

MEDICAL ASSURANCE SOCIETY NEW ZEALAND LIMITED

**TRUST DEED
IN RESPECT OF THE**

**MEDICAL ASSURANCE SOCIETY RETIREMENT
SAVINGS PLAN**

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THIS DEED is made the 6th day of April 2017 ("**Deed**")

PARTIES

MEDICAL ASSURANCE SOCIETY NEW ZEALAND LIMITED at Wellington ("**the Founder**")

BRENDAN GERARD O'DONOVAN of Wellington, Economist, ("**the Licensed Independent Trustee**")

RICHARD JAMES TYLER of Wellington, Medical Practitioner,
ALASTAIR CHARLES HERCUS of Wellington, Lawyer,
DANELLE RAEWYN DINSDALE of Auckland, Company Director,
BRETT CHRISTOPHER SUTTON of Wellington, Company Director, (together "**the Trustees**")

INTRODUCTION

- A. The Medical Assurance Society Retirement Savings Plan ("**Plan**") was established by trust deed dated 1 December 1993 ("**Trust Deed**") which was amended by deeds of modification dated 4 December 1996, 6 December 2000, 27 February 2002 and 7 May 2003.
- B. The Trust Deed was further amended on 22 June 2007 to create an umbrella trust called the Medical Assurance Society Retirement Trust and to establish a registered KiwiSaver scheme called the Medical Assurance Society KiwiSaver Plan ("**Scheme**") within the Trust. The Trust Deed was further amended on 5 April 2012, 21 September 2012 and 22 March 2013 ("**Existing Trust Deed**").
- C. The Plan was originally registered as a superannuation scheme under the Superannuation Schemes Act 1989 ("**1989 Act**").
- D. The Existing Trust Deed was rescinded and amended on 7 September 2016 ("**FMCA Deed**") as a result of the Financial Markets Conduct Act 2013 ("**Act**") and the repeal of the 1989 Act. The Plan transitioned to the new financial markets conduct regime under the Act on 13 September 2016.
- E. The FMCA Deed is the governing document of the Plan.
- F. The Trustees now wish to amend and consolidate the FMCA Deed as a consequence of the changes made by the United Kingdom government which impact transfers of UK pension scheme funds to the Plan effective from 6 April 2017.
- G. The Trustees are satisfied that the amendment and replacement of the FMCA Deed by this deed is permissible under clause A22.1 of the FMCA Deed.
- H. The Founder consents to the amendment as evidenced by the signature of the Founder attested hereto.
- I. The Trustees are satisfied that this deed when it takes effect will comply with the requirements of the Act, with the amendments not having a material adverse effect on Members.
- J. The Financial Markets Authority has consented to the amendment of the FMCA Deed.

Operative Provisions

PART 1

Structure of this Deed

1.1 In accordance with the power of amendment contained in clause A22.1 of the FMCA Deed the Trustees amend the FMCA Deed by substituting the provisions of the FMCA Deed with all the clauses and Rules set out in this Deed.

1.2 The Plan is comprised of different sections for the purposes of the registration requirements under the Act. Accordingly:

- (a) The Individual Member Section is constituted principally for the purpose of providing retirement benefits directly or indirectly to individuals; and
- (b) The Workplace Savings Section is constituted for the purpose of providing:
 - (i) retirement benefits directly or indirectly to individuals; and
 - (ii) benefits to Eligible Individuals on ceasing employment or engagement with one or more persons or industry specified in this deed (whether immediately on ceasing that employment or engagement, or subsequently);
- (c) The Individual Member Section closed to new Members from the Effective Date.

1.3 Except where expressly provided otherwise, the terms and conditions in this Deed apply to all Members of the Plan. Additional terms and conditions of membership apply to certain Sections, as follows:

- (a) Individual Member Section: the individual member rules specified in Divisions B and C of this Deed apply to individual members.
- (b) Workplace Savings Section: the workplace savings rules specified in Divisions B and D of this Deed apply to Members who joined the Plan on or after the Effective Date.

1.4 Any transfers from the Plan shall be in accordance with the relevant requirements of the Act.

1.5 The Fund for the Plan shall consist of all Assets held by the Trustees upon the trusts of this Deed.

1.6 The Fund shall be vested, controlled and administered by the Trustees upon the trusts and subject to the terms and conditions powers authorities and provisions of this Deed.

1.7 The Trustees must ensure that the Plan meets, and continues to meet the initial and on-going registration requirements applicable to the Plan under the Act.

1.8 The Plan and Fund will be known by such name or names as the Trustees decide from time to time.

1.9 PART 2

DIVISION A: General

A1 ESTABLISHMENT OF THE PLAN

- A1.1 **Constitution of the Plan:** The **MEDICAL ASSURANCE SOCIETY RETIREMENT SAVINGS PLAN** established under the Existing Trust Deed shall be subject to the terms set out in this Deed which shall be binding upon the Trustees, the Founder and the Members of the Plan.
- A1.2 **Trustees:** The Trustees have been appointed and have agreed to act as trustees of the **MEDICAL ASSURANCE SOCIETY RETIREMENT SAVINGS PLAN**.
- A1.3 **Purpose:** The principal purpose of the Plan is to provide retirement benefits directly or indirectly to Members as detailed in clause 1.2 of Part 1.

A2 DEFINITIONS AND INTERPRETATION

- A2.1 **Definitions:** In this Deed, unless the context otherwise requires:

"**Act**" and "**the Act**" means the Financial Markets Conduct Act 2013.

"**Actuary**" means a person who is a fellow of the New Zealand Society of Actuaries.

"**Administration Manager**" in relation to the Plan means any person or persons (if any) to whom the Trustees have contracted part or all of the administration of the Plan.

"**Application Form**" means the form prescribed from time to time by the Trustees that is required to be completed by a person applying for membership of the Plan.

"**Assets**" means:

- (a) Contributions paid to the Plan by or on behalf of Members;
- (b) Income, including capital appreciation arising in respect of the Plan's assets;
- (c) Any other accretions or benefits arising in respect of the Plan's assets;
- (d) Transfer Values received by the Trustees in respect of the Plan;
- (e) Other property, moneys, amounts, benefits, rights, options, income, investments, dividends or gains received, derived, acquired or earned or held by the Trustees from time to time in their capacity as Trustees of the Plan.

"**Auditor**" means the Qualified Auditor for the time being holding the office of auditor of the Plan.

"**Base Contributions**" means the amount of any regular Contribution specified by the Member which is to be indexed as provided for in clause B1.4.

"**Benefit**" means any lump sum, refund or other payment to which a Member is entitled arising from membership of the Plan.

"**Business Day**" means a day on which the principal bank for the Plan is open for business in Wellington and Auckland.

"**Commencement Date**" means 1 April 1994.

"Consumer Price Index" means the consumer price index (all groups) published by the Government statistician or by such other person or body as may be appointed in that person's place or such other consumer price index as may be established in place of the consumer price index (all groups) or where no such index is published such other index or indicator of consumer prices in each case as determined by the Trustees to be appropriate.

"Contribution" means any sum paid by or in respect of a Member to the Trustees as a contribution to the Plan in accordance with this Deed.

"Date of Termination" means the date of termination of the Plan in accordance with clause A20.1.

"Deed" means this deed as amended from time to time and includes the Rules of the Plan.

"Dependant" means in respect of a Member (or in the case of joint membership, each Member severally):

- (a) the Member's spouse or de facto spouse;
- (b) any child (including any adopted child) of the Member;
- (c) any other person whom the Trustees in their absolute discretion determine to have been dependent either wholly or in part on the Member.

"Early Retirement" is where a Member (or the elder Member in the case of joint Members) in the opinion of the Trustees has totally and permanently retired before attaining the Normal Retirement Date.

"Effective Date" means the date the Trustees elect under clause 19(1)(a) of Schedule 4 of the Act.

"Eligible Member" means an individual from the following classes of professionals:

- (a) Doctors;
- (b) Dentists;
- (c) Veterinarians;
- (d) Students of those professions listed in (a)-(c) above;
- (e) Professionals registered under the Health Practitioners Competency Assurance Act 2003;
- (f) Lawyers;
- (g) Accountants;
- (h) Architects;
- (i) Engineers; and
- (j) Employees of an employer who is of a class of professional listed in (a)-(i) above.

"Employee" means a natural person who receives, or is entitled to receive, Salary or Wages.

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

"Financial Year" means the annual period from 1 April to 31 March of the following year.

"Financial Markets Legislation" has the meaning set out in section 6(1) of the Act.

"FMA" means the Financial Markets Authority.

"FMA" means the Person acting as Financial Markets Authority and includes any Person lawfully delegated to exercise or perform any of the powers or functions of a Financial Markets Authority.

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

"Fund" means all Assets of every type from time to time held by the Trustees on the trusts established by this Deed in respect of the Plan.

"Fund Update" has the meaning given to it in regulation 5 of the FMC Regulations.

"Government" or **"Government Agency"** means the Government of New Zealand and includes any local authority in New Zealand.

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

"Income Tax Act" means the Income Tax Act 2007.

"Individual Member" means a person who is a member of the Individual Member Section.

"Individual Member Section" means a section of the Plan that is a legacy retirement scheme under the Act.

"In-House Asset" has the meaning given to it in section 173(3) of the Act.

"Investment Direction" in respect of a Member means an operative direction to invest in Units in an Investment Portfolio given or made in respect of that Member's Member Account pursuant to clause A6.4 and includes a varied investment direction.

"Investment Manager" in relation to the Plan means any person or persons (if any) to whom the Trustees have contracted some or all of the investment of some or all of the Assets.

"Investment Portfolio" means a separate investment portfolio established pursuant to clause A6.3 and where there is only one investment portfolio means the Fund in respect of the Plan.

"Investment Portfolio Objective" means in respect of any Investment Portfolio the investment characteristics of that Investment Portfolio initially as determined by the Founder or as amended from time to time by the Founder with the consent of the Trustees.

"Issuer Obligations" has the meaning given to it in section 6(1) of the Act.

"Licensed Independent Trustee" means a licensed independent trustee under section 131 of the Act whose licence covers the Plan who is independent under section 131(3) of the Act.

"Member" means a natural person who has been accepted for membership of the Plan or a trustee of a Retirement Scheme who has been accepted for membership of the Plan either into the Individual Member Section or Workplace Savings Section, as applicable. Where a Member Account is held for the time being in the name of two persons Member means each

of such persons jointly (or where the context requires the survivor of them) except where expressly stated to mean each of such persons severally.

"Member Account" in respect of each Member of the Plan; means the account maintained by the Trustees for a Member under clause B3.1.

"Member's Accumulation" in respect of the Plan has the meaning given in clause A13B.

"Minimum Account Balance" is \$5,000.00 or such other amount as the Trustees determine is required to keep a Member Account open.

"Month" means a calendar month.

"Net Value" means, in respect of an Investment Portfolio, the value of that Investment Portfolio as calculated under section A13A on a Valuation Day.

"Normal Retirement Date" means the date of the Member's or the elder Member's (in the case of joint membership) 55th birthday.

"Participating Agreement" means an agreement in the form prescribed by the Trustees from time to time, which once executed will form part of this Deed provided that separate agreements must be executed by all relevant parties in respect of the Plan. The Participating Agreement in respect of a Member means the Participating Agreement in respect of the Participating Employer by whom the Member is employed.

"Participating Employer" means any employer admitted to participation in the Plan by way of a Participating Agreement.

"Permanent Disability" is where a Member or either of the Members (in the case of joint membership) has suffered a permanent disability or other incapacity of such a nature that due to the permanent disability or incapacity the Member in the opinion of the Trustees will be unable to obtain employment of a nature similar to that in which the Member has been employed and the Member is not likely to obtain other employment of an equivalent standing and remuneration.

"Permanent Emigration" is when the Trustees are satisfied that the Member or one of the Members (in the case of joint membership) intends to emigrate permanently from New Zealand.

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

"PIE Tax" means the tax liability for the Plan as determined in accordance with the Income Tax Act where the Plan is a PIE.

"Plan" means the Medical Assurance Society Retirement Savings Plan.

"Portfolio Investment Entity" or **"PIE"** has the same meaning as defined in section YA 1 of the Income Tax Act.

"Prescribed Investor Rate" has the same meaning as defined in section YA 1 of the Income Tax Act.

"Qualified Auditor" has the meaning given to it in section 461E of the Act.

"Register" means the register of Members of the Plan pursuant to clause A19.

"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" has the meaning given to it in section 172 of the Act.

"Related Party Benefit" has the meaning given to it in section 172 of the Act.

"Relevant Law" means all laws applicable to the Trustees and/or the Plan at applicable points in time and which may include, without, the Financial Markets Legislation, the FMC Regulations, and any methodologies or frameworks issued by the FMA under such legislation.

"Reserve Account" means the account or accounts established in respect of the Plan pursuant to clause A15.

"Retirement Scheme" has the meaning given in the Act.

"ROPS" means a Recognised Overseas Pension Scheme under the laws of the United Kingdom.

"Rules of the Plan" means the rules set out at the end of Division B, C and D of this Deed, as applicable.

"Salary" or **"Wages"** means at any date the annual rate of gross salary or a wage as received by a Member from their employer, inclusive of any permanent superable allowance as determined by their employer but exclusive of other allowances or other payments ('Excluded Payments') except to the extent that their employer determines that any Excluded Payments form part of the Member's remuneration. In the event of any dispute over whether any payment is to be included as 'Salary' it shall be determined by the employer whose decision shall be final.

"Solicitor" means a person enrolled as a barrister and solicitor of the High Court of New Zealand under the Lawyers and Conveyancers Act 2006.

"SIPO" means the statement of investment policy and objectives for the Plan in the form and containing the contents required by the Act.

"State Sector Employer" means an employer in the state services within the meaning of the State Sector Act 1988 or any other person or organisation that participates in the Plan for the purposes of establishing a retirement scheme for its officers or employees under section 84A of the State Sector Act 1988.

"State Sector Employee" means any employee of a State Sector Employer.

"Switching Fee" means as at the date of this Deed the amount of \$50.00 which may be amended from time to time by the Trustees.

"Tax" includes but is not limited to all income tax, land tax, any form of capital gains tax, assets tax, withholding tax, goods and services tax, stamp, registration and other duties and other taxes, levies, imposts, deductions and charges whatsoever together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof for which the Trustees are accountable in respect of the Trust but does not include income tax payable by the Trustees on fees received by the Trustees for performing services pursuant to this Deed, or, at the discretion of the Trustees, PIE Tax. For avoidance of doubt 'Tax' will include such taxes or similar amounts that may arise under the Finance Act.

"Transfer Value" means the amount received or paid pursuant to clause B5.

"Trustee" or **"Trustees"** means the trustee or trustees hereof or the Trustees for the time being appointed or holding office pursuant to this Deed including for clarity the Licensed Independent Trustee.

"Trustee Act" means the Trustee Act 1956.

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

"UK Transfer" means, in respect of any relevant Member the transfer value received by the Plan in respect of the relevant Member's entitlements under a UK registered pension scheme transferred by that Member to the Plan on or after 6 April 2012.

"Unit" means a unit in an Investment Portfolio as referred to in section A13.

"Unit Price" means the price for a Unit calculated under clauses A13.5 and A13.6.

"Valuation Day" means a day on which an Investment Portfolio is valued under section A13A.

"Winding Up Date" means the effective date of winding up of the Plan or the Individual Member Section in accordance with sections A21 or A21B (as applicable).

"Withdrawal Fee" means a fee to be deducted from a Member's Member Account in accordance with clause A11.4.

"Workplace Savings Section" means the section that is a Workplace Savings Scheme under the Act.

A2.2 Interpretation: In the interpretation of this Deed:

- (a) The headings are for convenience only and shall not be construed as part of this Deed.
- (b) Words describing the singular include the plural and vice versa and words importing one gender shall include the other.
- (c) Any references to a statute or regulations (or to any particular part or section, clause or definition) shall (subject to any other provisions of this Deed) include a reference to any regulations or other statutory instrument made under the statute and to any subsequent modification or re-enactment of the statute or regulations or other statutory instrument.
- (d) All references in this Deed to this Deed or to provisions or clauses of this Deed shall be deemed to be references to this Deed or to those provisions or clauses as altered from time to time under the provisions of this Deed.

A3 APPOINTMENT AND REMOVAL OF TRUSTEES

A3.1 Number of Trustees: Except where a corporate body has been appointed as the sole Trustee of the Plan the number of Trustees of the Plan shall be not less than two, provided one Trustee is a Licensed Independent Trustee. A body corporate may be appointed as the sole Trustee of the Plan, provided at least one director of the body corporate is a Licensed Independent Trustee. A body corporate may be a sole Trustee of the Plan if so permitted by the Act, or any exemption provided under the Act.

A3.1A A3.2 NZ Residency: Where a Trustee ceases to be resident in New Zealand, the Trustee shall notify the FMA as soon as practicable.

A3.3 Founders' rights: Subject to the Act, the Founder shall have the right by deed at any time:

- (a) To remove any Trustee upon giving 30 days' notice in writing to the Trustee of its intention so to do; and in place of the Trustee so removed,
- (b) To appoint a new Trustee.

No person shall be appointed as a Trustee unless that person satisfies the trustee requirements of the Relevant Law.

A3.4 Office vacant: Subject to clause A3.6 the office of a Trustee shall become vacant if the Trustee:

- A3.4.1 (a) Resigns from office by the giving of 30 days' notice in writing addressed to the Founder; or
- (b) Becomes bankrupt or makes an assignment to creditors, and in the case of a corporate Trustee, if an order is made or an effective resolution is made for its winding up (other than for the purposes of reconstruction or amalgamation); or it is placed in liquidation or receivership or under statutory management; or
- (c) If a natural person dies or becomes of unsound mind; or
- (d) Is convicted of an indictable offence; or
- (e) Is removed from office by the Founder pursuant to clause A3.3.
- (f) Any continuing Trustee may act during any vacancy in the office of a Trustee.

- A3.4.2 (a) being the Licensed Independent Trustee (whether that be an individual trustee, a director of a corporate body trustee or an approved trust corporation):
 - (ii) the Trustee's licence to act as Licensed Independent Trustee expires or is cancelled under the Act; or
 - (iii) the Trustee is removed by the FMA if it is satisfied that the Trustee no longer meets the requirements in the Act; or
- (b) the Trustee is substituted by the High Court under the Act; or
- (c) the Trustee is otherwise removed or resigns in accordance with this Deed.

A3.5 If a Trustee ceases to hold office pursuant to clause A3.4, the Trustee and any delegate of the Trustee must immediately desist from all activities relating to the Plan unless the FMA agrees otherwise.

A3.6 A Licensed Independent Trustee may not:

- (a) be removed or resign in accordance with this Deed unless:
 - (iv) all functions and duties of the position have been performed; or
 - (v) another Licensed Independent Trustee has been appointed, and accepted appointment, in its place; or
 - (vi) the High Court consents;
- (b) (despite anything to the contrary in this Deed) be removed under this Deed without the FMA's consent.

- A3.7 If the Plan does not, at any time, for any reason have a Licenced Independent Trustee the FMA must appoint a temporary Licensed Independent Trustees in accordance with the Act.
- A3.8 Any new trustee must immediately upon appointment execute a deed in such form as the Trustees may require whereby the Trustee undertakes to the Trustees and the relevant Members to be bound by all the covenants on the part of the Trustees under this Deed from the date of such appointment.
- A3.9 From the date of execution by the new Trustee of a deed in accordance with clause A3.8, the retiring Trustee is absolved and released from all such covenants under this Deed in relation to the Plan (except in respect of any prior breach) and the new Trustee must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Trustees under this Deed in all respects as if the new Trustee had been originally named as a party to this Deed as Trustee of the Plan.

A4 PROCEEDINGS OF TRUSTEES

- A4.1 **Procedures:** Subject to compliance with the provisions of all Relevant Law , the Trustees may despatch the business of the Plan and otherwise regulate their procedures as they think fit. When required by Relevant Law, the Trustees shall call a meeting of Members in the manner and on the basis set out in the Act and the FMC Regulations. A meeting of Members shall be conducted in accordance with Relevant Law.
- A4.2 **Quorum:** Except where a sole corporate Trustee holds office the quorum for any meeting of the Trustees shall be two.
- A4.3 **Chairpersons casting vote:** Where there is more than one Trustee in the case of an equality of votes the chairperson shall have a second casting vote.
- A4.4 **Records:** The Trustees shall keep full and proper records of their decisions relating to the Plan including all minutes, resolutions and proceedings of meetings. Without limitation, the Trustees shall keep, or cause to be kept, a complete record of:
- (a) Members;
 - (b) Participating Employers;
 - (c) the Members employed by each Participating Employer; and
 - (d) all other matters, information and data necessary or expedient for the proper and efficient working of the Plan or required by Relevant Law.
- A4.5 **Secretary:** The Trustees may from time to time appoint a secretary and other officers if necessary to assist the Trustees in carrying out the Trustees' duties and functions upon such terms as the Trustees think proper and may also revoke and amend any such appointments.
- A4.6 **Trustees' discretions:** Subject to Relevant Law, the Trustees in the exercise of the Plan's authorities, powers, and discretions conferred upon the Trustees by this Deed, shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the Plan's authorities, powers, and discretions or may refrain from exercising all or any of the same from time to time or at all.
- A4.7 **Payments and receipts:** The Trustees shall make all necessary arrangements for dealing with receipts and payments under the Plan and may resolve that cheques should be drawn or endorsed by any one person duly authorised by the Trustees or in such manner as it may from time to time resolve. The Trustees may give, vary and revoke instructions as to the custody and disposal of any Assets of the Plan and the signature of forms and documents on behalf of the Trustees.

- A4.8 **Advice of experts:** The Trustees may in administering the Plan rely upon the advice or opinion (whether or not obtained by them) of any professional person or upon any advice the Trustees may obtain directly or indirectly from any person as shall in their opinion be qualified to advise them and the Trustees shall not be responsible for any loss occasioned by relying on such advice. The reasonable cost of obtaining any such advice shall form part of the expenses incurred by the Trustees in connection with the Plan.
- A4.9 **Acts of officers, agents:** Any action taken by a duly authorised officer, agent, employee or servant of the Trustees to give effect to any resolution of the Trustees shall be effective as an act of the Trustees.
- A4.10 **Resolutions in writing:** A resolution in writing signed by the Trustees, or where there is a sole corporate Trustee signed by that Trustee, shall have the same force and effect as a resolution passed at a duly constituted meeting of the Trustees.
- A4.11 **Nominees:** The Trustees shall ensure that the Fund is held in accordance with the Act.
- A4.12 The Trustees shall hold the Fund in one of the following ways:
- (a) by a body corporate that is either the sole corporate trustee of the Plan or that has, as its directors, only persons who are Trustees; or
 - (b) by a body corporate to whom the Trustees have contracted the holding of the Fund and who:
 - (vii) is a body corporate that the Trustees believe, on reasonable grounds, to be appropriate to hold, and safeguard the Fund; and
 - (viii) is not the same person as, or associated with, any of the Trustees (other than by virtue of the custodianship).
- A4.13 Subject to clause A4.12 the Trustees may contract out the holding of the Fund to another person provided the Trustees:
- (a) take all reasonable steps to:
 - (i) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person had performed them directly; and
 - (ii) monitor the performance of a function,
 - (b) are jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with clause A4.13(a).
- A4.14 **Trustees' reports:** The Trustees must, in accordance with Relevant Law, prepare and provide the FMA with reports that contain the information that is required by the FMC Regulations.
- A4.15 If the Trustees have reasonable grounds to believe that the Trustees have contravened, may have contravened or are likely to contravene any of their Issuer Obligations in a material respect then the Trustees must, as soon as practicable:
- (a) report the contravention or possible contravention to the FMA; and

- (b) advise the FMA of the steps (if any) that the Trustees have taken or intend to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.

A4.16 **Fund Update:** The Trustees shall prepare and make available Fund Updates as required by the Act.

A4.17 **Regulatory compliance:** The Trustees shall at all relevant times file or lodge all reports, returns, statements, information or other material required by Relevant Law to be filed or lodged with any public registry or regulatory authority (and FMA upon request) in respect of the Plan.

A5 TRUSTEES' INDEMNITY AND LIABILITY

A5.1 No liability: Subject to Relevant Law, the Trustees shall not be liable for:

- (a) Any losses or damages except losses or damages arising out of their own wilful default or wilful breach of trust or wilful failure to comply with Relevant Law; or
- (b) Any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in the Trustees by this Deed; or
- (c) Any omission or omissions or non-exercise in respect of any trust power or discretion of the Trustees under this Deed unless such omission or omissions or non-exercise is in breach of clause A5.1(a).

A5.2 **Indemnity:** Subject to Relevant Law, and in the case of the Trustees subject to the proper performance of the Trustees' duties under sections 143(1) and 144 of the Act, the Trustees and every other person acting on behalf of the Trustees shall be indemnified out of the Plan's Assets against all liabilities and expenses incurred by them, including Tax, in the exercise or attempted exercise of the Plan's powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the Plan (other than a liability for which the Trustees are liable under clause A5.1(a) above). This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled thereto although it may be subsequently found that the person was not in fact so entitled. The Trustees will also be indemnified by a Member for any shortfall if the value of Units in a Member's Accounts is insufficient to meet any liability for Tax payable in respect of that Member by the Plan or the Trustees (whether current or deferred). The Trustees shall have a lien or charge on the Plan's Assets and may retain and pay out of any moneys in the Plan, all sums and amounts necessary to give effect to such indemnity.

A5.3 **Indemnity benefits officers and agents:** Any Investment Manager, Administration Manager, manager or agent acting for or on behalf of the Trustees shall have the benefit of any exclusions or indemnities given to the Trustees whether contained in this Deed or in any application for membership of the Plan or otherwise at law. If an Investment Manager is to be so indemnified, the terms of appointment of the Investment Manager must include its right to be indemnified with the indemnity only available in relation to the proper performance of the Investment Manager's duties, including the duty of complying with the relevant professional standard of care of the Investment Manager under the Act. The Trustees will remain liable for the acts or omissions of any Investment Manager.

A5.4 **Limitation:** Unless the Trustees are liable pursuant to clause A5.1(a) of this Deed the liability of the Trustees under this Deed, the Act or other Relevant Law shall at all times be limited to the Plan's Assets.

A5.6 **Licensed Independent Trustee protected:** No Trustee nor any other party to this Deed may take any action against the Licensed Independent Trustee by reason of the Licensed Independent Trustee having made a report or disclosure to the FMA under the conditions of the licence granted to the Licensed Independent Trustee by the FMA under the Act.

A6 INVESTMENTS

A6.1 Trustees' Powers of Investment:

- (a) All money belonging to the Plan and available for investment shall be invested in accordance with the SIPO and the provisions of the Trustee Act 1956 as to the investment of trust funds.
- (b) In respect of any moneys subject to an Investment Direction (but subject to clause A6.1(a)) such amount shall be invested in Units in accordance with the Investment Portfolio Objectives of the Investment Portfolio to which the Investment Direction relates.

A6.2 Standard of care: Notwithstanding the foregoing and anything to the contrary in section 13D(1) of the Trustee Act 1956, the Trustees and any Investment Manager shall, in exercising the power of investment, exercise the care, diligence, and skill required of that person by section 13B or section 13C of that Act, as is applicable. Any Investment Manager appointed by the Trustees to exercise their power of investment must, in exercising those powers, or performing those duties, exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances

A6.3 Establishment of Investment Portfolios:

- (a) The Trustees in consultation with the Founder have established several Investment Portfolios. Notwithstanding the establishment of separate Investment Portfolios and the provisions of clauses A6.7 and A6.8, but subject to clause A14.1(b)(iii), there shall only be one Fund in respect of the Plan.
- (b) The Trustees may with the written consent of the Founder add other Investment Portfolios to the Plan or may delete an Investment Portfolio or portfolios from the Plan. If the Trustees delete an Investment Portfolio, Members investing in that portfolio will be required to switch to other Investment Portfolios. Any such switch will not incur a Switching Fee.

A6.4 Member's Directions:

An applicant for membership of the Plan, shall give the Trustees a written direction as to the proportion in which Contributions and other on-going amounts which are allocated to the credit of their Member Account which become available for investment are to be invested in Units in each Investment Portfolio. The direction must be in respect of 100% of the applicant's on-going Contributions and will also apply to on-going amounts which become available for investment unless the Member directs otherwise at the time additional investments are made.

A6.5 Trustees to Invest in Accordance with Investment Direction: Upon accepting an application for membership, the Trustees (but subject to any subsequent varied Investment Direction approved by the Trustees pursuant to clause A6.7) shall invest the Contributions made in respect of a Member and any other amounts from time to time available for investment in Units in the same Investment Portfolio in accordance with the proportions stated in the Investment Direction.

A6.6 Contributions to the Plan where no Investment Direction: Where a Member of the Plan does not have a current and fully operative Investment Direction and until the Member provides such an Investment Direction to the Trustees, the Trustees may:

- (a) refuse to accept any Contributions from the Member; or
- (b) Accept Contributions from the Member and, at the Trustees discretion, invest those Contributions in Units in an Investment Portfolio or portfolios and in such proportion as the Trustees determine.

A6.7 Amendment of Investment Direction: A Member may at any time vary the Investment Direction with the prior approval of the Trustees in respect of future Contributions or future amounts standing to the credit of their Member Account which are available for investment. Such variation will be in a form prescribed by the Trustees from time to time and shall be effective from a date no later than 21 days after the Trustees receive written notice of the variation.

A6.8 Transfer Between Investment Portfolios of Plan:

- (a) Subject to the consent of the Trustees a Member may transfer all or part of a Member's interest in one Investment Portfolio to another Investment Portfolio or portfolios within the Plan, on giving notice in writing to the Trustees in such form as the Trustees may from time to time prescribe whereupon the Trustees shall realise and transfer all or part of the Member's interest in the relevant Investment Portfolio of the Plan, making, at the discretion of the Trustees, provision for Tax, PIE Tax or any other amount the Trustees consider appropriate, and reinvest such realised amount in Units in another Investment Portfolio within the Plan nominated by the Member.
- (b) Members shall be entitled to one free switch per Financial Year. Switches not used shall be forfeited. Any amount payable for a Switching Fee will be deducted from the Member Account by the cancellation of Units in accordance with clause A13.10. The Trustees may in their absolute discretion waive payment of a Switching Fee in any particular instance.
- (c) A transfer of a Member's interest in an Investment Portfolio pursuant to the terms of this clause may be postponed or effected over such period as the Trustees consider prudent if the Trustees (in their absolute discretion) consider that it is in the best interest of all Members with Units in the Investment Portfolio from which the Member is transferring to ensure the stability and continued viability of that Investment Portfolio and its investments.

A6.9 Investment Directions: An Investment Direction by a Member under clause A6.4 is a direction by the Member pursuant to Section 13G of the Trustee Act 1956 subject only to the terms of this clause.

A6.10 Member's Interest in the Investments of an Investment Portfolio:

- (a) All investments held in an Investment Portfolio shall be held by the Trustees for the benefit of the Members and the Reserve Account in respect of the relevant period they had or have Units in that Investment Portfolio.
- (b) All profits, losses, costs and expenses made or incurred and identified by the Trustees as relating to a particular Investment Portfolio shall be borne by that Investment Portfolio or the Members and the Reserve Account to the extent they had or have Units in that Investment Portfolio as the Trustees consider appropriate. Any costs, profits, losses and expenses not attributable to a particular Investment Portfolio shall be allocated across all Investment Portfolios of the Plan or to all Member Accounts and the relevant Reserve Account pro rata based on amounts designated for each Investment Portfolio in each Member Account and the relevant Reserve Account.

A6.11 Investment of Reserve Account: The balance of the Reserve Account available for investment shall be invested in Units in such Investment Portfolios of the Plan as the Trustees determine from time to time with full power to transfer such investments to Units in the other Investment Portfolios.

A6.12 Units Register: The Trustees shall maintain a register or other suitable record of investments of the Plan in which the Trustees shall record the Unit holdings which are for

the time being included in the Plan and in respect of each Investment Portfolio and such other information as the Trustees shall determine.

- A6.13 **SIPO:** The Trustees must ensure that there is a SIPO for the Plan that complies with Financial Markets Legislation.
- A6.14 **Limit breaks:** The Trustees must report to the FMA any material breaches of any limits under a SIPO to the extent required by Relevant Law.
- A6.15 **Pricing errors:** The Trustees must report to the FMA in relation to any material error in the calculation of a managed investment product or material non-compliance with any methodology for pricing managed investment products set out in this Deed or notices issued by the FMA, and must correct such error or non-compliance and take any prescribed steps, to the extent required by Relevant Law.
- A6.16 Subject to Relevant Law, for the purpose of clause A6.15 a “material error” (unless the Trustees agrees otherwise from time to time) is an error that equals or exceeds 0.30% of Member’s Net Asset Value:
- A6.17 If, under Relevant Law, reimbursement and compensation is payable to a Member or former Member, the Trustees must comply with all their obligations under those requirements except that the Trustees may choose not to pay any reimbursement or compensation to a Member or former Member for an amount less than \$20 (or such other amount as the Trustees may agree from time to time).

A7 RELATED PARTY BENEFITS

- A7.1 Subject to A7.2, the Trustees (and any Investment Manager, Administration Manager or other person to whom the Trustees have contracted out some or all of its functions as manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- A7.2 Clause A7.1 does not apply to a transaction or series of transactions if one of the following applies and the Trustees (with the consent of the Licensed Independent Trustee) certify to that effect:
- (a) the transaction or series of transactions are in the best interests of the Members; or
 - (b) section 174 of the Act applies to the transaction or transactions or all Related Party Benefits to be given; or
 - (c) the transaction or series of transactions are approved by or contingent on approval by a Special Resolution of the class of Members affected or potentially affected by the transaction or transactions.
- A7.3 Subject to Relevant Law, the Trustees (or any person to whom the Trustees have contracted out some or all of its functions as trustee) must not acquire any new In-House Asset if, as a result of the acquisition, the Plan would have, or increase, an In-House Asset ratio of 5% or more in relation to any Related Party or Member.

A8 TRUSTEES' FUNCTIONS, DUTIES AND POWERS

- A8.1 **Trustees' Functions:** In accordance with the Act, the Trustees are deemed to be the manager of the Plan. The Trustees are appointed to manage the Plan and are responsible for performing the functions and duties of a manager of a managed investment scheme under the Act. In particular, the Trustees are responsible for performing the following functions:

- (a) offering interests in the Plan for subscription;
- (b) issuing interests in the Plan;
- (c) managing the Plan's investments and property; and
- (d) administering the Plan.

A8.2 Trustees' Duties: The Trustees, in exercising their powers and performing their duties as the trustees of the Plan, must:

- (a) act honestly;
- (b) in exercising any powers or performing any duties as Trustees:
 - (a) act in the best interests of Members;
 - (b) treat the Members equitably; and
- (c) not make use of information acquired through being Trustees in order to:
 - (a) gain an improper advantage for itself or any other person; or
 - (b) cause detriment to the Members;
- (d) carry out its functions in accordance with this Deed, the SIPO and all other Issuer Obligations; and
- (e) comply with any requirements applying to the Trustees as a result of holding and or part of the Plan property.

A8.3 Standard of care: In exercising any powers or performing any duties:

- (a) the Licensed Independent Trustee of the Plan must exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances;
- (b) any other Trustee of the Plan whose professional business is or includes acting as a trustee or investing money on behalf of others must exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances; and
- (c) any other Trustee that does not fall within paragraphs (a) or (b) above must exercise the care, diligence, and still that a prudent person of business would exercise in the same circumstances.

A8.4 Trustees' Powers: The Trustees shall administer the Plan in accordance with the powers, duties, authorities and discretions conferred on it by this Deed or at law and shall pay or cause to be paid from the Plan, as the case may be, the Benefits provided for in accordance with the terms of this Deed and Relevant Law, as applicable. Subject to Relevant Law the Trustees shall in addition to the other powers vested in the Trustees pursuant to this Deed or at law have all the powers over and in respect of the Plan and the Plan's Assets as if it were the absolute and beneficial owner of the Plan and the Plan's Assets.

A9 BORROWING POWERS

A9.1 Borrowing: Subject to the SIPO, the Trustees may, with the consent of the Founder, (which consent shall not be unreasonably withheld) in respect of the Plan:

- (a) Borrow or raise money from any person (including a Member or the Founder); or
- (b) Enter into any form of credit facility or other accommodation or sell, discount and deal with bills of exchange; or
- (c) Charge all or part of the Plan's Assets or any of them as security for any moneys borrowed or raised or for the purposes of acquiring further Assets for the Plan on such terms and conditions as thought fit by the Trustees.

A9.2 Limitation: All borrowings, raising of money, charging of investments or other transactions entered into or undertaking pursuant to clause A9.1 ("Security Transactions") shall only be entered into or made where the Trustees in good faith determine that the Security Transactions are necessary or desirable in the general interests of the Members of the Plan, as the case may be, or for the purposes of conducting the investment or management or other operation of the Plan pursuant to this Deed. Furthermore no Security Transactions shall be entered into if the result will be that the total amount owing under the Security Transactions will exceed ten per cent of the gross value of the Assets.

A10 DELEGATION BY TRUSTEES

A10.1 Delegation: The Trustees may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) or contract any person or persons to perform any act, or exercise any discretion within the Trustees' power. The authorisation must be written. In doing this:

- (a) the Trustees must take all reasonable steps to:
 - (a) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Trustees were performing them directly; and
 - (b) monitor the performance of those functions; and
- (b) the delegation or contracting out does not affect the liability of the Trustees for the performance of those functions.

8.11 The Trustees may include provisions to protect and assist those dealing with the delegate in the authorisation as the Trustees thinks fit. The delegate or contracted party may be a Related Party of the Trustees.

A11 TRUSTEES' FEE AND REIMBURSEMENT OF EXPENSES

A11.1 Trustees' Fee: The Trustees shall be paid out of the Fund in respect of their services under this Deed a fee equal to an amount agreed between the Trustees and the Founder, such fee to be reviewed annually provided that the Trustees may waive payment of any fee or part of any agreed fee from time to time in accordance with any arrangement from time to time agreed with the Founder.

A11.2 Expenses: Subject to Relevant Law, as applicable, the Trustees shall also be reimbursed out of the Plan (whether from income or capital or both) for and in respect of the following:

- (a) All costs, charges and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with investments and Assets of the Plan including real estate and Solicitors' fees and commissions, bank charges and stamp duty, and the expenses of any agents or nominated company of the Trustees both within and outside New Zealand;
- (b) All costs incurred by the Trustees in calculating the value of each Investment Portfolio whenever the Trustees are required to do so in accordance with the provisions of this Deed;
- (c) Any costs and expenses including all legal costs, expenses and registration fees incurred by the Trustees to or in connection with the preparation, approval and execution of this Deed and any amendments, modifications or additions to the provisions of this Deed or any deed supplemental to this Deed or obtaining any approvals which may be required by law or otherwise in respect of any such supplemental deed;
- (d) The fees and expenses of the Auditor;
- (e) Expenses in connection with the annual accounts and the annual reports;
- (f) All Tax charged to or payable by the Trustees, the Plan (whether by any taxing authority or any other person) in connection with the Plan, or any Member of any account whatsoever;
- (g) Interest on borrowings and discounts and acceptance fees in respect of bill facilities for the Plan;
- (h) The fees, costs and expenses of any manager delegate (other than the Administration Manager or Investment Manager) or any other agent or person engaged contracted or employed by the Trustees as provided in this Deed;
- (i) The fees and expenses of any Solicitor, barrister, valuer, accountant, Actuary or other person from time to time employed by the Trustees in the discharge of its duties under this Deed;
- (j) Expenses in connection with the keeping of the Register;
- (k) Any reasonable amounts incurred by the Trustees in respect of the administration of the Fund, management of any investment or in investigating any proposed investment of the Plan;
- (l) The costs of preparing taxation returns and other costs arising in respect of taxation matters relating to the Plan or the Members of the Plan;
- (m) Any other expenses properly and reasonably incurred by the Trustees in connection with carrying out their duties under this Deed;
- (n) All costs in or in connection with the retirement or removal of the Trustees under this Deed and the appointment of any person in substitution;
- (o) All costs, expenses, duties and disbursements incurred by the Trustees in connection with the closing or winding up of the Plan;
- (p) All costs in connection with the initiation, conduct and settlement of any court proceedings (including any negotiations and demands relating to them) including, without limitation, proceedings against the Trustees arising from any neglect, breach or default under this Deed. If in any proceedings against the Trustees they are found to be in breach of clause A5.1(a), the Trustees are not entitled to any right of reimbursement or indemnity under this clause;

- (q) The amount of any rates, land tax, insurance premiums, property repairs and maintenance costs and other outgoings incurred in respect of any investment;
- (r) All management fees, commissions and other fees and expenses paid to any real estate agents, property managers or other persons appointed to manage any investments; and
- (s) All costs in preparing, printing and distributing performance reports or bulletins for Members, provided that a corporate Trustee shall always bear its own internal administration costs.

A11.3 Administration Manager: The Trustees shall pay out of the Plan (whether from income or capital or both) the fees, costs and expenses of any Administration Manager or Investment Manager contracted or employed by the Trustees as provided in this Deed. The Trustees may agree such fees and agree from time to time to vary such fees.

A11.4 Withdrawal Fee: Where an application for early withdrawal is received by the Trustees in respect of the Plan the Trustees shall be entitled to charge and deduct from the Member's Account a Withdrawal Fee in respect of the withdrawal. The Trustees may, with the consent of the Founder, waive all or part of the Withdrawal Fee in their absolute discretion.

A11.5 Deductions from Member Accounts: Without limiting the foregoing, the Trustees may deduct from a Member Account the following fees:

- (a) Any Withdrawal Fee authorised under this Deed to be deducted from the Member Account.
- (b) On an amount standing to the credit of a Member Account being switched from one Investment Portfolio to another Investment Portfolio, an amount not exceeding the Switching Fee.

A12 TRUSTEES' POWER TO REVIEW FEES AND OTHER AMOUNTS

A12.1 Review: Subject to compliance with clause A22.1, and Relevant Law, the Trustees may at any time increase or reduce the amount of any penalties, fees or other charges payable by a Member or from the Plan pursuant to this Deed.

A12.2 Date of Reduction: In any case where the Trustees reduce the amount of any penalties, fees or other charges pursuant to clause A22.1, the reduction shall take effect from a date determined by the Trustees.

A12.3 Date of Increase: In any case where the Trustees determine to increase the amount of any penalties, fees or other charges pursuant to clause A22.1 then the increase shall become effective from a date determined by the Trustees subject to all Members affected by such increase being given not less than one month's prior notice in writing of the new penalties, fees or other charges or amounts, and subject to compliance with Relevant Law.

A13 UNITISATION

A13.1 The Trustees will operate each Investment Portfolio on a unitised basis.

A13.2 The beneficial interest in each Investment Portfolio will be divided into Units (including, if the Trustees so determine, fractions of Units) which may be consolidated or divided in such manner as the Trustees may from time to time decide.

A13.3 All Units referable to an Investment Portfolio will be of one class and confer identical rights and interests.

A13.4 A Unit will not confer any right or interest in any particular Asset that is attributable to, and that is comprised in, the Investment Portfolio to which it relates and no Member is entitled to require the transfer of any of the assets to the Member.

A13.5 In the case of Units issued on establishment of each Investment Portfolio, the initial Unit Price will be \$1.00.

A13.6 After establishment of each Investment Portfolio, the Unit Price for each Investment Portfolio will be determined on each Valuation Day by dividing the Net Value of the assets of the relevant Investment Portfolio by the number of Units then on issue in respect of that Investment Portfolio. For the avoidance of doubt, the assets used to determine the Unit Price on a Valuation Day will:

- (a) not include amounts received from which Units are to be but have not been issued; and
- (b) include amounts deducted, transferred or withdrawn from Member Accounts for which Units are to be but have not been cancelled,

at the time of such determination.

A13.7 Subject to clauses A13.8 and A13.9, the Trustees will in respect of:

- (a) each Contribution and other amounts received by the Plan from or in respect of a Member (including, any rebate in respect of tax credits or tax losses);
- (b) any amount transferred into the Plan from another Retirement Scheme in respect of a Member;
- (c) any amount transferred into an Investment Portfolio of the Plan from another Investment Portfolio within the Plan under clause A6.8;
- (d) any amount transferred to the Reserve Account;
- (e) any other amount received by the Plan which the Trustees consider should give rise to the issue of Units,

issue Units to the relevant Member in the relevant Investment Portfolio or Investment Portfolios or to the Reserve Account based on the amount received or transferred (net of any amount that the Trustees consider appropriate to deduct for fees, Tax, etc.) at the relevant Unit Price or Unit Prices at which Units are issued on that day.

A13.8 Without limiting clause A13.7 the Trustees may delay the conversion into Units under clause A13.7 of any Contributions accepted into the Scheme in respect of a Member or group of Members until such time as the Trustees are reasonably satisfied that those Contributions do not exceed the amount required to be paid to the Scheme in respect of the Member (or those Members collectively) under this Deed and have not otherwise been paid in error.

A13.9 Without limiting clause A13.6 or any other provision of this Deed (but subject to clause A17.1), the Trustees may determine at any time or times that from a specified date no further Units will be issued pursuant to this Deed, or in relation to a specified Investment Portfolio or Investment Portfolios, either:

- (a) for a specified period; or
- (b) until the relevant Investment Portfolio or Investment Portfolios, or the Plan, is or are terminated;

and in that case the Trustees will not, after the date specified and for the period contemplated by paragraph (a) or paragraph (b) (as applicable), issue any further Units under this Deed or in relation to that Investment Portfolio or such Investment Portfolios.

A13.10 The Trustees will in respect of:

- (a) amounts deducted from Member Accounts and/or the Reserve Account to meet fees, charges, costs, expenses, or premiums payable that may be deducted to the Member Accounts and/or the Reserve Account;
- (b) amounts transferred out of the Plan to another permitted Retirement Scheme;
- (c) permitted withdrawals or Benefits (as applicable);
- (d) any amount transferred from one Investment Portfolio of the Plan to another Investment Portfolio within the Plan under clause A6.8;
- (e) amounts deducted in respect of PIE Tax that is or may be calculated, assessed against or payable by or in respect of the Member, or the Member's interest in an Investment Portfolio or Fund and/or the Reserve Account; and any amount transferred from a Member's Account to the Reserve Account under clause A15.2(c) (other than where that transfer or debiting is implemented through a transfer of Units); and
- (f) any other amount which the Trustees consider should be deducted from Member Accounts and/or the Reserve Account,

cancel the number of the Units of the relevant Member or held in the Reserve Account determined by dividing the amount deducted, transferred or withdrawn in respect of the relevant Investment Portfolio or Investment Portfolios by the relevant Unit Price or Unit Prices at which Units are issued on that day (provided that, for amounts deducted on account of Tax payable, the Trustees may use the same Valuation Day as the day on which they determine the amounts of attributed Tax to be deducted).

A13.11 Subject to Relevant Law, the Trustees may defer giving effect to a Benefit in respect of the Plan or any transfer out of the Plan, or any transfer between Investment Portfolios, if (and for so long as) the Trustees determine that, having regard to the realisation of assets required in order to make the withdrawal or transfer or the occurrence or existence of any other circumstance or event relating to the Plan or generally, earlier withdrawal or transfer would be imprudent or is impracticable.

A13.12 Units issued against uncleared funds may be treated as void if the funds are not subsequently cleared.

A13.13 Units that the Trustees determine have been issued in error may be treated as void unless a Member has altered his or her position in good faith to the Member's detriment in reliance on the validity of those Units (in circumstances where relevant law does not require the Units to be treated as void).

A13A VALUATION

A13A.1 The Trustees will calculate the Net Value of each Investment Portfolio on each Business Day, or, subject to clause A13A.2, at such other intervals (not exceeding 30 Business Days) as they may determine, by deducting the liabilities attributable to that Investment Portfolio from the market value of its assets.

A13A.2 If, due to factors beyond their reasonable control, the Trustees cannot complete a valuation of each Investment Portfolio within 30 Business Days of the last valuation, the Trustees

must calculate the Net Value of each Investment Portfolio on the first Business Day following those factors ceasing to exist.

A13A.3 The Trustees will determine the market value of each asset in the Investment Portfolio on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice as defined in the Financial Reporting Act 1993 (except to the extent that the Trustees determine that they need not have regard to that practice) and may from time to time engage any valuers or other suitably qualified persons for the purposes of fixing the market value of any asset (but are not under any duty to do so).

A13A.4 The Trustees will determine the liabilities attributable to an Investment Portfolio on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice as defined in the Financial Reporting Act 1993 (except to the extent that the Trustees determine that they need not have regard to that practice) and in doing so may (subject to clause A6.10):

- (a) apportion the liabilities of the Plan generally amongst the Investment Portfolios on such basis as the Trustees consider appropriate; and
- (b) take account of each debt, liability, provision, cost, charge, expense and outgoing, contingent liability, provision, liability to Tax, unpaid remuneration, reimbursement or indemnity or other matter as they consider appropriate.

A13A.5 Notwithstanding clause A13A.1, the Trustees may exclude certain liabilities from the liabilities that are deducted from the market value of the assets of an Investment Portfolio. For example, but without limitation, the Trustees may exclude:

- (a) PIE Tax where Units relating to a Member will be cancelled in respect of that liability; and
- (b) amounts representing the interests of Members to the extent considered appropriate by the Trustees whether or not accounting practice requires those amounts to be treated as liabilities for accounting purposes.

A13A.6 **Trustees' decision is final:** In the absence of manifest error, the Trustees' determination of Net Value and the Unit Price will be final and binding on all persons including, without limitation, the Trustee, the Founder and any Member.

A13B CALCULATION OF MEMBER'S ACCUMULATION

A13B.1 Where this Deed requires the Trustees to calculate an amount representing the "member's accumulation" in respect of a Member for the purposes of calculating a Benefit or permitted withdrawal (as the case may be) payable to or in respect of the Member the amount will be calculated by:

- (a) multiplying the Units attributable to the Member Account in respect of the Member by the relevant Unit Price or Unit Prices on the next Valuation Day after the Trustees make a final determination that the Benefit or permitted withdrawal (as the case may be) should be paid;
- (b) deducting an amount equal to the net value of any unvested employer contributions made to the Plan for the Member's benefit; and
- (c) deducting any further amount that the Trustees consider appropriate to deduct with respect to costs, expenses, fees (including specified fees) or Tax payable pursuant to this Deed or, where applicable, the relevant Participating Agreement.

A14 PROVISION FOR AND PAYMENT OF TAX

A14.1 PIE Tax

- (a) The Trustees may elect that the Plan be a PIE, or cease to be a PIE at its discretion, and may allocate the costs of being a PIE as they consider appropriate. The Trustees shall ensure that any PIE Tax is calculated in accordance with the Income Tax Act.
- (b) Subject to the requirements of the Income Tax Act, the Trustees have the power and discretion for as long as the Plan is a PIE to:
 - (a) make any elections as to the method of calculation for allocation or attribution of income, expenses, tax credits or PIE Tax as they think fit;
 - (b) take all steps necessary to ensure that the Plan is eligible or continues to be eligible as a PIE or otherwise to comply with the requirements of the Income Tax Act relevant to PIEs;
 - (c) elect to offset tax liabilities and credits or losses in respect of an Investment Portfolio or Fund and/or Member and make such adjustments as the Trustees consider appropriate;
 - (d) allocate any tax rebate received for tax credits or tax losses in respect of Members or former Members among the Members or former Members in such manner as the Trustees in their complete discretion consider appropriate;
 - (e) exercise, or decline to exercise any power or discretion relevant to PIEs granted under any enactment as the Trustees consider appropriate.

A14.2 Payment of Tax

- (a) The Trustees may, at their discretion, deduct from any Member's interests in an Investment Portfolio or Fund the amount of any Tax that is or may be calculated, assessed against or payable by or in respect of the Member, or the Member's interest in an Investment Portfolio or Fund.
- (b) The Trustees are authorised to withhold any amount payable to a Member, to the extent necessary to make payment of any Tax.
- (c) The Trustees shall pay to the relevant authority (if required) the amount of any Tax that is calculated, assessed against or payable by or in respect of a Member, after taking into account any credits or rebates in respect of Tax for any past or present Member and any prior Tax payments. The payment which the Member shall be entitled to receive shall be the net amount after any deductions have been made.
- (d) The Trustees are authorised to adjust the interests of Members to the extent necessary to account for payments or rebates in respect of any Tax or other amounts payable or received from time to time as the Trustees consider appropriate.
- (e) Each Member shall indemnify the Trustees in respect of any Tax calculated, payable by the Trustees in respect of the relevant Investment Portfolio or Fund, or that Member's interest in the relevant Investment Portfolio or Fund.

A15 RESERVE ACCOUNT

A15.1 Reserve Account: The Trustees shall establish a Reserve Account or accounts for the Plan to which shall be allocated from time to time:

- (a) All Benefits and amounts forfeited to the Plan pursuant to the terms of this Deed;
- (b) Other moneys not allocated to Member Accounts and that are not required for the payment of Benefits.

A15.2 Use of Reserve Account: The Reserve Account may be used at the Trustees' discretion:

- (a) In meeting any of the expenses of the Plan or an Investment Portfolio;
- (b) In providing Benefits other than retirement benefits for all Members of the Plan, on an equitable basis;
- (c) In increasing all Member Accounts of the Plan, on an equitable basis having regard to the Unit Value of Units in Member Accounts in the Plan, at a particular time;
- (d) In such other manner as the Trustees from time to time consider appropriate and is permitted under Relevant Law in respect of the Plan.

A16 GENERAL PROVISIONS APPLYING TO BENEFITS

A16.1 Payment of Benefits: The Trustees shall not be bound to see to the application of any money paid by it as a Benefit or otherwise in accordance with this Deed and the receipt by any person of money paid or distributed by the Trustees as a Benefit or otherwise in accordance with this Deed, shall be a full and complete discharge of all the Trustees' obligations in respect of such payment or distribution and in respect of the Benefit represented by such payment or distribution.

A16.2 Lump sum: Benefits payable under this Deed shall, except as otherwise specifically provided, be payable by way of lump sum to the Member or such other person entitled to the Benefit.

A16.3 Bankruptcy: If a Member who is entitled to a Benefit under the Plan becomes bankrupt:

- (a) The Member shall not be entitled to receive any Benefit;
- (b) The Trustees may, as they in their absolute discretion think fit, apply the Member's Accumulation in any manner for the benefit of the Dependants of the Member; and
- (c) In the case of a joint Member the Member who is not bankrupt shall continue as the holder of all entitlements under this Deed but not if that Member is also made bankrupt.

A16.4 Incapacity: If a Member is, in the opinion of the Trustees formed on the basis of evidence satisfactory to them, incapable of managing that Member's own affairs, the Trustees shall be entitled to withhold payment of any Benefit payable in terms of this Deed. The Trustees shall then apply such Benefit to or for the benefit of the Member or of other Members contingently entitled to such Benefit, in such manner as the Trustees may in their absolute discretion determine.

A16.5 Forfeiture: The Trustees shall exercise reasonable diligence in tracing Members entitled to immediate Benefits from the Plan. Should any payment which becomes due to any Member remain unclaimed for a period of six (6) years from the date entitlement arose, the Trustee will arrange for such unclaimed amount to be paid to the Crown pursuant to Relevant Law.

- A16.6 **Information:** Any Member shall provide such evidence or information as may be reasonably required by the Trustees concerning the Member's entitlement under the Plan. Until such evidence or information is produced the Trustees may withhold the payment of any Benefit to such Member.
- A16.7 **Tax:** If the Trustees are required by law to deduct from any Benefit due to a Member any amount for the payment of any duty or Tax or otherwise, the Trustees shall be entitled to deduct the amount so payable from that Member's Benefit or account for the amount as otherwise provided in accordance with clause A14.2 and to pay or apply the amount deducted as required by law. The balance of the Benefit shall be paid to the Member in accordance with this Deed in full satisfaction of the Member's entitlement to Benefits under the Plan.
- A16.8 **Minors:** If any Benefit under this Deed is payable to a person who is a minor or who is under a legal incapacity, or if for any other reason the Member so requests, the Trustees may pay the Benefit or any part of it to such person for the benefit of the minor or other person as the Trustees shall think fit. Upon the receipt of the Benefit by that person the provisions of clause A16.1 shall apply.
- A16.9 **Interest:** Where an entitlement to a Benefit in respect of a Member arises from the Plan and payment of the Benefit is not made until after the date upon which the Trustees are required to pay the Benefit, the Trustees may (but shall not be obliged to) increase the Benefit by the addition of interest, at a rate determined by the Trustees, in respect of all or part of the period from that date to the date of payment.
- A16.10 **Manner and time of payment:** Subject to the express terms of this Deed, Benefits becoming payable hereunder shall be paid as soon as practicable after the date on which application for the Benefit is made. Payment of a Benefit may be effected by cheque delivered to or posted to the last known address of the Member entitled to the Benefit or such other means agreed to by the Trustees and the person entitled to payment. Payment made by cheque payment will be deemed to have been made on the date of the posting of the cheque.
- A16.11 **Evidence of Entitlement:** Any Member or any other person purporting or claiming to be qualified or entitled to any Benefit under the Plan shall on request produce to the Trustees such evidence as the Trustees may require.

A17 SUSPENSION RIGHTS

A17.1 **Right to suspend:** If by reason of:

- (a) A decision to terminate the Plan; or
- (b) Financial, political or economic conditions applying in respect of any financial market in which investments may be sold; or
- (c) The nature of any investments or Assets of the Plan; or
- (d) The occurrence or existence of any other circumstances or events,

the Trustees reasonably form the opinion that it is not practicable or would be materially prejudicial to the interests of Members in the Plan, for the Trustees to realise investments or borrow in accordance with this Deed in order to permit payment of Benefits, then the Trustees may give notice (a "suspension notice") to that effect to the Members of the Plan. A suspension notice may relate to all the Assets of the Plan or any one or more Investment Portfolios and shall have the effect of suspending the operation of all existing and future withdrawal and/or switch requests received from Members relating to the Plan or the Investment Portfolio or portfolios to which it relates until;

- (a) The Trustees give notice to the effect that the relevant suspension notice is cancelled; or
 - (b) After the expiration of twelve months,
- whichever is the earlier.

Where withdrawal requests are suspended pursuant to this clause, withdrawals shall be payable to the Members as soon as practicable immediately following the date the suspension is cancelled.

A17.2 Withdrawal request: Where withdrawal requests are suspended pursuant to clause A17.1 a Member may revoke a withdrawal request at any time prior to cancellation of the suspension notice or the expiration of twelve months whichever is the earlier.

A18 ACCOUNTING RECORDS

A18.1 Accounting Records: The Trustees shall ensure that there are kept at all times accounting records that:

- (a) correctly record the transactions of the Plan;
- (b) will enable the Trustees to ensure that the financial statements of the Plan comply with generally accepted accounting practice and any prescribed requirements; and
- (c) will enable the financial statements of the Plan to be readily and properly audited.

A18.2 In keeping or causing to be kept the Trustees' proper records or accounts under clause A18.1:

- (a) the Trustees must have appropriate systems of control and oversight;
- (b) the Trustees must keep such accounting records at a suitable secured location accessible to each of the Trustees, the FMA and the Auditor; and
- (c) the provisions of Part 7 of the Act must be complied with.

A18.3 Inspection by the Auditor: The accounting and other records of the Trustees in respect of the Plan shall be open to the inspection of the Auditor. The Trustees shall provide to the Auditor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

A18.4 Financial Statements: Subject to Relevant Law, the Trustees must ensure that within 4 months after the end of each financial year end for the Plan, financial statements that comply with generally accepted accounting practice are:

- (a) completed in relation to the Plan for that; and
- (b) dated and signed on behalf of the Trustees.

A18.5 Audit: The Trustees shall ensure that, within 4 months after the end financial year end for the Plan:

- (a) the Plan's financial statements for that year are audited and reported on by the Auditor in accordance with the requirements of the Act; and
- (b) those financial statements, together with the Auditor's report on those financial statements, are delivered to the Registrar for lodgement.

A18.6 The Auditor: A person or firm of accountants selected by the Trustees must be appointed Auditor of the Plan provided that such person or firm of accountants is licensed under the Audit Regulation Act 2011 and meets the requirements of Relevant Law.

A18.7 Annual Report: The Trustees must:

- (a) within 4 months after the end of each financial year end for the Plan, prepare an annual report on the affairs of the Plan during that year; and
- (b) within 28 days after the annual report is prepared:
 - (a) send to every Member:
 - (i) a copy of the annual report; or
 - (ii) a notice containing the statements required by the FMC Regulations; and
 - (b) lodge the annual report with the Registrar.

A19 REGISTER OF MEMBERS

A19.1 Register: The Trustees shall keep and maintain or cause to be kept and maintained a Register of Members in respect of the Plan.

A19.2 The Register shall take the form of a computer file compiled in a manner required by the FMA.

A19.3 The Register shall be kept or caused to be kept by the Trustees at its offices or such other place as the Trustees may from time to time approve.

A19.4 On request by the FMA, the Trustees will provide the FMA with a copy of the Register in such form as the FMA may approve and the FMA shall be entitled to inspect the Register at any time during the normal working hours of the Trustees.

A19.5 There shall be entered in each Register:

- (a) the names, addresses and Prescribed Investor Rates (if given) of the Members having an interest in the Plan;
- (b) the number and type of interests held by each Member in the Plan;
- (c) the date on which any person ceased to be a Member having an interest in the Plan;
- (d) in respect of Members who are employees of Employers, the name of the relevant Employers; and

- (e) such other details as the Trustees may require or as may be required by law from time to time.

A19.6 The Trustees shall cause the Register to be audited by the Auditor at annual intervals or as required by the Act. Such audit shall be completed in accordance with the Act and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of the Act has not been complied with. The FMA may at any time for a specified and reasonable purpose request the Trustees to cause each Register or one or more of them to be audited.

A19.7 **Information in Register:** There shall be entered in the Register:

- (a) The names, addresses and Prescribed Investor Rates (if given) of the Members in the Plan.
- (b) The number and type of Units in a Member's Member Account.
- (c) The date on which the name of every person was entered in the Register as a Member having an interest in the Plan;
- (d) The date on which every person became a Member of the Plan and the date on which any person ceased to be a Member.
- (e) in respect of Members who are employees of Participating Employers, the name of the relevant Participating Employers;
- (f) The date Contributions were made and the amount of each Contribution made by a Member and the date Benefits were paid and withdrawals were made and the amount thereof; and
- (g) such other details as the Trustees determine or as are required by law.

A19.8 **Audit of Register:** The Trustees shall cause the Register to be audited by the Auditor at annual intervals or as required by the Act. Such audit shall be completed in accordance with the Act and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of the Act has not been complied with. The FMA may at any time for a specified and reasonable purpose request the Trustees to cause each Register or one or more of them to be audited.

A19.9 **Inspection of Register:** The Register shall be open for inspection by the Auditor and any Member free of charge at any time during the normal business hours of the Trustees.

A19.10 **Registered Holder:** The Trustees shall be entitled to treat the registered holder of a Member Account as the absolute owner thereof.

A19.11 **Reliance on Information:** The Trustees will be entitled to rely on the validity and accuracy of the information in the Register or provided to it by Members, and upon the validity of any signature on any transfer, form of application or other instrument and will not be liable in any way to make good out of its own funds any loss, liability or penalty incurred by any person in the event of such information being incorrect or such signature being forged or otherwise ineffective; that loss (if any) will, subject to any right of reimbursement from any other person, be borne by the relevant Fund.

A20 PERIOD OF PLAN

A20.1 **Trust Period:** The Plan shall commence on Commencement Date and shall (subject to the provisions of Relevant Law) continue until the Date of Termination which shall be whichever of the following dates first occurs:

- (a) The Winding Up Date specified by the Trustees pursuant to clause A21;
- (b) The date falling 80 years less two days from the Commencement Date (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964).

A21 WINDING UP OF THE PLAN

A21.1 Resolution: The Plan shall be wound up and dissolved if:

- (a) The Trustees (after first giving to the Founder not less than ten days' prior notice in writing of their intention) resolve in writing to wind up the Plan in whole or in part; or
- (b) The Founder (after first giving to the Trustees not less than ten days' prior notice in writing of its intention) resolves in writing to wind up the Plan in whole or in part; or
- (c) The last Member of the Plan withdraws that Member's Benefits and the Trustees resolve in writing to wind up the Plan in whole or in part.

A21.2 Effect of resolution to wind up:

- (a) Every resolution to wind up the Plan shall specify an effective Winding Up Date of the Plan;
- (b) On or after the Winding Up Date:
 - (a) No further natural persons or Trustees of Retirement Schemes shall be admitted as Members to the Plan;
 - (b) No further Contributions shall be made to the Plan; and
 - (c) The Plan's Assets shall thereupon be realised by the Trustees as soon as reasonably possible having regard to the nature of the Assets to be realised.

A21.3 Notice to Members: Immediately after the passing of the resolution to wind up the Plan each Member of the Plan shall be promptly given notice in writing of the resolution.

A21.4 Application of Proceeds: Subject to clause A21.4A the proceeds obtained from realising the Plan's Assets shall be applied by the Trustees in the following order of priority:

- (a) First, in meeting all costs, expenses, Tax and liabilities of the Plan including setting aside any amounts the Trustees consider necessary or desirable in respect of any Tax or contingent liability of the Plan;
- (b) Secondly in payment of any Benefits to the extent the same were payable out of the Assets of the Investment Portfolio which became payable prior to the Winding Up Date and for which an application for payment had been received by the Trustees prior to the Winding Up Date;
- (c) The balance of each Investment Portfolio then remaining shall be applied to allocating each Member, taking into account any deductions or adjustments the Trustees consider appropriate, an interest in the Investment Portfolio and to the Reserve Account an amount equal to the value of the amount of the Member's or the Reserve Account's interest in the Investment Portfolio immediately prior to the Winding Up Date as the case may require provided that if the amount available is insufficient for the allocation as above, then the amount available shall be divided amongst the Members in proportion to each Member's interests in the Investment Portfolio immediately prior to the Winding Up Date and if there are any moneys

remaining, shall be applied in augmenting the interest of all Members who had an interest as to the Winding Up Date pro rata to the Member's interests in the Investment Portfolio at that date;

- (d) The balance standing to the credit in the Reserve Account shall be distributed to all Members in proportion to each Member's Account balance on the Winding Up Date.

A21.4A Where any proceeds are payable to a Member in accordance with A21.4, that part of the proceeds which relate to a UK Transfer received on and after 6 April 2012 shall be applied by the Trustees by way of:

- (a) a transfer of such amount to another Retirement Scheme elected by that Member, provided such scheme is recognised by HMRC as a ROPS; or
- (b) in such manner that satisfies any requirements imposed by the HMRC on such UK Transfers from time to time.

Any residual proceeds shall be paid to the Member in accordance with clause A21.4 as applicable.

A21.5 **Advice to Financial Markets Authority and Inland Revenue:** The Trustees shall, within 10 Business Days after the winding up resolution is made, lodge a copy of that resolution with the FMA, and in the case of the winding up, give (i) a copy of that resolution to the Commissioner of Inland Revenue and (ii) notice to the Commissioner of Inland Revenue of the name, tax file number, and address of each member of the Plan.

A21.6 **Final Accounts:** The Trustees shall ensure that final accounts of the Plan showing the financial position of the Plan as at the Winding Up Date are prepared in accordance with generally accepted accounting practice within 4 months after the date on which the winding up takes effect and audited.

A21.7 **Copies of Final Accounts:** The Trustees shall, within 20 Business Days after the final accounts have been audited ensure that:

- (a) a copy of those accounts is sent to the FMA and all Members who were Members of the Plan immediately before it was wound up; and
- (b) the FMA and relevant Members are advised in writing as to the manner in which the Plan's Assets are to be distributed.

A21.8 **Advice to Financial Markets Authority of distribution:** The Trustees shall inform the FMA of the date on which the distribution of the Plan's Assets is completed.

A21.9 **Members' rights to information:** All Members who were Members of the Plan immediately before its winding up shall continue to have the right to the information.

A21B WINDING UP INDIVIDUAL MEMBER SECTION

A21B.1 The Individual Member Section shall be wound up if the Trustees resolve to wind-up the Individual Member Section and notify the Supervisor in writing of the date the Individual Member Section is to commence being wound up. The Trustees shall proceed to wind up the Individual Member Section in accordance with clause 21.

A21B.2 As at the date when the wind-up of the Individual Member Section takes effect all Contributions by or in respect of Members of the Individual Member Section shall terminate except in relation to Contributions that had already become payable but were as yet unpaid as at the effective wind-up date.

A21B.3 As at the date when the wind-up of the Individual Member Section takes effect, all Members of the Individual Member Section shall cease to be Members.

A21B.4 Upon the Individual Member Section being wound up pursuant to this clause 21B:

A21B.4.1 The Assets and other interests comprised in the Individual Member Account shall be realised; and

A21B.4.2 The proceeds shall be applied by the Trustees in the order of priority set out in clause A21.4 (as applicable).

A2B.5 A Person in respect of whom an allocated amount has been paid or transferred under the provisions of clause 21 shall have no right to resort to or claim against the Plan otherwise than in respect of the amount so allocated.

ALTERATION OF THIS DEED

A22.1 **Alteration:** Subject to the Act, the Trustees may, with the consent of the Founder, by deed from time to time rescind, alter, modify or add to any of the provisions of this Deed.

A22.2 The Trustees may permit minor amendments to the format of the Participating Agreement from time to time.

A22.3 Transfers:

Subject to the Act:

- (a) No Member of the Plan may be transferred to another Retirement Scheme, without the written consent of the Member concerned.
- (b) Subject to Relevant Law where it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of Members of the Plan to another Retirement Scheme, as applicable, the Trustees shall, at least one month before the implementation of the proposed transfer, notify all Members in writing of the proposal and of its implications for Members and shall also forward a copy of such notification to the FMA.
- (c) The giving of notice under subclause (b) above shall not derogate from the need to comply with Relevant Law.

A22.5 **Copies with Financial Markets Authority:** Within 5 Business Days after any amendment to this Deed is made the Trustees shall ensure that notice of the amendment is lodged with the Registrar.

A23 NOTICES

A23.1 **Method of Service:** Any document or notice to be served or required to be given to the Trustees or the Founder may be delivered personally to the registered office of the Trustees or the principal place of business of the Founder or may in the Trustees' discretion be made by facsimile, orally, or in such other manner as is acceptable to or prescribed by the Trustees. A notice given to the Trustees or the Founder shall only be effective when received by the Trustees or the Founder as the case may be.

A23.2 **Deemed service of Members:** Any notice or other document to be served on a Member shall be deemed served if:

- (a) Delivered to that Member personally or to the Member's principal place of business or place of abode;
- (b) Sent by prepaid post to the address of the Member last known to the Trustees. Any notice sent by prepaid post to a Member shall be deemed to be served three days after the date of posting.; or

- (c) Sent to that Member by telephone, facsimile, computer, videophone or other electronic medium approved by the Trustees subject to such conditions as the Trustees considers appropriate as to identification of the person making the communication or verification of the content of the communication.

A24 NEW ZEALAND LAW

A24.1 **Governing Law:** This Deed shall be construed according to the laws of New Zealand.

A25 CURRENCY

A25.1 **Payment in New Zealand dollars:** Contributions shall be paid in New Zealand currency. All amounts and Benefits payable by the Trustees in respect of this Deed shall be paid in New Zealand currency.

A25.2 **Conversion of foreign currencies:** Where, for the purposes of any provision of this Deed, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on a consistent basis fixed by the Trustees and any liability that is payable in a non-New Zealand currency shall, for the purposes of this Deed, be treated as being a liability of an amount equal to the New Zealand currency equivalent determined as aforesaid provided always that in determining the New Zealand currency equivalent of a liability payable or an amount expressed in a non-New Zealand currency, account may be taken of any contractual arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the liability.

DIVISION B: Common Rules Applying to Members of the Individual Member Section and Workplace Savings Section

B1 AMOUNT OF CONTRIBUTIONS

- B1.1 Contributions:** A Member may contribute such amount or amounts as the Member may determine from time to time provided that unless regular contributions are being made, the initial Contribution satisfies the Minimum Account Balance requirement and all Contributions if accepted by the Trustees shall be recorded in the Member Account held in respect of that Member. All Contributions shall be deemed to be made when received by the Administration Manager or (if at the time there is no Administration Manager) by the Trustees.
- B1.2 Rules applying to Contributions:** Unless the Member and the Trustees otherwise agree, the following provisions shall apply in respect of Member Contributions:
- (a) Contributions may be paid by a Member at any time;
 - (b) Any Member Contributions may be received or collected by any authorised agent on behalf of the Trustees; and
 - (c) The Trustees may at any time refuse to accept from any Member any Contribution to the Plan notwithstanding any prior agreement made to pay Contributions to the Plan by direct debit or by any other means.
- B1.3 Members' Direction:** All Contributions if accepted by the Trustees shall be applied subject to section A6 of this Deed to the Fund in accordance with the Members' direction contained in the Application Form.
- B1.4 Indexation:** On joining the Plan or at any time thereafter a Member may elect to index that Member's Base Contribution. If at 1 July of each year the Member has been a Member of the Plan for at least three months and provided the Member has not cancelled the Member's election to index the Base Contribution shall as from 1 July in each year (or as soon as practicably possible thereafter) be increased by the percentage increase in the Consumer Price Index over the twelve month period up to the end of the immediately preceding March quarter.
- B1.5 Method of payment of Contributions:** Regular Contributions shall be made by direct debit by the Trustees from an account or accounts nominated by the Member or by such other means as the Trustees may require. Irregular lump sum payments shall be made by cheque or by such other means as the Trustees may require.
- B1.6 Increase, reduction or suspension of Contributions:** A Member may from time to time by notice in writing to the Trustees increase, reduce or suspend the regular Contribution the Member is entitled to contribute to the Plan.
- B1.7 Cessation of membership:** Contributions payable by or in respect of a Member shall cease on the date the Member ceases to be a Member.
- B1.8 Contributions in relation to State Sector Employees:** Notwithstanding the rest of clause B2, where the Member is a State Sector Employee, employed by a Participating Employer, the levels of Contribution by the Member and their Participating Employer shall be in accord with those set down in that Participating Employer's Participating Agreement.
- B1.9 Cessation of Contribution by Participating State Sector Employer:** A Participating Employer who is also a State Sector Employer is entitled to cease contributing to the Plan

on behalf of any Member who ceases to be an officer or employee of that Participating Employer.

B2 MEMBERS' RIGHTS TO INFORMATION

B2.1 Right to Information: Each Member (which in the case of any joint Member shall mean each person severally) shall:

- (a) Be given, within six months of the close of each Financial Year for the Plan, a copy of the annual report of the Trustees for the Plan in respect of that Financial Year; and
- (b) Have the right, upon request:
 - (a) to receive an estimate of the Member's Benefits;
 - (b) to look at, at any reasonable time, a copy of this Deed and these rules;
 - (c) to receive, upon payment of a reasonable fee, a copy of this Deed and these rules.

B3 MEMBER ACCOUNT

B3.1 Establishment of Member Account: The Trustees shall establish and maintain an account known as a Member Account in respect of each Member of the Plan and that Member Account will be denominated in Units.

B3.2 Credits and Debits to Member Account: The Member Account will comprise Units issued in respect of:

- (a) Contributions received by the Plan from or in respect of the Member;
- (b) any Transfer Value received in respect of the Member in accordance with clause B4;
- (c) any distributions to the Member Account which the Trustees may make from the Reserve Account;
- (d) any amounts representing rebates in respect of Tax attributable to the Member;
- (e) amounts transferred from another Investment Portfolio; and
- (f) any amount received by the Plan in respect of the Member which the Trustees consider should be credited to the Member Account of the Member,

less Units cancelled in respect of:

- (g) any fees (including Withdrawal Fees) debited against the Member Account of the Member or Tax that is calculated, assessed against or payable by or in respect of the Member or the Member's interest in an Investment Portfolio or Fund.
- (h) any Benefit paid from the Member Account of the Member;
- (i) any Transfer Value paid to another Retirement Scheme;
- (j) any amount in the Member Account forfeited or paid to the Reserve Account pursuant to the provisions of this Deed;

- (k) any premiums payable under any contract entered into by the Member with the Founder or a Related Party of the Founder if that contract requires premium payments to be made by the Member and the Member has agreed to the premiums being paid by the debiting of the necessary amounts from the Member Account of the Member PROVIDED THAT such agreement and the terms and conditions of any arrangement for payment will be at the sole discretion of the Trustees including the debiting of a Withdrawal Fee (if any) and PROVIDED FURTHER THAT the agreement with the Member for the payment of the premiums will be deemed to include an acknowledgement by the Member that the Trustees and the Plan will not in any way be liable for the payment of any premiums or for any consequence of non-payment of any premiums if the Member's Accumulation will for any reason fall below the Minimum Account Balance;
- (l) amounts transferred to another Investment Portfolio; and
- (m) any other amount which the Trustees consider should be debited to the Member Account in respect of the Member.

B3.3 Minimum Account Balance: The Member's Accumulation shall not fall below the Minimum Account Balance.

B3.4 Closing of the Member Account: Upon a person ceasing to be a Member and all Benefits payable having been paid (or forfeited under clause A16.5) the Trustees may close the former Member's Member Account.

B3.5 Sub-accounts: The Trustees may open sub-accounts in respect of each Member Account or the Reserve Account as it considers necessary for the management, investment, and administration of the Plan in respect of each Investment Portfolio in which the Member or Reserve Account has an interest from time to time.

B4 TRANSFERS INTO AND OUT OF THE PLAN

B4.1 Transfers in: Subject to clause B4.1A if a Member is entitled to a benefit or payment from any other Retirement Scheme the Trustees may in their absolute discretion accept from that scheme a Transfer Value into the Plan in respect of that person and in the event that the Trustees accept such Transfer Value, the Transfer Value shall be allocated to the Member Account. Any Transfer Value received in respect of a Member shall be invested in Units in an Investment Portfolio in accordance with the Investment Direction current in respect of the Member Account at the date of receipt of the Transfer Value by the Trustees. The Trustees shall have regard to any restrictions or conditions imposed by the transferor scheme trustees on any UK Transfer Funds transferred in, on or after 6 April 2012.

B4.1A UK Pension Plan Transfers: Notwithstanding clause B4.1 above, a Member may, subject to Relevant Law, at any time apply to the Trustees to accept a UK Transfer. If any such UK Transfer is transferred into the Plan on or after 6 April 2012, the UK Transfer shall be credited to the Member's Account of the relevant Member and shall be accepted subject to the following terms and conditions:

- B4.1A.1** the pension benefits (as that term is used in the Finance Act) and any lump sum associated with those pension benefits payable to the Member under the Plan, to the extent that they relate to the UK Transfer, shall be payable no earlier than they would be if pension rule 1 in section 165 of the Finance Act applied; and
- B4.1A.2** such other terms and conditions as are agreed between the scheme manager of the registered pension scheme from which the UK Transfer is to be transferred and the Trustees and/or such other terms and conditions as the Trustees may determine as being necessary or desirable or in the interests of the relevant Member or the Plan, having regard to applicable laws and HMRC requirements.

- B4.2 Transfers out:** The Trustees may in their absolute discretion if requested by a Member transfer to another Retirement Scheme all the Member's Accumulation whereupon the Member shall cease to be a Member and the Trustees shall not be bound to see to the subsequent application of the Transfer Value. The Trustees shall be entitled to charge and deduct from the Member's Account a Withdrawal Fee or any other amount that the Trustees, at their discretion, consider appropriate in respect of the transfer provided that the Trustees may with the consent of the Founder waive all or part of the Withdrawal Fee in their absolute discretion. Any transfers from the Plan shall be in accordance with the relevant requirements of the Act and will satisfy any requirements imposed by the HMRC, as may be applicable.
- B4.3 State Sector Employee Transfers:** If a State Sector Employee is entitled to a benefit or payment from any other Retirement Scheme the Trustees shall accept from that scheme a Transfer Value into the Plan in respect of that person and the Transfer Value shall be allocated to the Member Account. Any Transfer Value received in respect of a Member shall be invested in Units in an Investment Portfolio in accordance with the Investment Direction current in respect of the Member Account at the date of receipt of the Transfer Value by the Trustees.

B5 MEMBERS' WITHDRAWAL RIGHTS

B5.1 Normal or Early Retirement:

- (a) Any Benefit becoming payable to or in respect of a Member at Normal Retirement Date or Early Retirement Date will exclude any UK Transfer transferred into the Plan on or after 6 April 2012. Where a UK Transfer has been accepted pursuant to clause B4.1A, any withdrawal benefits to the extent they relate to the UK Transfer shall be paid to the relevant Member in accordance with the terms and conditions set out in clause B4.1A.1 - B4.1A.2. Notwithstanding clause B5.1, a Benefit, comprising as the Member shall request all or part of the Member's Accumulation, will be payable to a Member upon the Member giving two months' prior written notice (or such lesser notice as the Trustees in their absolute discretion may accept) of withdrawal without deduction of any Withdrawal Fee, but subject to deduction of any other amount that the Trustees, at their discretion, consider appropriate, in the following circumstances:
- (a) Where the Member has attained the Normal Retirement Date, or
 - (b) The Early Retirement of the Member.
- (b) If a Member is entitled to a Benefit in terms of this clause as a result of that Member attaining the Normal Retirement Date or Early Retirement, the Member shall be entitled to:
- (a) Continue to make Contributions to the Plan; or
 - (b) Cease making Contributions to the Plan but be entitled to maintain a Member Account provided that the balance in such Member Account is greater than the Minimum Account Balance; or
 - (c) Arrange with the Trustees (subject to their approval and on such terms and conditions as they may from time to time impose) for amounts to be deducted from the Member Account of a Member and paid to the Member on a regular or as required basis. Such arrangement shall continue for so long as there remains a positive balance in the Member Account from which payments are being deducted by the Trustees sufficient to cover the amount of such payments or provision for amounts assessed or payable in respect

of the Member to be made to the Member's nominated account or until otherwise terminated by either the Member or the Trustees. The option contained in this clause is only available in respect of amounts invested by the Member in the conservative asset Investment Portfolio.

B5.2 Death, Permanent Disability or Permanent Emigration: Any Benefit payable in respect of Permanent Disability or the Permanent Emigration of the Member will exclude any UK Transfer accepted into the Plan on or after 6 April 2012. Where UK Transfer have been transferred to the Plan pursuant to clause B4.1A, any withdrawal benefits shall be paid to the relevant Member in accordance with the terms and conditions set out in clause B4.1A.1 - B4.1A.2. Notwithstanding clause B5.1 a Benefit, comprising all of the Member's Accumulation, will be payable to a Member upon the Member giving two months' prior written notice (or such lesser notice as the Trustees in their absolute discretion may accept) of withdrawal without deduction of any Withdrawal Fee, but subject to deduction of any other amount that the Trustees, at their discretion, consider appropriate, in the following circumstances:

- (a) The death of the Member or either Member in the case of joint membership; or
- (b) The Member suffering a Permanent Disability; or
- (c) The Permanent Emigration of the Member.

B5.3 Investment Portfolios: Unless the Member otherwise instructs the Trustees the amount of any partial withdrawal shall be withdrawn pro rata against all Investment Portfolios in which the Member Account of that Member is invested as at the date of withdrawal.

B6 SPECIAL PROVISIONS RELATING TO BENEFITS ON DEATH OF A MEMBER

B6.1 Death Benefit:

- (a) If a Member in whose sole name a Member Account has been established or in whose sole name a Member Account stands dies either before or after attaining the Normal Retirement Date, a death benefit shall be payable from that Member Account on application by the Member's estate and subject to the completion of legal formalities and proofs.
- (b) If a Member in respect of whom there is a joint Member Account dies before or after attaining the Normal Retirement Date, the Member Account relating to the deceased Member shall (subject to completion of legal formalities) be transferred into the sole name of the surviving Member. If the surviving Member elects to remain a Member, the surviving Member shall be entitled upon two months prior written notice (or such lesser notice period as the Trustees in their absolute discretion may accept) and without deduction of any Withdrawal Fee, but subject to deduction of any other amount that the Trustees, at their discretion, consider appropriate, to withdraw all the Member's Accumulation notwithstanding that the surviving Member might not otherwise be entitled to be paid a Benefit. In all other respects the surviving Member shall be a Member of the Plan and the provisions of this Deed shall apply accordingly.
- (c) The death benefit payable under clause B5.2(a) shall be a lump sum equal to the Member's Accumulation as at the date of payment and on such date no further Benefits will be payable from the Plan in respect of the Member.

DIVISION C: Rules Applying to the Individual Member Section

C1 ELIGIBILITY

This Division C applies to natural persons who have joined the Plan before the Effective Date. From the Effective Date no new members will be accepted to the Individual Member Section.

C2. JOINT MEMBERSHIP

Where a Member comprises more than one person:

- (a) The joint Members shall be liable jointly and severally for all Contributions required to be paid into the Plan.
- (b) Unless the joint Members direct the Trustees in writing to the contrary the Member's Contributions shall be allocated equally between the persons in whose name the Member Account stands.
- (c) Save as otherwise provided in this Deed, the Trustees shall treat the Member Account as a joint account and shall not, except as ordered by a court of competent jurisdiction, be bound to recognise any tenancy in common relating to the Member Account or any equitable claim to or interest in the Member Account.
- (d) Joint Members may direct the Trustees in writing to establish separate Member Accounts for each joint Member. Any such direction shall be signed by both joint Members and shall be treated as a request for a full withdrawal of the Member's Accumulation and the provisions of this Deed shall apply accordingly including without limitation the payment of a Withdrawal Fee and the crediting of Interim Interest. Following the establishment of separate Member Accounts as provided in this clause, each former joint Member shall be deemed to be a Member of the Plan and the provisions of this Deed shall apply to each individual Member accordingly.
- (e) One of the joint Members (the "assignor") may assign his/her interest in the Member Account to the other joint Member (the "assignee") on directing the Trustees in writing to that effect whereupon the Trustees shall transfer the Member Account into the sole name of the assignee.
- (f) A Member may request the Trustees to transfer his or her Member Account into the joint names of that Member and one other person who shall also be a Member to the intent that the account shall thereupon be held as a joint Member Account.
- (g) Except as otherwise provided in this Deed or by Relevant Law any direction or instruction given to the Trustees or any delegate in accordance with the provisions of this Deed shall be signed by both joint Members or their respective duly authorised attorneys.
- (h) Subject to the requirements of Relevant Law relating to notices to be given to Members:
 - (a) Only the person whose name appears first on the Application Form shall be entitled to receive notices or other communications from the Trustees or any delegate and any notice or other communication given to such person shall be deemed to be given to all the joint holders.
 - (b) On the death of a joint applicant the survivor of them shall be the only person recognised by the Trustees as having any interest in

the deceased's Member Account but the Trustees may require such evidence of death as they may deem fit.

- (c) If the Trustees have accepted more than one individual as a joint Member, they may determine the Prescribed Investor Rate for the joint Member as if they were a single Member at the Trustees discretion for the purpose of calculating PIE Tax and any attribution of tax payable to the joint Members.

C3 EARLY WITHDRAWAL

Subject to clause A16.3 the Trustees may in their sole and absolute discretion permit a Member to withdraw all or part of the Member's Accumulation at any time prior to the Normal Retirement Date and on such terms and conditions as the Trustees think fit provided that (1) any Benefit will exclude any UK Transfer Funds transferred into the Plan on or after 6 April 2012; and (2) the Member shall give the Trustees two months' prior written notice (or such lesser notice as the Trustees in their absolute discretion may accept) of its request to withdraw. Where a UK Transfer has been accepted pursuant to clause B4.1A, any withdrawal benefits to the extent they relate to the UK Transfer shall be paid to the relevant Member in accordance with the terms and conditions set out in clause B4.1A.1 - B4.1A.2.

C4 PAYMENT OF JOINT BENEFITS

In any case where a Member Account stands in the name of two persons an application for a Benefit (except a death benefit) must be signed by each of them severally and the Benefit will be paid to the Members jointly or to the Members in such proportion as both of them agree and direct the Trustees in writing.

C5 CESSATION OF MEMBERSHIP

A Member shall cease to be a Member of the Plan:

- (a) At the discretion of the Trustees where the Member's Accumulation falls below the Minimum Account Balance; or
- (b) Once the Plan has been wound up in accordance with clause A16 of this Deed; or
- (c) If the Member is a trustee of a Retirement Scheme, upon the Retirement Scheme of which the Member is trustee being deregistered under the Act.

DIVISION D: Rules Applying to Members of the Workplace Savings Section

D1. ADMISSION TO MEMBERSHIP

ADMISSION OF MEMBERS

D1.1 Admission: Subject to D1.1A natural persons shall be admitted to membership of the Scheme on or after the Effective Date by contracting directly with the Trustees to become a Member of the Scheme

D1.1A The following persons may become a Member of the Scheme under the Workplace Savings Section:

- (a) persons who are Eligible Members;
- (b) persons who are employed by Medical Assurance Society New Zealand Limited;
- (c) any member of Medical Assurance Society New Zealand Limited from a profession other than those described in the definition of Eligible Member, and other than a member described in paragraphs (a) and (b) above, at the Trustees' complete discretion and considered on a case by case basis (Other Members), provided that the Trustees remain satisfied that Medical Assurance Society New Zealand Limited continues to have a definable community of interest, taking into account the nature and number of Other Members and the proportion of Other Members to total Members of Medical Assurance Society New Zealand Limited; and
- (d) persons who are immediate family members, or are wholly or partially financially dependent on, a person in one or more of the classes persons described in paragraphs (a) to (c) above. For the purposes of this paragraph (d), immediate family member in relation to a person means a person's spouse, civil union partner, de facto partner, parent, child, step parent or step child.

D1.1AB Deemed acceptance: On admission to Membership of the Scheme pursuant to clause D1.1A, a Member shall be deemed to have consented to the Trustees and the Administration Manager obtaining, holding, using and disclosing personal information in respect of the Member.

D1.2 Any natural person or any Trustee of a Retirement Scheme shall be eligible to become a Member of the Plan subject to:

- (a) Being accepted for membership by the Trustees.
- (b) Such conditions relating to the membership as the Trustees from time to time determine, and the person accepting the conditions of membership; and
- (c) Supplying such information as the Trustees may require.

D1.3 Employees of Participating Employers: Any person who becomes an employee of a current Participating Employer shall become eligible to become a Member of the Plan if the Employer agrees to contribute to the Plan on that person's behalf.

D1.4 Acceptance or refusal of application: The Trustees may in their sole discretion accept or refuse an application for membership and in the case of a refusal shall not be obliged to give any reason for such refusal.

D1.5 Information to be supplied before a person becomes a Member:

- (a) Each natural person (and in the case of a joint application each of them severally) or trustee of a Retirement Scheme, before becoming a Member of the Plan, shall be advised in writing of:
 - (a) details of Contributions payable;
 - (b) any charges or fees payable in addition to any Contributions;
 - (c) the Members' principal rights and Benefits including rights and Benefits upon the closure of the Plan and upon the Plan being wound up;
 - (d) any circumstances that it would be reasonable to expect the Trustees to foresee in which any Benefit could be expected to reduce over time;
 - (e) any circumstances that it would be reasonable to expect the Trustees to foresee in which, given the nature of the Plan, any Member could be expected to receive less from the Plan than the Contributions made by that Member to the Plan; and
 - (f) the Members' rights to request information required to be supplied by rule B2.1.
- (b) Every natural person (and in the case of a joint application each of them severally) shall be given a copy of the most recent annual report of the Plan; or, if there is no such report, be advised in writing of:
 - (a) the names of the present Trustees and of any Administration Manager and every Investment Manager; and
 - (b) the name and address of the person to whom all correspondence from the Member to the Trustees shall be sent.

D1.6 Application for Membership: A trustee of a Retirement Scheme who wishes to join the Plan shall:

- (a) Complete the Application Form;
- (b) Submit such evidence of age (if appropriate) as may be required by the Trustees;
- (c) Provide such other information which may reasonably be required by the Trustees; and
- (d) Agree in writing to be bound by the terms and conditions of this Deed.

D1.7 Benefit on resignation: If a Member ceases to be employed in the industry of professionals listed in the definition of the Eligible Member the benefit payable shall be a lump sum equal to the Members Accumulation as at the date of payment and on such date no further Benefits will be payable from the Plan in respect of the Member.

D1.8 Cessation of Membership: A Member shall cease to be a Member of the Plan:

- (a) The Member ceasing to be employed in the industry of professionals listed in the definition of Eligible Member; or

- (b) At the discretion of the Trustees where the Member's Accumulation falls below the Minimum Account Balance; or
- (c) Once the Plan has been wound up in accordance with clause A16 of this Deed; or
- (d) If the Member is a trustee of a Retirement Scheme, upon the Retirement Scheme of which the Member is trustee being deregistered under the Act.

EXECUTED AS A DEED

**MEDICAL ASSURANCE SOCIETY
NEW ZEALAND LIMITED** by:

SIGNED by RICHARD JAMES TYLER:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

**SIGNED by ALASTAIR CHARLES
HERCUS::**

Signature of witness

Name of witness

Occupation of witness

City/town of residence

**SIGNED by DANELLE RAEWYN
DINSDALE:**

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signature of director

Name of director

Signature of director

Name of director

Signature of Richard James Tyler

Signature of Alastair Charles Hercus

Signature of Danelle Raewyn Dinsdale

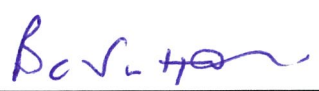
**SIGNED by BRETT CHRISTOPHER
SUTTON:**

Signature of witness

Name of witness

Occupation of witness

City/town of residence


Signature of Brett Christopher Sutton

**SIGNED by BRENDAN GERARD
O'DONOVAN:**

Signature of witness

Name of witness

Occupation of witness

City/town of residence


Signature of Brendan Gerard O'Donovan

EXECUTED AS A DEED

**MEDICAL ASSURANCE SOCIETY
NEW ZEALAND LIMITED** by:

Signature of director

Name of director

Signature of director

Name of director

SIGNED by RICHARD JAMES TYLER:

Signature of Richard James Tyler

Signature of witness

Name of witness

Occupation of witness

City/town of residence

**SIGNED by ALASTAIR CHARLES
HERCUS:**

Signature of Alastair Charles Hercus

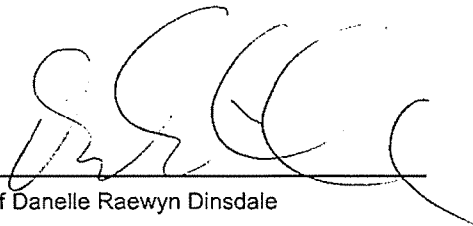
Signature of witness

Name of witness

Occupation of witness

City/town of residence

**SIGNED by DANELLE RAEWYN
DINSDALE:**



Signature of Danelle Raewyn Dinsdale

Signature of witness

Name of witness

Occupation of witness

City/town of residence