



Governing Document relating to Fisher Funds LifeSaver Plan

Fisher Funds Management Limited
Trustees Executors Limited

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Parties

Fisher Funds Management Limited (Fisher Funds or Manager)

Trustees Executors Limited (Supervisor)

Background

- A The Fisher Funds LifeSaver Plan (the **Plan**) was established by a trust deed dated 17 May 1994 for the purpose of providing retirement benefits to employees of employers who agreed to participate in the Plan.
- B The Plan is currently governed by a trust deed dated 29 January 2014 as amended by deeds dated 13 October 2016 and 24 March 2017 (the **Present Trust Deed**).
- C The Manager and the Supervisor wish to amend the Present Trust Deed and replace it with this Deed in order to provide for several new liquidity management tools, the Trusts Act 2019 and make updating changes.
- D The Manager and the Supervisor are satisfied that these amendments will comply with the amendment provisions of the Present Trust 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 Members and the Supervisor has certified to that effect as required by section 139(2) of the Financial Markets Conduct Act 2013 (**FMCA**).

Operative provisions

PART 1: ESTABLISHMENT OF THE PLAN

1 This Deed witnesses

- 1.1 The Present Trust Deed is hereby amended by substituting each and every one of the existing clauses and Rules and Schedules of the Present Trust Deed with the clauses and Rules of this Governing Document so that, from the date of this Governing Document, the Plan will be operated, administered, and governed in accordance with the provisions of this Governing Document.
- 1.2 The Funds established in accordance with the Present Trust Deed continue after the Effective Date on the terms contained in this Governing Document.
- 1.3 The continuation of any Participating Agreement entered into in accordance with the Present Trust Deed is confirmed under this Governing Document (which may be amended from time to time).
- 1.4 The Supervisor agrees to continue to act as trustee and as supervisor of the Plan.
- 1.5 The Plan is constituted upon the terms set out in this Governing Document which shall be binding on the Supervisor, the Manager and the Members of the Plan.

2 Establishment of the Plan

2.1 The purpose or purposes of each respective Section of the Plan are:

2.1.1 in the case of the Workplace Savings Section to provide:

- (a) retirement benefits directly or indirectly to individuals; and

- (b) benefits to eligible individuals on ceasing employment or engagement with an Employer (whether immediately on ceasing that employment or engagement, or subsequently);
- 2.1.2 in the case of the Individual Investor Section, principally to provide retirement benefits directly or indirectly to individuals.
- 2.2 The Plan shall comprise all Assets from time to time held by the Supervisor upon the trusts of this Governing Document including the income arising therefrom.
- 2.3 The Plan shall be managed and administered in accordance with the provisions of this Governing Document.
- 2.4 The Assets of the Plan shall be held on trust by the Supervisor and shall be managed and administered by the Manager on the terms contained and implied in this Governing Document.
- 2.5 The Plan may be closed or wound up at any time in accordance with clauses 30 and 31 respectively.
- 2.6 Nothing in this Governing Document shall restrict the right of a Participating Employer to determine the Employment of an Employee nor shall the retirement age contemplated by this Governing Document be deemed to be imported to any Employee's contract of Employment with a Participating Employer nor shall any Benefit which might otherwise have arisen under the Plan be used as grounds for increasing damages in any action which may be brought by or in respect of a Beneficiary against a Participating Employer.
- 2.7 The Manager must ensure that the Plan meets, and continues to meet, the initial and ongoing registration requirements applicable to the Plan under the FMCA.
- 2.8 The Plan and Funds shall be known by such name or names as the Manager, in consultation with the Supervisor, shall decide from time to time.

3 Trusts Act 2019

- 3.1 The provisions of the Trusts Act are modified or excluded as follows:
 - 3.1.1 Section 31 (duty not to exercise power for own benefit) is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.
 - 3.1.2 Section 34 (duty to avoid conflict of interests) is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.
 - 3.1.3 Section 36 (duty not to profit) is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.
 - 3.1.4 Any provision of the Trusts Act or rule of law restricting the remuneration of the Manager or Supervisor including but not limited to section 37 (duty to act for no reward) of the Trusts Act is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.

4 Period of Plan

4.1 The Plan was established on the Commencement Date and shall continue until the Date of Termination which shall be whichever of the following dates first occurs:

4.1.1 The Winding Up Date specified pursuant to clause 31; and

4.1.2 The date falling one hundred twenty five (125) years less two (2) days from the Commencement Date.

5 Admission of Participating Employers and Individual Investors

5.1 Except where expressly provided otherwise, the terms and conditions in this Governing Document shall apply to all Members of the Plan. Additional terms and conditions of membership will apply to certain Sections, as follows:

5.1.1 Individual Investor Section: the Individual Investor Rules shall continue to apply to Individual Investors;

5.1.2 Workplace Savings Section: the Workplace Savings Rules will apply to Participating Employers and Employees who joined the Plan on or after 9 February 2006; and

5.1.3 Part 3 will continue to apply to Participating Employers and Employees who joined the Plan prior to 9 February 2006.

5.2 The Individual Investor Section is closed to new Members.

5.3 In respect of the Workplace Savings Section, any Employer or Association may be invited by the Manager to participate in the Workplace Savings Section of the Plan. To participate in the Plan an Employer or Association shall complete and sign a Participating Agreement except in the case of an Associated Employer or Associated Participant.

5.4 Any Participating Employer who has completed a Participating Agreement may, with the consent of the Manager, invite an Associated Employer of that Participating Employer to participate in the Plan. Where the Participating Employer who has completed a Participating Agreement is an Association, the Participating Employer may, with the consent of the Manager, invite an Associated Participant to participate in the Plan.

5.5 Any Associated Employer or Associated Participant who participates in the Plan agrees to be bound by the terms of the Participating Agreement entered into by the relevant Participating Employer and the terms of this Governing Document.

5.6 If a Participating Employer who signs a Participating Agreement after 13 July 2001 ceases to participate in the Plan under clause 5.8 a relevant Associated Employer or Associated Participant, as the case may be, may continue to participate in the Plan, provided the Associated Employer or Associated Participant completes and signs a Participating Agreement on the same terms and conditions of the Participating Agreement signed by the relevant Participating Employer. In respect of Participating Agreements entered into on or after 9 February 2006, the consent of the Manager is required in relation to the continued participation by an Associated Employer or Associated Participant under this clause 5.6.

5.7 Any breach of the terms of a Participating Agreement or the terms of this Governing Document by an Associated Employer or Associated Participant who joined the Plan before 29 January 2014 shall be treated as a breach by the relevant Participating Employer and the relevant Participating Employer shall be liable for that breach. An Associated Employer or Associated Participant who joined the Plan on or after 29 January 2014 and who

commits a breach of any of the terms of a Participating Agreement or the terms of this Governing Document shall be liable for that breach as provided for by the terms of the relevant Participating Agreement.

- 5.8 A Participating Employer shall cease to participate in the Plan:
- 5.8.1 on the expiry of giving three (3) Months' written notice to the Manager (or such lesser period as the Manager agrees) that it intends to cease to participate in the Plan; or
 - 5.8.2 if an order is made or resolution is passed for the liquidation or receivership of the Participating Employer (except for the purpose of amalgamation or reconstruction); or
 - 5.8.3 if the Participating Employer ceases in the opinion of the Manager to be in business; or
 - 5.8.4 if the Participating Employer ceases to have any Employees who are Members of the Plan, except where, with the consent of the Manager, a new Employer takes over the employment contracts of Members of the relevant Participating Employer and agrees in writing to be bound by the terms of the relevant Participating Agreement (so far as Relevant Law and current practice allows); or
 - 5.8.5 if in respect of Participating Employers who join the Plan on or after 9 February 2006 the Manager has given the Participating Employer three (3) Months' written notice that it intends to dissolve the Employer Scheme; or
 - 5.8.6 at the discretion of the Manager, if the Participating Employer persistently materially breaches its obligations under this Governing Document or the Participating Agreement and fails to remedy any such breach within thirty (30) days of receiving notice in writing of such breach from the Manager.
- 5.9 Subject to clause 5.10, upon any such termination of participation there shall be deemed to be a dissolution of the Employer Scheme attributable to that Participating Employer and the provisions of clauses 2729, 30, 31 and 32 shall apply (as applicable).
- 5.10 If an Associated Employer or Associated Participant signs a Participating Agreement in accordance with clause 5.6 of this Governing Document, then that part of the Employer Scheme, including an equitable proportion of any Reserve Fund or Employee Special Purpose Reserve Account that is held on trust for the Associated Employer or Associated Participant and those Members of the Plan who are Employees of the Associated Employer or Associated Participant, shall from the date of execution of the new Participating Agreement be held on trust as a new Employer Scheme on the terms of the new Participating Agreement. No Members who are Employees of that Associated Employer or Associated Participant shall be entitled to a Benefit on the dissolution of their former Employer Scheme.

6 Offer of Membership

- 6.1 The Manager must not make a Regulated Offer of Membership in the Plan unless:
- 6.1.1 the Plan is registered under the FMCA;
 - 6.1.2 a PDS has been prepared and lodged on the Disclose Register in respect of the Plan and each Fund; and

- 6.1.3 all of the information that the Register Entry is required to contain under the FMCA has been lodged on the Disclose Register with respect to the Plan and each Fund.
- 6.2 Each Disclosure Document must comply with Relevant Law at the time and, subject to clause 6.4, otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 6.3 The Manager must use reasonable commercial endeavours to ensure that the Disclosure Documents for the Plan and each Fund at all times comply with the Relevant Law.
- 6.4 The Manager shall, unless agreed otherwise, provide to the Supervisor, with reasonable notice, drafts of all proposed Disclosure Documents (other than Fund Updates, drafts of which will be provided to the Supervisor on request) in respect of the Plan and each Fund so as to allow the Supervisor to review and provide comments on the draft (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).

7 Separate Accounts

- 7.1 The Plan shall be divided into separate Employer Schemes in respect of each Participating Agreement and separate Individual Investor Accounts in respect of each Individual Investor.
- 7.2 A new Employer Scheme is constituted once a Participating Agreement has been completed by a Participating Employer and signed by the Manager.
- 7.3 The Supervisor will, following the constitution of an Employer Scheme or Individual Investor Account and the issue of Membership interests in respect of that Employer Scheme or Individual Investor Account, hold any Contributions and any other Assets thereafter becoming part of that Employer Scheme or Individual Investor Account upon trust for the Members who participate in that Employer Scheme or the Individual Investor (as applicable), subject to any Liabilities of that Employer Scheme or Individual Investor Account in accordance with the terms and conditions of this Governing Document, the Participating Agreement and any Relevant Law (as applicable).
- 7.4 The Supervisor will at all times treat an Employer Scheme or an Individual Investor Account as a separate and distinct trust fund with its separate Assets and Liabilities governed by the terms and conditions of this Governing Document and the Participating Agreement (as applicable).
- 7.5 No Member or Participating Employer in respect of one Employer Scheme or Individual Investor Account shall by virtue of participating in that Employer Scheme or Individual Investor Account have any claim on any other Employer Scheme or Individual Investor Account. For the avoidance of doubt, nothing in this subclause shall prevent Tax liabilities or Tax credits relating to a Member's interests in more than one Employer Scheme or Individual Investor Account being netted off for Tax purposes.

8 Side-Pocketing

- 8.1 Where the Manager considers that it is in the interests of the Members holding Units in a Fund generally to do so (for example, but without limitation, to address liquidity or pricing issues in relation to a particular Asset that might lead to the suspension of payments or withdrawals relating to Units in a Fund under clause 49), the Manager may with the approval of the Supervisor, with effect from a particular date (the **Side-Pocket Record Date**), without the agreement of or consultation with Members:

- 8.1.1 determine that particular Assets and Liabilities of a Fund should be quarantined in accordance with this clause 8 (the **Side-Pocketed Assets and Liabilities**); and
- 8.1.2 reclassify, divide or otherwise reconstruct the Unit holdings of Members holding Units in that Fund as at the Side-Pocket Record Date so that those holdings consist of:
- (a) Units that relate to the Assets and Liabilities that have not been side-pocketed (the **Non-Side-Pocketed Assets and Liabilities**); and
 - (b) Units that relate to the Side-Pocketed Assets and Liabilities.
- 8.2 The Manager shall give written notice to the Members holding Units in a Fund in relation to which side-pocketing has occurred under clause 8.1 as soon as reasonably practicable after the Side-Pocket Record Date stating that side-pocketing has occurred in relation to the Fund and including such other information as the Manager and the Supervisor may consider necessary (including details of any arrangements in respect of the items set out in clause 8.3).
- 8.3 The provisions of this Governing Document will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the Units relating to the Side-Pocketed Assets and Liabilities as if the relevant Fund consisted solely of the Side-Pocketed Assets and Liabilities and the related Units provided that the Manager and the Supervisor may agree special arrangements relating to the Side-Pocketed Assets and Liabilities and the related Units. Without limiting the generality of the proviso to the previous sentence, those special arrangements may include:
- 8.3.1 arrangements for how withdrawal, transfer or switch requests or Benefit payments should be treated (including, without limitation, preventing Members from making requests or cancelling requests as necessary);
 - 8.3.2 arrangements preventing the issue of any further Units relating to the Side-Pocketed Assets and Liabilities;
 - 8.3.3 arrangements for the realisation/discharge of the Side-Pocketed Assets and Liabilities;
 - 8.3.4 arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets to or for the benefit of Members holding Units relating to the Side-Pocketed Assets and Liabilities;
 - 8.3.5 arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of Units relating to the Side-Pocketed Assets and Liabilities);
 - 8.3.6 arrangements relating to the fees and expenses associated with, and any further liabilities that may be incurred in respect of, the Side-Pocketed Assets and Liabilities and the related Units;
 - 8.3.7 arrangements relating to the recovery of PIE Tax liability from Members holding Units relating to the Side-Pocketed Assets and Liabilities (including where applicable the recovery of a PIE Tax liability relating to Side-Pocketed Assets and Liabilities from such Members by way of arrangements relating to Units (if any) held by such Members that relate to the Non-Side-Pocketed Assets and Liabilities) and the payment of Tax liabilities in respect of the Fund;

- 8.3.8 arrangements that the Manager and the Supervisor consider appropriate in relation to the Fund's or the Plan's status as a PIE; and
 - 8.3.9 such other arrangements as the Manager and the Supervisor consider to be appropriate and in the interests of Members holding Units in the relevant Fund generally in relation to the side-pocketing arrangements contemplated by this clause 8.
- 8.4 For the avoidance of doubt, the side-pocketing arrangements contemplated by this clause 8 operate within the affected Fund and do not create a new and separate Fund. Unless required by law, the Manager need not prepare separate financial statements relating to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities provided that the Manager must prepare accounts in such form as the Supervisor considers necessary to provide adequate disclosure to Members.

9 Unitisation

- 9.1 The Manager shall operate each Fund on a unitised basis, with the beneficial interests in each Fund divided into Units.
- 9.2 Units referable to a Fund shall:
- 9.2.1 be of one class and shall confer identical rights and interests;
 - 9.2.2 confer on each Member an equivalent interest in all of the Investments comprised in the relevant Fund, but shall not confer any interest, to the exclusion of any other Member, in any particular Investment comprised in the relevant Fund (with the result that no Member will be entitled to require the transfer of any Investment to the Member); and
 - 9.2.3 not confer any right or interest in the Assets of any other Fund.
- 9.3 The Unit Price shall be determined on each Valuation Day by dividing the Net Value of the relevant Fund by the number of Units then on issue in respect of that Fund and rounding the product in the manner, and to the number of decimal places, as the Manager may decide in its absolute discretion. For the avoidance of doubt, the Net Value used to determine the Unit Price on a Valuation Day shall not include amounts received for which Units are to be but have not been issued, and shall include amounts debited, transferred or withdrawn from the Plan for which Units are to be but have not been redeemed, at the time of such determination.
- 9.4 Subject to clause 9.6, in respect of:
- 9.4.1 each Contribution and other amount accepted into the Plan under Rule 54, Rule 81 or Rule 102;
 - 9.4.2 any other amount accepted into the Plan which the Manager considers should give rise to the issue of Units; and
 - 9.4.3 any amount switched from one Fund to another Fund;
- the Manager shall issue Units in the relevant Fund or Funds:
- 9.4.4 by the next Valuation Day after the acceptance of a valid Contribution, valid application, or valid request to switch (as determined by the Manager); or

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

Units issued under this clause 9.4 shall be based upon the amount accepted, payable or transferred (net of any amount that the Manager considers appropriate to deduct for fees, expenses, Taxes, the Buy Spread (if any) referred to in clause 9.5 or other liabilities) and the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on the day when the Units are issued.

- 9.5 The Buy Spread shall be such sum, if any, as the Manager may from time to time determine, either generally or in relation to a particular proposed issue of Units, to be a fair amount, in relation to the Units to be issued, to provide for the likely cost of purchasing or developing Assets for the relevant Fund. The amount of the Buy Spread payable on the issue of the Units shall be applied by the Manager in payment of purchase and development costs and expenses on behalf of the relevant Fund.

- 9.6 Without limiting clause 9.4, the Manager may delay converting into Units under clause 9.4 any Contributions accepted into the Plan in respect of any Member or group of Members until such time as the Manager is reasonably satisfied that those Contributions do not exceed the amount required to be paid to the Plan in respect of that Member (or those Members collectively) under this Governing Document and have not otherwise been paid in error.

- 9.7 Without limiting clause 9.4 or any other provision of this Governing Document the Manager, after consulting with the Supervisor, may determine at any time or times that from a specified date no further Units will be issued pursuant to this Governing Document (or, if applicable, in relation to a specified Fund or Funds) either:

9.7.1 for a specified period; or

9.7.2 until the Plan (or the relevant Fund or Funds) is (or are) terminated;

and in that case the Manager shall not, after the date specified and for the period contemplated by clause 9.7.1 or clause 9.7.2 (as applicable), issue any further Units under this Governing Document or in relation to such Fund or Funds.

- 9.8 In respect of amounts debited, transferred or withdrawn from the Plan, or switched from one Fund to another Fund, the Manager shall redeem the number of Units determined by dividing the amount debited by the relevant Unit Price or Unit Prices applying on a day no later than the next Valuation Day after the Manager determines that the debit, transfer or withdrawal shall be made (provided that, for amounts debited on account of Tax payable, the Manager may use the Valuation Day on which the Manager finally determines the amounts of Tax payable). The Sell Spread (if any) referred to in clause 9.9 shall be deducted in respect of any amounts debited, transferred or withdrawn under this clause 9.8.

- 9.9 The Sell Spread shall be such sum, if any, as the Manager in its discretion may determine (either generally or in relation to particular Units) to be a fair amount payable in relation to the relevant Units having regard to the Manager's estimate of the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual payments which would likely be incurred in respect of the sale or disposal of the Assets on the date of calculation of the Unit Price for the relevant Fund.

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

- 9.11 Units that the Manager determines have been issued in error may be treated as void unless a Member has altered his or her position in good faith to the Member's detriment in reliance on the validity of those Units (in circumstances where Relevant Law does not require the Units to be treated as void).
- 9.12 For the purposes of this clause 9, the Manager may at any time and from time to time:
- 9.12.1 create and cancel part Units; and
- 9.12.2 consolidate or divide Units;
- in each case in such manner as the Manager (acting reasonably) determines.

10 Unit pricing errors

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

11 Appointment and removal of Supervisor

- 11.1 The Supervisor at the date of execution of this Governing Document shall be Trustees Executors Limited.
- 11.2 The Supervisor continues to act as the trustee of the Plan and is the supervisor of the Plan for the purposes of the FMCA. The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Plan under the FMCA and this Governing Document.
- 11.3 The Plan shall have a single supervisor who must:
- 11.3.1 not be the Manager or an Associated Person of the Manager; and
- 11.3.2 must be a Licensed Supervisor whose licence covers the Plan.
- 11.4 The Supervisor shall cease to be the trustee and supervisor of the Plan in the circumstances prescribed in the FMCA or, subject to the requirements of the FMCA, the Manager may remove the Supervisor from the office with the FMA's prior consent:

- 11.4.1 with immediate effect by giving the Supervisor written notice of such removal if the Manager reasonably believes that the Plan will be adversely affected if the Supervisor continues to hold office, such notice to specify the grounds on which the Manager has formed this belief; or
 - 11.4.2 otherwise upon giving the Supervisor not less than 30 days' written notice of such removal in other circumstances.
- 11.5 Subject to clauses 11.2 and 11.4 and the requirements of the FMCA, the Supervisor may retire at any time upon giving not less than 30 days' notice in writing to the Manager of its intention to do so.
- 11.6 No removal or retirement under clause 11.4 or clause 11.5 will take effect unless:
- 11.6.1 the requirements for such removal or retirement, and for any new supervisor under the FMCA (if applicable) or any Relevant Law have been met;
 - 11.6.2 a new Licensed Supervisor has been appointed and has executed the deed referred to in clause 11.8 and
 - 11.6.3 all of the Scheme Property of the Plan has been transferred to the new Licensed Supervisor, or a Custodian(s) which holds all of the Scheme Property of the Plan and has acknowledged, in its capacity as Custodian for the Plan, that it is acting for the new supervisor.
- 11.7 The power of appointing a new supervisor of the Plan (in place of a supervisor which has been removed from office or retired) is vested in the Manager.
- 11.8 Any new supervisor must forthwith upon appointment execute a deed in such form as the Manager may require whereby the new supervisor undertakes to the Manager and the Members to be bound by all the covenants on the part of the former supervisor under this Governing Document from the date of such appointment.
- 11.9 From the date of execution by the new supervisor of a deed in accordance with clause 11.8, the retiring supervisor is absolved and released from all covenants under this Governing Document (except in respect of prior breach) and the new supervisor must thereafter exercise all powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the supervisor under this Governing Document in all respects as if such supervisor had been originally named as a party to this Governing Document.
- 11.10 Nothing contained in this Governing Document shall be construed as preventing the Supervisor from establishing, or acting as supervisor in relation to, another managed investment scheme.

12 Indemnities and liability

- 12.1 Subject to this Governing Document and the indemnity limitations under the FMCA, neither the Supervisor nor the Manager shall, to the maximum extent permitted by Relevant Law, be liable for:
- 12.1.1 Any losses or damages except losses or damages arising from its own wilful default or wilful breach of trust or the dishonesty of its directors or officers; or
 - 12.1.2 Any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in it by this Governing Document; or

- 12.1.3 Any omission or omissions or non-exercise in respect of any trust, power or discretion of the Supervisor or the Manager under this Governing Document.
- 12.2 The Supervisor and the Manager shall each be indemnified out of each Employer Scheme, Individual Investor Account or Fund, as applicable, to the maximum extent permitted by Relevant Law, against all liabilities (including Tax) and expenses incurred by it or them in the exercise or attempted exercise of the trusts, powers and discretions vested in it or them pursuant to this Governing Document in relation to that Employer Scheme, Individual Investor Account or Fund, as applicable, in respect of any matter or thing done or omitted to be done in any way relating to that Employer Scheme, Individual Investor Account or Fund. No Person, in respect of any action of the Supervisor or the Manager relating to any Employer Scheme, Individual Investor Account or Fund shall have any claim on any other Employer Scheme, Individual Investor Account or Fund. This indemnity shall extend to any payments made to any Person whom the Supervisor or the Manager (as applicable) bona fide believes to be entitled thereto although it may be subsequently found that the Person was not in fact so entitled.
- 12.3 To the maximum extent permitted by the FMCA, the Supervisor or the Manager (as applicable) shall have a lien or charge over all Assets in each Employer Scheme, Individual Investor Account or Fund for the indemnity and may retain and pay out of the Investments in any Employer Scheme, Individual Investor Account or Fund all sums and amounts necessary to give effect to the indemnity.
- 12.4 For members joining from the Effective Date, subject to the indemnity limitations under the FMCA, if a Member's Account balances are insufficient to meet any liability for Tax payable by the Plan, the Manager or the Supervisor (whether current or deferred) which is:
- 12.4.1 attributed under the Tax Act to the Beneficiary; or
- 12.4.2 determined by the Manager to be attributable to the Beneficiary, then the Beneficiary shall indemnify the Supervisor and the Manager for that shortfall.
- 12.5 The Manager may agree:
- 12.5.1 to limit the liability (in connection with its services in respect of the Plan) of; and/or
- 12.5.2 to indemnify and reimburse out of the Plan Assets,
- any Investment Manager or Administration Manager appointed in respect of the Plan, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the Investment Manager or Administration Manager in respect of the Plan or any action taken or omitted to be taken in connection with the Plan (including, without limitation, legal fees and disbursements).
- 12.6 The Supervisor may agree:
- 12.6.1 to limit the liability (in connection with its services in respect of the Plan), of; and/or
- 12.6.2 to indemnify and reimburse out of the Plan Assets,
- any Custodian appointed in respect of the Plan, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Plan or any action taken or omitted to be taken in connection with the Plan (including without limitation, legal fees and disbursements).
- 12.7 Unless the Supervisor or the Manager is liable pursuant to clause 12.1.1 of this Governing Document, the liability of the Supervisor or the Manager (as applicable) under this

Governing Document, or at any Relevant Law, shall at all times be limited to the Assets of the relevant Fund(s).

- 12.8 The Manager may from time to time, at its absolute discretion, indemnify affected Members of each Employer Scheme and Individual Investor Account for all losses, liabilities, costs, damages and expenses suffered by the Member, caused through any negligence or breach of law by the Manager.
- 12.9 No provision of this clause 12 has the effect of indemnifying the Supervisor or the Manager or any director or officer of either of them, to the extent that doing so would be void under the FMCA or any other statute.

13 Supervisor's powers and duties

- 13.1 The Supervisor, in exercising its functions as the trustee and supervisor of the Plan, must comply with the general duties under the FMCA and, in exercising its powers and performing its duties as supervisor, comply with the professional standard of care under the FMCA.
- 13.2 In addition to any powers granted under this Governing Document or by Relevant Law, but subject to the FMCA, the Supervisor may:
- 13.2.1 delegate the performance of its functions in respect of the Plan to any person only to the extent such delegation is permitted by Relevant Law; and
 - 13.2.2 do anything the Supervisor, acting reasonably, considers necessary to enable it to discharge its statutory duties in relation to the Plan.
- 13.3 The Supervisor is entitled, in the performance of the Supervisor's functions, to engage an expert in accordance with Relevant Law.

14 Appointment of Custodians

- 14.1 The Supervisor shall ensure that all Assets of the Plan are held in the name of the Supervisor or any Custodian or sub-custodian appointed in accordance with this clause.
- 14.2 The Supervisor may from time to time, having consulted with the Manager, appoint in writing, any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any of the Scheme Property of the Plan is to be vested. The Custodian must meet the external custodianship requirements for such person under the FMCA. The Supervisor shall be jointly and severally liable with the Custodian for the performance by the Custodian of the functions imposed on it pursuant to this clause 14.2 (and subject to the same duties and restrictions), in accordance with clause 14.4.
- 14.3 If authorised in writing by the Supervisor, having consulted with the Manager, a Custodian appointed under clause 14.1 may itself appoint one or more sub-custodian (other than the Manager or an Associated Person of the Manager) in which any of the Scheme Property of the Plan is to be vested. Any sub-custodian appointed under this clause 14.3 must meet the requirements for such a person under the FMCA. The Supervisor and the Custodian which appointed that sub-custodian shall be jointly and severally liable with the sub-custodian for the performance by the sub-custodian of all the functions imposed on it pursuant to this clause 14.3 (and subject to the same duties and restrictions), in accordance with clause 14.4.
- 14.4 Where the Supervisor appoints a Custodian, the Supervisor shall take all reasonable steps to ensure that the custodial functions for the Plan are performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Supervisor were

performing the custodial functions itself and in a manner which complies with all of the obligations relating to holding the Assets as supervisor or custodian expressed or implied in this Governing Document and Relevant Law.

- 14.5 The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to this clause 14, the fees that may be charged and the extent to which expenses will be reimbursed out of the Scheme Property provided that such fees and expenses are no more than usual commercial rates.

15 Manager's powers and duties

- 15.1 The Manager, in exercising its functions as the manager of the Plan, must comply with the general duties applicable to it under the FMCA and, in exercising any powers or performing any duties as manager, comply with the relevant professional standard of care under the FMCA.
- 15.2 Without limiting the generality of the foregoing, the Manager shall perform each of the following specific functions and duties in relation to the Plan:
- 15.2.1 admitting Employers and all other Members;
 - 15.2.2 establishing and maintaining the Register, procuring that the Register is audited, and maintaining records for all Accounts, in accordance with the requirements of the FMCA;
 - 15.2.3 acquiring and disposing of Investments for each Fund in accordance with the SIPO which covers the Fund;
 - 15.2.4 arranging for the receipt and acceptance of Contributions and other monies payable to the Plan;
 - 15.2.5 providing Members with all information, notices and disclosures required to be given to Members under the FMCA;
 - 15.2.6 effecting switches between Funds where a Member amends their Investment Direction pursuant to clause 43;
 - 15.2.7 discharging its obligations under clause 50, the Workplace Savings Rules and the Individual Investor Rules with respect to valuations and benefit calculations;
 - 15.2.8 determining the terms of all contracts to be entered into in respect of the Plan provided that the Manager must ensure that at all times, to the extent possible having regard to Relevant Law, the liability of the Supervisor in relation to any contract is limited to the assets of the Plan or the relevant Fund or Funds (as applicable);
 - 15.2.9 subject to the requirements of the FMCA, determining whether Benefits are payable and arranging for the payment of Benefits to or in respect of Members, and for transfers to other Retirement Schemes;
 - 15.2.10 appointing and engaging solicitors and other consultants, advisers, Investment Managers, Administration Managers and, in consultation with the Supervisor, the Auditor on such terms as the Manager determines;
 - 15.2.11 arranging insurance under one or more Group Insurance Policies for Insured Benefits and arranging for any Benefits to be paid under a Group Insurance Policy;

- 15.2.12 making available to the Supervisor or to the Custodian or the Auditor the whole of the records of the Manager kept pursuant or in relation to this Governing Document whether kept at the Manager's registered office or elsewhere;
- 15.2.13 without limiting sections 147 to 151 of the FMCA, giving the Supervisor, the Custodian or the Auditor such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by Relevant Law or requested by the Supervisor under Relevant Law in order for the Supervisor to perform its duties under the FMCA (such agreement shall not be unreasonably withheld);
- 15.2.14 at the request of the Supervisor give the Supervisor or its nominated company or the Auditor, such oral or written information as may be required with respect to matters relating to the Manager as manager of the Plan provided that the Supervisor shall only request such information in the following circumstances:
 - (a) after consultation with the Manager; and
 - (b) if the Supervisor reasonably believes that the Manager is unable or is likely to become unable to carry out its obligations under this Governing Document and the Supervisor certifies its belief and the reasons for such request in writing to the Manager;
- 15.2.15 providing to the Supervisor on request such information or access to employees and board members of, and (where practical) service providers to, the Manager as the Supervisor reasonably requires;
- 15.2.16 notifying the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Members or the Manager's licence under the FMCA;
- 15.2.17 ensuring compliance by the Plan with the requirements of Relevant Law;
- 15.2.18 ensuring compliance by the Plan with all Tax obligations;
- 15.2.19 maintaining all accounting records for the Plan and allowing for inspection of those records to the extent required by the FMCA;
- 15.2.20 arranging for the preparation, audit and lodgement of the financial statements for the Plan, and the preparation of the Plan's annual reports in accordance with the requirements of the FMCA;
- 15.2.21 taking all actions and making all determinations, decisions or elections relevant to the Tax treatment or status of the Plan; and
- 15.2.22 exercising such other powers, authorities, functions and discretions as are granted or imposed by the FMCA or incidental to the above functions.

16 Delegation by Manager

- 16.1 The Manager may delegate the performance of all or any of the Manager's powers, authorities, functions and discretions under the FMCA or the provisions of this Governing Document (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions) to any person, with the same power to sub-delegate, including any Associated Person of the Manager, and the Manager may agree with such delegate the fees that may be charged and the extent to which expenses will be reimbursed as the Manager may

consider suitable having regard to normal commercial terms, provided that the Manager shall:

- 16.1.1 take all reasonable steps to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
- 16.1.2 take all reasonable steps to monitor the performance of those functions; and monitor the performance of those functions; and
- 16.1.3 at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

17 Supervisor's duty to refuse to act on wrongful direction

- 17.1 The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on a direction of the Manager in the circumstances where such a refusal is required by the FMCA and the Supervisor (and any Custodian) shall not be liable to Members or the Manager for so refusing to act (or for directing any Custodian to so refuse to act).
- 17.2 If the Supervisor refuses pursuant to clause 17.1 to act (or directs any Custodian to refuse to act) on a direction from the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for refusal or direction.

18 Absolute and uncontrolled discretion

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

19 Borrowing powers

- 19.1 Subject to the relevant SIPO and clause 17, the Supervisor may at the direction of the Manager and in respect of any Fund:
 - 19.1.1 borrow or raise money from any Person (including a Member or the Supervisor); or
 - 19.1.2 enter into any form of credit facility or other accommodation or sell, discount and deal with bills of exchange; or
 - 19.1.3 charge the Assets of the Employer Scheme, Individual Investor Account or Fund as security for any monies borrowed or raised or for the purposes of acquiring further Assets for the Employer Scheme, Individual Investor Account or Fund.
- 19.2 All borrowings, raising of money, charging of Assets or other transactions entered into or undertaken pursuant to clause 19.1 (**Security Transactions**) shall only be entered into or made where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Members, or for the purposes of conducting the investment or management or other operation of an Employer Scheme or Individual Investor Account pursuant to this Governing Document.

20 Investment Records

- 20.1 The Supervisor or Custodian must keep, or ensure that there are kept, complete, accurate and separate records of all Investments constituting each of the Funds in accordance with the applicable requirements of Relevant Law.
- 20.2 The Supervisor or Custodian must keep the records required by clause 20.1, or ensure that they are kept, in a manner that enables those records to be conveniently inspected and used by the Manager and the Supervisor or its agents and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with the applicable requirements of Relevant Law.
- 20.3 The Manager is entitled to assume that the Supervisor's or Custodian's records of Investments are complete and accurate and may rely upon them accordingly.

21 Related Party Benefits

- 21.1 The Manager must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the FMCA.
- 21.2 The Manager must give prior written notice to the Supervisor in respect of a transaction which provides for a Related Party Benefit.
- 21.3 Neither the Manager nor any such Related Party is liable to account to the Supervisor or any Member for any profit arising from any transaction that gives a Related Party Benefit and that the Manager is permitted to enter into under the FMCA.
- 21.4 A failure to comply with this clause does not affect the validity of a transaction (subject to any Court order to the contrary).

22 Accounts

- 22.1 The Manager shall keep or cause to be kept such accounting records as are required by Relevant Law.
- 22.2 The Manager shall allow for inspection of the accounting records relating to the Plan to the extent required by Relevant Law.
- 22.3 The Manager shall cause financial statements to be prepared, audited and lodged with the Registrar of Financial Service Providers in respect of each Fund and the Plan in accordance with Relevant Law.

23 Auditor

- 23.1 A Qualified Auditor selected by the Manager in consultation with the Supervisor and entitled by Relevant Law to act as such must be appointed as Auditor of the Plan. The Manager, in consultation with the Supervisor, must agree upon the services to be performed and reports to be provided by the Auditor, and their scope having regard to requirements under the FMCA. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.
- 23.2 The Auditor may at any time and from time to time be removed by the Manager with notice to the Supervisor. The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Plan and/or Members and instructs the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' notice in writing.

- 23.3 Any vacancy in the office of Auditor must be filled by the Manager, in consultation with the Supervisor, appointing as Auditor a licensed auditor or registered audit firm entitled by law to act as such.
- 23.4 The Auditor may be the auditor of the Manager, or of the Supervisor, or of an Associated Person of either the Manager or the Supervisor or of any other managed investment scheme whether of a similar nature to the Plan or otherwise.
- 23.5 The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's opportunity to report to the Supervisor.

24 Register of Members

- 24.1 The Manager shall keep and maintain or cause to be kept and maintained in New Zealand in respect of the Plan an up-to-date Register of Members in each Fund. Such Registers shall:
- 24.1.1 be kept in the manner;
 - 24.1.2 contain the content;
 - 24.1.3 be audited; and
 - 24.1.4 be available for inspection; as required by the FMCA.
- 24.2 The Register may be kept in the form of an electronic register.
- 24.3 Each of the Supervisor and the Manager shall be entitled to rely absolutely upon entries in the Register for the Plan being correct if it reasonably believes that the Register has been adequately maintained and neither the Supervisor, the Manager nor any of the Supervisor's or the Manager's agents, shall incur any liability or responsibility on account of any mistake in respect of the Register.
- 24.4 Any change of name or address, Tax File Number or Prescribed Investor Rate of any Member shall be notified by the Member, in writing or in any other manner approved by the Manager, to the Manager or any registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

25 Non-recognition of equitable interest

- 25.1 The Supervisor and the Manager shall be entitled to treat the registered Members as the absolute owners of all interests in the Plan and accordingly shall not, except as ordered by a court of competent jurisdiction or as required by statute, be bound to recognise (even when having notice thereof) any equitable or other claim to or interest in the Plan on the part of any other Person.

26 Transfers in

- 26.1 If any Member is entitled to transfer (in cash or in specie at the discretion of the Manager) from any other Retirement Scheme the Manager shall, at its discretion, accept a transfer from that other scheme in accordance with the relevant requirements of the FMCA.
- 26.2 The amount transferred (being comprised of cash, or transfer to the Supervisor or a Custodian on account of the Fund the investments agreed to be acquired by the Fund or such combination of them as the Manager may determine from time to time in its absolute discretion) shall be credited to the Member Account, Voluntary Account, Employer Account, the Employer Special Purpose Account, the Relevant Reserve Fund, the Individual Investor

Member Account or the Individual Investor Employer Account of that Member (as applicable), in such proportions as is agreed between the Manager, any manager (or any other authorised person) of a transferor Retirement Scheme or the Member as the case requires for investment by the Manager in accordance with this Governing Document and the Manager must have regard to any applicable restrictions on the amount or investments transferred.

26.3 The Manager shall invest the amount so transferred as soon as practicable by investing in accordance with that Member's Investment Direction.

26.4 The Participating Employer may grant a Member transferring to the Plan a period of additional Employment to be included in the Member's Employment for the purposes of the Plan.

27 Transfers out

27.1 Any transfers from the Plan, or between Sections, shall be in accordance with the relevant requirements of the FMCA.

27.2 Subject to clause 27.1 above, where a Member becomes a member of another Retirement Scheme, Equivalent Overseas Scheme or the Member is an Individual Investor, the Manager shall (at its discretion), on the request of the Member, subject to the consent of the manager (or any other authorised person) of that other Retirement Scheme or Equivalent Overseas Scheme (if applicable) and subject to any limitations attached to the Member's Locked-in Interest, either make an in specie transfer or realise all investments of that Member and, as soon as the proceeds are received by the Manager transfer to the manager (or any other authorised person) of such Retirement Scheme or Equivalent Overseas Scheme or to the Individual Investor Account (as applicable) an amount equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account (as applicable) of that Member PROVIDED THAT in paying any such transfer amount or transferring the assets the Manager and the Supervisor shall at all times comply with Relevant Law. A Member shall not need to cease Employment with his or her Participating Employer for this clause to apply.

27.3 Where a Member ceases to be a Member through ceasing to be Employed by a Participating Employer and immediately thereafter commences Employment with another Employer who also participates in the Plan, the Manager shall, on the request of the Member, subject to the consent of the new Employer, transfer into the new Employer Scheme of the Employer the balance of that Member's Member Account, Voluntary Account, Employer Account or Employer Special Purpose Account in such proportions as are agreed by the Manager after consultation with the original Participating Employer and the new Participating Employer PROVIDED THAT the Supervisor and the Manager must comply with the FMCA.

27.4 A Member in respect of whom a full transfer is made to another Retirement Scheme or an Equivalent Overseas Scheme under clause 27.2 shall not be entitled to any other Benefit under the Plan and the receipt issued by the proper officer of that other Retirement Scheme or an Equivalent Overseas Scheme in respect of the transferred amount shall be a complete discharge to the Supervisor and the Manager of all liability in respect of the Member under the Plan and the Supervisor and the Manager shall be under no liability to see to the application of the amount transferred.

28 Meetings

28.1 The Manager may call a meeting of Members at any time and, when required by the FMCA, the Manager must call a meeting of Members in the manner and on the basis set out in the FMCA and the FMC Regulations.

- 28.2 A meeting of Members shall be conducted in accordance with the requirements of the FMCA.

29 Dissolution of an Employer Scheme

- 29.1 Upon dissolution and windup of an Employer Scheme as provided in clause 5.9 no further persons shall be admitted to membership of the Plan in respect of that Employer Scheme and no contributions shall be accepted and no further investments made in respect of Members who participate in that Employer Scheme.
- 29.2 In the event of dissolution and wind up of an Employer Scheme, subject to clause 5.10, the Supervisor shall, subject to any limitations attached to the Member's Locked-in Interest or UK Transfer:
- 29.2.1 firstly, realise all investments in respect of the relevant Reserve Fund and relevant Employer Special Purpose Reserve Account and apply the relevant Reserve Fund and relevant Employer Special Purpose Reserve Account in the manner provided for in Rules 59.3.1, or 59.3.3 and 60.3.1, 60.3.2 or 60.3.3 and 86.3.1, 86.3.2 or 86.3.3 (as applicable) as the Supervisor shall determine; and
 - 29.2.2 secondly, subject to any restriction relating to investment in a Fund, realise all investments in respect of the Employer Scheme as soon as practicable and apply the proceeds in accordance with clause 31.
- 29.3 In the event of dissolution of an Employer Scheme, the Employer Scheme will be wound up only once all proceeds have been paid out in accordance with clause 29.2 and any Locked-in Interests have become payable and/or transferred to another Employer Scheme or Retirement Scheme.

30 Closing of the Plan

- 30.1 The Manager may close the Plan at any time if (after first giving to the Supervisor not less than ninety (90) days' prior notice in writing of its intention) resolves to close the Plan.
- 30.2 The Plan shall be closed in accordance with the following provisions:
- 30.2.1 The resolution to close the Plan shall specify a closing date from which the closure shall take place (in this clause called the **Closing Date**);
 - 30.2.2 After the passing of the resolution each Participating Employer and each Member of the Plan shall be promptly given notice in writing of the closure of the Plan;
 - 30.2.3 The FMA shall, after the passing of the resolution, be given notice in writing of the intention to close the Plan;
 - 30.2.4 No Members shall be admitted to the Plan after the Closing Date;
 - 30.2.5 No further Contributions shall be accepted by the Manager for the Plan after the Closing Date;
 - 30.2.6 After the Closing Date Members of the Plan shall be entitled to a Benefit in accordance with this Governing Document, subject to any limitations attached to any UK Transfer, and the Plan shall be wound up and terminated when the last Member has received all Benefits payable to them from the Plan.

31 Winding Up of the Plan

31.1 The provisions of the FMCA relating to the winding up of the Plan and each of its Funds shall apply to the winding up of the Plan or each of its Funds.

31.2 The Plan shall be wound up:

31.2.1 if the Manager resolves to wind-up the Plan and notifies the Supervisor in writing of the date the Plan (as the case may be) is to commence being wound up, or

31.2.2 if a Special Resolution of Members is passed to wind up the Plan;

31.2.3 if the Plan is required to be wound up pursuant to the FMCA, this Governing Document, by the Courts or by operation of law; or

31.2.4 upon the date of termination described in clause 4.1.2,

and immediately after any of the foregoing events on the effective date of winding up of the Plan no further persons shall be admitted to membership of the Plan and no further Contributions shall be accepted and the Manager shall wind up the Plan and realise all Investments in the manner set out in this Governing Document or Relevant Law as soon as practicable thereafter, and shall comply with all the provisions of the FMCA relating to the winding up of the Plan as a consequence of the winding up of the Plan.

31.3 The proceeds obtained from realising all Assets and other interests in the Plan shall, be applied by the Supervisor in the following order of priority:

31.3.1 **FIRSTLY**, in meeting all costs, charges, expenses and Liabilities, and any Tax of the Plan or of the Members, which are attributable to the Plan or any Employer Scheme or Individual Investor Account PROVIDED THAT no costs, charges, expenses and Liabilities which are attributable to any one Employer Scheme or Individual Investor Account shall be met from any other Employer Scheme or Individual Investor Account. Where any such costs, charges, expenses and Liabilities are attributable to the Plan or are in respect of two (2) or more Employer Schemes or Individual Investor Accounts then the Supervisor shall apportion such costs, expenses, charges or Liabilities between the respective Employer Schemes or Individual Investor Accounts in such manner as the Supervisor thinks is fair and equitable; and

31.3.2 **SECONDLY**, by payment from the proceeds attributable to the Employer Scheme or Individual Investor Account in payment of any Benefits which became payable prior to the Winding Up Date of the Plan and remain unpaid at that date; and

31.3.3 **THIRDLY**, by:

(a) in the case of each Employer Scheme, payment from the proceeds attributable to the Employer Scheme in the payment or distribution to each Member for whom provision has not already been made the value of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account of the Member at the date the winding up takes effect; and

(b) in the case of each Individual Investor Account, payment from the proceeds attributable to the Individual Investor Account in the payment or distribution to the Member for whom provision has not already been made of the value of the Individual Investor Account at the date the winding up takes effect; and

- 31.3.4 **FOURTHLY**, with the consent of the relevant Participating Employer (if applicable), in augmenting, from the balance remaining in respect of the Employer Scheme, all or any of the benefits under sub clauses 31.3.2 or 31.3.3(a) above; and
- 31.3.5 **FIFTHLY**, with the prior written consent of the FMA refunding the balance attributable to a particular Employer Scheme or Individual Investor Account to the relevant Participating Employer, (if applicable). If the FMA refuses to consent to a payment to the Participating Employer, or if there is no applicable Participating Employer, the Supervisor shall apply the unexpended balance of each Employer Scheme or Individual Investor Account under clause 31.3.4. In such case the consent of the Participating Employer to such application shall not be required.
- 31.4 Notwithstanding anything contained elsewhere in this Governing Document, a Member shall only have an interest, as provided in this Governing Document:
- 31.4.1 In the Employer Scheme or Individual Investor Account in respect of which that Member participates in the Plan.
- 31.4.2 In the Fund in respect of which Contributions paid in respect of that Member have been invested by the Supervisor.
- 31.5 A Person in respect of whom an allocated amount has been paid or transferred under the provisions of clause 31.3 shall have no right to resort to or claim against the Plan otherwise than in respect of the amount so allocated.
- 31.6 If the Manager is unable to locate a Member, having used reasonable endeavours in accordance with Relevant Law, the Manager shall transfer the entitlements of that Member in accordance with Relevant Law.

32 Winding up Individual Investor Section

- 32.1 The Individual Investor Section shall be wound up if the Manager resolves to wind-up the Individual Investor Section and notifies the Supervisor in writing of the date the Individual Investor Section is to commence being wound up. The Manager shall proceed to wind up the Individual Investor Section in accordance with clause 31.
- 32.2 As at the date when the wind-up of the Individual Investor Section takes effect all Contributions by or in respect of Members of the Individual Investor Section shall terminate except in relation to Contributions that had already become payable but were as yet unpaid as at the effective wind-up date.
- 32.3 As at the date when the wind-up of the Individual Investor Section takes effect, all Members of the Individual Investor Section shall cease to be Members.
- 32.4 Upon the Individual Investor Section being wound up pursuant to this clause 32:
- 32.4.1 the Assets and other interests comprised in the Individual Investor Account shall be realised; and
- 32.4.2 the proceeds shall be applied by the Supervisor in the order of priority set out in clause 31.3 above (as applicable).
- 32.5 A Person in respect of whom an allocated amount has been paid or transferred under the provisions of clause 31.3 shall have no right to resort to or claim against the Plan otherwise than in respect of the amount so allocated.

33 Supervisor's fees

- 33.1 The Supervisor shall be paid from each Employer Scheme or Individual Investor Account in respect of its ongoing service under this Governing Document such fee or fees as are commensurate with the service performed having regard to fees charged by supervisors or trustees of similar trusts and as are agreed between the Manager and the Supervisor from time to time.
- 33.2 The Supervisor may be paid an establishment fee in respect of each Participating Agreement as specified in the Participating Agreement. The establishment fee shall be a maximum of \$5,000.
- 33.3 The Supervisor may increase any fees on any Review Date by a percentage which does not exceed the percentage increase during the immediately preceding calendar year in the All Groups Index Numbers of the Consumers Price Index prepared by the Government statistician or such other equivalent measure as agreed between the Manager and the Supervisor.
- 33.4 The Supervisor's fee under clause 33.1 shall be paid in arrears on the last day of each quarter or as otherwise agreed between the Supervisor and the Manager.

34 Manager's fees

- 34.1 The Manager may charge for its services with respect to the Plan any or all of the following fees (in each case in such amounts as the Manager shall determine and notify to the Supervisor in writing from time to time):
- 34.1.1 annual and other fees which are:
- (a) calculated daily and payable monthly in arrears;
 - (b) expressed as percentages of the gross asset value in each respective Fund; and
 - (c) paid from the Assets of the Plan by way of either deduction from the Assets of each Fund or the cancellation of Units from Members' Accounts in such manner as the Manager determines at its discretion; and
- 34.1.2 monthly and other fees, which are expressed in dollar terms and apportioned among Members' Accounts in such manner as the Manager determines at its discretion; and
- 34.1.3 additional fees (including transaction fees, however expressed) charged to the Members (including, for the avoidance of doubt, Individual Investors) or the Plan.
- 34.2 The Manager may, in respect of the Plan and either generally or in respect of any particular Member or Members, waive part or all of its fees or decrease any fee. The Manager may, in consultation with the Supervisor:
- 34.2.1 increase its fees payable in respect of the Plan or Funds or by the relevant Members; or
- 34.2.2 provided that any such fee is permitted under this Governing Document, commence charging any such fee which is not currently being charged.

- 34.3 The Manager shall be entitled to deduct from each Employer Scheme or Individual Investor Account in respect of Contributions received from or in respect of Members who become Members after 31 December 1999, a contribution fee to meet the costs and commissions incurred by the Manager in arranging promotion of the Plan and provision of other services to the Plan and Members. The contribution fee shall be of the amount and shall be deducted from such account, as is specified in the relevant PDS.
- 34.4 The Manager's fee under clause 34.1 shall be paid in arrears on the last day of each quarter or as otherwise agreed between the Supervisor and the Manager.
- 34.5 The Manager is entitled to receive, in addition to the fees referred to in this clause 34, any goods and services tax or duty or similar Tax payable in respect of such fees.
- 34.6 Notwithstanding clauses 33 to 35, if an Employer Scheme or Individual Investor Account invests in Funds the maximum aggregate fee that can be charged against that Employer Scheme or Individual Investor Account under clause 33.1 and clause 34.1, and the costs, expenses, fees, duties and other Liabilities for investment management shall, subject to clause 34.2, not exceed 1.5% per annum of the gross value of the Employer Scheme or Individual Investor Account.

35 Reimbursement of expenses

- 35.1 Subject to clause 12.1.1, the Supervisor and the Manager shall be reimbursed in the manner provided in this Governing Document for and in respect of all costs, expenses, fees, duties and other Liabilities properly incurred by them in carrying out their respective obligations under this Governing Document, the FMCA and any Relevant Law.
- 35.2 All costs, expenses, fees, duties and other Liabilities incurred by the Supervisor and the Manager in carrying out their respective obligations under this Governing Document, the FMCA and any other Relevant Law, including, but not limited to, payment of the Supervisor's fees and the Manager's fees, the costs of any Investment Manager or Administration Manager or Custodian and any premiums payable under any Group Insurance Policy shall be paid from the Member Account, Employer Account, Voluntary Account and Employer Special Purpose Account of each Member or from a Relevant Reserve Fund or Employer Special Purpose Reserve Account as determined by the Supervisor or the Manager with the consent of the Participating Employer or by deduction from an Individual Investor Member Account or Individual Investor Employer Account.
- 35.3 All costs, expenses, fees, duties and other Liabilities including payment of the Supervisor's fees and Manager's fees, the costs of any Investment Manager or Administration Manager and any premiums payable under any Group Insurance Policy shall be paid from the Employer Scheme, Individual Investor Account or Fund (as applicable) in respect of which they were incurred. Where such costs, expenses, fees, duties or other Liabilities are incurred by the Plan in respect of two (2) or more Employer Schemes, Individual Investor Accounts or Funds, then the Supervisor or the Manager (as applicable) shall apportion such costs, expenses, fees, duties or other Liabilities between the Employer Schemes, Individual Investor Accounts or Funds in such manner as the Supervisor or the Manager (as applicable) considers fair and equitable.
- 35.4 The Manager is authorised at any time to adjust all or any interest in a Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account or any, Employer Special Purpose Reserve Account, Reserve Fund, Individual Investor Member Account or Individual Investor Employer Account for payment of the costs, expenses, fees, duties, premiums and other Liabilities under clauses 35.2 and 35.3.

36 Appointment of the Manager

- 36.1 The Plan must have a manager, who:
- 36.1.1 must not be an Associated Person of the Supervisor; and
 - 36.1.2 must be a Licensed Manager.
- 36.2 The Manager continues as manager of the Plan upon and subject to the terms and conditions contained or implied in or prescribed pursuant to this Governing Document, the FMCA and any other Relevant Law, and will observe and perform the manager obligations under this Governing Document, the FMCA and any other Relevant Law.
- 36.3 The Manager shall be removed from office in the circumstances set out in the FMCA.
- 36.4 Subject to clause 36.8 and all Relevant Law, the Manager may retire and be discharged from its obligations and duties under this Governing Document at any time, on at least three months' prior written notice to the Supervisor.
- 36.5 Any removal or retirement under clause 36.3 or clause 36.4 shall be conditional upon and not be effective until a new manager that is qualified for appointment under clause 36.1 has been appointed pursuant to clause 36.8 or clause 36.9 and has executed the deed referred to in clause 36.11.
- 36.6 Subject to Relevant Law, from the date of appointment of a new Manager, the new Manager assumes, and the former Manager shall be absolved and released from, all obligations and liabilities under this Governing Document. For the avoidance of doubt, the former Manager shall be entitled to payment of all fees, and reimbursement of all expenses, accrued before it ceased to hold office under this Governing Document.
- 36.7 A former Manager must hand over records and give reasonable assistance to the new Manager in accordance with the requirements of the FMCA.
- 36.8 The power to appoint a temporary manager and permanent manager under the FMCA shall apply upon the occurrence of a vacancy in the office of manager of the Plan.
- 36.9 Subject to Relevant Law, the power of appointing a new permanent manager of the Plan shall be vested in the retiring manager, but no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).
- 36.10 Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Plan occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Plan.
- 36.11 Any new manager must forthwith upon being appointed, execute a deed undertaking to be bound by the terms set out in this Governing Document from the date of such appointment. The form of such deed will be as required by the Supervisor.

37 Tax

- 37.1 Notwithstanding any other provision of this Governing Document, the Manager shall have the following additional powers and discretions in respect of the Plan:
- 37.1.1 to elect for the Plan to be a PIE, or cease to be a PIE;

- 37.1.2 to select from the available options under the Tax Act the method for paying the Plan's PIE Tax liability and to make any elections provided for in the Tax Act required to give effect to that selection;
- 37.1.3 to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner pursuant to the Tax Act;
- 37.1.4 to make any other elections as to the method of calculation, allocation or attribution of Tax, having regard to the requirements of the Tax Act;
- 37.1.5 to allocate Tax Benefits received by the Plan or anticipated to be received by the Plan to Members;
- 37.1.6 to carry out any other Tax calculations, allocations or attributions required by the Tax Act;
- 37.1.7 to adjust a Member's Unit holding, whether in accordance with the Tax Act or otherwise to the extent permitted by Relevant Law, at any time (including immediately prior to paying any Benefit or accepting a request to switch from one Fund to another), having regard to the effect of:
 - (a) the Member's Prescribed Investor Rate; and
 - (b) the income (and the losses and associated Tax liabilities and rebates) allocated to the Member under the Tax Act, as adjusted for any expenses which the Manager considers it appropriate to charge to the particular Member;
 - (c) on the Plan's PIE Tax liability, and the amount of any rebate or refund, under the Tax Act;
- 37.1.8 to elect to offset Tax liabilities and rebates in respect of more than one Fund or more than one Member to the extent permissible by the Tax Act, and to make such adjustments;
- 37.1.9 to allocate the costs associated with the Plan being a PIE among Members and Funds (to the extent practical);
- 37.1.10 to take all steps as the Manager considers necessary or desirable to ensure the Plan 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 declining Contributions or switching some or all of a Member's investment from one Fund to another as if the Manager had received a request to that effect from the relevant Member;
- 37.1.11 to require that before a Member is accepted into the Plan he or she provides their Tax File Number, Prescribed Investor Rate and any other information required by the Tax Act, and that at any time a Member must confirm such details or provide such other information as required by the Tax Act on request from the Manager;
- 37.1.12 to value Tax losses of the Plan for the purpose of determining the Net Value of the Assets of a Fund in such manner as the Manager thinks fit having regard to the Tax Act, generally accepted accounting practice as defined by the Financial Reporting Act 2013 and the Plan's stated policies (if any) from time to time;
- 37.1.13 to adjust a Member's Unit holding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether

in accordance with the Tax Act or otherwise to the extent permitted by Relevant Law, at any time (including immediately prior to the redemption of the Member's Units); and

- 37.1.14 to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition the Plan or a Fund to and from being a PIE or to administer the Plan or a Fund as a PIE.
- 37.2 If the Manager is obliged by Relevant Law to make, or may make and determines to make, any deduction or withholding on account of Taxes from any payment to be made to a Beneficiary, the Manager shall make such deduction or withholding and pay such amount to the relevant taxing authority. On payment of the net amount to the relevant Beneficiary, the full amount payable to the relevant Beneficiary shall be deemed to have been duly paid and satisfied.
- 37.3 Without limiting Rule 109.3.3 following any amendment to or re-enactment of the Tax Act (a *Revision*):
 - 37.3.1 all of the discretions and powers available to the Manager where the Plan is a PIE, whether under this clause 37 or otherwise, shall continue to apply with such modifications as are necessary to reflect the Revision;
 - 37.3.2 the Manager shall have the discretion to apply all of the requirements of the Revision to the Plan and the Members on such basis as it considers appropriate, taking into account such factors as the Manager considers relevant; and
 - 37.3.3 to the extent reasonably possible taking into account the nature of the Revision, any references in this Governing Document to terms defined in the Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

38 Alteration of this Governing Document or Participating Agreement

- 38.1 Subject to any requirements of the FMCA, the Manager may by deed amend, with the consent of the Supervisor, any provision of this Governing Document or a Participating Agreement.
- 38.2 No amendment shall have the effect of amending this Governing Document or any Participating Agreement in such a manner that administration and operation of the Plan in respect of any State Sector Employer, any Employer Scheme established by any State Sector Employer, or any Member who is an employee of a State Sector Employer, could contravene the provisions of the Public Service Act 2020.

39 Notices

- 39.1 In any other case other than a notice of meeting, a notice or other document to be given to a Member of the Plan or Participating Employer shall be considered served if it is:
 - 39.1.1 personally leaving it at the Member's address or the Participating Employer's business address recorded in the Register; or
 - 39.1.2 sending it addressed to the Member or the Participating Employer at the Member's or Participating Employer's recorded address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post; or
 - 39.1.3 sent to the information system specified by the Member or the Participating Employer for the purpose of receiving notices by electronic means; or

- 39.1.4 sent by electronic mail in accordance with Relevant Law.
- 39.2 A Member or a Participating Employer must notify the Manager of any change to the Member's or a Participating Employer's registered address, email or to the information system to be used for the purpose of the Member's or the Participating Employer's receipt of notices by electronic means, and the Manager must ensure that the Register is altered accordingly.
- 39.3 Any notice sent by prepaid post to a Member or a Participating Employer shall be deemed to be served three (3) days after the date it was posted. Any notice sent to the information system specified by the Member or the Participating Employer for the purpose of receiving that notice by electronic means will be deemed to have been received once it has left the sender's information system. Any notice sent by email shall be deemed to have been served provided no non delivery answer back is received by the sender within one (1) hour of sending.
- 39.4 Any notice required by this Governing Document to be given by the Manager to the Supervisor, or by the Supervisor to the Manager, must be in writing (including by email), or such other manner as agreed to from time to time, signed by a duly authorised officer on behalf of the party giving it and addressed to the 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 as the address for service of notices pursuant to this Governing Document).

40 New Zealand Law

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

41 Fisher Funds Entitled to "Fisher Funds" Name

- 41.1 No Person (other than Fisher Funds) whether the Supervisor, a Member, or any other Person shall be deemed to have acquired by reason of an interest in the Plan or otherwise any right to the use of any goodwill in the name of "Fisher Funds" and notwithstanding any other provision in this Governing Document, if Fisher Funds or a Related Party of Fisher Funds is not for any reason the Manager of the Plan at any time then, (except to the extent that Fisher Funds otherwise agrees in writing):-
- 41.1.1 If on the date of such cessation the name of the Plan or a Fund includes the words "Fisher Funds" from that date the name of the Plan or Fund shall be the name arrived at by removing the words "Fisher Funds";
- 41.1.2 If on the date of such cessation the name of any Custodian, or holding company operated by the Supervisor includes the words "Fisher Funds" the Supervisor shall forthwith after that date change the name of such company so that the words "Fisher Funds" ceases to appear therein;
- 41.1.3 The Supervisor shall ensure that, as soon as practicable after the date of such cessation, the words "Fisher Funds" do not appear in any documents, publications, or advertisements relating to the Plan or any Fund, and that all registers and records are amended to record such change, and it is hereby expressly declared that the foregoing provisions and covenants on behalf of the Supervisor are inserted specifically for the benefit of Fisher Funds and such provisions and covenants may be enforced accordingly.

42 Confidentiality of information

- 42.1 The Supervisor and the Manager are each authorised to make any information held by it in relation to the Plan available to Related Parties of the Supervisor or the Manager (as applicable) and such other Persons as the Supervisor or the Manager determines should have such information in connection with the Plan or the administration of the Plan.

43 Investment Direction

- 43.1 All Members and Participating Employers shall complete an Investment Direction.
- 43.2 An Investment Direction is:
- 43.2.1 A direction by a Member to the Manager as to which Fund(s) the Manager shall invest all Contributions made by or on behalf of that Member in accordance with clause 46.1; and
 - 43.2.2 A direction by a Participating Employer to the Manager as to which Fund the Manager shall invest the Reserve Fund; and
 - 43.2.3 A direction by a Participating Employer to the Manager as to which Fund the Manager shall invest the Employer Special Purpose Reserve Account.
- 43.3 A Member shall complete an Investment Direction in such form and manner as is prescribed from time to time by the Manager at the time of becoming a Member. A Participating Employer shall complete an Investment Direction when completing the Participating Agreement.
- 43.4 If a Member fails to give an Investment Direction to the Manager, the Manager shall invest all of the Member's Contributions in the LifeSaver Balanced Fund or, if the LifeSaver Balanced Fund is not available for investment, such alternate Fund nominated by the Manager from time to time.
- 43.5 A Member may once during each Plan Year:
- 43.5.1 Amend or vary that Member's Investment Direction for the investment of future Contributions and such amendment or variation shall be in a form approved or prescribed from time to time by the Manager;
 - 43.5.2 At the Manager's discretion and, subject to this Governing Document and to such controls or restrictions as may be imposed by the Manager from time to time, request the Manager to switch investment in one Fund to invest in another Fund such request to be in a form approved or prescribed from time to time by the Manager.
- 43.6 If a Member wishes to amend their Investment Direction or switch their investments more than once during a Plan Year the Manager may charge a reasonable fee.

44 Members bound by this Governing Document

- 44.1 This Governing Document binds (and is legally enforceable between) the Supervisor, the Manager, the Members, former Members and any person claiming through any of them as if each of them had been a party to this Governing Document.

45 Delivery

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

PART 2: FUNDS

46 Funds

- 46.1 The Manager may operate separate Funds on such terms and conditions as the Manager prescribes from time to time. The terms and conditions set by the Manager must include a written SIPO for the Plan that is developed in consultation with the Supervisor and which covers each Fund and complies with the requirements of the FMCA, which SIPO may be altered by the Manager from time to time on prior written notice to the Supervisor and subject to the requirements of Relevant Law, and all monies available for investment in a Fund shall be invested in accordance with the SIPO for the Plan which covers that Fund. The Manager shall provide a copy of the proposed SIPO (or any alteration to that SIPO) to the Supervisor as agreed between the Manager and the Supervisor, and must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by Relevant Law.
- 46.2 The Manager must report to the Supervisor any contraventions of any limits under a SIPO to the extent required by Relevant Law.
- 46.3 Subject to clause 12, neither the Manager nor the Supervisor shall be responsible to any Member for the investment performance of the Plan or a Fund arising as a result of the Plan or a Fund being invested in accordance with the SIPO for a particular Fund.
- 46.4 Each Fund will consist of such Investments as the Manager decides from time to time in accordance with the SIPO applicable to that Fund. This requirement shall modify the general power to invest under section 58 of the Trusts Act.
- 46.5 As at the date of this Governing Document, the Manager operates the following Funds:
- 46.5.1 LifeSaver Preservation Fund
 - 46.5.2 LifeSaver Conservative Fund
 - 46.5.3 LifeSaver New Zealand Fixed Income Fund
 - 46.5.4 LifeSaver Balanced Fund
 - 46.5.5 LifeSaver Growth Fund
 - 46.5.6 LifeSaver Equity Fund
 - 46.5.7 LifeSaver Trans Tasman Equity Fund.

47 Manager's powers to invest

47.1 Subject to this clause 47 and to compliance with the Plan's SIPO, the Manager shall manage the Investments of each Fund and may, in order to perform its functions under clause 15.2 and the FMCA, direct the Supervisor, or a Custodian on behalf of the Supervisor, in writing, to:

- 47.1.1 purchase, acquire, sell, transfer or dispose of Scheme Property;
- 47.1.2 enter into any commitments or liabilities in respect of Scheme Property;
- 47.1.3 execute and deliver such contracts or other instruments as may be necessary in respect of the foregoing; and
- 47.1.4 take any other action which may be required in respect of Scheme Property;

and, subject to clause 17, the Supervisor shall (and, when a Custodian has been appointed, procure that the Custodian shall) from time to time, to the extent of the respective funds in its hands or control, do all things necessary on its part to act as directed in writing by the Manager.

47.2 The Manager shall obtain and comply with each Investment Direction and, subject to clauses 43.4 and 48.1.6, is prohibited from investing Contributions or any other Assets other than in accordance with such Investment Directions.

47.3 The Assets of each Fund are the exclusive property of that Fund, and all liabilities incurred in relation to a Fund shall be the exclusive liabilities of that Fund, and the Supervisor and the Manager shall in all respects act so as to give effect to these intentions. Without prejudice to the generality of the foregoing:

- 47.3.1 the Assets of a Fund shall not be available to meet the liabilities of any other Fund;
- 47.3.2 all Investments made with the monies of a Fund shall be held by the Supervisor as the exclusive property of that Fund and for the exclusive benefit of the Members who hold Units in that Fund pursuant to this Governing Document;
- 47.3.3 without limiting the obligations of the Supervisor under clause 20, the Manager shall keep separate records and accounts in respect of each Fund;
- 47.3.4 the Supervisor shall not permit the Assets or liabilities of any Fund to become intermingled with those of any other Fund provided that nothing in this clause shall prevent:
 - (a) the Assets of any Fund being lent to, deposited with or invested in another Fund or
 - (b) liabilities or credits in respect of any Tax relating to Member interests in Funds being netted off or dealt with at the Member level by adjusting their Unit holding in one or more Funds; and
- 47.3.5 without limiting the generality of this clause 47.3, but subject to clause 27, the provisions of this Governing Document as it relates to the Plan relating to the indemnities in favour of the Supervisor and the Manager, the fees payable to the Supervisor and the Manager and the reimbursement of the Supervisor and the Manager shall be construed in a manner consistent with this clause where separate Funds have been established, that is to say:

- (a) any amounts payable to the Supervisor or the Manager shall be payable from the Fund or Funds to which the matter giving rise to the amount relates; and
- (b) where the amount payable to the Supervisor or the Manager relates to more than one Fund, that amount shall be apportioned between those Funds on such fair and equitable basis as may be determined by the Manager in consultation with the Supervisor.

48 Closure of a Fund

48.1 The Manager, in consultation with the Supervisor, may resolve to terminate a Fund at any time in accordance with the following provisions:

- 48.1.1 A resolution by the Manager terminating a Fund shall specify a closing date on which the closure will take effect (in this clause called the **Closing Date**).
- 48.1.2 After the passing of the resolution, each Member and Participating Employer whose Investment Direction instructs the Manager to invest in the relevant Fund shall be promptly given notice in writing of the termination of their ability to invest in that Fund and the new Funds which have been made available by the Manager for investment.
- 48.1.3 No further Contributions or application of Reserve Funds shall be accepted by the Manager for investment in the relevant Fund after the Closing Date.
- 48.1.4 The Manager shall withdraw all the Investments in the relevant Fund after the Closing Date.
- 48.1.5 Each Member whose Contributions were, and each Participating Employer whose Reserve Fund or Employer Special Purpose Reserve Account was invested in the relevant Fund shall complete a new Investment Direction in respect of future Contributions and complete a new Investment Direction in respect of Investments made in the relevant Fund.
- 48.1.6 If a Member or Participating Employer does not make an Investment Direction under clause 48.1.5 the Contributions or relevant Reserve Fund or relevant Employer Special Purpose Reserve Account will be invested in a Fund chosen by the Manager until such time as the Manager receives an Investment Direction for such Member or Participating Employer.
- 48.1.7 No new Members of the Plan shall be entitled to invest in the relevant Fund after the Closing Date.
- 48.1.8 Investments in the relevant Funds shall be transferred to another Fund in accordance with the new Investment Direction of the Member and each Participating Employer.

49 Suspension of Plan or Funds

49.1 If by reason of:

- 49.1.1 a decision to terminate the Plan or a Fund; or
- 49.1.2 financial, political or economic conditions applying in respect of any relevant market relating to the Investments of the relevant Fund or Funds; or

- 49.1.3 the nature of any Investment; or
- 49.1.4 the liquidity of the relevant Fund or Funds and the number of requests for payments or withdrawals from the Plan received by the Manager; or
- 49.1.5 the occurrence or existence of any other circumstance or event;

and the Manager in good faith determines that the Manager's obligation or ability to realise Investments or borrow in accordance with this Governing Document in order to permit payments or withdrawals:

- 49.1.6 is not practicable or desirable; or
- 49.1.7 would be prejudicial to the interests of Members holding Units in the relevant Fund or Members of the Plan generally; or
- 49.1.8 would threaten the Plan's eligibility for PIE status,

then the Manager, having first advised the Supervisor, may give a repayment suspension notice (a **Suspension Notice**) to any Member or Members and the Supervisor.

49.2 A Suspension Notice shall have the effect of suspending the operation of all existing and future withdrawal, transfer or switch requests or Benefit payments until:

- 49.2.1 the Manager gives to the relevant Members and the Supervisor notice to the effect that the Suspension Notice is cancelled; or
- 49.2.2 90 days after the date of the Suspension Notice or such other date that is approved by the Supervisor,

whichever is the earlier.

49.3 If the circumstances in clause 49.1 apply, then the Manager may, at its discretion:

- 49.3.1 determine that such Units the subject of the relevant withdrawal, transfer or switch request or Benefit payment may be redeemed by instalments on Valuation Days falling in a period determined by the Manager or in total at the expiration of a period determined by the Manager and in any such case the amount payable is determined as if the request was made or payment obligation arose on the first Business Day after the period of suspension; or
- 49.3.2 after having consulted with the Supervisor, and regardless of whether a Suspension Notice has been given, defer the redemption of all or any Units in any Fund (including in respect of any withdrawal, transfer or switch requests or payments not yet processed by the Manager as at the date of the deferral), and shall notify the Supervisor and the relevant Members accordingly.

49.4 A partial suspension may be defined by reference to proportions of Units held, or by fixing maximum dollar amounts receivable by way of the amount payable.

49.5 The terms for full or partial revocation of a Suspension Notice, and the period or periods of suspension may correspond to or reflect (with such adjustments as the Manager thinks fit):

- 49.5.1 the constraints of liquidity in, and realisation of, Assets of the relevant Fund; and

- 49.5.2 the judgement of the Manager after consultation with the Supervisor as to equitable treatment of Members seeking redemption at different times, and in different amounts, or not seeking repayment.
- 49.6 Where withdrawal, transfer or switch requests or Benefit payments are suspended:
- 49.6.1 any Member who has issued a request in respect of the relevant Fund may revoke the request at any time prior to the last day of the period of suspension; and
- 49.6.2 any unrevoked request shall be processed as if the request was received on the last day of the period of suspension.

50 Valuations

- 50.1 The Net Value of each Asset of, or to be acquired by, a Fund shall be such of the following as the Manager determines from time to time:
- 50.1.1 the latest sale price, or such other market convention, of the Asset on any recognised exchange at the time of valuation;
- 50.1.2 the amount certified by an independent or suitably qualified person to be the fair value of the Asset; and
- 50.1.3 the amount agreed upon between the Manager and the Supervisor on the basis of the agreed methodology as the fair value after taking account of the most recent material sales, valuations, and other information that the Manager and the Supervisor consider to be appropriate.
- 50.2 On each Valuation Day in respect of each Fund the Manager shall calculate the Net Value of the Assets of each Fund by adding the aggregate of the Net Value of the Assets of that Fund on the relevant Valuation Day and the amount of any income that is due to be received by the Fund and deducting the aggregate of all Liabilities of that Fund determined on an accruals basis determined by the Manager on the relevant Valuation Day. The amount determined by the Manager must be calculated with Generally Accepted Accounting Practice where it is appropriate and reasonable to do so.
- 50.3 The Net Value shall be calculated by using a methodology determined by the Manager (after consulting with the Supervisor) from time to time, details of which are set out in a separate document lodged on the Disclose Register.
- 50.4 The Net Value ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and any Member or Beneficiary.

51 Record of valuations of Investments in Funds

- 51.1 The Manager shall determine and record, in respect of each Account, the estimated value of any cash, including from Contributions, applications from a Reserve Fund and distributions from any Fund, all investments attributable to the Member or Participating Employer in any relevant Fund and any Liabilities and expenses relevant to them.
- 51.2 Each Account and the Reserve Funds shall record the value of the Member's and each Employer's respective interests in the Plan based upon interests in Funds and any cash including Contributions and distributions made from a Fund or application from a Reserve Fund or obtained by the Manager from other sources.

- 51.3 No record making up an Account or of the interests comprising an Account or published by the Manager, or supplied to any Member or any other Person:
- 51.3.1 is binding on the Manager or the Supervisor; or
- 51.3.2 establishes the amount that will be payable to a Member or Participating Employer upon realisation of the Units or other investments attributable to the relevant Account or Relevant Reserve Fund and neither the Member, the Participating Employer or any other Person should rely on it.

PART 3: RULES APPLICABLE TO EMPLOYEES OF PARTICIPATING EMPLOYERS WHO JOINED THE PLAN PRIOR TO 9 FEBRUARY 2006

52 Eligibility

- 52.1 These Rules apply to Employees of Participating Employers who joined the Plan prior to 9 February 2006.
- 52.2 The eligibility of Employees to join the Plan shall be specified in the Participating Agreement.

53 Cessation of Membership

- 53.1 A Member shall cease to be a Member under this Part 3 on whichever of the following first occurs:
- 53.1.1 subject to Rule 74, and any restrictions attached to a Member's Locked-in Interest, the Member ceasing to be Employed by a Participating Employer;
- 53.1.2 in the event of the Participating Employer withdrawing from the Plan in accordance with clause 5.8;
- 53.1.3 the Member transferring to a transferee scheme as described in clause 27.1;
- 53.1.4 the Plan being wound up under clause 31.
- 53.2 A Member, on ceasing to be a Member under this Part 3, shall be entitled to payment of the Benefits specified in Parts 1, 2 and 3 of this Governing Document (as applicable) and the Participating Agreement.
- 53.3 Subject to Rule 70, and unless specifically provided in this Governing Document or the Participating Agreement to the contrary, a Member shall not be entitled to payment of a Benefit under the Plan while that Member remains in Employment.

54 Contributions

- 54.1 Each Member shall contribute to the Plan the amount from that Member's Salary provided for in the Participating Agreement which shall be deducted by the Participating Employer from that Member's Salary.
- 54.2 If agreed between the Member and his or her Employer, an obligation to contribute to the Plan shall be satisfied, whether in full or in part, by contributions made to a KiwiSaver Scheme in accordance with the KiwiSaver Act (to the extent of such contribution to a KiwiSaver Scheme).

- 54.3 Each Member may arrange with the Manager to pay an additional Contribution over and above the rate paid under Rule 54.1. The amount of the Member's additional Contribution shall be an amount to which the Manager shall agree, having regard to such regulations as the Manager may establish and announce to Members from time to time. Any additional Contribution to be paid under this Rule shall be credited to each Member's Member or Voluntary Account as specified in the Participating Agreement.
- 54.4 Subject to the other provisions of this Governing Document and the Participating Agreement, the Participating Employer shall contribute to the Plan in respect of each Member the amount of each Member's Salary provided for in the Participating Agreement PROVIDED THAT no Participating Employer shall be required, in respect of any Member who became a Member after 31 December 1999, to contribute to the Plan after that Member attains Normal Retirement Date. The Participating Employer may elect to continue, reduce or terminate its Contributions in respect of any Member who became a Member after 31 December 1999 after that Member attains Normal Retirement Date. Before paying any Contribution to the Plan the Participating Employer shall deduct any ESCT or any equivalent or similar, or other Tax, levy or amount payable in respect of any Contribution to any regulatory or government authority. The Contributions of the Participating Employer shall be divided between the Employer Account, the Employer Special Purpose Account and the Employer Special Purpose Reserve Account as directed by the Participating Employer.
- 54.5 Unless otherwise provided for in a Participating Agreement in respect of Members who join the Plan on or after 1 July 2001, a Member may, by giving written notice to the Participating Employer, terminate, reduce or suspend their Contributions to the Plan. In such event the Participating Employer may then continue, reduce, suspend or terminate its Contribution in respect of that Member.
- 54.6 The Participating Employer shall ensure that, in relation to Contributions paid via Payroll, payment of any Contribution as agreed under this Rule 54 shall be passed to the Plan promptly after the Participating Employer's Payroll run.
- 54.7 Any Employee who was a member of another Retirement Scheme may transfer the amount of their benefits from that scheme to the Plan under clause 26.2.
- 54.8 All Contributions made to the Plan shall be subject to any minimum contribution rate or other applicable rules required by any Relevant Law.

55 Member Account

- 55.1 The Manager shall keep and update at such intervals as the Manager shall determine a record to be known as the "Member Account" in respect of each Member.
- 55.2 A Member Account at any given date means:
- 55.2.1 the value of any cash held including from Contributions, applications from the Reserve Fund to the Member Account under Rules 59.3.1 or 59.4.2, applications from the Employer Special Purpose Reserve Account to the Member Account under Rule 60.3.4, transfers from the Member's Employer Account or Member's Employer Special Purpose Account to the Member Account under Rules 57.3 or 58.4, transfers pursuant to clause 26.2, any financial assistance or grant provided to members of Retirement Schemes as a result of any legislation and distributions from Funds; plus
 - 55.2.2 the value of all Units attributable to the Member Account in respect of that Member across all Funds; plus

- 55.2.3 any interest or earnings (or losses) thereon; plus
- 55.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
- 55.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Member that are properly deductible from the Member Account or Contributions and any adjustments for Tax under clause 37.

56 Voluntary Account

- 56.1 The Manager shall keep and update at such intervals as the Manager shall determine a record to be known as the "Voluntary Account" in respect of each Member.
- 56.2 A Voluntary Account at any given date means:
 - 56.2.1 the value of any cash held including from Contributions under Rule 54.3, transfers pursuant to clause 26.2 and distributions from Funds; plus
 - 56.2.2 the value of all Units attributable to the Voluntary Account in respect of that Member across all Funds; plus
 - 56.2.3 any interest or earnings (or losses) thereon; plus
 - 56.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
 - 56.2.5 an allowance for any fees, expenses, costs, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Member that are properly deductible from the Voluntary Account or Contributions paid under Rule 54.3 and any adjustments for Tax under clause 37.

57 Employer Account

- 57.1 The Manager shall keep a record to be known as the "Employer Account" in respect of each Member.
- 57.2 An Employer Account at any given date means:
 - 57.2.1 the value of any cash held including from Contributions under Rule 54.4, applications from the Reserve Fund to the Employer Account under Rules or 59.4.2 applications from the Employer Special Purpose Reserve Account to the Employer Account under Rule 60.3.4 transfers pursuant to clause 26.2 and distributions from Funds; plus
 - 57.2.2 the value of all Units attributable to the Employer Account in respect of that Member across all Funds; plus
 - 57.2.3 any interest or earnings (or losses) thereon; plus
 - 57.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
 - 57.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that

Member that are properly deductible from the Employer Account or Contributions paid under Rule 54.4 and any adjustments for Tax under clause 37; less

57.2.6 the value of all Units transferred from the Member's Employer Account to the Member Account under Rule 57.3.

57.3 The Manager shall, if so directed by the Participating Employer, transfer all or part of the Member's Employer Account to the Member Account.

58 Employer Special Purpose Account

58.1 At the request of the Participating Employer, for each Member who joined the Plan on or after 1 July 2001, the Manager shall keep a record to be known as the "Employer Special Purpose Account" in respect of each Member.

58.2 An Employer Special Purpose Account at any given date means:

58.2.1 the value of any cash held including from Contributions under Rule 54.4, applications from the Reserve Fund to the Employer Special Purpose Account under Rule 59.3.1, transfers pursuant to clause 26.2 and distributions from Funds; plus

58.2.2 the value of all Units attributable to the Employer Special Purpose Account in respect of that Member across all Funds; plus

58.2.3 any interest or earnings (or losses) thereon; plus

58.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less

58.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Member that are properly deductible from the Employer Special Purpose Account or Contributions paid under Rule 54.4 and any adjustments for Tax under clause 37; less

58.2.6 the value of all Units transferred from the Member's Employer Special Purpose Account to the Member Account under Rule 58.4.

58.3 A Member will not be able to access their Employer Special Purpose Account unless provided for in the Participating Agreement.

58.4 The Manager shall, if so directed by the Participating Employer, transfer all or part of the Member's Employer Special Purpose Account to the Member Account.

59 Reserve Fund

59.1 The Manager shall establish an account in respect of each Employer Scheme in the Supervisor's name to be known as the "Reserve Fund".

59.2 A Reserve Fund at any given date means:

59.2.1 the value of any amount forfeited under the Plan in respect of a Member who is an Employee of the Participating Employer, which amount is not required to pay the Benefits of that Member; plus

59.2.2 the value of all Units attributable to the Reserve Fund across all Funds; plus

- 59.2.3 any amounts that are credited in accordance with clause 26.2; plus
 - 59.2.4 any amounts that are credited in accordance with Rule 75.3; plus
 - 59.2.5 any amounts that are credited from time to time by the Participating Employer; plus
 - 59.2.6 any interest and earnings (or losses) thereon; plus
 - 59.2.7 any amounts representing rebates in respect of any Tax required to be made in respect of the Reserve Funds; less
 - 59.2.8 any amount transferred from the Reserve Fund under Rules 59.3 or 59.4; less
 - 59.2.9 an allowance for any Tax and other Liabilities that are properly deductible from the relevant Reserve Fund and any adjustments for Tax under clause 37.
- 59.3 The Manager may, with the consent of the Participating Employer, apply the Relevant Reserve Fund at any time, in one or more of the following ways:
- 59.3.1 Increasing Member Accounts, Employer Accounts and Employer Special Purpose Accounts on a fair and equitable basis;
 - 59.3.2 Payment of all or part of the fees, costs, charges or other Liabilities of the Employer Scheme;
 - 59.3.3 Payment of insurance premiums for Members in respect of Insured Benefits;
 - 59.3.4 Payment of all or part of the Contributions required by the Participating Employer under Rule 54.4;
 - 59.3.5 Payment of insurance premiums for Members for any insurance arrangements made by a Participating Employer outside the Plan;
 - 59.3.6 In respect of any Employer Scheme created after 31 December 1999, payment for such other purpose as the Manager, with the consent of the Participating Employer shall consider appropriate, PROVIDED THAT no portion of the Reserve Fund shall revert to any Participating Employer without the approval of the FMA in accordance with the FMCA.
- 59.4 Unless otherwise provided for in a Participating Agreement, the following provisions shall apply for each Reserve Fund:
- 59.4.1 The Manager shall not allow any Reserve Fund to be in credit for more than \$2,000.
 - 59.4.2 If at the end of each Plan Year a Reserve Fund is in credit for more than \$2,000 the Manager shall apply the amount held in the Reserve Fund in excess of \$2,000 by increasing the appropriate Member Account and Employer Account on a fair and equitable basis.

60 Employer Special Purpose Reserve Account

- 60.1 At the request of the Participating Employer the Manager shall establish an account in the Supervisor's name to be known as the "Employer Special Purpose Reserve Account".
- 60.2 An Employer Special Purpose Reserve Account at any given date means:

- 60.2.1 any amounts that are credited from time to time by the Participating Employer; plus
 - 60.2.2 the value of all Units attributable to the Employer Special Purpose Reserve Account across all Funds; plus
 - 60.2.3 any interest and earnings (or losses) thereon; plus
 - 60.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of the Employer Special Purpose Reserve Account; less
 - 60.2.5 any amount transferred from the Employer Special Purpose Reserve Account under Rule 60.3; less
 - 60.2.6 an allowance for any Tax and other Liabilities that are properly deductible from the Employer Special Purpose Reserve Account and any adjustments for Tax under clause 37.
- 60.3 The Manager may, with the consent of the Participating Employer, apply the Relevant Employer Special Purpose Reserve Account at any time, in one or more of the following ways:
- 60.3.1 payment of insurance premiums for Members of the Employer Scheme in respect of Insured Benefits under a Group Insurance Policy;
 - 60.3.2 payment of all or part of the fees, costs or charges in respect of providing Insured Benefits to Members under a Group Insurance Policy;
 - 60.3.3 payment of all or part of the fees, costs, charges or other Liabilities of the Plan; or
 - 60.3.4 increasing the appropriate Member Account and Employer Account on a fair and equitable basis; or payment of such other purpose as the Participating Employer thinks fit PROVIDED THAT no portion of the Employer Special Purpose Reserve Account shall revert to the Participating Employer without the consent of the FMA in accordance with the FMCA.

61 Benefits on Retirement

- 61.1 Subject to Rule 61.2, if a Member leaves Employment either:
- 61.1.1 at any time on or after that Member's Normal Retirement Date; or
 - 61.1.2 at any time after the Member's Early Retirement Date, on the terms provided in the Participating Agreement,

the Member shall be entitled to a cash lump sum equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account (as applicable) of that Member or such other sum as is provided in the Participating Agreement provided however the Benefit payable shall always include the Member Account and the Voluntary Account of a Member.

- 61.2 A Member may request a Benefit pursuant to this Rule 61 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 72.4.

62 Benefits on death

- 62.1 If a Member dies in Employment before that Member's Normal Retirement Date there shall be payable under Rule 62.3 a Benefit equal to the sum of:
- 62.1.1 the Member Account, the Voluntary Account, the Employer Account, the Employer Special Purpose Account of the Member as set out in the Participating Agreement; and
 - 62.1.2 subject to Rule 75.6 any Insured Benefits in respect of the Member, or such other sum as provided in the Participating Agreement, provided however the Benefit payable shall always include the Member Account and the Voluntary Account of a Member.
- 62.2 If a Member dies in Employment after that Member's Normal Retirement Date the Member shall be deemed to have Retired on the day before that Member's death. The Benefit arising shall be payable as a cash lump sum under Rule 61.1 and paid in accordance with Rule 62.3.
- 62.3 The Manager shall pay or apply any amount payable on the death of a Beneficiary (the **Deceased Beneficiary**) out of the Plan to or for the benefit of any Dependant of the Deceased Beneficiary or such one or more of the Nominated Beneficiaries of the Deceased Beneficiary or the administrator or executor of the estate of the Deceased Beneficiary the amounts, at times and generally in such manner as the Manager shall from time to time think fit.

63 Benefit on resignation

- 63.1 Subject to Rules 63.2, 64 and 65, if a Member leaves Employment and a Benefit is not payable under Rules or 62.2 a cash lump sum shall be paid to the Member equal to:
- 63.1.1 the sum of the Member Account and Voluntary Account of the Member; and
 - 63.1.2 such percentage of the Employer Account as set out in the vesting schedule in the Participating Agreement (if applicable); and
 - 63.1.3 subject to Rule 75.6 any Insured Benefit in respect of the Member; and
 - 63.1.4 such percentage of the Employer Special Purpose Account as set out in the vesting schedule in the Participating Agreement (if applicable); and
 - 63.1.5 such further amount as the Manager in its absolute discretion shall determine to pay at the request of the Participating Employer provided however such further amount shall not exceed the balance of the Employer Account and in respect of a Member who joined the Plan on or after 1 July 2001 the Employer Special Purpose Account of the Member as set out in the Participating Agreement; less
 - 63.1.6 any FWT that may be chargeable in respect of the Employer's Contributions to the Employer Account or the Employer Special Purpose Account.
- 63.2 A Member may request a Benefit pursuant to this Rule 63 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 72.4.

64 Redundancy and ill-health

- 64.1 Subject to Rule 64.2, if a Member leaves Employment as a result of Redundancy or ill-health (as certified to the Manager by the Participating Employer) a cash lump sum shall be paid to the Member equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account as set out in the Participating Agreement of the Member, less any FWT that may be chargeable in respect of the Employer's Contributions to the Employer Account or the Employer Special Purpose Account or such other sum as is provided in the Participating Agreement provided however the Member shall always receive the sum of the Member Account and Voluntary Account of the Member.
- 64.2 A Member may request a Benefit pursuant to this Rule 64 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 72.4.

65 Benefit on dismissal

- 65.1 Subject to Rule 65.3 but notwithstanding any other provision to the contrary in this Governing Document or the Participating Agreement if a Member shall be dismissed from Employment or resigns or leaves Employment to avoid dismissal for misconduct, dishonesty, theft or fraud then:
- 65.1.1 a cash lump sum shall be paid to the Member equal to the sum of the Member Account and Voluntary Account of the Member together with such further amount (if any) of the Employer Account and the Employer Special Purpose Account (as set out in the Participating Agreement) of the Member, less any FWT that may be chargeable in respect of the Employer's Contributions to the Employer Account or the Employer Special Purpose Account, as the Manager in its absolute discretion shall determine to pay as requested by the Participating Employer or such sum as is provided in the Participating Agreement provided however, subject to Rule 65.1.2, that the Member shall always receive the sum of the Member Account and Voluntary Account of the Member;
- 65.1.2 the Manager shall, if money is owed to the Participating Employer as a result of the misconduct, dishonesty, theft or fraud of the Member, apply the Benefit payable firstly in reimbursing the Participating Employer for any amount so owed.
- 65.2 Production of a certificate signed by a director or the secretary of the Participating Employer that any amount is so owing to it shall be sufficient evidence for the Manager provided a copy of such certificate is given to the Member.
- 65.3 A Member may request a Benefit pursuant to this Rule 65 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 72.4.

66 Total and Permanent Disablement Benefit

- 66.1 If a Member's Participating Employer makes a Total and Permanent Disability benefit available to the Member and the Member suffers Total and Permanent Disablement, as defined in the Relevant Insurance Policy, and leaves Employment, the Member shall be entitled to receive:

- 66.1.1 the insurance benefit set out in the Participating Agreement relating to that Member together with;
- 66.1.2 a Benefit equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account of the Member as set out in the Participating Agreement;

or such other sum as provided in the Participating Agreement, provided however that the Benefit payable shall always include the Member Account and the Voluntary Account of the Member.

67 Crisis Benefit

- 67.1 If a Member's Participating Employer makes Crisis Cover available and the Member suffers one of the Critical Events detailed in the Relevant Insurance Policy the Member shall be entitled to receive the Insured Benefit set out in the Participating Agreement relating to that Member.

68 Income Protection Benefit

- 68.1 If a Member's Participating Employer makes an Income Protection benefit available and the Member suffers Total Disablement as defined in the Relevant Insurance Policy the Member shall be entitled to receive the Insured Benefit set out in the Participating Agreement relating to that Member.

69 Annuity option

- 69.1 If a Member so requests the Manager shall instead of paying to a Member all or part of the lump sum payable under these Rules arrange for an annuity to be purchased from a Life Insurer on such terms and conditions as shall be agreed upon between the Member, the Manager and the Life Insurer.

70 Withdrawals while still in service

- 70.1 Subject to Rule 72.5, a Member may at any time on or after that Member's Normal Retirement Date apply to the Manager to withdraw all or part of their Member Account, Voluntary Account, and the vested portion of their Employer Account and Employer Special Purpose Account as set out in the Participating Agreement while still in the Service of the Participating Employer, subject to any conditions imposed on such withdrawals by the Manager from time to time.
- 70.2 In the event of such withdrawal, the Member shall receive an amount equal to the Benefit that would have been payable had the Member left Service at the date of withdrawal and been eligible to receive a benefit pursuant to Rule 63.
- 70.3 The Manager shall refuse any withdrawal under this Rule 70 that the Manager considers to be in breach of Relevant Law or likely to jeopardise the continued registration or designation of the Plan under the FMCA.

71 Withdrawals for purpose of purchase of first home

- 71.1 Subject to Rule 72.5, a Member may, subject to any limitations attached to the Member's Locked-in Interest, apply to the Manager to withdraw all or part of the Member Account, Voluntary Account, and the vested portion of their Employer Account and Employer Special Purpose Account of that Member as set out in the Participating Agreement (subject to clause 8(4)(a) of the KiwiSaver Scheme Rules, read as if the KiwiSaver Scheme Rules

applied to the Plan) if the Member intends to purchase an estate in land in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules.

- 71.2 In the event of such withdrawal, the Member shall receive an amount equal to the Benefit that would have been payable had the Member left Service at the date of withdrawal and been eligible to receive a benefit pursuant to Rule 63 (subject to clause 8(4)(a) of the KiwiSaver Scheme Rules, read as if the KiwiSaver Scheme Rules applied to the Plan).
- 71.3 The Manager in its absolute discretion may permit such withdrawal if it is satisfied, based on whatever supporting evidence it may reasonably require, that clause 8 of the KiwiSaver Scheme Rules (read as if the KiwiSaver Scheme Rules applied to the Plan) would enable the withdrawal.

72 Withdrawals

- 72.1 Subject to Rule 72.5, a Member may at any time before being entitled to receive a Benefit under these Rules, withdraw part or all of the Member Account, Voluntary Account or the vested portion of their Employer Account and Employer Special Purpose Account as set out in the Participating Agreement under Rules 72.2 and 72.3. Notwithstanding Rules 55.2, 56.2, 57.2 and 58.2 and the value of the Member Account, Voluntary Account, Employer Account or Employer Special Purpose Account of the Member will be reduced by the value of any Units redeemed to pay a partial withdrawal under this Rule, subject to any other deduction the Manager considers appropriate.
- 72.2 Subject to Rule 72.5, a Member may make a partial withdrawal under Rule 72.1 as provided in the Participating Agreement relevant to the Member. If no such provision is made in the relevant Participating Agreement the Member may make one partial withdrawal under Rule 72.1 during his or her Membership of the Plan provided such withdrawal is for:
- 72.2.1 no more than 50% of the value of the Member Account and Voluntary Account of the Member at any time; and
 - 72.2.2 at least \$1,000.
- 72.3 Subject to Rule 72.5, the Manager may allow more frequent withdrawals than permitted under Rule 72.2. The Manager may however impose reasonable requirements governing partial withdrawals including provisions determining the frequency of withdrawals and the number of withdrawals that can be made during any Plan Year.
- 72.4 A Member may at any time before being entitled to receive a Benefit under these Rules, withdraw all or part of the entire value of their Member Account, Voluntary Account or the vested portion of their Employer Account and Employer Special Purpose Account as set out in the Participating Agreement (as applicable), including any Locked-in Interest, where the Manager is satisfied in its absolute discretion that the Member desires to receive such monies as a result of:
- 72.4.1 the permanent emigration of the Member from New Zealand, approved as such by the Manager; or
 - 72.4.2 such circumstances involving financial hardship to the Member as the Manager determines justify the need for payment of such monies; or
 - 72.4.3 the Terminal Illness of the Member; or

- 72.4.4 a change to the operation of the Plan, which change is considered by the Manager in its absolute discretion to be material to the relevant Member's decision to invest in the Plan; or
- 72.4.5 the Member being required (including under any contract or agreement) to make a relationship property settlement with his or her spouse, civil union partner or de facto partner provided that the Manager shall have full discretion to determine the amount payable under this Rule 72.4.5 which may be less than, but no greater than, the value of the Member's Member Account, Voluntary Account, and vested portion of the Employer Account and Employer Special Purpose Account (as applicable); or
- 72.4.6 other circumstances that the Manager considers in its absolute discretion warrant payment of such monies,

PROVIDED THAT in no circumstances shall a Member be eligible to withdraw such monies where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Plan, or to any Member of the Plan or to any contribution made by or in respect of a Member under the Plan under any law (including without limitation Tax status or treatment).

- 72.5 Rules 72.1 to 72.3 (inclusive) shall not be applicable to a Member's Locked-in Interest.

73 Insured Benefits

- 73.1 The Participating Employer may make Insured Benefits available for Members under the Participating Agreement. If Insured Benefits are available they shall be specified in the Participating Agreement. Such Insured Benefits may include but shall not be limited to Death Cover, Total and Permanent Disability Cover, Health Insurance, Crisis Cover or Income Protection Cover. These Insured Benefits may be made available to Members and will be paid as set out under the Participating Agreement. Death Cover may be made available to Members' and their Spouses or Partners.
- 73.2 The Manager may enter into any insurance arrangements, at either its own volition or at the request of a Participating Employer, to make Insured Benefits available for Members. Insured Benefits may be offered in respect of all Members or in respect of any group of Members and shall, subject to the agreement of the Insurer, be offered to Members as specified in the Participating Agreement. The Manager has no duty to ensure consistency or equality between insurance arrangements entered into and will not be liable to Members if their Insured Benefits are less generous than other Insured Benefits offered by other Participating Employers.
- 73.3 Subject to the Manager's right to offer Insured Benefits in respect of all Members, the Manager shall act on the direction of a Participating Employer to enter into insurance arrangements on behalf of the Employees of the Participating Employer and the Manager shall not be under a duty to check the terms of any such arrangements. The Manager shall not however be required to enter into any Group Insurance Policy which, in the Manager's sole discretion, would subject the Plan to any unreasonable obligation or undue risk.
- 73.4 Any insurance cover provided to Members will be subject to any conditions imposed by the Insurer with payment of any Insured Benefit subject to approval of the claim by the Insurer.
- 73.5 All Members must provide to the relevant Insurer all information required by that Insurer to enable it to issue a Group Insurance Policy or to enable the relevant Members to be included within an existing Group Insurance Policy.

73.6 Any Insured Benefits in respect of a Member may be suspended if required at any time by the Insurer and if this is provided for in the Participating Agreement.

74 Leave of Absence

74.1 In the event of a Member being on Leave of Absence for a period of less than twelve (12) Months or any other period approved by the Member, Participating Employer and Manager, (**Approved Leave**) the absent Member (the **Absent Member**) shall, subject to this Rule 74, continue to be a Member during that period.

74.2 During any period of Approved Leave the Absent Member may elect to:

74.2.1 discontinue contributing to the Plan during the period of Leave of Absence; or

74.2.2 continue to make Contributions under Rules 54.1 and 54.3.

74.3 During any period of Approved Leave, the Employer Contributions payable under Rule 54.4 may be suspended at the Participating Employer's absolute discretion.

74.4 During any period of Approved Leave, the Absent Member shall continue to be a Member and there shall be no interruption in the Member's Membership of the Plan.

74.5 During any period of Approved Leave, any Insured Benefits in respect of the Member may be suspended if this is provided for in the Participating Agreement.

74.6 If the Absent Member does not return to Employment immediately after the expiry of the period of Approved Leave, the Absent Member shall receive the appropriate Benefit payable under these Rules calculated at the date of expiry of the period of Approved Leave or the date that the Absent Member ceased being in Employment whichever is the earlier (as certified to the Manager by the Participating Employer).

75 General provisions relating to Benefits

75.1 Deduction of Tax and Other Charges

75.1.1 The Manager may deduct from any Member's Contribution or from any payment to be made to any Beneficiary from the Plan the amount of any Tax that is or may be assessed against or payable by or in respect of the Beneficiary. The Manager shall pay any such amounts so deducted to the relevant authority (where required) and any amounts payable to a Beneficiary by the Manager shall be the net amount after any such deductions have been made.

75.1.2 The Manager may deduct insurance premiums and any other amounts, fees and charges (including any Tax on those payments) payable by or in respect of the Member or the Member's Spouse or Partner from the Member Account, Voluntary Account, Employer Account or Employer Special Purpose Account in respect of a Member or the Relevant Reserve Fund or Relevant Employer Special Purpose Reserve Account as provided in clause 35.2.

75.2 Proofs and Receipts

75.2.1 The Member or any person purporting or claiming to be qualified or entitled to any Benefit under the Plan shall on request produce to the Manager such evidence or information as the Manager may reasonably require.

75.2.2 The payment by the Manager or the Supervisor of any Benefits in respect of a Member to any Beneficiary to whom such Benefit or amount is authorised or

determined to be payable (including a payment to a Life Insurer under Rule 69) shall be a complete discharge to the Manager and the Supervisor for any liability the Manager or the Supervisor has in respect of that Benefit AND the Manager and the Supervisor shall be under no liability to see to the application of the Benefit so paid.

75.2.3 Subject to clause 10.1, in the event of any Beneficiary being paid any amount in error in excess of that Beneficiary's lawful entitlement then the Beneficiary will forthwith upon demand by the Manager refund to the Manager the amount overpaid in error.

75.3 Unclaimed Benefits

75.3.1 If the Manager is unable to trace a person entitled to a Benefit within six (6) years after the date on which the Benefit became due then the Benefit at the option of the Manager, subject to Relevant Law, may be forfeited to the Relevant Reserve Fund and the Benefit and rights to any other Benefits under the Plan shall be cancelled by the Manager.

75.4 Assignment of Benefits

75.4.1 Subject to Relevant Law a Member may charge or borrow against the security of their Member Account and/or Voluntary Account but may not transfer, assign or otherwise alienate their interest in the Plan EXCEPT THAT in no circumstances may a Member assign by way of mortgage, charge or transfer the Member's right to receive a Benefit in respect of the Member's Locked-in Interest.

75.5 Information from Beneficiary

75.5.1 Each Beneficiary shall produce such evidence or information as may reasonably be required by the Manager concerning the Beneficiary's entitlement under the Plan and until that evidence or information is produced the Manager may withhold the payment of any Benefit to that Beneficiary.

75.6 Mis-statement of Information

75.6.1 If any mis-statement is made by a Member as to that Member's status, age or otherwise (including any medical information considered necessary by the Manager in order to determine whether a Member is entitled to an Insured Benefit), then the Manager shall be entitled to make adjustments to the Benefits in respect of the Member.

75.7 Where no Beneficiaries

75.7.1 In the event of a Member dying intestate and not being survived by either:

- (a) any person who in the opinion of the Manager is a Nominated Beneficiary; or
- (b) a person described in section 77 of the Administration Act 1969, to which apart from the provisions of this Rule there would be a Benefit payable under this Governing Document,

then any Benefit shall be dealt with in accordance with the provisions of Rule 75.3.

75.8 Infancy or Incapacity of Beneficiary

75.8.1 If any Benefit under this Governing Document is payable to or for the benefit of a Beneficiary who is an infant, is under a legal incapacity or, in the opinion of the Manager is incapable of managing that Beneficiary's own affairs or it is otherwise in that Beneficiary's best interests for the Manager to exercise their discretion under this Rule, the Manager may pay the Benefit for the benefit of that Beneficiary in such manner, on such terms and in such proportions as the Manager think fit including, at the discretion of the Manager, payment of all or part of the benefit to another Person, for the benefit of that Beneficiary.

75.9 Payment of Benefits

75.9.1 Payment of a Benefit in accordance with this Governing Document and the Rules shall, subject to clauses 29.2.2 and 49.1, be paid by the Manager as soon as possible after the Benefit becomes due for payment.

PART 4: WORKPLACE SAVINGS RULES**76 Eligibility**

76.1 These Rules shall apply to Employees of Participating Employers, (excluding Individual Members) who join the Plan on or after 9 February 2006.

76.2 The eligibility of Employees to join the Plan shall be specified in the Participating Agreement.

77 Application for Membership

77.1 Every Employee who applies to join the Plan shall:

77.1.1 make written application in such form as the Manager may from time to time require; and

77.1.2 submit such evidence of age and health as may be required by the Manager; and

77.1.3 complete an Investment Direction; and

77.1.4 provide such other information that may be required by the Manager; and

77.1.5 agree in writing to be bound by the terms of this Governing Document.

78 Admission to Membership

78.1 An Employee shall upon acceptance for Membership be admitted as a Member as from the first day of the next available Payroll period unless otherwise agreed between the Employee and the Manager.

79 Cessation of Membership

79.1 A Member shall cease to be a Member under this Part 4 on whichever of the following first occurs:

79.1.1 subject to Rule 98, and any restrictions attached to a Member's Locked- in Interest, the Member ceasing to be Employed by a Participating Employer;

- 79.1.2 in the event of the Participating Employer withdrawing from the Plan in accordance with clause 5.8;
 - 79.1.3 the Member transferring to a transferee scheme as described in clause 27.1;
 - 79.1.4 on the Plan being wound up under clause 31;
 - 79.1.5 at the discretion of the Manager, subject to the maintenance of any Insured Benefits under Rule 97, the Member's Accounts being reduced to a zero balance.
- 79.2 A Member, on ceasing to be a Member under this Part 4, shall be entitled to payment of the Benefits specified in Parts 1, 2 and 4 of this Governing Document (as applicable) and the Participating Agreement.

- 79.3 Subject to Rule 94 and unless specifically provided in this Governing Document or the Participating Agreement to the contrary, a Member shall not be entitled to payment of a Benefit under the Plan while that Member remains in Employment.

80 Information to be supplied before an Employee becomes a Member

- 80.1 Each Employee, before applying for Membership of the Plan, shall be given a copy of a PDS for the Plan in accordance with the FMCA and the FMC Regulations.

81 Contributions

- 81.1 Each Member shall contribute to the Plan the amount from that Member's Salary provided for in the Participating Agreement which shall be deducted by the Participating Employer from that Member's Salary.
- 81.2 If agreed between the Member and his or her Employer, an obligation to contribute to the Plan shall be satisfied, whether in full or in part, by contributions made to a KiwiSaver Scheme in accordance with the KiwiSaver Act (to the extent of such contribution to a KiwiSaver Scheme).
- 81.3 Each Member may arrange with the Manager to pay an additional Contribution over and above the rate paid under Rule 81.1 The amount of the Member's additional Contribution shall be an amount to which the Manager shall agree, having regard to such regulations as the Manager may establish and announce to Members from time to time. Any additional Contribution to be paid under this Rule shall be credited to each Member's Member or Voluntary Account as specified in the Participating Agreement.
- 81.4 Subject to the other provisions of this Governing Document and the Participating Agreement, the Participating Employer shall contribute to the Plan in respect of each Member the amount of each Member's Salary provided for in the Participating Agreement PROVIDED THAT no Participating Employer shall be required, in respect of any Member, to contribute to the Plan after that Member attains Normal Retirement Date. The Participating Employer may elect to continue, reduce or terminate its Contributions in respect of any Member after that Member attains Normal Retirement Date. Before paying any Contribution to the Plan the Participating Employer shall, deduct any ESCT or any equivalent or similar, or other Tax, levy or amount payable in respect of any Contribution to any regulatory or government authority. The Contributions of the Participating Employer shall be divided between the Employer Account and the Employer Special Purpose Account as directed by the Participating Employer.
- 81.5 Unless otherwise provided for in a Participating Agreement, a Member may, by giving written notice to the Participating Employer, terminate, reduce or suspend their

Contributions to the Plan. In such event the Participating Employer may then continue, reduce, suspend or terminate its Contribution in respect of that Member.

- 81.6 The Participating Employer shall ensure that, in relation to Contributions paid via Payroll, payment of any Contribution as agreed under this Rule 81 shall be passed to the Plan promptly after the Participating Employer's Payroll run.
- 81.7 Any Employee who was a member of another Retirement Scheme may transfer the amount of their benefits from that scheme to the Plan under clause 26.2.
- 81.8 All Contributions made to the Plan shall be subject to any minimum contribution rate or other applicable rules required by any Relevant Law.

82 Member Account

- 82.1 The Manager shall keep and update at such intervals as the Manager shall determine a record to be known as the "Member Account" in respect of each Member.
- 82.2 A Member Account at any given date means:
- 82.2.1 the value of any cash held including from Contributions, applications from the Reserve Fund to the Member Account under Rules 86.3.1 or 86.4, transfers from the Member's Employer Account or Member's Employer Special Purpose Account to the Member Account under Rule 84.3 or 85.4 transfers pursuant to clause 26, any financial assistance or grant provided to members of Retirement Schemes as a result of any legislation and distributions from Funds; plus
 - 82.2.2 the value of all Units attributable to the Member Account in respect of that Member across all Funds; plus
 - 82.2.3 any interest or earnings (or losses) thereon; plus
 - 82.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
 - 82.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Member that are properly deductible from the Member Account or Contributions and any adjustments for Tax under clause 37.

83 Voluntary Account

- 83.1 The Manager shall keep and update at such intervals as the Manager shall determine a record to be known as the "Voluntary Account" in respect of each Member.
- 83.2 A Voluntary Account at any given date means:
- 83.2.1 the value of any cash held including from Contributions under Rule 81.3, transfers pursuant to clause 26 and distributions from Funds; plus
 - 83.2.2 the value of all Units attributable to the Voluntary Account in respect of that Member across all Funds; plus
 - 83.2.3 any interest or earnings (or losses) thereon; plus
 - 83.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less

- 83.2.5 an allowance for any fees, expenses, costs, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Member that are properly deductible from the Voluntary Account or Contributions paid under Rule 81.3.

84 Employer Account

- 84.1 The Manager may keep a record to be known as the "Employer Account" in respect of each Member.
- 84.2 An Employer Account at any given date means:
- 84.2.1 the value of any cash held including from Contributions under Rule 81.4, applications from the Reserve Fund to the Employer Account under Rules 86.3.1 or 86.4, transfers pursuant to clause 26.2 and distributions from Funds; plus
 - 84.2.2 the value of all Units attributable to the Employer Account in respect of that Member across all Funds; plus
 - 84.2.3 any interest or earnings (or losses) thereon; plus
 - 84.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
 - 84.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Member that are properly deductible from the Employer Account or Contributions paid under Rule 81.4 and any adjustments for Tax under clause 37; less
 - 84.2.6 the value of all Units transferred from the Member's Employer Account to the Member Account under Rule 84.3.
- 84.3 The Manager shall, if so directed by the Participating Employer, transfer all or part of the Member's Employer Account to the Member Account.

85 Employer Special Purpose Account

- 85.1 At the request of the Participating Employer, the Manager may keep a record to be known as the "Employer Special Purpose Account" in respect of each Member.
- 85.2 An Employer Special Purpose Account at any given date means:
- 85.2.1 the value of any cash held including from Contributions, applications from the Reserve Fund to the Employer Special Purpose Account under Rules 86.3.1 or 86.4, transfers pursuant to clause 26 and distributions from Funds; plus
 - 85.2.2 the value of all Units attributable to the Employer Special Purpose Account in respect of that Member across all Funds; plus
 - 85.2.3 any interest or earnings (or losses) thereon; plus
 - 85.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
 - 85.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that

Member that are properly deductible from the Employer Special Purpose Account or Contributions and any adjustments for Tax under clause 37; less

- 85.2.6 the value of all Units transferred from the Member's Employer Special Purpose Account to the Member Account under Rule 85.4.
- 85.3 A Member will not be able to access their Employer Special Purpose Account unless provided for in the Participating Agreement.
- 85.4 The Manager shall, if so directed by the Participating Employer, transfer all or part of the Member's Employer Special Purpose Account to the Member Account.

86 Reserve Fund

- 86.1 The Manager may establish an account in respect of each Employer Scheme to be known as the "Reserve Fund".
- 86.2 A Reserve Fund at any given date means:
- 86.2.1 the value of any amount forfeited under the Plan in respect of a Member who is an Employee of the Participating Employer, which amount is not required to pay the Benefits of that Member; plus
 - 86.2.2 the value of all Units attributable to the Reserve Fund across all Funds; plus
 - 86.2.3 any amounts that are credited in accordance with clause 26.2; plus
 - 86.2.4 any amounts that are credited in accordance with Rule 99.3; plus
 - 86.2.5 any amounts that are credited from time to time by the Participating Employer; plus
 - 86.2.6 any interest and earnings (or losses) thereon; plus
 - 86.2.7 any amounts representing rebates in respect of any Tax required to be made in respect of the Reserve Fund; less
 - 86.2.8 any amount transferred from the Reserve Fund under Rules 86.3 or 86.4; less
 - 86.2.9 an allowance for any Tax and other Liabilities that are properly deductible from the relevant Reserve Fund and any adjustments for Tax under clause 37.
- 86.3 The Manager may, with the consent of the Participating Employer, apply the Relevant Reserve Fund at any time, in one or more of the following ways:
- 86.3.1 Increasing Member Accounts, Employer Accounts and Employer Special Purpose Accounts on a fair and equitable basis;
 - 86.3.2 Payment of all or part of the fees, costs, charges or other Liabilities of the Employer Scheme;
 - 86.3.3 Payment of insurance premiums for Members in respect of Insured Benefits;
 - 86.3.4 Payment of all or part of the Contributions required by the Participating Employer under Rule 81.4;

- 86.3.5 Payment of insurance premiums for Members for any insurance arrangements made by a Participating Employer outside the Plan;
 - 86.3.6 Payment for such other purpose as the Manager, with the consent of the Participating Employer shall consider appropriate, PROVIDED THAT no portion of the Reserve Fund shall revert to any Participating Employer without the approval of the FMA in accordance with the FMCA.
- 86.4 Unless otherwise provided for in a Participating Agreement, the Manager will review the amount held in the Reserve Fund at the end of each Plan Year, and where a Reserve Fund contains an amount that the Manager considers to be in excess of that required for the proper maintenance of the Employer Scheme, the Manager shall at its discretion distribute an appropriate amount of the sum held in the Reserve Fund by any of the methods specified in Rule 86.3.

87 Benefits on Retirement

87.1 Subject to Rule 87.2, if a Member leaves Employment either:

- 87.1.1 at any time on or after that Member's Normal Retirement Date (if any); or
- 87.1.2 at any time after the Member's Early Retirement Date (if any), on the terms provided in the Participating Agreement,

the Member shall be entitled to a cash lump sum equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account (as applicable) of that Member or such other sum as is provided in the Participating Agreement provided however the Benefit payable shall always include the Member Account and the Voluntary Account of a Member.

87.2 A Member may request a Benefit pursuant to this Rule 87 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 96.4.

88 Benefits on death

88.1 If a Member dies in Employment before that Member's Normal Retirement Date (if any) there shall be payable under Rule 88.3 a Benefit equal to the sum of:

88.1.1 the Member Account, the Voluntary Account, the Employer Account, the Employer Special Purpose Account of the Member as set out in the Participating Agreement; and

88.1.2 subject to Rule 99.6 any Insured Benefits in respect of the Member, or such other sum as provided in the Participating Agreement, provided however the Benefit payable shall always include the Member Account and the Voluntary Account of a Member.

88.2 If a Member dies in Employment after that Member's Normal Retirement Date (if any) the Member shall be deemed to have Retired on the day before that Member's death. The Benefit arising shall be payable as a cash lump sum under Rule 87.1 and paid in accordance with Rule 88.3.

88.3 The Manager shall pay or apply any amount payable on the death of a Beneficiary (the **Deceased Beneficiary**) out of the Plan to or for the benefit of any Dependant of the Deceased Beneficiary or such one or more of the Nominated Beneficiaries of the

Deceased Beneficiary or the administrator or executor of the estate of the Deceased Beneficiary the amounts, at times and generally in such manner as the Manager shall from time to time think fit.

89 Benefit on resignation

- 89.1 Subject to Rules 89.2, 90 and 91, if a Member leaves Employment and a Benefit is not payable under Rules 87.1, 88.1 or 88.2 a cash lump sum shall be paid to the Member equal to:
- 89.1.1 the sum of the Member Account and Voluntary Account of the Member; and
 - 89.1.2 such percentage of the Employer Account as set out in the vesting schedule in the Participating Agreement (if applicable); and
 - 89.1.3 subject to Rule 97.6 and 99.6.1 any Insured Benefit in respect of the Member; and
 - 89.1.4 such percentage of the Employer Special Purpose Account as set out in the vesting schedule in the Participating Agreement (if applicable); and
 - 89.1.5 such further amount as the Manager in its absolute discretion shall determine to pay at the request of the Participating Employer provided however such further amount shall not exceed the balance of the Employer Account and in respect of a Member who joined the Plan on or after 1 July 2001 the Employer Special Purpose Account of the Member as set out in the Participating Agreement; less
 - 89.1.6 any FWT that may be chargeable in respect of the Employer's Contributions to the Employer Account or the Employer Special Purpose Account.
- 89.2 A Member may request a Benefit pursuant to this Rule 89 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 96.4.

90 Benefit on Redundancy or ill-health

- 90.1 Subject to Rule 90.2, if a Member leaves Employment as a result of Redundancy or ill-health (as certified to the Manager by the Participating Employer) a cash lump sum shall be paid to the Member equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account as set out in the Participating Agreement (as applicable), less any FWT that may be chargeable in respect of the Employer's Contributions to the Employer Account or the Employer Special Purpose Account or such other sum as is provided in the Participating Agreement provided however the Member shall always receive the sum of the Member Account and Voluntary Account of the Member.
- 90.2 A Member may request a Benefit pursuant to this Rule 90 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 96.4.

91 Benefit on dismissal

- 91.1 Subject to Rule 91.3 and notwithstanding any other provision to the contrary in this Governing Document or the Participating Agreement if a Member shall be dismissed from

Employment or resigns or leaves Employment to avoid dismissal for misconduct, dishonesty, theft or fraud then:

- 91.1.1 a cash lump sum shall be paid to the Member equal to the sum of the Member Account and Voluntary Account of the Member together with such further amount (if any) of the Employer Account and the Employer Special Purpose Account (as set out in the Participating Agreement) of the Member, less any FWT that may be chargeable in respect of the Employer's Contributions to the Employer Account or the Employer Special Purpose Account, as the Manager in its absolute discretion shall determine to pay as requested by the Participating Employer or such sum as is provided in the Participating Agreement provided however, subject to Rule 91.1.2, that the Member shall always receive the sum of the Member Account and Voluntary Account of the Member;
- 91.1.2 the Manager shall, if money is owed to the Participating Employer as a result of the misconduct, dishonesty, theft or fraud of the Member, apply the Benefit payable firstly in reimbursing the Participating Employer for any amount so owed.

Any remaining balance of the Benefit payable shall be paid as a lump sum in cash to the Member.

- 91.2 Production of a certificate signed by a director or the secretary of the Participating Employer that any amount is so owing to it shall be sufficient evidence for the Manager provided a copy of such certificate is given to the Member.
- 91.3 A Member may request a Benefit pursuant to this Rule 91 from or in respect of the Member's Locked-in Interest prior to attaining Lock-in Age only where the Manager is satisfied in its absolute discretion that the Member desires to receive such money as a result of the circumstances outlined in Rule 96.4.

92 Total and Permanent Disablement Benefit

- 92.1 If a Total and Permanent Disablement Benefit is available to the Member and the Member suffers Total and Permanent Disablement, as defined in the Relevant Insurance Policy, and leaves Employment, the Member shall be entitled to receive:
- 92.1.1 any Insured Benefit relating to that Member together with;
- 92.1.2 a Benefit equal to the sum of the Member Account, Voluntary Account, Employer Account and Employer Special Purpose Account of the Member as set out in the Participating Agreement;

or such other sum as provided in the Participating Agreement, provided however that the Benefit payable shall always include the Member Account and the Voluntary Account of the Member.

93 Annuity option

- 93.1 If a Member so requests the Manager shall instead of paying to a Member all or part of the lump sum payable under these Rules arrange for an annuity to be purchased from a Life Insurer on such terms and conditions as shall be agreed upon between the Member, the Manager and the Life Insurer.

94 Withdrawals while still in Service

- 94.1 Subject to Rule 96.5, a Member may at any time on or after that Member's Normal Retirement Date apply to the Manager to withdraw all or part of their Member Account, Voluntary Account and the vested portion of their Employer Account and Employer Special Purpose Account as set out in the Participating Agreement while still in the Service of the Participating Employer, subject to any conditions imposed on such withdrawals by the Manager from time to time.
- 94.2 In the event of such withdrawal, the Member shall receive an amount equal to the Benefit that would have been payable had the Member left Service at the date of withdrawal and been eligible to receive a benefit pursuant to Rule 89.
- 94.3 The Manager shall refuse any withdrawal under this Rule 94 that the Manager considers to be a breach of Relevant Law or likely to jeopardise the continued registration or designation of the Plan under the FMCA.

95 Withdrawals for purpose of purchase of first home

- 95.1 Subject to Rule 96.5, a Member may, subject to any limitations attached to the Member's Locked-in Interest, apply to the Manager to withdraw all or part of the Member Account, Voluntary Account or the vested portion of their Employer Account and Employer Special Purpose Account of that Member as set out in the Participating Agreement (subject to clause 8(4)(a) of the KiwiSaver Scheme Rules, read as if the KiwiSaver Scheme Rules applied to the Plan) if the Member intends to purchase an estate in land in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules.
- 95.2 In the event of such withdrawal, the Member shall receive an amount equal to the Benefit that would have been payable had the Member left Service at the date of withdrawal and been eligible to receive a benefit pursuant to Rule 89 (subject to clause 8(4)(a) of the KiwiSaver Scheme Rules, read as if the KiwiSaver Scheme Rules applied to the Plan).
- 95.3 The Manager in its absolute discretion may permit such withdrawal if it is satisfied, based on whatever supporting evidence it may reasonably require, that clause 8 of the KiwiSaver Scheme Rules read as if the KiwiSaver Scheme Rules applied to the Plan would enable the withdrawal.

96 Withdrawals

- 96.1 Subject to Rule 96.5, a Member may at any time before being entitled to receive a Benefit under these Rules, withdraw part or all of the Member Account, Voluntary Account or the vested portion of their Employer Account and Employer Special Purpose Account as set out in the Participating Agreement under Rules 96.2 and 96.3. Notwithstanding Rules 82.2, 83.2, 84.2 and 85.2, the value of the Member Account, Voluntary Account, Employer Account or Employer Special Purpose Account of the Member will be reduced by the value of any Units redeemed or realised to pay a partial withdrawal under this Rule subject to any other deduction the Manager considers appropriate.
- 96.2 Subject to Rule 96.5, a Member may make a partial withdrawal under Rule 96.1 as provided in the Participating Agreement relevant to the Member. If no such provision is made in the relevant Participating Agreement the Member may make one partial withdrawal under Rule 96.1 during his or her Membership of the Plan provided such withdrawal is for:
- 96.2.1 no more than 50% of the value of the Member Account and Voluntary Account of the Member at any time; and

- 96.2.2 at least \$1,000.
- 96.3 Subject to Rule 96.5, the Manager may allow more frequent withdrawals than permitted under Rule 96.2. The Manager may however impose reasonable requirements governing partial withdrawals including provisions determining the frequency of withdrawals and the number of withdrawals that can be made during any Plan Year.
- 96.4 A Member may at any time before being entitled to receive a Benefit under these Rules, withdraw all or part of the entire value of their Member Account, Voluntary Account or the vested portion of their Employer Account and Employer Special Purpose Account as set out in the Participating Agreement (as applicable), including any Locked-in Interest, where the Manager is satisfied in its absolute discretion that the Member desires to receive such monies as a result of:
- 96.4.1 the permanent emigration of the Member from New Zealand, approved as such by the Manager; or
 - 96.4.2 such circumstances involving financial hardship to the Member as the Manager determines justify the need for payment of such monies; or
 - 96.4.3 the Terminal Illness of the Member; or
 - 96.4.4 a change to the operation of the Plan, which change is considered by the Manager in its absolute discretion to be material to the relevant Member's decision to invest in the Plan; or
 - 96.4.5 the Member being required (including under any contract or agreement) to make a relationship property settlement with his or her spouse, civil union partner or de facto partner provided that the Manager shall have full discretion to determine the amount payable under this Rule 96.4.5 which may be less than, but no greater than, the value of the Member's Member Account, Voluntary Account, and vested portion of the Employer Account and Employer Special Purpose Account (as applicable); or
 - 96.4.6 other circumstances that the Manager considers in its absolute discretion warrant payment of such monies,

PROVIDED THAT in no circumstances shall a Member be eligible to withdraw such monies where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Plan, or to any Member of the Plan or to any contribution made by or in respect of a Member under the Plan under any law (including without limitation Tax status or treatment).

- 96.5 Rules 96.1 to 96.3 (inclusive) shall not be applicable to a Member's Locked-in Interest.

97 Insured Benefits

- 97.1 The Participating Employer may make Insured Benefits available for Members under the Participating Agreement. If Insured Benefits are available they shall be included in the Participating Agreement. Such Insured Benefits may include but shall not be limited to Death Cover, Total and Permanent Disablement Cover, Health Insurance, Crisis Cover or Income Protection Cover. These Insured Benefits may be made available to Members and will be paid as set out under the Participating Agreement. Death Cover may be made available to Members and their Spouses or Partners.
- 97.2 The Manager may enter into any insurance arrangements, at either its own volition or at the request of a Participating Employer, to make Insured Benefits available for Members.

Insured Benefits may be offered in respect of all Members or in respect of any group of Members and shall, subject to the agreement of the Insurer, be offered to Members as specified in the Participating Agreement or as otherwise advised to Members. The Manager has no duty to ensure consistency or equality between insurance arrangements entered into and will not be liable to Members if their Insured Benefits are less generous than other Insured Benefits offered to other Members (including by other Participating Employers).

- 97.3 Subject to the Manager's right to offer Insured Benefits in respect of all Members, the Manager shall act on the direction of a Participating Employer to enter into insurance arrangements on behalf of the Employees of the Participating Employer and the Manager shall not be under a duty to check the terms of any such arrangements. The Manager shall not however be required to enter into any Group Insurance Policy which, in the Manager's sole discretion, would subject the Plan to any unreasonable obligation or undue risk.
- 97.4 Any insurance cover provided to Members will be subject to any conditions imposed by the Insurer with payment of any Insured Benefit subject to approval of the claim by the Insurer.
- 97.5 All Members must provide to the relevant Insurer all information required by that Insurer to enable it to issue a Group Insurance Policy or to enable the relevant Members to be included within an existing Group Insurance Policy.
- 97.6 Any Insured Benefits in respect of a Member may be suspended if required at any time by the Insurer and if this is provided for in the Participating Agreement or as otherwise advised to Members.

98 Leave of Absence

- 98.1 In the event of a Member being on Leave of Absence for a period of less than twelve (12) Months or any other period approved by the Member, Participating Employer and the Manager, (**Approved Leave**) the absent Member (the **Absent Member**) shall, subject to this Rule 98, continue to be a Member during that period.
- 98.2 During any period of Approved Leave the Absent Member may elect to:
- 98.2.1 discontinue contributing to the Plan during the period of Leave of Absence; or
- 98.2.2 continue to make Contributions under Rules 81.1 and 81.3
- 98.3 During any period of Approved Leave, the Employer Contributions payable under Rule 81.4 may be suspended at the Participating Employer's absolute discretion.
- 98.4 During any period of Approved Leave, the Absent Member shall continue to be a Member and there shall be no interruption in the Member's Membership of the Plan.
- 98.5 During any period of Approved Leave, any Insured Benefits in respect of the Member may be suspended if this is provided for in the Participating Agreement.
- 98.6 If the Absent Member does not return to Employment immediately after the expiry of the period of Approved Leave, the Absent Member shall receive the appropriate Benefit payable under these Rules calculated at the date of expiry of the period of Approved Leave or the date that the Absent Member ceased being in Employment whichever is the earlier (as certified to the Manager by the Participating Employer).

99 General provisions relating to Benefits

- 99.1 Deduction of Tax and Other Charges

- 99.1.1 The Manager may deduct from any Member's Contribution or from any payment to be made to any Beneficiary from the Plan the amount of any Tax that is or may be assessed against or payable by or in respect of the Beneficiary. The Manager shall pay any such amounts so deducted to the relevant authority (where required) and any amounts payable to a Beneficiary by the Manager shall be the net amount after any such deductions have been made.
- 99.1.2 The Manager may deduct insurance premiums and any other amounts, fees and charges (including any Tax on those payments) payable by or in respect of the Member or the Member's Spouse or Partner from the Member Account, Voluntary Account, Employer Account or Employer Special Purpose Account in respect of a Member or the Relevant Reserve Fund as provided in clause 35.2.
- 99.2 Proofs and Receipts
- 99.2.1 The Member or any person purporting or claiming to be qualified or entitled to any Benefit under the Plan shall on request produce to the Manager such evidence or information as the Manager may reasonably require.
- 99.2.2 The payment by the Manager or the Supervisor of any Benefits in respect of a Member to any Beneficiary to whom such Benefit or amount is authorised or determined to be payable (including a payment to a Life Insurer under Rule 93) shall be a complete discharge to the Manager and the Supervisor for any liability the Manager or the Supervisor has in respect of that Benefit AND the Manager and the Supervisor shall be under no liability to see to the application of the Benefit so paid.
- 99.2.3 Subject to clause 10.1, in the event of any Beneficiary being paid any amount in error in excess of that Beneficiary's lawful entitlement then the Beneficiary will forthwith upon demand by the Manager refund to the Manager the amount overpaid in error.
- 99.3 Unclaimed Benefits
- 99.3.1 If the Manager is unable to trace a person entitled to a Benefit within six (6) years after the date on which the Benefit became due then the Benefit at the option of the Manager may be forfeited to the Relevant Reserve Fund and the Benefit and rights to any other Benefits under the Plan shall be cancelled by the Manager.
- 99.4 Assignment of Benefits
- 99.4.1 Subject to Relevant Law a Member may charge or borrow against the security of their Member Account and/or Voluntary Account, but may not transfer, assign or otherwise alienate their interest in the Plan EXCEPT THAT in no circumstances may a Member assign by way of mortgage, charge or transfer the Member's right to receive a Benefit in respect of the Member's Locked-in Interest.
- 99.5 Information from Beneficiary
- 99.5.1 Each Beneficiary shall produce such evidence or information as may reasonably be required by the Manager concerning the Beneficiary's entitlement under the Plan and until that evidence or information is produced the Manager may withhold the payment of any Benefit to that Beneficiary.

99.6 Mis-statement of Information

99.6.1 If any mis-statement is made by a Member as to that Member's status, age or otherwise (including any medical information considered necessary by the Manager in order to determine whether a Member is entitled to an Insured Benefit), then the Manager shall be entitled to make adjustments to the Benefits in respect of the Member.

99.7 Where no Beneficiaries

99.7.1 In the event of a Member dying intestate and not being survived by either:

- (a) any person who in the opinion of the Manager is a Nominated Beneficiary; or
- (b) a person described in section 77 of the Administration Act 1969, to which apart from the provisions of this Rule there would be a Benefit payable under this Governing Document,

then any Benefit shall be dealt with in accordance with the provisions of Rule 99.3.

99.8 Infancy or Incapacity of Beneficiary

99.8.1 If any Benefit under this Governing Document is payable to or for the benefit of a Beneficiary who is an infant, is under a legal incapacity or, in the opinion of the Manager is incapable of managing that Beneficiary's own affairs or it is otherwise in that Beneficiary's best interests for the Manager to exercise their discretion under this Rule, the Manager may pay the Benefit for the benefit of that Beneficiary in such manner, on such terms and in such proportions as the Manager think fit including, at the discretion of the Manager, payment of all or part of the benefit to another Person, for the benefit of that Beneficiary.

99.9 Payment of Benefits

99.9.1 Payment of a Benefit in accordance with this Governing Document and the Rules shall, subject to clauses 29.2.2 and 49.1, be paid by the Manager as soon as possible after the Benefit becomes due for payment.

PART 5: INDIVIDUAL INVESTOR RULES**100 Eligibility**

100.1 This Part 5 applies to natural persons who have joined the Plan before the Effective Date as an Individual Investor.

101 Cessation of Membership

101.1 An Individual Investor shall cease to be a Member under this Part 5 on whichever of the following first occurs:

- 101.1.1 the Member transferring to a transferee scheme as described in clause 27.2;
- 101.1.2 on the Plan being wound up under clause 31;
- 101.1.3 on the Individual Investor Section being wound up under clause 32;

101.1.4 at the discretion of the Manager, subject to the maintenance of any Insured Benefits under Rule 106, the Individual Investor's Accounts being reduced to a zero balance.

101.2 A Member, on ceasing to be a Member under this Part 5, shall be entitled to payment of Benefits specified in Parts 1, 2 and 5 of this Governing Document (as applicable).

102 Contributions

102.1 An Individual Investor may make such Contributions to the Plan as they choose from time to time, as agreed with the Manager. Such Contributions shall be directed to the Member's Individual Investor Member Account.

102.2 If agreed between the Individual Investor and his or her Employer, an obligation to contribute to the Plan shall be satisfied, whether in full or in part, by contributions made to a KiwiSaver Scheme in accordance with the KiwiSaver Act (to the extent of such contribution to a KiwiSaver Scheme).

102.3 The Employer of an Individual Investor may make such Contributions as is agreed between the Member and the Employer from time to time. Such Contributions shall be directed to the Member's Individual Investor Employer Account. Before paying any Contributions to the Plan the Employer shall deduct any ESCT or any equivalent or similar, or other Tax, levy or amount payable in respect of any Contribution to any regulatory or government authority.

102.4 The Employer shall ensure that, in relation to Contributions paid via Payroll, payment of any Contribution as agreed under this Rule 102 shall be passed to the Plan promptly after the Employer's Payroll run.

102.5 Any Individual Investor who was a member of another Retirement Scheme may transfer the amount of this benefit from that scheme to the Plan under clause 26.2.

103 Individual Investor Member Account

103.1 The Manager shall keep and update at such intervals as the Manager shall determine a record to be known as the "Individual Investor Member Account" in respect of each Individual Investor.

103.2 An Individual Investor Member Account at any given date means:

103.2.1 the value of any cash held including from any amount elected by the Individual Investor to be transferred in from any Benefit paid to them under this Governing Document, any Contributions, transfers pursuant to clause 26.2, any financial assistance or grant provided to members of Retirement Schemes as a result of any legislation and distributions from Funds; plus

103.2.2 the value of all Units attributable to the Individual Investor Member Account in respect of that Member across all Funds; plus

103.2.3 any interest or earnings (or losses) thereon; plus

103.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less

103.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Individual Investor that are properly deductible from the Individual Investor Member Account or Contributions and any adjustments for Tax under clause 37.

104 Individual Investor Employer Account

- 104.1 The Manager shall at the request of the Member keep and update at such intervals as the Manager shall determine a record to be known as the "Individual Investor Employer Account" in respect of each Individual Investor.
- 104.2 An Individual Investor Employer Account at any given date means:
- 104.2.1 the value of any cash held including from any amount elected by the Individual Investor to be transferred in from any Benefit paid to them under this Governing Document, any Contributions made under Rule 102.3, transfers pursuant to clause 26.2 and distributions from Funds; plus
 - 104.2.2 the value of all Units attributable to the Individual Investor Employer Account in respect of that Member across all Funds; plus
 - 104.2.3 any interest or earnings (or losses) thereon; plus
 - 104.2.4 any amounts representing rebates in respect of any Tax required to be made in respect of that Member; less
 - 104.2.5 an allowance for any fees, costs, expenses, charges, any premiums payable under any Group Insurance Policy, Tax and other Liabilities relating to that Individual Investor that are properly deductible from the Individual Investor Employer Account or Contributions paid under Rule 102.3 and any adjustments for Tax under clause 37.

105 Benefits on death

- 105.1 If an Individual Investor dies there shall be payable a Benefit equal to the sum of the Individual Investor Member Account and the Individual Investor Employer Account (if any).
- 105.2 The Manager shall pay or apply any amount payable on the death of a Beneficiary (the **Deceased Beneficiary**) out of the Plan to or for the benefit of any Dependant of the Deceased Beneficiary or such one or more of the Nominated Beneficiaries of the Deceased Beneficiary or the administrator or executor of the estate of the Deceased Beneficiary the amounts, at times and generally in such manner as the Manager shall from time to time think fit.

106 Insured Benefits

- 106.1 The Manager may enter into any insurance arrangements to make Insured Benefits available for Members. Insured Benefits may be offered in respect of all Members or in respect of any group of Members and shall, subject to the agreement of the Insurer, be offered to Members as advised to Members from time to time. The Manager has no duty to ensure consistency or equality between insurance arrangements entered into and will not be liable to Members if their Insured Benefits are less generous than other Insured Benefits offered to other Members.
- 106.2 Any insurance cover provided to Members will be subject to any conditions imposed by the Insurer with payment of any Insured Benefit subject to approval of the claim by the Insurer.
- 106.3 All Members must provide to the relevant Insurer all information required by that Insurer.
- 106.4 Any Insured Benefit in respect of a Member may be suspended if required at any time by the Insurer.

107 Withdrawals

- 107.1 Subject to Rule 107.2 an Individual Investor shall be entitled to withdraw part or all of their Individual Investor Account (subject to any liability for FWT), either by lump sum from time to time, or by regular withdrawals made by automatic payment to a nominated bank account, no more frequently than fortnightly. The minimum lump sum withdrawal shall be \$500, the minimum fortnightly withdrawal shall be \$250 and the minimum Monthly withdrawal shall be \$500 or such other amounts as stated by the Manager from time to time EXCEPT THAT, in no circumstances shall a Member be eligible to make such a withdrawal where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Plan, or to any Member of the Plan or to any contribution made by or in respect of a Member under the Plan under Relevant Law (including without limitation Tax status or treatment). For the purposes of this clause "Monthly" shall mean a period of 30 days.
- 107.2 Notwithstanding Rule 107.1 a Member shall only be entitled to a Benefit pursuant to this Rule 107 from or in respect of a Member's Locked-in Interest prior to attaining Lock-in Age where the Manager is satisfied in its absolute discretion that the Member desires to receive that Benefit as a result of:
- 107.2.1 the permanent emigration of the Member from New Zealand, approved as such by the Manager; or
 - 107.2.2 such circumstances involving financial hardship to the Member as the Manager determines justify the need for payment of such monies; or
 - 107.2.3 the Terminal Illness of the Member; or
 - 107.2.4 a change to the operation of the Plan, which change is considered by the Manager in its absolute discretion to be material to the relevant Member's decision to invest in the Plan; or
 - 107.2.5 the Member being required (including under any contract or agreement) to make a relationship property settlement with his or her spouse or civil union partner or de facto partner provided that the Manager shall have full discretion to determine the amount payable under this Rule 107.2.5 which may be less than, but no greater than, the entire value of the Individual Investor Account and Individual Investor Employer Account; or
 - 107.2.6 other circumstances that the Manager considers in its absolute discretion warrant payment of such monies,

PROVIDED THAT in no circumstances shall a Member be eligible to withdraw such monies where the Manager considers that payment of such a withdrawal may be prejudicial to the status or treatment of the Plan, or to any Member of the Plan or to any contribution made by or in respect of a Member under the Plan under Relevant Law (including without limitation Tax status or treatment).

108 General provisions relating to Benefits

- 108.1 Deduction of Tax and Other Charges
- 108.1.1 The Manager may deduct from any Member's Contribution or from any payment to be made to any Beneficiary from the Plan the amount of any Tax that is or may be assessed against or payable by or in respect of the Beneficiary. The Manager shall pay any such amounts so deducted to the relevant authority

(where required) and any amounts payable to a Beneficiary by the Manager shall be the net amount after any such deductions have been made.

- 108.1.2 The Manager may deduct insurance premiums and any other amounts, fees and charges (including any Tax on those payments) payable by or in respect of the Individual Investor from the Individual Investor Member Account or the Individual Investor Employer Account as provided in clause 35.2.

108.2 Proofs and Receipts

- 108.2.1 The Individual Investor or any person purporting or claiming to be qualified or entitled to any Benefit under the Plan shall on request produce to the Manager such evidence or information as the Manager may reasonably require.
- 108.2.2 The payment by the Manager of any Benefits in respect of an Individual Investor to any Beneficiary to whom such Benefit or amount is authorised or determined to be payable shall be a complete discharge to the Manager for any liability the Manager has in respect of that Benefit AND the Manager shall be under no liability to see to the application of the Benefit so paid.
- 108.2.3 Subject to clause 10.1, in the event of any Beneficiary being paid any amount in error in excess of that Beneficiary's lawful entitlement then the Beneficiary will forthwith upon demand by the Manager refund to the Manager the amount overpaid in error.

108.3 Unclaimed Benefits

- 108.3.1 If the Manager is unable to trace a person entitled to a Benefit within six (6) years after the date on which the Benefit became due then the Benefit at the option of the Manager may be forfeited and applied under section 149 of the Trusts Act and the Benefit and rights to any other Benefits under the Plan shall be cancelled by the Manager.

108.4 Assignment of Benefits

- 108.4.1 Subject to Relevant Law an Individual Investor may charge or borrow against the security of their Individual Investor Member Account, or the Individual Investor Employer Account, but may not transfer, assign or otherwise alienate their interest in the Plan EXCEPT THAT in no circumstances may a Member assign by way of mortgage, charge or transfer the Member's right to receive a Benefit in respect of the Member's Locked-in Interest.

108.5 Information from Beneficiary

- 108.5.1 Each Beneficiary shall produce such evidence or information as may reasonably be required by the Manager concerning the Beneficiary's entitlement under the Plan and until that evidence or information is produced the Manager may withhold the payment of any Benefit to that Beneficiary.

108.6 Mis-statement of Information

- 108.6.1 If any mis-statement is made by an Individual Investor as to that Member's status, age or otherwise, then the Manager shall be entitled to make adjustments to the Benefits in respect of the Individual Investor.

108.7 Where no Beneficiaries

108.7.1 In the event of an Individual Investor dying intestate and not being survived by any person who in the opinion of the Manager is a Nominated Beneficiary then the provisions of section 77 of the Administration Act 1969 shall apply to any Benefit payable.

108.8 Infancy or Incapacity of Beneficiary

108.8.1 If any Benefit under this Governing Document is payable to or for the benefit of a Beneficiary who is an infant, is under a legal incapacity or, in the opinion of the Manager is incapable of managing that Beneficiary's own affairs or it is otherwise in that Beneficiary's best interests for the Manager to exercise their discretion under this Rule, the Manager may pay the Benefit for the benefit of that Beneficiary in such manner, on such terms and in such proportions as the Manager think fit including, at the discretion of the Manager, payment of all or part of the benefit to another Person, for the benefit of that Beneficiary.

108.9 Payment of Benefits

108.9.1 The Benefit shall, subject to clauses 29.2.2 and 49.1, be paid by the Manager as soon as possible after the Benefit becomes due for payment.

PART 6: DEFINITIONS

109 Definitions and interpretation

Definitions

109.1 In this document the following definitions apply:

Account means as applicable any form of account established under this Governing Document and shall include a Member Account, Voluntary Account, Employer Account, Employer Special Purpose Account, Employer Special Purpose Reserve Account, Relevant Employers Special Purpose Reserve Account, Individual Investor Member Account and an Individual Investor Employer Account.

Administration Manager in relation to the Plan means any Person to whom the Manager has contracted part or all of the management of the administration of the Plan.

Assets means, in respect of each Fund, the aggregate of the Investments of that Fund.

Associated Employer means any Employer who is an Associated Person of an Employer who joins or has joined the Plan and who completes or has completed a Participating Agreement and includes any successor.

Associated Participant means any Employer who is a member or affiliate or employs individuals who are members or affiliates of an Association who joins or has joined the Plan and who completes or has completed a Participating Agreement and includes any successor.

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

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

Auditor means the person for the time being appointed as auditor of the Plan pursuant to this Governing Document.

Beneficiary means any Member or any other Person either presently or contingently entitled to any Benefit from the Plan.

Benefit means any lump sum or other payment arising from Membership of the Plan.

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

Buy Spread means the Buy Spread referred to in clause 9.5.

Cash includes cheque, bank cheque and electronic transfer.

Commissioner means the Commissioner of Inland Revenue.

Contribution means any sum paid by or on behalf of a Member as a contribution to the Plan.

Commencement Date means the 17th day of May 1994.

Custodian means a person appointed by the Supervisor to hold all or part of the Scheme Property under clause 14.1, and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold all or part of such Scheme Property.

Date of Termination means the date of termination of the Plan determined under or pursuant to clause 4.

Dependant in relation to a Member means any person or persons (whether or not related by blood or marriage to the Member), whom the Manager in its absolute discretion from time to time determines to be or to have been wholly or partly dependent on the Member, alone or with others at any time prior to the Member's death.

Disclosure Document has the meaning set out in the FMCA and includes any PDS, Register Entry or Fund Update.

Early Retirement Date in respect of a Member means, the early retirement date specified in the Participating Agreement (if any).

Effective Date means the date that the Manager elects under clause 19(1)(a) of Schedule 4 of the FMCA.

Employee means any person who is in the Employment of an Employer.

Employer means any employer whether a limited liability company, partnership, sole proprietor or any other Person and includes a State Sector Employer. Where a Member is Member of the Plan by virtue of their membership or affiliation of an Association, 'Employer' shall, as the context requires in relation to that Member include that Association.

Employer Account in relation to a Member shall have the meaning given in Rules 57.2 and 84.2.

Employer Scheme means in respect of each Participating Agreement, that part of the Plan that relates to the Participating Agreement as described in clause 7.

Employer Special Purpose Account in relation to a Member shall have the meaning given in Rules 58.2 and 85.2.

Employer Special Purpose Reserve Account in relation to a Member shall have the meaning given in Rule 60.

Employment means employment under a contract of employment or apprenticeship with a Participating Employer or with an Employer of a member or affiliate of an Association as set out in the Participating Agreement including:

- (a) Employment while a director or officer;
- (b) Any period (determined by the Participating Employer with the approval of the Manager) of employment with a Participating Employer prior to the date upon which such Employer becomes a Participating Employer;
- (c) Any period of additional employment granted in respect of the receipt of a transfer amount under clause 26.4,

and Employed shall have a similar meaning.

In the event of any doubt as to whether the requirements of Employment have been fulfilled the decision of the Manager shall be final. If Relevant Law requires, Employment and Employed shall be interpreted as defined in that Relevant Law.

Equivalent Overseas Scheme means an equivalent overseas retirement scheme as defined in the FMC Regulations.

ESCT means Employer Superannuation Contribution Tax as set out in the Tax Act.

Finance Act means the Finance Act 2004 (UK), any regulations made thereunder and any amending or successor legislation.

Fisher Funds means Fisher Funds Management Limited or any Person, firm, corporation or company carrying on business in succession thereto or in amalgamation therewith.

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

FMCA means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Fund means a fund established under clause 46.

FWT means Fund Withdrawal Tax, as it is commonly referred to for income tax purposes.

Generally Accepted Accounting Practice has the meaning given in the FMCA.

Governing Document means this trust deed constituting the Plan and as may be amended from time to time.

Group Insurance Policy means any policy or policies of insurance effected by the Manager to fund Insured Benefits for Members and Member's Spouses with a Life Insurer under clause 15.2.11.

HMRC means Her Majesty's Revenue and Customs (United Kingdom).

Individual Investor means a person who has been admitted to Membership as an Individual Investor.

Individual Investor Account means in relation to an Individual Investor, the Individual Investor Member Account and Individual Investor Employer Account.

Individual Investor Employer Account shall have the meaning given in Rule 104.2.

Individual Investor Member Account in relation to an Individual Investor shall have the meaning given in Rule 103.2.

Individual Investor Rules means the rules at Part 5 of this Governing Document, which apply to Individual Investors.

Individual Investor Section means the section of the Plan that is a legacy superannuation scheme under the FMCA.

Insured Benefits means any insured benefits made available to Members of the Plan or Spouses of Members.

Insurer means a company selected and appointed from time to time by the Participating Employer or the Manager to provide a policy of insurance in connection with the provision of Insured Benefits.

Investment means, in respect of each Fund, any part of the Scheme Property held on trust by the Supervisor in respect of that Fund.

Investment Direction means an investment direction given by a Member to the Manager or a Participating Employer to the Manager in accordance with clause 43.

Investment Manager in relation to the Plan means any Person to whom the Manager has contracted some or all of the investment of the Assets of the Plan.

KiwiSaver Act means the KiwiSaver Act 2006.

KiwiSaver Scheme has the same meaning as in the FMCA.

Leave of Absence in respect of a Member shall mean, provided that there is a reasonable expectation of that Member returning to Employment:

- (a) any period of absence from Employment due to "parental leave" or a "period of preference" (both of which expressions are contemplated by the Parental Leave and Employment Protection Act 1987) as determined by the Participating Employer; or
- (b) any other period of absence from Employment, whether due to illness, for the purposes of education or training, or due to being overseas or otherwise, approved by the Participating Employer; or
- (c) with the approval of the Participating Employer any period of leave of absence from attendance at work during the usual hours of employment of that Member and during which period of absence the Member does not receive remuneration from the Participating Employer.

Liabilities means debts and other obligations of the Supervisor or the Manager payable from the Plan and the liability of the Supervisor or the Manager as drawer or acceptor of a bill of exchange including all Taxes and duties payable from the Plan but excluding contingent liabilities except to the extent the Supervisor or the Manager decides an allowance should properly be made therefore.

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

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

Life Insurer has the same meaning as in the Insurance (Prudential Supervision) Act 2010.

Locked-in Interest means any portion of the Member's interest in an Employer Scheme or Individual Investor Account in relation to which an election has been made by the Member for it to be treated as a Locked-in Interest.

Lock-in Age in respect of a Member means the later of:

- (a) fifty (50) years of age; or
- (b) the age specified by the Member at the date the Member made an election for all or any portion of his or her Account to be treated as a Locked-in Interest.

Manager means Fisher Funds Management Limited or such other Licensed Manager for the time being appointed as manager of the Plan pursuant to this Governing Document, and includes any attorney, agent, and delegate of such person.

Member means a person who has been accepted for Membership of the Plan and the personal representative of a Member where applicable.

Member Account in relation to a Member shall have the meaning given in Rule 55.2 and 82.2.

Membership means a Member's membership of the Plan.

Month means a calendar month, unless otherwise stated.

Net Value means:

- (a) in respect of an Asset of the Plan, the value of the Asset calculated in accordance with clause 50.1; or
- (b) in respect of a Fund in the Plan, the aggregate value of the Assets of the Fund calculated in accordance with clause 50.2.

Nominated Beneficiary in respect of a Beneficiary or deceased Beneficiary means any person whose name and particulars have been notified to the Manager in writing by a Member and accepted by them as being a person whom the Member may wish the Manager to consider as a nominated beneficiary.

Normal Retirement Date in respect of a Member means the age upon which the Member becomes entitled to receive New Zealand superannuation (as defined in the New Zealand Superannuation and Retirement Income Act 2001) or any replacement or successor to New Zealand superannuation unless otherwise specified in the Participating Agreement (if any).

Participating Agreement means an agreement in a form approved by the Manager under which the Participating Employer sets out the particular Rules governing their Employee's, or member or affiliate's, Membership of the Plan and agrees to participate in the Plan and be bound by the terms and provisions of this Governing Document.

- (a) **The Participating Agreement in respect of a Member or an Employee** means the participating agreement in respect of the Participating Employer or Associated Employer by whom the Member or Employee is Employed, or in respect of the Association or Associated Participant with which the Member or Employee has a relationship.
- (b) **The Participating Agreement in respect of a Participating Employer** means the Participating Agreement executed by that Participating Employer.
- (c) **The Participating Agreement in respect of an Associated Employer** means the Participating Agreement executed by the Participating Employer in respect of which the Associated Employer is associated.
- (d) **The Participating Agreement in respect of an Associated Participant** means the Participating Agreement executed by the Participating Employer with which the Associated Participant is associated.

Participating Employer means any Person admitted to participation in the Plan in accordance with clause 5.1, clause 5.4, or clause 5.6, and that Person's successors.

- (a) **The Participating Employer in respect of a Member or an Employee** means the Employer by which the Member or Employee is Employed or the Association with which the Member or Employer has a relationship.
- (b) **The Participating Employer in respect of an Associated Employer** means the Participating Employer of which the Associated Employer is a subsidiary or with which it is associated.
- (c) **The Participating Employer in respect of an Associated Participant** means the Participating Employer with which the Associated Participant is associated.

Payroll means the systems used by an Employer to pay its Employees on a regular basis. This may be weekly, fortnightly or Monthly, as is decided by that Employer.

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

PDS has the meaning given in the FMCA and means, in relation to the Plan, the most recent product disclosure statement for the Plan.

Plan and **the Plan** means the Fisher Funds LifeSaver Plan originally established by a trust deed dated 17 May 1994, currently governed by the Present Trust Deed and then governed by this Governing Document.

Plan Year means the period commencing on a Review Date and ending on the day before the following Review Date, both commencement and ending dates being included.

Present Trust Deed has the meaning given to it in Background recital B.

Qualified Auditor has the meaning given in the FMCA.

Redundancy means the termination of the Employment of a Member by a Participating Employer through compulsory or involuntary termination of Employment because of redundancy as so certified by the Participating Employer. In the case of a Member who is a Member by virtue of their relationship with an Association, Redundancy means the termination of Employment by their Employer through compulsory or involuntary termination of Employment because of redundancy as so certified by that Employer.

Register means the register of Members of the Plan maintained by the Manager.

Register Entry has the meaning set out in the FMCA.

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

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

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

Relevant Insurance Policy means the insurance policy made available to a Member by the Member's Participating Employer.

Relevant Law means, as appropriate, all laws applicable to the Manager (including compliance by the Manager with its licence from the FMA), the Supervisor and/or the Plan at applicable points in time and which may include, without limitation, the FMCA, FMC Regulations and any frameworks or methodologies issued by the FMA under that legislation, and the Trusts Act.

Reserve Fund in respect of an Employer Scheme means, at any date the reserve fund in respect of that Employer Scheme as described in Rules 59 and 86.

Retirement means an ending of Employment in circumstances in which a Benefit becomes immediately payable under Rules 61 or 87 and "Retired" shall have an equivalent meaning.

Retirement Scheme has the meaning given in the FMCA and, for the purposes of this Governing Document, includes any overseas superannuation scheme, in respect of which transfers to or from the Plan are permissible.

Review Date means the 1st day of April in each year or such other date as may be agreed from time to time between the Supervisor and the Manager.

Rules means the Rules set out in Parts 3, 4 and 5 in accordance with the context of this Governing Document as amended from time to time.

Salary or Wages means at any date the annual rate of gross wages or pay received by an Employee from a Participating Employer or as otherwise specified in the Participating Agreement, PROVIDED THAT for any Member who is an Employee of an Employer that is approved as an 'exempt employer' (as that term is defined in the KiwiSaver Act), **Salary or Wages** has the meaning given to those terms in the KiwiSaver Act.

Salary Sacrifice Arrangement means an arrangement entered into between the Member and the Participating Employer (or an Individual Investor's Employer where applicable) whereby the Member sacrifices part or all of their Salary and such amount is paid as Employer Contributions to the Plan.

Scheme Property has the meaning given in the FMCA.

Section means the Workplace Savings Section or the Individual Investor Section.

Sell Spread means the Sell Spread referred to in clause 9.9.

Service means actual employment with the Participating Employer in respect of which the Employee concerned receives Salary, and includes any period of Leave of Absence, or as otherwise specified in the Participating Agreement.

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

Special Resolution has the meaning given to it by the FMCA.

Spouse or Partner in relation to a Member means at any given date:

- (a) a person to whom the Member was married or with whom the Member was in a civil union immediately prior to such given date; or
- (b) a person with whom the Member was living immediately prior to such given date in a relationship in the nature of marriage; or
- (c) a person nominated by the Member.

State Sector Employer means an employer in the state services within the meaning of the Public Service Act 2020 or any other Person or organisation that participates in the Plan for the purposes of establishing a superannuation scheme for its officers or employees.

Subsidiary has the meaning contained in Section 5 of the Companies Act 1993.

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

Tax includes any income tax (including tax payable by a Portfolio Investment Entity), capital gains tax, withholding tax, goods and services tax, withdrawal tax or other transactional tax, duties and other levies, imposts, deductions and charges, together with interest, penalties (if any) and charges, fees or other amounts made on or in respect of such amounts.

Tax Act means the Income Tax Act 2007.

Terminal Illness means any illness or medical condition which, in the opinion of the Manager after consideration of unequivocal medical evidence provided to the Manager by the Member's own doctor and such other evidence as the Manager may require, will result in the death of the Member within twelve (12) Months.

Trusts Act means the Trusts Act 2019.

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

UK Pension Plan means a 'registered pension scheme', as that term is defined in the Finance Act.

UK Transfer means, in respect of any relevant Member, a transfer value received by the Plan in respect of the relevant Member's entitlements under a UK registered pension scheme.

Unit means a unit in a Fund as referred to in clause 9.

Unit Price means the price for a Unit calculated under clause 9.3.

Valuation Day means a day on which a Fund is valued under clause 50, being each Business Day or at such other intervals (not exceeding 31 days) as the Manager may determine.

Voluntary Account in relation to a Member shall have the meaning given in Rules 56.2 and 83.2 in accordance with the context of this Governing Document.

Winding Up Date means the effective date of winding up the Plan in accordance with clause 31.1.

Workplace Savings Rules means the rules at Part 4 of this Governing Document, and in relation to a Participating Agreement means the particular rules referred to in that Participating Agreement.

Workplace Savings Section means the Section that is a workplace savings scheme under the FMCA.

Terms defined in Tax Act

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

Interpretation

109.3 In the interpretation of this document, the following provisions apply unless the context otherwise requires:

109.3.1 Headings are inserted for convenience only and do not affect the interpretation of this document.

109.3.2 In this Governing Document where the context permits words describing the singular include the plural and vice versa and words importing masculine, feminine or neuter gender shall include all genders as the case may require.

109.3.3 References to any act includes all amendments and re-enactments thereof and regulations made in respect thereof.

109.3.4 Footnotes used in this Governing Document do not form part of this Governing Document, are a guide only and, where they refer to legislative provisions, they are not intended to incorporate those provisions in this Governing Document or affect the interpretation of this Governing Document. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Governing Document to comply with a particular act or legislation generally.

109.3.5 Where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, which would be applicable to the Plan and are inconsistent with this Governing Document, this Governing Document shall be deemed to be modified to the extent necessary to be consistent with such frameworks or methodologies in respect of the Plan.

Implied terms under the FMCA

109.4 Terms implied into this Governing Document under the FMCA will apply for so long as they are implied in this Governing Document under the FMCA despite anything to the contrary in this Governing Document, and any provision in this Governing Document that is contrary to any such implied term will be void to the extent that it is contrary.

Execution and date

Executed as a deed.

Date: 10 July 2023

Signed by
Fisher Funds Management Limited



Director




Director

Signed by
Trustees Executors Limited
in the presence of:



David Shaw
Senior Client Manager

Authorised Signatory



Shahazad Contractor
Head of Client Supervision

Authorised Signatory

Witness signature:



Witness name:

Aditya Bhatti
Operations Manager
Auckland

Occupation:

Address: