

NZAS Retirement Fund

Trust Deed

New Zealand Aluminium Smelters Limited
(*Company*)

NZAS Retirement Fund Trustee Limited (*Trustee*)

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NZAS RETIREMENT FUND – TRUST DEED

Date: 23 January 2024

PARTIES

New Zealand Aluminium Smelters Limited, a company incorporated in New Zealand with its registered office in Invercargill (*Company*)

NZAS Retirement Fund Trustee Limited, a company incorporated in New Zealand with its registered office in Wellington (*Trustee*)

BACKGROUND

- A The NZAS Retirement Fund (*Fund*), formerly the Rio Tinto New Zealand Retirement Fund, is an employer-related workplace savings scheme registered under the Financial Markets Conduct Act 2013 (*Act*).
- B The Fund was established by a trust deed dated 26 May 1995 and is currently governed by a trust deed dated 30 June 2023 (*Existing Deed*).
- C The Company wishes to amend the Existing Deed by substituting this Deed for the Existing Deed in order to prescribe:
 - (a) a facility for a Member to make a withdrawal from the Member’s Standard Account Balances (on materially the same terms as the KiwiSaver first home withdrawals facility) for the purpose of purchasing a first home; and
 - (b) other more minor amendments and updates.
- D The Trustee has consented to the proposed amendments (as evidenced by its execution of this Deed).
- E The Trustee is satisfied that the amendments to be made by this Deed are permissible as the requirements of clause 26 of the Existing Deed have been met and the amendments will not have a material adverse effect on the Members (as defined in this Deed).
- F The Financial Markets Authority has consented, pursuant to sections 139(1)(a) and 139(2)(a)(ii) of the Act, to the amendments comprised in this Deed.
- G The Trustee has obtained a certificate from its solicitor to the effect that the Existing Deed, as amended by this Deed, will continue complying with sections 135 to 137 of the Act on the basis set out in the certificate.

BY THIS DEED, with the intent that:

- (a) the Assets of the Fund (as defined in *clause 1.2*) will continue being held on the same trusts as before; and
- (b) the Fund will otherwise be operated, governed and administered as provided in this Deed;

the Existing Deed is amended with effect on and from the Effective Date by substituting all of its provisions with the provisions of this Deed as set out below.

1 INTERPRETATION AND DEFINITIONS

Interpretation

- 1.1 In the interpretation of this Deed, unless the context otherwise requires:
- 1.1.1 *Defined terms:* Words or phrases (other than proper names) appearing with capitalised initial letters are defined terms and have the meanings given to them in this Deed;
 - 1.1.2 *Headings:* The headings in this Deed are for convenience only, and shall not affect its interpretation;
 - 1.1.3 *Related Terms:* Where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
 - 1.1.4 *Singular, Plural and Gender:* The singular includes the plural and vice versa, and words importing one gender include the other genders;
 - 1.1.5 *Statutory References:* Any reference to a statute or regulation includes any amendment or re-enactment and, in the case of a statute, includes any regulations made under that statute;
 - 1.1.6 *Governing Law:* This Deed shall be governed and construed and shall take effect in accordance with the laws of New Zealand. All parties to this Deed and all Beneficiaries shall accept and be subject to the jurisdiction of the Courts of New Zealand;
 - 1.1.7 *Footnotes:* Footnotes used in this Deed do not form part of the Deed, are a guide only, do not affect the interpretation of the Deed and (where they refer to legislative provisions) are not intended to incorporate those provisions in the Deed; and
 - 1.1.8 *References:* Any reference:
 - (a) to an account established, maintained, credited or debited, an election or nomination made or any other action taken or thing done (each an *Action*) under, in accordance with or pursuant to a provision of this Deed at or in respect of a date before the date of entry into force of this Deed (*Relevant Date*) shall be a reference to an equivalent Action taken under, in accordance with or pursuant to a materially corresponding provision in the deed governing the Fund as at the Relevant Date; and
 - (b) to the operation or effect of a provision of this Deed at or in respect of a date before the Relevant Date shall be a reference to the operation or effect of a materially corresponding provision in the deed governing the Fund as at the Relevant Date.

Definitions

1.2 In this Deed unless the context requires otherwise:

Act means the Financial Markets Conduct Act 2013;

Actuary means a person who is a Fellow of the New Zealand Society of Actuaries appointed by the Trustee as the Actuary for the Fund;

Allocated Rate of Earnings means, in respect of the Insurance Account balance, all or any part of a Member's Standard Account Balances and the balances in any Locked-in Account or Retirement Account, the rate of earnings (whether positive, negative, or zero) determined by the Trustee from time to time under *clause 7.2* with respect to the Fund or (where *clause 24* applies) the relevant Investment Portfolio;

Assets of the Fund means the assets for the time being held by the Trustee (and/or by a Custodian appointed pursuant to *clause 23.4.4* or *clause 23.5*) for the purposes of the Fund, as more particularly described in *clause 2.6*;

Associated Company means any company or other entity which is a related body corporate of the Company within the meaning of the Act and which is notified by the Company to the Trustee as being an Associated Company for the purposes of this Deed;

Auditor means the person (being a licensed auditor or registered audit firm under the Auditor Regulation Act 2011) appointed by the Trustee as the auditor of the Fund, or the firm of persons so appointed;

Basic Insurance Charge means in relation to a Member such amount as is determined from time to time by the Trustee, after obtaining the advice of the Actuary, as appropriate to make provision for Basic Insurance Cover in the event of the death or Total Disablement or Ill-health of the Member;

Basic Insurance Cover means in relation to a Member:

- (a) who ceases to be an Employee by reason of death or Total Disablement, an amount calculated as 8% of the Member's Salary at the date of death or Total Disablement multiplied by each complete year (and pro rata for complete months of an incomplete year) of the Member's Potential Insured Membership PROVIDED THAT the Member's Basic Insurance Cover shall not exceed 3 times the Member's Salary at the date of death or Total Disablement;
- (b) who ceases to be an Employee by reason of Ill-health, one half of the amount calculated in paragraph (a) of this definition;

Beneficiary means a Member or other natural person entitled to a Benefit under the Fund;

Benefit means any amount paid or payable (as the case requires) by the Trustee out of the Assets of the Fund pursuant to this Deed to or in respect of a Beneficiary (and includes, for the avoidance of doubt, Deferred Benefits and Insured Benefits);

Board means Directors of the Trustee who number not less than the required quorum acting together as the Board of Directors of the Trustee;

Company means New Zealand Aluminium Smelters Limited, or any other company nominated by New Zealand Aluminium Smelters Limited which has agreed to become the Company for the purposes of this Deed, or any successor to the Company under *clause 29*;

Complying Fund Rules means complying fund rules as defined in section YA 1 of the Income Tax Act;

Complying Superannuation Fund means a workplace savings scheme that is identified as a complying superannuation fund on the register of managed investment schemes maintained under the Act (and in rule 3(b) of the Schedule, means the section of that scheme that is subject to Complying Fund Rules);

Custodian means the Trustee or a person appointed to hold any of the Assets of the Fund under *clause 23.4.4* and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold any Assets of the Fund under *clause 23.5*;

Deed means this deed as amended from time to time and includes the Schedule;

Deferred Benefit means the benefit provided under *clause 11*;

Director means a director of the Trustee;

Employee means:

- (a) a natural person who is in the Service of a Participating Company, and includes a director of a Participating Company who is also in the Service of a Participating Company; or
- (b) a natural person who has become a *permanent employee* (as defined in section 147(3) of the KiwiSaver Act) of a Participating Company;

Effective Date means 2 February 2024;

Equivalent Overseas Scheme means an equivalent overseas retirement scheme as defined in the Regulations;¹

¹ Regulation 82(3).

ESCT means employer's superannuation contribution tax or any similar tax or charge;

FMA means the Financial Markets Authority or any successor entity;

Fund means the NZAS Retirement Fund;

Fund Year means a period of 12 months commencing with 1 July in any year;

Ill-health in relation to a Member means physical or mental ill-health (not amounting to Total Disablement) of the Member caused through illness, infirmity or accident which, in the opinion of the Trustee after consideration of medical evidence, any statement from the Participating Company and such other matters as the Trustee thinks fit, renders the Member unable to perform:

- (a) their normal duties, performed for the Participating Company before they ceased Service with the Participating Company; and
- (b) the duties of any other position with the Participating Company for which the Member is considered to be reasonably suited,

such duties being as determined and advised to the Trustee by the Participating Company PROVIDED THAT where the Trustee has taken out an Insurance Policy to provide all or any of the Insured Benefits, but the Insurance Policy contains a definition of *Ill-health* that differs from this definition (but excluding this proviso) the definition in the Insurance Policy shall prevail;

Income Tax Act means the Income Tax Act 2007;

Insurance Account means the Insurance Account maintained under *clause 6.7*;

Insurance Policy means a policy of insurance with an Insurer under which all or part of Basic Insurance Cover or Optional Insurance Cover, or both, may be provided;

Insured Benefit means a benefit payable to a Member under *clause 8.1.3, 8.1.4, 9.1.2 or 9.1.3*;

Insurer means any Life Insurance Company which insures the Insured Benefits under the Fund;

Investment Portfolio means, respectively:

- (a) an investment portfolio maintained under *clause 24.1*;
- (b) a default investment portfolio determined under *clause 24.5*; and
- (c) the investments in which the Reserve Account and Insurance Account balances are comprised;

KiwiSaver Act means the KiwiSaver Act 2006;

KiwiSaver Scheme means a KiwiSaver scheme as defined in section 4(1) of the KiwiSaver Act;

KiwiSaver Scheme Rules means the KiwiSaver Scheme Rules set out in Schedule 1 to the KiwiSaver Act;

Licensed Independent Trustee means a licensed independent trustee for the purposes of the Act whose licence covers the Fund and who is independent as defined in the Act;²

Life Insurance Company means a life insurer as defined in section 6(1) of the Insurance (Prudential Supervision) Act 2010;

Locked-in Account means in respect of a Member the Locked-in Account maintained under *clause 6.13*;

Maximum Member Contribution Rate means in respect of a Member the greater of 20% of Salary and the rate, expressed as a Salary percentage, at which (as applicable):

- (a) the Member was contributing to the Fund as at 30 June 2013; or
- (b) the Participating Company was contributing to a Member's No.2 Company Account for the Member's benefit as at 30 June 2013;

Member means an Employee who has been admitted to membership of the Fund, and includes any person whose Service (or employment with a Participating Company, in the case of an Unsubsidised Member) has ceased, until they have received in full the Benefit to which they are entitled under this Deed;

Member's Account means in respect of a Member the Member's Account maintained under *clause 6.1.1*;

Member's Company Account means in respect of a Member the Member's Company Account maintained under *clause 6.1.3*;

Member's No. 2 Company Account means in respect of a Member any Member's No. 2 Company Account maintained under *clause 6.1.2*;

Member's Transfer Account means in respect of a Member the Member's Transfer Account maintained under *clause 6.1.4*;

Membership means a period during which a Member is a Member of the Fund and includes any period of Temporary Absence;

² Section 131(3).

NZ Super Age means in relation to a Member the age specified in section 7 of the New Zealand Superannuation and Retirement Income Act 2001;

Optional Insurance Charge means in relation to a Member such amount as is determined from time to time by the Trustee, after obtaining the advice of the Actuary, as appropriate to make provision for Optional Insurance Cover in the event of the death or Total Disablement or Ill-health of the Member on terms and conditions and at levels agreed between the Trustee and the Member;

Optional Insurance Cover means in relation to a Member the amount of optional death or Total Disablement or Ill-health cover which the Trustee and the Member have agreed will be provided in respect of the Member from time to time. The Optional Insurance Cover shall be:

- (a) in the case of a Member who ceases to be an Employee by reason of death or Total Disablement, an amount calculated as either 4% or 8% (as agreed between the Trustee and the Member) of the Member's Salary at the date of death or Total Disablement multiplied by each complete year (and pro rata for complete months of an incomplete year) of the Member's Potential Insured Membership PROVIDED THAT the Member's Optional Insurance Cover when added to the Member's Basic Insurance Cover shall not exceed, respectively, 4.5 or 6 times the Member's Salary at the date of death or Total Disablement; and
- (b) in the case of a Member who ceases to be an Employee by reason of Ill-health, one half of the amount calculated in paragraph (a) of this definition;

Participating Company means New Zealand Aluminium Smelters Limited and any Associated Company admitted to participation in the Fund by the Company in accordance with *clause 26*. Any requirement or demand that may be made on a Participating Company may be made on the Company itself. *Participating Company* in respect of a Member or an Employee means the Participating Company by which the Member or Employee is employed;

Personal Representative means a personal representative as defined in section 4(1) of the KiwiSaver Act;

Potential Insured Membership in relation to a Member means the period from the date when the Member ceases to be an Employee (by reason of death or otherwise) to the date when the Member would have attained NZ Super Age;

Register means the register of Members maintained for the Fund pursuant to the Act;³

Regulations means the Financial Markets Conduct Regulations 2014;

³ Section 215.

Related Party has the meaning given to it by the Act;⁴

Related Party Benefit has the meaning given to it by the Act;⁵

Reserve Account means the Reserve Account maintained under *clause 6.2*;

Retirement Account means in respect of a Member the Retirement Account maintained under *clause 6.11*;

Retirement Scheme means a retirement scheme as defined in the Act;

Returning Officer means the Secretary, when acting in the capacity of Returning Officer as contemplated by *clause 18.3.1*;

Salary means the annual base remuneration received by a Member from a Participating Company exclusive of:

- (a) director's fees in the case of a Member who is a director of the Participating Company; and
- (b) allowances, overtime, bonuses, commissions or any exceptional payments made to the Member (as determined by the Company).

If the annual base remuneration received by a Member from a Participating Company is reduced for the purpose of any arrangement whereby the Participating Company contributes to a Member's No. 2 Company Account then, for the purposes of this Deed, the Member's Salary shall be determined as if the reduction had not occurred;

Schedule means the schedule included at the end of this Deed;

Secretary means the Secretary appointed under *clause 19.1.6*;

Serious Illness means serious illness as defined in clause 12(3) of the KiwiSaver Scheme Rules;

Service means continuous permanent employment with one or more Participating Companies and includes any period of Temporary Absence. In the event of any doubt as to whether the requirements of Service have been fulfilled the decision of the Participating Company shall be final;

Significant Financial Hardship means significant financial hardship as defined in clause 11 of the KiwiSaver Scheme Rules;

SIPO has the meaning given to it by the Regulations;⁶

⁴ Section 172(2).

⁵ Section 172(1).

Standard Accounts means in respect of a Member means the Member's Account, the Member's Company Account, the Member's No. 2 Company Account and the Member's Transfer Account;

Standard Account Balances in respect of a Member means the total of the balances from time to time in the Member's Account, the Member's Company Account, the Member's No. 2 Company Account and the Member's Transfer Account;

Supplementary Balance at any date in relation to a Member means the portion of the balance in any Member's No. 2 Company Account maintained for that Member which is attributable to contributions made by a Participating Company at a rate or in amounts (after deducting ESCT) that, together with any ongoing contributions from the Member under *clause 4.1* or *clause 4.3*, exceeded, when made, the greater of:

- (a) 4% of the Member's Salary; and
- (b) the rate (expressed as a percentage of Salary) at which the Member was contributing to the Fund immediately before the Participating Company began contributing to the Member's No. 2 Company Account,

plus earnings on those excess contributions at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*;

Tax File Number means a tax file number as defined in section YA 1 of the Income Tax Act;

Temporary Absence in respect of a Member means:

- (a) any period of absence from Service due to parental leave or any period of preference (in terms of the Parental Leave and Employment Protection Act 1987) as determined by the Participating Company; or
- (b) any other period of absence from Service approved by the Participating Company for the purposes of the Fund; or
- (c) any period of absence from attendance at work during the usual hours of employment of the Member during which absence the Member does not receive remuneration from a Participating Company,

but does not include any such period of absence that the Participating Company and the Member agree should not be treated as Temporary Absence for the purposes of the Fund;

Total Disablement in relation to a Member means absence from Service for six consecutive months, or such lesser period as determined by the Trustee, by reason of physical or mental incapacity that is of such extent that the Trustee in

⁶ Regulation 5.

its discretion determines that the Member is unlikely ever to engage in or work for reward to a significant extent in any occupation or work for which the Member is reasonably qualified by education, training or experience. For the purposes of applying this definition, the Trustee shall obtain and consider such medical and vocational advice and evidence as it considers appropriate and have regard to the previous employment and other characteristics of the person considered relevant by the Trustee to its consideration PROVIDED THAT where the Trustee has taken out an Insurance Policy to provide all or any of the Insured Benefits, but the Insurance Policy contains a definition of Total Disablement that differs from this definition (but excluding this proviso) the definition in the Insurance Policy shall prevail;

Where this Deed refers to the date of a Member's Total Disablement, this means (subject in the case of any Insured Benefit to the terms and conditions of any Insured Policy in relation to a Member) the date at the end of the six-month period referred to above, or if the Trustee determines that a lesser period is appropriate, the date which the Trustee so determines;

Trustee means NZAS Retirement Fund Trustee Limited or such other person as is appointed from time to time as the trustee of the Fund;

Trusts Act means the Trusts Act 2019; and

Unsubsidised Member means a person who is eligible to join the Fund by reason of coming within paragraph (b) (and who does not come within paragraph (a)) of the *Employee* definition.

- 1.3 Terms implied into this Deed by the Act will apply for so long as they are implied into this Deed under the Act (despite anything to the contrary in this Deed) and any provision in this Deed that is contrary to any such implied term will be void to the extent that it is contrary.
- 1.4 Where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Fund and relate to any matter which is required by the Act to be provided for adequately in this Deed, the provisions of this Deed which deal with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of the Fund.

2 CONTINUATION AND ADMINISTRATION OF FUND

- 2.1 The Fund is continued as an employer-related restricted workplace savings scheme for the purposes of the Act on the terms and conditions contained in this Deed.
- 2.2 The purposes of the Fund are to provide:
 - 2.2.1 retirement benefits directly to Members; and
 - 2.2.2 benefits to Members on ceasing employment with a Participating Company (whether immediately on ceasing that employment or subsequently);

- including (except as provided elsewhere in this Deed) additional benefits for Members who cease to be Employees due to Ill-health or die or become Totally Disabled while in the Service of a Participating Company.
- 2.3 The Fund shall be administered in accordance with the provisions of this Deed which shall be binding on the Participating Companies, the Trustee, and all Members and Beneficiaries (and any person claiming under this Deed) as if each of them were a party to this Deed.
- 2.4 The Trustee is responsible for managing the Fund and (in particular) for performing the functions set out in the Act⁷, and must ensure that the Fund continues to comply with, and the Trustee continues to meet, all initial and ongoing registration requirements applying to the Fund and the Trustee under the Act.⁸
- 2.5 The Fund shall continue being known as the NZAS Retirement Fund. The Trustee may change the name of the Fund by resolution at any time.
- 2.6 The Assets of the Fund shall consist of:
- 2.6.1 the assets held by the Trustee at the date of this Deed and subject to the trusts of the Fund;
 - 2.6.2 contributions paid to the Fund by Members and by the Participating Companies;
 - 2.6.3 any assets transferred to the Fund; and
 - 2.6.4 income from any source whatsoever together with all other property received, derived, or acquired by the Trustee for the purposes of the Fund;
- less any amounts paid from the Fund from time to time by the Trustee pursuant to this Deed.
- 2.7 The Assets of the Fund shall (subject to *clauses 23.4.4* and *23.5*) continue being held upon trust by the Trustee for the purposes of the Fund in accordance with the Act and the Regulations⁹, and shall be administered by the Trustee in accordance with this Deed.
- 2.8 Notwithstanding any other provision of this Deed, in the event of any inconsistency between this Deed and the Act or the Regulations the Act and the Regulations will prevail.

⁷ Section 142(1).

⁸ Sections 127, 130, 131 and 133.

⁹ Sections 156(2) and 157 to 159.

- 2.9 In the event of any inconsistency between a provision in this Deed and a provision in the Trusts Act that applies to the Fund unless modified or excluded by the express or implied terms of this Deed:
- 2.9.1 to the extent permitted by the Trusts Act, the relevant provision in this Deed will prevail and the Trusts Act provision will be deemed modified or excluded (as appropriate) by this Deed; and
 - 2.9.2 where modification or exclusion of the relevant Trusts Act provision is not permitted, that provision in this Deed (if contrary to that Trusts Act provision) will be void to the extent that it is contrary;
- and without limiting the preceding provisions of this *clause 2.9*, each of:
- 2.9.3 section 31 (duty not to exercise power directly or indirectly for own benefit);
 - 2.9.4 section 34 (duty to avoid conflict of interest);
 - 2.9.5 section 36 (duty not to profit); and
 - 2.9.6 section 37 (duty to act for no reward);
- of the Trusts Act is modified to the extent contemplated by *clause 18.4, clause 19.1.10, clause 21.2, clause 22.2 and clause 33*.

3 MEMBERSHIP

Eligibility

- 3.1 Every person to whom paragraph (b) of the *Employee* definition applies shall be eligible to become a Member by notice in writing to the Trustee in the form prescribed from time to time by the Trustee.
- 3.2 Any other Employee may apply to become a Member on the invitation of the Participating Company by which they are employed. The invitation of the Participating Company may be given to individuals or to groups of individuals and may be a standing invitation.
- 3.3 Any Employee who applies to the Trustee under *clause 3.2* to become a Member shall use the application form prescribed from time to time by the Trustee.
- 3.4 Membership of the Fund shall, unless otherwise agreed to by the Member, the Participating Company and the Trustee, take effect on and from the date when (as applicable) the Trustee receives the Member's notice under *clause 3.1* or accepts the Member's application under *clause 3.2*.
- 3.5 On joining the Fund, every Employee agrees:
- 3.5.1 to be bound by the provisions of this Deed as a Member;
 - 3.5.2 to disclose to the Trustee, and authorise disclosure of, personal information between the Company, the Participating Companies, the Trustee, and advisers, administration managers and Insurers for the

purposes of the Fund; and

- 3.5.3 to authorise deductions of contributions from Salary in accordance with *clause 4.2*.
- 3.6 Every Employee who is eligible to become a Member shall, before becoming a Member, be provided with a product disclosure statement prepared in accordance with the Act and the Regulations.
- 3.7 Each Member shall have the right upon request:
- 3.7.1 to receive an estimate of the Member's Benefits;
- 3.7.2 to look at, at any reasonable time, a copy of this Deed;
- 3.7.3 to receive, upon payment of a reasonable fee, a copy of this Deed.
- 3.8 Where any disclosure document or register entry relating to the Fund contains a statement to the effect that a document or other information is available from the Trustee on request, the Trustee must (after receiving such a request) provide the document or other information requested as soon as practicable but in any event within 5 working days.¹⁰

Cessation of Membership

- 3.9 A Member shall cease to be a Member of the Fund on the earliest of:
- 3.9.1 their Benefit being paid in full under this Deed;
- 3.9.2 a transfer of their full Benefit under *clause 17.3* or *17.5.3* and/or *rule 5* or *rule 6* of the Schedule;
- 3.9.3 the Participating Company which employs the Member ceasing to be a Participating Company and the Fund being partially wound up under *clause 28.4*; and
- 3.9.4 the Fund being wound up under *clause 30*.

Upon attaining NZ Super Age a Member shall remain entitled, but shall no longer be required, to contribute (and may elect to cease contributing) to the Fund. *Clauses 4.1* to *4.3* shall apply subject to this *clause 3.9*.

4 CONTRIBUTIONS

Members

- 4.1 Subject to *clauses 4.3, 4.12, 4.16* and *4.20* every Member (other than a Member who has ceased Service but has not received in full the Benefit to which they are entitled under this Deed) shall contribute to the Fund at the rate of 4% of the Member's Salary.

¹⁰ Regulation 53.

- 4.2 Unless the Member is on Temporary Absence without pay and contributing to the Fund in accordance with *clause 4.14*, each Member's contributions under *clause 4.1* shall be deducted by the Participating Company from each payment of their Salary and paid to the Trustee not later than the 20th day of the following month.
- 4.3 A Member who has a Member's No. 2 Company Account may elect with immediate effect not to contribute, or to reduce, cease or suspend their contributions, to the Fund under *clause 4.1*, PROVIDED THAT the Participating Company's net rate of contribution to that Account under *clause 6.1.2(i)* (after deducting ESCT), plus any ongoing contributions from the Member under this *clause 4.3*, together total not less than 4% of the Member's Salary.

Participating Companies

- 4.4 Subject to *clauses 4.5, 4.6, 4.12, 4.15* and *4.22* each Participating Company shall contribute, in respect of each Member who is an Employee of that Participating Company and who is not an Unsubsidised Member, an amount equal to 10% of the Member's Salary (or, where the Member has elected pursuant to *clause 3.9* to cease contributing to the Fund, an amount equal to 4% of the Member's Salary).
- 4.5 Where ESCT, whether imposed in New Zealand or elsewhere, is imposed in respect of the contributions of a Participating Company, an amount to meet the taxation liability shall be deducted from the contributions made under *clauses 4.4* and *4.9* prior to the contributions being credited to the Member's Company Account or the Member's Locked-in Account (as applicable).
- 4.6 The contribution obligations of a Participating Company (excluding any contributions under *clause 6.1.2* or payable with respect to a Member who has attained NZ Super Age) may be met in part from the Reserve Account if so directed under *clause 6.4*, PROVIDED THAT:
- 4.6.1 the net amounts credited to the Member's Company Account or the Member's Locked-in Account (as applicable) shall be determined as if the contributions had been paid directly by the Participating Company to the Fund. The intention of this provision is that if ESCT would have been deducted had the contributions been paid directly by the Participating Company to the Fund, the net amount credited to the relevant account will be determined as if that tax or charge was deducted; and
- 4.6.2 the Participating Company must continue to pay directly to the Fund, in addition to its contributions under *clause 6.1.2(i)*, an amount at least equal to:
- (i) each Member's contributions (if any) under *clause 4.1*; plus
 - (ii) in respect of each Member for whom a Participating Company is contributing under *clause 6.1.2(i)*, 4% of the Member's Salary (less any ongoing contributions from the Member under *clause 4.1* or *clause 4.3*),

less any deductions under *clause 4.5*.

- 4.7 Participating Company contributions shall be paid to the Trustee under *clause 4.4* or credited under *clause 4.5*, at the same time as Member contributions are paid under *clause 4.2*.
- 4.8 The Company may require each Participating Company, in addition to the contributions payable by the Participating Company under *clauses 4.4* and *4.9*, to make such other contributions in the proportions that the Company in its absolute discretion determines, to meet:
- 4.8.1 the expenses, fees, charges and costs payable by the Participating Companies under *clause 5.1*; and
- 4.8.2 the benefits payable pursuant to *clause 8.1.2*, where these are not paid directly by a Participating Company or met from the Reserve Account under *clause 6.4*.

Voluntary Contributions

- 4.9 Notwithstanding the provisions of *clause 4.4*, but subject to *clause 4.5* and without prejudice to its ability to reduce contributions under *clause 4.15*, *clause 4.22* and *rule 2(c)* of the Schedule, a Participating Company may increase its contributions on behalf of all or any Members to such multiple or rate and for such period of time as the Participating Company wishes, PROVIDED THAT the Participating Company's contributions on behalf of a Member may not exceed an amount equal to 20% of the Member's Salary plus 10% of any bonus payment.
- 4.10 Any Member who has not yet attained NZ Super Age may with the consent of the Trustee make voluntary contributions by way of deduction from their Salary, subject to any conditions and restrictions imposed by the Trustee from time to time and provided that the Member's overall rate of contributions does not exceed the Maximum Member Contribution Rate. Subject to *clause 4.8*, no Participating Company shall be liable to contribute any amount in respect of or determined by reference to voluntary contributions made by any Member under this *clause 4.10*.

Temporary Absence

- 4.11 Each Member while on Temporary Absence with pay shall continue to pay contributions in accordance with *clause 4.1*.
- 4.12 A Member who is on Temporary Absence without pay shall have the option to suspend their contributions to the Fund during the period of such Temporary Absence without pay. Where the Member elects to suspend contributions under this *clause 4.12*:
- 4.12.1 the Participating Company shall also suspend its contributions in respect of that Member during the period of Temporary Absence without pay (unless and except to the extent that, where the Temporary Absence is due to *parental leave* as defined in the Parental Leave and Employment

Protection Act 1987, the Company determines otherwise for the time being and notifies the Trustee accordingly); and

- 4.12.2 the Member shall not be entitled to a Benefit under *clause 8.1.2* if they die or become Totally Disabled while on Temporary Absence, unless:
- (i) the Temporary Absence is due to *parental leave* (as defined above) or is another period of absence approved by the Participating Company for the purposes of the Fund; and
 - (ii) the Company determines that the Member will remain entitled to a Benefit under *clause 8.1.2* if dying or becoming Totally Disabled while on Temporary Absence; and
 - (iii) on or before the period of Temporary Absence commences, the Company notifies the Trustee accordingly.

4.13 If a Member who is on Temporary Absence:

- 4.13.1 advises the Participating Company that they do not intend to return to the Service of the Participating Company; or
- 4.13.2 on being lawfully requested to return to work fails within 14 days after that request (or any further period permitted by the Participating Company) to do so,

then that Member shall be deemed to have resigned as at the date of the advice under *clause 4.13.1* or as at the date of the request under *clause 4.13.2*, as the case may be.

- 4.14 A Member's contributions to the Fund while on Temporary Absence without pay must not exceed, as to either amount or frequency, the contributions that the Member was making in accordance with this Deed immediately before commencing Temporary Absence without pay.

Suspension or Reduction of Contributions

- 4.15 Any Participating Company may cease or suspend or reduce its contributions to the Fund by giving the Trustee and the relevant Members not less than one month's notice in writing of its intention. Upon the expiration of the notice given by the Participating Company under this clause, the liability of that Participating Company to make those payments shall cease either wholly or to the extent or for the period or in the circumstances contained in the notice (except in respect of payments due on or before the date of expiration of the period of the notice).
- 4.16 On a cessation or suspension of the Participating Company's contributions, a Member in respect of whom the cessation or suspension applies may continue, cease, or suspend contributions to the Fund as from the effective date of cessation or suspension of the Participating Company's contributions, subject to such adjustments to the Benefits payable to, or in respect of, that Member as the Trustee considers equitable (subject to the provisions of the Act), PROVIDED THAT a Member to whom paragraph (b) of the *Employee* definition applies may

not, in any one election made under this *clause 4.16*, cease contributions to the Fund or suspend those contributions for a period exceeding 5 years.

Locked-in Contributions

4.17 While the Fund is a Complying Superannuation Fund the Trustee may maintain a facility whereby (subject to such notice requirements and other conditions, and in such circumstances, as the Trustee and the Company agree from time to time):

- (a) a Participating Company and a Member can agree that a portion of the contributions paid to the Fund by and/or for the benefit of that Member will be subject to the rules prescribed in the Schedule; and/or
- (b) a Participating Company can direct the Trustee that a prescribed portion of the contributions paid to the Fund by and/or for the benefit of an Employee who has yet to join the Fund will be subject to the rules prescribed in the Schedule;

and a Member for whom any Participating Company contributions are being made to a Locked-in Account pursuant to this *clause 4.17* shall be deemed to have agreed that those contributions comprise the compulsory employer contributions payable in respect of that Member under the KiwiSaver Act.

4.18 A Member's Locked-in Account must be credited with all contributions to which *clause 4.17* applies. Notwithstanding *clauses 4.1 to 4.3* (each of which shall apply subject to this *clause 4.18*), but subject to *rule 2* of the Schedule, those contributions may be such rates (expressed as percentages of Salary which, in the case of Member contributions, do not exceed the Maximum Member Contribution Rate) as are agreed or directed pursuant to *clause 4.17*.

4.19 Any election under *clause 4.17* must include the Member's Tax File Number.

Deferral of Member Contributions by KiwiSaver Scheme members

4.20 A Member who when joining the Fund:

4.20.1 is a member of a KiwiSaver Scheme; and

4.20.2 is not yet permitted to invoke section 102(b) of the KiwiSaver Act (allowing a KiwiSaver savings suspension);

may elect to defer commencing Member contributions to the Fund under *clause 4.1* until no later than the date when the Member becomes permitted to apply under that section 102(b) for a KiwiSaver savings suspension.

4.21 Subject to *clause 4.22*, any deferral under *clause 4.20* shall not affect the relevant Participating Company's obligations under *clause 4.4* or the Member's entitlement to Basic Insurance Cover under *clause 14.1*.

Reduction of Participating Company Contributions in respect of KiwiSaver Scheme members

4.22 A Participating Company, by notice in writing to the Trustee, may reduce its contributions under *clause 4.4* in respect of a Member by an amount not

exceeding the amount of any employer contributions being made to a KiwiSaver Scheme by the Participating Company for the Member's benefit; PROVIDED THAT the aggregate amount required to be contributed to the Fund by and for the benefit of the Member will not be less than 4% of the Member's Salary. The liability of that Participating Company to make contributions to the Fund in respect of that Member shall reduce pursuant to this *clause 4.22* to the extent and for the period contained in that notice.

- 4.23 Without limiting either *clause 4.22* or *rule 2(c)* of the Schedule, while a Member contributes to a KiwiSaver Scheme the relevant Participating Company may elect to contribute to a Locked-in Account established for the Member the portion of the contributions payable under *clause 4.4* for the Member's benefit that is necessary to discharge the Participating Company's compulsory employer contribution obligations with respect to the Member under the KiwiSaver Act.

5 ADMINISTRATION COSTS

- 5.1 Except as provided in *clauses 5.2* and *5.3* or elsewhere in this Deed, the expenses, fees, charges and costs in respect of the Fund shall be met by the Participating Companies in the proportions required by the Company under *clause 4.8*.
- 5.2 All expenses, fees, charges and costs associated with the investments of the Fund shall be met:
- (a) by deduction from earnings as provided for in *clause 7.2.6*; or
 - (b) from the Reserve Account to the extent determined under *clause 6.5.2*.
- 5.3 All expenses, fees, charges and costs associated with the administration of Retirement Accounts and Locked-in Accounts shall be debited from Retirement Accounts and Locked-in Accounts to the extent determined under *clause 11.7*. Expenses, fees, charges and costs associated with administering the Standard Accounts and Locked-in Accounts maintained for Members who have attained NZ Super Age but remain in Service may be debited from those accounts at such times and in such manner as the Trustee determines (provided that those expenses, fees, charges and costs cannot exceed those payable pursuant to *clause 11.7*).

6 ACCOUNTS

- 6.1 The Trustee shall maintain in the name of each Member:

Member's Account

- 6.1.1 a Member's Account to which shall be allocated:
- (i) contributions made by the Member under *clauses 4.1* and *4.10* (except to the extent that the Member has elected, or the Participating Company has directed, pursuant to *clause 4.17*, that

those contributions will be credited to the Member's Locked-in Account); and

- (ii) earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.

The balance in each Member's Account shall be applied in accordance with this Deed;

Member's No. 2 Company Account

- 6.1.2 if required by a Participating Company, a Member's No. 2 Company Account, to which shall be credited:

- (i) direct contributions paid by the Participating Company to the Fund of such whole percentage of the Member's Salary (not exceeding, after deducting ESCT, the Maximum Member Contribution Rate) as may be agreed between the Participating Company and the Member and notified by the Participating Company to the Trustee from time to time; and
- (ii) earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.

Participating Company contributions under this *clause 6.1.2* shall be paid and credited to a Member's No. 2 Company Account at the same time as Participating Company contributions are credited to the Member's Company Account under *clause 4.4*. The balance in any Member's No. 2 Company Account shall be applied in accordance with this Deed;

Member's Company Account

- 6.1.3 a Member's Company Account, to which shall be allocated:

- (i) contributions made in respect of the Member by the Participating Company under *clause 4.4* or *clause 4.9* (or credited under *clause 4.6*), except to the extent that the Member has elected (or the Participating Company has either directed under *clause 4.17(b)* or elected under *clause 4.23* or *rule 2(c)* of the Schedule) that those contributions will be credited to the Member's Locked-in Account; and
- (ii) earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.

The balance in each Member's Company Account shall be applied in accordance with this Deed; and

Member's Transfer Account

- 6.1.4 a Member's Transfer Account, to which shall be allocated:

- (i) amounts (if any) transferred from another superannuation scheme or Retirement Scheme in respect of the Member and determined by the Trustee to be appropriate to credit to the Member's Transfer Account; and

- (ii) earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.

The balance in each Member's Transfer Account shall be applied in accordance with this Deed.

Reserve Account

- 6.2 The Trustee shall maintain a Reserve Account to which shall be credited:
 - 6.2.1 all income, earnings, capital gains, upward revaluations of property or receipts;
 - 6.2.2 any Benefits for which Beneficiaries cannot be ascertained by the Trustee within a period of six (6) years from the date of entitlement of a Beneficiary to the Benefit;
 - 6.2.3 all Benefits forfeited under *clause 15.3*;
 - 6.2.4 any amounts transferred from another superannuation scheme or Retirement Scheme in respect of the Member and determined by the Trustee to be appropriate to credit to the Reserve Account;
 - 6.2.5 the benefit of any tax deductions in respect of the costs and expenses of the Fund paid by the Trustee;
 - 6.2.6 any amounts transferred from the Insurance Account under *clause 6.10.2*; and
 - 6.2.7 any other amount transferred to the Reserve Account in accordance with this Deed and any money not required for the payment of Benefits from the Fund which is not allocated to Members' Accounts, Members' Company Accounts, Members' No. 2 Company Accounts, Members' Transfer Accounts, Members' Locked-in Accounts, Retirement Accounts or the Insurance Account.
- 6.3 The Reserve Account shall be debited with capital losses, downward revaluations of property, income tax and any other taxes, levies, charges or similar impositions from time to time payable in respect of the investment or other income of the Fund. Amounts may be retained in the Reserve Account at the discretion of the Trustee to cover any provision for any matter that the Trustee considers appropriate.
- 6.4 The Trustee shall, if the Company so directs and the Actuary certifies that it is appropriate, apply the Reserve Account in meeting:
 - 6.4.1 subject to *clause 4.6*, part of the contribution obligations of all or some of the Participating Companies to the Fund (excluding any contributions payable under *clause 6.1.2*); or
 - 6.4.2 the Benefits payable under *clause 8.1.2* (except Benefits payable under that provision to Members who have attained NZ Super Age).

- 6.5 The Trustee may from time to time apply any part of the Reserve Account for all or any of the following purposes but without any particular priority:
- 6.5.1 allocating earnings at the Allocated Rate of Earnings to Members' Standard Accounts, the Insurance Account, Locked-in Accounts and Retirement Accounts;
 - 6.5.2 meeting all or any of the expenses, fees, charges and costs associated with investments of the Fund;
 - 6.5.3 paying Benefits in accordance with *clauses 15.4 and 15.5*;
 - 6.5.4 transferring any amounts to the Insurance Account in accordance with *clause 6.10.3*.
- 6.6 The Trustee may, with the consent of the Company, from time to time apply any part of the Reserve Account for all or any of the following purposes, but without any particular priority:
- 6.6.1 paying all or any of the contributions of all Members of the Fund on an equitable basis;
 - 6.6.2 increasing the Member's Accounts for all Members on an equitable basis;
 - 6.6.3 providing Benefits other than retirement benefits for all Members on an equitable basis, PROVIDED THAT no additional Benefits shall be paid or credited to a Member under this *clause 6.6.3* by reference to any Supplementary Balance.

Insurance Account

- 6.7 The Trustee shall maintain an Insurance Account to which shall be credited:
- 6.7.1 all insurance charges debited from Members' Company Accounts in accordance with *clauses 14.1 and 14.2*;
 - 6.7.2 all amounts paid to the Trustee by an Insurer in respect of the Insured Benefits under the Fund;
 - 6.7.3 amounts transferred from the Reserve Account under *clause 6.5.4*; and
 - 6.7.4 earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.
- 6.8 The Trustee shall apply the Insurance Account for the following purposes:
- 6.8.1 paying Insured Benefits in respect of Members;
 - 6.8.2 paying insurance premiums to an Insurer under *clause 14.5*;
 - 6.8.3 transferring amounts to the Reserve Account in accordance with *clause 6.10.2*.
- 6.9 At 3 yearly intervals and at such other times as requested by the Company or the Trustee, the Actuary shall investigate and report on the financial position of the Insurance Account.

- 6.10 After obtaining the advice of the Actuary under *clause 6.9*, the Trustee may do any or all of the following:
- 6.10.1 arrange an Insurance Policy to cover all or any part of the Insured Benefits for Members to meet the Trustee’s obligations under *clause 6.8.1*;
 - 6.10.2 transfer any amount from the Insurance Account to the Reserve Account;
 - 6.10.3 transfer any amount from the Reserve Account to the Insurance Account.

Retirement Account

- 6.11 The Trustee shall establish and maintain a Retirement Account in the name of each Member who has one or more Standard Accounts and is either entitled to receive a Deferred Benefit under *clause 11.1*, or permitted to receive a Deferred Benefit under *clause 11.2*, to which shall be allocated:
- 6.11.1 all amounts transferred from the Member’s Standard Accounts under *clause 11.3*;
 - 6.11.2 earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.
- 6.12 The Trustee shall debit from a Member’s Retirement Account:
- 6.12.1 all amounts withdrawn by the Member in accordance with *clause 11.4*; and
 - 6.12.2 the expenses, fees, charges and costs associated with administering the Member’s Retirement Account as determined under *clause 11.7*.

Locked-in Account

- 6.13 The Trustee shall maintain in respect of each Member to whom *clause 4.17* applies a Locked-in Account, to which shall be allocated:
- 6.13.1 contributions to which *clause 4.17* or *clause 4.23* applies and all other amounts paid or credited to the Locked-in Account pursuant to *rule 2* of the Schedule; and
 - 6.13.2 earnings at the Allocated Rate of Earnings and transferred from the Reserve Account as provided for in *clause 6.5.1*.

The balance in each Member’s Locked-in Account shall (and may only) be applied in accordance with the rules set out in the Schedule.

7 EARNINGS

Allocated Rate of Earnings

- 7.1 Before determining the Allocated Rate of Earnings applying to the Fund or, where *clause 24* applies, each respective Investment Portfolio, from time to time the Trustee shall determine the net market value of the Assets of the Fund or of that investment portfolio using a methodology determined by it from time to time which accords with generally accepted accounting practice as defined in the Act.

7.2 The Trustee shall determine from time to time (but no less frequently than as at monthly intervals) the Allocated Rate of Earnings applying to the Fund or, where *clause 24* applies, each respective Investment Portfolio (whether positive, negative or zero) using a methodology determined by the Trustee from time to time and taking into account (without limitation):

7.2.1 the nature of the investments and the investment performance of the Fund or that Investment Portfolio and the extent to which gains are realised or unrealised;

7.2.2 taxation liabilities and provisions;

7.2.3 the liquidity of investments; and

7.2.4 such other matters as the Trustee may consider relevant;

and which is determined after deducting any amounts that the Trustee considers appropriate;

7.2.5 to hold in the Reserve Account (including for the purposes of a provision made under *clause 6.3*); and

7.2.6 to provide for expenses, fees, charges or costs associated with the investments of the Fund or that Investment Portfolio;

and the Trustee shall also as soon as practicable after the end of each Fund Year determine an Allocated Rate of Earnings for (as applicable) the Fund or each Investment Portfolio with respect to that Fund Year using a methodology determined by the Trustee from time to time and taking into account not only the preceding factors but also the Fund's audited financial statements for that Fund Year and the Allocated Rates of Earnings applied for the previous 11 months.

7.3 Each Allocated Rate of Earnings shall be credited or debited (as the case may be) to Members' Standard Accounts, Locked-in Accounts, Retirement Accounts and the Insurance Account, at such times and in such manner as the Trustee determines from time to time.

Interim Earnings

7.4 When a Member becomes entitled to a Benefit:

7.4.1 earnings as determined by the Trustee shall be credited or debited in respect of the Benefit then payable (using a methodology determined by the Trustee from time to time) for the period between:

(i) the last date as at which accounts were credited or debited with earnings at Allocated Rates of Earnings in accordance with *clause 7.3*; and

(ii) the date on which the entitlement to the Benefit arose (or, as applicable, the Trustee is informed of the Member's death); and

7.4.2 notwithstanding any other provision of this Deed, earnings as determined by the Trustee may, at the Trustee's discretion, be credited or debited in

respect of the Benefit then payable (using a methodology determined by the Trustee from time to time) for the period between:

- (i) the date referred to in *clause 7.4.1(ii)*; and
- (ii) the date on which the Benefit is paid.

Earnings Rate Corrections

7.5 The Trustee shall to the extent required by the Act¹¹ and the Regulations¹²:

7.5.1 correct any material error or non-compliance in an Allocated Rate of Earnings or interim earnings determination made pursuant to *clause 7.2* or *clause 7.4*; and

7.5.2 take any steps prescribed in that regard by any applicable law;

PROVIDED THAT if the amount of any reimbursement or compensation required (after all relevant earnings adjustments have been made) is less than such minimum level of reimbursement or compensation as the Trustee may determine from time to time then no reimbursement or compensation shall be required to be provided.

7.6 The Trustee shall report to the FMA any material error in an Allocated Rate of Earnings or interim earnings rate determination made pursuant to *clause 7.2* or *clause 7.4*, or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law.¹³

7.7 The Trustee shall, as soon as is reasonably practicable, take all reasonable steps (in consultation with FMA) to notify disadvantaged current or former Members of any such error, and of any action that has been taken to compensate or reimburse those persons, to the extent required by the Act.¹⁴

8 BENEFIT ON DEATH OR TOTAL DISABLEMENT

8.1 Subject to *clause 14.6*, if a Member dies or becomes Totally Disabled while in the Service of a Participating Company a Benefit shall be payable equal to the sum of:

8.1.1 the Member's Standard Account Balances as at the date on which (as applicable) the Trustee is informed of the Member's death or the Member ceases to be an Employee; and

8.1.2 if the Member is not an Unsubsidised Member, an amount equal to the Member's Salary at the date of their death or Total Disablement, if such a

¹¹ Section 168.

¹² Regulations 97 to 99.

¹³ Section 168 of the Act and regulations 97 to 99 of the Regulations.

¹⁴ Section 168 of the Act and regulations 97 to 99 of the Regulations.

payment has not been made to the Member directly by the Participating Company;

together with, if the Member has not yet attained NZ Super Age:

8.1.3 the Member's Basic Insurance Cover for death or Total Disablement; and

8.1.4 the Member's Optional Insurance Cover (if any) for death or Total Disablement.

8.2 The Benefit payable under *clause 8.1* shall be paid to the Member's Personal Representative.

8.3 Subject to *clause 11.1* and to *clause 11.2*, the Benefit payable under *clause 8.1* in the event of a Member's Total Disablement shall be paid at the Trustee's discretion:

8.3.1 to the Member; or

8.3.2 to other persons on behalf of the Member, pursuant to *clause 15.5*.

8.4 The Benefits payable under *clause 8.1.2* shall be met:

8.4.1 out of the Reserve Account, if so directed under *clause 6.4*; or

8.4.2 by the Participating Companies, in the proportions required by the Company under *clause 4.8*.

9 **BENEFIT ON ILL-HEALTH**

9.1 Subject to *clause 14.6*, if a Member who has not yet attained NZ Super Age ceases to be an Employee by reason of Ill-health, a Benefit shall be payable equal to the sum of:

9.1.1 the Member's Standard Account Balances as at the date on which the Member ceases to be an Employee; and

9.1.2 the Member's Basic Insurance Cover for Ill-health; and

9.1.3 the Member's Optional Insurance Cover (if any) for Ill-health.

9.2 Subject to *clause 11.1* and *clause 11.2*, the Trustee shall pay the lump sum payable in accordance with *clause 9.1* to the Member or to other persons for the benefit of the Member (under *clause 15.5*).

10 **BENEFIT ON ATTAINING NZ SUPER AGE OR LEAVING SERVICE, OR ON PARTICIPATING COMPANY CEASING TO BE ASSOCIATED**

10.1 If a Member attains NZ Super Age, retires from Service, is made redundant or leaves or ceases to be in the Service of any Participating Company otherwise than in the circumstances provided for in *clauses 8* or *9*, or if the proviso to *clause 28.4* applies, the Member shall be entitled to a lump sum withdrawal Benefit equal to the Member's Standard Account Balances, PROVIDED THAT if a Member who has attained NZ Super Age continues in Service then the Member

shall be entitled to withdraw amounts from their Standard Account Balances at any time and from time to time subject to such conditions and restrictions as the Trustee may impose.

- 10.2 Notwithstanding any other provision to the contrary in this Deed, if the Participating Company certifies that a Member is dismissed from Service (or leaves Service in order to avoid dismissal) on the grounds of the Member's fraud or serious misconduct in relation to the Member's employment, the balance in the Member's Company Account shall be applied by the Trustee, so far as it shall extend, to make good any costs or losses (including the costs of any prosecution or civil proceedings) incurred by the Participating Company as a result of the fraud or serious misconduct. The balance of the Member's Company Account not applied for such costs or losses shall be paid in accordance with this Deed.
- 10.3 In relation to a Member who has a Locked-in Account, *rule 4* of the Schedule specifies when amounts may be released from that Locked-in Account.

11 DEFERRED BENEFIT

- 11.1 A Member shall be entitled to receive a Deferred Benefit if:

- 11.1.1 they leave the employment of a Participating Company at or after age 45, having completed not less than fifteen years' Service, and elect to receive a Deferred Benefit; or
- 11.1.2 they retire from Service at or after age 55, become Totally Disabled or cease to be an Employee by reason of Ill-health, and elect to receive a Deferred Benefit; or
- 11.1.3 an amount is allocated to the Member's Transfer Account under *clause 17.1* and they elect under *clause 17.2* to receive a Deferred Benefit;

PROVIDED THAT to the extent required by the Schedule this *clause 11.1* will not take effect until the Member's Withdrawal Age (as defined in the Schedule).

- 11.2 If a Member leaves the employment of a Participating Company for any reason and is not entitled to receive a Deferred Benefit under *clause 11.1*, then the Trustee at its discretion (and subject to such conditions and restrictions as the Trustee may impose from time to time) may allow the Member to receive a Deferred Benefit PROVIDED THAT a Member who is permitted to receive a Deferred Benefit under this *clause 11.2* shall not be entitled to be elected by the Members as a Member Director, or to vote in any election for a Member Director, as contemplated by *clause 18.3*.
- 11.3 Where a Member becomes entitled to a Deferred Benefit under *clause 11.1* or is permitted to receive a Deferred Benefit under *clause 11.2*:
- 11.3.1 the Member's Standard Account Balances and any other lump sum Benefit payable pursuant to whichever of *clause 8* to *10* applies; or

- 11.3.2 the amount allocated to the Member's Transfer Account referred to in *clause 11.1.3*;
- as the case may be, shall be transferred to a Retirement Account in the Member's name, with the balance in any Locked-in Account remaining in that Locked-in Account.
- 11.4 A Member shall be entitled to withdraw amounts from their Retirement Account, subject to such conditions and restrictions as the Trustee may impose from time to time.
- 11.5 The maximum amount that the Member shall be entitled to withdraw from their Retirement Account shall be the balance standing to the credit of that Retirement Account from time to time.
- 11.6 Except to the extent (if any) required pursuant to *rule 4* of the Schedule, a Member who is entitled to a Deferred Benefit under this *clause 11* shall be deemed for the purposes of section 70(5)(d) of the Human Rights Act 1993 to have left the Fund and shall not be entitled:
- 11.6.1 to make further contributions to the Fund;
- 11.6.2 to receive contributions from a Participating Company;
- 11.6.3 to receive any other Benefits under the Fund; or
- 11.6.4 to Basic Insurance Cover or Optional Insurance Cover.
- 11.7 Any expenses, fees, charges and costs associated with the administration of a Member's Retirement Account (or the administration of a Locked-in Account to which this *clause 11* applies) and not met by the Participating Companies shall be debited from the Retirement Account (or that Locked-in Account) at times and in a manner determined by the Trustee.
- 11.8 If a Member dies while a balance remains in their Retirement Account, then the balance in that account as at the date when the Trustee is informed of the Member's death shall be paid to the Member's Personal Representative.
- 11.9 A Member with a Locked-in Account to whom this *clause 11* applies:
- 11.9.1 will not be entitled to withdraw amounts from their Locked-in Account other than in accordance with *rule 4* of the Schedule; but
- 11.9.2 may elect at any time to transfer all or part of their Locked-in Account balance to another Complying Superannuation Fund, or to a KiwiSaver Scheme, in accordance with *rule 5* of the Schedule.
- 11.10 If the Retirement Account balance and any Locked-in Account balance of a Member to whom this *clause 11* applies is invested in two or more Investment Portfolios then, when a withdrawal is permitted from either or both of those accounts, the Investment Portfolios shall be debited in such proportions or in

such order of priority as the Trustee at its discretion may determine or allow from time to time.

12 WITHDRAWAL IN CASES OF SERIOUS ILLNESS

- 12.1 In cases of Serious Illness a Member may apply to withdraw all or some of the Member's Standard Account Balances.
- 12.2 The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, clause 12 of the KiwiSaver Scheme Rules would allow the withdrawal.

13 WITHDRAWAL TO PURCHASE A FIRST HOME

- 13.1 A Member who has been a member of one or more KiwiSaver Schemes and/or the Fund for at least 3 years in total may apply to the Trustee to make a withdrawal from the Member's Standard Account Balances if the Member intends to purchase an estate in land in a circumstance specified in (or prescribed pursuant to) clause 8 of the KiwiSaver Scheme Rules.
- 13.2 The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, the withdrawal would be allowed under or pursuant to clause 8 of the KiwiSaver Scheme Rules.
- 13.3 The Trustee may require at its discretion that immediately following a withdrawal made pursuant to this *clause 13* the Member's Standard Account Balance must be not less than such minimum amount as the Trustee determines from time to time.

14 INSURANCE COVER AND CHARGES

Insurance Cover

- 14.1 Subject to *clause 14.6*, each Member who has not yet attained NZ Super Age and who is not an Unsubsidised Member shall be entitled to Basic Insurance Cover. The Basic Insurance Charge shall be determined by the Trustee after obtaining the advice of the Actuary and debited from each Member's Company Account at times and in a manner determined by the Trustee.
- 14.2 Subject to *clause 14.6*, a Member who has not yet attained NZ Super Age and who is not an Unsubsidised Member may elect at any time to take out or increase or decrease Optional Insurance Cover. Any such election shall take effect at such time as the Trustee determines from time to time. The Optional Insurance Charge shall be debited from the Member's Company Account at times and in a manner determined by the Trustee.
- 14.3 Where a Member wishes to take out or increase any Optional Insurance Cover or where the Member does not join the Fund when first invited, the Trustee or the

Participating Company may require the Member to supply such information and/or undergo such medical examinations and tests as the Trustee or Participating Company may determine. If the Member does not supply the information or does not undergo such medical examinations and tests as required, or if information supplied by a Member or the results of any such examination or test are such that the Trustee considers special considerations should apply, the Trustee may do all or any of the following as it considers appropriate:

- 14.3.1 impose terms, conditions or restrictions on the amount of or conditions of payment of any Optional Insurance Cover;
- 14.3.2 refuse to grant or increase Optional Insurance Cover in relation to the Member; or
- 14.3.3 increase the Optional Insurance Charge payable by that Member, and shall give the Member notice accordingly.

Purchased Insurance Policy

- 14.4 Where the Trustee arranges an Insurance Policy under *clause 6.10.1*, each Member shall submit to any medical examination and shall deliver any statement of health or other information required by the Insurer from time to time.
- 14.5 The Trustee shall pay any premiums in respect of an Insurance Policy to the Insurer from the Insurance Account.
- 14.6 Notwithstanding any other provision of this Deed, if any Insurer:
 - 14.6.1 declines to grant any part of the cover under the Insurance Policy in respect of a Member on its standard terms and conditions; or
 - 14.6.2 declines to admit all or part of a claim under the Insurance Policy in respect of a Member; or
 - 14.6.3 declines at any time to provide insurance for the full amount which the Trustee requests in respect of any Member; or
 - 14.6.4 imposes any other restrictions or conditions on a Member's cover under the Insurance Policy;

then the Insured Benefits payable in respect of the Member may at the Trustee's discretion be reduced by the amount which the Insurer declines to cover or to pay, as the case may be.

Accuracy of Information Provided

- 14.7 If it is found that the Member's age was incorrectly stated to the Trustee or to an Insurer in connection with the provision of Basic Insurance Cover or Optional Insurance Cover, the Insured Benefit and premiums payable in respect of the Member shall, unless the Trustee otherwise determines, be adjusted by the Trustee to take into account the Member's correct age.

- 14.8 If it is found that any information or evidence supplied by the Member when the Member joined the Fund or in connection with any increase in the Insurance Cover being provided in respect of the Member:
- 14.8.1 is fraudulently untrue, the Insured Benefits and/or the charges payable in respect of the Member shall be adjusted by the Trustee to take account of the effect of the fraudulent untruth (after considering the advice of the Insurer, if any); or
 - 14.8.2 contains any misstatement, error, mistake, omission or suppression, the Insured Benefits and/or the charges payable in respect of the Member shall be adjusted to take account of the effect of the misstatement, error, mistake, omission or suppression (after considering the advice of the Insurer, if any).

Cessation of Insurance Cover

- 14.9 Each Member's Basic Insurance Cover and Optional Insurance Cover (if any) shall cease if:
- 14.9.1 the balance in their Member's Company Account becomes insufficient to meet the Basic Insurance Charge and Optional Insurance Charge when they fall due; or
 - 14.9.2 the Member becomes entitled to a Benefit under this Deed; or
 - 14.9.3 the Member ceases to be a Member of the Fund.

15 GENERAL PROVISIONS RELATING TO BENEFITS

Information from Member or Beneficiary

- 15.1 Each Member or Beneficiary shall produce such evidence or information as may be reasonably required by the Trustee concerning the Member's or Beneficiary's entitlement to a Benefit under the Fund including, without limitation, any medical information considered necessary by the Trustee in order to determine whether (as applicable) the person is Totally Disabled or suffering Ill-health or Serious Illness and until such evidence or information is produced the Trustee may withhold the payment of any Benefit to that person.

Augmentation of Benefits

- 15.2 The Trustee at the request of a Participating Company, and upon the Participating Company paying such additional contributions as the Trustee considers appropriate, shall augment any of the Benefits provided in accordance with this Deed for any Member or Beneficiary.

Unclaimed Benefits

- 15.3 If a Member or Beneficiary cannot be located (after all reasonable enquiries have been made by the Trustee) within six years from the date on which a Benefit became payable to or in respect of the Member or Beneficiary, then the Benefit shall be forfeited to the Reserve Account, PROVIDED THAT this *clause 15.3* shall

not apply to the balances in any Locked-in Account if precluded by the Complying Fund Rules.

- 15.4 In the event of a claim for Benefits being made later than six years after the date on which it becomes due, the Trustee may at its discretion pay the whole or any part of the Benefit claimed out of the Reserve Account.

Infancy or Incapacity of Beneficiary

- 15.5 If any Benefit under this Deed (other than with respect to any Locked-in Account balance) is payable to or for the benefit of a Beneficiary who:

15.5.1 is an infant; or

15.5.2 is legally incapacitated; or

15.5.3 in the opinion of the Trustee is incapable of managing their own affairs;
and

it is in the Beneficiary's best interests for the Trustee to exercise its discretion under this clause, then the Trustee may pay the Benefit for the benefit of the Beneficiary in such manner and on such terms as the Trustee thinks fit including, at the discretion of the Trustee, payment of all or part of the Benefit to another person, persons, firm or body corporate for the benefit of the Beneficiary.

No Right to Recover Amounts Owing

- 15.6 Except as required by law or permitted under *clause 10.2*, no person shall have the right to recover any money owing to or any monetary loss suffered by that person from the Benefit payable to a Member or Beneficiary.

Deductions in Respect of Tax

- 15.7 If the Trustee becomes liable for the payment of any duty, tax or other charge to any regulatory or governmental authority in respect of any Benefit due to a Member or Beneficiary the Trustee may deduct any amount so payable from the Benefit which would have been payable and pay the balance of such Benefit to the Member or Beneficiary in full satisfaction of the Member's or Beneficiary's entitlement to Benefits under the Fund.

16 ALIENATION

No Member may charge, borrow against or (except as required by law) assign, alienate or transfer to any other person the security of their Benefits under the Fund. Without limiting the preceding provisions of this *clause 16*, the balances in any Locked-in Account shall be subject to section 127 of the KiwiSaver Act, which shall take priority to the extent of any inconsistency between that section and the preceding provisions of this *clause 16*.

17 TRANSFER PROVISIONS

Transfers from Other Schemes

- 17.1 Subject to *clause 17.2* and to legislation:

17.1.1 a Member who was previously a member of another Retirement Scheme (*Transferor Plan*), may elect to transfer a benefit from the Transferor Plan;

17.1.2 the Trustee may accept from the Transferor Plan the amount which its manager may be authorised to pay or transfer to the Fund in respect of that Member; and

17.1.3 the Trustee shall allocate the transferred amount between the Member's Transfer Account and the Reserve Account as determined to be appropriate by the Trustee on the advice of the Actuary and having regard to any terms and conditions of the transfer;

and with the consent of the Company and the Member, the Trustee may make such other arrangements in regard to such Member as the Trustee considers just and equitable.

17.2 If a Member who transfers a benefit to the Fund under *clause 17.1* was previously entitled to a pension or a deferred benefit from the Transferor Plan, the part of the transferred amount allocated by the Trustee to the Member's Transfer Account shall, at the Member's request:

17.2.1 be paid immediately to the Member as a lump sum; or

17.2.2 be transferred to a Retirement Account in the Member's name, to be applied as a Deferred Benefit in accordance with *clause 11*.

Transfers to Another Scheme

17.3 If a Member leaves the Service of a Participating Company and becomes a member, or is eligible to become a member, of another Retirement Scheme or an Equivalent Overseas Scheme (*Transferee Plan*) the Trustee shall if the Member requests in writing, instead of granting the Member the Benefit to which they are entitled under the Fund, transfer to the Transferee Plan a lump sum equal to the value of that Benefit.

Transfer to Another Participating Company or an Overseas Associated Company

17.4 Unless the Participating Company and the Member agree otherwise, a Member shall not cease to be a Member, and the Member's Service and Membership shall not be broken, where the Member transfers employment from one Participating Company to another.

17.5 If a Member is transferred from the employ of a Participating Company to the employ of an employer overseas which is declared by the Company to be an Associated Company (*Overseas Associated Company*), the Trustee may notwithstanding anything expressed or implied to the contrary in this Deed deem that transfer of employment not to be leaving the Service of the Participating Company for the purposes of this Deed and the Trustee shall:

- 17.5.1 arrange for the continuation of contributions to the Fund by and/or in respect of the Member (provided that the Member's contributions must be deducted from Salary) if the Overseas Associated Company agrees in writing to become a Participating Company for the purposes of this Deed. Any such arrangement may include an agreement between the Member, the Overseas Associated Company and the Trustee for different contribution rates and different Benefits to be payable than would otherwise have been the case, provided that:
- (i) the Member's overall rate of contributions must not exceed the Maximum Member Contribution Rate; and
 - (ii) the Overseas Associated Company's contributions must not exceed the maximum rate of Participating Company contributions that would otherwise have been payable in respect of the Member under this Deed; or
- 17.5.2 arrange, with the consent of the Member, for the Member to continue their Membership of the Fund PROVIDED THAT contributions to the Fund by and/or in respect of the Member shall cease while they remain in the employ of an Overseas Associated Company; or
- 17.5.3 arrange, with the consent of the Member and subject to the requirements of the Act, for payment from the Fund to a superannuation arrangement established for employees of the Overseas Associated Company of an amount equal to the balance standing in the Member's Account and the Member's Company Account, in which case *clause 17.6* shall apply.

Discharge of Trustee's Liability

- 17.6 A Member in respect of whom a transfer is made under *clause 17.3* or *clause 17.5* shall not be entitled to any other Benefit from the Fund (except, as applicable, in relation to any Locked-in Account) and a receipt issued on behalf of the Transferee Plan shall be a complete discharge to the Trustee of all liability in respect of the Member under the Fund (or, as applicable, with respect to the amount so transferred) and the Trustee shall be under no liability as to the application of the amount so transferred.

18 TRUSTEE

- 18.1 The Company shall appoint a corporate body as the sole trustee of the Fund PROVIDED THAT the corporate body is permitted under the Act (and any other applicable legislation) to be the trustee of the Fund and has complied with all applicable registration requirements. The Company shall have power by deed to remove such Trustee and, if it sees fit, to appoint in its place another corporate body as Trustee. The Trustee must also be removed if required under the Act.¹⁵

¹⁵ Section 185.

- 18.2 The Trustee shall have the Company as its sole or principal shareholder, and a constitution which prescribes that the Trustee's sole purpose is to act as the trustee of the Fund. The Trustee's constitution shall also prescribe that it must ordinarily have 8 Directors, of whom:
- 18.2.1 at least one is a New Zealand resident as defined in section YA 1 of the Income Tax Act;
 - 18.2.2 half (at least one of whom is a Licensed Independent Trustee) are appointed by the Company and (subject, in the case of the Licensed Independent Trustee, to the requirements of the Act¹⁶) may be removed by the Company, in each case by giving written notice to the Trustee; and
 - 18.2.3 half are appointed by the Company after first having been elected by Members and are themselves Members (*Member Directors*); and
 - 18.2.4 subject to *clause 18.3.4*, each Member Director shall hold office for 3 years from the date of their election (and be eligible for re-election) PROVIDED THAT the Member Director must be removed from office if:
 - (i) the majority of valid votes cast in a secret postal ballot among the Members (conducted after receipt by the Secretary of a motion signed by at least 10% of the Members which proposes removal and gives reasons) are in favour of the removal; or
 - (ii) the Member Director ceases to be a Member; and
- 18.3 The Trustee's constitution must also prescribe that:
- 18.3.1 when the term of office of a Member Director expires, or when the office of that Director becomes or is about to become vacant:
 - (i) an election among the Members shall be held to fill the vacancy or anticipated vacancy, as the case may be;
 - (ii) the Secretary shall be the Returning Officer;
 - (iii) the Returning Officer shall call for nominations by notice posted (or by electronic mail if requested by a member) to the Members;
 - (iv) nominations shall not be valid unless received by the Returning Officer no later than three weeks after posting (or sending by electronic mail, as the case may be) the notice calling for nominations;
 - (v) each nomination shall be signed by a nominator, seconder and the nominee, all of whom shall be Members (nominations may be signed by those persons in separate forms and the Returning

¹⁶ Section 185(1)(c) and (3).

Officer may accept forms sent by facsimile or electronic mail if satisfied as to authenticity);

- (vi) a nominee may provide to the Returning Officer a statement in writing not exceeding 500 words supporting their nomination to Members and outlining their qualifications and reasons for standing for office (any such statements shall be published and distributed by the Returning Officer with the ballot papers);
- (vii) where there are more nominations than vacancies, the Returning Officer shall conduct an election by secret ballot and the highest polling nominee or nominees shall be declared elected; and
- (viii) where nominations do not exceed the number of vacancies no ballot shall be held and the Returning Officer shall declare the nominee or nominees elected;

18.3.2 a person elected in the manner described in *clause 18.3.1* shall assume the office of Member Director from the later of:

- (i) the date they are appointed as a Director by the Company; and
- (ii) the day following the date the incumbent Member Director vacates office;

18.3.3 a Member Director elected other than on the expiry of the term of office of another Member Director shall hold office for the balance of the unexpired term;

18.3.4 notwithstanding *clause 18.3.1*, where the office of a Member Director becomes vacant and less than 12 months of the term of that Director remains, the remaining Directors may appoint another person as a Member Director to complete the balance of that term; and

18.3.5 the Board may, subject to the provisions of the Trustee's constitution, delegate any of its powers to committees consisting of such Directors as it thinks fit, and any such committee shall in the exercise of the powers delegated conform to any directions or regulations imposed on it by the Board but may otherwise meet and adjourn as it thinks proper and make regulations (not inconsistent with this Deed or the constitution) for the conduct of its business, the running of committee meetings, the appointment of a chairperson, minutes of meetings, and all other matters in connection with its work.

18.4 A Director who is a Member may retain for that Director's absolute benefit all money and Benefits accruing to that Director as a Member and no decision of the Trustee or exercise of any power by the Trustee shall be invalidated on the grounds that the Director had a direct or personal interest in the result of any such decision or in the exercise of any such power.

18.5 Subject to *clauses 18.2 to 18.4* (inclusive) any power, authority or discretion vested in the Trustee under this Deed shall be exercised on the Trustee's behalf by the Directors in the manner required by the Trustee's constitution.

19 TRUSTEE'S POWERS AND RESPONSIBILITIES

19.1 In addition to the powers conferred by law and elsewhere in this Deed but subject to *clause 19.3*, the Trustee shall have the power:

- 19.1.1 to settle, compromise or submit to arbitration or another disputes resolution procedure any claims or matters relating to this Deed, the Fund or the rights of Members, former Members and Beneficiaries;
- 19.1.2 to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members and Beneficiaries;
- 19.1.3 to insure in full or in part any risks or contingencies affecting or with potential to affect the Fund;
- 19.1.4 to retain the services of, and to remove as appropriate, professional advisers, managers, Auditors or agents in relation to the management, administration or investments of the Fund and to pay the fees payable to them (which shall be such fees as are agreed with those service providers) in accordance with *clause 5*;
- 19.1.5 without limiting *clause 19.1.4*, to delegate to any person including the Company or a Participating Company or its directors or employees, or to an administration manager or any agent, all or any of the matters of administration or management of the Fund or the business of the Trustee, but without in any way releasing the Trustee from its obligations as trustee under this Deed, and to pay to any such person such remuneration as the Trustee considers reasonable and appropriate in accordance with *clause 5*, PROVIDED THAT the Trustee:
 - (i) must comply with the requirements of the Act¹⁷ if contracting out any of its functions as the manager of the Fund; and
 - (ii) remains liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority;
- 19.1.6 to appoint and remunerate (in such manner as may be agreed between the Trustee and that person) a Secretary (who may be a Member) to assist the Trustee in the management of the Fund with such duties as it thinks appropriate and from time to time to revoke any appointment and make a new appointment;
- 19.1.7 to borrow and raise money on a short-term basis for any of the purposes of the Fund on such terms and conditions as it thinks fit PROVIDED THAT

¹⁷ Section 146.

the repayment of moneys so borrowed and interest thereon shall be secured by mortgage or charge over all or any of the Assets of the Fund. In no event shall the total amount borrowed under this *clause 19.1.7* exceed the total Assets of the Fund. No lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;

- 19.1.8 to give guarantees, undertakings and indemnities and incur all such obligations relating to the Fund as the Trustee in its discretion thinks fit;
 - 19.1.9 to make any levy or payment out of the Fund (and where necessary to debit any account of the Fund) which is required to be made by law and which is not otherwise provided for under this Deed;
 - 19.1.10 to do all acts and things it considers necessary or expedient for the administration, maintenance and preservation of the Fund and the performance of its powers, authorities, obligations, or discretions under this Deed or by law including, without limitation, paying out of the Fund all expenses, fees, charges, or costs of and incidental to the management and administration of the Fund to the extent that they are not paid by the Company or any other Participating Company.
- 19.2 Except as otherwise expressly provided by this Deed the Trustee may exercise all the powers, authorities or discretions vested in the Trustee by law or this Deed in the absolute and uncontrolled discretion of the Trustee at such time or times upon such terms and conditions and in such manner as the Trustee may determine.
- 19.3 In acting as the Trustee of the Fund, the Trustee must comply at all times with the requirements of the Act.¹⁸

20 TRUSTEE'S PROCEDURES

The Trustee shall be free to make rules or to adopt procedures appropriate for the convenient administration of the Fund so long as those rules or procedures do not conflict with, alter or add to the terms of this Deed and comply with any relevant requirements in the Act.

21 TRUSTEE'S REMUNERATION AND PAYMENTS

- 21.1 Neither the Trustee nor any director of the Trustee shall receive from the Fund any commission or other remuneration in respect of its or their office, but the Company:

- 21.1.1 shall remunerate the Licensed Independent Trustee as agreed from time to time with the Licensed Independent Trustee; and

¹⁸ Sections 142 to 151.

21.1.2 if it thinks fit at any time and from time to time in its absolute discretion, pay to one or more of the other Directors any remuneration it thinks fit.

21.2 Without limiting *clause 19.1.10*, the Trustee and each Director:

21.2.1 may arrange to have paid; or

21.2.2 shall be reimbursed for,

any costs or expenses which the Trustee or that Director may bona fide pay or incur in the administration of the Fund, including but not limited to the Trustee or that Director effecting professional indemnity insurance with respect to the Fund. Those costs and expenses shall be met in accordance with *clause 5*.

22 TRUSTEE'S INDEMNITY AND LIABILITY

22.1 No provision of this Deed has the effect of exempting the Trustee or any Director from, or indemnifying the Trustee or any such Director against, any liability to the extent that doing so would be void under the Act or any other statute.¹⁹

22.2 Subject to the indemnity limitations applying under the Act²⁰:

22.2.1 neither the Trustee nor any Director shall be liable for:

- (i) any act done or omission made in good faith (whether authorised or not) which in any way relates to this Deed or the Fund including, without limitation, any payment made to a person where the Trustee believes in good faith the person is entitled to the payment, even though it is subsequently found that the person was not so entitled; or
- (ii) the acts or omissions of any Actuary, Auditor, solicitor, banker, accountant, broker, adviser, agent or other person employed or appointed in good faith by the Trustee;

22.2.2 the liability of the Trustee and the Directors under this Deed, the Act or at law shall at all times be limited to the Assets of the Fund; and

22.2.3 the Trustee and each Director shall be fully indemnified by and out of the Assets of the Fund against all liabilities and expenses incurred by the Trustee or that Director arising out of any act, omission, matter or thing (whether authorised or not) which in any way relates to this Deed or the Fund.

22.3 Notwithstanding any other provision of this Deed, the Trustee shall have a lien on the Assets of the Fund in respect of the indemnity and may retain and pay out of

¹⁹ Section 143(1) and 144.

²⁰ Sections 135(1)(f) and 136(1)(b).

the moneys in the Fund all sums and amounts necessary to give effect to such indemnity.

22.4 The Trustee may agree:

22.4.1 to limit the liability (in connection with its services in respect of the Fund) of; and/or

22.4.2 to indemnify out of the Assets of the Fund;

any administration manager, investment manager or Custodian appointed in respect of the Fund, to the fullest extent permitted by the Act²¹, in respect of any debt, liability or obligation incurred by or on behalf of the administration manager, investment manager or Custodian in respect of the Fund or any action taken or omitted to be taken in connection with the Fund (including, without limitation, legal fees and disbursements).

23 INVESTMENTS

23.1 All money belonging to the Fund and available for investment shall be invested by and under the control of the Trustee in accordance with the provisions of the Act as to the investment of trust funds (including without limitation the requirement to maintain a SIPO for the Fund which complies with the requirements of the Act).²²

23.2 The Trustee shall, in exercising the power of investment, exercise the care, diligence and skill required by section 144 of the Act.

23.3 In the case of an Investment Manager, the Trustee shall impose an obligation that it will, in exercising the power of investment, exercise the care, diligence, and skill required by section 144(1) of the Act.

23.4 Without prejudice to the powers conferred upon it by general law or under this Deed the Trustee may:

23.4.1 by deed from time to time appoint one or more persons as investment managers to the Fund (in this *clause 23*, the *Investment Managers*) on such terms and conditions as may be agreed between the Trustee and the Investment Managers and delegate to each Investment Manager such of the Trustee's authorities, powers and discretions in relation to the investment of the Assets of the Fund as the Trustee may think fit (and the Investment Managers shall be entitled to charge fees as agreed between the Trustee and the Investment Managers, which fees shall be paid in accordance with *clause 5*);

23.4.2 from time to time remove an Investment Manager;

²¹ Sections 135(1)(f) and 136(2).

²² Section 164.

- 23.4.3 authorise an Investment Manager to further delegate and authorise further delegation of any authorities, powers and discretions delegated to the Investment Manager to any other person to the extent approved by the Trustee and in accordance with the approval of and any conditions imposed by the Trustee; and
- 23.4.4 by deed appoint and remove from office a Custodian (which must meet the requirements for such a person under the Act²³) in respect of the whole or any part of the Fund on terms to be agreed between the Trustee and the Custodian (and any Custodian shall be paid its proper fees, which fees shall be paid in accordance with *clause 5*, and shall not be precluded by its appointment from conducting any other business for the Fund).
- 23.5 If authorised in writing by the Trustee, a Custodian appointed under *clause 23.4.4* may itself appoint one or more sub-custodians in which any of the Assets of the Fund are to be vested. Any sub-custodian appointed under this *clause 23.5* must meet the requirements for such a person under the Act²⁴.

24 MEMBER INVESTMENT CHOICE

Separate Investment Portfolios

- 24.1 The Trustee may create and maintain separate investment portfolios within the Fund for the investment of Members' Standard Account Balances, and the balances in Member's Locked-in Accounts and Retirement Accounts, on such terms and conditions as the Trustee determines. Those terms and conditions:
- 24.1.1 must be set out in a SIPO for the Fund which complies with the requirements of the Act²⁵; and
- 24.1.2 may be amended or replaced by the Trustee from time to time subject to the requirements of the Act;
- and the Trustee must comply at all times, in relation to the SIPO, with the requirements of the Act²⁶ and the Regulations²⁷, including ensuring that:
- 24.1.3 all moneys available for investment in an investment portfolio are invested in accordance with the SIPO (this requirement modifies the Trustee's general power to invest under section 58 of the Trusts Act); and

²³ Sections 127(1)(f) and 156(2).

²⁴ Section 156.

²⁵ Section 164.

²⁶ Sections 165 to 167.

²⁷ Regulations 94 to 96.

- 24.1.4 the SIPO or any alteration to it (as applicable) are lodged with the Registrar of Financial Service Providers as required by the Act.²⁸
- 24.2 The Trustee may offer Members the option of electing to invest their Standard Account Balances, and their Locked-in Account balances and Retirement Account balances, in any one of the investment portfolios maintained under *clause 24.1*. Members must complete those elections within the time limits and in the manner required by the Trustee.

Member Investment Elections

- 24.3 The following provisions apply to elections made by Members in response to an offer made under *clause 24.2*:
- 24.3.1 the election will be a binding direction from the Member (this requirement modifies the Trustee's general power to invest under section 58 of the Trusts Act) and the investment obligations of the Trustee under the Deed shall be modified accordingly, though the Trustee:
- (i) may, after notifying the Member, refuse to implement any election if it considers that to do so would be inappropriate in the particular circumstances, or would result in inordinate expense; and
 - (ii) may transfer a deceased Member's total balances into a cash-based investment portfolio (to be held there in trust pending payment to the Member's Personal Representatives) after being informed of the Member's death;
- 24.3.2 the election may only be changed with the Trustee's consent and subject to any conditions and fees imposed by the Trustee; and
- 24.3.3 making an election is the Member's sole responsibility, and the Trustee (by offering, accepting or implementing an election) is not to be regarded as representing or implying that any particular investment option is appropriate for the Member.
- 24.4 The Trustee is not obliged to offer Members the option of electing to invest in any of the investment portfolios maintained under *clause 24.1* and, subject to the other provisions of this *clause 24*, the Trustee may determine at its sole discretion:
- 24.4.1 which investment portfolios are to be made available for the purposes of a Member's investment election;
- 24.4.2 whether or not to offer a choice of investment portfolios to any Member or class of Members;

²⁸ Section 166.

- 24.4.3 the frequency with which a Member may change their choice of investment portfolio; and
- 24.4.4 such other matters as the Trustee may consider appropriate in relation to the operation of the investment choice facility, including whether and how to alter or withdraw the facility.

Default Investment Portfolios

- 24.5 The Trustee may determine a default investment portfolio, in which a Member's Standard Account Balances, any Locked-in Account balances or Retirement Account balances will be invested if the Member does not make an election pursuant to *clause 24.2*, and the Trustee may determine different default portfolios in respect of any Member or class of Members.

General

- 24.6 No direction by a Member in terms of this *clause 24* shall exempt the Trustee from its responsibilities under the Act²⁹.
- 24.7 The provisions of this *clause 24* do not apply to the Reserve Account and Insurance Account balances, which are to be invested as determined by the Trustee pursuant to *clause 23*.

25 ADMINISTRATION

- 25.1 The Trustee shall ensure that there are kept (in such form as it may determine):
 - 25.1.1 minutes of resolutions in a book provided for that purpose; and
 - 25.1.2 records of Members showing:
 - (i) the full names and addresses of Members;
 - (ii) the particulars of each Member's Account and each Member's Company Account, No. 2 Company Account, Transfer Account, Locked-in Account and Retirement Account;
 - (iii) the particulars of the Reserve Account and the Insurance Account; and
 - (iv) the particulars of payments in respect of Members and former Members.
- 25.2 The Trustee shall ensure that an account is kept of the money received and disbursed and that a statement of account is made up annually in accordance with good accounting practice. The accounts shall be audited by an Auditor appointed by the Trustee.

²⁹ Section 144.

- 25.3 The Trustee shall ensure the preparation and distribution of annual reports for the Fund in accordance with the requirements of the Regulations³⁰.
- 25.4 The Trustee shall ensure that all necessary arrangements are made for dealing with receipts and payments under the Fund and may resolve that cheques should be drawn or endorsed by any person it may appoint for the purpose or in such other manner as the Trustee may from time to time resolve and may give, vary and revoke instructions as to:
- 25.4.1 the custody and disposal of any investments;
 - 25.4.2 the signature of proposals, forms and confirmations of membership; and
 - 25.4.3 the giving of receipts and discharges (whether or not for policy moneys or payments);
- in connection with the Fund on behalf of the Trustee.
- 25.5 Without limiting any other provision of this Deed, the Trustee must keep and reconcile or ensure there are kept and reconciled records that:
- 25.5.1 identify the Assets of the Fund;
 - 25.5.2 show when the Assets of the Fund were received; and
 - 25.5.3 if any of the Assets of the Fund have been disposed of, show when it was disposed of and to whom;
- and have those records audited (and give reports about the Assets of the Fund) in accordance with the requirements of the Act³¹ and the Regulations³².
- 25.6 Each Member shall be given annual confirmation information in accordance with the Act³³ and the Regulations³⁴.
- 25.7 The Trustee shall cause financial statements to be prepared, audited and lodged with the Registrar of Financial Service Providers in respect of the Fund in accordance with the Act.
- 25.8 The Trustee shall ensure that a Register is maintained in New Zealand in respect of the Fund which is kept in the manner, contains the information, is audited and is available for inspection as required by the Act and the Regulations³⁵. The

³⁰ Regulations 62 and 63.

³¹ Sections 158 and 159.

³² Regulations 86 to 88.

³³ Section 100.

³⁴ Regulations 69 to 71.

³⁵ Sections 215 to 223 of the Act and regulations 109 and 110 of the Regulations.

Register may be kept electronically.³⁶ The Trustee shall be entitled to treat the Register as being correct if it reasonably believes that the Register has been adequately maintained.

- 25.9 The Trustee shall provide the FMA with such reports and information (including, for the avoidance of doubt, in relation to SIPO limit breaks) as are required by the Act and the Regulations.³⁷

26 **EXTENSION OF FUND**

The Trustee may at the request of any Associated Company not already a Participating Company and with the consent of the Company extend the Benefits of the Fund to persons who would if the Associated Company was a Participating Company be Employees of that Participating Company. As from the date on which such Benefits are extended under this *clause 26*, the Associated Company shall be deemed to be a Participating Company subject to it entering into a deed or agreement by which it covenants with the Trustee to comply with and observe the provisions of this Deed so far as they are to be applicable to it as if it were a Participating Company.

27 **AMENDMENT OF DEED**

The Company (with the written consent of the Trustee) may from time to time by an amending deed amend all or any of the trusts or provisions of this Deed, subject to the restrictions in the Act³⁸ and any other applicable legislation.

28 **RECONSTRUCTION OF A PARTICIPATING COMPANY**

- 28.1 If a Participating Company (*Transferor Company*) is amalgamated with or disposes of its undertaking to the Company or to another Participating Company (*Transferee Company*) the Members who are Employees of the Transferor Company and become Employees of the Transferee Company shall continue as Members and the Transferee Company shall thereafter pay the Participating Company's contributions in respect of those Members.
- 28.2 If a Participating Company is reconstructed or goes into liquidation for the purposes of reconstruction, it and the Trustee respectively shall use their best endeavours to ensure that the Participating Company while in liquidation, and any company into which it is reconstituted, shall continue to meet its obligations under this Deed.

³⁶ Section 216(2)(a).

³⁷ Sections 147 to 151, 167 and 168 of the Act and regulations 94 to 98 and 100 of the Regulations.

³⁸ Section 139.

- 28.3 If a Participating Company amalgamates with or disposes of its undertaking to another company (other than the Company or a Participating Company) or body then the Trustee may enter into an agreement with that other company or body in the manner and as nearly as may be appropriate to that set out in *clause 29.1*.
- 28.4 If a Participating Company while in liquidation, or any company into which it is reconstructed, fails to remain a Participating Company pursuant to *clause 28.2* or if the Trustee has not negotiated within a period of 3 months (or such shorter period as the Company may determine) the agreement referred to in *clause 28.3* and the Company so directs, there shall be deemed to be a wind-up of such part of the Fund as is determined to be appropriate to the Members so affected and the provisions of *clauses 30.2 to 30.5* shall (mutatis mutandis) apply to that partial winding up PROVIDED THAT if the Company does not direct that there shall be a partial wind-up of the Fund, the provisions of *clause 10.1* shall apply.

29 RECONSTRUCTION OF COMPANY

29.1 If the Company:

29.1.1 is reconstructed; or

29.1.2 goes into liquidation for the purpose of reconstruction; or

29.1.3 is amalgamated with another Company; or

29.1.4 disposes of all or, in the opinion of the Trustee, substantially all of its undertaking; or

29.1.5 is or becomes a subsidiary of another company,

the Trustee may enter into an agreement with the successor or holding company of the Company as the case may be (*Successor*) providing for the continuation of the Fund under the provisions of this Deed as if the Successor were the Company, in which case the Successor shall act in succession to and in place of the Company.

30 WINDING UP

30.1 The Fund shall be wound up at a date specified in a resolution of the Trustee as the date of winding up:

30.1.1 if the Company is in liquidation or ceases to operate for any reason;

30.1.2 if the Company resolves that the Fund shall be wound up; or

30.1.3 if the Trustee with the written consent of the Company resolves that the Fund shall be wound up; or

30.1.4 if the Fund is required to be wound up under the Act³⁹;

³⁹ Sections 195 and 211.

and the Trustee shall in each case comply with all of the provisions of the Act relating to the wind-up of the Fund⁴⁰.

- 30.2 The Trustee shall after taking appropriate professional advice and making provision for any debts and Benefits due and unpaid before the date of winding up arrange for the liquidation of the Assets of the Fund and, after deducting any amount to pay any costs, expenses and fees of winding up required to be paid from the Fund, distribute any moneys remaining thereafter (as such money becomes available to the Trustee) with the following priorities (subject to *clause 30.3*):
- 30.2.1 each Member to receive the amount (if any) in their Retirement Account; and then
 - 30.2.2 each Member to receive the Member's Standard Account Balances; and then
 - 30.2.3 each Member to have the balance in that Member's Locked-in Account (if any) transferred to a KiwiSaver Scheme in accordance with *rule 6(a)(ii)* of the Schedule (or to receive that balance, if the Member is eligible to make a withdrawal under *rule 3* of the Schedule).
- 30.3 If the moneys available for distribution under *clause 30.2* are insufficient to allow the full payment under *clause 30.2.1*, *clause 30.2.2* and *clause 30.2.3*, then the moneys shall be distributed as determined by the Trustee first in priority to Members in proportion to (and subject to a maximum value equal to) the amount of their Benefits payable under *clause 30.2.1*, then, if there are moneys remaining, to each Member in proportion to each Member's Standard Account Balances at the date of winding up and then, if there are moneys remaining, to each Member with a Locked-in Account in proportion to the Member's Locked-in Account balance at the date of winding up.
- 30.4 In the event of there being any money remaining following the payments under *clauses 30.2.1*, *30.2.2* and *30.2.3*, the Trustee shall apply all of those moneys to increase any or all of the Benefits under *clauses 30.2.2* and *30.2.3* (excluding the benefits of Unsubsidised Members), PROVIDED THAT any distribution to Members of such money by the Trustee shall be equitable as among the relevant Members (excluding, for the purpose of determining what is an equitable distribution under this *clause 30.4*, any Supplementary Balances).
- 30.5 No part of the Assets of the Fund shall revert to any Participating Company on the total or partial winding up of the Fund.

⁴⁰ Sections 212 and 213.

31 MISCELLANEOUS

- 31.1 Nothing contained in this Deed shall in any way restrict the rights of a Participating Company to dismiss a Member as an employee.
- 31.2 The Benefits to which a Beneficiary might claim to be entitled under this Deed shall not be used as grounds for increasing, or as a means of assessing, damages in any claim made or action brought by the Beneficiary or former Beneficiary against the Participating Company.
- 31.3 The Trustee, with the consent of the Company, may at any time close the Fund to the admission of new Members and/or close the Fund to further contributions from both Members and Participating Companies.
- 31.4 Where this Deed requires the consent, approval or direction of a Participating Company the Trustee shall be entitled to act on a consent, approval or direction of a director or the company secretary of that Participating Company, or any other person notified to the Trustee by the Participating Company as being authorised to give such consent, approval or directions.

32 NOTICES

- 32.1 Notices under this Deed may be given:
- 32.1.1 to a Participating Company, Member or Beneficiary at the address of such Participating Company, Member or Beneficiary last known to the Trustee;
 - 32.1.2 to the Trustee at the address of the Trustee set out in the most recent annual report of the Fund, or such other address as is notified by the Trustee to Participating Companies, Members or Beneficiaries.
- 32.2 Notices shall be deemed to be given as follows:
- 32.2.1 if by hand, then at the date and time of delivery if before 4pm on a business day. If after 4pm then delivery is deemed to be at 9am on the next business day;
 - 32.2.2 if by prepaid post, then on the 3rd day after the date of posting;
 - 32.2.3 if by facsimile, then on the day of transmission, if transmission is recorded as occurring before 4pm on any business day. If after 4pm, then delivery is deemed to be at 9am on the next business day; and
 - 32.2.4 if electronically, when it enters the addressee's information system (as shown in a confirmation of delivery report from the Trustee's information system, which indicates that the communication was sent to the address notified by the Member or the relevant Participating Company to the Trustee).
- 32.3 Notwithstanding *clause 32.2*, notice given in any form shall be deemed to have been given at any earlier time at which specific personal acknowledgment of receipt is given by an individual on behalf of the party concerned.

33 RELATED PARTY TRANSACTIONS

- 33.1 The Trustee and any Related Party of the Trustee must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the Act.⁴¹
- 33.2 The Trustee must not acquire any new in-house asset contrary to the Act.⁴²
- 33.3 Neither the Trustee nor any Related Party shall be liable to account to the Fund or any Member for any profit, loss, fees, brokerage or commissions arising from any transaction entered into in accordance with *clause 33.1*.
- 33.4 A failure to comply with *clause 33.1* does not affect the validity of a transaction (subject to any Court order to the contrary).⁴³

34 AUDITOR

- 34.1 The Trustee shall appoint in writing (and may on notice remove) as Auditor of the Fund a person qualified in terms of the Act⁴⁴ and entitled by law to act as such, to provide services and reports in accordance with the requirements of the Act and the Regulations.⁴⁵
- 34.2 The remuneration of the Auditor shall be fixed by the Trustee on an arm's length basis and shall be paid as an expense of the Fund unless paid by the Company.
- 34.3 The Auditor may at any time be removed by the Trustee and may retire upon the expiration of not less than ninety (90) days' notice to the Trustee.
- 34.4 Any vacancy in the office of Auditor occurring under *clause 34.3* shall be filled by the Trustee appointing as Auditor of the Fund a person qualified for appointment in terms of *clause 34.1*.

35 MEETINGS

- 35.1 When required by the Act, the Trustee must call a meeting of Members in the manner and on the basis set out in the Act and the Regulations.⁴⁶ A meeting of

⁴¹ Sections 172 to 175 and 177.

⁴² Section 176.

⁴³ Section 173(6).

⁴⁴ Section 461E.

⁴⁵ Section 218 of the Act and regulations 108 and 109 of the Regulations.

⁴⁶ Sections 161 to 163 of the Act and regulation 83 of the Regulations.

Members shall be conducted in accordance with the requirements of the Act and the Regulations.⁴⁷

35.2 Without limiting *clause 35.1*:

- (a) the Trustee may call a meeting of all Members (or of any group of Members) by giving written notice to the Members (or to the related group of Members) in accordance with the Regulations⁴⁸;
- (b) If the Trustee has convened a meeting of all or any Members, or if the Directors (or any of them) have been invited by the relevant Members to attend a Member meeting, then if the Members present do not choose one of their number to be chairperson of the meeting the Director or Directors present may appoint a chairperson (who may be a Director);
- (c) The quorum for any Member meeting (other than a meeting at which a special resolution is to be presented) is:
 - (i) two-thirds of the Members who called the meeting; or
 - (ii) if it is a lesser number, 5% of Members.

36 **DELIVERY**

36.1 For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Deed will be delivered by each party on the earlier of:

- 36.1.1 physical delivery of an original of this Deed, executed by the relevant party, into the custody of the other party; or
- 36.1.2 transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a facsimile, photocopied or scanned and emailed copy of an original of this Deed, executed by the relevant party, to the other party or the other party's solicitors.

37 **COUNTERPARTS**


The parties acknowledge that this Deed may be executed in several counterparts (including scanned and emailed copies) and execution of this Deed may be in electronic form. So long as each party has received a counterpart or counterparts carrying the signatures of each of the other parties, the counterparts together shall constitute a binding and enforceable agreement between the parties.

⁴⁷ Sections 162 and 163 of the Act and regulations 83 and 91 of (and Schedule 11 to) the Regulations.

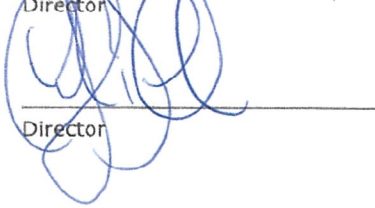
⁴⁸ Section 161(1)(d) and Regulations, Schedule 11, clauses 2 and 3.

EXECUTED AND DELIVERED AS A DEED

New Zealand Aluminium Smelters Limited by:



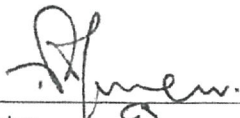
Director




Director

NZAS Retirement Fund Trustee Limited

by:



Director



Director

SCHEDULE – LOCK-IN RULES

1. DEFINITIONS

In this **Schedule**:

Commissioner means the Commissioner of Inland Revenue as defined in section 3 of the Tax Administration Act 1994;

Deed means the trust deed for the Fund (excluding this Schedule);

Government Contribution means the member tax credit provided for in sections MK 1 to MK 8 of the Income Tax Act and paid to the Fund in respect of a Member with a Locked-in Account;

KiwiSaver Regulations means regulations made under section 228 of the KiwiSaver Act; and

Withdrawal Age means in relation to a Member (and except as contemplated by clauses 4(4) to 4(6) of the KiwiSaver Scheme Rules) the date on which the Member reaches NZ Super Age.

2. CONTRIBUTION RATE

- (a) Subject to *clauses 4.12, 4.15 and 4.22* and **rule 2(b)**, the total amount of contributions credited to a Member's Locked-in Account while an election or direction under *clause 4.17* of the Deed remains in force must be not less than the minimum amount required to be contributed to a Complying Superannuation Fund pursuant to clause 7 of the Complying Fund Rules, PROVIDED THAT a Member to whom *clause 4.20* applies may defer making Member contributions to the Locked-in Account until no later than the date when the Member becomes permitted to apply under section 102(b) of the KiwiSaver Act for a KiwiSaver savings suspension.
- (b) Any Member to whom **rule 2(a)** applies may, upon written notice to the Trustee, suspend their contributions to a Locked-in Account and, with like notice, resume any suspended contributions to the Locked-in Account.
- (c) Where a Member suspends their contributions to a Locked-in Account under **rule 2(b)**, the relevant Participating Company's contributions to that Locked-in Account for the Member's benefit will also be suspended unless the relevant Participating Company and the Member agree otherwise, PROVIDED THAT if during the period of suspension the Member contributes to a KiwiSaver Scheme the Participating Company may elect to continue or resume contributing to the Locked-in Account the portion of the contributions payable under *clause 4.4* that is necessary to discharge its compulsory employer contribution obligations with respect to the Member under the KiwiSaver Act. For the avoidance of doubt, during any period of suspension of the Participating Company's contributions to that Locked-in Account, the relevant Participating Company will continue contributing in accordance with *clause 4.4* of the Deed.

- (d) During any period of suspension of a Member's contributions to a Locked-in Account under **rule 2(b)** the Member shall continue contributing in accordance with *clause 4.1* of the Deed and may from time to time with the Trustee's agreement (subject to such conditions as the Trustee may impose) direct the withdrawal of any amount from the Member's Account for the purpose of crediting the amount withdrawn to the Member's Locked-in Account.

3. LOCK-IN REQUIREMENT

Subject to **rule 4** of this Schedule, a Member may not make a withdrawal from a Locked-in Account before reaching the Withdrawal Age.

4. RELEASE OF LOCKED-IN AMOUNTS

Release of locked-in amount on reaching Withdrawal Age

- (a) A Member is entitled to withdraw all or some of the balance in the Member's Locked-in Account on reaching the Withdrawal Age.
- (b) Nothing in **rule 4(a)** of this Schedule requires a Member to withdraw the balance in the Member's Locked-in Account on reaching the Withdrawal Age.

Release of locked-in amount under legislation

- (c) The Trustee must comply with the provisions of any statute requiring it to release funds from a Member's Locked-in Account in accordance with that statute.
- (d) The requirement under **rule 4(c)** of this Schedule includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

Release of locked-in amount on death

- (e) If a Member dies the Trustee must, on application by the Member's Personal Representative, pay to that person an amount that is equal to the balance in the Member's Locked-in Account as at the date when the Trustee is informed of the Member's death.

Release of locked-in amount for purpose of purchase of first home

- (f) A Member who has been a member of one or more KiwiSaver Schemes and/or the Fund for at least 3 years in total may apply to the Trustee to withdraw some or all of the balance in the Member's Locked-in Account if the Member intends to purchase an estate in land in a circumstance specified in (or prescribed pursuant to) clause 8 of the KiwiSaver Scheme Rules.

- (g) The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, the withdrawal would be allowed under or pursuant to clause 8 of the KiwiSaver Scheme Rules.

Release of locked-in amount in cases of a Significant Financial Hardship

- (h) In the case of Significant Financial Hardship a Member may apply to the Trustee to make a withdrawal (to the extent contemplated by clause 10(2) of the KiwiSaver Scheme Rules) from the Member's Locked-in Account.
- (i) The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, clause 10 of the KiwiSaver Scheme Rules would allow the withdrawal.

Release of locked-in amount in cases of Serious Illness or life-shortening congenital condition

- (j) In cases of Serious Illness or a life-shortening congenital condition a Member may apply to the Trustee to withdraw all or some of the balance in the Member's Locked-in Account.
- (k) The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, clause 12 or clause 12B of the KiwiSaver Scheme Rules would allow the withdrawal.

Release of locked-in amount in cases of permanent emigration

- (l) A Member may apply to withdraw some or all of the permitted portion of the balance in the Member's Locked-in Account, or to transfer the permitted portion of the balance in the Member's Locked-in Account to an overseas superannuation scheme, in the case of permanent emigration from New Zealand.
- (m) The Trustee shall permit such withdrawal or transfer if satisfied (based on whatever supporting evidence it may reasonably require) that, if the Member's membership of the Fund was membership of a KiwiSaver Scheme, clause 14 of the KiwiSaver Scheme Rules would enable the withdrawal or transfer (disregarding for this purpose the effect of clause 14B of the KiwiSaver Scheme Rules).

General

- (n) The Trustee is required, if a Member asks, to pay any withdrawal allowed under this **rule 4** as a lump sum, as if the withdrawal were a permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act applies, modified as necessary.

5. VOLUNTARY TRANSFER

Without limiting **rule 7.1**, while the Complying Fund Rules require such transfers (with the intent that this **rule 5** will not otherwise apply), the Trustee shall transfer all or part of the balance in a Member's Locked-in Account to another Complying Superannuation Fund or to a KiwiSaver Scheme if the Member requests the transfer.

6. INVOLUNTARY TRANSFER

- (a) Without limiting **rule 7.1**, all of the balance in a Member's Locked-in Account shall be transferred to a KiwiSaver Scheme if the Member does not request a transfer under **rule 5** and the Member:
- (i) ceases to be in Service for any reason other than death, without being permitted either to withdraw the Member's Locked-in Account balance under **rule 4** or to defer receiving the Member's Locked-in Account balance under *clause 11*; or
 - (ii) ceases to be eligible to be a Member by reason of the wind-up of the Fund, or of a portion of the Fund, under (as applicable) *clause 28.4* or *clause 30* without being permitted to withdraw the Member's Locked-in Account balance under **rule 4**.
- (b) The Trustee shall transfer the balance in a Member's Locked-in Account to a KiwiSaver Scheme if:
- (i) the Financial Markets Authority revokes the Fund's approval as a Complying Superannuation Fund; and
 - (ii) the balance in the Member's Locked-in Account is not transferred to another Complying Superannuation Fund where it remains subject to Complying Fund Rules.
- (c) If the Trustee is required or decides under this **rule 6** to transfer any amount to a KiwiSaver Scheme, then:
- (i) the Trustee shall notify the Commissioner accordingly; and
 - (ii) that notice must include the relevant Member's name, address and Tax File Number, the relevant Participating Company's name and address and the Fund's name and Tax File Number, with the intent that when the Commissioner receives that notice the transferred amount will be dealt with in accordance with section 57(1)(d) of the

KiwiSaver Act (and the Member may not remain a Member for any reason except pending a transfer in accordance with this **rule 6(c)**).

7. TRANSFERS – GENERAL

7.1 Subject to *rule 4(l)*, the Trustee may only transfer part or all of the balance in a Member’s Locked-in Account to another Retirement Scheme if that scheme is a KiwiSaver Scheme or a Complying Superannuation Fund and:

- (a) in the case of a transfer to a KiwiSaver Scheme, the requirements of the KiwiSaver Act 2006 are met; and
- (b) in the case of a transfer to a Complying Superannuation Fund, the manager of that fund has notified the Trustee that the amount transferred will remain subject to Complying Fund Rules;

provided that consent to the transfer shall first be obtained from the manager of the Complying Superannuation Fund or KiwiSaver Scheme.

7.2 *Clause 17.3* shall be read subject to **rule 7.1**.

7.3 If any amount is transferred out of the Fund under **rule 5** or **rule 6** of this Schedule, then:

- (a) the receipt of the manager of the KiwiSaver Scheme, or of the other Complying Superannuation Fund, shall be a complete discharge to the Trustee of all liability in respect of the transferred amount;
- (b) the Trustee shall be under no liability to see to the application of the amount it has transferred; and
- (c) unless the Member retains another account in the Fund, the Member shall cease to be a Member and shall not be entitled to any further Benefit from the Fund.

8. GENERAL

Without otherwise limiting any of *clauses 5.1* to *5.3*, clause 2 of the KiwiSaver Scheme Rules shall apply with respect to a Member’s Locked-in Account as if the Fund were a KiwiSaver Scheme.

9. GOVERNMENT CONTRIBUTIONS

9.1 For the purposes of obtaining and administering the Government Contributions payable to the Fund in respect of Members, the Trustee shall (for the avoidance of doubt) have the following powers and discretions:

- (a) to make claims for Government Contributions in accordance with section 68C of the Tax Administration Act 1994;
- (b) to credit any Government Contribution paid to the Fund in respect of a Member to that Member’s Locked-in Account taking into account

the requirements of section MK 6 of the Income Tax Act if necessary; and

- (c) to require a Member wishing to withdraw from the Fund any amount arising from Government Contributions to provide a statutory declaration stating the periods for which the Member has resided mainly in New Zealand.

10. INCONSISTENCY WITH COMPLYING FUND RULES

In the event of an inconsistency at any time between a provision in this Schedule (or any other provision of this Deed applying in respect of a Member's Locked-in Account) and the Complying Fund Rules, the Complying Fund Rules shall prevail to the extent of the inconsistency.

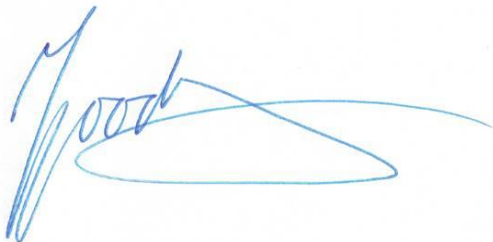
NZAS RETIREMENT FUND**Solicitor's Certificate – replacement Trust Deed**

As solicitors to NZAS Retirement Fund Trustee Limited, the Trustee of the NZAS Retirement Fund (*Fund*), we hereby certify that the Trust Deed of the Fund dated 30 June 2023 (*Trust Deed*), when amended as proposed by the draft replacement Trust Deed attached to this certificate:

- (a) will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 (*Act*); and
- (b) will not contain any provision that is contrary to those implied in the Trust Deed by, or that contravenes, either the Act or the Financial Markets Conduct Regulations 2014.

The replacement Trust Deed to which this certificate relates is yet to be executed, and the certificate is given on the basis that the replacement Trust Deed will not be executed until after the Financial Markets Authority has consented to the proposed amendments (as contemplated by section 139(1)(a) of the Act).

Yours faithfully
Chapman Tripp



Mike Woodbury
Consultant

Date: 26 December 2023

16 January, 2024

Our Ref: AS/1192

The Trustee
NZAS Retirement Fund
c/o Chapman Tripp
PO Box 993
WELLINGTON 6140

Attention: Mike Woodbury

**FINANCIAL MARKETS CONDUCT ACT 2013
TRUST DEED AMENDMENT CONSENT APPLICATION**

Thank you for your email dated 26 December 2023 and attachments regarding the proposed Deed of Amendment for the NZAS Retirement Fund and the Solicitor's sign off. I also acknowledge the prior correspondence regarding the proposed amendment.

Your email requests the Financial Markets Authority exercise its power under section 139(1) of the Financial Markets Conduct Act 2013 and consent to the proposed draft Deed of Amendment to the trust deed of the NZAS Retirement Fund which is a restricted workplace savings scheme.

The Financial Markets Authority is satisfied that the execution copy of the deed of amendment attached to the Solicitors compliance certificate does not have a material adverse effect on the scheme participants and hereby grants its consent.

I enclose an invoice for the time taken to consider the application. Please pay promptly.

Yours faithfully



Gavin Quigan
Principal Adviser, Restricted Managed Investment Schemes
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gavin.quigan@fma.govt.nz