8 Transmission of Units**

The executors or administrators of a deceased Unitholder (not being one of several joint Unitholders) will be the only persons recognised by the Manager as having any title or interest in the Units held by such Unitholder or Unitholders. However, if that Unitholder has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of such Units and the transfer of Units is not registered before the death of the deceased Unitholder, the Manager may register that transfer even if the Manager at the time of such registration has notice of that Unitholder's death.

**11.9 Transfer by operation of law**

Any person having authority to administer the estate of a mentally disordered person and any person becoming entitled to any Units in consequence of the death, bankruptcy or liquidation of any Unitholder may upon producing such evidence of capacity or of title as the Manager considers sufficient be registered as the holder of such Units and subject to the provisions as to transfer contained in this clause 11 may transfer such Units. This provision will apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.

**12. Distributions****12.1 Income distribution or retention**

Subject to the terms of the Governing Document, after the end of each Distribution Period, the Manager may elect that the Income of each Fund is:

- (a) retained by the Supervisor and reinvested in accordance with the provisions of clause 12.2;
- (b) distributed by the Supervisor to Unitholders of that Fund who were Unitholders on the last day of that Distribution Period in accordance with the provisions of clause 12.3; or
- (c) partly retained and invested and partly distributed to Unitholders who were Unitholders on the last day of that Distribution Period.

**12.2 Directions to the Supervisor**

Subject to clause 12.1, the Manager may from time to time by notice in writing direct the Supervisor in respect of any Fund:

- (a) to wholly or partly reinvest or distribute the Income of that Fund; or
- (b) to distribute all or any part of the capital of the Fund, and if necessary to realise Investments in order to produce cash to make such distribution,

and the Supervisor will (subject to clause 14.2 as if it related to directions to distribute) act in accordance with any such direction.

**12.3 Distribution**

- (a) All Entitlements to be distributed pursuant to clauses 12.1 or 12.2 will be distributed to a Unitholder or Unitholders at such time or times as may be specified in respect of each Fund in that Fund's Establishment Deed.
- (b) Subject to the terms of the relevant Establishment Deed, such Entitlements will be distributed amongst Unitholders of the relevant Fund in proportion to the number of Units held by them irrespective of the number of days the Units have been on issue.
- (c) For the avoidance of doubt, a distribution for a Fund may be made in cash or, at the absolute discretion of the Manager, the Manager may direct the Supervisor, in relation to that Fund, to:
  - (i) effect a capital distribution by transferring Assets to all Unitholders of that Fund rather than paying cash. The Assets transferred to each Unitholder must be of the same type, have the same rights and be fully paid; and

- (ii) determine that upon a capital distribution to Unitholders that number of Units determined by the Manager are cancelled, such cancellation to be in proportion to the Units registered in the names of the respective Unitholders, provided that that Fund cannot be wound up and terminated under this clause 12.3(c).  
In each case where property other than cash is to be transferred to a Unitholder, each Unitholder authorises the Supervisor:
  - (iii) to act as the Unitholder's agent to agree to obtain the property;
  - (iv) where the property is a share or an interest in a share in a company, to agree to become a shareholder of that company; and
  - (v) where the property is a unit or an interest in a unit in a Fund, to agree to become a unitholder of that Fund.

#### **12.4 Reinvestment of Entitlements**

- (a) The Manager may, by notice in writing to the Supervisor and Unitholders and subject to the Manager complying with all applicable laws, provide Unitholders with an opportunity to elect to reinvest all or any part of their Entitlements (less any Tax which the Manager is obliged to deduct or to account for in respect of income attributable to Unitholders in accordance with the Tax Act) by subscribing for further Units in the relevant Fund by written request to the Manager in such form as may from time to time be agreed by the Manager including Electronic Communication. Any request may be varied or terminated by notice to the Manager at any time prior to the Manager effecting any such reinvestment of Entitlement.
- (b) The Manager will treat such a request as though it were an application to purchase further Units in the relevant Fund with the relevant Entitlement (less any Tax) and accordingly the provisions of clause 7, with such changes as are necessary, will apply to the Units issued in accordance with this clause.
- (c) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

#### **12.5 Determination of Income**

- (a) Income will be determined in accordance with the Accounting Policies.
- (b) Subject to paragraph (a) above, in determining Income of any Fund for any period all income due and receivable and all costs, charges and expenses due or accrued, charged or chargeable against income will be taken into account, including, but not limited to:
  - (i) all costs and disbursements incurred in connection with the relevant Fund or the administration of it and chargeable against income including fees payable to the Supervisor and the Manager;
  - (ii) the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by the Governing Document for or in connection with the relevant Fund including the convening of meetings of Unitholders;
  - (iii) any Taxes paid or payable by the Supervisor or the Manager in connection with the relevant Fund, Unitholders or Assets, including any Taxes or duties paid or payable by the Supervisor or the Manager or as a consequence of redeeming a Unit pursuant to a Withdrawal Notice;
  - (iv) such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the relevant Fund for that period; and

(v) the fees and expenses of the Auditor in connection with the audit of the relevant Fund.

(c) For the avoidance of doubt, Income of a Fund may be a negative amount.

#### **12.6 Determination by Auditor**

If any question arises as to whether any money or property is or is not Income, or whether any expense is or is not chargeable against Income, that question will be determined by the Auditor.

#### **12.7 Portfolio Investment Entity**

The amount to be distributed to Unitholders of a Fund that is a PIE may differ as between Unitholders as a result of the exercise of the Manager's discretions in clause 26.1 to adjust Unitholders' Entitlements to reflect the effect of the PIE Rules.

### **13. Supervision and management of the scheme**

#### **13.1 Appointment of Supervisor and Supervisor's responsibilities**

The Supervisor is appointed, and accepts appointment, as supervisor of the Scheme for the purposes of the MIS Legislation and will be designated as such. The Supervisor covenants with the Manager (also for the benefit of Unitholders) on a continuing basis that the Supervisor is licensed under the Financial Markets Supervisors Act 2011. 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 Unitholders in relation to:
  - (i) the Manager;
  - (ii) any matter connected to the Governing Document and 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 the Fund or the Scheme, or ensuring that the Assets of the Fund or the Scheme are held, in accordance with the Governing Document and MIS Legislation; and
- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by or under MIS Legislation, the Financial Markets Supervisors Act 2011 and the Governing Document.

#### **13.2 Supervisor's duties**

The Supervisor acknowledges and undertakes that:

- (a) it will comply with its duties as 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 Unitholders 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 13.1(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Unitholders);
- (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 Unitholders that is not inconsistent with any enactment, rule of law, or the Governing Document in relation to:
  - (A) seeking a remedy to a contravention referred to in clause 13.1(a); and
  - (B) any other matter connected with the Supervisor's functions, provided that it is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by the Unitholders; 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.

### **13.3 Supervisor's general power as supervisor**

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

### **13.4 No delegation or agency**

Except as may be permitted by MIS Legislation, the Financial Markets Supervisors Act 2011 and the Governing Document, and then agreed in a written authorisation by the Manager and the Supervisor, no powers of the Supervisor can be delegated (including to the Manager nor is the Manager appointed (or permitted to represent itself) as the agent of the Supervisor).

The Supervisor remains liable for the acts or omissions of any delegate. However, the Supervisor may include provisions to protect and assist those dealing with the delegate in the written authorisation as the Supervisor thinks fit.

### **13.5 Investments in Supervisor's name**

Subject to MIS Legislation, the Manager must cause Investments and property held for the Scheme to be vested in the Supervisor or in any Custodian duly appointed under clause 15.3 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.

### **13.6 Bank accounts**

A bank account or accounts in the name of the Supervisor or a Custodian duly appointed under clause 15.3 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 will determine the persons authorised to operate such bank accounts.

### 13.7 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 MIS Legislation and will be designated as such. The Manager covenants with the Supervisor (also for the benefits of Unitholders) on a continuing basis that the Manager is licensed to manage the Scheme under MIS Legislation.
- (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 13.7(a) and 13.7(b) above (or the Manager's power of management under the Governing Document and all applicable legislation) the Manager must 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 Unitholders 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 Unitholders;
    - (B) treat the Unitholders 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 Unitholders;
  - (v) carry out its functions in accordance with the Governing Document, any SIPO and all other Issuer Obligations;
  - (vi) establish and maintain Unitholder records, including a Register which meets the requirements of the FMCA;
  - (vii) 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 13.7(vii) 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;
  - (viii) keep complete and accurate records of all investments of the Scheme (and, if applicable, each Fund);
  - (ix) where there are two or more Funds, effect Switches between Funds pursuant to clause 10;
  - (x) discharge all functions and duties with respect to unitisation, valuations and benefit calculations;
  - (xi) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;

- (xii) ensure compliance by the Scheme with the requirements of the MIS Legislation, the Financial Reporting Act 2013 and other applicable legislation;
- (xiii) 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;
- (xiv) give and receive all notices and other information in accordance with the FMCA;
- (xv) maintain all accounting records for the Scheme;
- (xvi) 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 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;
- (xvii) acquire or sell Assets for cash or upon terms;
- (xviii) instruct persons to act in relation to investments of the Scheme or the proposed acquisition or disposal of investments;
- (xix) underwrite offers of securities out of the Assets of the Scheme;
- (xx) participate in joint ventures in relation to real properties;
- (xxi) convene meetings of the Unitholders in accordance with clause 34;
- (xxii) 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
- (xxiii) provide to the Supervisor as soon as practicable following receipt copies of all notices or communications received from a regulatory authority which are material and/or affect the Manager's or the Supervisor's duties or obligations in relation to the Scheme.

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

### **13.8 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).

### **13.9 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 MIS Legislation, and the Governing Document 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 must take all reasonable steps to:

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

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

### **13.10 Information and reports to Supervisor**

Without limiting the requirements under the FMCA and any relevant laws, the Manager must supply the Supervisor the information and reports set out in the Manager Reporting Agreement which may be amended by mutual agreement between the Manager and the Supervisor from time to time.

### **13.11 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 will include the following periodic reports required under the FMCA:

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

### **13.12 Payment of Fees and reimbursement of expenses**

- (a) In respect of the Scheme, 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 the Governing Document, 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 Unitholder's account, to the extent permitted by the FMCA, any fees charged directly or indirectly in respect of the Unitholder'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 Unitholders, and the fees have been authorised by the Unitholder 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.

### **13.13 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 13.12 or clause 18 to one or more Unitholders in such manner as the Manager considers equitable.

### **13.14 SIPO**

The Manager will establish, and may at any time change, a SIPO for the Scheme (and each Fund) in accordance with the requirements of MIS Legislation.

## **14. Manager's powers to invest**

### **14.1 Investment directions by the Manager**

Subject to this clause 14 and to compliance with the Governing Document, the SIPO, and all 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) invest in, 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 will from time to time, to the extent of the respective funds in its control, do all things necessary on its part to act as directed in writing by the Manager.

This clause 13.3 expressly modifies the power of a trustee under section 58 of the Trusts Act.

#### **14.2 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 14.1 in the circumstances described in section 160 of the FMCA and the Supervisor, and any other Custodian of the Scheme, will not be liable to Unitholders or the Manager for so refusing to act.
- (b) If the Supervisor refuses, or directs any other Custodian to refuse, pursuant to clause 14.2(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 18.5, neither the Manager nor the Supervisor will be responsible to any Unitholder for the investment performance of the Scheme (or, if applicable, a Fund) arising as a result of a SIPO.

#### **14.3 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.

#### **14.4 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.

#### **14.5 Permitted transactions**

Clause 14.4 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 14.6; 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.

#### **14.6 Restrictions on consent**

The Supervisor must not consent to a transaction or transactions under clause 14.5(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 Unitholders; or
- (b) the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Unitholders of the relevant Investment Portfolio that are affected or potentially affected by the transaction or transactions.

#### **14.7 Certification**

Before entering into a transaction or series of transactions under clause 14.5(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.

#### **14.8 Supervisor notification**

The Manager must provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clause 14.5.

#### **14.9 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.

#### **14.10 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.

#### **14.11 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).

#### **14.12 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.

### **15. Powers of the supervisor**

#### **15.1 Supervisor's general powers**

In addition to any other powers granted under the Governing Document or by law, but subject to the FMCA and to the limitations set out in clauses 13.4 and 15.3, the Supervisor may (and must if so directed by the Manager under clause 15.1(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 will require the Supervisor to take any action which it reasonably believes would cause it to breach any of its obligations under any rule of law or under the Governing Document); and
- (c) do anything the Supervisor, acting reasonably, considers necessary to enable it to discharge its statutory duties in relation to the Scheme.

#### **15.2 Exercise of Supervisor's powers**

Subject to the other provisions of the Governing Document and to a Court of law deciding otherwise:

- (a) the Supervisor may transact any business of the Scheme with the Manager and its Related Parties and may use the Assets of the Scheme to pay any fees, premiums, commissions and other payments payable in respect of such business;
- (b) the Supervisor's powers, duties and discretions may be exercised at times and on terms and conditions and in such manner as it decides;

- (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 15.2 expressly excludes the duties of a trustee under section 32 of the Trusts Act.

### **15.3 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 will 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 15.3(a) and otherwise by law.
- (b) In appointing a Custodian the Supervisor must take all reasonable steps to:
  - (i) ensure that the functions are performed by the Custodian in the same manner and subject to the same duties and restrictions as would be required if the Supervisor were performing those functions directly; and
  - (ii) monitor the performance of those functions.
- (c) If authorised in writing by the Supervisor (after the Supervisor has notified the Manager), a Custodian appointed under clause 15.3(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 will 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 15.3 and otherwise by relevant law.

### **15.4 Custodian reports**

The Supervisor will 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.

### **15.5 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.

### **15.6 Manager's obligations in relation to experts**

If the Supervisor engages an expert under clause 15.5, the Manager:

- (a) must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 15.5;
- (b) must pay the expert's reasonable fees and expenses; and
- (c) 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 18.5.

### **15.7 Proceedings**

The Supervisor may institute, prosecute, defend and compromise legal proceedings in order to secure compliance with the provisions of the Governing Document and may recover any loss suffered by any Unitholders on their behalf in respect of their Units.

## 16. Remuneration of Supervisor

The Supervisor will be paid such annual fee, accrued daily and payable monthly (or at such other frequency as agreed between the Supervisor and the Manager from time to time) 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 Unitholders.

The Supervisor is entitled to receive, in addition to the fees referred to in this clause 16, any GST or similar Tax payable in respect of such fees.

## 17. Remuneration of manager

### 17.1 Fees charged by Manager

Subject to the provisions of the Governing Document, the Manager may charge for its services with respect to the Scheme such annual or other administration, management, membership, transaction, individual action, performance 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 Unitholders. The method of paying such fees will 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 17.1, any GST or similar Tax payable in respect of such fees.

### 17.2 Alteration or waiver of fees

The Manager may waive part or all of any fee or decrease any fee and 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 Unitholder or Unitholders; or
- (b) provided that any such fee is not prohibited under the Governing Document, commence charging a fee which is not currently being charged.

## 18. Liability and Indemnities

### 18.1 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 18.2 of this deed.

### 18.2 Indemnification from Scheme assets

Subject to clause 18.5 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).

### 18.3 Reimbursement of Supervisor and Manager

Subject to clause 18.5, 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 the Governing Document (including, without limitation, any expense, cost or liability which may be incurred by the Supervisor or the Manager (as applicable) in bringing or defending any action or suit in respect of the Scheme).

#### **18.4 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).

#### **18.5 Breach of duty**

The rights of the Manager and the Supervisor to the indemnities set out in the Governing Document will be limited to the extent required by section 136(1)(b) of the FMCA and no provision of the Governing Document 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.

#### **18.6 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, actuaries, 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.

#### **18.7 Reliance upon documents**

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

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

#### **18.8 Manager's discretion and authority**

Except as otherwise expressly provided in the Governing Document or required by law, the Manager has absolute and uncontrolled discretion as to the exercise or non-exercise of all the powers, authorities and discretions vested in it by the Governing Document, whether in relation to the manner or as to the mode of and time for their exercise, subject to supervision by the Supervisor (and, where expressly required, giving notice to or consulting with or obtaining the approval of the Supervisor) and provided the Manager will not have failed to comply with the requirements of the FMCA the Manager will not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of its powers. The Manager will have no liability for any loss suffered by a Unitholder as a result of any action taken or adjustment made pursuant to clause 26.1.

### **18.9 No conflicts of interest for Supervisor or Manager**

Nothing in the Governing Document or any rule of law will prevent the Supervisor, or any Related Party of the Supervisor or any shareholder, director, officer, or employee of the Supervisor or their Related Parties, or the Manager, or any Related Party of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Parties, from:

- (a) subscribing for, holding, or 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 Unitholder 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 will be in any way liable to account either to any other of them, the Scheme, or to the Unitholder or any of them for any profits or benefits (including, without limitation, commission, brokerage and fees) made or derived thereby or in connection therewith.

### **18.10 Supervisor's discretion and authority**

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

### **18.11 Supervisor's limited liability to Unitholders**

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

### **18.12 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.

### **18.13 Attributed Tax indemnity**

If a Unitholder'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 Unitholder; or
- (b) determined by the Manager to be attributable to the Unitholder;

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

### **18.14 Indemnity by Manager**

The Supervisor will 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 the Governing Document in

circumstances where the protections from liability for the Manager and the Supervisor under clauses 18.1 and 18.2 are not available.

## **19. Amendments**

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

## **20. Appointment and removal of supervisor**

### **20.1 Eligibility to be Supervisor**

The Scheme will have a single Supervisor which:

- (a) is a Licensed Supervisor whose licence covers the supervision of the Scheme;
- (b) is not the Manager or an Associated Person of the Manager; and
- (c) must carry out the supervision of the Scheme in accordance with clause 13 (and as otherwise specified in the Governing Document).

### **20.2 Removal of Supervisor**

- (a) Subject to clause 20.4, the Manager may remove the Supervisor from office as supervisor, subject to any applicable law.
- (b) The FMA may remove the Supervisor from office as 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 Supervisor under Part 2 of the Financial Markets Supervisors Act 2011.

### **20.3 Retirement of Supervisor**

Subject to clause 20.4, the Supervisor may retire at any time (upon giving the Manager no fewer than 120 Business Days' written notice of such retirement).

### **20.4 Restrictions on removal/retirement**

No removal or retirement under clause 20.2(a) or clause 20.3 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.

### **20.5 New appointment**

The power of appointing a new Supervisor (in place of a Supervisor which has been removed from office or retired) is vested in the Manager, provided that no person will be appointed as a new Supervisor unless qualified for appointment under clause 20.1.

### **20.6 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 Unitholders to be bound by all the covenants on the part of the former Supervisor under the Governing Document from the date of such appointment.

### **20.7 Release of Supervisor**

From the date of execution by a new Supervisor of a deed in accordance with clause 20.6, 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 the Governing Document in all respects as if it had been originally named as a party to the Governing Document.

#### **20.8 Appointment not exclusive**

Nothing contained in the Governing Document will be construed to prevent the Supervisor from establishing, or acting as the Supervisor in relation to another MIS, Superannuation Scheme or similar scheme.

#### **20.9 Notice of Change of Supervision**

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

### **21. Appointment and removal of manager**

#### **21.1 Eligibility to be Manager**

Where the Scheme is a 'registered scheme' within the meaning of that term in section 6 of the FMCA, the Scheme must have a manager, who must:

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

#### **21.2 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 Unitholders that the Manager be removed.
- (b) The Manager may be removed by a Special Resolution of the Unitholders.
- (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 21.2(a), or of its intention to apply to the High Court to substitute the Manager under clause 21.2 (c).

#### **21.3 Manager may retire**

Subject to clause 21.4 and to all applicable laws, the Manager may retire as manager of the Scheme at any time, without assigning any reason, upon giving no less than 120 days' notice in writing to the Supervisor of its intention to do so.

#### **21.4 Restrictions on removal/retirement**

No removal or retirement under clause 21.2 or clause 21.3 will take effect until a new Manager has been appointed pursuant to clause 21.5 and has executed the deed referred to in clause 21.6.

#### **21.5 Power to appoint a new manager**

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

- (a) no person will be appointed as a new manager unless qualified for appointment under clause 21.1; and
- (b) no new manager will be so appointed without the approval of the Supervisor (which must not be unreasonably withheld).

#### **21.6 Restrictions on new appointment**

Any new manager must 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 Unitholders to be bound by all the covenants on the

part of the former manager under the Governing Document from the date of such appointment.

### **21.7 Release of Manager**

From the date of execution by a new Manager of a deed in accordance with clause 21.6, 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 the Governing Document in all respects as if it had been originally named as a party to the Governing Document.

### **21.8 Manager's entitlements preserved**

Nothing in this clause 21 will prevent the Manager from receiving a payment, or a benefit, which has accrued to the Manager pursuant to the terms of the Governing Document prior to the date of or arising on the Manager's retirement or removal from office (and the Manager will 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).

### **21.9 Transfer of management to members of Generate Group**

Despite any other provision of the Governing Document, and subject to applicable law, 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 the Governing Document to any other member of the Generate Group. Where such transfer occurs, the Manager, the Supervisor and new manager must execute a deed in such form as the Supervisor may require whereby the new manager undertakes to the Supervisor and the Unitholders 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 will be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new manager will thereafter exercise all the powers and enjoy and exercise all the rights and will 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.

### **21.10 Retirement or removal of Generate Investment Management Limited**

Notwithstanding any other provision of, or amendment to, the Governing Document, if Generate Investment Management Limited ceases for any reason, other than because of a transfer under clause 21.9, 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.

### **21.11 Benefit to Generate Group**

It is hereby declared, for the purposes of the Contract and Commercial Law Act 2017 that clause 21.10 will 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 the Governing Document to vary or discharge benefits or obligations as provided in the Governing Document, without the consent of members of the Generate Group other than Generate Investment Management Limited.

## **22. Winding up**

### **22.1 Term**

A Scheme or a Fund will be wound up if:

- (a) the Manager resolves in writing to wind up the Scheme or Fund and the Manager provides the Supervisor with a copy of that resolution; or
- (b) a Special Resolution of Unitholders is passed to wind up that Scheme or Fund; or

- (c) the Scheme or Fund is required to be wound up pursuant to the FMCA, the Governing Document, by the Courts or by operation of law.

## **22.2 Procedure**

If a Scheme or a Fund is to be wound up:

- (a) the Manager must realise the Assets to the extent the Manager does not propose to distribute them in specie;
- (b) the Manager may postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Unitholders to do so, and will not be responsible for any consequent Unitholders' loss;
- (c) the Manager may make partial distributions of the Assets of the Scheme or Fund during the winding up, if it so decides;
- (d) the Manager will, during the winding up of any Scheme or a Fund, comply with all procedural winding up requirements required by the FMCA; and
- (e) the Manager will, during the winding up of a Fund that is a PIE, take all reasonable steps to ensure compliance with the PIE eligibility rules until completion of the wind-up.

## **22.3 Final distribution**

- (a) Subject to the rights, terms of issue, obligations and restrictions attaching to any particular Units or classes of Units, any net proceeds of realisation and any remaining Assets, after discharging or providing for any unpaid fees due to the Manager and the Supervisor and all Liabilities (including the expenses of winding up the Scheme) and, in the case of a Fund which is a PIE, for all amounts due to Inland Revenue on account of the Fund's PIE tax liability, will be distributed to Unitholders in cash or in specie pro rata according to the number of Units held by them.
- (b) In the case of a Fund which is a PIE, all such distributions will be subject to adjustment in accordance with the provisions of the Governing Document.

## **22.4 No Maximum Duration**

Pursuant to section 16(6)(d) of the Trusts Act and section 155A(4) of the FMCA, but subject to this clause 22, there shall be no restriction on the duration of the trusts created for the Scheme.

## **23. Unitholders bound by the Governing Document**

### **23.1 Provisions benefit and bind Unitholders**

Except where the Governing Document expressly provides otherwise or the context otherwise requires, the terms and conditions of the Governing Document are for the benefit of and binding on each Unitholder (and persons claiming through them) as if they were a party to the Governing Document for the purposes of the Contract and Commercial Law Act 2017.

### **23.2 No interference in management**

Subject to the rights created for Unitholders by the Governing Document, no Unitholder will 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 the Governing Document or in respect of all or any of the Assets of the Scheme, or to exercise any right, power or privilege in respect of any investment comprised in the Scheme.

## **24. Limitation of liability of Unitholders**

### **24.1 No personal obligation to indemnify**

Except as expressly provided by the Governing Document no Unitholder is, by reason solely of being a Unitholder 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.

#### **24.2 Limited recourse to Assets of the Scheme**

Subject to clause 18.13, 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 Unitholder personally in such person's capacity as a Unitholder.

#### **24.3 No liability to contribute to any shortfall**

On the winding up of the Scheme, no Unitholder will have any liability to contribute to any shortfall in the Assets of the Scheme.

### **25. Notices and information to Unitholders**

#### **25.1 Notices**

- (a) A notice under the Governing Document, and (without limiting any enabling provision MIS Legislation) any other Scheme-related communication intended for a Unitholder, may be given to the Unitholder personally by:
- (i) leaving it at the Unitholder's last known address recorded in the Register; or
  - (ii) sending it addressed to the Unitholder at the Unitholder'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 Unitholder having given his or her electronic address to the Manager or having otherwise consented to accept Scheme-related information in an electronic form, by means of an Electronic Communication.
- (b) A Unitholder must notify the Manager of any change to the Unitholder's address and/or electronic address and the Register will be altered accordingly. Any notice given to Unitholders by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Unitholder in substantially the same form but with personalised details in respect of each Unitholder, it will be sufficient to provide the Supervisor with a sample of such a notice.

#### **25.2 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 (or other Electronic Communication) 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).

#### **25.3 Signature of notice**

The signature to any notice or document to be given by the Manager or the Supervisor or any Unitholder may be written or printed by or on behalf of the Manager, Supervisor or any Unitholder (as applicable) or by an officer, employee, agent, attorney or solicitor of the respective person or otherwise provided in accordance with Part 4 of the Contract and Commercial Law Act.

#### **25.4 Calculation of notice periods**

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

## 25.5 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 Unitholder pursuant to the provisions of the Governing Document will (notwithstanding that the Unitholder is then deceased and whether or not the Manager has notice of such deceased Unitholder's death) be deemed to have been duly given until some other person is registered in the place of the Unitholder, and such service will for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators.

## 26. Taxation

### 26.1 PIE tax compliance

The Manager may elect that the Scheme be a PIE, or cease to be a PIE, at its complete discretion. The Manager will have the following additional powers and discretions in respect of the Scheme for so long as the Scheme is a PIE:

- (a) to determine, on such basis as the Manager thinks appropriate at its complete discretion, classes of Unitholders, 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 Unitholder's Investor Interest for any period, based on what that Unitholder's proportionate interest in any distribution by the Scheme to Unitholders 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 Unitholder otherwise would be entitled if that amount is required to be paid to the Commissioner of Inland Revenue 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 Unitholders 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 Unitholder and to make available to the Unitholder 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 Unitholder;
- (p) to carry out any other Tax calculations, allocations or attributions required by the Tax Act;
- (q) to adjust a Unitholder's Investor 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 Unitholder's Notified Investor Rate; and
  - (ii) the Unitholder'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 Unitholder,on the Scheme's income Tax liability and the amount of any credit under subpart HM of the Tax Act;
- (r) to allocate Tax Relief received by the Scheme or anticipated to be received by the Scheme to Unitholders in such manner as the Manager considers appropriate at its complete discretion (subject to the requirements of the Tax Act);
- (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 Unitholder, 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 Unitholders (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 Applications; or
  - (ii) treating Units issued to a Unitholder as void ab initio to the extent to which the Unitholder's Investor 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 Unitholder's Investor Interest from one Fund to another as if the Manager had received a Switching request to that effect from the relevant Unitholder;
- (w) to require that before being accepted into the Scheme a Unitholder 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 Unitholder must confirm such details on request from the Manager or the Supervisor;
- (x) 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
- (y) 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 the Governing Document, or to carry out functions relating to the Scheme or a Fund as a result of the Scheme being a PIE.

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

## 26.3 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 26 or otherwise, will continue to apply with such modifications as are necessary to reflect the Revision;
- (b) the Manager will have the discretion to apply all of the requirements of the Revision to the Scheme and the Unitholders 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 the Governing Document to terms defined in the Tax Act which are amended or replaced as a result of the Revision must be deemed to be references to those defined terms as amended by the Revision.

## 26.4 Disposals of Units to avoid exceeding investor interest size requirements

If a Unitholder exceeds the Investor Interest size requirement prescribed in the Tax Act (for the purposes of this clause, a **Breach**) in respect of a Fund, in order to remedy the Breach within the period determined in accordance with the Tax Act (the **Remedy Period**), the Manager must take the following steps:

- (a) as soon as practicable after becoming aware of the Breach, the Manager must give written notice to the relevant Unitholder(s) of the Breach, including details of the number of Units (the **Excess Units**) giving rise to the Breach;
- (b) the Unitholder will have a period consisting of the relevant Remedy Period less 30 days to remedy the Breach, but if the Manager becomes aware of the Breach and determines that there are 30 days or less to remedy the Breach then the Breach will be deemed to have not been remedied under this paragraph (b); and
- (c) if the Breach has not been remedied upon expiry of the period in paragraph (b) above, then the Manager may, in its discretion, sell or redeem the amount of the Excess Units in order to remedy the Breach, and:
  - (i) the Manager must account to the relevant Unitholder for the proceeds of any disposal of the Excess Units after deduction of all expenses arising from such disposal; and
  - (ii) neither the Manager nor the Supervisor is required to maximise the Unit price for any disposal and, in any event, will not be liable to any Unitholders for any loss on disposal.

## 26.5 Provision of information

The Manager may request any Unitholder or Applicant to provide information to the Manager to enable the Manager and the Supervisor to meet and comply with the administration requirements of the Tax Act and any other information which the Manager and the Supervisor may reasonably require in order to comply with any other laws in New Zealand and any other country in relation to the Funds, and, in particular, where a Fund is PIE, the Manager may request any Unitholder or Applicant to:

- (a) where the Fund is a PIE, provide such information pertaining to any Unitholder as the Manager considers reasonably necessary to ensure that the Fund can comply with its obligations as a PIE under the Tax Act;
- (b) provide details of Units held by any associated person (as defined in the Tax Act) of the Unitholder or Applicant where the associated person holds 5 per cent or more of the Units in the Fund;
- (c) confirm that:
  - (i) the Unitholder or Applicant either is or is eligible to be and intends to be a member of a PIE; or
  - (ii) the Unitholder or Applicant either is or is eligible and intends to be a proxy for an investor under section HM 33 of the Tax Act (**PI**); or
- (d) if the Unitholder or Applicant either is or is eligible and intends to be a PI:
  - (i) confirm that the Unitholder or Applicant has provided the information specified in the Tax Act; and
  - (ii) provide any other information to establish that the PI has met its obligations under the Tax Act.

If the Manager requests a Unitholder or Applicant to provide information to the Manager pursuant to this clause, the Unitholder or Applicant must supply such information within 30 days of the request.

## 26.6 Disclosure of Information

The Manager and the Supervisor are hereby authorised to disclose any information, including issuing any statements and providing any information to Unitholders as required by the Tax Act in respect of their Tax position in relation to the Scheme, and make such disclosure as may be required by the Commissioner of Inland Revenue or any other governmental or administrative body, authority, agency or entity in New Zealand or any other jurisdictions, of any information about any Unitholder, the details of any distributions to Unitholders or any

other details or information arising out of or in connection with any of the Funds. Subject to any legal requirement to the contrary, neither the Manager nor the Supervisor is required to notify any Unitholder of the fact or content of that disclosure.

## **27. Auditor**

### **27.1 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 will be determined by the Manager on an arm's length basis.

### **27.2 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 Unitholders and instructs the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' notice in writing.

### **27.3 Power to appoint Auditor**

The power to appoint a new Auditor will be vested in the Manager, subject to the approval of the Supervisor in accordance with clause 27.1.

### **27.4 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 27.1.

### **27.5 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.

### **27.6 Auditor's report to Supervisor**

The Manager will 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.

## **28. Payments to Unitholders**

### **28.1 Method of payment**

Subject to the FMCA, any monies payable by the Manager (or by the Supervisor at the Manager's direction) to a Unitholder or the Unitholder's personal representative, or to another relevant person for the purposes of under the provisions of the Governing Document may be direct credited to any bank account nominated by the Unitholder or other recipient.

### **28.2 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).

## **29. Minimum economic amount**

Neither the Supervisor nor the Manager will 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.

## **30. Governing law**

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

### **31. Notices between Manager and Supervisor**

Any certificate, notice, communication or information required by the Governing Document 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.

### **32. Delivery**

For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) the Governing Document 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.

### **33. Counterparts**

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

### **34. Meetings**

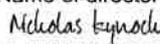
The Manager must call a meeting of the Unitholders in the manner and on the basis set out in the FMCA. Meetings of Unitholders will be conducted in accordance with the requirements of the FMCA.

# Signing page

EXECUTED as a deed

**GENERATE INVESTMENT MANAGEMENT LIMITED** by:

DocuSigned by:  
  
Signature of director  
Henry Tongue

Name of director  
  
Signature of director  
Nicholas Kynoch  
Name of director

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

  
Signature of witness

Name of witness **Brian Cleary Jnr Esq**  
**Senior Manager Client Services**  
**Public Trust, Auckland**

Occupation of witness

City/town of residence

  
Signature of attorney  
Elena Vinton  
Name of attorney

**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

# Schedule 1 – Form of Establishment Deed

**Draft**  
Date: [ ]

[ ] - Establishment  
Deed

---

[ ] (Manager)  
[ ] (Supervisor)

# Establishment Deed

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# Details

Date

## Parties

Name [     ]  
Short name **Manager**  
Notice details [     ]  
Fax. [     ]  
Attention: [     ]

Name [     ]  
Short name **Supervisor**  
Notice details [     ]  
Fax. [     ]  
Attention: [     ]

## Background

- A The Manager and the Supervisor are parties to a master trust deed dated [●] (**Master Trust Deed**) for the Generate Unit Trust 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 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 this 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 [DATE].

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

**Initial Offer Period** means the initial offer period for the Fund specified in the Disclosure Document.

[ ]

### 1.2 General construction

The provisions of clauses 1.4 and 1.5 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. PIE status

[Subject to satisfying the requirements of the PIE Rules, the Fund elects to become a PIE.]

## 4. Investments

### 4.1 SIPO

[The SIPO for the Fund will be established and may be changed in accordance with the Master Trust Deed.]

### 4.2 Authorised Investments

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

## 5. Valuation of the Fund and calculation of Unit Price

### 5.1 Valuation Time

The Fund and the Units will be valued [daily / weekly / monthly] and otherwise as provided for under the Master Trust Deed. [The Manager may value the Fund more frequently.] The Manager may value the Fund less frequently only in situations where for reasons beyond the Manager's control, valuation is impossible or impracticable for the day in question. In such situations the Manager will value the Fund as soon as reasonably practicable.

## 5.2 Time of valuation

The Net Asset Value of the Fund will be calculated as at such time or times on each valuation day as the Manager determines (each being a Valuation Time for the purposes of the Master Trust Deed).

## 5.3 Market Value of Investment

The Market Value of any Investment as at any Business Day means:

- (a) in respect of any Investment listed on any Exchange, the official quoted close of market price on that Business Day, or, if such quotation is not available, such value as is determined in good faith by the Manager of the Fund. In instances where the official quoted close of market price is deemed by the Manager (acting in good faith) not to represent fair market value (for example, if the price of a security listed on an Exchange is fixed by reason of a limit on the daily price change, and the Manager determines that, because of unusual and material changes affecting the issuer, the quoted price does not reflect the value of the security), the price will be determined in such manner as the Manager may prescribe acting in good faith;
- (b) in respect of any Investments not listed on any Exchange for which a published price exists, the most recently published price for that Investment, unless the Manager and the Supervisor agree otherwise; and
- (c) in respect of Investments not listed on any Exchange and for which no published price exists or where the Manager or Supervisor agree that this provision will apply, the amount most recently agreed upon, or determined in a manner agreed upon, between the Manager and the Supervisor, or failing such agreement determined by a valuer or other suitably qualified person approved by the Supervisor, or, if no such amount or manner has been agreed upon or determined, the cost (as determined by the Manager) to the relevant Fund of that Investment. [For the purposes of this clause, the Manager and the Supervisor agree that term debt which is not traded on an active market will be valued either on a yield to maturity basis, at face value or at cost, at the Manager's discretion.]

## 6. Issue of Units

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

[Provisions relating to Standing Applications?]

## 7. Withdrawal of Units

### 7.1 Redemption Days

Units may be redeemed in accordance with the provisions of clause 9 of the Master Trust Deed on a [daily / weekly / monthly] basis (each such day, or if not a Business Day, the first Business Day following such day, being a Redemption Day for the purposes of the Master Trust Deed).

[Other provisions relating to withdrawal procedures (e.g. notice period)?]

### 7.2 Deferral of redemption or switching

[Clause 10.12 of the Master Trust Deed will/will not apply in respect of this Fund.]

[If clause 10.12 will apply to this Fund include other provisions relating to percentage trigger before deferral is implemented.]

### 7.3 Cancellation period for a Redemption Suspension Notice

[In respect of the Fund, the specified period in clauses 9.11(a) to (c) of the Master Trust Deed is [•] days].

## 8. Switching of Units

Units [may/may not] be switched under clause 10 of the Master Trust Deed.

[Other provisions relating to switching (e.g. notice period, special pricing terms)?]

## 9. Transfer of Units

Units may be transferred in accordance with the provisions of clause 11 of the Master Trust Deed.

[Other provisions relating to transfer (e.g. notice period and any other restrictions/limitations)?]

## 10. Limitation on borrowing

For the purposes of clause 14.9 of the Master Trust Deed, the limitation on borrowing is [specify]% of the Net Asset Value of the Fund.

## 11. Distributions

The Manager may from time to time determine the date or dates of allocation and distribution of Entitlements and the Distribution Period to which Entitlements relate. [Other provisions relating to Distributions]

## 12. Minimum and maximum holding and Transaction values

### 12.1 Minimum Holding

The minimum initial investment and ongoing Holding in the Fund is \$[ ].

### 12.2 Maximum Holding

The maximum initial investment and ongoing Holding in the Fund is \$[ ] [or There is no maximum initial investment and ongoing Holding in the Fund.]

### 12.3 Minimum Transaction values

The minimum value for a Transaction in relation to Units is:

- (a) for an issue of Units, \$[ ];
- (b) for a Withdrawal of Units, \$[ ]; and
- (c) for switching of Units, \$[ ].

## 13. Fees and Transaction Costs

### 13.1 Manager's fees and expenses

- (a) [The Management Fee for the purposes of clause 17 of the Master Trust Deed is an amount determined from time to time by the Manager after consultation with the Supervisor and disclosed in the Disclosure Documents, accrued daily and paid monthly in arrears on the last Business Day of each month, plus any GST and any similar Tax.]
- (b) [At the date of this deed, there are no Entry or Exit Fees payable in relation to the Fund or other fees]

### 13.2 Supervisor's fees and expenses

[The Supervisor's remuneration for the purposes of the Master Trust Deed is an amount agreed from time to time between the Manager and the Supervisor accrued daily and paid monthly in arrears, plus any GST and any similar Tax.]

### 13.3 Transaction Costs

The Transaction Costs in respect of the Fund will be:

EITHER

- (a) [the actual cost of investing Application Money in the Fund or the actual or estimated cost to that Fund of divesting the Fund's assets to fund the withdrawal of a Unitholder from that Fund and other administrative costs relating to the sale, redemption or issue of the Units]
- (b) OR [calculated in accordance with the following formula:  
[            ]]

**14. Remuneration of Auditor**

[The remuneration of the Auditor will be paid by the Manager out of its own funds and not out of the Assets of the relevant Fund].]

**15. Master Trust Deed**

**15.1 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.

**15.2 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

[ ] by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

[ ] by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

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Signature of director

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Name of director