

Discovery Funds Management Scheme Governing Document

Discovery Funds Management Limited
(Manager)

Public Trust
(Supervisor)



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DISCOVERY FUNDS MANAGEMENT SCHEME GOVERNING DOCUMENT

Date: 02 September 2022

PARTIES

Discovery Funds Management Limited (*Manager*)

Public Trust (*Supervisor*)

BACKGROUND

- A The Manager wishes to establish a managed investment scheme, which will be known as the Discovery Funds Management Scheme (*the Scheme*) and which will initially be made up of the Discovery Founders' Fund (*the Initial Fund*).
- B The Scheme shall be governed by this Governing Document and any further schemes or funds shall be established under the terms of an Establishment Deed.
- C The Manager will act as manager of the Scheme on the terms and conditions set out in this Governing Document.
- D The Supervisor has agreed to act as supervisor of the Scheme for the benefit of the Scheme Participants on the terms and conditions set out in this Governing Document.
- E The Manager and the Supervisor wish to record in this Governing Document the terms and conditions under which the Scheme is to be constituted and administered.

BY THIS DEED the parties agree as follows:

SECTION 1 - INTERPRETATION

1 INTERPRETATION

1.1 Definitions

In this Governing Document, unless the context requires otherwise:

Assets means, in relation to a Fund, the property, rights and assets of the Fund;

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

Auditor means, in relation to a Fund or a Scheme, the person or persons for the time being appointed as auditor of the Fund or Scheme, pursuant to this Governing Document;

Business Day means a day, other than a Saturday, Sunday or public holiday, on which banks are open for general banking business in Auckland and Wellington, New Zealand;



Contribution means the amount payable by or in respect of a Scheme Participant as a contribution to the Scheme;

Custodian means, in relation to a Fund, the person or persons appointed as custodian in respect of that Fund pursuant to clause 19.5 (*Appointment of Custodians*) and includes, to the extent that the context permits, any sub-custodian appointed by the Custodian in respect of a Fund under clause 19.5;

Distributable Amount means, in relation to a class of Units, the amount per Unit determined by the Manager as being the amount to be distributed to the Scheme Participants holding those Units from the relevant Fund in accordance with the terms of issue of the Units in that class;

Distribution Account means, in relation to a Fund, the account to which amounts may be transferred pursuant to clause 14.2 (*Entitlements to Distribution Amounts*);

Establishment Deed means any establishment deed in respect of a New Scheme or a New Fund prepared in accordance with clause 3.10 (*Establishment of New Schemes or New Funds*), as any Establishment Deed may be amended from time to time.

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;

Fractional Unit means that part of a Unit in respect of which there is contributed or credited by or on behalf of a Scheme Participant for the Unit, an amount which is less than the Unit Price applicable at the time the Unit is issued;

Fund means, in respect of a Scheme, the fund(s) established pursuant to this Governing Document in respect of that Scheme. For the avoidance of doubt, where a Scheme is established without separate Funds, the Scheme shall constitute a single Fund;

Governing Document means this trust deed, as this trust deed may be amended from time to time, and includes, where the context permits, any Establishment Deed in respect of a New Scheme or a New Fund;

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

Investment Policies means, in relation to a Wholesale Scheme, the policies in relation to investment and other matters affecting the financial position in respect of the Wholesale Scheme adopted from time to time in accordance with clause 10.2 and, in the case of a Registered Scheme, includes a SIPO;

Liabilities means, in relation to a Fund, all liabilities of the Fund and any provision which the Manager decides should be taken into account in determining the liabilities of the Fund, but excluding any amount which results from treating Units



as liabilities and, in the case of a Scheme or Fund which is a PIE, where the Manager, in its complete discretion considers it appropriate to do so, any PIE Tax Liability;

Management Agreement means any management agreement between the Supervisor and the Manager which sets out the Manager's reporting obligations and other agreements (in addition to those in this Governing Document) in respect of a Scheme from time to time;

Manager means, in relation to a Scheme, the manager of the Scheme for the time being appointed under the provisions of this Governing Document;

Minimum Unitholding means, in relation to a Fund or a class of Units, such amount or amounts as the Manager may determine in respect of the Fund or class;

Net Asset Value means such amount as is from time to time ascertained by the Manager in respect of a Fund in accordance with clause 11 (*Valuations*);

New Fund means any fund established by an Establishment Deed under clause 3.10 (*Establishment of New Schemes or New Funds*);

New Scheme means any scheme established by an Establishment Deed under clause 3.10 (*Establishment of New Schemes or New Funds*);

Offering Document means, in relation to a Wholesale Scheme, the offering document pursuant to which Units in the Scheme are offered and, in the case of a Registered Scheme, includes a PDS;

Operative Date has the meaning given to it in clause 7.2(b).

PDS means a product disclosure statement or PDS, as defined by the FMCA;

PIE Investor Proxy means, in respect of a Scheme, a proxy for PIE investors under the Tax Act;

PIE Tax Liability means, in respect of a Fund or a Scheme that is a PIE, the Tax liability for the Fund or Scheme as calculated under the Tax Act;

PIP Investor means, in respect of a Scheme, a person who has provided funds to be invested in a Fund on the basis that a PIE Investor Proxy will be registered as the holder of the applicable Units on that person's behalf;

Portfolio Investment Entity or PIE means a portfolio investment entity as defined in the Tax Act;

Prescribed Investor Rate has the same meaning as in the Tax Act;

Record Date means, in relation to a Fund, a time and date determined by the Manager for the purpose of determining the persons presently entitled to a Distributable Amount in respect of the Fund;



Register means, in relation to a Scheme, the register of Scheme Participants maintained pursuant to clause 6.1 (*Register to be maintained*);¹

Registered Scheme has the meaning given to it in the FMCA.²

Registrar means, in relation to a Scheme, any person appointed by the Manager pursuant to clause 6.2 (*Appointment of Registrar*);

Related Party has the same meaning as in the FMCA;³

Related Party Benefit has the same meaning as in the FMCA;⁴

Scheme means any scheme established under this Governing Document or by an Establishment Deed;

Scheme Participant means, in relation to a Fund, the person registered as the holder of a Unit or Units in that Fund (including persons jointly registered);

Security Interest has the same meaning as in the Personal Property Securities Act 1999;

SIPO has the same meaning as in the FMC Regulations;⁵

Special Resolution has the same meaning as in the FMCA⁶ in respect of a managed investment product;

Subscription Bank Account means, in relation to a Scheme or a Fund, any bank account used to hold subscriptions or withdrawal proceeds for the Scheme or Fund in the name of the Supervisor or a Custodian in accordance with clause 10.10 (*Subscription Bank Account*);

Supervisor means, in relation to a Scheme, the supervisor of the Scheme for the time being appointed under the provisions of this Governing Document and, in respect of a Fund's Assets, includes (if the context so requires) any Custodian which holds legal title to the Assets;

Suspension Notice means a notice given by the Manager under clause 8.13 (*Suspension of repayment*);

Tax means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties including any PIE Tax Liability;

¹ Section 215 of the FMCA.

² Section 6 of the FMCA.

³ Section 172(1) of the FMCA.

⁴ Section 172(2) of the FMCA.

⁵ Regulation 5 of the FMC Regulations.

⁶ Section 6 of the FMCA.



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

Tax Credit means a credit against a person's tax liability provided for under the Tax Act, or any other similar credit and includes, in the case of a Fund or Scheme that is a PIE, a refund payable to the Fund or Scheme in respect of losses or excess tax credits which is attributable to a Scheme Participant;

Tax File Number has the same meaning as in the Tax Act;

Trusts Act means the Trusts Act 2019;

Unit means, in relation to a Fund, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units, an undivided share in the beneficial interest in the Assets of the Fund as provided in clause 3.5 (*Units*) of this Governing Document (and, where the context permits, includes a Fractional Unit);

Unitholding means, at any time in relation to a Scheme Participant and class of Unit, the aggregate number of Units and Fractional Units in that class held by the Scheme Participant at that time as recorded in the Register;

Unitholding Balance means, at any time in relation to a Unitholding, the Scheme Participant's Unitholding at that time multiplied by the Unit Price of those Units at the relevant time;

Unit Price means, in relation to a Unit in a Fund, such amount as is ascertained by the Manager in accordance with clause 5 (*Issue of Units*):

Unpaid Amount means, in relation to a Unit, any amount of the Unit Price which:

- (a) has not been paid or credited; or
- (b) has been reversed and remains unpaid, or otherwise not satisfied under this Governing Document; or
- (c) is otherwise not satisfied under this Governing Document; or
- (d) is due and payable to the Manager in respect of a Unit,

and which the Manager has decided should be satisfied by the cancellation of Units;

Valuation Date means, in relation to a Fund, a date at which the Manager calculates the Unit Price in respect of the Fund;

Winding Up Entitlements means, in respect of a Scheme or a Fund being wound up, and a Scheme Participant, Assets (including, where relevant, cash) equal in value to a proportion of the Scheme or Fund's assets after allowing for the deduction of all amounts under clauses 24.5 and 24.7, which is equal to the proportion of Units held by the Scheme Participant in the relevant Scheme or Fund, reduced by other deductions permitted by this Governing Document;



Withdrawal Amount means the amount of the proceeds of a redemption of Units which the Scheme Participant wishes to receive or to be paid to another person as a result of the redemption;

Withdrawal Price means, in relation to a Unit in a class, the amount payable to a Scheme Participant (or any other person in accordance with the Scheme Participant's instructions) upon a redemption of a Unit, determined under clause 8.7 (but, for the avoidance of doubt, prior to any deductions made in accordance with clause 8.7(b));

Withdrawal Request means any form of instruction (including a written, oral, electronic, or phone instruction) acceptable to the Manager from a Scheme Participant, or any person appointed by the Scheme Participant for such purpose, to withdraw an amount from a Fund, which has been received by the Manager (or any other person appointed by the Manager for such purpose) pursuant to clause 8.2, or otherwise a withdrawal request deemed to have been received by the Manager under the provisions of this Governing Document;

Wholesale Scheme means a Scheme established and identified as a Wholesale Scheme in this Governing Document or an Establishment Deed.

1.2 Construction

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

Business Days: anything required by this Governing Document to be done on a day which is not a Business Day may be done on the next Business Day;

Clauses and Schedules: a reference to a clause or a schedule is to a clause or schedule of this Governing Document;

Conflict: in the event of a conflict between the provisions of this Governing Document and any Establishment Deed, the Establishment Deed shall prevail, subject to clause 8.14(c) (*Side-pocketing*);

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

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

Footnotes: 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 do not 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 to the extent they are relevant;



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

GST: any consideration payable for a supply made under or in connection with this Governing Document is expressed on a GST-exclusive basis, unless otherwise stated. If GST is imposed on any supply made under or in connection with this Governing Document, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on or in respect of the supply;

Headings: headings appear as a matter of convenience and do not affect the construction of this Governing Document;

Implied Terms: terms implied into the Governing Document under the FMCA or other applicable legislation with respect to a particular Scheme will apply for so long as they are implied in the Governing Document under the FMCA or that other applicable legislation, despite anything to the contrary in the Governing Document, and any provision in the Governing Document that is contrary to any such implied term (while it is so implied) will be void to the extent that it is contrary;

Manager's discretion in relation to PIE rules: whenever there is a reference in this Governing Document to the Manager exercising any discretion in decision-making in relation to applying the PIE rules in the Tax Act to a Fund or Scheme and its Scheme Participants, this discretion shall be interpreted to include the requirement that the Manager exercise such discretion with a view to ensuring that the Fund or Scheme complies to the fullest extent possible with the requirements of the PIE rules as they apply at the time of exercising the discretion;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule, does not apply to this Governing Document;

Parties: a reference to a Scheme Participant or a party to this Governing Document or any other document includes that party's personal representatives/successors and permitted assigns;

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

Prescribed frameworks or methodologies: where any frameworks or methodologies specified in notices issued by the FMA under the FMCA are applicable to a Scheme, and relate to any matter which is required to be provided for adequately in this Governing Document by the FMCA, the provisions of this Governing Document which deal with such matters shall be deemed to be modified



to the extent necessary to adopt such frameworks or methodologies in respect of such matters for that Scheme;

Related Terms: where a word or expression is defined in this Governing Document, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

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

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

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

Trusts Act: in the event of any inconsistency between a provisions in this Governing Document and a provision in the Trusts Act that applies to a Scheme or a Fund unless modified or excluded by the express or implied terms of this Governing Document, the relevant provisions in this Governing Document will (to the extent permitted by law) prevail and the Trusts Act provision will be deemed modified or excluded (as appropriate) by this Governing Document;

Units: notwithstanding any provision of this Governing Document, Units are not to be treated as liabilities for any purpose under this Governing Document;

Wholesale Schemes: where any provision of this Governing Document expressly refers to compliance with, or expressly adopts aspects of, the FMCA, the FMC Regulations, or any applicable legislation in respect of a Wholesale Scheme or a Fund in a Wholesale Scheme (including by reference to a Scheme or a Fund generally), that provision shall apply and shall be deemed to apply as if the Wholesale Scheme was a registered Scheme under the FMCA, except where Schedule 1 or the context expressly states to the contrary; and

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form, including, without limitation, in electronic form.

1.3 **Parties bound**

This Governing Document binds (and is legally enforceable by and between⁷) the Supervisor, the Manager, the Scheme Participants, former Scheme Participants and any person claiming through any of them as if each of them had been a party to this Governing Document.

1.4 **Currency**

(a) In this Governing Document, unless the context otherwise requires, references to money are references to a currency determined by the Manager.

⁷ Section 137 of the FMCA.



- (b) Where, for any purpose under this Governing Document:
 - (i) it is necessary to determine the equivalent in a currency of a sum expressed in another currency, such amount will be converted to the equivalent in the relevant currency determined on a basis fixed from time to time by the Manager; and
 - (ii) any liability which is payable in another currency is to be treated as being a liability of an amount equal to the equivalent in the relevant currency determined as set out in paragraph (i),
 - (iii) provided that in determining the relevant currency equivalent of a liability payable or an amount expressed in another currency, account may be taken of any applicable currency hedging or other contractual arrangement in force covering the risk of fluctuations between the relevant currency and the currency of the liability or amount.



SECTION 2 - CONSTITUTION

2 ESTABLISHMENT OF THE INITIAL SCHEME

2.1 Establishment

- (a) The initial Scheme established under this Governing Document shall be known as the Discovery Funds Management Scheme.
- (b) The initial Fund within the Discovery Funds Management Scheme is established and shall be known as the Discovery Founders' Fund.
- (c) The Discovery Funds Management Scheme is a Wholesale Scheme and Schedule 1 applies to it.

2.2 Commencement of the initial Scheme and initial Fund

The Scheme and the initial Fund are each established with effect from the date of this Governing Document and are to be governed and administered in accordance with the provisions of this Governing Document.

3 SCHEME CONSTITUTION

3.1 Contributions and other Assets held on trust

Subject to clause 19.4 (*Appointment of Custodian*), all Contributions and Assets of a Scheme shall be held on trust in accordance with the terms of this Governing Document and all applicable legislation, in one or more Funds, each Fund being a separate and discrete trust.⁸

3.2 Appointment of Supervisor

The Supervisor is appointed as the supervisor of each Registered Scheme for the purposes of the FMCA and agrees to act in respect of each Registered Scheme as the supervisor of that Scheme. The Supervisor is appointed as the trustee of each Wholesale Scheme and agrees to act in respect of each Wholesale Scheme as the trustee of that Wholesale Scheme. The Supervisor agrees to hold (or arrange for the Custodian to hold) the Assets of each Scheme in trust solely for the Scheme Participants of that Scheme, upon and subject to the terms and conditions expressed or implied in this Governing Document, the FMCA and any other applicable legislation.⁹

3.3 Appointment of Manager

The Manager is appointed manager of the Schemes and is responsible for managing the Schemes and performing the functions set out in this Governing Document. The Manager agrees to act as the manager upon and subject to the terms and conditions expressed or implied in this Governing Document and any applicable legislation, and to observe and perform its obligations under this Governing Document and any applicable legislation.¹⁰

⁸ Section 87 and 157 of the FMCA.

⁹ Sections 135(1)(g) and 152(1)(c) of the FMCA.

¹⁰ Section 135(1)(h) of the FMCA.



3.4 **Names**

- (a) The Schemes or the Funds shall be known by such name or names as the Manager shall determine from time to time, subject to compliance with any regulatory requirements.
- (b) Notwithstanding any name given to a Scheme or a Fund pursuant to this Governing Document or any Establishment Deed, the Manager may change the name of the Scheme or Fund by written notice to the Supervisor. The Manager shall notify Scheme Participants in a Scheme or Fund of any change of name of that Scheme or Fund when next convenient for the Manager.

3.5 **Units**

The beneficial interests in each Fund shall be divided into Units and Fractional Units. Each Unit in each class in a Fund shall be of equal value and shall confer an equal interest in the relevant balance of the Fund's Assets, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units or class of Units. No Unit shall confer any interest in any particular part of a Scheme, a Fund or in any Asset. A Fractional Unit confers a proportion of the interest represented by a Unit in the relevant Fund but, if the Manager so decides, shall not confer any voting rights on the holder.

3.6 **Rights of PIP Investors**

A PIP Investor shall have the same rights, benefits and entitlements as if the PIP Investor were the registered holder of the Units held by the PIE Investor Proxy on behalf of the PIP Investor, except that:

- (a) the PIE Investor Proxy shall be deemed to hold such rights, benefits and entitlements on behalf of the PIP Investor; and
- (b) the PIE Investor Proxy is the only person able to exercise any such rights or entitlements or receive any such benefits.

3.7 **Role of PIE Investor Proxy**

Notwithstanding anything else in this Governing Document, in respect of a Scheme:

- (a) the PIE Investor Proxy must comply, in respect of a Fund, with the obligations imposed on PIE investor proxies under the Tax Act;
- (b) to the extent permitted by law none of the Manager or the Supervisor shall have any obligation or liability of any nature:
 - (i) for PIE or other Tax in respect of income attributed to the PIE Investor Proxy; or
 - (ii) for any matter for which the PIE Investor Proxy is responsible under clause 3.7(a) above; and
- (c) neither the Manager nor the Supervisor shall have any liability or obligation to PIP Investors or the PIE Investor Proxy in connection with the PIE



Investor Proxy's failure to comply with, or any action or inaction of the PIE Investor Proxy in respect of, its obligations under clause 3.7(a) above.

3.8 **Rights not attaching to Units**

Subject to the Scheme Participants' rights created by this Governing Document, the FMCA and any other applicable legislation, no Scheme Participant shall be entitled to:

- (a) *Acquire particular Assets*: require the transfer to him or her of any of the Assets; or
- (b) *Question discretions*: interfere with or question the exercise or non-exercise by the Supervisor or the Manager of the rights, authorities, discretions and powers of the Supervisor and the Manager in their dealings with a Scheme or its Assets; or
- (c) *Exercise rights concerning the Assets*: by virtue of holding Units, attend meetings whether of shareholders, scheme participants or otherwise or vote or take part in or consent to any action concerning any property or corporation in which a Scheme holds an interest.

3.9 **Classes of Units**

Different classes of Units may be issued within a Fund with such rights, terms of issue, obligations and restrictions attaching to the Units of such classes, as the Manager determines after prior notice to the Supervisor. Such issue is subject to, and must be in accordance with, the FMCA¹¹ and any other applicable legislation.

3.10 **Establishment of New Schemes or New Funds**

The Manager may at any time give prior written notice to the Supervisor of its intention to constitute a New Scheme, or a New Fund within an existing Scheme. If the Supervisor approves the constitution of a New Scheme or a New Fund (such approval not to be unreasonably withheld or delayed), the Supervisor and the Manager shall execute an Establishment Deed (which, where reasonably possible, should be materially similar to the template establishment deed for a New Fund in Schedule 2 to this Governing Document), which shall:

- (a) contain a provision for the constitution of the New Scheme (and the Funds in respect of that Scheme), or the New Fund;
- (b) specify the name of the New Scheme (and the Funds in respect of that Scheme), or the New Fund;
- (c) specify if the New Scheme is a Wholesale Scheme;
- (d) if applicable, prescribe the Investment Policies for the New Scheme, or in the case of a New Fund, changes to the Investment Policies for the Scheme in which that Fund is to be established, to cover that New Fund;

¹¹ Including section 143(1)(b)(ii) of the FMCA.



- (e) specify the date of commencement of the New Scheme or the New Fund;
- (f) specify whether any New Scheme or New Fund is to be a PIE; and
- (g) make any amendment to this Governing Document in respect of the New Scheme or New Fund approved by the Supervisor.

3.11 **Modifications for different type of New Scheme or New Fund**

If a New Scheme is specified as a Wholesale Scheme, the provisions of this Governing Document will apply with such modifications to the clauses as set out in **Schedule 1**.

3.12 **Separation of Schemes and Funds**

- (a) The Supervisor and the Manager will at all times treat each Scheme as an entirely separate arrangement, with each Scheme or, where the Scheme is made up of more than a single Fund, each Fund within a Scheme, as a separate and distinct trust with its separate property and liabilities governed by the terms and conditions of this Governing Document.
- (b) The Supervisor (or the Custodian) will hold the Assets of each Fund (or, where a Scheme does not have separate Funds, each Scheme) on trust solely for those persons who are Scheme Participants in that Fund (or Scheme) in accordance with the terms and conditions of this Governing Document.
- (c) All investments made with the funds of a Fund (or, where a Scheme does not have separate Funds, a Scheme) shall be held by the Supervisor (or the Custodian) as the exclusive property of that Fund (or that Scheme) and exclusively for the benefit of the Scheme Participants in that Fund (or Scheme).
- (d) The Assets of a Fund (or, where a Scheme does not have separate Funds, a Scheme) will not be available to meet the liabilities of (or apportioned to) another Fund or Scheme.
- (e) No Scheme Participant in one Fund (or, where a Scheme does not have separate Funds, in one Scheme) shall have any claim on any other Fund or Scheme.
- (f) The constitution of a New Fund shall not in any way vary or affect another Fund or any Scheme, nor give rise to any resettlement of the assets or property of the New Fund's Scheme.
- (g) The constitution of a New Scheme shall not in any way vary or affect another Fund or any Scheme, nor give rise to any resettlement of the assets or property of another Scheme.

3.13 **Consolidation of Funds**

Subject to clause 16.3, the Manager may consolidate Funds within a Scheme at any time by:



- (a) giving prior written notice of such consolidation to the Supervisor and all Scheme Participants;
- (b) on the written request of the Supervisor, convening a meeting of Scheme Participants, and passing a special resolution by the required majority of such Scheme Participants in attendance at the meeting, each in accordance with the requirements under clause 23; and
- (c) obtaining the prior approval of the Supervisor.

Where Funds are consolidated, the Assets and Liabilities of each Fund shall be combined and Scheme Participants shall have Units in the combined Fund equal to the value of their Unitholding in the Funds being combined at the Record Date for such consolidation selected by the Manager.



SECTION 3 - ISSUE OF UNITS

4 OFFER OF UNITS

4.1 Offer of Units¹²

The Manager may from time to time invite applications from any person or persons to contribute to a Scheme by subscribing for or purchasing Units, in compliance with the FMCA (to the extent it is applicable) and any other applicable legislation, for the Unit Price and on the terms and conditions contained in this Governing Document and such other terms and conditions (not being inconsistent with this Governing Document) as are determined by the Manager from time to time. For the avoidance of doubt, in respect of a Wholesale Scheme, the Manager may invite applications only from a person or persons who meet the definition of a wholesale investor under Schedule 1 to the FMCA or who otherwise do not require disclosure under Part 3 of the FMCA.

4.2 Manager may refuse application

The Manager may in its absolute discretion accept or refuse an application or postpone the processing of an application or a Contribution in whole or in part, without reason, and may limit the size of any Contribution, Fund or class in its discretion and the Manager shall not be required to give any reason or ground for such refusal or postponement.

4.3 Minimum Unitholding

Without limiting clause 4.2, the Manager may refuse any application for Units in a Fund or a Contribution which would result in a Unitholding Balance by a Scheme Participant of less than a Minimum Unitholding in respect of that Fund or class of Units, and redeem any Units held by the relevant Scheme Participant in accordance with clause 7.1.

4.4 Portfolio Investment Entity

Without limiting clause 4.2, the Manager may refuse any application for Units in a Fund where to do otherwise would threaten the Scheme's or Fund's eligibility as, or cause the Scheme or the Fund to become ineligible to be, a PIE.

5 ISSUE OF UNITS

5.1 Manager's power to issue

- (a) *Manager's discretion*: If the Manager accepts a Contribution to a Scheme, in respect of a Scheme Participant, or a person who will be a Scheme Participant, from any person, the Manager shall issue Units in accordance with this section.
- (b) *Units issued at the Unit Price*: Unless otherwise provided in an Offering Document, each Unit shall be issued for the Unit Price calculated by the Manager prevailing at the time the Units are issued. Such price shall be paid to the Manager (or into an account nominated by the Manager) on

¹² Section 135(1)(b) of the FMCA.



behalf of the relevant Fund or may be credited where amounts are credited in the form of Units, pursuant to this Governing Document.¹³

- (c) *Issue of Units ranking equally with existing Units:* The Manager may issue Units in a Fund ranking equally on a winding up of the Fund with all existing Units. Any such issue will not be treated as an action affecting the rights attached to the existing Units, and the Manager need not first offer those Units to existing Scheme Participants.
- (d) *Manager to issue confirmations:* Where required by applicable law, the Manager shall issue confirmations recording the issue of Units in a Fund, in such form and within such time frames as the Manager shall decide, subject to any applicable legislation.¹⁴
- (e) *Manager may impose conditions or restrictions:* The Manager may otherwise impose such conditions or restrictions as the Manager may from time to time determine on the offer for sale or issue of Units.

5.2 Contributions

Each Scheme Participant may, or any other person with the consent of the Manager may in respect of a Scheme Participant, contribute to a Scheme or a Fund such funds or assets in such amounts and at such times as the Manager may accept.

5.3 Minimum Contributions

The Manager may require that any amount contributed or transferred to a Scheme or a Fund by or in respect of a Scheme Participant:

- (a) must be no less than any minimum Contribution amount that the Manager may set from time to time; and
- (b) must be made in New Zealand currency,

and may impose, with respect to the acceptance of the relevant amount, such other terms and conditions (including, without limitation, as to the mode or means of payment) as the Manager may set from time to time.

5.4 Fractional Units

The Manager may issue Fractional Units (rounded to the number of decimal places and in such manner as the Manager may decide) where the amount contributed by or on behalf of a Scheme Participant is less than the Unit Price applicable at the time of issue of a Unit. Fractional Units shall rank and confer entitlements in proportion to the fractional proportion they represent.

5.5 Initial issue price

The first Units issued in any Fund established under or in accordance with this Governing Document shall be issued at a price of \$1.00.

¹³ Section 135(1)(c) of the FMCA.

¹⁴ Section 100 of the FMCA and FMC Regulations 65 to 68.



5.6 Unit Price determination

Subject to clause 5.5, and unless otherwise provided for in an Offering Document:

- (a) *Unit Price*: The Manager shall determine a Unit Price on each Valuation Date.
- (b) *Unit Price Calculation*: Each Unit Price shall be determined by dividing the Net Asset Value for the relevant Fund, less the balance of the Distribution Account for that Fund (to the extent that balance is included in the Net Asset Value calculation as an Asset), by the aggregate number of Units and Fractional Units in the Fund on issue at the date of calculation of the Net Asset Value.
- (c) *Allocation of Subscription and Withdrawal Amounts*: The Assets used to determine the Net Asset Value on a Valuation Date for the purposes of calculating the Unit Price shall not include subscription amounts received for which no Units have been issued and, subject to clause 10.10(c), shall include Withdrawal Amounts for Units which have not been cancelled, at the time of such determination.
- (d) *NAV Rounding*: The Unit Price shall be rounded in the manner, and to the number of decimal places, as the Manager may decide in its absolute discretion.
- (e) *Change to NAV Rounding*: The Manager shall provide prior written notice to the Supervisor when there is a change to the number of decimal places the Unit Price is rounded to or the rounding manner to be adopted.
- (f) *Unit Price adjustments*: Before applying the Unit Price to an application for Units, the Manager may adjust the Unit Price by an amount the Manager thinks appropriate to reflect the fees, expenses, Taxes, costs or other liabilities associated with the application, including the costs of investing the application proceeds for the relevant Unit which may include the difference between the price paid for an Asset and its market value immediately after its acquisition, provided that there shall be no double-counting in view of calculations undertaken in accordance with clause 11.4. Such additional amount may be set by the Manager as a standard amount or percentage reflecting the Manager's estimate of such costs generally, and may be rounded as the Manager thinks fit.

5.7 Payment for a Unit

- (a) Payment for Units shall be in cash by electronic or telephone transfer.¹⁵
- (b) The Manager may, in its absolute discretion, pay, as an expense of a Fund, brokerage and/or commission on the issue of Units at a rate set by the Manager, from time to time, provided that there shall be no double-counting in view of calculations undertaken in accordance with clause 11.4.

¹⁵ Section 135(1)(f) of the FMCA.



5.8 Issue date

Units are taken to be issued when:

- (a) the Manager accepts the application for those Units; or
- (b) the consideration against which Units are to be issued is transferred or credited to the Supervisor,

whichever happens later. Units issued against consideration paid other than in cleared funds are void if the money is not subsequently cleared or the assets are not subsequently transferred (in the case of a payment *in specie*).

5.9 Pricing errors

Where there is a Unit pricing error,¹⁶ the Manager:

- (a) *Power to adjust Unitholdings*: has the power to alter a Scheme Participant's Unitholding, or allocate Units to former Scheme Participants, to the extent reasonably practicable in the circumstances to address partly or entirely the impact of the Unit pricing error,¹⁷ provided such alteration does not adversely affect the relevant Scheme Participant's Unitholding or the position of other Scheme Participants, as compared with the position such Scheme Participant or Scheme Participants would have been in had the Unit pricing error not occurred;
- (b) *Report*: shall report to the Supervisor any material error in the calculation of the Unit Price or material non-compliance with the pricing methodology for managed investment products (as set out in this Governing Document or any notice issued by the FMA in respect of the pricing methodology), to the extent required by the FMCA;¹⁸
- (c) *Correct errors*: shall correct any material Unit pricing errors or material non-compliance with a pricing methodology for Units in a Fund, to the extent required by the FMCA, provided that where (after all relevant Unit adjustments and set offs have been made under clause 5.9(a) or otherwise):
 - (i) the amount of any Unit pricing error is less than 0.3% of the correct Unit Price; or
 - (ii) the payment to a Scheme Participant or former Scheme Participant would be less than \$20; or
 - (iii) the amount of any Unit pricing error is less than any other relevant measure specified in a relevant policy that may be disclosed on the Disclose register of the Scheme; or

¹⁶ Section 168(2) of the FMCA.

¹⁷ Section 168(2) of the FMCA.

¹⁸ Section 168 of the FMCA and FMC Regulations 97 to 98.



- (iv) the amount of any reimbursement or compensation required is less than any other minimum level of reimbursement or compensation which is determined in accordance with the Management Agreement,

no reimbursement or compensation shall be required to be provided;¹⁹ and

- (d) *Notify:* shall notify each of those current or former Scheme Participants of any material Unit pricing error or material non-compliance with a pricing methodology for Units in a Fund, and, except to the extent clause 5.9(c) applies, any action that has been or will be taken to reimburse or compensate the current or former Scheme Participants.²⁰

¹⁹ Section 168 of the FMCA and FMC Regulation 99.

²⁰ Section 168 of the FMCA and FMC Regulation 99.



SECTION 4 - REGISTER AND UNITHOLDING ADJUSTMENTS

6 REGISTER²¹

6.1 Register to be maintained

The Manager shall keep and maintain or cause to be kept and maintained in respect of each Fund an up-to-date Register of Scheme Participants in each Fund (or Scheme). Such Registers shall:

- (a) be kept in the manner;²²
- (b) contain the content;²³
- (c) be audited;²⁴ and
- (d) be available for inspection,²⁵

as required by the FMCA.

6.2 Appointment of Registrar

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

6.3 Tax information

To the extent such information has been provided to the Manager or the Registrar, the following information shall also be kept by the Manager or the Registrar in respect of any period where a Fund or Scheme is a PIE:

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

6.4 Register deemed to be accurate²⁶

The Supervisor and the Manager:

- (a) shall be entitled to rely absolutely on a Register as being correct;
- (b) shall not be required to enquire into the authenticity of a Register; and

²¹ Sections 215 to 223 of the FMCA and FMC Regulations 108 to 110.

²² Sections 215, 216 of the FMCA.

²³ Section 217 of the FMCA.

²⁴ Sections 218 and 219 of the FMCA and FMC Regulations 108 to 110.

²⁵ Sections 221 and 222 of the FMCA.

²⁶ Section 217(3) of the FMCA.



- (c) shall not incur any liability or responsibility on account of any mistake in a Register.

6.5 **Scheme Participants to notify changes**

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

6.6 **No Security Interests to be entered upon a Register**

Neither the Manager nor the Supervisor shall recognise any person as having any interest in any Unit except for the person recorded in a Register as the Scheme Participant, and accordingly no notice of any Security Interest or trust (express, implied or constructive), shall be entered upon a Register.²⁷

6.7 **Joint Scheme Participants**

Where two or more persons are registered as the Scheme Participants with respect to any Unit in a Scheme or a Fund, they shall be deemed to hold the same as joint tenants with the benefit of survivorship subject to the following provisions:

- (a) *Joint and several liability:* the joint Scheme Participants shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (b) *Survivor of joint holders:* on the death of any one of such joint Scheme Participants, the survivor or survivors of them shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- (c) *Instructions of joint holders:* any one of such joint Scheme Participants may give instructions in relation to the Scheme Participants' joint Unitholding or their Units, which instruction shall bind all such Scheme Participants;
- (d) *Receipts:* any one of such joint Scheme Participants may give effectual receipts for any distribution payable to such joint Scheme Participants;
- (e) *First holder on Register:* only the person whose name stands first in the Register as one of the joint Scheme Participants shall be entitled to receive notices from the Manager or Supervisor, and any notice given to such person shall be deemed notice to all the joint Scheme Participants;
- (f) *Voting rights:* at any meeting of Scheme Participants any one of such joint Scheme Participants may vote, either personally, or by duly appointed and authorised representative, or any attorney or proxy, in respect of such Unit as if he or she were solely entitled to it, provided that if more than one of such joint Scheme Participants is present personally, or by duly authorised representative, or attorney or proxy, then (both on a poll and on a show of

²⁷ Section 217(2) of the FMCA.



hands) only one of them may vote as a Scheme Participant in respect of a Unit, and if both of them vote in respect of a Unit, such one of those joint Scheme Participants so present whose name stands first in the Register in respect of the Unit shall alone be entitled to vote as a Scheme Participant in respect of that Unit; and

- (g) *Prescribed Investor Rate*: for the purposes of calculating the relevant Fund or Scheme's PIE Tax Liability and attributing such liability to Scheme Participants and for all other purposes relating to the application of the Tax Act to the Fund or Scheme as a PIE, the Manager may in its complete discretion either treat the Scheme Participants as separate Scheme Participants (in equal shares), or treat the joint Scheme Participants as a single Scheme Participant with a Prescribed Investor Rate equal to the highest notified Prescribed Investor Rate of the joint Scheme Participants or, subject to the Tax Act, such other rate as the Manager thinks fit in its complete discretion.

7 **ADJUSTMENT TO UNITHOLDINGS**

7.1 **Sale by Manager of Units where less than a Minimum Unitholding**

The Manager may sell or direct the Supervisor to compulsorily redeem the Units of any Scheme Participant whose Unitholding Balance is less than the Minimum Unitholding prescribed in respect of a relevant class or Fund from time to time. Any such disposition shall be conducted as follows:

- (a) *Notice*: the Scheme Participant shall be notified of the disposition of the Units, to the extent required by any relevant terms of issue;
- (b) *Transfer or redemption*: the Manager may cause the Units to be transferred to applicants for Units or redeemed in accordance with clause 8.1; and
- (c) *Proceeds*: promptly after the transfer or redemption, the Manager shall transfer to the Scheme Participant the proceeds of the sale or redemption after deduction of Taxes and of any amount due under this Governing Document, including any reasonable expenses of conducting the sale or effecting the redemption.

The Manager and the Supervisor shall have no liability for loss on any sale or redemption made pursuant to this clause 7.1.

7.2 **Consolidation or subdivision of Units**

Subject to clause 16.3, the Manager may at any time after prior consultation with the Supervisor, cause the Units of a Fund in existence at the date of that notice to be consolidated or subdivided. For such purpose, the Manager may specify:

- (a) the Units affected by such consolidation or subdivision;
- (b) the date on which such consolidation or subdivision is to take place (the *Operative Date*); and



- (c) the ratio which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision (the *Ratio*).

7.3 Effect of consolidation or subdivision

As from the Operative Date, each Scheme Participant shall be deemed to hold a number of Units equivalent to the number held by him or her before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, at the option of the Manager, fractions may be dealt with by rounding upwards or downwards to the nearest number of decimal places as the Manager may determine.



SECTION 5 - WITHDRAWALS, TRANSFERS AND TRANSMISSIONS

8 WITHDRAWALS²⁸

8.1 Procedure and applicable provisions for withdrawals

Unless otherwise provided for in an Offering Document, all withdrawals (other than pro rata distributions in accordance with Section 8) shall be effected by redemptions of Units in accordance with this Section 5 and any relevant provisions in the Schedule.

8.2 Redemption requests to be made by notice to the Manager

Unless otherwise provided for in an Offering Document, where a Scheme Participant wishes to withdraw an amount from the Scheme, the Scheme Participant shall give the Manager, or any other person appointed by the Manager for such purpose, a Withdrawal Request (in such form and with such minimum notice period (if any) as may be acceptable to the Manager from time to time) specifying the Fund in which the Units are held and the number of Units to be redeemed (or, if acceptable to the Manager, the amount of the proceeds which the Scheme Participant wishes to receive from the redemption). A Withdrawal Request shall be irrevocable unless the Manager, or any other person appointed by the Manager for such purpose, agrees otherwise.

8.3 Obligation to redeem

Subject to clauses 8.13 and 8.14, the Schedule, an Offering Document, and any terms of issue delaying or restricting redemptions, the Manager shall, within the time prescribed in any Offering Document or register entry for the relevant Scheme or, where no such time is prescribed, within a reasonable time after the next Valuation Date on or following the receipt of a Withdrawal Request, cause the value (or number) of Units held by the Scheme Participant referred to in the Withdrawal Request to be redeemed by the Supervisor out of the Assets of the relevant Fund.

8.4 Permitted Withdrawals

Where Units are to be redeemed pursuant to clause 8.3, the Manager may:

- (a) *Make withdrawals in lump sums or at regular intervals:* make withdrawals in one or more lump sums and/or at regular intervals in its discretion;
- (b) *Refuse to act:* unless the Withdrawal Request relates to all the Units in a class or a Fund held by a requesting Scheme Participant, refuse the redemption of the Units to which the Withdrawal Request relates in any case where:
 - (i) the redemption is of Units which would lead to a Unitholding Balance less than a Minimum Unitholding for the relevant class or Fund if it was processed;

²⁸ Sections 135(1)(a) and (b) of the FMCA.



- (ii) the Withdrawal Request is less than any minimum number of Units or dollar amount and multiples thereof as determined by the Manager from time to time;
 - (iii) the frequency of any regular withdrawals or lump sums would be greater than the Manager may permit; or
 - (iv) the withdrawal would be contrary to the issue terms of the relevant Units, including the terms set out in any applicable Offering Document or register entry;
- (c) *Redeem all Units*: if the number of Units in a class held by the requesting Scheme Participant (after excluding the number of Units to which the Withdrawal Request relates) would constitute a Unitholding Balance less than a Minimum Unitholding for the relevant class or Fund, cause to be redeemed all Units in that class or Fund held by that Scheme Participant as if the request relates to all the Units in that class or Fund held by that Scheme Participant.

8.5 **Regular withdrawals**

Where any Offering Document for a Fund specifies that regular withdrawals of Units may occur in respect of a Fund or the Manager otherwise allows regular withdrawals, the Manager shall cause, at such frequency as specified in the Offering Document or as the Manager so allows, such Units held by a Scheme Participant in that Fund to be withdrawn by the Supervisor in accordance with the description in the relevant Offering Document or the Manager's decision, and the Withdrawal Price shall be paid to Scheme Participants' bank accounts or (with the Manager's approval) as notified to the Manager by the relevant Scheme Participant or any person authorised by the Scheme Participant for that purpose.

8.6 **Amount payable**

Unless otherwise provided for in an Offering Document, upon the redemption of a Unit, the amount payable to the Scheme Participant shall be the Withdrawal Price of the Unit less any Unpaid Amount and less any other deductions permitted under this Governing Document or provided for in the Offering Document for the relevant Scheme.

8.7 **Withdrawal Price**

- (a) Unless otherwise provided for in an Offering Document, the Withdrawal Price of a Unit of a Fund shall be the Unit Price, calculated by the Manager, prevailing at the time set by the Manager for processing the withdrawal or such other time as the Manager shall reasonably decide.
- (b) Before applying the Withdrawal Price to a redemption, the Manager may deduct from the Withdrawal Price an amount the Manager thinks appropriate to reflect fees, expenses, Taxes, costs or other liabilities associated with the redemption, including the costs of realising Assets to meet the Withdrawal Price which may be the difference between the price received for the Assets so realised and the value (on the date of realisation) of such Assets. Such deducted amount may be set by the Manager as a



standard amount or percentage reflecting the Manager's estimate of such costs generally and may be rounded by the Manager as it thinks fit.

8.8 Order

Unless the Manager decides otherwise, the first Units issued to a Scheme Participant are the first redeemed.

8.9 Delay if consideration not otherwise received

Where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not cause the redemption of the Units so applied for until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.

8.10 Manager to effect redemptions

Where the Manager is required to cause the Units specified in a Withdrawal Request to be redeemed, the Manager shall, on behalf of the Supervisor, take all steps reasonably necessary to effect the redemption on behalf of the Supervisor (including causing an appropriate entry to be made on the Register in respect of the number of Units redeemed).

8.11 Cancellation of Units

Where Units are redeemed, the number of Units so redeemed shall be cancelled as at the date of redemption.

8.12 Withdrawals satisfied by transfers of Assets

The Manager may, with the relevant Scheme Participant's prior agreement, require the Supervisor to transfer Assets of a Fund to a Scheme Participant in that Fund, or to hold such Assets on trust solely for such a Scheme Participant on such terms as the Manager requires, rather than pay cash on the redemption of Units. These Assets must be of equal value to the Withdrawal Price less any deductions permitted by this Governing Document.

8.13 Suspension of repayment

(a) Notwithstanding the foregoing and subject to prior written notification to the Supervisor (such notification to be provided as soon as reasonably practicable upon forming the opinion outlined below), if for any good reason reasonably determined by the Manager, the Manager shall form the opinion that it is not desirable, or would be prejudicial to the interests of Scheme Participants in a Fund or Scheme as a whole, for the Manager to cause the redemption of Units of Scheme Participants in that Fund or Scheme, or would threaten that Fund or Scheme's eligibility for PIE status, then the Manager may give notice to Scheme Participants in that Fund or Scheme whose Withdrawal Requests have not been processed, suspending such Scheme Participants' redemptions. A Suspension Notice shall have the effect of suspending the processing of all Withdrawal Requests from all such Scheme Participants effective from the time the decision to suspend is made until the Manager gives to the affected Scheme Participants notice to the effect that the Suspension Notice is cancelled.



- (b) Where a Suspension Notice has been given to Scheme Participants in a relevant Fund or Scheme pursuant to clause 8.13(a) and not cancelled within 90 Business Days of such Suspension Notice, the Manager shall obtain the Supervisor's written approval of the continuation of the suspension, if the suspension is to continue.
- (c) Where the operation of Withdrawal Requests are suspended pursuant to this clause 8.13, the Withdrawal Price payable to the Scheme Participants, in respect of any redemption which has been suspended, shall be determined as if the Withdrawal Request is made on the first Business Day following the end of the period covered by the Suspension Notice.

8.14 Side-Pocketing

- (a) Where the Supervisor and the Manager consider that it is in the interests of the Scheme Participants in a Fund generally to do so (for example, but without limitation, to address liquidity or pricing issues or Asset or underlying asset impairment), the Manager may, with effect from a particular date (a *Record Date*), and without the agreement of, or consultation with, those Scheme Participants:
 - (i) determine that particular Assets and Liabilities of a Fund (the *Side-Pocketed Assets and Liabilities*) be quarantined in accordance with this clause 8.14; and
 - (ii) reclassify, divide or otherwise reconstruct the Unitholdings of Scheme Participants as at the Record Date so that those holdings consist of:
 - (A) Units that relate to the Assets and Liabilities of the Fund 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, all on a pro rata basis.
- (b) 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 may (after consulting with the Supervisor) determine 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 arrangements:
 - (i) preventing Scheme Participants in the relevant Fund from giving Withdrawal Requests in relation to the Side-Pocketed Assets and Liabilities and the related Units;



- (ii) preventing the issue of any further Units relating to the Side-Pocketed Assets and Liabilities;
 - (iii) for the realisation/discharge of the Side-Pocketed Assets and Liabilities;
 - (iv) relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets to or for the benefit of Scheme Participants holding Units relating to the Side-Pocketed Assets and Liabilities;
 - (v) relating to the termination of the side-pocketing arrangement (including the cancellation of Units relating to the Side-Pocketed Assets and Liabilities);
 - (vi) relating to the fees and expenses associated with the Side-Pocketed Assets and Liabilities and the related Units;
 - (vii) relating to the recovery of PIE Tax Liabilities attributed to those Scheme Participants holding Units relating to the Side-Pocketed Assets and Liabilities (including, where applicable, the recovery of such PIE Tax Liabilities from such Scheme Participants by way of arrangements relating to Units (if any) held by those Scheme Participants that relate to the Non-Side-Pocketed Assets and Liabilities), and the payment of the tax liabilities of the relevant Fund;
 - (viii) that the Manager considers appropriate in relation to the Scheme's or Fund's status as a PIE;
 - (ix) for the treatment of Withdrawal Requests that remain outstanding as at a Record Date (including, without limitation, the cancellation of any such Withdrawal Requests);
 - (x) for treating Units (if any) held by Scheme Participants that relate to Side Pocketed Assets and Liabilities as a different class of Unit; and
 - (xi) which the Manager otherwise considers to be appropriate and in the interests of Scheme Participants generally in relation to the side-pocketing arrangements contemplated by this clause 8.14.
- (c) Where any conflict arises between the special arrangements agreed between the Manager and the Supervisor under this clause 8.14 and any other provision of this Governing Document or any Establishment Deed, the special arrangements will prevail, except to the extent any applicable legislation requires that the other provision prevails.
- (d) For the avoidance of doubt, the side-pocketing arrangements contemplated by this clause, although they may involve a different class of Unit, operate within the relevant 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.

- (e) Notwithstanding clause 8.14(d), the Manager and the Supervisor may, at any time, decide that the Side-Pocketed Assets and Liabilities shall constitute a separate Fund and may accordingly segregate such Assets and Liabilities into a separate Fund. In such case, the Units that relate to the Side-Pocketed Assets and Liabilities shall become Units in that new Fund.

8.15 **Other withdrawal terms may be applied**

Notwithstanding any other provisions of this Governing Document, the Manager may in its discretion determine from time to time and must specify in any Offering Document for the relevant Scheme, other limitations on withdrawals or prohibitions on withdrawals or the transfer of Units which will take effect in accordance with their terms.

8.16 **Manager instigated pro rata withdrawals**

At any time, the Manager may redeem in accordance with this clause 8 an equal pro rata share (determined by the Manager) of all Unitholders' Units in a Fund, as if a Withdrawal Request had been made under clause 8.2 in respect of such Units.

9 **TRANSFERS AND TRANSMISSION**

9.1 **Units are not transferable**

Units in a Fund are not generally transferable.²⁹ However, the Manager may (in its absolute discretion), at the request of a Scheme Participant, transfer Units in a Fund in a Scheme which are of the same class from a Scheme Participant to another person either by registering a transfer of Units from the transferor to the transferee or by:

- (a) cancelling the number of Units sought to be transferred without any payment to the Scheme Participant; and
- (b) issuing to the transferee such number of Units as the Manager thinks is appropriate taking into account the number of Units cancelled pursuant to paragraph (a) above and the Taxes and Tax Credits attributable to the Units cancelled, treating the transferee as having satisfied payment of the Unit Price by the cancellation of the Units referred to in paragraph (a) above.

9.2 **Transfers between managed investment schemes**

Unless otherwise provided for in an Offering Document, a Scheme Participant's total Unitholding in a Fund may be transferred by the Manager from a Fund to another Fund or to another managed investment scheme, or from a managed investment scheme to a Fund, with the written consent of the Scheme Participant, or, if provided for in an Offering Document for the Scheme, at the Manager's discretion, provided either:

²⁹ Section 135(1)(a) of the FMCA.



- (a) in the case of a transfer from a Fund, the transfer is effected as if it were a withdrawal (in cash or in specie at the discretion of the Manager) from the Fund, and the Assets transferred to the new Fund or managed investment scheme correspond in value to the Withdrawal Price (after taking into account Taxes and Tax Credits attributable to the withdrawn Units and any deductions permitted by this Governing Document) of the relevant Scheme Participant's Units (which Units shall be cancelled on completion of the transfer); or
- (b) in the case of a transfer to a Fund, the transfer is effected as if it were an application for Units, with the Unit Price being met by the assets transferred to the Fund and the assets transferred to the Fund correspond in value to the Unit Price of the Units to be issued to the Scheme Participant as part of the transfer.

9.3 **No Security Interests**

Subject to this Governing Document, and except with the approval of the Manager, no Scheme Participant may assign nor grant a Security Interest in respect of the Scheme Participant's Unitholding. Any such approval may be given subject to such terms and conditions and may be conditional on the payment of such fees as the Manager may determine.

9.4 **Persons recognised by the Manager on death**

The executors or administrators of a deceased Scheme Participant (not being one of several joint Scheme Participants) and, in the case of the death of a joint Scheme Participant, the survivor of such joint Scheme Participants shall be the only persons recognised by the Manager as having any title or interest in the Units held by such deceased Scheme Participant.

9.5 **Claimants to prove entitlement**

Any person becoming entitled to any Units in consequence of the death, incapacity, or bankruptcy of any Scheme Participant may, upon producing such evidence as the Manager shall think sufficient to establish that person's entitlement to such Units, be registered as the Scheme Participant with respect to such Units.



SECTION 6 - INVESTMENTS AND VALUATIONS

10 INVESTMENT

10.1 Establish Investment Policies

The Manager shall establish, and may change, Investment Policies for each Scheme which covers each Fund in accordance with the requirements of the FMCA.³⁰ The Manager must consult with the Supervisor when establishing or amending Investment Policies. If the Manager proposes to make a material change to Investment Policies, the Manager must give prior notice to Scheme Participants of any material change.

10.2 Investments to follow Investment Policies

The Assets of a Fund shall be invested by the Manager in accordance with the Investment Policies for the Scheme which covers that Fund. The Manager shall provide a copy of the proposed Investment Policies (or any alteration to that Investment Policy) to the Supervisor in accordance with the timeframes specified in the Management Agreement (if any).

10.3 Manager's power of investment

- (a) Subject to the requirements of the Investment Policies, the FMCA and any other applicable legislation (and in the case of a PIE, the rules prescribed by the Tax Act), the Manager shall have absolute and uncontrolled discretion as to the investment of any Assets and as to how the Assets and Liabilities are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the Assets from time to time.
- (b) The duty on the Manager and Supervisor to invest prudently in the Trusts Act is expressly excluded by this clause 10.3. However, any direction by a Scheme Participant in terms of this clause will not exempt the Manager from its responsibilities under the FMCA.³¹

10.4 Supervisor's role

- (a) In relation to a Registered Scheme, subject to its duties of the Supervisor under the FMCA, the Supervisor must:³²
 - (i) give effect to the Manager's directions in relation to the investment of the Assets;
 - (ii) not acquire, dispose of, mortgage or change (or permit any Custodian so to do) any Asset except as directed by the Manager;
 - (iii) without delay forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets; and

³⁰ Sections 164 and 165 of the FMCA.

³¹ Section 144 of the FMCA.

³² Section 160 of the FMCA.



- (iv) subject to the terms of this Governing Document, execute all such proxies, powers of attorney and other instruments, deal with the Assets, and exercise any discretion conferred on the Supervisor under this Governing Document, to enable the Manager or any person nominated by the Manager to exercise the powers of investment or other rights of the Manager in relation to this Governing Document.
- (b) In relation to a Wholesale Scheme, subject to any applicable legislation, the Supervisor must:
- (i) act in accordance with the Governing Document;
 - (ii) act honestly and in good faith in acting as trustee of the Scheme;
 - (iii) exercise the trustee's powers for a proper purpose;
 - (iv) in exercising its powers and performing its duties as trustee, act in the best interests of Scheme Participants;
 - (v) in exercising its powers and performing its duties as trustee, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a trustee of a wholesale managed investment scheme would exercise in the same circumstances;
 - (vi) in relation to any contravention or alleged contravention of the Manager's obligations under the Governing Document or Offering Documents, do all things it has the power to do to cause any contravention to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Scheme Participants);
 - (vii) act in accordance with any direction given by Special Resolution that is not inconsistent with applicable legislation or the Governing Document; and
 - (viii) in giving effect to the Manager's directions in relation to the investment of Assets, not act on any direction of the Manager to acquire any property or dispose of any property if, in the Supervisor's reasonable opinion, the proposed acquisition or disposal is manifestly not in the interests of Scheme Participants.
- (c) The parties acknowledge that, to the extent permitted by the FMCA,³³ the Supervisor (or any Custodian appointed by the Supervisor) shall not be liable to the Scheme Participants or the Manager, for refusing, or directing a Custodian to refuse, to act on a direction of the Manager, in accordance with the requirements of the FMCA.

³³ Section 160(4) of the FMCA.



10.5 **Related Party transactions**

Notwithstanding any other provision of this Governing Document, the Manager must not enter into, nor authorise any investment manager, administration manager or other person to whom the Manager has contracted out some or all of its functions as a manager of a Scheme to enter into, a transaction that provides for a Related Party Benefit contrary to the requirements of the FMCA with respect to such transactions.³⁴

10.6 **Related party transactions not void**

A failure to comply with clause 10.5 does not affect the validity of any transaction (subject to any Court order to the contrary).³⁵

10.7 **Costs**

All costs, Taxes, legal fees and other fees, disbursements and expenses incurred by the Supervisor or the Manager in connection with the investigation of, negotiation for and acquisition of any Asset by a Fund, or in connection with any sale, transfer, exchange, replacement or other dealing with or disposal of any Asset of a Fund shall be payable (as determined by the Manager) by (and reimbursable from) the relevant Fund.

10.8 **Voting rights of investment**

(a) *Manager to decide:* Subject to the provisions of this Governing Document, all voting rights conferred by the Assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor (or the Custodian on behalf of the Supervisor) shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise, or act in relation to, such voting rights.

(b) *No liability:* Subject to the provisions of this Governing Document, neither the Manager, the Supervisor, nor any holder of any proxy or power of attorney of the Manager or Supervisor, shall be liable or responsible for any vote cast or not cast.

10.9 **Bank Accounts**

A bank account or accounts, in the name of the Supervisor or a Custodian appointed in accordance with clause 19.4, may be opened and maintained for each Scheme or Fund or any combination of them as the Manager shall decide. All moneys held for the relevant Scheme(s) or Fund(s) shall be paid to the credit of such bank account or bank accounts. The Supervisor shall determine the persons authorised to operate such bank accounts.³⁶

10.10 **Subscription Bank Account**

(a) A bank account or accounts, in the name of the Supervisor or a Custodian appointed in accordance with clause 19.4, may be opened and maintained

³⁴ Sections 172 to 175 of the FMCA.

³⁵ Section 173(6) of the FMCA.

³⁶ Section 87 of the FMCA and FMC Regulation 49.



in respect of a Scheme or Fund or a combination of them as the Manager shall decide.

- (b) If such Subscription Bank Accounts are opened, all subscriptions for Units that are paid, prior to the allotment of those Units, shall be paid to the credit of the Subscription Bank Account until Units for those subscription amounts are issued, at which point such subscription monies shall be credited to a bank account for the relevant Fund or the Scheme.
- (c) If the Manager elects, amounts payable to a Scheme Participant, or to effect a transfer when the relevant Units are cancelled, shall be paid to the credit of the Subscription Bank Account. The Supervisor shall determine the persons authorised to operate such bank accounts. If such amounts are paid to the Subscription Bank Account, the corresponding obligation to pay such amounts shall not be considered when calculating the relevant Fund's Unit Price.

11 VALUATIONS³⁷

11.1 Net Asset Value of a Fund

The Manager shall calculate the Net Asset Value of each Fund as frequently as the Manager may consider necessary or desirable from time to time (but there must be a Valuation Date on any day on which a Withdrawal Price is calculated pursuant to clause 8.3 or Units are issued pursuant to clause 5.1) by deducting the Liabilities attributable to that Fund from the market value of its Assets.

11.2 Determining Market Value

For the purpose of determining the Net Asset Value of a Fund under clause 11.1, the Manager shall determine the market value of each Asset in the Fund on such basis as the Manager considers to be fair and equitable having regard to generally accepted accounting practice (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and may from time to time engage any valuer or other suitably qualified person for the purpose of fixing the market value of any such Asset (but is not under any duty to do so) and the Manager shall be entitled to rely upon the advice of any such valuer or other person and any such valuer or other person shall be deemed to be acting as an expert.

11.3 Determining Assets

For the purposes of determining the Net Asset Value of a Fund under clause 11.1, the Manager may include in the market value of a Fund's Assets, the market value of any other amounts which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the net asset value of the Fund and, in the case of a Fund which is a PIE, where the Manager considers it appropriate to do so, exclude any Tax Credit.

11.4 Determining Liabilities

For the purpose of determining the Net Asset Value of a Fund under clause 11.1, the Manager shall determine the Liabilities attributable to the Fund on such basis as

³⁷ Section 135(1)(d) of the FMCA.



the Manager considers to be fair and equitable having regard to generally accepted accounting practice (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and in doing so may:

- (a) apportion the Liabilities of a Scheme generally among the Funds on such basis as the Manager considers appropriate, fair and equitable for Scheme Participants; and
- (b) take account of each debt, liability, provision, cost, charge, expense, outgoing, Tax obligation or other matter as the Manager considers should be included as a liability for the purposes of making a fair and reasonable determination of the total Net Asset Value of the relevant Fund,

and, for the avoidance of doubt, may exclude certain Liabilities from the liabilities taken into account (such as PIE Tax Liability) or expenses charged to a Scheme Participant and met by cancellation of Units held by that Scheme Participant (whether or not those amounts are required to be treated as liabilities for accounting purposes).

11.5 Manager's decision is final

Subject to clause 11.6, the Net Asset Value of the Fund ascertained by the Manager is final and binding on all persons, including, without limitation, the Supervisor and any applicant or subscriber for, or purchaser of, Units, and all Scheme Participants.

11.6 Valuation on a consistent basis

The Manager shall ascertain the Net Asset Value of a Fund and the value of the Assets on a consistently applied basis. The Manager shall however be entitled at any time or times to alter that basis and the application to another basis, provided that the Manager first consults with the Supervisor on the alterations proposed by the Manager.

11.7 Remain in force

Determinations of the value of an Asset pursuant to clause 11.1 shall remain in force from the time they take effect until the time determined by the Manager on the next Business Day that a determination of the value of the Asset is made by the Manager.

11.8 Reliance by Supervisor

The Supervisor shall be entitled to rely on the Manager's calculations under this clause 11, and will not be required to verify those calculations or the methods and procedures used by the Manager in relation to them, except to the extent that such verification is required in order for the Supervisor to meet its obligations under the FMCA.



SECTION 7 - ACCOUNTING RECORDS, FINANCIAL STATEMENTS AND AUDIT

12 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

12.1 Accounting Records

- (a) The Manager shall keep or cause to be kept such accounting records as correctly record and explain the transactions and the financial position of each Fund and each Scheme to the extent required by the FMCA.³⁸
- (b) The Supervisor shall (and shall procure that any Custodian shall) from time to time, upon request, furnish the Manager with any information necessary for the Manager's record keeping purposes.
- (c) The Manager shall allow for inspection of all records relating to a Fund or a Scheme to the extent required by the FMCA (including by procuring legal access rights for the Supervisor to the extent such records are maintained or held by third parties).³⁹

12.2 Financial statements to be prepared

The Manager shall cause financial statements to be prepared in respect of each Scheme and each Fund to the extent required by the FMCA.⁴⁰

12.3 Audit of financial statements

The Manager shall ensure that the financial statements prepared for each Scheme and each Fund are audited to the extent required by the FMCA.⁴¹

13 AUDITOR APPOINTMENT

13.1 Appointment

- (a) As soon as practicable after the date of execution of this Governing Document, the Manager shall, after consultation with the Supervisor, appoint an auditor or auditors for each Scheme, who shall be a qualified auditor (as defined in the FMCA).⁴²
- (b) The Manager and the Supervisor shall consult on the services to be performed by the auditor and the scope of the services to be provided.
- (c) The Manager shall comply with the FMCA in relation to the appointment of the auditor, including any provisions implied into this Governing Document by the FMCA or the FMC Regulations.⁴³

³⁸ Sections 455 to 458 of the FMCA.

³⁹ Section 459 of the FMCA.

⁴⁰ Sections 460 and 461A of the FMCA.

⁴¹ Sections 461D to 461G of the FMCA.

⁴² Section 461E of the FMCA.

⁴³ FMC Regulation 84 implies clauses 1 to 3 of Schedule 13 to the FMC Regulations into the Governing Document.



13.2 **Auditor may act for others**

The Auditor may also be auditor of the Supervisor, the Manager, or any other fund or managed investment scheme.

13.3 **Auditor's remuneration**

The remuneration of the Auditor shall be fixed by the Manager on an arm's length basis, and may be paid out of the relevant Scheme and apportioned between the Scheme's Funds as the Manager thinks fit.

13.4 **Retirement or removal of auditor**

The Auditor may at any time be removed from office by the Manager (after prior consultation with the Supervisor) or by a Special Resolution of Scheme Participants. The Auditor may retire on such basis as is agreed with the Manager.

13.5 **Vacancy in office of Auditor**

Any vacancy in the office of Auditor occurring under clause 13.4 shall be filled by the Manager (after consultation with the Supervisor) appointing a qualified auditor under clause 13.1.



SECTION 8 - DISTRIBUTIONS TO SCHEME PARTICIPANTS AND TAX

14 PRO RATA DISTRIBUTIONS TO SCHEME PARTICIPANTS

14.1 Power to make pro rata distributions⁴⁴

Subject to the provisions of this Governing Document and the rights, terms of issue, obligations and restrictions attaching to any Units or classes of Units, the Manager may at any time direct the Supervisor to distribute any amount of capital or income to Scheme Participants in a Fund, pro rata according to the aggregate number of Units and Fractional Units they hold in that Fund, on a Record Date and, in the case of a Scheme or Fund that is a PIE, subject to any adjustment made to the Distributable Amount to be distributed to Scheme Participants pursuant to clause 16.6 and for any pro rata expenses incurred in relation to the Distribution Account. The Distributable Amount for each Fund and for each Scheme Participant shall be determined in accordance with the Manager's determination under this clause.

14.2 Entitlements to Distributable Amounts

Unless otherwise agreed by the Manager, and subject to the rights, terms of issue, restrictions and obligations attaching to any particular Units:

- (a) *Payment to Distribution Account:* the Distributable Amounts for a Fund are to be transferred to a Distribution Account for that Fund as soon as practicable after the Fund's Record Date and cease to be an Asset when they are transferred into the Distribution Account;
- (b) *Registered holders entitled:* subject to clauses 14.2(d) and 14.2(e) and 16.6, Scheme Participants registered in the Register of a Fund at the relevant Record Date are presently entitled to the Distributable Amount attributed to the aggregate number of Units and Fractional Units they hold in that Fund as calculated and adjusted in accordance with this Governing Document;
- (c) *Payment from Distribution Account:* payments must be made out of the Distribution Account as soon as practicable after the relevant Record Date;
- (d) *Apportionment of distributions:* where a Unit is partly paid, it shall be treated for the purposes of calculating Distributable Amounts under this clause as that proportion of a whole Unit as the amount paid up bears to the Unit Price for that Unit or shall be treated in such other manner as the Manager determines; and
- (e) *Portfolio Investment Entity:* the Distributable Amount to be distributed to Scheme Participants of a Fund or Scheme that is a PIE may differ as between Scheme Participants as a result of the exercise of the Manager's discretion in clause 16.6 to adjust Scheme Participants' Distributable

⁴⁴ Sections 135(1)(e) of the FMCA.



Amounts to reflect the Fund's or Scheme's PIE Tax Liability or Tax Credits attributable to a Scheme Participant.⁴⁵

14.3 In specie distributions or the issue of bonus Units

The Manager may, in its discretion, make a distribution in cash, *in specie*, or by way of bonus Units, provided that if the Manager proposes to make a distribution *in specie* to Scheme Participants, each Scheme Participant shall receive the same value of Assets for each of their Units (with the value of such Assets to be determined in accordance with clause 11.2 (*Determining Market Value*)), subject to any adjustments, and less any deductions permitted in accordance with this Governing Document.

14.4 Distribution reinvestment

A Scheme Participant may elect to reinvest some or all of any distribution (or any Tax Credits under clause 16.6) by acquiring Units in a Scheme, Fund or class of Unit selected by the Scheme Participant, if the Manager decides to allow distribution reinvestment in such case. The procedure for such distribution reinvestment shall be determined by the Manager.

14.5 Bonus issues in lieu of distributions

If the Manager decides to offer bonus issues of Units in lieu of distributions or a Tax Credit received by the Manager under clause 16.6, a Scheme Participant may elect this option in respect of all or some distributions from a Fund or Scheme or the Tax Credit on the terms offered by the Manager. In such cases, the Manager shall issue Units in accordance with the terms of the offer.

14.6 Payment

The Manager must prepare or arrange for distributions to be paid.

14.7 Distributions in the context of transfers and transmissions

Entitlements to distributions in a Distribution Account when a transfer of Units is registered remain credited to the transferor, unless the Manager receives evidence to its satisfaction, or the transferor advises the Manager, that distributions are to be transferred to the transferee. Entitlements to distributions in a Distribution Account when a transmission of Units is registered are to be credited to the beneficiary.

14.8 Distributions subject to terms of issue

The rights of a Scheme Participant under this clause 14 are subject to the rights, terms of issue, obligations and restrictions attaching to the Units which they hold.

15 TAX

15.1 Deduction of Tax in respect of a Scheme Participant⁴⁶

The Supervisor or the Manager may deduct from any amounts due or payable to a Scheme Participant (including, without limitation, from the proceeds of any redemption under clause 16.6 or prior to the satisfaction of such amounts through

⁴⁵ Section 170 of the FMCA.

⁴⁶ Sections 170 of the FMCA.



the cancellation of Units) any Tax paid or payable on behalf of or in respect of that Scheme Participant.

15.2 Indemnity for Tax

Every Scheme Participant shall indemnify the Supervisor and the Manager on demand, to the maximum extent permitted by law, in respect of any Tax paid or payable by the Supervisor or the Manager on behalf of or in respect of the Scheme Participant, including any shortfall if the value of a Scheme Participant's Units is insufficient to meet any Liability attributable to that Scheme Participant. The indemnified amount may be deducted from or set-off against any amount due to the Scheme Participant in relation to any Units.

15.3 Disposals of Units to avoid exceeding maximum investor interests requirements

If a Scheme Participant or a PIP Investor (where a PIE Investor Proxy holds Units on behalf of PIP Investors) exceeds or is expected to exceed the maximum investor interests rules for PIEs prescribed in the Tax Act (the *Breach*) in respect of a Fund or Scheme, the Manager may in its discretion, sell or redeem the amount of the excess Units in order to remedy the Breach, and:

- (a) the Manager shall account to the relevant Scheme Participant for the proceeds of any disposal of the excess Units after deduction of all expenses and Taxes arising from such disposal; and
- (b) neither the Manager nor the Supervisor is required to maximise the Unit sale price for any disposal and in any event, shall not be liable to any Scheme Participants for any loss on disposal.



SECTION 9 - THE MANAGER

16 MANAGER'S RESPONSIBILITIES, POWERS AND DUTIES

16.1 Manager's responsibilities

The Manager shall perform the functions, in respect of a Scheme, of the manager of a Scheme under the FMCA.⁴⁷ Subject to the provisions of this Governing Document, the FMCA and any applicable legislation, the Manager shall have full and complete power of management in respect of the Assets and the Schemes, and without limiting the generality of the foregoing, the Manager shall perform the following specific functions:

- (a) arranging for the receipt and acceptance of Contributions and other money payable to a Scheme;
- (b) maintaining the Register in accordance with the requirements of clause 6;
- (c) discharging its obligations under this Governing Document with respect to unitisation, investment management, borrowing (with or without security), valuations, distributions and withdrawals;
- (d) keeping complete and accurate records of all investments of each Scheme and each Fund;
- (e) determining the terms of, and entering into on behalf of the Supervisor or Custodian (as the case may be), all contracts and other arrangements to be entered into in respect of a Scheme, provided that such contracts or arrangements are consistent with the Investment Policies and the Manager ensures that at all times, to the extent permitted by the by law,⁴⁸ the liability of the Supervisor in relation to any contract is limited to the extent to which the Supervisor is actually and effectively indemnified out of the Assets of a Scheme or the relevant Fund (as applicable);
- (f) appointing and engaging solicitors and other consultants, advisers, investment managers, and administration managers in accordance with clause 13.1, on such terms as the Manager determines, and the Auditor, subject to the terms of clause 13;
- (g) providing Scheme Participants with information, notices and disclosures required to be given to them under the FMCA (and providing the Supervisor with copies of any such information, notices or disclosures that the Manager has given to Scheme Participants as a class);⁴⁹
- (h) reporting and providing information to the Supervisor (including, for the avoidance of doubt, in relation to Investment Policy limit breaks, unit pricing errors and non-compliance with the applicable unit pricing methodology for Units in a Fund) to the extent required by the FMCA and

⁴⁷ Section 133 and 142 of the FMCA.

⁴⁸ Section 136 of the FMCA.

⁴⁹ Sections 96, 97 and 100 of the FMCA and FMC Regulations 56, 62 and 65.



complying in all respects with the Manager's obligations under the Management Agreement (if any) as to the frequency and content of such reports;⁵⁰

- (i) altering a Scheme Participant's Unitholding Balance to address partly or entirely the impact of any unit pricing error⁵¹ in accordance with clause 5.9(a);
- (j) correcting unit pricing errors or non-compliance with a unit pricing methodology for Units in a Fund to the extent required by the FMCA and clause 5.9(c);⁵²
- (k) ensuring compliance by the Scheme with the applicable requirements of the FMCA, the Financial Reporting Act 2013 and other applicable legislation;
- (l) ensuring compliance by the Scheme with all Tax obligations;
- (m) maintaining all accounting records for the Scheme and allowing for inspection of those records to the extent required by the FMCA and clause 12.1;⁵³
- (n) arranging for the preparation, audit and lodgement of the financial statements for the Scheme, and the preparation of the Scheme's annual reports to the extent required by the FMCA and clauses 12.2 and 12.3;⁵⁴
- (o) subject to compliance with the relevant Investment Policies and all applicable laws, lend money; and
- (p) exercising such other powers, authorities, functions and discretions as are granted or imposed by the FMCA or incidental to the above functions,

and in performing the above responsibilities, the Manager shall act in accordance with this Governing Document and the FMCA if applicable.

16.2 **Manager's powers**

In addition to any powers granted under this Governing Document, the FMCA or by law, but subject to the FMCA, the Manager may do anything the Manager considers necessary or expedient to enable it to discharge the Manager's responsibilities and meet its duties under this Governing Document.

⁵⁰ Sections 147 to 151, 167 and 168 of the FMCA and FMC Regulations 83, 94 to 98 and 100.

⁵¹ Section 168(2) of the FMCA.

⁵² Section 168 of the FMCA and FMC Regulation 99.

⁵³ Sections 455 to 459 of the FMCA.

⁵⁴ Sections 461A, 461D and 461H of the FMCA and FMC Regulations 62 and 63.



16.3 **Manager's duties**

The Manager shall, in exercising its powers and performing its duties as the manager of a Scheme:

- (a) *Comply with statutory duties:* comply with the duties applicable to the Manager, as manager of the relevant Scheme, under the FMCA and the Trusts Act;⁵⁵
- (b) *Ensure Funds meet PIE criteria:* use its reasonable endeavours to ensure that, if a Fund or Scheme is a PIE, that the Fund or Scheme meets the eligibility requirements in the PIE rules in the Tax Act; and
- (c) *Comply with the Management Agreement:* when acting as manager of a Scheme, comply at all times with the terms of the Management Agreement.

16.4 **Delegation by Manager**

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 to any Associated Person of the Manager. The Manager may agree with such delegate the fees that may be charged and the extent to which expenses will be reimbursed⁵⁶ (subject to clause 10.5 in relation to Related Party Benefits) as the Manager may consider suitable, provided that the Manager shall:⁵⁷

- (a) 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
- (b) take all reasonable steps to monitor the performance of those functions; and
- (c) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

16.5 **Manager's power to appoint third party advisers**

- (a) The Manager may appoint in respect of a Scheme:
 - (i) one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of a Scheme (and all Funds within the Scheme);
 - (ii) one or more investment managers (including any Associated Person of the Manager) to manage the Scheme's (or each Fund's) property; and
 - (iii) any other experts (including, without limitation, any valuer, barrister, solicitor, accountant or share broker) for the provision of

⁵⁵ Sections 143 and 144 of the FMCA.

⁵⁶ Section 135(f) of the FMCA.

⁵⁷ Section 146 of the FMCA.



services relevant to the Scheme or Funds (which person or persons may be an Associated Person of the Manager except where prohibited by any applicable legislation),

and (subject to clause 10.5 in relation to Related Party Benefits) agree with such party the fees that may be charged to each relevant Scheme or Fund, and the extent to which expenses will be reimbursed.

- (b) The Manager may agree to indemnify any investment manager and administration manager from and against any and all losses, costs, and expenses incurred by them, to the fullest extent permitted by law, in relation to the performance of their functions in respect of a Scheme or Fund.⁵⁸

16.6 **Manager's powers if a Scheme or Fund is a PIE**

The Manager may elect that a Scheme or Fund be a PIE, or cease to be a PIE, in its absolute discretion. The Manager shall have the following additional powers and discretions in respect of any Scheme or Fund which is a PIE:

- (a) to determine, on such basis as the Manager thinks appropriate in its complete discretion, any matter which is necessary or desirable to be decided in order to operate a Scheme or Fund as a PIE;
- (b) to retain any amount to which a Scheme Participant otherwise would be entitled if that amount is required to be paid to Inland Revenue pursuant to the Tax Act;
- (c) to make available to the Scheme Participant the benefit of any Tax Credit in such manner as the Manager considers appropriate in its complete discretion;
- (d) to make any elections or exercise any options under the Tax Act as it thinks fit having regard to the interests of Scheme Participants generally and the rules in the Tax Act;
- (e) to carry out any tax calculations, allocations or attributions required by the Tax Act for a PIE;
- (f) to adjust a Scheme Participant's Unitholding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the redemption of the Scheme Participant's Units);
- (g) to deduct any amount on account of a PIE Tax Liability or to credit any amount on account of a Tax Credit from or to any Distributable Amount or Withdrawal Amount in respect of a Scheme Participant on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent

⁵⁸ Sections 135(f) and 136(2) of the FMCA.



permitted by law, as the Manager thinks equitable in its absolute discretion, at any time (including immediately prior to the redemption of the Scheme Participant's Units);

- (h) to elect to offset Tax liabilities and Tax Credits in respect of more than one Scheme Participant and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act;
- (i) to allocate the costs associated with being a PIE between Scheme Participants and Funds or Schemes on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion;
- (j) to take all steps as the Manager considers necessary or desirable to ensure the Scheme or Fund is eligible or continues to be eligible as a PIE, or otherwise to comply with the PIE rules in the Tax Act, including (in the Manager's complete discretion):
 - (i) rejecting applications for Units;
 - (ii) treating Units issued to a Scheme Participant as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Scheme Participant acknowledges that any Units issued which exceed the investor interest size requirement prescribed in the Tax Act, shall be deemed to be held by that Scheme Participant on trust for the Manager and the Manager shall, subject to clause 15.3, have full powers of direction in relation to those Units including when, how and to whom they shall be disposed of; or
 - (iii) redeeming Units where the relevant Scheme Participant's Unitholding would threaten the Scheme's or Fund's eligibility as, or cause a Scheme's or Fund to be ineligible to be, a PIE, provided the Manager has given the Scheme Participant one month's notice or such shorter notice as is necessary in order to maintain the Scheme's or Fund's status as a PIE;
- (k) to require that before accepting an application for Units the applicant provides their Tax File Number, Prescribed Investor Rate, and any other information required by the Tax Act, and that at any time a Scheme Participant must confirm such details or provide such other information as required by the Tax Act on request from the Manager;
- (l) to disclose any information, including issuing any statements and providing any information to Scheme Participants as required by the Tax Act and in respect of their tax position in relation to the Scheme or Fund, and providing any information (including personal information) to Inland Revenue or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Scheme or Fund's Tax obligations;



- (m) to value Tax losses of the Scheme or Fund for the purpose of determining the Unit Price as the Manager thinks fit in its complete discretion having regard to the Tax Act and to the Scheme or Fund's stated policies (if any) from time to time; and
- (n) to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition a Scheme or Fund to and from being a PIE or to administer the Scheme or Fund as a PIE.

16.7 **Fair dividend rate powers**

Where the Manager considers it necessary or desirable in the Manager's complete discretion that a Scheme or Fund should meet the requirements of section EX 52A(2)(a) of the Tax Act, the Scheme or Fund shall be treated as having assigned to each Scheme Participant an interest in a proportion of the net returns from investments of the Scheme or Fund corresponding to the Scheme Participant's Unitholding in the Scheme or Fund.

16.8 **PIE Investor Proxies**

The Manager shall have the power to enter into any contractual or administrative arrangements with a PIE Investor Proxy for the purposes of ensuring that:

- (a) the PIE Investor Proxy meets its obligations under the Tax Act; and
- (b) the Manager can require the PIE Investor Proxy to take such steps as are necessary to ensure that a Scheme or Fund continues to be eligible to be a PIE.

16.9 **Provision of Information where a Scheme or Fund is a PIE**

The Manager may request any Scheme Participant to provide information to the Manager to enable the Manager to determine whether a Scheme or Fund continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Scheme Participant to:

- (a) provide details of Units held by any associated person (as defined in the Tax Act) of the Scheme Participant (including any associated person who is a PIP Investor) where the associated person holds 5% or more of the Units in a class; and/or
- (b) confirm that the Scheme Participant either is or is eligible to be a PIE.

If the Manager requests a Scheme Participant to provide information to the Manager pursuant to this clause, the Scheme Participant shall supply such information within 30 days of the request, or such shorter notice as is necessary in order to maintain the Scheme's or Fund's status as a PIE.



17 **MANAGER'S FEES AND EXPENSES**

17.1 **Manager's fees**⁵⁹

- (a) *Fee*: The Manager shall be entitled to receive from each Fund:
- (i) a management fee; and
 - (ii) a performance fee (if any),
- of an amount set by the Manager, each such fee being calculated and paid in the manner described in the relevant Fund's current Offering Document or register entry.
- (b) *Manager may provide services*: Instead of contracting other parties to do so, the Manager may, with the Supervisor's approval (such approval not to be unreasonably withheld or delayed), itself provide services in relation to registry management and accounting. The Manager is entitled to reasonable fees for these services, if it provides them itself, in addition to its fees for managing the relevant Fund (or Scheme). Such services shall be on normal commercial terms, or terms as favourable to the relevant Fund as normal commercial terms.
- (c) *Allocation of Fees to Scheme Participants*: Where a fee is incurred in respect of a Scheme Participant, the Manager shall levy such fee to that Scheme Participant. Such levied fee shall be met by the redemption of Units of the relevant Scheme Participant with an aggregate Withdrawal Price (less any deductions permitted by this Governing Document) equal in value to the amount of the levied fee, and the proceeds of such redemption shall be paid to the Manager or at its direction (in full satisfaction of such fee). Where there are insufficient Units in a Scheme Participant's Unitholding to satisfy such fees, the unsatisfied balance of such fees shall be a debt owing to the Manager or the Supervisor in its capacity as Supervisor as the case may be.
- (d) *No amendment without Manager's agreement*: This clause 17.1 shall not be amended without the agreement of the Manager.

17.2 **Expenses**⁶⁰

- (a) The Manager may pay all reasonable expenses incurred in relation to the management or operation of a Fund from the Assets of that Fund (including expenses for which the Supervisor is entitled to be reimbursed pursuant to clause 20.2). The Manager may cancel or redeem Units of a Scheme Participant to reflect the Scheme Participant's share of any expenses so paid, from time to time in its absolute discretion.

⁵⁹ Section 135(1)(f) of the FMCA.

⁶⁰ Section 135(1)(f) of the FMCA.



- (b) Where any item of expenditure relates to more than one Fund or Scheme the amount thereof shall be apportioned among the relevant Funds or Schemes in such manner as the Manager determines.

17.3 **Advances to the Manager**

- (a) Subject to this Governing Document, the Supervisor is empowered to advance or otherwise make available to the Manager out of a Fund or to authorise the Manager to retain out of a Fund such amount as the Supervisor from time to time considers to be reasonable and proper in order to enable the Manager to perform and carry out its powers and obligations with regard to the management of the Fund, but any such amount shall be on account only of costs, charges and expenses that are or would become or are anticipated by the Supervisor to be the subject of reimbursement to the Manager or are or would become or are anticipated by the Supervisor to become owing in respect of Assets comprised in the relevant Scheme.
- (b) The Manager shall, whenever so required by the Supervisor, furnish to the Supervisor such evidence as the Supervisor may require as to the utilisation of any such amounts and the purpose for which the same have been or are intended to be applied by the Manager.

17.4 **Alteration or waiver of fees**

The Manager may at any time and from time to time, in its absolute discretion, upon notifying the Supervisor in writing:

- (a) increase fees payable in respect of a Scheme or any Fund or by the relevant Scheme Participants;
- (b) provided that any such fee is not prohibited under this Governing Document, commence charging any such fee which is not currently being charged; or
- (c) waive in full or in part, or delay, payment of fees or expenses or reimbursement due to it generally or in relation to any particular Scheme Participant or potential Scheme Participant,

subject to the terms of issue and the Manager providing Scheme Participants with 30 Business Days' prior notice of any fee increase or new fee. Where payment of fees is deferred, the fee continues to accrue daily until paid.

18 **REMOVAL AND RETIREMENT OF MANAGER**

18.1 **Criteria for removal**

The Manager shall be removed from office as Manager of a Scheme in the circumstances set out in the FMCA.⁶¹

⁶¹ Sections 135(1)(h), 185, 209 and 210 of the FMCA.



18.2 **Manager to cease activities**

If the Manager ceases to hold office as manager of a Scheme pursuant to clause 18.1 or clause 18.3, the Manager and any delegate shall immediately desist from all activities related to that Scheme, unless the Supervisor agrees to the contrary.⁶²

18.3 **Manager may retire**

The Manager may retire in relation to a Scheme at any time, without assigning any reason, upon giving to the Supervisor 90 days' (or such shorter period as the Supervisor shall reasonably require) notice in writing of the Manager's intention to do so. No such retirement shall take effect until a new Manager has been appointed in relation to the relevant Scheme pursuant to clause 18.4.

18.4 **New Manager appointment**

- (a) The power to appoint a temporary manager under the FMCA⁶³ shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.
- (b) Subject to all applicable laws, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, but, except where the new permanent manager is a Related Party of the Manager, no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).
- (c) Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

18.5 **Release of former Manager**

Subject to all applicable laws,⁶⁴ from the date of appointment of a new Manager, the former Manager shall be absolved and released from all such covenants under this Governing Document (except in respect of antecedent breach). 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.

18.6 **Handing over records**

In accordance with the requirements of the FMCA, a former manager must hand over records and give reasonable assistance to the new manager.⁶⁵

18.7 **Termination of Scheme on removal of the Manager**

Notwithstanding any other provision of, or amendment to, this Governing Document (but subject at all times to any applicable laws), if Discovery Funds Management

⁶² Section 185(4) of the FMCA.

⁶³ Sections 186, 187, 189 and 191 of the FMCA.

⁶⁴ Section 191 of the FMCA.

⁶⁵ Section 190 of the FMCA.



Limited is removed as Manager of a Scheme, the Scheme shall be wound up, unless Discovery Funds Management Limited and the Supervisor agree otherwise.



SECTION 10 - THE SUPERVISOR

19 SUPERVISOR'S RESPONSIBILITIES, POWERS AND DUTIES

19.1 Supervisor's responsibilities

The Supervisor shall perform, in respect of a Scheme, the functions of the Supervisor of the Scheme under the FMCA including, but not limited to, acting on behalf of Scheme Participants in relation to the Manager and supervising the performance by the Manager of its functions and its issuer obligations.⁶⁶

19.2 Supervisor's powers

The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions as supervisor of a Registered Scheme, it must comply with its duties under the FMCA.⁶⁷ Subject to the provisions of this Governing Document, the FMCA, any applicable legislation and the powers, rights and discretions given to the Manager by this Governing Document, the FMCA and any applicable legislation, the Supervisor may:

- (a) delegate the performance of all or any of its powers, authorities, functions and discretions under this Governing Document (including power to sub-delegate such powers, duties and discretions) to its officers and employees;
- (b) subject to prior consultation with the Manager (if the Supervisor deems it appropriate in the circumstances) appoint, engage, employ and contract any valuer, accountant, sharebroker, lawyer or any other person from whom the Supervisor reasonably considers the Supervisor requires assistance in respect of its functions under this Governing Document, on such terms and conditions and remuneration as are agreed by the Supervisor (after consultation with the Manager, if applicable) and the other person;
- (c) at the direction of the Manager:
 - (i) raise or borrow any sum or sums of money or obtain credit, accommodation or finance for the purposes of a Fund; and
 - (ii) give any guarantee or undertaking or security interest over any Asset of a Fund in relation to the repayment of money and interest, costs and other charges and expenses,

upon such terms and conditions in all respects as the Supervisor and the Manager may think fit, provided that:

- (iii) the total principal amount borrowed or raised (whether secured or unsecured) in relation to the Fund does not exceed 40% of the Fund's Net Asset Value; and

⁶⁶ Section 152 of the FMCA.

⁶⁷ Sections 153 and 154 of the FMCA.



- (iv) nothing in this sub-clause (c) shall require the Supervisor to take any action which it reasonably believes would cause it to breach its obligations under any rule of law or under this Governing Document; and
- (d) do anything the Supervisor considers necessary or expedient to enable it to discharge the Supervisor's statutory duties in relation to the Scheme.

19.3 **Limitation on investment duty**

To the extent that any provisions in this Governing Document expressly or impliedly impose any obligation on the Supervisor in respect of such investments, the Supervisor is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in diversifying the Assets of a Fund, and the duty on the Manager and Supervisor to invest prudently in the Trusts Act is expressly excluded by the provisions in this Governing Document.

19.4 **Appointment of Custodian**

- (a) *Power to appoint a Custodian:* The Supervisor may, subject to obtaining the prior written approval of the Manager if the Custodian is anyone other than an Associated Person of the Supervisor (which approval shall not be unreasonably withheld), appoint any other person or persons (other than the Manager or an Associated Person of the Manager) to be a Custodian in respect of a Scheme and to hold all or some of the Assets on such terms and conditions as the Supervisor thinks fit, including the power to appoint sub-custodians, provided, in each case, the Custodian or sub-custodian meets the criteria for their respective appointment set out in the FMCA.⁶⁸
- (b) *Custodian's duties:* Where the Supervisor appoints a Custodian or the Custodian appoints a sub-custodian in respect of a Scheme, the Supervisor shall take all reasonable steps to ensure that the custodial functions for the Scheme are performed by the Custodian or sub-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 covenants and obligations relating to holding the Assets as supervisor or custodian expressed or implied in this Governing Document and any applicable legislation.
- (c) *Supervisor to monitor:* The Supervisor shall monitor the performance of any Custodian appointed pursuant to this clause.
- (d) *Indemnity:* The Supervisor may agree to indemnify the Custodian, from and against any and all losses, costs, and expenses incurred by them, to the fullest extent permitted by law, in relation to the Custodian's performance of its functions in respect of a Fund, except to the extent such losses, costs and expenses arose from a failure to exercise the care, diligence and skill a prudent person engaged in the Custodian's profession would exercise in the same circumstances.

⁶⁸ Section 156 of the FMCA.



19.5 **Supervisor's liability**

- (a) Subject to any applicable legislation and without prejudice to any powers of and protections available to trustees, the Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction given to it by Scheme Participants.⁶⁹
- (b) The Supervisor has the same duties and liability in the performance of its functions as it would if it performed those functions as a trustee (except to the extent those duties are altered by or inconsistent with the FMCA).⁷⁰
- (c) Notwithstanding anything contained in this Governing Document, but subject to the FMCA if applicable,⁷¹ in no event is the Supervisor bound to make any payment to Scheme Participants except out of the appropriate Fund or be liable to the Scheme Participants to any greater extent than the amount by which it is actually and effectively indemnified out of the Assets of the relevant Fund.

20 **SUPERVISOR'S FEES AND EXPENSES**⁷²

20.1 **Supervisor's fees**

The Supervisor shall be entitled to receive and retain for its own use and benefit out of each Fund, by way of remuneration for its services as Supervisor, such fees as may be agreed upon in writing between the Supervisor and the Manager. The Supervisor may be paid additional fees for non-routine matters as the Supervisor and the Manager may agree from time to time.

20.2 **Reimbursement of expenses**

In addition to its fee referred to in clause 20.1, the Supervisor is authorised to pay out of a Fund or reimburse itself from that Fund for all expenditure reasonably incurred in respect of that Fund that may from time to time be met by the Supervisor from its own funds.

21 **REMOVAL AND RETIREMENT OF SUPERVISOR**

21.1 **Removal of Supervisor**

Subject to any restrictions in the FMCA,⁷³ the Supervisor shall cease to hold office as Supervisor of a Scheme if:

- (a) *Supervisor ceases to be licensed*: the Supervisor ceases to hold any licence it is required to hold as a supervisor of the Scheme;
- (b) *Removal by High Court*: the Supervisor is removed from office as supervisor of the Scheme by the High Court on application of the Manager;

⁶⁹ Section 153(3) of the FMCA.

⁷⁰ Section 153(4)(b) of the FMCA.

⁷¹ Section 136 of the FMCA.

⁷² Section 135(1)(f) of the FMCA

⁷³ Sections 135(1)(g) and 193(2) of the FMCA.



- (c) *Special resolution of Scheme Participants:* Scheme Participants resolve by Special Resolution that the Supervisor be removed from office as supervisor of the Scheme;⁷⁴
- (d) *Removal by FMA:* the FMA or any court removes the Supervisor from office as Supervisor of a Scheme in accordance with any applicable legislation; and
- (e) *Removal by Manager:* the Manager (as issuer) removes the Supervisor from office as Supervisor of a Scheme in accordance with Part 2 of the Financial Markets Supervisors Act 2011;⁷⁵ or
- (f) *Supervisor insolvency:* the Supervisor does not meet the solvency test as defined in section 4(1) of the Companies Act 1993 and either:
 - (i) it has a receiver or voluntary administrator appointed; or
 - (ii) an order is made by a court or a formal resolution is passed for the appointment of a liquidator or voluntary administrator of the Supervisor.

21.2 Retirement of Supervisor

Subject to the restrictions in the FMCA,⁷⁶ the Supervisor may retire as supervisor and trustee of a Scheme at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do (or such shorter period as the Manager shall reasonably require).

21.3 Appointment of a new supervisor

The power of appointing a new supervisor and trustee of a Scheme shall be vested in the Manager. No person shall be appointed as a new supervisor unless that person holds a licence under the Financial Markets Supervisors Act 2011 that covers the Scheme.

21.4 Provision in relation to new supervisor

A new supervisor and trustee appointed in relation to a Scheme pursuant to this Governing Document shall forthwith upon appointment execute a deed in such form as the Manager may require whereby the new supervisor and trustee undertakes to the Manager and the Scheme Participants of the Scheme to be bound by all the covenants on the part of the Supervisor under this Governing Document from the date of such appointment. From such date, the retiring Supervisor shall be absolved and released from all such covenants under this Governing Document (except in respect of antecedent breach) and the new supervisor shall thereafter have all the powers and shall be subject to all the duties and obligations of the Supervisor under this Governing Document in all respects as if such new supervisor had been originally named as the Supervisor.

⁷⁴ Section 193(1)(c) of the FMCA.

⁷⁵ Section 193(1)(b) of the FMCA and section 23 of the Financial Markets Supervisors Act 2011.

⁷⁶ Section 193(2) of the FMCA.



SECTION 11 - GENERAL PROVISIONS FOR THE SUPERVISOR AND MANAGER

22 INDEMNITY AND RESPONSIBILITIES

22.1 Liability

Subject to this Governing Document and the indemnity limitations under the FMCA,⁷⁷ and except as otherwise provided at law, neither the Supervisor nor the Manager, nor a director or officer of either of them, shall be under any personal liability in respect of any loss or breach of trust relating to a Scheme unless the same shall have been due to that person's own dishonesty or gross negligence.

22.2 Indemnities

The Supervisor and the Manager shall each be indemnified out of each Fund, to the maximum extent permitted by law, from and against any and all losses, costs, and expenses incurred by the Supervisor or Manager in performing any of their respective duties or responsibilities, or exercising or purporting to exercise any of their respective powers, authorities or discretions in relation to a Scheme pursuant to this Governing Document and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Governing Document or the relevant Fund, including all actions or omissions in relation to the offer and issue of Units and the Manager may retain and pay out of the relevant Fund all sums necessary to give effect to such indemnity.

22.3 Power to indemnify investment managers and administration managers

The Manager may agree:

- (a) to limit the liability (in connection with its services in respect of a Scheme) of; and/or
- (b) to indemnify and reimburse out of a Scheme's property,

any investment manager or administration manager appointed in respect of a Scheme, to the maximum extent permitted by law in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of a Scheme or any action taken or omitted to be taken in connection with a Scheme (including, without limitation, legal fees and disbursements).⁷⁸

22.4 Power to indemnify custodians

The Supervisor may agree:

- (a) to limit the liability (in connection with its services in respect of a Scheme) of; and/or
- (b) to indemnify and reimburse out of a Scheme's property,

⁷⁷ Sections 136 and 153(3) of the FMCA.

⁷⁸ Section 135(1)(f) and 136(2) of the FMCA.



any Custodian or sub-custodian appointed in respect of a Scheme, to the maximum extent permitted by law in respect of any debt, liability or obligation incurred by or on behalf of the Custodian or sub-custodian in respect of a Scheme or any action taken or omitted to be taken in connection with a Scheme (including, without limitation, legal fees and disbursements).⁷⁹

22.5 **Indemnity and liability exclusion limitations**

No provision of this Governing Document has the effect of exempting or indemnifying the Supervisor or the Manager or any director or officer of the Supervisor or the Manager to the extent that doing so would be void under the FMCA or any other statute.⁸⁰

22.6 **Lien**

To the maximum extent permitted by the law,⁸¹ the Supervisor and the Manager shall have a lien on and may use any, or any part of, any Asset of a Fund for the time being in the hands or coming into the hands of the Supervisor or the Manager for the indemnity from that Scheme referred to in clause 22.2 and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the Assets of the Fund under this Governing Document.

22.7 **Reliance of Manager and Supervisor**

Neither the Supervisor nor the Manager shall incur any liability, to the maximum extent permitted by the law,⁸² in respect of any action taken or thing suffered by the Supervisor or Manager in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Supervisor or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.

22.8 **Prohibited performance**

Neither the Supervisor nor the Manager shall incur any liability, to the maximum extent permitted by the law,⁸³ to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law or ordinance, rule, regulation or bylaw made pursuant thereto or of any decree, order or judgment of any competent court, the Supervisor or the Manager shall be hindered, prevented or forbidden from so doing or performing.

22.9 **Tax payments in good faith**

Neither the Supervisor nor the Manager shall be liable, to the maximum extent permitted by law,⁸⁴ to account to any Scheme Participant or otherwise for any payments made by the Supervisor or the Manager in good faith to any fiscal authority for Taxes in respect of a Scheme, any Fund, Scheme Participants or with

⁷⁹ Section 135(1)(f) of the FMCA.

⁸⁰ Section 136(1) of the FMCA.

⁸¹ Section 136(1) of the FMCA.

⁸² Section 136(1) of the FMCA.

⁸³ Section 136(1) of the FMCA.

⁸⁴ Section 136(1) of the FMCA.



respect to any transaction under this Governing Document notwithstanding that any such payment need not have been made.

22.10 **Supervisor relying on advice**

The Supervisor, in relation to this Governing Document, may rely on:

- (a) the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Party of the Manager or the Supervisor) (whether or not obtained by the Manager or the Supervisor) and the Supervisor shall not be responsible, to the maximum extent permitted by the law,⁸⁵ for any loss occasioned by so acting so long as the Supervisor has no reason to believe that the opinion or advice is not authentic;
- (b) a certificate signed on behalf of the Manager by two directors of the Manager (or one director and one authorised signatory of the Manager, or one director where that director is the sole director):
 - (i) as to any fact or matter and which the Supervisor may, in the exercise of any of the powers and discretions under this Governing Document, require to be satisfied; or
 - (ii) that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Scheme Participants or any of them,

as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing;
- (c) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Governing Document, as conclusive evidence of the facts stated in that certificate.

22.11 **Manager relying on advice**

The Manager may act on the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Party of the Manager or the Supervisor) (whether obtained by the Manager or the Supervisor) and the Manager shall not be responsible, to the maximum extent permitted by the FMCA,⁸⁶ for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic.

22.12 **Communication between Manager and Supervisor**

Whenever, pursuant to any provision of this Governing Document, any certificate, notice, instruction or other communication is to be given by the Manager to the Supervisor, or the Supervisor to the Manager, the Supervisor or the Manager, as

⁸⁵ Section 136(1) of the FMCA.

⁸⁶ Section 136(1) of the FMCA.



the case may be, may accept as sufficient evidence thereof a document (or its electronic copy) signed on behalf of the Manager or Supervisor by any one of their directors or board members (as the case may be) or by any other person or persons duly authorised by the Manager or Supervisor or any other form of communication as agreed.

22.13 **Discretion of Manager and Supervisor**

The Manager and the Supervisor shall (except as otherwise provided in this Governing Document) when exercising any of their powers and discretions under this Governing Document or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise of that power or discretion and, provided the Manager or the Supervisor (as the case may be) shall not have acted fraudulently or with gross negligence, by act or omission, the Manager and the Supervisor (as applicable) shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of that power or discretion to the maximum extent permitted by the law.⁸⁷ The Manager shall have no liability for any loss suffered by a Scheme Participant on any action taken or adjustment made pursuant to clause 14.2 or clause 16.6 to the maximum extent permitted by the FMCA.

22.14 **No conflicts of interest for Supervisor or Manager**

Subject to clause 10.3 and the FMCA if applicable,⁸⁸ nothing in this Governing Document or any rule of law shall prevent the Supervisor, or any Related Party of the Supervisor or any shareholder, board member, officer, or employee of the Supervisor or its Related Party, or the Manager, or any Related Party of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Party, from:

- (a) subscribing for, purchasing, holding, dealing in, or disposing of Units;
- (b) otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for or entering into any sale or purchase, financial, banking, agency, or other transaction with either or both of the Supervisor or Manager (whether in respect of the Schemes or otherwise) or with any Scheme Participant or any person whatsoever;
- (c) being interested in any such contract, transaction or otherwise;
- (d) acting as supervisor or manager of any other managed investment scheme;
or
- (e) holding any Asset jointly with a Scheme;

and none of them shall be in any way liable to account either to any other of them, a Scheme, or to the Scheme Participants or any of them for any profits or benefits (including, without limitation, any customary bank charges, commission, exchange, brokerage and fees).

⁸⁷ Section 136(1) of the FMCA.

⁸⁸ Sections 172 to 177 of the FMCA.

**22.15 Limitation on payments to Scheme Participants**

To the maximum extent permitted by law,⁸⁹ in no event shall the Supervisor or the Manager, as the case may be, be bound to make any payment to Scheme Participants except out of funds held by it for that purpose under the provisions of this Governing Document.

22.16 Failure to carry out agreement

Subject to the provisions of this Governing Document, to the maximum extent permitted by law,⁹⁰ neither the Supervisor nor the Manager will be liable for the failure of any person to carry out any agreement in relation to a Scheme.

22.17 Resolutions of Scheme Participants

To the maximum extent permitted by law,⁹¹ neither the Supervisor nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Scheme Participants even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the relevant Scheme Participants.

22.18 Reliance by Manager and Supervisor

To the maximum extent permitted by law:⁹²

- (a) *No liability for other's fault:* the Manager shall not be responsible for any loss arising as a result of any act or omission of the Supervisor or the Custodian, and the Supervisor shall not be responsible for any loss arising as a result of any act or omission of the Manager; and
- (b) *No liability for failure to check:* the Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Supervisor or the Custodian, and the Supervisor shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager.

22.19 Disclosure of information

Subject to the terms of this Governing Document, neither the Manager nor the Supervisor shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Scheme Participant confidential, financial or other information made available to it in connection with this Governing Document. Notwithstanding any provision of this Governing Document or the provisions of the Privacy Act 2020, the Scheme Participants authorise the Manager and the Supervisor to provide information relevant to a Scheme Participant to any person as may be deemed necessary by the Manager or the Supervisor.

⁸⁹ Section 136(1) of the FMCA.

⁹⁰ Section 136(1) of the FMCA.

⁹¹ Section 136(1) of the FMCA.

⁹² Section 136(1) of the FMCA.



22.20 Manager and Supervisor not acting personally

The Manager and the Supervisor are each deemed to be acting for and on behalf of the relevant Scheme and not in their own respective capacities. Subject to clause 22.1, neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for satisfaction of any obligation to a Scheme.



SECTION 12 - MISCELLANEOUS

23 MEETINGS

23.1 Meetings generally

The Manager may (and, if required by the FMCA⁹³ to call meetings, shall) convene a meeting of a class of Scheme Participants by giving notice in accordance with the FMCA and FMC Regulations. A meeting of Scheme Participants shall be conducted in accordance with the requirements of the FMCA, the FMC Regulations and any other law, subject (where permitted) to any additions or changes expressly prescribed in this Governing Document.⁹⁴

23.2 Attendance at meetings and right to be heard

The Manager and the Auditor and their duly appointed representatives may attend and address any meeting of Scheme Participants (including any adjourned meeting).

23.3 Validity of proxy's vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation as aforesaid shall have been received by the Manager before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.

23.4 Special Resolutions binding on all Scheme Participants

A Special Resolution passed by the required majority at a meeting of a class of Scheme Participants shall be binding upon all the relevant Scheme Participants in that class, whether present or not present at such a meeting, and each of the Scheme Participants and the Supervisor and the Manager shall be bound to give effect thereto accordingly.

23.5 Resolutions where more than one class of Units

Where there is more than one class of Units in a Fund, a resolution of Scheme Participants in relation to any matter affecting the Fund as a whole shall require the approval of all classes of Units in that Fund by the required majority.

23.6 Class meetings

The provisions of this clause 23 shall apply to meetings of Scheme Participants in a Scheme or a class of Scheme Participants, as if the Scheme, or each class of Units, were a separate Fund.

⁹³ Sections 161 to 163 of the FMCA and regulation 83 of the FMC Regulations.

⁹⁴ Sections 135(1)(j) and 161 to 163 of the FMCA and FMC Regulations 83(1)(b) and 89 to 91 and Schedule 11.



24 WIND UP

24.1 Supervisor notification of wind up

A Scheme or a Fund shall be wound up if:

- (a) the Manager gives, after prior consultation with the Supervisor, 3 months' written notice (or such shorter notice as the Supervisor shall agree) to the Supervisor that a Scheme or Fund is to be wound up; or
- (b) a Scheme registration is cancelled or the Scheme or Fund is required to be wound up pursuant to the FMCA,⁹⁵ this Governing Document, by the Courts or by operation of law; and

the wind-up shall take effect on the date specified for that purpose under such process requiring such winding up.

24.2 Scheme Participant notification

Where a Scheme or a Fund is to be wound up, within 30 Business Days of giving notice to wind up the Scheme or Fund in accordance with clause 24.1(a), the Manager must give to each Scheme Participant holding Units in the Scheme or Fund, notice of the winding up and of the intention of the Supervisor to distribute to Scheme Participants the Assets of that Scheme or Fund, and notice of any suspension of all existing and future Withdrawal Requests pursuant to clause 8.15.

24.3 Winding up proceeds may be met by distributing units in another scheme or fund

- (a) Where the Manager elects to wind up a Scheme or Fund, or a Scheme is wound up pursuant to clause 24.1(b) of this Governing Document, the Manager may (subject to the FMCA) satisfy Scheme Participants' Winding Up Entitlements:
 - (i) through a payment in cash; or
 - (ii) through the distribution (*in specie*) of units in another scheme or a fund of another scheme (or in the case of the winding up of a Fund under clause 24.1, another Fund) (an *Alternate Fund*) in accordance with this clause; or
 - (iii) by providing Scheme Participants with the choice of having their Winding Up Entitlements met in cash or through the distribution (*in specie*) of units in one or more Alternate Funds,

provided that, in either case under clause 24.3(a)(ii) or (iii), the Manager shall (after good faith consultation with the Supervisor for a period of up to 20 Business Days, and following due consideration of any expert analysis or opinion reasonably requested or solicited by the Supervisor following such consultation process) ensure that the Alternate Fund(s) selected shall offer funds with substantially similar investment objectives, fees and other matters to ensure that Scheme Participants are not materially adversely

⁹⁵ Sections 195 and 211 of the FMCA.



affected by the distribution of units in one or more Alternate Funds, and the Manager shall certify to the Supervisor that this requirement has been met.

- (b) If the Manager makes such an election to offer such a choice under clause 24.3(a)(iii), the notice given by the Manager pursuant to clause 24.2 shall invite the relevant Scheme Participants to elect, within such reasonable period as the Manager may prescribe:
 - (i) to receive payment in cash; or
 - (ii) to have the Scheme Participant's Winding Up Entitlements satisfied by the distribution (*in specie*) of units in an Alternate Fund and may determine (and notify Scheme Participants in the notice pursuant to clause 24.2) whether Scheme Participants who do not make an election are to receive cash or units in the Alternate Fund.

24.4 **Procedure on winding up**

From and after the date of termination of a Scheme or a Fund, the Manager shall direct the Supervisor to (or, if the Manager cannot or will not provide such a direction, the Supervisor can apply to the court for a direction to):

- (a) sell and realise the Assets of the Scheme or Fund maintained under this Governing Document and make provision for any debts and benefits due but unpaid and the costs of winding up other than units in an Alternate Fund to be distributed to Scheme Participants in satisfaction of their Winding Up Entitlements; and
- (b) acquire such units in the Alternate Fund to be distributed (*in specie*) to Scheme Participants in satisfaction of their Winding Up Entitlements,

as soon as reasonably practicable, subject to clause 24.8(a).

24.5 **Supervisor's retention power**

The Supervisor shall be entitled to retain out of a Scheme or a Fund, such amount that the Supervisor considers necessary or appropriate to meet all claims and liabilities (including contingent liabilities) in connection with the Scheme or Fund or arising out of the liquidation of the Scheme or Fund, such fee for time in attendance as the Manager and the Supervisor shall agree and the fees of any agents, solicitors, bankers, accountants, auditors or other persons (including the Manager) whom the Supervisor may employ in connection with the winding up of a Scheme or a Fund. The Supervisor shall be entitled to be indemnified in respect of the foregoing from the moneys or Assets retained by the Supervisor.

24.6 **Scheme Participant's entitlement on wind up**

A Scheme Participant's Winding Up Entitlements on a winding up of a Scheme or a Fund shall be satisfied by the distribution of either cash or units in an Alternate Fund equal in value to the Scheme Participant's Winding Up Entitlements in accordance with the process elected under this clause 24.



24.7 **Wind up procedure**

On a winding up of a Scheme or a Fund, the Supervisor shall:

- (a) first, pay or retain all costs, charges, expenses, taxes and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Scheme or Fund and of all remuneration payable to the Supervisor and the Manager as provided by this Governing Document; and
- (b) secondly, satisfy the Winding Up Entitlements of Scheme Participants in the manner determined under this clause 24.

24.8 **Miscellaneous wind up provisions**

- (a) The Manager may postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Scheme Participants to do so, and will not be responsible for any Scheme Participant's consequent loss.
- (b) If, in the opinion of the Supervisor, it shall be expedient to do so, the Supervisor may make interim payments or distributions on account of the amounts to be distributed in accordance with clause 24.7.
- (c) The Supervisor must provide all the reports and comply with all of the requirements set out in the FMCA and any other applicable legislation when a Scheme or a Fund is wound up.

25 **AMENDMENTS**

25.1 **Amendments**

Subject to any requirements of the FMCA, the Manager may at any time, by deed supplemental to this Governing Document, with the consent of the Supervisor,⁹⁶ amend, add to or revoke (in whole or in part) any provision of this Governing Document or any Establishment Deed, if the amendment, addition or revocation:

- (a) *Not prejudicial*: does, in the opinion of the Manager, not have a material adverse effect on Scheme Participants in any Scheme affected by the proposed amendment, addition or revocation; or
- (b) *Approved by Scheme Participants*: is approved by, or contingent on, approval by separate Special Resolutions of each class of Scheme Participants which, in the opinion of the Manager, is likely to be affected by the proposed amendment; or
- (c) *Authorised by Governing Document*: is otherwise expressly authorised by this Governing Document (including any Establishment Deed).

25.2 **Amendments by the Manager**

Subject to any requirements of the FMCA,⁹⁷ the Manager may, with the consent of the FMA, by deed supplemental to this Governing Document amend, add to or revoke (in whole or in part) any provision of this Governing Document or any

⁹⁶ Section 139 of the FMCA.

⁹⁷ Section 140 of the FMCA.



Establishment Deed if the FMA is satisfied that the amendment, addition or revocation is necessary to enable the Governing Document (including any Establishment Deed) to comply with sections 135 to 137 of the FMCA.

26 **NOTICES TO SCHEME PARTICIPANTS**

26.1 **Notice may be given to registered address**

A notice may be given by the Manager or the Supervisor to any Scheme Participant personally, by leaving it at his or her address recorded in the relevant Register, by sending it addressed to such Scheme Participant at his or her recorded address by ordinary prepaid post, or by sending it by email to such Scheme Participant at the last email address provided by such Scheme Participant.

26.2 **Deemed service**

Any notice sent by post shall be deemed to have been served at the expiration of seventy-two (72) hours after the notice is posted. Any notice sent by email shall be deemed to have been served provided no non delivery answer back is received by the sender within 1 hour of sending.

26.3 **Period of notice**

Subject to any applicable legislation, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.

26.4 **Transferees bound by notices sent to the transferor**

Every person who, by operation of law, transfer, death or by any other means whatsoever, shall become entitled to any Units, shall be bound by every notice which (prior to his or her name and address being entered in the Register in respect of such Units) shall have been duly given to the person from whom he or she derives his or her title to such Units.

27 **MONEY PAYABLE TO SCHEME PARTICIPANTS**

- (a) Any money payable by the Supervisor or by the Manager to a Scheme Participant under this Governing Document may be paid to an account of a bank or financial institution nominated by the Scheme Participant:
 - (i) by direct electronic bank transfer; or
 - (ii) as the Scheme Participant or joint Scheme Participants with the approval of the Manager may from time to time specify.
- (b) Any payment made in any other manner in accordance with a Scheme Participant's instructions shall be a full satisfaction of the money payable and will be a good discharge to the Supervisor and to the Manager.

28 **UNCLAIMED PAYMENTS**

If any payment made to any Scheme Participant in accordance with this Governing Document is returned or otherwise unclaimed, the amount shall be retained by the



Manager for such Scheme Participant without liability to invest it or pay interest on it. Such retained amount shall not, for any purposes of this Governing Document, be part of the relevant Fund, but such amount may be invested in the relevant Fund and any proceeds from such amount shall become the property of the relevant Fund. Any amount unclaimed for five years or longer shall be forfeited to and for the benefit of the Manager, or to the extent required by the applicable laws (including, in the Manager's discretion, amounts unclaimed any shorter period of time period allowed by the applicable laws), to the Crown.

29 **MINIMUM ECONOMIC AMOUNT**

Subject to clause 16.3, neither the Supervisor nor the Manager shall be obliged to undertake any transaction for which a payment or transfer would be for an amount less than the out of pocket costs of effecting it.

30 **SEVERANCE**

30.1 **Ability to read down clauses**

If a provision of this Governing Document is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

30.2 **Severance of invalid clause**

Notwithstanding clause 30.1 if a provision of this Governing Document is still void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal if a word or words (as the case may be) were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is hereby severed,

and the remainder of this Governing Document has full force and effect.

31 **CONTRACT AND COMMERCIAL LAW ACT 2017**

This Governing Document shall take effect as a contract (as well as a Governing Document) to the extent provided in this Governing Document, and shall be enforceable for the benefit of every Scheme Participant from time to time except that, for the purposes of the proviso to section 12 of the Contract and Commercial Law Act 2017, the benefit so extended to Scheme Participants is intended to be limited by, and enforceable subject to, the rights of parties to the Governing Document to vary or discharge benefits or obligations as provided in this Governing Document without the consent of any Scheme Participant, other than as so provided.

32 **GOVERNING LAW**

This Governing Document shall be governed by and construed in accordance with New Zealand law.

**33 COUNTERPARTS**

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

34 DELIVERY

Without limiting any other mode of delivery, this Governing Document may be delivered by each of the parties to this Governing Document by:

- (a) physical delivery by that party, its solicitors or any other person authorised by that party, of an original of this Governing Document, executed by that party, into the custody of the other party or its solicitors; or
- (b) transmission, in electronic form by any means of electronic communication (including email of a scanned copy) to the other party or its solicitors, by that party, its solicitors or any other person authorised in writing by that party, of an original of this Governing Document, executed by that party, and the parties hereby consent to such form of delivery.



SCHEDULE 1 – WHOLESALE SCHEMES

1 EXCLUDED CLAUSES FOR WHOLESALE SCHEMES

The following clauses do not apply to Wholesale Schemes:

- 1.1 Clause 1.2 (*Prescribed frameworks or methodologies*); and
- 1.2 Clause 5.1(d).

2 MODIFIED CLAUSES FOR WHOLESALE SCHEMES

The following modifications to this Governing Document shall apply in respect of a Wholesale Scheme and any Funds within that Wholesale Scheme:

- 2.1 *Clause 5.9(b)*: Clause 5.9(b) shall require the Manager to report to the Supervisor any errors in the Unit Price calculations or non-compliance with any pricing methodology to the extent described in the Establishment Deed for the Wholesale Scheme, the Management Agreement or any Offering Document relating to it, but shall not require any reporting in relation to such errors required by Part 4 of the FMCA in respect of that Wholesale Scheme;
- 2.2 *Clause 5.9(c)*: Clause 5.9(c) shall require the Manager to correct any errors or non-compliance with the pricing methodology for Units in a Fund to the extent described in the Establishment Deed for the Wholesale Scheme, the Management Agreement or any Offering Document relating to it or in accordance with its internal policy, but shall not require any correction required by Part 4 of the FMCA in respect of that Wholesale Scheme. Clause 16.1(j) shall be read accordingly;
- 2.3 *Clause 5.9(d)*: *Clause 5.9(d)* applies only when the Manager corrects a unit pricing error or non-compliance with the pricing methodology for Units in a Fund pursuant to clause 2.2 of this Schedule 1;
- 2.4 *Clause 8.14(c)*: Clause 8.14(c) applies to a Wholesale Scheme, but without the exception requiring that Part 4 of the FMCA prevails;
- 2.5 *Clauses 10.1, 10.2 and 10.3*: The Manager's obligations in clauses 10.1 to 10.3 shall not apply to a Wholesale Scheme. The Statement of Investment Policies and Objectives for a Wholesale Scheme shall be contained in the Offering Document for the Wholesale Scheme and shall not be required to comply with the FMCA or any guidance issued under the FMCA in respect to Statements of Investment Policies and Objectives;
- 2.6 *Clause 16.1*: The Manager's obligations in clause 16.1 shall apply to a Wholesale Scheme without the need to follow the requirements of Part 4 of the FMCA;
- 2.7 *Clause 16.1(h)*: Clause 16.1(h) shall require the Manager to report any errors or non-compliance with pricing methodologies to the extent described in the Establishment Deed for the Wholesale Scheme, the Management Agreement or any Offering Document relating to it, but shall not require the Manager to report any



correction required by Part 4 of the FMCA to the Supervisor in respect of that Wholesale Scheme;

- 2.8 *Clause 16.1:* Clause 16.1 shall not require the Manager to register any documents with the Registrar of Financial Service Providers in respect of a Wholesale Scheme, nor require the Manager to act in accordance with the FMCA to the extent this Schedule excludes the requirement to do so; and
- 2.9 *Clause 17.1(a):* In clause 17.1(a), the Manager must set its fees for a Wholesale Scheme in the manner described in the relevant Fund's Establishment Deed or any Offering Document relating to it, rather than in the relevant Fund's current PDS or register entry.



SCHEDULE 2 – TEMPLATE ESTABLISHMENT DEED FOR A NEW FUND

Establishment Deed for
Discovery Funds
Management Scheme:
[] Fund

Discovery Funds Management Limited
(Manager)

Public Trust (Supervisor)



ESTABLISHMENT DEED FOR DISCOVERY FUNDS MANAGEMENT SCHEME: [] FUND

Date:

PARTIES

Discovery Funs Management Limited (*Manager*)

Public Trust (*Trustee*)

BACKGROUND

- A The Manager and the Supervisor are parties to a governing document dated [] 2022 in respect of the Discovery Funds Management Scheme (*Trust Deed*), which sets out the terms and conditions applicable to funds and schemes established under the Trust Deed.
- B The Trust Deed provides that the Manager may at any time give notice to the Supervisor of its intention to constitute a New Scheme or a New Fund under the Trust Deed. If the Supervisor approves the constitution of a New Scheme and the New Fund (such approval not to be unreasonably withheld or delayed) the Supervisor shall execute an establishment deed with the Manager setting out the specific terms and conditions relating to the New Scheme and the New Fund.
- C The Manager gives notice to the Supervisor of its intention to constitute a New Fund, to be known as the [] (*the Fund*). The Supervisor approves the constitution of the Fund. The Parties are entering into this deed for the purpose of establishing the Fund and specifying their terms and conditions.

BY THIS DEED the parties agree as follows:

1 DEFINITIONS AND CONSTRUCTION

- 1.1 Unless the context requires otherwise, capitalised terms have the meaning given to them in the Trust Deed, or as otherwise set out in this deed.

2 CONSTITUTION OF THE FUND

Deposit of moneys

- 2.1 On execution of this deed the Fund will be constituted upon the lodgement by any person of \$[] by way of subscription for [] Units in the Fund. Such amount shall be held by the Supervisor upon the trusts created by this deed and the Trust Deed.

Name of the Fund

- 2.2 The name of the Fund shall be “[]”.

Investment Policies

- 2.3 The Investment Policies for the Scheme will be amended by way of addition of investment policies in respect of the Fund which will be [included in the Offering Documents] / [prepared in accordance with the requirements of the FMCA and clause 10.1 of the Trust Deed].

**Commencement date**

- 2.4 The Fund shall commence on [the date of execution of this deed], being the date on which the sum referred to in clause 2.1 is lodged in accordance with that clause.

PIE status

- 2.5 [It is intended that the Fund will be a PIE, provided that the Fund meets the eligibility requirements to be a PIE under the PIE rules in the Tax Act.]

Trust Deed adopted

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

3 GENERAL

- 3.1 The parties acknowledge that this deed may be executed in several counterparts (including by facsimile or emailed copy), and will be binding on the parties and enforceable upon each having executed an identical copy and will be treated as having been made upon the execution of it by the last party to execute a copy.
- 3.2 This deed is governed by the laws of New Zealand the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.
- 3.3 A party may sign this deed by way of the application of that party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017. Where a party applies an electronic signature to this deed in accordance with clause:
- (a) that party confirms that such method of signing is reliable and conclusive of that party's intention to be legally bound by this deed;
 - (b) all the parties are able to rely on such electronic signature as if that party had signed this deed by manuscript signature in accordance with all legal requirements; and
 - (c) the parties acknowledge that by accepting or acknowledging receipt of copies of the deed with another party's signature electronic signature, they are consenting to the use of the party's electronic signature.
- 3.4 For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this deed will be delivered by each party on the earlier of:
- (a) physical delivery of an original of this deed, executed by the relevant party, into the custody of the other party or the other party's solicitors; or
 - (b) transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a photocopied or scanned copy of an original of this deed or other digital version, executed by the relevant party, to the other party or the other party's solicitors.



EXECUTED and delivered as a deed

Discovery Funds Management Limited

by:

Director

in the presence of:

Name:

Occupation:

Address:

Executed on behalf of
Public Trust by its attorney:

Attorney

Print name

in the presence of:

Name:

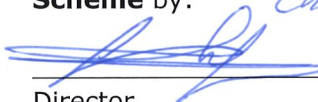
Occupation:

Address:



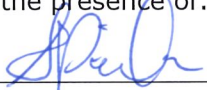
EXECUTED and delivered as a deed

Signed on behalf of **Discovery Funds Management Limited** as Manager of the **Scheme** by:

Chris Banbridge


Director

in the presence of:



Name: *Angela Paila*

Occupation: *Retail*

Address: *81 Bolton St,
Stockhouse Bay*

Public Trust by its attorney **Elena Vinton**



in the presence of:



Name: **Andrew Strother**

Occupation: **Manager Client Services**

Address: **Auckland**

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

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

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

Date: 2 September 2022



Signature of attorney