

# **TRUST DEED FOR MYSUPER SUPERANNUATION SCHEME**

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**Between**

**ACCIDENT COMPENSATION CORPORATION**

**And**

**SHAMROCK SUPERANNUATION LIMITED**

**Consolidated and Amended with effect from the Effective Date**



**Simpson Grierson**

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**THIS DEED** is dated the **23** day of September 2016

**BETWEEN**        **ACCIDENT COMPENSATION CORPORATION**, a Crown entity in terms of the Accident Compensation Act 2001 having its principal office in Wellington (**Corporation**)

**AND**              **SHAMROCK SUPERANNUATION LIMITED** a duly incorporated company under the Companies Act 1993 having its registered office in Wellington (**Trustee**)

## **BACKGROUND**

- A.**        mysuper Superannuation Scheme (**Scheme**) was established by a trust deed dated 27 August 1991 between the Corporation and the Trustee (**Trust Deed**). The Scheme is presently governed by a consolidated Trust Deed dated 14 November 2007 (**Present Trust Deed**).
- B.**        The Trustee and the Corporation wish to amend the Present Trust Deed to meet the requirements of, and register the Scheme as a managed investment scheme under, the FMCA.
- C.**        Clause 29(a) of the Present Trust Deed provides that the Trustee may, with the consent of the Corporation, by deed change all or any part of the provisions of the Trust Deed and such changes may have retrospective effect. The power of amendment in clause 29(a) of the Present Trust Deed is subject to the restrictions in clause 29(b) of the Present Trust Deed and section 9 of the Superannuation Schemes Act 1989 (**Act**).
- D.**        The Corporation has consented to the amendments in this Deed as is evidenced by the Corporation's execution of this Deed.
- E.**        The Trustee is satisfied that the amendments to the Present Trust Deed made by this Deed would not have any of the effects described in clause 29(b) of the Present Trust Deed and section 9 of the Act.
- F.**        The Trustee has given a certificate in accordance with clause 29(c) of the Present Trust Deed and section 12 of the Act that the Present Trust Deed, when amended as proposed by this Deed, will comply with section 7 of the Act, and will not contain any provision that is contrary to those implied by sections 8 to 10 (inclusive) of the Act.

**THIS DEED WITNESSES THAT** with effect on and from the Effective Date, this Deed will replace the Present Trust Deed. For the avoidance of doubt, it is intended that the Scheme will continue to operate as the same Scheme before and after the Effective Date, but will be governed and administered as provided in this Deed.

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

In this Deed unless the context otherwise requires:

**Actuary** means a person who is a Fellow of the New Zealand Society of Actuaries and who has been appointed by the Trustee to advise the Trustee regarding the Scheme. Where the Actuary is a firm then any reference to "Actuary" in the context of any requirement of the FMC Act shall mean an individual employee or partner of that firm who is a Fellow of the New Zealand Society of Actuaries.

**Annual Report** means an annual report prepared in accordance with the FMCA and FMC Regulations.

**Auditor** means a qualified auditor (within the meaning of the FMCA) who has been appointed in accordance with clause 24(i) as the auditor of the Scheme.

**Authorised Investment** means in respect of an Investment Portfolio the investments in which the assets of that Investment Portfolio may be invested.

**Beneficiary** means any Member, former Member or any other person either presently or contingently entitled to any benefit from the Scheme.

**Commissioner** means the Commissioner of Inland Revenue as defined in section 31 of the Tax Administration Act 1994.

**Complying Fund Rules** means the complying fund rules as defined in section RD 66 of the Income Tax Act 2007.

**Complying Superannuation Fund** has the meaning set out in section 6(1) of the FMCA.

**Confirmation Information** means confirmation information prepared in accordance with the FMCA and FMC Regulations.

**Continued Beneficiary** means a person who was a Member who has left Service and who has, with the consent of the Corporation, elected to retain the benefit payable under clause 11(a) and/or 11(b) for a Continuation Period.

**Continued Benefit** means the amount of the benefit payable under clause 11(a) and/or 11(b) in respect of a Continued Beneficiary plus any voluntary contributions made by the Continued Beneficiary under clause 11(c)(ii) plus or minus Interim Interest or Determined Interest.

**Continuation Period** means the period from the date the Continued Beneficiary leaves Service to the date the Continued Benefit is paid to the Continued Beneficiary.

**Corporation** means the Crown entity continued under the Accident Compensation Act 2001 which acts through the Board for the time being of the Accident Compensation Corporation or any quorum thereof competent to transact the affairs of the Corporation or such person or persons from time to time delegated by the Board to act on its behalf.

**Custodian** has the meaning set out in section 6(1) of the FMCA.

**Deed** means this Trust Deed as amended from time to time.

**Dependant** means in relation to a Member any person who the Trustee in its absolute discretion from time to time determines to be or have been financially dependent either in whole or in part on the Member at the relevant time.

**Determined Interest** means determined interest as defined clause 8(a).

**Earnings** in respect of an Investment Portfolio and any period means the profit or loss on the investments of that Investment Portfolio for that period and includes income, capital gains and losses, revaluations of assets and any provisions for contingencies considered appropriate by the Trustee.

**Effective Date** means the date on which the Scheme is registered as a managed investment scheme under the FMCA.

**Electronic Communication** means a transmission of an instruction, request, notice or other information by email or other electronic medium approved by the Trustee subject to such conditions as the Trustee considers appropriate as to identification of the person making the communication or verification of the content, despatch or receipt of the communication.

**Employee** means a person in the employment of an Employer as determined from time to time by that Employer.

**Employer** means the Corporation or any subsidiary, associated or related company or corporate body which the Corporation declares to be a subsidiary, associated or related company or corporate body for the purposes of this Deed and which shall have agreed in writing to be bound by the provisions of this Deed.

**Equivalent Overseas Retirement Scheme** means a scheme described in regulation 82(3) of the FMC Regulations.

**FMA or Financial Markets Authority** has the meaning set out in section 6(1) of the FMCA.

**FMCA** means the Financial Markets Conduct Act 2013.

**FMC Regulations** means the Financial Markets Conduct Regulations 2014.

**Former Employee** means a person who was formerly in Service and was a Member of the Scheme.

**Fund** means the assets for the time being held by or on behalf of the Trustee for the purposes of the Scheme.

**Fund Update** has the meaning set out in regulation 5(1) of the FMC Regulations.

**Group Insurance** means the group life insurance and the group salary continuance insurance or either, arranged under the Scheme by the Trustee pursuant to clause 15.

**Group Insurance Policy** means any policy document entered into between the Insurer and the Trustee for the Group Insurance.

**Group Insurance Premium** means the premium payable under a Group Insurance Policy.

**Ill Health** means an illness or injury suffered by a Member which is not of such an extent that the Member is considered by the Trustee on the recommendation of the Employer to have suffered Permanent Incapacity but is of such an extent that the Member has been unable to work for a period of three months. Ill Health continues for so long as the Member is in the opinion of the Trustee on the recommendation of the Employer unable to work for the Employer or is unable to obtain other suitable employment. For an Insured Benefit the definition and continuance of Ill Health is also subject to the terms of the relevant Group Insurance Policy.

**Income and Expenditure Account** means the Income and Expenditure Account established under clause 7(d).

**Independent Trustee Director** means a director of the Trustee who is the licensed independent trustee for the Scheme under the FMCA.

**Insured Benefit** means a benefit payable under a Group Insurance Policy.

**Insured Life Member** means a Member who has applied for and been accepted for group life insurance under the relevant Group Insurance Policy.

**Insured Member** means a Member who is an Insured Life Member or an Insured Salary Member.

**Insured Salary Member** means a Member who has applied and has been accepted for salary continuance insurance under the relevant Group Insurance Policy.

**Insurer** means any insurance company appointed by the Trustee with the approval of the Corporation to provide the Group

Insurance.

**Interim Earnings** means interim earnings as defined in clause 8(h).

**Interim Interest** means interim interest as defined in clause 8(c).

**Investment Direction** means a direction in writing made by a Member to the Trustee to invest assets attributable to the whole, or if the Trustee agrees any part, of the Members No. 1 Account, Members No. 2 Account, Members No. 3 Account and Members No. 4 Account of that Member in an Investment Portfolio or Investment Portfolios.

**Investment Manager** means the investment manager or investment managers, if any, appointed by the Trustee pursuant to clause 26(c) to manage all or part of the investment of the Fund.

**Investment Portfolio** means an investment portfolio established and maintained by the Trustee under clause 26(d).

**KiwiSaver Contribution Rate** means the minimum contribution rate for an employee as set out in section 64 of the KiwiSaver Act 2006.

**KiwiSaver Scheme** has the meaning set out in section 6(1) of the FMCA.

**Leave of Absence** means leave of absence from Service as determined by an Employer at its sole and absolute discretion and advised to the Trustee.

**Lender** means the Corporation in its capacity as Employer or any financial institution approved by the Corporation which has lent funds to a Member on mortgage secured on real property. For the purpose of this Deed (except to the extent a Lender may have a contingent interest under clause 15(i)) a Lender shall not be a Beneficiary of the Scheme.

**Locked-In Account Balances** means the total credit standing to a Member's Members No. 3 Account and Members No. 4 Account.

**Locked-In Payment Date** means the later of:

- (a) the date on which a Member reaches the New Zealand Superannuation Qualification Age; or
- (b) the date on which a Member has been a Member of the Scheme, another Complying Superannuation Fund and/or a KiwiSaver Scheme for 5 years,

or a date after that date.

**Member** means an Employee who at the invitation of an Employer has been admitted to membership of the Scheme and who is still in the Service of an Employer or who is still to receive a benefit

from the Scheme.

**Members Accounts** means all of a Member's Members No. 1 Account, Members No. 2 Account, Members No. 3 Account and Members No. 4 Account, or such of these accounts as the context requires.

**Members No. 1 Account** means a Member's account established under clause 7(a)(i).

**Members No. 2 Account** means a Member's account established under clause 7(a)(ii).

**Members No. 3 Account** means a Member's account established under clause 7(a)(iii).

**Members No. 4 Account** means a Member's account established under clause 7(a)(iv).

**New Zealand Superannuation Qualification Age** has the meaning set out in section 7(1) of the New Zealand Superannuation and Retirement Income Act 2001.

**Nominated Beneficiaries** means Nominated Beneficiaries as defined in clause 12(e).

**Normal Retirement Date** means the date of a Member's 60th birthday or such other date determined by an Employer for any new Member and for any existing Member with the consent of that Member.

**Permanent Incapacity** means in the opinion of the Trustee after consultation with the Employer acting on medical advice permanent physical or mental incapacity suffered by a Member that is of such an extent that the Member is considered by the Trustee, having regard to the previous employment and other characteristics of the Member deemed by the Trustee to be relevant to such considerations, unlikely to have a significant earning capacity in the future. For an Insured Benefit the definition of Permanent Incapacity is also subject to the terms of the relevant Group Insurance Policy.

**Permitted Scheme** means one of the following types of schemes:

- (a) a Workplace Savings Scheme;
- (b) a Superannuation Scheme;
- (c) a KiwiSaver Scheme; or
- (d) an Equivalent Overseas Retirement Scheme.

**Product Disclosure Statement** or **PDS** has the meaning set out in section 6(1) the FMCA.

**Profit Share** means any distribution made by the Insurer to the Trustee representing an agreed share of the profits from the Group Insurance.

**Redundancy** means termination of the Service of a Member by an Employer by compulsory or involuntary termination of employment because of redundancy where certified as such by the Employer to the Trustee.

**Registrar** means the Registrar of Financial Service Providers appointed under section 35 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**Related Party** of the Scheme means the persons described in sections 172(2) and 172(3) of the FMCA.

**Related Party Benefit** has the meaning set out in section 172(1) of the FMCA.

**Reserve Fund** means the Reserve Fund established under clause 7(b).

**Review Date** means 1 July in any year subsequent to the year 1991 or such other date in any year as determined by the Corporation and advised to the Trustee.

**Salary** means:

- (a) in the case of a Member nominated by an Employer as an executive the amount determined by the Employer of that executive and advised to the Trustee as being the total remuneration of that executive for the purposes of this Deed; or
- (b) in the case of every other Member at the date of this Deed, unless the Employer determines otherwise, the annual base taxable wages or salary received by that Member from an Employer excluding commission, overtime, bonuses, expense allowances, or other allowances of a similar nature.

**Scheme Year** means the period commencing on 1 July of one year and ending on 30 June in the following year or if the Trustee determines with the consent of the Corporation such other period commencing and ending on another date or dates.

**Serious Illness** means serious illness as defined in clause 12 of schedule 1 of the KiwiSaver Act 2006.

**Service** means continuous full-time or part-time employment with an Employer as determined by that Employer (or, where an Employer determines from time to time, any casual employment with that Employer) and includes any absence of a temporary nature approved by the Employer.

**Significant Financial Hardship** means significant financial hardship as defined in clause 11 of schedule 1 of the KiwiSaver Act 2006.

**SIPO** means the Statement of Investment Policy and Objectives for the Scheme required under section 164 of the FMCA, as amended from time to time.

**Spouse** includes in relation to a Member, the wife, husband or civil union partner of the Member (whether that person is of the same or a different sex) and any other person determined by the Trustee to be a spouse of a Member.

**Sub-Custodian** means a body corporate that meets the external custodianship requirements in section 156(4) of the FMCA and that has been appointed by the Custodian to hold the Fund under clause 27(d).

**Superannuation Scheme** has the meaning set out in section 6(1) of the FMCA.

**Transfer Value** means that part of any assets received or paid by the Trustee as representing the value determined by the Trustee to be a Beneficiary's interest under the Scheme or under any Permitted Scheme.

**Trustee** means Shamrock Superannuation Limited or the trustee of the Scheme for the time being.

**Working Day** has the meaning set out in the Interpretation Act 1999.

**Workplace Savings Scheme** has the meaning set out in section 6(1) of the FMCA.

## Interpretation

Words describing the singular include the plural and vice versa.

References to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it.

Marginal notes and headings are for guidance only and shall not affect the interpretation of this Deed.

References to clauses are references to the clauses of this Deed.

Where the Corporation, any Employer or the Trustee grant agreement or consent to any matter arising from or under this Deed, they may impose any conditions whatsoever to any such agreement or consent provided that any such conditions are not contrary to any provision of the FMCA or this Deed.

Expressions defined in clause 1 or elsewhere in this Deed have the defined meaning throughout this Deed (including in the Background).

Any references to "in writing" or "written" include references to words typewritten, printed lithographed, photocopied, emailed, telexed, copied by facsimile, or represented or reproduced in any other mode in a permanently visible form, or in any medium by electronic means that enables words to be stored in permanent form and to be retrieved and read or partly in one and partly another.

## 2. ESTABLISHMENT AND CONTINUATION OF SCHEME

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|-----------------------------|--|
| Establishment of the Scheme | (a) The Scheme was established under a trust deed dated 27 August 1991 and is continued as a registered managed investment scheme under the FMCA, on the basis set out in this Deed, with effect from the Effective Date.  |
| Constitution of the Fund    | (b) The Fund shall consist of: <ul style="list-style-type: none"> <li>(i) the assets held by the Trustee at the date of this Deed and subject to the trusts of the Scheme;</li> <li>(ii) any contributions paid to the Scheme by Members and by the Employers;</li> <li>(iii) Transfer Values received in respect of Members;</li> <li>(iv) income from any source and any donations, bequests or other gifts, funds, investments, policies, money and property received and held by the Trustee by way of addition or accretion or otherwise, together with any property of whatsoever nature coming into the hands of the Trustee subject to the provisions of this Deed.</li> </ul> |
| Control of Fund             | (c) The Fund shall be held upon trust by or on behalf of the Trustee in accordance with clause 27 for the purposes of the Scheme and shall be administered by the Trustee in accordance with this Deed.  |
| Payment of Expenses         | (d) All expenses of the management and administration of the Scheme shall be met by the Trustee out of the Scheme except to the extent that the Corporation may determine that such expenses shall from time to time be met by the Employers.  |
| New Zealand Law             | (e) This Deed shall in all respects be governed by and interpreted according to the laws of New Zealand.   |
| New Zealand Currency        | (f) Nothing in this Deed shall require the Trustee to make any payments other than in New Zealand and in New Zealand currency.   |
| Perpetuities Provision      | (g) In the event that the Scheme shall cease to qualify under the provisions of section 19 of the Perpetuities Act 1964 the Trustee may take such action as thought fit by the Trustee including the re-establishment of the trusts of the Scheme and the payment of the Fund to a new Trustee so as to prevent the operation of any rules of law relating to  |

perpetuities which might otherwise invalidate or might be taken to invalidate any of the trusts of the Scheme or any disposition made under it or for its purposes.

### 3. MEMBERSHIP

- |                            |  |
|----------------------------|--|
| Eligibility                | (a) Any Employee may apply to become a Member of the Scheme.   |
| Information for Applicants | (b) Prior to becoming a Member an Employee shall be provided with a copy of the Scheme's Product Disclosure Statement or any other document required by law to be provided to the Employee in respect of the Scheme.   |
| Application                | (c) Prior to becoming a Member an Employee must: <ul style="list-style-type: none"> <li>(i) make written application in the form provided for in the Scheme's Product Disclosure Statement or such other form as the Trustee may from time to time require; and</li> <li>(ii) produce such evidence or information as the Trustee may reasonably require.</li> </ul> |
| Date of Membership         | (d) On having been invited by an Employer to join the Scheme and upon acceptance of such application by the Trustee the Employee shall become a Member and be bound by the provisions of this Deed from the first day of the next following payroll period or such other date agreed between the Employee and the Trustee.   |
| Register of Members        | (e) The Trustee will keep a register of Members in accordance with the FMCA and will arrange for the register to be audited in accordance with the FMC Regulations.  |

### 4. CONTRIBUTIONS

- |                             |   |
|-----------------------------|---|
| Members Contributions       | (a) Subject to this Deed, each Member shall contribute a minimum amount equal to 2% of Salary or the KiwiSaver Contribution Rate of the Member's Salary if the Member has elected to lock-in such contribution pursuant to clause 5. Contributions shall be made by way of a deduction from Salary as that Salary becomes due and payable, and shall be remitted to the Trustee by the Employer at the time the deduction is made or at such other time or times as the Trustee shall decide but in any event within 20 Working Days of such deduction. |
| Variations of Contributions | (b) A Member may upon joining the Scheme and providing at least 20 Working Days prior written notice (or such shorter time as agreed with the Trustee) elect to contribute an amount higher than the minimum contribution required by clause 4(a) but this higher amount must be an integral multiple of 1% of Salary, and provided that the number of such notices must not exceed two in any Scheme Year without the consent of the Trustee.  |

- Voluntary Contributions (c) In addition a Member may from time to time make voluntary lump sum contributions to the Scheme.
- Employer Contributions (d) Subject to this Deed, each Employer shall contribute for a Member in its employment an amount equal to an amount calculated using the table below, based on the Member's contribution made in terms of clauses 4(a) and 4(b) and subject to the maximum Employer's contribution set out in the table:

<b>Employer's contribution (multiple of Member's contribution under clauses (a) and (b))</b>	<b>Maximum Employer contribution (as a percentage of a Member's Salary)</b>
1.5 x	9%

Such contributions by the Employer shall be made contemporaneously as the Salary of the Member becomes due and payable or at such other time as the Trustee shall decide but in any event within 20 Working Days of the Member's Salary becoming due and payable. The Employer shall be entitled to deduct from any contributions paid for a Member any employer's superannuation contribution tax or similar tax or levy payable on such contribution to any government authority.

- (e) No Employer shall be required to make any contributions in respect of any Member's contributions made under clause 4(c).
- Variation of Employer Contributions (f) Notwithstanding the provisions of clause 4(d) the Employer of the Member may by notice to the Trustee elect to defer alter or suspend the Employer's contributions. The Trustee shall inform the Members of such notification as soon as practicable after the Trustee receives it.
- Transfer into Scheme (g) A Member who was previously a Member of another Permitted Scheme (other than a KiwiSaver Scheme) may with the Trustee's consent transfer to the Fund the Transfer Value in accordance with the provisions of clauses 6(a) and 6(b).
- Group Insurance Premiums (h) Each Group Insurance Premium for an Insured Member shall be deducted from that Member's Members No. 1 or Members No. 2 Account and shall be paid by the Trustee to the Insurer in accordance with the provisions of the relevant Group Insurance Policy.
- Group Insurance during Leave of Absence (i) If an Insured Member desires the Group Insurance to continue during any Leave of Absence such Insured Member shall apply to the Trustee for such continuation and if approved by the Trustee make such contributions and other arrangements as required for the continuation of the Group Insurance.

Membership Continues During Leave of Absence	(j)	<p>If a Member is granted Leave of Absence membership of the Scheme shall continue. The Member shall not be required to make contributions during the period of the Leave of Absence but any contributions made voluntarily by the Member shall be accepted. The Employer shall not be required to make any contributions on behalf of the Member during the period of the Leave of Absence but may do so if it so determines. The agreed cessation of contributions by a Member shall not result in loss of accrual of Service for the purpose of clause 16(b) but the period of Leave of Absence shall not count for the purposes of that clause (unless otherwise directed by the Employer under clause 16(b)).</p>
Consequences of a Member Ceasing Contributions	(k)	<p>Except where Leave of Absence has been granted or to the extent clause 4(n) or clause 5(f) applies, if a Member ceases or fails to make the contributions required under clause (a)4(a) for a period of three consecutive months or such other period as the Trustee shall determine then that Member shall be deemed to have elected to withdraw from the Scheme while still in Service in which event the provisions of clause 16 shall apply.</p>
Application of Benefit on Dismissal where Criminal Act or Fraud	(l)	<p>Notwithstanding any other provision to the contrary in this Deed if a Member shall be dismissed from Service (or shall leave Service in order to avoid dismissal) on the grounds that the Member owes money to an Employer arising out of any criminal act or fraud of the Member in respect of an Employer then:</p> <p>(i) the benefit payable shall be equal in value to the contributions paid by the Member and if appropriate any Transfer Value received by the Trustee from another scheme as contemplated by clause 4(g) excluding any portion of that Transfer Value resulting from contributions made by an Employer. The Trustee may, in the absolute discretion of the Trustee, with the approval of the Employer concerned pay to the Member part or all of such benefit to which the Member would have been entitled but for the provisions of this clause and that part of such benefit not so paid shall be forfeited to the Scheme; and</p> <p>(ii) the Trustee shall apply the benefit payable firstly in reimbursing the Employer of the amount so owed. Any remaining balance of the benefit payable shall be paid as a lump sum in cash to the Member.</p> <p>Production of a certificate signed by the secretary or other authorised person of the Employer stating that any amount alleged to be owing by the Member to the Employer arising out of any criminal act or fraud of the Member in respect of the Employer is so owing shall be sufficient evidence thereof for the purposes of this clause. A copy of such certificate shall be given to the Member.</p>

Variation of Contributions in Cases of Hardship	(m)	In special circumstances of hardship or otherwise and with the prior consent of the Corporation in each case an Employer and/or a Member may secure payment of the contributions by and/or for the Member on a basis other than that described in clause 4(a) and (b) and agreed between the Trustee, the Employer and the Member in each case and if such an agreement is so made the Trustee shall make such adjustments to the benefits payable pursuant to this Deed as deemed appropriate by the Trustee in relation to the contributions actually paid by and/or for the Member.
Non Locked-In Account Balances: Temporary Suspension of Contributions	(n)	A Member may, by providing at least 20 Working Days prior written notice (or such shorter time as agreed with the Trustee), elect to suspend contributions to that Member's Members No. 1 Account for a stated period (but having regard to payroll periods), provided that the period of any one suspension under this clause 4(n) must not exceed 5 years.
	(o)	Any suspension made pursuant to clause 4(n) will apply from the first day of the Member's next following payroll period after the date of the election or as otherwise determined by the Trustee and will cease at the end of the payroll period closest to the end of the period notified by the Member under clause 4(n) or such other date agreed with the Trustee. If the Member is also taking a contribution holiday under clause 5(f), the Member must align the contribution holiday periods taken under clauses 4(n) and 5(f) if required to do so by the Trustee.
	(p)	During the period of any suspension made pursuant to clause 4(n) the other provisions of this Deed will continue to apply. The Trustee shall make such adjustments to the benefits payable pursuant to this Deed as deemed appropriate by the Trustee in relation to the contributions actually paid by and/or for the Member.
Corporation May on Notice Cease to Contribute	(q)	The Corporation may upon giving 20 Working Days prior written notice (or such shorter time as agreed with the Trustee) to the Trustee cease to contribute to the Scheme in which event the provisions of clause 33 shall apply.
Member May on Notice Cease to Contribute	(r)	A Member may upon giving 20 Working Days prior written notice (or such shorter time as agreed with the Trustee) to the Trustee cease to contribute to the Scheme in which event the provisions of clause 17 shall apply.
Member May Apply to Rejoin Scheme	(s)	An Employee who has withdrawn from the Scheme pursuant to the provisions of clause 4(k) or clause 4(r) may apply to rejoin the Scheme as a new Member and the Trustee may in special circumstances allow such rejoining but with effect from such date and on such basis as the Trustee and the Employer decide.

Members Receiving Employer Subsidies	(t)	<p>If a Member receives a subsidy from their Employer in another superannuation arrangement, as determined by that Employer, then notwithstanding the other provisions of this Deed, that Member will not be entitled to:</p> <ul style="list-style-type: none"> <li>(i) any Employer contributions under clauses 4(d) and 4(f) of this Deed; or</li> <li>(ii) become an Insured Member.</li> </ul>
<b>5. LOCK-IN ELECTION</b>		
Lock-In Election	(a)	<p>A Member may, after providing the Trustee with at least 20 Working Days prior written notice (or such shorter time as agreed with the Trustee) elect to lock-in a minimum amount equal to the KiwiSaver Contribution Rate of that Member's Salary. An election can only be made if and for so long as the Scheme is a Complying Superannuation Fund, and such lock-in complies with the provisions of this Deed and the Complying Fund Rules.</p>
Member's Locked-in Contributions	(b)	<p>Where a Member has elected pursuant to clause 5(a) to lock-in a minimum amount equal to the KiwiSaver Contribution Rate of their Salary, the Member's contribution to the Scheme made pursuant to clauses 4(a), 4(b) and 4(c) will be credited as follows:</p> <ul style="list-style-type: none"> <li>(i) the KiwiSaver Contribution Rate of the Member's Salary will be credited to the Member's Members No. 3 Account; and</li> <li>(ii) if the Member has decided to contribute to the Scheme a percentage rate higher than the KiwiSaver Contribution Rate of that Member's Salary, then that percentage rate above the KiwiSaver Contribution Rate will be credited to the Member's Members No. 1 Account.</li> </ul>
Employer's Locked-in Contributions	(c)	<p>Where a Member has elected pursuant to clause 5(a) to lock-in a minimum amount equal to the KiwiSaver Contribution Rate of their Salary, the Employer's contribution to the Scheme for the Member made pursuant to clauses 4(d) and 4(f) will be credited as follows:</p> <ul style="list-style-type: none"> <li>(i) an amount equal to the KiwiSaver Contribution Rate of the Member's Salary will be credited to the Member's Members No. 4 Account; and</li> <li>(ii) the remainder of the total amount required to be contributed by the Employer pursuant to clause 4(d) and 4(f) will be credited to the Member's Members No. 2 Account.</li> </ul>
Employer's Superannuation Contribution Tax	(d)	<p>The Employer will be entitled to deduct from any contributions paid for a Member any employer's superannuation contribution tax or similar tax or levy payable on such contribution to any government authority.</p>

Application of Election to Lock-In	(e)	Contributions to the Member's Members No. 3 Account and Members No. 4 Account will apply from the first day of the next following payroll period after the date the Member elected to lock-in pursuant to clause 5(a), or as otherwise determined by the Trustee, and shall continue so long as the Member is required to, and does, contribute at least the KiwiSaver Contribution Rate of their Salary to their Member's Members No. 3 Account.
Suspension of Member's Contributions to Member's Members No. 3 Account After First 12 Months	(f)	Twelve months or more after the date an election under clause 5(a) has taken effect a Member may, by providing at least 20 Working Days prior written notice (or such shorter time as agreed with the Trustee), elect to suspend contributions to that Member's Members No. 3 Account, provided that the period of any one suspension under this clause 5(f) must not exceed 5 years and must otherwise comply with the requirements of the Complying Fund Rules.
Suspension of Contributions in Financial Hardship	(g)	A Member can apply to the Trustee to suspend contributions to the Member's Members No. 3 Account at any time after commencing contributions to the Member's Members No. 3 Account if that Member is suffering or is likely to suffer from financial hardship. The Trustee may accept such an application at its absolute discretion.
Application of Suspension	(h)	Any suspension made pursuant to clause 5(f) or clause 5(g) will apply from the first day of the next following payroll period after the date of the election or as otherwise determined by the Trustee.
Minimum Contribution Requirements Remain	(i)	During the period of any suspension made pursuant to clause 5(f) or clause 5(g) the minimum contribution requirements under clause 4(a) and the other provisions of this Deed will continue to apply.
Transfer to Member's Members No. 3 Account and Members No. 4 Account	(j)	A Member may, at any time, elect to transfer all or part of the credit standing to that Member's Members No. 1 Account and all of the vested portion of that Member's Members No. 2 Account to that Member's Members No. 3 Account and/or Members No. 4 Account. The amounts so transferred will be locked-in until the Locked-In Payment Date and subject to the Complying Fund Rules.
Withdrawal of Locked-In Account Balances	(k)	Except as expressly provided in this Deed, a Member shall only withdraw their Locked-In Account Balances on or after the Locked-In Payment Date.
Vesting of Employer Contributions to Member's Members No. 4 Account	(l)	Subject to the requirements of clause 5(k) and unless otherwise required by law, if a Member ceases to be in Service otherwise than in the circumstances provided for in clauses 11, 12, 13 and 16(a), that Member shall be entitled to a lump sum benefit equal to the balance of that Member's Members No. 4 Account.

## 6. TRANSFER INTO AND OUT OF THE SCHEME

### Transfer into Scheme

- (a) If a Member or other person is entitled to a benefit under any Permitted Scheme (subject to section 55(1) of the KiwiSaver Act 2006) the Trustee may accept from such other Permitted Scheme (**Paying Scheme**) a Transfer Value which the trustees thereof or other person or persons having the necessary power thereunder (**Transferor**) may be authorised to pay or transfer to the Scheme in respect of such Member or other person and in the event that the Transfer Value is accepted by the Trustee then the Trustee shall confer on the Member or other person such rights under the Scheme in addition to the rights normally available to a Beneficiary in respect of such Beneficiary's membership of the Scheme as are determined by the Trustee after considering (where appropriate) the advice of the Actuary.
- (b) A Transfer Value received under clause 6(a) shall be subdivided by the Trustee, in its sole discretion, into two divisions. The first division shall be the amount of such Transfer Value which is derived from or deemed to be derived from the contributions made by the Member while a member of the Paying Scheme or any other retirement benefits scheme from which the Transfer Value arose. This amount, which may include interest on such contributions as well as any other amount so deemed by the Trustees, shall be credited to that Member's Members No. 1 Account under clause 7(a)(i). All remaining amounts of the Transfer Value not credited to that Member's Members No. 1 Account shall be credited to that Member's Members No. 2 Account under clause 7(a)(ii).

### Transfer out of Scheme

- (c) If a Member shall become or shall be eligible to become a member of a Permitted Scheme (**Transferee Scheme**) the Trustee may (subject to section 55(1) of the KiwiSaver Act 2006) with the prior written consent of the Employer and the Member instead of granting the Member the benefits to which such Member is entitled under the Scheme transfer to the Transferee Scheme a Transfer Value determined by the Trustee after considering (where appropriate) the advice of the Actuary to be equivalent in value to such benefits so that such Member shall become entitled to such rights under the Transferee Scheme as may be agreed between the Trustee and the trustees of the Transferee Scheme or other person authorised thereunder (**Transferee**).

### Discharge of Liability by Trustee

- (d) A Member in respect of whom a transfer is made under this clause shall not be entitled to any other benefit under the Scheme and the receipt of the Transferee shall be a complete discharge to the Trustee of all liability in respect of such Member under the Scheme and the Trustee shall be under no liability to see to the application of the amount so transferred.

Transfer into a Member's Members No. 3 Account or Members No. 4 Account	(e)	Notwithstanding the other provisions of clause 6, the following provisions will apply to a transfer into a Member's Members No. 3 Account or Members No. 4 Account:
	(i)	If any Member is entitled to transfer an amount from a Permitted Scheme (other than a KiwiSaver Scheme) to the Member's Members No. 3 Account and/or the Members No. 4 Account, the Trustee shall accept a transfer amount from that other scheme;
	(ii)	The transfer amount is the amount which the Trustee of the transferor scheme transfers to the Scheme on behalf of the Member and this amount shall be credited to the relevant Member's Members No. 3 Account and/or Members No. 4 Account as determined by the Trustee; and
	(iii)	The Trustee shall have regard to any restrictions or limitations or conditions imposed by the transferor scheme Trustees and the relevant requirements of the KiwiSaver Act 2006 and the Complying Fund Rules (as applicable).
Voluntary Transfers to a KiwiSaver Scheme	(f)	A Member may request a transfer of all or part of their Locked-In Account Balances to another KiwiSaver Scheme, and the Trustee shall permit such a transfer, provided that:
	(i)	the requirements of the KiwiSaver Act 2006 are met; and
	(ii)	the transfers are available to the KiwiSaver Scheme.
No Other Benefit from the Scheme	(g)	Members in respect of whom a transfer is made under clause 6(f) shall not be entitled to any other benefit from the Scheme in respect of the Member's Locked-In Account Balances.
Complete Discharge of Liability	(h)	The receipt by an authorised person of the KiwiSaver Scheme or Complying Superannuation Fund, as the case may be, shall be a complete discharge to the Trustee of all liability in respect of the transferred amount.
Involuntary Transfer to a KiwiSaver Scheme	(i)	If a Member does not request a transfer in accordance with clause 6(f), that Member's Locked-In Account Balances will remain within the Scheme:
	(i)	as if the Member had made a request under clause 29(e); or
	(ii)	be transferred to a KiwiSaver Scheme if the FMA revokes approval of the Scheme as a Complying Superannuation Fund and the Member's Locked-In Account Balances are not transferred to another Complying Superannuation Fund where it remains subject to the Complying Fund Rules.

- Notification Following an Involuntary Transfer (j) If a Member's Locked-In Account Balances are transferred in accordance with clause 6(i), the Trustee must notify the Commissioner of the transfer. The notice must include the name, address and tax file number of the Member, the name and address of the Employer and the name and tax file number of the Scheme.

## 7. ACCOUNTS

### Members Accounts

- (a) The Trustee shall establish and maintain for each Member:
- (i) A Members No. 1 Account to which shall be credited or debited:
- the portion of the contributions made by the Member in terms of clauses 4(a), 4(b) and 4(c) that the Member has not elected to lock-in in terms of clause 5;
  - such part of the Transfer Value under clause 4(g) as is determined by the Trustee;
  - Interim Interest or Determined Interest transferred from the Income and Expenditure Account;
  - Earnings or Interim Earnings allocated in accordance with clauses 8(g) or 8(h);
  - all or part of the contributions made by the Employer for that Member as determined from time to time by the Employer and notified to the Trustee;
  - any benefits paid to or in respect of a Member;
  - all or part of the Group Insurance Premiums payable for a Member or any other insurance premium payable for any Insured Benefit under the Scheme;
  - any amount which the Trustee (after consultation with the Actuary) considers necessary or appropriate to be transferred to the Income and Expenditure Account under clause 7(d)(iii);
- (ii) A Members No. 2 Account to which shall be credited or debited:
- the portion of the contributions made for a Member by the Employer in terms of clauses 4(d) and 4(f) that the Member has not elected to lock-in in terms of clause 5;
  - such part of the Transfer Value under clause 4(g)

as is determined by the Trustee;

- Interim Interest or Determined Interest transferred from the Income and Expenditure Account;
- Earnings or Interim Earnings allocated in accordance with clause 8(g) or 8(h).
- a proportionate share of any Profit Share paid under clause 15(h);
- any benefits paid to or in respect of a Member;
- all or part of the Group Insurance Premiums payable for a Member or any other insurance premium payable for any Insured Benefit under the Scheme;
- a proportionate share of the expenses of administration and management of the Scheme as determined by the Trustee;
- any amount which the Trustee (after consultation with the Actuary) considers necessary or appropriate to be transferred to the Income and Expenditure Account under clause 7(d)(iii);

(iii) A Members No. 3 Account to which shall be credited or debited:

- the portion of the contributions made by the Member in terms of clauses 4(a), 4(b) and 4(c) that the Member has locked-in in terms of clause 5;
- the locked-in part of the Transfer Value under clause 4(g) as is determined by the Trustee;
- Interim Interest or Determined Interest transferred from the Income and Expenditure Account;
- any benefits, tax credits or Government contributions required to be paid into a locked-in account for the Member;
- any amount the Member elects to withdraw under the First Home Withdrawal Benefit in clause 19;

(iv) A Members No. 4 Account to which shall be credited or debited:

- the portion of the contributions made for a Member by the Employer in terms of clauses 4(d) and 4(f) that the Member has locked-in in terms of clause 5;

- the locked-in part of the Transfer Value under clause 4(g) as is determined by the Trustee;
- Interim Interest or Determined Interest transferred from the Income and Expenditure Account;
- any benefits paid to or in respect of a Member that are permitted under the Complying Fund Rules;
- any amount the Member elects to withdraw under the First Home Withdrawal Benefit in clause 19.

Reserve Fund (b) The Trustee shall establish and maintain a Reserve Fund which shall be credited or debited:

- (i) any death benefits for which Beneficiaries cannot be ascertained by the Trustee within a period of 6 years from the date of death of the Member;
- (ii) all benefits forfeited in terms of clause 22(b) and not applied for the benefit of Dependants or forfeited in terms of clause 4(l) or unclaimed in terms of clause 31(e);
- (iii) any amount in a Members No. 2 Account or a Members No. 4 Account which is not payable to a Member on that Member ceasing to be a Member;
- (iv) Interim Interest or Determined Interest transferred from the Income and Expenditure Account;
- (v) any amount received by the Trustee which is not credited to the Members' Members Accounts or the Income and Expenditure Account;
- (vi) any amount which the Trustee considers necessary or appropriate to be transferred to the Income and Expenditure Account either under clause 7(d)(iii) or for any other reason.

Application of Reserve Fund (c) All or part of the Reserve Fund may be applied by the Trustee after prior consultation with the Corporation in all or any of the following ways:

- (i) meeting all or part of the expenses of administration and management of the Scheme;
- (ii) meeting all or part of the Group Insurance Premiums or any other cost of insuring any benefits payable on the death, Permanent Incapacity or Ill Health of a Member;
- (iii) meeting all or part of Members contributions or Employers contributions to the Scheme;

- (iv) increasing the retirement benefits of all or any of the Members;
- (v) providing benefits other than retirement benefits for all or any of the Members;
- (vi) providing personal benefits for a Member or a Member's dependants in cases of hardship;
- (vii) meeting all or part of any other liability of the Scheme or in making any other payment to a Member or Beneficiary, as the Trustee considers appropriate.

Income and  
Expenditure  
Account

- (d)
  - (i) The Trustee shall establish and maintain an Income and Expenditure Account to which shall be credited or debited any income, capital gains, upwards revaluations of assets or receipts which are not directed to be credited to the Members' Members Accounts and any expenditure, costs of borrowing or raising money, capital losses, downward revaluations of assets, the expenses of administration and management of the Scheme, taxation paid or payable by the Scheme and any provisions for contingencies considered necessary by the Trustee; all as determined by the Trustee.
  - (ii) In making any calculation of Determined Interest under clause 8(a) or Interim Interest under clause 8(c) the Trustee shall take into account the balance standing to the credit or debit of the Income and Expenditure Account and for the purpose of allocating the Determined Interest under clause 8(b) or crediting the Interim Interest under clause 8(c), may transfer such part of any credit balance standing to the Income and Expenditure Account as the Trustee considers appropriate or equitable to the Members' Members Accounts and the Reserve Fund.
  - (iii) If there shall be a debit balance standing to the Income and Expenditure Account at the time of making such calculation of Determined Interest or Interim Interest or at any other time, the Trustee may transfer to the Income and Expenditure Account such amount from the Reserve Fund, the Members' Members Accounts as the Trustee considers appropriate or necessary in the circumstances.
  - (iv) Subject to clause 8(e) but notwithstanding any other provision of this Deed, the application of clauses 7(d)(i), (ii) and (iii) shall exclude:
    - all amounts in respect of the assets and liabilities of the Investment Portfolios; and
    - the Members Accounts of all Members from

whom there were for the relevant period operative Investment Directions.

## 8. ALLOCATION OF INTEREST

**Determined Interest** (a) As soon as practicable after the expiry of each Scheme Year or at such other times as the Trustee shall decide the Trustee shall (after considering (where appropriate) the advice of the Actuary or any Investment Manager) calculate the Determined Interest for that Scheme Year or part of the Scheme Year where appropriate.

In ascertaining such Determined Interest the Trustee shall:

- (i) determine the value of the assets of the Scheme as the aggregate market value of the Fund as determined by the Trustee and all cash whether capital or income in the hands of the Trustee and all moneys recoverable by the Trustee less:
  - any sum owing on any account or any charges or expenses accrued or unpaid;
  - such estimate (if any) of costs and expenses (including brokerage and stamp duty) of realising the investments and converting the Fund into cash on that date as the Trustee considers appropriate;
  - such provisions as the Trustee deems prudent against future losses or in respect of any investment of which the market value cannot in the Trustee's opinion be fairly or accurately assessed; and
  - the amount of any tax paid or payable by the Scheme as determined by the Trustee and any provisions for contingencies considered necessary by the Trustee;
- (ii) deduct from the Fund as ascertained in clause 8(a)(i) the total of the net amounts standing to the credit of all Members' Members Accounts and the Reserve Fund as at the date on which the value of the Fund is so ascertained.

The net result shall be the Determined Interest in respect of that Scheme Year or part of the Scheme Year where appropriate.

**Allocation** (b) The Determined Interest calculated in terms of clause 8(a) shall be allocated by the Trustee among all Members' Members Accounts and the Reserve Fund in such equitable manner as the Trustee shall decide.

Interim Interest	(c)	The Trustee may at such times as a benefit becomes due to be paid to a Member or Beneficiary hereunder other than at the date at which the Trustee allocated Determined Interest determine an amount to be called the "Interim Interest" to be credited or debited to that Member's Members No. 1 Account, Members No. 3 Account, Members No. 4 Account and where appropriate that Member's Member No. 2 Account being a portion of the anticipated surplus or deficit in the Income and Expenditure Account calculated with reference to the benefit payable (as determined by the Trustee in its absolute discretion after making such provisions as the Trustee thinks fit) since the immediately preceding calculation of the Determined Interest.
Investment Portfolios Excluded	(d)	Notwithstanding any other provision of this Deed, the application of clauses 8(a), (b) and (c) shall exclude: <ul style="list-style-type: none"> <li>(i) all amounts in respect of the assets and liabilities of the Investment Portfolios; and</li> <li>(ii) the Members Accounts of all Members from whom there were for the relevant period operative Investment Directions.</li> </ul>
Expenses and Tax	(e)	The Trustee may deduct from an Investment Portfolio and credit to the Income and Expenditure Account any amount necessary to meet the expenses of administration and management of the Scheme or taxation paid or payable by the Scheme to the extent that such outgoings are attributable to the Investment Portfolio of a Member from whom there is an operative Investment Direction in respect of the Investment Portfolio.
Earnings	(f)	The Trustee after considering (where appropriate) the advice of the Actuary or any Investment Manager shall determine the Earnings of each Investment Portfolio for such periods as the Trustee shall decide.
Allocation of Earnings	(g)	The Earnings of an Investment Portfolio determined in terms of clause 8(f) shall be allocated equitably by the Trustee among the Members Accounts of those Members from whom there were during the period to which the Earnings relate operative Investment Directions in respect of that Investment Portfolio.
Interim Earnings	(h)	The Trustee shall whenever a benefit becomes due to be paid to a Member who has given an Investment Direction determine in respect of each relevant Investment Portfolio an amount to be called "Interim Earnings" to be credited or debited to the Members No. 1 Account, Members No. 3 Account and Members No. 4 Account and (where appropriate) Members No. 2 Account of that Member, being a portion of the anticipated Earnings calculated with reference to the benefit payable (as determined by the Trustee in its absolute discretion after making such provisions as the Trustee thinks fit) since the immediately

preceding determination of Earnings of the Investment Portfolio.

## **9. FEES, EXPENSES AND REMUNERATION**

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| Payment of Expenses                | (a) | All expenses of the management and administration of the Scheme shall be met by the Trustee out of the Fund except to the extent that the Corporation may determine that such expenses shall from time to time be met by the Employers.   |
| Parties entitled to be remunerated | (b) | <p>The following parties are entitled to be remunerated out of the Fund at a rate agreed between the Trustee and the relevant party from time to time in writing:</p> <ul style="list-style-type: none"> <li>(i) any Independent Trustee Director;</li> <li>(ii) any Custodian;</li> <li>(iii) any administration manager;</li> <li>(iv) any Investment Manager;</li> <li>(v) any other party appointed by the Trustee to perform a function under or to provide goods or services relating to the Scheme.</li> </ul> |
| Indemnity                          | (c) | The parties named in clause 9(b) may be indemnified out of the Fund for all liabilities and expenses reasonably incurred by the parties in relation to the proper performance of their duties in respect of the Scheme.   |

## **10. TRUSTEE'S LIABILITY FOR TAX**

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|---------------------------|---|
| Payment of Tax by Trustee | The Trustee shall be entitled to deduct from any payment or benefit payable under this Deed a sum equal to the amount of any income tax or other tax, duty, impost or charge imposed by a government or semi-government body for which the Trustee may directly or indirectly become liable as a consequence of such payment. |
|---------------------------|---|

## 11. BENEFIT ON RETIREMENT

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|---|--|
| Non Locked-In Account Balances: Benefit on Retirement | <p>(a) In the event of a Member retiring from the Service of an Employer:</p> <ul style="list-style-type: none"> <li>(i) on or after Normal Retirement Date; or</li> <li>(ii) with the consent of the Employer after attaining the age of 50 years; or</li> <li>(iii) at any time as a result of Permanent Incapacity or Ill Health,</li> </ul> <p>the Trustee shall pay the total credit standing to that Member's Members No. 1 and No. 2 Accounts to the Member.</p>  |
| Locked-In Account Balances: Benefit on Retirement     | <p>(b) In the event of a Member retiring from the Service of an Employer:</p> <ul style="list-style-type: none"> <li>(i) on or after the Locked-In Payment Date; or</li> <li>(ii) at any time as a result of Serious Illness,</li> </ul> <p>the Trustee shall pay the total credit standing to that Member's Members No. 3 and No. 4 Accounts to the Member.</p>   |
| Continued Beneficiaries                               | <p>(c) A Member may, with the approval of the Corporation and subject to any conditions determined by the Corporation from time to time in its absolute discretion, elect to become a Continued Beneficiary, in which case:</p> <ul style="list-style-type: none"> <li>(i) the Continued Beneficiary will be entitled to receive the Continued Benefit at the expiry of the Continuation Period but shall not be entitled to an Insured Benefit;</li> <li>(ii) the Continued Beneficiary may continue to make voluntary contributions to the Scheme as approved by the Trustee, but this will not give rise to any obligation for an Employer to make contributions unless an Employer agrees otherwise;</li> <li>(iii) the Trustee shall determine from time to time the Interim Interest or Determined Interest payable in respect of the Continued Benefit;</li> <li>(iv) no contributions to the Scheme shall be paid or be payable during the Continuation Period by the Continued Beneficiary or an Employer in respect of the Continued Beneficiary;</li> <li>(v) the Trustee may deduct out of any Continued Benefit an amount agreed with the Continued Beneficiary to recompense the Trustee for the estimated costs of</li> </ul> |

administration of the Continued Benefit during the Continuation Period;

- (vi) the Continued Benefit shall be paid as a cash lump sum to the Continued Beneficiary or transferred as provided by clause 6(c) as soon as practicable after the date on which the Continued Beneficiary requests the payment of the Continued Benefit or the Corporation directs the Trustee to pay the Continued Benefit to the Continued Beneficiary; and
- (vii) in the event of any dispute as to the date of commencement of the Continuation Period, the Corporation shall advise the Trustee of the date of commencement and the decision of the Corporation shall be final.

Deferral of Retirement Benefit

- (d) A Beneficiary who continues to be employed by an Employer after that Beneficiary's Normal Retirement Date may elect to defer the receipt of any benefit which the Beneficiary is eligible to receive under the Scheme until the date upon which the Beneficiary ceases to be employed by that Employer. For the avoidance of doubt, an election to defer the receipt of any benefit under this clause does not have the effect of requiring either the Beneficiary or the Employer to continue to contribute, or to cease to contribute, to the Scheme after the Beneficiary's Normal Retirement Date.

## 12. BENEFIT ON DEATH IN SERVICE

Insured Life Member

- (a) If a Member who is an Insured Life Member dies in Service a cash lump sum benefit shall be payable to that Insured Life Member in accordance with and subject to the terms of the relevant Group Insurance Policy. In addition the Insured Life Member shall be entitled to receive the total credit standing to that Member's Members Accounts.

Member who is not an Insured Life Member

- (b) If a Member not being an Insured Life Member dies in Service the lump sum benefit payable to that Member shall be the total credit standing to that Member's Members Accounts.

Power in Relation to Death Benefits

- (c) Subject to clause 12(f), the Trustee shall pay or apply any sum payable on the death of a Member out of the Scheme to or for the benefit of one or more of the Nominated Beneficiaries (as defined in this clause) of the Member in amounts at times and generally in such manner as the Trustee in the absolute discretion of the Trustee shall from time to time think fit.
- (d) If thought fit by the Trustee in the absolute discretion of the Trustee the Trustee shall pay the capital sum into a separate bank account and hold it for the benefit of and subject to any claims by one or more of the Nominated Beneficiaries which the Trustee shall agree to accept and if no such claim is made within a period of 6 years from the

date of the death of the Member the capital sum shall (unless decided by the Trustee otherwise) revert to the Scheme under the provisions of clause 31(e).

**Definition of  
"Nominated  
Beneficiaries"**

- (e) In this Deed the expression "Nominated Beneficiaries" shall mean and include any one or more of the following:
- (i) the Member's Spouse or former Spouse;
  - (ii) the following relatives of the Member (whether by birth or adoption, living or as yet unborn at the date of death of such Member) namely parent, child, step-child, brother or sister or the wife, husband or child then living of any such relative;
  - (iii) any Dependant of the Member;
  - (iv) any person with whom the Member was at the date of their death living in a de facto relationship which in the opinion of the Trustee was of a continuing and stable nature similar to the state of marriage (whether the person is of the same or a different sex);
  - (v) any person whose name and particulars have been notified to and accepted by the Trustee in writing by the Member as being a person whom the Member may wish the Trustee to consider as included in the Nominated Beneficiaries;
  - (vi) the Member's personal representatives.

**Payment of Locked-In Account Balances on Death**

- (f) If a Member dies in Service the Trustee shall, within 12 months of the Member's death, pay to the personal representative of such Member, as a lump sum benefit, that Member's Locked-In Account Balances at the date the application is accepted as part of that Member's estate.

**13. BENEFIT ON PERMANENT INCAPACITY OR ILL HEALTH IN SERVICE**

**Insured Salary Member**

- (a) If the Trustee determines, after consultation with the Insurer that an Insured Salary Member in Service has suffered Permanent Incapacity or Ill Health then that Insured Salary Member shall in accordance with and subject to the terms of the relevant Group Insurance Policy, be entitled to receive an Insured Benefit. Any Insured Benefit payable under the relevant Group Insurance Policy will be in addition to any benefit payable in terms of clause 11.

**Member who is not an Insured Salary Member**

- (b) If the Trustee determines in accordance with the provisions of this Deed that a Member, not being an Insured Salary Member, has suffered Permanent Incapacity or Ill Health the benefit (if any) payable to such Member will be the benefit determined in accordance with clause 11.

#### 14. BENEFIT ON SERIOUS ILLNESS OR SIGNIFICANT FINANCIAL HARDSHIP

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| Serious Illness                | (a) | A Member can apply to the Trustee to withdraw all or part of that Member's Locked-In Account Balances if that Member is suffering or has suffered from Serious Illness. The Trustee may, subject to any legal restrictions, permit such withdrawal if satisfied that, if the Member's membership of the Scheme were membership of a KiwiSaver Scheme, clause 12 of schedule 1 of the KiwiSaver Act 2006 would allow such withdrawal.  |
| Significant Financial Hardship | (b) | A Member can apply to the Trustee to withdraw all or part of that Member's Locked-In Account Balances if that Member is suffering or has suffered from Significant Financial Hardship. The Trustee may, subject to any legal restrictions, permit such withdrawal if satisfied that reasonable alternative sources of funding have been explored and exhausted and that, if the Member's membership of the Scheme were membership of a KiwiSaver Scheme, clause 10 of schedule 1 of the KiwiSaver Act 2006 would allow such withdrawal. The amount withdrawn may be limited to a specified amount that the Trustee determines is required to alleviate the particular hardship. |

#### 15. GROUP LIFE AND SALARY CONTINUANCE INSURANCE

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|---|-----|--|
| Trustee to Arrange Group Insurance          | (a) | The Trustee shall arrange the Group Insurance to provide each Insured Benefit referred to in clauses 12 and 13.  |
| Trustee to Pay Group Insurance Premiums etc | (b) | The Trustee shall pay the Group Insurance Premium and receive all payments refunds and other moneys in respect of each Group Insurance Policy and shall dispose of all such moneys in accordance with the provisions of such Group Insurance Policy and this Deed.   |
| Amount of Premium for Insurance Cover       | (c) | The Group Life Premiums payable shall be as agreed between the Trustee and the Insurer from time to time.  |
| Insurer refuses Member on standard terms    | (d) | If an application for cover for a Member under any Group Insurance Policy is for any reason not accepted by the Insurer on its standard terms, the Trustee may make such arrangements with the Insurer and the Member regarding the amount of the cover under that Group Insurance Policy for that Member and the payment of premiums or charges in respect thereof as in all the circumstances it considers suitable and the benefit payable under this Deed in respect of that Member on the Member's death, Permanent Incapacity or Ill Health shall be adjusted accordingly. |
| Age incorrectly advised to Insurer          | (e) | If at any time it is found that a Member's age was incorrectly stated to an Insurer in connection with the Group Insurance the benefit payable under this Deed to or in respect of that Member on the Member's death, Permanent Incapacity or  |

III Health shall, unless the Trustee otherwise determines be adjusted by the Trustee to take into account the Member's correct age.

Incorrect  
Information to  
Insurer

- (f) If at any time it is found that any information or evidence supplied by a Member when the Member joined the Scheme or at any other time or in connection with any increase in the benefits being provided in respect of the Member under this Deed:
- (i) is fraudulently untrue, the amount of the benefit payable hereunder on that Member's death, Permanent Incapacity or III Health shall be adjusted by the Trustee to take account of the effect of the fraudulent untruth on the proceeds payable under the relevant Group Insurance Policy (after considering the advice of the Insurer); or
  - (ii) contains any misstatement, error, mistake, omission or suppression, the benefit payable hereunder on that Member's death, Permanent Incapacity or III Health shall, unless the Trustee otherwise determines, be adjusted to take account of the misstatement, error, mistake, omission or suppression.

Insurance  
unavailable

- (g) If the Trustee is unable to arrange any Group Insurance or if any Insurer declines to admit or pay any amount under the Group Insurance Policies to the Trustee for a Member, or if any Insurer refuses to insure a Member under the Group Insurance Policies, then the benefit payable under clauses 12 and 13 shall be limited to that amount (if any) payable under clause 11.

Profit Share

- (h) Any Profit Share arising from the Group Insurance shall be paid by the Trustee to the credit of the Members No. 2 Accounts.

Assignment of  
Insurance Cover

- (i) The proceeds of the Group Insurance Policy taken out on the life of the Insured Life Member shall be paid to the Lender of that Member where:
- (i) the Member's interest has been assigned to the Lender in a manner permitted under the Group Insurance Policy and by this Deed;
  - (ii) the Trustee has received written notice of such assignment from the Member; and
  - (iii) the Corporation has consented in writing to the assignment in a manner permitted by this clause.

The Trustee may pay all of the proceeds of the Group Insurance Policy for the Member to the Lender in full and final satisfaction of the Member's personal representative's rights to the proceeds of such Group Insurance Policy under this clause 15(i). The Trustee shall not be required to enquire whether any amounts remain outstanding to the

Lender or whether the benefit is properly payable to the Lender in terms of the assignment between the Member and the Lender and payment to the Lender as aforesaid shall be in full and sufficient discharge to the Trustee of the benefit payable under this clause 15(i).

#### **16. BENEFIT ON LEAVING SERVICE**

- Benefit on Resignation
- (a) If a Member leaves the Service of an Employer in order to commence Service with another Employer that Member will be deemed to have remained in Service.
  - (b) If a Member ceases to be in Service otherwise than in the circumstances provided for in clauses 11, 12, 13 and 16(a), that Member shall be entitled to a lump sum benefit equal to:
    - (i) the credit standing to that Member's Members No. 1 Account; and
    - (ii) the percentage of that Member's Members No. 2 Account based on the Member's completed years of membership in accordance with the following scale:

<b>Completed Years of Membership</b>	<b>Percentage of Members No. 2 Account</b>
Less than 1 Year	0%
1	10%
2	20%
3	35%
4	70%
5 or more	100%

The Trustee to pay such greater proportion of the Members No. 2 Account as the Employer shall determine irrespective of the number of years of Service.

- Transfer Out of Scheme
- (c) If a Member ceases to be in Service in terms of clause 16(b) then in lieu of receiving the Benefit specified under that clause the Member may transfer to a Permitted Scheme in accordance with the provisions of clause 6(c).

#### **17. NO BENEFIT ON WITHDRAWAL WHILE STILL IN SERVICE**

- Employee Remaining in Employment but Ceasing to be Eligible for Membership
- (a) If a Member ceases or fails to contribute to the Scheme in terms of clause 4(k) or if a Member gives notice to withdraw from the Scheme pursuant to clause 4(r) while still in Service or if for any reason that Member ceases to be eligible for continued membership any benefit then secured for or in respect of that Member shall continue to be held subject to the trusts of the Scheme until the Member either ceases to be in employment of an Employer or transfers to a Transferee Scheme (as defined in clause 6(c)).

The Trustee may after consultation with the Employer in its absolute discretion in cases of hardship or otherwise elect to distribute to such Member a lump sum benefit equal to all or part of the credit standing to that Member's Members No. 1 Account and all or part of the credit standing to that Member's Members No. 2 Account. The Member shall cease to be a Member of the Scheme from the date of payment of such lump sum benefit except where the Member does not receive their full benefit entitlement under this clause 17(a), in which case the Member will remain a Member of the Scheme.

In the event the benefit due to such Member continues to be held by the Scheme, no further contributions in respect of such Member shall be made, no further benefit shall accrue in respect of such Member except Determined Interest or Interim Interest as appropriate and no further Service shall accrue in respect of such Member unless and until such Member again becomes eligible to contribute to the Scheme.

No Withdrawal  
From Scheme

- (b) Unless specifically provided in this Deed to the contrary a Member shall not be entitled to payment of a benefit under the Scheme while that Member remains in the employment of an Employer.

Release of a  
Member's Locked-In  
Account Balances  
as required by  
statute

- (c) If the provisions of any statute, or an order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976), require the Trustee to release, assign or charge a Member's Locked-In Account Balances, then the Trustee shall so release, assign or charge the amount required to comply with the provisions of the statute or court order, as the case may be.

## **18. BENEFIT ON REDUNDANCY**

Benefit on  
Redundancy

In the event of a Member leaving Service through Redundancy that Member shall be entitled to a lump sum benefit equal to the total credit standing to that Member's Members No. 1 and No. 2 Accounts. The Member shall not be entitled to a lump sum benefit equal to the total credit standing to that Member's Locked-In Account Balances (unless the Member has reached the Locked-In Payment Date) and the provisions of clause 6(i) will apply to that Member.

## **19. FIRST HOME WITHDRAWAL BENEFIT**

First Home  
Withdrawal Benefit

Three years after a Member has made a Locked-In election as provided by clause 5(a) and/or after three years of contributions to one or more KiwiSaver Schemes or Complying Superannuation Fund, a Member may apply to the Trustee to withdraw part of that Member's Locked-In Account Balances for the purchase of a first home. The Trustee, in its absolute discretion and subject to any legal restrictions, may accept such application and allow the withdrawal by the Member under this clause if it is satisfied that

had the Member been a member of a KiwiSaver Scheme or Complying Superannuation Fund the requirements of clause 8 of schedule 1 of the KiwiSaver Act 2006 are met.

## 20. PERMANENT EMIGRATION

Withdrawal or  
Transfer of Locked-in  
Account Balances in  
Cases of Permanent  
Emigration

Twelve months after a Member has permanently emigrated from New Zealand, that Member may apply to the Trustee to withdraw that Member's Locked-in Account Balances. At any time after a Member has permanently emigrated from New Zealand, that Member may apply to the Trustees to have their Locked-in Account Balances transferred to a foreign superannuation scheme. The Trustee may, in its absolute discretion and subject to any legal restrictions, accept the application and allow such withdrawal or transfer if satisfied (based on whatever supporting evidence the Trustee may reasonably require) that had the Member been a member of a KiwiSaver Scheme, clause 14 of Schedule 1 of the KiwiSaver Act 2006 would allow the withdrawal or transfer.

## 21. LOCKED-IN PAYMENT DATE WITHDRAWAL

Locked-In Payment  
Date Withdrawal

On or after the Locked-In Payment Date, a Member may elect to either transfer the Member's Locked-In Account Balances in accordance with clause 6(f) or withdraw, as a cash lump sum benefit, the total credit standing to that Member's Locked-In Account Balances.

## 22. ALIENATION, BANKRUPTCY OR INCAPACITY

Benefits Personal to  
Member

(a) The benefits and rights under the Scheme are personal to the Member and subject to this Deed no Member may assign charge or borrow against the security of or otherwise alienate the Member's benefits under this Scheme.

Benefits in event of  
insolvency

(b) If a Beneficiary commits an act of bankruptcy or becomes insolvent then the benefits to which such Beneficiary would have been entitled under the Scheme, to the full extent permitted by law, shall be forfeited to the Scheme. The Trustee may in its absolute discretion apply in respect of such Beneficiary an amount not exceeding the amount of the benefits which have been so forfeited for the maintenance support or otherwise for the benefit of the Beneficiary or such of that Beneficiary's Dependents as the Trustee may in its discretion determine.

Benefits in event of  
physical or mental  
incapacity

(c) If a Beneficiary becomes physically, mentally or otherwise incapable of managing their own affairs the Trustee shall apply the benefits for the maintenance support or otherwise for the benefit of the Beneficiary or such of that Beneficiary's Dependents as the Trustee may in its discretion determine.

Infants' Benefits

(d) If any benefit under this Deed is payable to a person who is an infant or is under a legal incapacity or for any other reason (in respect of which payment in terms of this clause

is in the opinion of the Trustee in the Beneficiary's interests) then the Trustee shall have the power to pay the benefit or any part thereof to such person, persons or body corporate for the benefit of the infant or such other person as the Trustee shall think fit and the receipt of such person persons or body corporate shall be a complete discharge to the Trustee of all liability in respect of the benefit.

### 23. COMPLYING FUND RULES

Complying Fund  
Rules Apply

Notwithstanding any other provisions of this Deed, the Complying Fund Rules will apply to a Member's Locked-In Account Balances. To the extent that there is a conflict between the provisions of this Deed and the Complying Fund Rules, the Complying Fund Rules will apply.

### 24. TRUSTEE – POWERS, ADVISERS AND NOMINEES

Trustee Sole  
Trustee

(a) The Trustee shall be the sole trustee of the Scheme until such time as it is removed as the Trustee by the Corporation or the FMA.

Trustee  
Directorships and  
Governance

(b) The Trustee must ensure that its directors are appointed and the Scheme is governed in accordance with this Deed, the FMCA, the FMC Regulations and all other relevant laws.

Independent  
Trustee Director

(c) The Independent Trustee Director must meet, and continue to meet at all times, the requirements of the FMCA including the requirements to be independent as defined in the FMCA. The Independent Trustee Director will continue to hold office until the earlier of:

- (i) the Independent Trustee Director's licence expiring or being cancelled under the FMCA;
- (ii) the Independent Trustee Director being removed by the FMA under the FMCA;
- (iii) the Independent Trustee Director being substituted by the court under section 209 of the FMCA;
- (iv) the Independent Trustee Director resigning as Independent Trustee Director; or
- (v) the Independent Trustee Director being removed by the board of the Trustee, in which case no consent to removal is required from any such Independent Trustee Director being removed from office provided that notice is sent to that Independent Trustee Director.
- (vi) Any Independent Trustee Director may not be removed or resign under clause 24(c)(iv) or 24(c)(v) unless:

- A. all functions and duties of the position have been performed;
    - B. another Independent Trustee Director has been appointed, and has accepted the appointment; or
    - C. a court with appropriate jurisdiction consents to the resignation.
  - (vii) Any Independent Trustee Director may not be removed under clause 24(c)(v) without the FMA's consent.
  - (viii) If the Scheme does not at any time, for any reason, have an Independent Trustee Director, the trustee must procure that a new Independent Trustee Director is appointed as soon as practicable.
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| General Duty                              | (d) The Trustee is designated to, and shall, manage the Scheme in accordance with this Deed and the requirements of the law, including the FMCA and FMC Regulations. The Trustee has the responsibility and liability for the functions and duties of a manager of a registered managed investment scheme under the FMCA.  |
| General Powers                            | (e) The Trustee may in the absolute discretion of the Trustee enter into all such contracts, deeds and documents and do all such acts, matters and things as the Trustee may deem expedient for the purpose of securing the benefits mentioned in this Deed or for otherwise giving effect to and carrying out the trusts, authorities, powers and discretions conferred on the Trustee by this Deed.  |
| Bank Accounts                             | (f) The Trustee may open and operate such bank accounts as it thinks fit.  |
| Reliance on Professional Advice           | (g) The Trustee may in administering the Scheme rely upon the advice or opinion (whether or not obtained by the Trustee) of any professional person or upon any advice the Trustee may obtain directly or indirectly from any company firm or person as shall in the opinion of the Trustee be qualified to advise the Trustee and shall not be responsible for any loss occasioned thereby. The cost of obtaining any such advice shall form part of the expenses incurred by the Trustee in connection with the Scheme.          |
| Appointment of Actuary and Other Advisors | (h) The Trustee may appoint and obtain the advice of the Actuary and other professional advisers on such terms as may be agreed between the Trustee and the Actuary or other adviser. Where this Deed requires the Trustee to seek or rely upon the advice of the Actuary or to obtain a report from the Actuary the Trustee shall be entitled to seek or rely upon the advice or to obtain a report from the Actuary or from such other person or body who is for the time being appointed by the Trustee in accordance with this |

clause as “Actuary” to the Scheme.

Appointment of Auditor	(i)	The Trustee shall when appropriate appoint an Auditor to be the Auditor of the Scheme on such terms as may be agreed between the Trustee and the Auditor.
Appointment of Officers, Nominees etc	(j)	The Trustee may employ such person or persons as officers, nominees or agents including any Employer as thought fit by the Trustee in the transaction of any business of the Scheme including the administration of the Scheme or the payment of benefits and any valid receipt therefor given to such agents shall be a good and sufficient discharge to the Trustee.
Appointment of Secretary or Administration Manager	(k)	<p>The Trustee may appoint a secretary and/or administration manager to the Scheme and shall regulate the powers and duties of such secretary or administration manager. Any notice required to be given to the Trustee hereunder may be given to the secretary or administration manager to the Scheme if one is so appointed. The Trustee must take reasonable steps to:</p> <p>(i) ensure any functions delegated are performed in the same manner and are subject to the same duties and restrictions as if the Trustee was performing them directly; and</p> <p>(ii) monitor the performance of those functions.</p>
Trustee Duty of Care	(l)	The Trustee must, in exercising its powers, or performing any duties, exercise the care, diligence and skill that a prudent person of business would exercise in the same circumstances.
Independent Trustee Director Duty of Care	(m)	The Independent Trustee Director must, in exercising their powers, or performing any duties, exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances.
Limitation of Liability	(n)	Subject to the provisions of clause 24(p), the Trustee shall not incur any personal liability for anything done or omitted to be done as a Trustee hereunder, except in regard to any fraud or wilful misconduct on the part of the Trustee.
Indemnities	(o)	Subject to the provisions of clauses 24(n) and 24(p), and without prejudice to the indemnity given by law to the Trustee, the Trustee with the consent of the Corporation which shall not be unreasonably or arbitrarily withheld shall be indemnified out of the Scheme from and against all liabilities and expenses incurred by it in relation to the proper performance of its duties under this Deed and the FMCA.

No Contravention of FMCA	(p)	No provision of this Deed has the effect of exempting the Trustee from any liability, or of indemnifying the Trustee against any liability, to the extent that doing so would contravene the FMCA.
Payment of Benefits	(q)	The payment by the Trustee of any benefit to a person to whom such benefit is determined to be payable under this Deed shall be a complete discharge of the Trustee's liability in respect of the benefit. The Trustee shall be under no liability to see to the application of the benefit so paid.
Trustee may Receive Benefit	(r)	A director of a corporate Trustee being a Beneficiary may retain for the director's own absolute benefit subject to the conditions of the Scheme all moneys and benefits accruing to or in respect of that director as a Beneficiary and no decision of the Trustee or of its directors shall be invalidated on the ground that the director had a direct or personal interest in the result of any such decision or in the exercising of any power under this Deed.
Trustee Remuneration	(s)	Any director of the Trustee or the Trustee (as the case may be) may be remunerated out of the Scheme, or by the Corporation at a rate approved by the Corporation and, if a person engaged in any profession or business, may charge and be paid all usual charges for business done by the director of the Trustee or the director's company or firm in connection with the Scheme.
Trustee Decision Final	(t)	Except as otherwise provided by law a decision made by the Trustee on any question as to the construction or meaning or interpretation of this Deed or in respect of the administration of the Scheme shall be final and binding.

## 25. ACCOUNTS, UPDATES, REPORTS AND AUDIT

Preparation and Audit of Accounts	(a)	The Trustee shall ensure that accounting records are kept, and that financial statements are prepared, audited and registered, in accordance with the requirements of the FMCA and the Financial Reporting Act 2013.
Annual Reports	(b)	The Trustee shall, in accordance with the FMCA and FMC Regulations, within 4 months of the end of each Scheme Year prepare an Annual Report for the Scheme Year and, within 28 days after the Annual Report is prepared, send a copy of the Annual Report (or a notice permitted by the FMCA and FMC Regulations) to each Member, lodge a copy of the Annual Report with the Registrar and forward a copy of the Annual Report to the Corporation.
Fund Updates	(c)	The Trustee shall, as required by and in accordance with the FMCA and FMC Regulations, produce a Fund Update and make it publically available within 3 months of the end of each Scheme Year in accordance with the FMC Regulations.

- Reporting to FMA (d) The Trustee shall report to the FMA on such matters required to be reported under the FMCA and FMC Regulations in the manner prescribed by the FMCA and FMC Regulations.

## 26. INVESTMENTS

- Power of Investment (a) The Trustee shall invest the Fund (excluding the assets of the Investment Portfolios) in accordance with the provisions of the Trustee Act 1956, the FMCA and the SIPO as to the investment of trust funds.
- Corporation may Request Information (b) The Trustee shall from time to time as required by the Corporation advise the Corporation of the investments of the Fund and provide the Corporation with such other information as the Corporation may require.
- Appointment of Investment Manager (c) Without prejudice to the powers conferred upon the Trustee by general law or by clauses 24(j) or 24(k) the Trustee may appoint and remove one or more Investment Managers (whether a company or an individual) to the Scheme on terms to be agreed between the Trustee and such Investment Manager. The Investment Manager may have such powers and duties in relation to the investment of the assets of the Scheme including the power to determine and make particular investments in accordance with the provisions of clause 26(a) as agreed between the Trustee and the Investment Manager. The Trustee must take reasonable steps to:
- (i) ensure any functions delegated to the Investment Manager are performed in the same manner and are subject to the same duties and restrictions as if the Trustee was performing them directly; and
  - (ii) monitor the performance of those functions.
- Investment Portfolios (d) The Trustee may establish and maintain one or more Investment Portfolios from time to time and may close entry into or terminate an Investment Portfolio at any time.
- Authorised Investments (e) The Authorised Investments of each Investment Portfolio shall be determined by the Trustee from time to time.
- Power of Investment (f) The Trustee shall invest the assets of an Investment Portfolio in the Authorised Investments of that Investment Portfolio. In respect of each Investment Portfolio the wide power of investment under section 13A of the Trustee Act 1956 shall not apply and any Investment Direction given by a Member shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956.
- Investment Duties (g) Notwithstanding the preceding provisions of this clause or anything to the contrary in section 13D(1) of the Trustee Act 1956 the Trustee and any Investment Manager shall, in exercising the power of investment applicable in respect of

each Investment Portfolio as constrained by this Deed and any Investment Direction given by a Member, exercise the care, diligence and skill required of that person by section 144 of the FMCA, section 13B or section 13C of the Trustee Act 1956, as applicable.

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| Investment Direction  | (h) | Subject to clause 26(m) a Member at any time may give to the Trustee an Investment Direction.   |
| Variation and Revocation of Investment Direction                  | (i) | Subject to clause 26(m) a Member at any time may vary or revoke an Investment Direction given by that Member by giving at least 20 Working Days' prior written notice to the Trustee in such form as the Trustee may prescribe.   |
| Effective Date of Variation or Revocation of Investment Direction | (j) | Any variation of an Investment Direction shall become operative, and any revocation of an Investment Direction shall take effect at the time and in the manner determined by the Trustee and notified to the Member.  |
| Effect of Investment Direction                                    | (k) | The Trustee shall invest assets attributable to the Members Accounts of a Member in respect of whom there is an operative Investment Direction in accordance with that Investment Direction.  |
| No Direction  | (l) | Clause 26(a) shall apply in respect of that part of the Fund that is not subject to an operative Investment Direction.  |
| Investment Administration   | (m) | <p>The Trustee from time to time may prescribe rules for the effective administration and regulation of the Investment Portfolios including, but not limited to rules prescribing:</p> <ul style="list-style-type: none"> <li>(i) the minimum amount which may be re-apportioned between Investment Portfolios by;</li> <li>(ii) the notice period for; and</li> <li>(iii) the maximum number and frequency of;</li> </ul> <p>notices of entry into, variation or revocation of an Investment Direction that may be given by a Member in any period specified by the Trustee.</p> |

## 27. CUSTODIANSHIP

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| Fund to be held on trust by either the Trustee or a Custodian | (a) | The Fund shall be held on trust for the Scheme in accordance with the requirements of the FMCA, by either the Trustee or a Custodian appointed by the Trustee.  |
|   | (b) | <p>The Trustee must ensure that either the Trustee or an appointed Custodian:</p> <ul style="list-style-type: none"> <li>(i) keeps, or ensures there are kept, records that comply with requirements of the FMCA and the FMC Regulations;</li> <li>(ii) reports on the Scheme in accordance with the</li> </ul> |

requirements of the FMCA and the FMC Regulations;

- (iii) complies with, or ensures compliance with, any procedures prescribed by the FMC Regulations; and
- (iv) obtains an assurance engagement with an Auditor in accordance with the FMC Regulations.

(c) Where the Fund is held by a Custodian, the Fund must be held subject to and in accordance with the directions of the Trustee as given from time to time. The Trustee may delegate to a Custodian such powers, discretions and authorities in relation to the collection, investment and payment of moneys as it thinks fit and may revoke the same at any time.

(d) If authorised in writing by the Trustee, an appointed Custodian may itself appoint one or more Sub-Custodians to hold the Fund. The Trustee and the Custodian which appointed that Sub-Custodian will be jointly and severally liable with the Sub-Custodian for the due and faithful performance and observance by the Sub-Custodian of all the duties and obligations imposed on it in relation to the Scheme under the FMCA and FMC Regulations and this Deed. The Custodian must take all reasonable steps to:

- (i) ensure that the function for which it is appointed is performed by the Sub-Custodian in the same manner and subject to the same duties and restrictions as would be required if the Custodian were performing it directly; and
- (ii) monitor the performance of that function.

## **28. BORROWING**

Trustee's Power to Borrow

Subject to the Trustee obtaining the prior written consent of the Corporation which consent may be given or withheld in the Corporation's absolute discretion the Trustee may from time to time borrow or raise money for any of the purposes of the Scheme on such terms and conditions as it thinks fit and secure the repayment or payment of moneys so borrowed or raised and any interest thereon by mortgage or charge over all or any of the assets of the Scheme and no lender or financier shall be concerned to enquire as to whether the necessity for any such borrowing or financing has arisen or as to the purpose for which it is required or as to the application of the money borrowed or raised.

## **29. MEMBERS' RIGHTS**

Copies of Deed

- (a) A copy of this Deed shall be made available by the Trustee for inspection by a Beneficiary during any reasonable times that the Trustee may appoint.

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|  | (b) | A Member may on application to the Trustee purchase a copy of this Deed after payment of a reasonable fee as determined, from time to time, by the Trustee.  |
| Advice on Withdrawal Rights                                    | (c) | Each Member shall have the right to be advised as soon as practicable after request to the Trustee of an estimate of the amount of that Member's benefits under the Scheme.  |
| Annual Confirmation Information                                | (d) | The Trustee shall in accordance with the FMCA and FMC Regulations, within 3 months of the end of each Scheme Year, prepare Confirmation Information in respect of each Member and provide the Confirmation Information in accordance with the FMCA and FMC Regulations.  |
| Former Employee Deferral of Receipt of Benefit from the Scheme | (e) | Notwithstanding the other provisions in this Deed (except clause 11(c)), if a Member is, or is about to become, a Former Employee then that Member may request that any benefit payable to the Member at that time be retained in the Scheme. The Trustee may in its absolute discretion agree or not agree to such a request. If the Trustee agrees to the request then the benefit due to such Member will continue to be held in the Scheme and will be held subject to any conditions regarding retention as determined by the Trustee from time to time in its absolute discretion. The Trustee will advise the Member of such conditions. The Former Employee may request payment of the benefit at any time and the Trustee may elect to pay the benefit to the Former Employee at any time. For the avoidance of doubt, the Member is not an Insured Member while he or she is not in Service. |

### 30. Meetings of Members

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| Meetings of Members  | (a) | The Trustee: <ul style="list-style-type: none"> <li>(i) may, of its own volition, call and hold a meeting of Members; and</li> <li>(ii) must call and hold a meeting of Members in the circumstances set out in the FMCA and FMC Regulations.</li> </ul> |
| Proceedings for Meetings   | (b) | Except to the extent that the provisions of clause 30(c) state otherwise, any meeting of Members must be conducted in accordance with the requirements of the FMCA and FMC Regulations.  |
| Clause 5(4) of Schedule 11 of the FMC Regulations (quorum for other business) modified | (c) | <p>Clause 5(4) of Schedule 11 of the FMC Regulations is deleted and replaced with the following:</p> <p>"a quorum for any other business at a meeting Members is present if at least 25% of Members or their proxies are present."</p>                   |

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| Resolutions not Binding | (d) The Trustee will consider any resolutions passed at a meeting of Members held in accordance with clause 30(a), but such resolutions are advisory only and not binding on the Trustee, an Employer or the Corporation. |
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### 31. GENERAL

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| Deed Does Not Affect Employment Agreement | (a) This Deed shall not restrict the effect of an employment agreement of an Employer as to whether or not contributions required by an Employer under this Deed must be on top of a Members Salary.   |
|   | (b) For the avoidance of doubt clause 31(a) means that an Employer and a Member or prospective Member can agree whether or not to take a total remuneration approach to Employer contributions for that Member or prospective Member.  |
| No claim on Employer                      | (c) No Member shall have any claim against any Employer or its property or funds in respect of any moneys payable pursuant to the provisions of this Deed.   |
| Provide Information                       | (d) Every Employer and Member must furnish to the Trustee such information as the Trustee shall require in order to fulfil the Trustee's duties under this Deed.   |
| Unclaimed Benefits                        | (e) The Trustee shall exercise reasonable diligence in tracing Beneficiaries entitled to immediate benefits from the Scheme but in the event of the Trustee being unsuccessful any moneys payable out of the Scheme which are not claimed within 6 years after the date on which they become due shall (unless directed by the Corporation otherwise) revert to the Scheme.  |
| Closing of Scheme                         | (f) The Corporation may at any time by notice in writing to the Trustee close the Scheme for the admission of new Members and from the date of such notice no further Members shall be admitted. The Corporation may by notice in writing and with the consent of the Trustee reopen the Scheme for the admission of new Members and from the date specified in that notice further Members may be admitted on terms to be agreed between the Corporation and the Trustee. |
| Related Party Transactions                | (g) The Trustee (or any other person to whom the Trustee has delegated their functions) must not enter into a transaction that provides for a Related Party Benefit to be given other than as permitted under the FMCA.  |
| Valuation of the Fund                     | (h) Whenever the Trustee is required to value the Fund or any part of it, it shall do so in accordance with generally accepted accounting practice or, if appropriate, actuarial practice, as it applies to the Scheme.  |
| Notices to Members                        | (i) Subject to relevant law, any notice, document, material or cheque may be sent to a Member by Electronic Communication or by prepaid post to the Member's address   |

shown on the Scheme's records, or delivered by hand at that address, and will be deemed received:

- (i) in the case of Electronic Communication or hand delivery, on the next Working Day after despatch or hand delivery, as the case may be; and
- (ii) in the case of prepaid post, 3 Working Days after posting.

### **32. AMENDMENT**

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| Amendments to Deed                          | (a) Subject to compliance with the FMCA the Trustee may with the consent of the Corporation by deed amend or replace any part of the provisions of this Deed and such changes may have retrospective effect.              |
| Notification to Financial Markets Authority | (b) Within 5 Working Days after the execution of any amendment or replacement to this Deed in accordance with clause 32(a) the Trustee must ensure a notice of the amendment or replacement is lodged with the Registrar. |

### **33. WINDING UP**

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| Wind-Up of the Scheme     | (a) The Scheme shall be wound up if the Corporation gives the notice referred to in clause 4(q) or if the Trustee resolves that the Scheme shall be wound up.  |
| Notification and Expenses | (b) Upon the winding up of the Scheme the Trustee shall notify each Member and any other person presently entitled to benefits, and before applying the Fund under clause 33(c) shall be entitled to set aside an amount which is considered necessary by the Trustee to meet any expenses of the administration, dissolution and winding up of the Scheme and which in the opinion of the Trustee may not be recoverable from the Employers and to meet any tax for which the Trustee may be accountable.   |
| Application of Fund       | <p>(c) In the event of the Scheme being wound up the Trustee shall apply the Fund so far as the Fund permits in the following priorities:</p> <ul style="list-style-type: none"> <li>(i) to the Members in amounts equal to the total credits in each Member's Members Accounts as at the date of the winding up of the Scheme and if the amount available is insufficient for the applications required in this sub-clause then the Members Accounts shall be reduced pro rata; and</li> <li>(ii) subject to clause 33(g) any remaining moneys will revert to the relevant Employer; and</li> <li>(iii) the Trustee may with the agreement of the Corporation determine that all or part of such moneys remaining be used to augment all or any of the</li> </ul> |

benefits to be distributed to the Members in the manner provided in clause 33(c)(i) in an equitable manner as determined by the Trustee.

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| Transfer of Member's Locked-In Account Balances on Wind-up of the Scheme | (d) | Upon the winding up of the Scheme before the Locked-In Payment Date, the credit standing to a Member's Members No. 3 Account and Members No. 4 Account that is permitted to be applied to the Member in accordance with clause 33(c)(i), shall be transferred to a KiwiSaver Scheme in accordance with clause 6(i).  |
| Partial Winding Up   | (e) | If an Employer shall cease to operate or shall be wound up or shall cease to be an Employer or shall so resolve then that portion of the Scheme determined by the Trustee as being applicable to Members then employed by such Employer shall be dealt with in accordance with clauses 33(a), (b) and (c) as if such provisions referred to such Members only.   |
| Transfer Out of Scheme   | (f) | In the event of a complete or partial winding up of the Scheme under clause 33(a) or (e), the total credits in the Member's Members No. 1 and No. 2 Accounts in respect of the Members affected by the complete or partial winding up may with the written consent of the Member concerned be transferred to another Permitted Scheme in accordance with the provisions of clause 6(c).  |
| FMA Consent Required before Reversion                                    | (g) | No part of the assets of the Scheme may revert to any Employer on the total or partial winding up of the Scheme without the prior written consent of the FMA.  |
| FMA Refusal of Consent   | (h) | If the FMA refuses to consent to the payment to the Employer as provided for in clause 33(c)(ii) the Trustee shall apply the unexpended balance of the Fund by augmenting the benefits payable under clause 33(c)(i) and in such case the consent of the Corporation to such application shall not be required.  |
| Trustees may Continue Scheme   | (i) | Notwithstanding anything to the contrary in this Deed on the happening of any of the events specified in clause 33(a) the Trustee may in its sole discretion continue the Scheme as a closed scheme for the benefit of the then existing Beneficiaries in which event clause 33(a) shall not apply and no further contributions shall be made to the Scheme. In this event each Member shall be entitled to a benefit based on the assumption that such Member had left Service at the date of winding up. The benefits in respect of Members shall be adjusted to the extent considered by the Trustee to be in the best interests of the Beneficiaries and to allow the Scheme to be continued as a closed scheme. |
|  | (j) | The Trustee may continue the Scheme under this clause for so long as such continuation is considered by the Trustee to be in the best interests of Beneficiaries and may also by resolution and at the discretion of the Trustee wind up the Scheme in which event clause 33(a) shall apply and the  |

date of winding up shall be the date of such resolution of the Trustee.

Amendment Without (k)  
Direction

If the Scheme is continued under clause 33(i) the Trustee may by deed amend the provisions of this Deed in order to facilitate the administration of the Scheme under that clause without requiring the consent of the Corporation as provided in clause 32(a) but otherwise in accordance with clause 32.

Copy of Resolution (l)  
to Financial Markets  
Authority

The Trustee shall within 10 Working Days after a winding up resolution is made, lodge a copy of that resolution with the FMA and ensure that all other requirements of the FMCA are completed.

## EFFECTIVE DATE

The amendments to the Trust Deed made by this Deed shall take effect on and from the Effective Date.

## EXECUTION

SIGNED on behalf of the **ACCIDENT  
COMPENSATION CORPORATION** by:



\_\_\_\_\_  
Authorised Signatory



\_\_\_\_\_  
Authorised Signatory

SIGNED by **SHAMROCK SUPERANNUATION  
LIMITED** as Trustee by:



\_\_\_\_\_  
Director



\_\_\_\_\_  
Director