



NATIONAL  
PROVIDENT

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ANNOTATED TRUST DEED  
FOR  
NATIONAL PROVIDENT LUMP  
SUM CASH ACCUMULATION  
SCHEME

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**as at 30 January 2021**

**This is an Annotated Trust Deed for the Scheme and is not the official signed trust deed that governs the Scheme. The Scheme trust deed is subject to change. Therefore, if you wish or need to rely on the terms of the trust deed, please contact the Scheme Administrator for a copy of the signed trust deed.**

**Marginal dates indicate that text in the clause (including any subsequent clauses included under that clause) beside which they are placed was amended with effect from the dates stated. If you wish to consult the terms of the trust deed as it applied in the past, please contact the Scheme Administrator.**

## TRUST DEED

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## TRUST DEED

### HISTORY OF THE DEED

#### WHEREAS

- A.** The NPF Lump Sum Cash Accumulation Scheme was established under the National Provident Fund Act 1950.
- B.** The scheme document was adopted on 30 June 1989 and amended by scheme documents dated 28 February 1990 and 27 March 1991.
- C.** By section 45 of the National Provident Fund Restructuring Act 1990 ("the Act") the Board was required to prepare a Trust Deed for the Scheme. This Deed was dated 28 March 1991 ("this Deed")
- D.** Since 28 March 1991 the Deed has been amended as follows:
- Deed of amendment dated 30 September 1991 (earning rates and crediting of interest to contributors amendments);
  - Deed of amendment dated 29 May 1992 (limit on contributions after age 65 amendment);
  - Deed of amendment dated 30 March 1993 ("Past Practice" amendments);
  - Deed of amendment dated 21 July 1993 (transfer amendments);
  - Deed of amendment dated 18 November 1993 (death benefits payable to Surviving Spouse amendments);
  - Deed of amendment dated 21 December 1995 (Human Rights Act amendments);
  - Deed of amendment dated 29 May 1996 (inconsequential amendments);
  - Deed of amendment dated 28 August 1996 ("Minimum Amount" amendments);
  - Deed of amendment dated 31 March 1998 (effective 1 April 1998) (amendments relating to discretionary transfers and Transfers in);
  - Deed of amendment dated 30 November 1998 (effective 1

December 1998) (Share of Reserves amendments);

- Deed of amendment dated 20 April 1999 (effective 1 May 1999) (Pension Scheme Transfer and Minimum Pension amendments);
- Deed of amendment dated 22 September 1999 (effective 23 September 1999) (Minimum Credit amendments);
- Deed of amendment dated 31 May 2000 (amendments to transfer in clause);
- Deed of amendment dated 5 April 2001 (Missing Persons amendments);
- Deed of amendment dated 13 April 2004 (amendments to provisions governing payment of Death Benefits);
- Deed of amendment dated 20 September 2007 (effective 21 December 1995) (amendments to "guaranteed minimum payments" provision);
- Deed of amendment dated 21 September 2016 (effective 20 October 2016) (Financial Markets Conduct Act 2013 compliance); and
- Deed of amendment dated 6 May 2021 (effective 30 January 2021) (Trusts Act 2019 amendments).

## **THIS ANNOTATED TRUST DEED**

The purpose of this annotated Trust Deed is to provide a record of all amendments that have been made to the Deed since 28 March 1991.

### **PART I**

#### **GENERAL**

##### **1 TITLE**

30/3/93

This Deed is the Trust Deed for the National Provident Lump Sum Cash Accumulation Scheme (the or this "Scheme").



20/10/16 **1A FMC ACT**

1A.1 For the purposes of the FMC Act:

1A.1.1 this Scheme is treated as a trust established and governed by a trust deed interpreted and administered in accordance with New Zealand law; and

1A.1.2 for the purposes of any other enactment, this Scheme must be treated as if it were registered on the register of managed investment schemes under the FMC Act as a restricted scheme that is a Superannuation Scheme; and

1A.1.3 the Board is the 'manager' and the 'issuer' of the Scheme.

30/1/21 **1B TRUSTS ACT**

1B.1 The provisions of the Trusts Act are modified or excluded as follows:

1B.1.1 Section 33 of the Trusts Act (duty not to bind or commit trustees to future exercise of discretion) is excluded from the provisions of this Deed and the provisions of this Deed are modified accordingly.

1B.1.2 Section 34 of the Trusts Act (duty to avoid conflict of interest) is excluded from the provisions of this Deed and the provisions of this Deed are modified accordingly.

1B.1.3 Section 36 of the Trusts Act (duty not to profit) is excluded from the provisions of this Deed and the provisions of this Deed are modified accordingly.

1B.1.4 Any provision of the Trusts Act or rule of law restricting the remuneration of the Board including but not limited to section 37 of the Trusts Act is excluded and the provisions of this Deed are modified accordingly.

1B.2 Nothing in this Deed shall be construed as empowering the Board to act in a manner which would contravene any provision of the Trusts Act unless this Deed expressly modifies or excludes a provision in the Trusts Act as permitted by the Trusts Act.

**2 DEFINITION AND CONSTRUCTION**

2.1 In this Deed, unless inconsistent with the context, -

- 30/3/93      **"Act"** means the National Provident Fund Restructuring Act 1990;
- 30/3/93      **"Actuary"** means a person who is a Fellow of the New Zealand Society of Actuaries, who has been appointed by the Board under **clause 28** and whose appointment has not been terminated;
- 1/4/98      **"Administration Manager"** means a person appointed by the Board to manage the administration of the Scheme under **clause 19.1**;
- 20/10/16     **"Auditor"** means the person or firm appointed as auditor of the Scheme under **clause 35**;
- "Beneficiary"** means a natural person who is entitled to receive a Benefit from this Scheme;
- 30/3/93      **"Benefit"** has the same meaning as in the Act;
- 1/12/98      **"Benefit Credit"** means the amount determined under **clause 13AA**;
- "Board"** means the National Provident Fund Board established under section 9 of the National Provident Fund Act 1950, as continued in existence by section 12 of the Act and renamed from 1 April 1991 by that section as the Board of Trustees of the National Provident Fund;
- 30/3/93      **"Contributions"** means the money paid into this Scheme pursuant to this Deed by or on behalf of a Contributor;
- 30/3/93      **"Contributor"** means any person who is contributing to this Scheme pursuant to this Deed and includes a person who has ceased to contribute pursuant to **clause 4.2** or **clause 4.3** and a person in respect of whom amounts are transferred to this Scheme under **clause 4.4** and where the context requires includes a former Contributor;
- 30/3/93      **"Earnings Rate"** means the earnings rate declared by the Board from time to time under **clause 11.1**;
- "Elect"** means to elect in writing, addressed and delivered or posted to the Board, and **"Election"** has a corresponding meaning;
- 21/12/95      **"Exempted Contributor"** means
- (a) a Contributor who first became a Contributor on or after 1 January 1996;  
              and

(b) a Contributor who rejoined this Scheme on or after 1 January 1996, not being a person who was a Member of this Scheme on 1 February 1994;

- 30/3/93      **"Financial Year"** means the period of twelve months from 1 April to 31 March, both days inclusive;
- 20/10/16      **"FMA"** means the Financial Markets Authority (or any successor organisation);
- 20/10/16      **"FMC Act"** means the Financial Markets Conduct Act 2013;
- 30/3/93      **"Former Scheme"** means the Cash Accumulation Scheme for Individuals which commenced in 1974 and was replaced as at 6 August 1982 by this Scheme and the National Provident Pension Cash Accumulation Scheme;
- "Interest Fluctuation Reserve"** means the Interest Fluctuation Reserve established under **clause 13**;
- 30/3/93      **"Member"** means a natural person who has been admitted to membership of this Scheme and who is, or may become, entitled to Benefits under this Scheme;
- 28/8/96      **"Minimum Amount"** means an amount specified by the Board from time to time;  
23/9/99
- 1/5/99      **"Minimum Pension"** means the amount determined by the Board from time to time under **clause 13G**;
- 21/12/95      **"Nominee"** in relation to a Contributor who is alive, means a natural person who has been nominated by a Contributor and accepted by the Board in accordance with **clause 9B.1**;
- 30/3/93      **"Pension"** means a non-assignable and non-commutable annual amount  
20/9/07      calculated in accordance with **clause 13B**, payable for life to a Contributor or the Spouse or Nominee of a Contributor or, in accordance with **clause 8.6.2** or **clause 8.6.4** (as applicable), for the joint lives of a Contributor and the Contributor's Spouse or the Contributor's Nominee;
- 30/3/93      **"Pension Account"** means the account established under **clause 13A**;
- 1/5/99      **"Pension Scheme"** means the National Provident Pension Scheme established by Trust Deed dated 20 April 1999;
- 30/3/93      **"Permanent Incapacity"** means permanent physical or mental incapacity suffered by any Contributor that is, in the opinion of the Board, of such extent that, having regard to the previous employment and other characteristics of that Contributor, the Contributor is unlikely to have a significant earning capacity in

the future;

**"Property"** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and includes, without limiting the generality of the foregoing;

- (a) Units in the global asset trust (as defined in the Act) and any GAT subsidiary (as defined in the Act) which is a unit trust;
- (b) Choses in action and money;
- (c) Goodwill;
- (d) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective;

30/3/93  
1/12/98

**"Small Credit Formula"** means the formula:

$$\$5,000 \times \frac{A}{B}$$

where:

- A is the all groups index number of the New Zealand Consumer Price Index for the December quarter preceding the Financial Year in respect of which the Pension is payable:
- B is the all groups index number of the New Zealand Consumer Price Index for the December quarter in the year 1982, -

with the result rounded up to the nearest \$1,000;

30/3/93  
21/12/95

**"Spouse"** in relation to a Contributor who is alive, means a woman or man to whom the Contributor is married and may include, whether or not the Contributor is legally married to another person, a woman or man whom the Board in its discretion regards as being the wife or husband or partner of the Contributor, being a woman or man who although not legally married to the Contributor has lived as that Contributor's wife or husband or partner on a permanent domestic basis for such period as the Board determines;

- 20/10/16      **"Superannuation Scheme"** has the meaning given to it in the Act;
- 30/3/93  
21/12/95      **"Surviving Nominee"** in relation to an Exempted Contributor who has died means a natural person who has been nominated by the Contributor and accepted by the Board in accordance with **clause 9B.1** at the time of the Contributor's death;
- 30/3/93  
21/12/95      **"Surviving Spouse"** in relation to a Contributor who has died, means a woman or man to whom the Contributor was married immediately before the Contributor's death, and may include, whether or not the Contributor was legally married to another person, a woman or man whom the Board in its discretion regards as having been the wife or husband or partner of the Contributor immediately before death, being a woman or man who although not legally married to the Contributor had lived as that Contributor's wife or husband or partner on a permanent domestic basis for such period as the Board determines;
- 30/3/93  
1/12/98      **"Total Credit"** in relation to a Contributor means the aggregate of:
- (a) that Contributor's Contributions;
  - (b) the Contributions (if any) paid into this Scheme on behalf of that Contributor;
  - (c) any other amounts credited to that Contributor's Total Credit under any provision of this Deed except under **clause 13AA** (including without limitation Interest Fluctuation Reserve distributions under **clause 13.4**); and
  - (d) earnings added or allocated to that Contributor's Total Credit or to any of the above amounts under this Deed to the extent not already included in any of the preceding paragraphs of this definition,
- less any amount withdrawn under **clause 7**;
- 21/7/93  
1/12/98      **"Transfer Value"** in respect of any Transferred Member and at any time, means:
- (i) the dollar amount calculated under **clause 19B.2**; plus
  - (ii) an amount equal to the earnings that have been credited at or prior to that time under **clause 19B.3**; plus
  - (iii) an amount equal to the earnings that have been credited at or prior to that time under **clause 19B.4**;

- 21/7/93            **"Transferred Member"** means a Member who has made an Election to transfer under **clause 19A** and whose Election to transfer has been accepted by the Board.
- 20/10/16
- 30/1/21            **"Trusts Act"** means the Trusts Act 2019.
- 30/3/93    2.2    Unless inconsistent with the context terms not defined in this Deed but defined in the Act shall have the same meaning as in the Act, whether specific reference is made to the Act or not.
- 30/3/93    2.3    In the construction of this Deed, unless inconsistent with the context, -
- 2.3.1    references to **clauses** and Parts are to clauses and parts of this Deed;
- 2.3.2    references to any statute are references to the statute as from time to time amended and include substituted provisions that substantially correspond to those referred to and also include any regulations, Orders in Council and other instruments from time to time issued thereunder;
- 2.3.3    the singular includes the plural and vice versa, and words importing any gender include the other genders;
- 2.3.4    the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed.

## **PART II**

### **ELIGIBILITY AND CONTRIBUTIONS**

- 30/3/93    **3        ELIGIBILITY**
- 30/3/93            Subject to the terms of this Scheme, persons who satisfy the requirements of section 38 of the Act may be contributors to this Scheme. For ease of reference, a copy of section 38 (in the form as at 8 May 1992) is annexed to this Deed.
- 4        CONTRIBUTIONS**
- 4.1       **Basis of Contributions**
- 30/3/93            A Contributor may make Contributions of such amounts and at such times, regular or irregular, as the Contributor shall choose;
- 28/8/96
- 31/5/00
- PROVIDED THAT** the initial Contribution of any Contributor who joins this Scheme on or after 1 October 1996 (whether by way of transferring into this Scheme under **clause 19E** or otherwise) must be at least the Minimum Amount.

This proviso does not apply to a person accepted by the Board as a Contributor under **clause 19E.1AA** on terms which permit the receipt of a transfer value which is less than the Minimum Amount.

#### 4.2 **No Further Contributions once Age 65 Attained**

29/5/92  
30/3/93  
23/9/99

Except where he or she is given notice by the Board under **clause 7B**, and for the period of time set out in that notice, no person who has attained the age of 65 years shall be entitled to make further contributions to this Scheme, but that person shall retain the status of a Contributor for all other purposes of this Scheme.

#### 4.3 **Discontinuance of Contributions**

29/5/92  
30/3/93

A Contributor may discontinue the payment of Contributions at any time. The Contributor's Total Credit (or the balance thereof) shall continue to attract earnings at the Earnings Rate, and to be credited with Interest Fluctuation Reserve distributions under **clause 13.4**, until such time as the Total Credit has been fully disbursed in terms of this Scheme or applied for the provision of a Pension. Any such Contributor may recommence Contributions at any time, subject to section 38 of the Act and to **clause 4.2**.

#### 4.4 **Transfer of Credits from other Schemes**

30/3/93  
20/10/16

A Contributor may transfer to this Scheme any credits (of such amounts as may be approved by the Board) the Contributor has accrued with any other Superannuation Scheme (including an overseas Superannuation Scheme). Any such credit shall be subject to the provisions of this Scheme from the date of such transfer and shall be credited to the Contributor's Total Credit.

### 5 **FEES PAYABLE ON CONTRIBUTIONS**

- 5.1 There shall be payable in respect of all Contributions paid by or on behalf of a Contributor on or after the 1st day of November 1988 such administration fee (if any) as may be determined by the Board.
- 5.2 The Board may determine different administration fees having regard to the age of the Contributor, the size or frequency of the Contributions, and such other matters as the Board considers appropriate.

### PART III

#### WITHDRAWALS

- 30/3/93     **6     PERMANENT DEPARTURE FROM NEW ZEALAND**
- 30/3/93     Upon the permanent departure of a Contributor from New Zealand, the Board shall, following an application to the Board by the Contributor for payment, and on production of such evidence as the Board may require to establish eligibility under this clause, pay the Total Credit to the Contributor.
- 30/3/93     **7     SPECIAL WITHDRAWAL RIGHT FOR MEMBERS OF FORMER SCHEME**
- 30/3/93     7.1    In the event of a Contributor having been a member of the Former Scheme on  
23/9/99    5 August 1982 that Contributor shall be permitted to withdraw the sum of all Contributions paid before 1 April 1983 together with earnings thereon at such rate as the Board may determine once membership in the Scheme, including pre-6 August 1982 membership in the Former Scheme, has been effective for a continuous period of not less than five years;
- PROVIDED THAT** in accordance with **clause 7B** the Total Credit remaining in the Scheme shall not be less than the Minimum Amount and a Contributor shall be permitted to withdraw only that part of his or her contributions paid before 1 April 1983, which will result in a Total Credit remaining in the Scheme of not less than the Minimum Amount.
- 7.2    Any difference between the amount paid under **clause 7.1** and the Contributor's Total Credit, in respect to Contributions paid up to 31 March 1983, shall be paid into the Interest Fluctuation Reserve.
- 28/8/96     **7A    [RESERVED]**  
23/9/99
- 23/9/99     **7B    TOTAL CREDIT NOT TO BE LESS THAN MINIMUM AMOUNT**
- 23/9/99     7B.1   The Total Credit of a Contributor may not be less than the Minimum Amount.
- 23/9/99     7B.2   Where the Total Credit of a Contributor is less than the Minimum Amount then, subject to **clause 7B.3** and **clause 7B.4**, but otherwise notwithstanding any other clause of this Deed, the Board may pay the Benefit Credit to the Contributor, and the Contributor shall, on receipt of such payment, cease to be a Member of this Scheme.
- 23/9/99     7B.3   Before paying the Benefit Credit to the Contributor under **clause 7B.2**, the Board shall give not less than six months notice in writing to the Contributor, of



the Minimum Amount and of the Board's intention to make such payment.

- 23/9/99 7B.4 Where the Contributor, by further Contribution, increases his or her Total Credit to at least the Minimum Amount within the notice period referred to in **clause 7B.3** then the Board shall not pay the Benefit Credit to the Contributor under **clause 7B.2**.

## PART IV

### RETIREMENT BENEFITS

#### 8 OPTIONS ON RETIREMENT

- 30/3/93 8.1 A Contributor on attaining age 60 years may Elect to receive a Benefit equal to  
1/12/98 that Contributor's Benefit Credit.
- 30/3/93 8.2 In respect of Contributors who have been admitted to membership of this  
1/12/98 Scheme on the terms and conditions known as the Provident Personal Superannuation Plan, any such Contributor who:
- 8.2.1 attains age 50 years; or
- 8.2.2 has been a Contributor for no less than three years (and for the purposes of this **clause 8.2.2**, time as a contributor to any other scheme of which the Board is trustee shall be deemed to be time as a Contributor to this Scheme),
- may Elect to be paid that Contributor's Benefit Credit.
- 30/3/93 8.3 The Board may in its discretion substitute such other qualification provision for those set out in **clause 8.1** or **clause 8.2** as it considers appropriate in respect of any particular individual or group.
- 30/3/93 8.4 A Contributor who is eligible to make an Election under **clause 8.1**, **clause 8.2**  
1/12/98 or **clause 8.3** may instead Elect to take an amount equal to the Contributor's  
23/9/99 Total Credit in instalments of such amounts and at such frequency as determined by the Board, and in that event the balance from time to time of the Total Credit remaining in the Scheme shall continue to attract earnings at the Earnings Rate and to be credited with Interest Fluctuation Reserve distributions under **clause 13.4**;

**PROVIDED THAT** in accordance with **clause 7B**, the Total Credit remaining in the Scheme after the payment of the instalment may not be less than the Minimum Amount and no Election may be made under this **clause 8.4** which would result in a Total Credit remaining in the Scheme of less than the Minimum

Amount.

- 30/9/91 8.5 Any Benefit payable under **clause 8.1, clause 8.2** or **clause 8.3** may, at the  
 30/3/93 Election of the Contributor, be –  
 1/12/98  
 1/5/99
- 8.5.1 paid as a cash lump sum; or
- 20/10/16 8.5.2 subject to section 38 of the Act, transferred to another Superannuation Scheme nominated by the Board for the purpose of providing an immediate pension payable from that scheme;
- PROVIDED THAT** no such transfer shall be made unless -
- 8.5.2.1 the pension so payable is at least \$10.00 per week; and
- 8.5.2.2 the trustees of the other Superannuation Scheme approve the transfer; or
- 8.5.3 except where an Election is made under **clause 8.4**, paid as to 25 percent or less of the Benefit Credit as a lump sum and the remaining 75 percent or more applied by the Board for the provision of a Pension as set out in **clause 8.6**;
- PROVIDED THAT** no Election under this **clause 8.5.3** shall be made where the Benefit Credit does not exceed \$10,000 or such greater amount as may be determined under the Small Credit Formula, or where the Pension would be less than the Minimum Pension.
- 30/9/91 8.6 The portion of the Benefit Credit being applied by the Board for the provision of a  
 30/3/93 Pension pursuant to **clause 8.5.3** may, at the Election of the Contributor be:  
 21/12/95  
 1/12/98  
 1/5/99
- 8.6.1 applied for the provision of a Pension payable to the Contributor;
- 8.6.2 applied (except in the case of a Contributor who joined this Scheme on or after 1 April 1980) for the provision of a Pension payable to the Contributor (on behalf of the Contributor and the Contributor's Spouse jointly) and upon the death of either of the Contributor or the Contributor's Spouse payable to the survivor of them until that survivor's death; or
- 8.6.3 applied (except in the case of a Contributor who joined this Scheme on or after 1 April 1980) as to up to half for the provision of a Pension payable to the Contributor's Spouse, with the remainder being applied for the provision of a Pension payable to the Contributor.

- 8.6.4 applied (in the case of a Contributor who joined this Scheme on or after 1 April 1980) for the provision of a Pension payable to the Contributor (on behalf of the Contributor and the Contributor's Nominee jointly) and upon the death of either of the Contributor or the Contributor's Nominee payable to the survivor of them until that survivor's death; or
- 8.6.5 applied (in the case of a Contributor who joined this Scheme on or after 1 April 1980) as to up to half for the provision of a Pension payable to the Contributor's Nominee, with the remainder being applied for the provision of a Pension payable to the Contributor;

**PROVIDED THAT** no Election shall be made under this **clause 8.6** if, as a result of that Election, the Pension payable to either the Contributor or the Contributor's Spouse or Nominee would be less than the Minimum Pension.

## **PART V**

### **PERMANENT INCAPACITY BENEFITS**

#### **9 PERMANENT INCAPACITY**

- 30/3/93  
1/12/98 9.1 In the event of the Permanent Incapacity of a Contributor prior to attaining age 60 years and before that Contributor has Elected to receive a Benefit under any other Part of this Deed (other than under **clause 7**), and upon producing such medical evidence as the Board may from time to time require, the Benefit Credit shall be paid as a lump sum to the Contributor or the Contributor's legal representative, subject to **clause 9.2** and **clause 9.3**.
- 30/3/93  
1/12/98  
23/9/99 9.2 A Contributor who is eligible to receive a Benefit under **clause 9.1** may instead Elect (either personally or through a legal representative) to take an amount equal to the Contributor's Total Credit in instalments of such amounts and at such frequency as determined by the Board and in that event the balance from time to time of the Total Credit remaining in the Scheme shall continue to attract earnings at the Earnings Rate and to be credited with Interest Fluctuation Reserve distributions under **clause 13.4**;
- PROVIDED THAT** in accordance with **clause 7B**, the Total Credit remaining in the Scheme after payment of the instalment may not be less than the Minimum Amount and no Election may be made under this **clause 9.2** which would result in a Total Credit remaining in the Scheme of less than the Minimum Amount.
- 30/3/93 9.3 Any Benefit payable under **clause 9.1** may, at the Election of the Contributor or the Contributor's legal representative, be taken in any of the ways described in **clause 8.5**, and for this purpose the reference in **clause 8.5.3** to **clause 8.4** shall be deemed to be a reference to **clause 9.2**, and **clause 8.6** shall apply to

any Election under **clause 8.5.3**.

#### **PART VA**

30/3/93

#### **TRANSFERS**

30/3/93

#### **9A TRANSFERS**

20/10/16

A Contributor may at any time Elect to transfer the Contributor's Total Credit to any other Superannuation Scheme subject to the approval of the Board (which may be withheld for any reason) and of the trustees of the other Superannuation Scheme.

21/12/95

#### **PART VB**

#### **NOMINEES**

21/12/95

#### **9B NOMINEES FOR RETIREMENT OR DEATH BENEFITS**

21/12/95

9B.1 Subject to **clause 8.6** and **clause 10**, a Contributor may nominate any person as a Nominee for the purposes of **clause 8.6** or **clause 10**;

29/5/96

#### **PROVIDED THAT**

9B.1.1 the Contributor must make the nomination in writing, addressed and delivered or posted to the Board or an authorised representative of the Board;

20/09/07

9B.1.2 the nomination shall not have effect for the purposes of **clause 8.6** or **clause 10** until the Board has accepted the nomination and advised the Contributor in writing of that acceptance;

9B.1.3 the Board shall not accept more than one Nominee in respect of any Contributor at any one time.

21/12/95

9B.2 A Contributor may cancel a nomination under **clause 9B.1** by notifying the Board in writing, addressed and delivered or posted to the Board or an authorised representative of the Board;

**PROVIDED THAT** a Contributor may not cancel a nomination after the commencement of a Benefit under **clause 8.6** or **clause 10**.

21/12/95

9B.3 Once a nomination under **clause 9B.1** has been cancelled by a Contributor in accordance with **clause 9B.2**, any Benefit payable under **clause 8.6** or **clause**

**10** shall be paid as if the nomination had never been made.

## **PART VI**

### **DEATH BENEFITS**

18/11/93 **10 BENEFITS PAYABLE**

18/11/93 10.1 **Payment to Surviving Nominee, Surviving Spouse or Contributor's**  
13/04/04 **estate**

30/3/93  
18/11/93  
21/12/95  
1/12/98  
13/04/04

In the event of a Contributor (not being an Exempted Contributor) dying before that Contributor has Elected to receive a Benefit under this Deed (other than under **clause 7, clause 8.4** or **clause 9.2**), the Board shall pay the Contributor's Benefit Credit (or the balance thereof) to the Contributor's Surviving Nominee. If there is no Surviving Nominee, the Board shall pay the Contributor's Benefit Credit (or the balance thereof) to the Contributor's Surviving Spouse or, if there is no Surviving Spouse or if the Contributor has so directed the Board in writing, to the Contributor's estate.

21/12/95 10.1A **Payment to Surviving Nominee or Exempted Contributor's estate**

1/12/98  
13/04/04

In the event of an Exempted Contributor dying before that Exempted Contributor has Elected to receive a Benefit under this Deed (other than under **clause 7, clause 8.4** or **clause 9.2**), the Board shall pay the Exempted Contributor's Benefit Credit (or the balance thereof) to the Exempted Contributor's Surviving Nominee or, if there is no Surviving Nominee, to the Exempted Contributor's estate.

18/11/93 10.2 **Options of Surviving Spouse**

30/3/93  
18/11/93  
1/12/98  
13/04/04

In the event that the Contributor's Benefit Credit (or the balance thereof) is payable to the Contributor's Surviving Spouse under **clause 10.1**, then the Surviving Spouse may Elect to exercise one of the following options -

10.2.1 to receive a payment equal to the Contributor's Benefit Credit (or the balance thereof) at the date of death; or

10.2.2 to defer making an Election to receive a Benefit pursuant to **clause 10.2.1** until such later date as may be decided upon by the Surviving Spouse.

- 21/12/95 10.2A **Options of Surviving Nominee**
- 1/12/98  
13/04/04 In the event that the Contributor's Benefit Credit (or the balance thereof) is payable to the Contributor's Surviving Nominee under **clause 10.1** or **clause 10.1A**, then the Surviving Nominee may Elect to exercise one of the following options -
- 10.2A.1 to receive a payment equal to the Contributor's Benefit Credit (or the balance thereof) at the date of death; or
- 10.2A.2 to defer making an election to receive a Benefit pursuant to **clause 10.2A.1** until such later date as may be decided upon by the Surviving Nominee.
- 18/11/93 10.3 **Where Election Deferred**
- 30/3/93  
18/11/93  
21/12/95 Where an Election is deferred under **clause 10.2.2** or **clause 10.2A.2**, the Contributor's Total Credit (or the balance thereof) shall continue to attract earnings at the Earnings Rate and to be credited with Interest Fluctuation Reserve distributions under **clause 13.4** until a Benefit becomes payable under this Part.
- 18/11/93 10.4 **Where Surviving Spouse or Surviving Nominee dies before making Election**
- 18/11/93  
21/12/95  
1/12/98  
13/04/04 In the event that the Contributor's Benefit Credit (or the balance thereof) is payable to the Contributor's Surviving Spouse or Surviving Nominee under **clause 10.1** or **clause 10.1A** and the Surviving Spouse or Surviving Nominee dies before making an Election pursuant to **clause 10.2** or **clause 10.2A**, the Benefit Credit (or the balance thereof) shall be paid to the estate of the Surviving Spouse or Surviving Nominee.
- 18/11/93 10.5 **Benefit Payable to Estate**
- 18/11/93  
21/12/95  
1/12/98  
13/04/04 In the event that the Contributor's Benefit Credit (or the balance thereof) is payable to the Contributor's estate under **clause 10.1** or **clause 10.1A**, a payment equal to the Contributor's Benefit Credit (or the balance thereof) at the date of death shall be paid to the administrator of the Contributor's estate.

18/11/93 10.6 **[RESERVED]**  
13/04/04

18/11/93 10.7 **Conflicting Claims as Surviving Spouse**

30/3/93  
18/11/93  
13/04/04

Where more persons than one claim to be Surviving Spouses of any Contributor the total amount payable to them in respect of any Benefit to which one Surviving Spouse would be entitled may be divided between them by the Board in such shares and proportions (including a nil proportion) as the Board thinks fit.

18/11/93 10.8 **[RESERVED]**  
21/12/95  
13/04/04

## PART VIA

30/3/93 **PERSONS ADMITTED ON OTHER TERMS**

30/3/93 **10A PERSONS ADMITTED ON OTHER TERMS**

30/3/93 10A.1 Notwithstanding any other provision of this Deed or any enactment or rule of law, where the Board has, before 1 April 1991, admitted any person or group of persons to membership of this Scheme on terms and conditions (referred to in this **clause 10A** as "Other Terms") which are different in any respect from or additional to the terms and conditions set out in this Deed, those Other Terms shall apply instead of or in addition to (as the case may require) the terms and conditions set out in this Deed.

30/3/93 10A.2 Where such Other Terms provide that some or all of the contributions made to this Scheme shall be contributions made on behalf of another person, the person on whose behalf the contributions are made (and no other person) shall (subject to those Other Terms) be deemed to be a "Contributor" for the purposes of this Deed (other than for the purposes of Part II).

**PART VII**

**FINANCIAL**

- 30/3/93    **11**        **EARNINGS RATES**
- 30/9/91    11.1        The Board shall declare from time to time an annual Earnings Rate and shall also  
30/3/93        declare the period during which that rate will apply. The period may be a year, or  
                  a half or quarter or other period less than a year and may be before or after (or  
                  both before and after) the date of declaration of the rate.
- 30/9/91    11.2        Earnings shall accrue daily on a Contributor's Total Credit (or the balance thereof)  
30/3/93        up to and including the day before the Total Credit is fully disbursed in terms of  
21/7/93        this Scheme (including by way of conversion to a Transfer Value under Part IXA)  
                  or applied for the provision of a Pension and shall be credited to the Contributor's  
                  Total Credit (or the balance thereof):
- 11.2.1    on the last day of such periods (none of which shall exceed one year) as  
                  the Board shall declare from time to time (in this **clause 11** called the  
                  "interest crediting date"); and
- 11.2.2    in the event that the Total Credit is fully disbursed (including by way of  
                  conversion to a Transfer Value under Part IXA) or applied for the  
                  provision of a Pension on a day other than an interest crediting date, on  
                  the day the Total Credit is fully disbursed or applied for the provision of a  
                  Pension.
- 30/9/91    11.3        The earnings accrued on a Contributor's Total Credit in respect of a particular day  
30/3/93        shall be calculated as follows:
- 11.3.1    the Total Credit (or the balance thereof) at the end of the preceding  
                  interest crediting date; plus
- 11.3.2    the Contributions received before that day but after the preceding  
                  interest crediting date; plus
- 11.3.3    the amounts transferred to this Scheme under clause 4.4 received before  
                  that day but after the preceding interest crediting date; plus
- 11.3.4    any other amounts credited to that Contributor's Total Credit under any  
                  provision of this Deed before that day but after the last preceding  
                  interest crediting date; less



11.3.5 any payment made under clause 7, clause 8.3 or clause 9.2 on or before that day but after the preceding interest crediting date -

all multiplied by the annual Earnings Rate applying on that day, divided by the number of days in the current Financial Year.

30/9/91 11.4 For the purpose of clause **11.3**, a Contribution will be treated as being received  
30/3/93 on the day it is credited to this Scheme's bank account in Wellington.

30/9/91 11.5 Notwithstanding **clause 11.1** to **clause 11.4**, the earnings accrued on a  
30/3/93 Contributor's Total Credit in the 12 month period to 31 March in each year shall be at a rate of no less than 4 percent per annum for:

11.5.1 amounts in credit for a full twelve month period ending 31 March; and

11.5.2 amounts credited for any lesser period (other than earnings credited during the twelve month period).

30/9/91 11.6 For the avoidance of doubt and without limiting the Board's powers to delegate its  
30/3/93 rights, powers, or duties under this or any other deed, the Board may delegate its powers to declare rates and periods under this **clause 11** pursuant to either or both of clauses 3(3) and 6 of the Fourth Schedule to the Act.

## **12 STATEMENT OF CONTRIBUTOR'S ACCOUNT**

30/3/93 A statement showing the position of a Contributor's account will be issued and posted to the last known address of the Contributor as soon as practicable after the end of each Financial Year, showing the Total Credit held in that Contributor's account in this Scheme and the Contributions paid during the Financial Year; **PROVIDED THAT** if the Board is satisfied that the Contributor does not live at the last known address and the Board has no other address for the Contributor, the statement may be retained by the Board.

## **13 INTEREST FLUCTUATION RESERVE**

13.1 An Interest Fluctuation Reserve shall be established for this Scheme.

30/3/93 13.2 The Interest Fluctuation Reserve shall be credited with:

13.2.1 the investment earnings of this Scheme (net of tax and expenses except to the extent that such tax or expenses are paid out of the Interest Fluctuation Reserve) or debited, in the case of negative earnings;

13.2.2 the balance of any Contributor's Total Credit not transferred or otherwise disbursed in accordance with the provisions of this Scheme;

13.2.3 all other credits to this Scheme other than amounts referred to in clause 4; and

13.2.4 any debits to the Pension Account made under clause 13A.6,

and all other moneys of this Scheme other than moneys held in the Pension Account or forming part of Contributors' Total Credits shall be held in the Interest Fluctuation Reserve.

30/9/91 13.3 The Interest Fluctuation Reserve shall be debited with:

30/3/93

21/7/93

1/12/98

13.3.1 earnings credited to Contributors' Total Credits in accordance with **clause 11**;

13.3.1A earnings credited to Transfer Values under **clause 19B.3** and **clause 19B.4**;

13.3.1B amounts included in Transfer Values under **clause 13AA.1.2**;

13.3.1C amounts added to Contributors' Total Credits under **clause 13AA.1.1**;

13.3.2 earnings credited to the Pension Account under **clause 13A.4.1** (or, in the case of a negative earnings rate, the Interest Fluctuation Reserve shall be credited with earnings debited under that clause);

13.3.3 tax and management (as defined in the Act) expenses not already deducted from investment earnings; and

13.3.4 such amounts as the Board from time to time determines, after receiving advice from the Actuary, shall be paid into the Pension Account (which amounts shall be credited to the Pension Account under **clause 13A.4.2**).

30/3/93 13.4 The Board in its discretion after receiving advice from the Actuary may use the balance in the Interest Fluctuation Reserve from time to time to increase all Contributors' Total Credits on an equitable basis.

30/3/93 13.5 The Board in its discretion may use the balance of the Interest Fluctuation Reserve from time to time to pay any expenses of this Scheme.

- 30/3/93 **13A PENSION ACCOUNT**
- 30/3/93 13A.1 At any time any Pension is payable from this Scheme, an account to be known as  
1/5/99 the Pension Account shall be maintained within this Scheme.
- 30/3/93 13A.2 Subject to **clause 13F** whenever an Election is made under this Scheme to  
1/12/98 receive a Pension, the Benefit Credit (less any part taken as a lump sum) of the  
1/5/99 relevant Contributor (or the relevant proportion of the Benefit Credit, as the case  
may require) to be applied to provide for that Pension shall be credited to the  
Pension Account.
- 30/3/93 13A.3 Any Interest Fluctuation Reserve distributions to be paid in the form of a Pension  
shall be credited to the Pension Account.
- 30/3/93 13A.4 The Pension Account shall also be credited with:
- 13A.4.1 earnings as soon as practicable after the end of each Financial Year, at  
such rate as the Board considers appropriate, having regard to the net  
investment earnings rate of this Scheme and to the advice of the  
Actuary (or, in the event that the rate considered by the Board to be  
appropriate is negative, the Pension Account shall be debited with  
earnings at that rate); and
- 13A.4.2 all amounts debited to the Interest Fluctuation Reserve under  
**clause 13.3.4.**
- 30/3/93 13A.5 All Pensions payable from this Scheme shall be paid out of the Pension Account.  
1/5/99
- 30/3/93 13A.6 The Board in its discretion and after receiving the advice of the Actuary may from  
time to time debit amounts to the Pension Account and credit such amounts to  
the Interest Fluctuation Reserve.
- 30/3/93 **13B ASSESSMENT OF PENSIONS**
- 30/3/93 13B.1 Whenever an Election is made under this Scheme to receive a Pension, the  
1/12/98 Benefit Credit (less any part taken as a lump sum) of the relevant Contributor  
1/5/99 (or the relevant proportion of the Benefit Credit, as the case may require) will be  
converted to a Pension on the basis of pension tables supplied by the Actuary  
from time to time and taking into account, where appropriate, the provisions of  
**clause 13F.**
- 30/3/93 13B.2 The pension tables may be varied by the Board on the recommendation of the  
Actuary.

- 30/3/93 13B.3 Any changes to the pension tables will not affect the Pension entitlement of any existing pensioner.
- 30/3/93 **13C PAYMENT OF PENSION**
- 30/3/93 13C.1 Any Pension payable from this Scheme will be paid by instalments in advance at intervals of 4 weeks or as the Board may direct.  
1/5/99
- 30/3/93 13C.2 Every such instalment shall be payable to the person entitled thereto personally or to that person's bank account unless that person is, by reason of age, infirmity, or because of inconvenience, unable to accept it, or the Board for any other reason, and subject to the provisions of **clause 22**, consents to it being paid to any person or agent duly authorised by the person entitled thereto to receive the payment on that person's behalf.
- 30/3/93 **13D INCREASES IN PENSIONS**
- The Board may from time to time, and having regard to the earnings credited to the Pension Account and to the advice of the Actuary, resolve to increase Pensions being paid from this Scheme. Pensions shall be increased in accordance with any such resolution.
- 30/3/93 **13E GUARANTEED MINIMUM PAYMENTS**
- 30/3/93 13E.1 Subject to **clause 13E.2** and **clause 13E.3**, where either a Contributor or a Spouse or a Nominee of a Contributor who has commenced to receive a Pension under this Scheme dies prior to having received such minimum payment as advised by the Board to the Contributor or Spouse or Nominee of the Contributor, the Board will pay the then present value of the balance of the minimum guaranteed payment, as determined by the Board, to:  
20/9/07
- 13E.1.1 where the deceased was a Contributor, other than an Exempted Contributor, the Surviving Nominee of the Contributor, or if there is no Surviving Nominee, the Surviving Spouse of the Contributor, or if there is no Surviving Spouse, the Contributor's estate;
- 13E.1.2 where the deceased was an Exempted Contributor, the Surviving Nominee of the Contributor, or if there is no Surviving Nominee, the Contributor's estate;
- 13E.1.3 where the deceased was a Spouse or Nominee, the deceased's estate.
- 30/3/93 13E.2 Where an Election has been made under **clause 8.6.2** and the Contributor and the Spouse both die before having received an aggregate Benefit equivalent to the minimum guaranteed amount previously advised to the Contributor and the Contributor's Spouse by the Board, the then present value, as determined by the

Board, of the difference between the amount guaranteed and the aggregate Benefit paid, will be paid to the estate of the last survivor.

- 20/9/07 13E.3 Where an Election has been made under **clause 8.6.4** and the Contributor and the Nominee both die before having received an aggregate Benefit equivalent to the minimum guaranteed amount previously advised to the Contributor and the Contributor's Nominee by the Board, the then present value, as determined by the Board, of the difference between the amount guaranteed and the aggregate Benefit paid, will be paid to the estate of the last survivor.
- 1/5/99 **13F TRANSFER OF PENSIONERS TO PENSION SCHEME**
- 1/5/99 13F.1 Subject to **clause 13F.7**, on any person making an Election and consequently becoming immediately entitled to a Pension under this Scheme on or after such date as the Board may determine, the Board shall transfer that person and the liability to pay the Pension to that person, to the Pension Scheme.
- 1/5/99 13F.2 Subject to **clauses 13F.7** and **13F.8**, the Board may, on such date as it may determine, transfer all persons already receiving a Pension under this Scheme, and the liability to pay their Pensions, to the Pension Scheme.
- 20/10/16
- 1/5/99 13F.3 Any Pension to be transferred under **clause 13F.1** or **13F.2** shall include:
- 13F.3.1 any Pension or other Benefit payable or contingently payable to any other person as a result of an Election made by a Contributor under **clause 8.6** or otherwise; and
- 13F.3.2 any minimum payment which would have applied in relation to that Pension under the terms of this Scheme or of which the Board advises the Contributor.
- 1/5/99 13F.4 On transfer of the liability to pay any Pension under **clause 13F.1**, the Board shall transfer from this Scheme to the Pension Scheme, assets with a value as determined by the Board (having considered the advice of the Actuary) to meet the liability so transferred.
- 1/5/99 13F.5 On transfer of the liability to pay any Pensions under **clause 13F.2** the Board shall transfer from this Scheme to the Pension Scheme, assets with a value as determined by the Board (having considered the advice of the Actuary) equal to the value of the Pension Account as at the date of transfer of the liability.
- 1/5/99 13F.6 On transfer of the liability to pay any Pension under **clauses 13F.1** or **13F.2** and assets under **clause 13F.4** or **13F.5** (as the case may be) the Pension so transferred shall be payable from the Pension Scheme and neither the person so transferred nor any other person shall be entitled to receive any further payment

from this Scheme in respect of that Pension.

- 1/5/99 13F.7 The Board must not transfer the liability to pay the Pension of a person from this Scheme to the Pension Scheme unless it is satisfied, after considering the advice of the Actuary, that:
- 13F.7.1 the terms of that person's Pension under the Pension Scheme are not materially and adversely different from the terms on which that person's Pension would have been paid under this Scheme; and
- 13F.7.2 the transfer of assets from this Scheme to the Pension Scheme under **clause 13F.4** or **13F.5** is fair and equitable to that person and to all members and beneficiaries of this Scheme materially affected by the transfer.
- 20/10/16 13F.8 In accordance with section 179 of the FMC Act, any transfer under **clause 13F.2** is subject to the prior written consent of either (i) the person who is the subject of the transfer or (ii) the FMA.
- 1/5/99 **13G MINIMUM PENSIONS**
- 1/5/99 13G.1 The Board may from time to time determine a minimum annual amount for a Pension payable from this scheme (the "Minimum Pension") and a date (the "specified date") from which that minimum amount is to apply.
- 1/5/99 13G.2 The Board may from time to time offer to a person who began receiving a Pension from this Scheme before 1 May 1999 which is less than the Minimum Pension, an opportunity to elect (by written notice to the Board) to cancel his or her Pension with effect from a date specified by the Board, being on or after the specified date (the "effective date"), and have the value of the Pension entitlement from the effective date (as determined by the Actuary) paid to him or her as a lump sum.
- 1/5/99 13G.3 Where a person receives a payment under **clause 13G.2**, he or she will cease to be a Member, Contributor or Beneficiary from the date of the payment.
- 1/12/98 **13AA SHARE OF RESERVES**
- 1/12/98 13AA.1 A Contributor's 'Benefit Credit' shall be:
- 13AA.1.1 for the purposes of the determination of a Benefit payable under any of **clauses 8.1, 8.2, 8.3, 9.1 and 10**, the Contributor's Total Credit plus a share (as determined under **clause 13AA.2.1**) of any positive reserves of the Scheme; or

13AA.1.2 for the purposes of the calculation of a Transfer Value under **clause 19B.2**, the Contributor's Total Credit as at the Transfer Date (which Total Credit, for the purposes of Part IXA, represents the share of the Property of this Scheme (including, for the avoidance of doubt, that representing contributions received or due from corporate contributors (as defined in the Act)) that is attributable to the Transferred Member as at that date) plus or minus (as the case may be) a share (as determined under **clause 13AA.2.2**) of any positive or negative reserves of the Scheme.

1/12/98 13AA.2 The share of any:

13AA.2.1 reserves to be added to a Contributor's Total Credit under **clause 13AA.1.1** shall be an equitable share (as determined by the Board) of any positive reserves (as defined in **clause 13AA.3.1**) of this Scheme as at the date of determination of that Total Credit; or

13AA.2.2 reserves to be added to or deducted from a Contributor's Total Credit under **clause 13AA.1.2** shall be an equitable share (as determined by the Board) of any reserves (as defined in **clause 13AA.3.2**) of this Scheme as at the Transfer Date, and in the event that this Scheme has negative reserves as at that date, the Contributor's Total Credit shall be reduced by an equitable share of those negative reserves.

1/12/98 13AA.3 The term "reserves" means:  
31/5/00

13AA.3.1 for the purposes of **clauses 13AA.1.1 and 13AA.2.1**, amounts that are shown in the accounts of the Scheme as being reserves attributable to this Scheme whether or not forming part of the Interest Fluctuation Reserve, but does not include negative reserves; or

13AA.3.2 for the purposes of **clauses 13AA.1.2 and 13AA.2.2**, amounts that are shown in the accounts of the Scheme as being reserves attributable to this Scheme whether or not forming part of the Interest Fluctuation Reserve, and includes negative reserves.

1/12/98 13AA.4 In determining (under **clause 13AA.2**) the equitable share of reserves to be added to the Contributor's Total Credit under **clause 13AA.1**, the Board shall have regard to the level of reserves required for the prudent management of the Scheme, having regard to the Board's obligation to declare an Earnings Rate of not less than 4% per annum under **clause 13AA.1**. In the event that the level of reserves is lower than such level, the share of reserves which would otherwise be added to the Total Credit of a Contributor under **clause 13AA.1** may be reduced

to reflect that fact.

## **PART VIII**

### **TRUSTEE PROVISIONS**

#### **14 TRUSTEES - APPOINTMENT AND REMOVAL**

- 30/3/93 20/10/16 14.1 The Board is the trustee of this Scheme pursuant to section 20(1)(a) of the Act and the 'manager' of the Scheme for the purposes of the FMC Act.
- 14.2 The members of the Board hold office in accordance with Part II of the Act.
- 14.3 The Board is a body corporate, and as such cannot retire from the office of trustee, nor can another trustee be appointed other than by Act of Parliament.

#### **15 POWERS OF BOARD**

- 20/10/16 30/1/21 15.1 The Board may give guarantees, undertakings and (subject to section 135(1)(f) of the FMC Act and the Trusts Act) indemnities and incur all such obligations relating to this Scheme as the Board in its discretion thinks fit.
- 30/3/93 15.2 The Board may borrow money for the purposes of -
- 15.2.1 making any investment; or
  - 15.2.2 paying any Benefit; or
  - 15.2.3 meeting any liability (as defined in the Act); or
  - 15.2.4 the management (as defined in the Act) of this Scheme.
- 15.3 The Board may enter into any insurance or reinsurance contract relating to the payment pursuant to this Scheme of any Benefit contingent on the death or survival of human life.
- 20/10/16 15.4 The Board in its capacity as manager shall have the functions and duties and have the responsibilities accorded to it as a manager under the FMC Act. In particular the Board is responsible for the following functions:
- 15.4.1 Offering the interests in the Scheme;
  - 15.4.2 Issuing the interests in the Scheme;



15.4.3 Managing the Scheme's Property and investments; and

15.4.4 Administering the Scheme.

## **16 POWER OF AMENDMENT**

22/11/91 16.1 **[RESERVED]**

30/3/93

20/9/16

30/3/93 16.2 The Board may amend this Trust Deed from time to time **PROVIDED THAT** no amendment shall have any effect unless the provisions of section 139 of the FMC Act are complied with.

20/10/16

20/10/16 16.3 **[RESERVED]**

## **17 LIMITATION OF LIABILITY**

17.1 No member of the Board shall be liable to the Board or any other person, nor shall the Board be liable, for any losses:

17.1.1 arising from any act or omission done bona fide in conformity with the decisions of the Board pursuant to the provisions of this Deed or the Act;  
or

17.1.2 not attributable to the wilful act or omission of the Board or member of the Board, as the case may be, known by the Board or member of the Board to be a breach of trust; or

17.1.3 arising from the neglect or default of any manager appointed under this Scheme or of any solicitor, banker, accountant, broker, actuary, or other adviser or agent employed or consulted by the Board.

30/3/93 17.2 Without limiting **clause 17.1**, neither the Board nor any member of the Board shall be liable for any losses attributable to the Board's or any member of the Board's negligence in the execution of the Board's or any member of the Board's duties under this Deed or the actions of any employee of the Board.

30/3/93 17.3 The liability of the Board and of every member of the Board for all losses, damages, costs and expenses of the Board for all claims against the Board and for every action of the Board referred to in this **clause 17** shall be limited to the assets of this Scheme.

30/3/93 17.4 No member of the Board shall be liable to contribute personally to any losses, damages, costs or expenses claimed against or payable by the Board unless the loss, damage, cost, or expense has been held by the High Court or any superior

court to be attributable to that member of the Board's dishonesty or that member of the Board's omission or wilful act known by that member of the Board to be a breach of trust.

- 20/10/16 17.5 Subject to the Trusts Act, the Board and the members of the Board may be indemnified for the liabilities or expenses incurred in relation to the performance of the Board's obligations as manager of the Scheme **PROVIDED THAT** such rights must only be available in relation to the proper performance of duties under section 143(1) and 144 of the FMC Act.
- 30/1/21

## **PART IX**

### **INVESTMENT PROVISIONS**

#### **18 INVESTMENT**

- 30/3/93 18.1 The Property of this Scheme may be invested only in the global asset trust (as defined in the Act), whether by way of debt securities (as defined in the Act) or managed investment products (as defined in the Act), or otherwise.
- 20/10/16
- 30/3/93 18.2 Nothing in **clause 18.1** shall prevent the Board as trustee of this Scheme depositing money of this Scheme into a bank account (which may be a bank account for one or more existing schemes (as defined in the Act)) to the extent necessary or desirable for the operation of this Scheme.
- 30/3/93 18.3 None of the provisions of the Trusts Act relating to the investment of trust funds shall apply in respect of this Deed or the investment of the Property of this Scheme.
- 20/10/16
- 30/1/21

#### **19 APPOINTMENT OF ADMINISTRATION AND/OR INVESTMENT MANAGERS**

- 30/3/93 19.1 The Board may, subject to the provisions of the FMC Act on such terms and conditions as it thinks fit, appoint any person (including the Crown) to manage all or any part of
- 20/10/16
- 19.1.1 the administration of this Scheme; or
- 19.1.2 the investment of the trust fund (as defined in the Act) of this Scheme; or
- 19.1.3 both.
- 30/3/93 19.2 All fees and expenses payable to any such manager or managers shall be paid out of the trust fund of this Scheme.
- 21/7/93 19.3 Where the Board has appointed an Administration Manager to, or agreed that the Administration Manager may, perform or exercise any duty or power given to the Board

- 20/10/16 by this Deed, references in this Deed to the performance or exercise of that duty or power by the Board shall be deemed to be references to the performance or exercise of that duty or power by the Administration Manager.
- 19.4 In appointing any person under clause 19.1, the Board shall take all reasonable steps to:
- 19.4.1 ensure these functions are performed in the same manner and are subject to the same duties and restrictions, as if the Board were performing them directly; and
- 19.4.2 monitor the performance of those functions.
- 20/10/16 19.5 Any right of indemnification given to an investment manager appointed under clause 30/1/21 19.1 shall be subject to the Trusts Act and shall be only in relation to the proper performance of the appointee's duties in accordance with section 136(2) of the FMC Act.

## PART IXA

### DISCRETIONARY TRANSFERS

- 21/7/93 **19A ELECTIONS TO TRANSFER**
- 21/7/93 19A.1 Any Member of this Scheme, other than:  
20/10/16
- 19A.1.1 a beneficiary (as defined in the Act) in receipt of a Pension from this Scheme; or
- 19A.1.2 a Member who has made an Election under **clause 8.4** or **clause 9.2**; or
- 19A.1.3 a Member who was admitted to this Scheme on terms that prohibited transferring out,
- may:
- 19A.1.4 Elect to transfer to another Superannuation Scheme; and
- 19A.1.5 having made an Election to transfer and subject to this Part IXA, transfer to another Superannuation Scheme.
- 21/7/93 19A.2 Any Member who Elects to transfer under this **clause 19A** shall complete an

"election to transfer notice" in the form prescribed by the Board.

- 1/4/98 19A.2 The Board (or, if the Board shall so agree in writing and on such terms and conditions as the Board shall determine, the Administration Manager) shall consider, and decide whether to accept, the Member's Election to transfer.
- 21/7/93 19A.3 The Board is not obliged to accept a Member's Election to transfer under this  
20/10/16 **clause 19A** unless it is satisfied that the Superannuation Scheme to which the Member has Elected to transfer (referred to below as the "other scheme") is:
- 19A.3.1 able and has agreed to accept:
- 19A.3.1.1 the Member as a transferring member; and
- 19A.3.1.2 the terms on which the Member's Transfer Value will be payable; and
- 19A.3.2 governed by a trust deed under which the Transfer Value is fully vested to the transferring member immediately on payment of that amount to the other scheme,
- and for this purpose the Board may require the trustees of the other scheme to certify to that effect.
- 21/7/93 19A.4 [**RESERVED**]  
1/4/98
- 21/7/93 **19B CONSEQUENCES OF TRANSFER**
- 21/7/93 19B.1 Once an Election to transfer under **clause 19A** has been accepted by the Board, the Transfer Value for the Transferred Member shall be calculated by the Board.
- 21/7/93 19B.2 The Transfer Value for a Transferred Member shall be calculated as at a date  
1/4/98 determined by the Board (such date being referred to in this Part IXA as the  
1/12/98 "Transfer Date") being a date not earlier than, and not more than 14 days after, the date the completed election to transfer notice was received by the Board. Subject to section 50(2)(c) of the Act, the Transfer Value shall be the Transferred Member's Benefit Credit.
- 21/7/93 19B.3 Transfer Values shall remain in this Scheme until payable under **clause 19C**, and  
1/12/98 as soon as practicable after the end of each Financial Year Transfer Values shall be credited with earnings (less withholdings, if any, required to be made by law) at the Transfer Value Earnings Rate (as defined in **clause 19B.7**) declared in respect of that Financial Year under **clause 19B.7.2** (and where a Transfer Value has been held in this Scheme for less than 12 months, that rate shall be applied

on such proportionate basis as the Board shall determine).

21/7/93 19B.4 Where during a Financial Year a Transfer Value is payable in accordance with  
1/12/98 **clause 19C**, the Transfer Value shall be credited with earnings (less withholdings, if any, required to be made by law) for the period from the later of the Transfer Date and the last day as at which earnings were credited under **clause 19B.3** to the date of payment at:

19B.4.1 the latest Transfer Value Earnings Rate (as defined in **clause 19B.7**) declared in respect of that Financial Year under **clause 19B.7.1**; or

19B.4.2 if no such rate has been declared in respect of that Financial Year, such rate as the Board shall determine,

which rate shall be applied on such proportionate basis as the Board shall determine.

21/7/93 19B.5 Notwithstanding any other clause of this Deed, no distributions from the Interest  
1/12/98 Fluctuation Reserve under **clause 13.4** shall be credited to Transfer Values.

21/7/93 19B.6 No contributions to this Scheme shall be payable by or on behalf of a Transferred  
1/12/98 Member, a Transferred Member shall cease to be a Contributor for the purposes of this Scheme and the words "and where the context requires includes a former Contributor" in the definition of "Contributor" shall not apply to Transferred Members. Transferred Members shall however remain Members until the Transfer Value has been paid under **clause 19C**. Nothing in this **clause 19B.6** shall prejudice **clause 19C.2** and **clause 19C.3** or the Transferred Member's ability (if any) to rejoin this Scheme, and **clause 22** shall continue to apply to the Transferred Member as if the Transferred Member were a Member.

21/7/93 19B.7 For the purposes of **clause 19B.3** and **clause 19B.4**, "Transfer Value Earnings  
1/12/98 Rate" means an annual earnings rate (which shall not be a negative rate but may be zero) which:

19B.7.1 may be declared by the Board from time to time in respect of a Financial Year; and

19B.7.2 shall be declared by the Board in respect of each Financial Year as soon as practicable after the end of that Financial Year,

for the purposes of this **clause 19B**, after receiving the advice of the Actuary and having regard to the net investment earnings rate of this Scheme.

- 27/7/93      **19C      WHEN TRANSFER VALUES PAYABLE**
- 27/7/93      19C.1      Subject to **clause 19C.2** and **clause 19C.3**, the Transfer Value for a Transferred  
20/10/16      Member shall become payable in one lump sum to the Superannuation Scheme to  
which the Transferred Member has transferred (“the elected scheme”) (or to  
another Superannuation Scheme nominated by the Transferred Member and  
approved by the Board in the event that the elected scheme for any reason is  
unable to receive such payment), on the earlier of:
- 20/10/16      19C.1.1      **[RESERVED]**
- 20/10/16      19C.1.2      **[RESERVED]**
- 20/10/16      19C.1.3      **[RESERVED]**
- 19C.1.4      such date as may be agreed between the Board and the trustees of the  
Superannuation Scheme to which the Transfer Value is payable; or
- 19C.1.5      the date of the winding up of this Scheme;
- and the Transfer Period will be the period between the Transfer Date and the  
earlier of such dates.
- 21/7/93      19C.2      If:  
18/11/93  
20/9/07      19C.2.1      a Transferred Member (or his or her Surviving Spouse or Surviving  
Nominee or estate in the event of death) would have become eligible  
for a Benefit during the Transfer Period under Part IV, Part V or Part VI  
of this Deed if the Transferred Member had remained a Contributor  
(and treating the Transferred Member as not having made an Election  
to receive a Benefit under this Part IXA for the purposes of **clause 9.1**  
and **clause 10**); or
- 19C.2.2      a Transferred Member establishes to the satisfaction of the Board that  
he or she intends to depart permanently from New Zealand,
- 20/9/07      then, subject to **clause 19C.3**, the Transfer Value shall, on the application in  
writing of the Transferred Member, Surviving Spouse, Surviving Nominee or  
representative of the estate (as appropriate) to the Board, become payable in one  
lump sum to the Transferred Member, Surviving Spouse, Surviving Nominee or  
estate (as appropriate).
- 21/7/93      19C.3      The Board shall not be required to pay out any Transfer Value under **clause**  
20/10/16      **19C.1** or **clause 19C.2** until such time as it has been able to convert the  
Property of this Scheme which represents that Transfer Value to cash (or, where

the Transfer Value is payable to the trustees of a Superannuation Scheme and the Board agrees to make the payment in Property other than cash, other Property acceptable to the Board and those trustees) and for the purposes of this **clause 19C.3** the Board shall not be required to convert any Property of this Scheme to cash or other Property if to do so would or might, in the opinion of the Board, unduly prejudice the value of the Property of this Scheme representing other Members' and beneficiaries' (as defined in the Act) interests in this Scheme.

21/7/93 19C.4 **[RESERVED]**

20/10/16

21/7/93 **19D OTHER PROVISIONS RELATING TO TRANSFERS OUT**

21/7/93 19D.1 Subject to **clause 19B.6**, nothing in this Part IXA shall limit any right contained  
1/12/98 in any other Part of this Deed for any Contributor to transfer to any other  
20/10/16 Superannuation Scheme.

21/7/93 19D.2 Nothing in this Part IXA shall confer upon any person any right to require the  
20/10/16 Board to provide for transfers from this Scheme to any other Superannuation Scheme.

21/7/93 19D.3 The Board shall be under no obligation or liability to see to the application of any  
20/10/16 amount paid (or Property transferred) to the trustees of any Superannuation Scheme or any other person under this Part IXA.

21/7/93 **19E TRANSFERS IN**

21/7/93 19E.1 Subject to **clause 3** and to the provisions of this **clause 19E**, the Board (or, if  
28/9/96 the Board shall so agree in writing and subject to such terms and conditions as  
1/4/98 the Board shall determine, the Administration Manager) may accept as a  
20/10/16 Contributor to this Scheme a person who is under sixty years of age and who has become a transferred member of another existing scheme (as defined in the Act) under provisions in that existing scheme which provide for the transfer of members (as defined in the Act) of that scheme to other Superannuation Schemes on terms which are the same as or similar to the terms set out in this Part IXA,

**PROVIDED THAT** the Board may not, on or after 1 October 1996, accept as a Contributor to this Scheme a person whose transfer value from that other existing scheme is less than the Minimum Amount.

31/5/00 19E.1AA Notwithstanding the restrictions contained in **clause 19E.1** and **clause 19E.2**  
20/9/07 the Board may accept as a Contributor to this Scheme any person (regardless of his or her age or of the amount of his or her transfer value) who has become a transferred member of another existing scheme (as defined in the Act), on terms which would not have the effect of reducing, postponing or otherwise adversely

affecting the benefits that may in due course flow from, or are attributable to, membership of the Scheme up to the date of transfer.

- 330/3/93 19E.1BB A person accepted as a Contributor under **clause 19E.1AA** may not make any contributions to the Scheme, apart from the transfer value received in respect of him or her from the existing scheme of which he or she was a transferred member.
- 1/4/98 19E.1A Any person who wishes to become a Contributor to this Scheme in accordance with this **clause 19E** shall complete an application form in such form as is prescribed by the Board.
- 1/4/98 19E.1B The Board (or, if applicable, the Administration Manager) shall consider and decide whether to accept the application.
- 21/7/93 19E.2 In relation to any Contributor to whom **clause 19E.1** applies, and notwithstanding **clause 8.2.2**, any period of time as a contributor to the other existing scheme shall not be counted as time as a Contributor to this Scheme for the purposes of this Scheme.

## PART X

### MISCELLANEOUS

#### **20 ELECTIONS IRREVOCABLE**

- 30/3/93 20.1 As soon as an Election under any part of this Scheme has been made it shall be  
1/4/98 irrevocable unless, in any case where a Benefit has not commenced to be paid, the Board in its discretion determines otherwise.
- 1/4/98 20.2 Any Election referred to in **clause 20.1** shall be deemed to be made as soon as it has been received by the Board or Administration Manager or an authorised representative of the Board or Administration Manager.

#### **21 [RESERVED]**

#### **22 PROHIBITION OF ASSIGNMENT, BORROWING AND PAYMENT OF DEBTS**

- 30/3/93 22.1 No money payable from this Scheme to any person shall be in any way assigned, charged, alienated or passed by operation of law to any other person.
- 22.2 No Contributor shall borrow against the security of any Benefits payable from this Scheme.
- 22.3 Any money payable from this Scheme on the death of a Contributor shall not be



assets for the payment of that Contributor's debts or liabilities.

## **23 BANKRUPTCY**

30/3/93 All the interests in this Scheme of any person then or contingently entitled to any Benefit under this Scheme shall be forfeited to this Scheme in the event that the Board considers that the person has committed or is likely to commit any act of bankruptcy; and shall be applied by the Board to the benefit of that person or that person's dependants in such manner as the Board considers appropriate having regard to the objects of this Scheme.

## **24 INABILITY TO MANAGE AFFAIRS**

30/3/93 The Board may, in the event of the inability of a Contributor or other Beneficiary to manage that person's own affairs, administer any Benefits on that person's behalf.

## **25 PAYMENTS IN RESPECT OF MINORS**

- 30/3/93 25.1 Where any Benefit is payable under this Scheme to any minor the Board may pay the Benefit to the minor or, subject to such terms and conditions as the Board may determine, to any other person to be expended on behalf of the minor.
- 25.2 Any receipt given by a minor or other person for money paid under **clause 25.1** shall be a good discharge to the Board.
- 21/12/95 25.3 In relation to any Benefit payable to any Exempted Contributor or as a result of the membership of this Scheme of any Exempted Contributor, the term "minor" in this **clause 25** shall mean a person under the age of 16 years.

## **26 UNCLAIMED MONEY PAYABLE OUT OF SCHEME**

All money payable out of this Scheme to any person for which no claim or demand has been made by or on behalf of that person shall remain part of this Scheme but may at any time be paid out of this Scheme to any person establishing a lawful claim to the money.

## **5/4/01 26A MISSING PERSONS**

5/4/01 26A.1 In this **clause 26A** –

"Existing Scheme" has the same meaning as in the Act:

“Missing Person” means any Member or Beneficiary from, or in respect of, whom no contributions are being received and for whom the Board has no current address.

- 5/4/01 26A.2 The Board may deduct from any Benefit, entitlement or earnings credited to a Missing Person to which the Missing Person is entitled, a reasonable amount to cover the costs incurred by the Board in endeavouring to locate, and in confirming and satisfying the Scheme’s liability to, the Missing Person; and
- 26A.2.1 the right of any Contributor to receive, under **clause 11** a minimum Earnings Rate is subject to the Board’s power to deduct an amount under this **clause 26A.2**; and
- 26A.2.2 this **clause 26A.2** does not limit any other power the Board may have to charge costs or expenses against this Scheme or any other Existing Scheme, or against a Member or Beneficiary.
- 5/4/01 26A.3 The Board may allocate to any Missing Persons:
- 26A.3.1 property of this Scheme equivalent to the Missing Persons’ share in this Scheme; and
- 26A.3.2 future investment returns from that property received after the date of that allocation.
- 5/4/01 26A.4 The Board may transfer Missing Persons, the liabilities of the Scheme to those Missing Persons and any property allocated to them under **clause 26A.3**, to any other Existing Scheme without the consent of Members or Beneficiaries or any other person.
- 5/4/01 26A.5 For the purposes of **clause 26A.3.1** and except as otherwise approved in writing by the Minister of Finance, a share in this Scheme is to be calculated as the value of the liabilities (as determined by the Actuary) of this Scheme to the Missing Persons –
- 26A.5.1 **plus**, if this Scheme has positive reserves, an equitable share of the reserves, as determined by the Board after receiving advice from the Actuary; or
- 26A.5.2 **less**, if this Scheme has negative reserves, an equitable share of the reserves, as determined by the Board after receiving advice from the Actuary.
- 5/4/01 26A.6 The Board may at any time extinguish the liabilities of this Scheme to a person who has been a Missing Person for a period of at least five years before the

extinguishment (whether under this Scheme or under the provisions of any Existing Scheme which are equivalent to the provisions of this **clause 26A**)

**PROVIDED THAT:**

26A.6.1 no liability may be extinguished under this **clause 26A.6** unless the Board has used reasonable endeavours to find the current address of that Missing Person; and

26A.6.2 if any person establishes to the satisfaction of the Board that a liability of this Scheme to him or her has been extinguished under this clause during the previous 15 years, the Board must reinstate the liability of this Scheme to that person as if it had never been extinguished.

**27 IMPLIED TERMS OR CONDITIONS**

30/3/93 Every term or condition of this Scheme that was provided in the National Provident Fund Act 1950 and is not expressly provided in this Scheme shall be incorporated in this Scheme as a term or condition of this Scheme.

30/3/93 **28 ACTUARY**

30/3/93 The Board shall appoint an Actuary for this Scheme and shall ensure that the financial position of this Scheme is examined by the Actuary so appointed as required by the FMC Act and the Act and that the requirements of those Acts in relation to actuarial examinations are complied with.  
20/10/16

30/3/93 **29 INFORMATION TO MEMBERS**

30/3/93 29.1 Every Member of this Scheme shall have the right to receive annual reports of the Board in respect of this Scheme, to receive estimates of Benefits, and to look at and receive copies of the scheme documents and reports as provided for in the FMC Act.  
20/10/16

20/10/16 29.2 The Board shall comply with the reporting requirements of the FMC Act.

30/3/93 **29A PAYMENTS IN NZ CURRENCY**

All Benefits payable under this Scheme shall be payable in New Zealand dollars and to a bank account in New Zealand, or, if the Board agrees, by posting of a cheque in New Zealand dollars to an address nominated by the person entitled to receive the Benefit.

## PART XI

### WINDING UP

- 30/3/93     **30**     **WINDING UP**
- 30.1       This Scheme may be wound up only at the direction of the Minister of Finance after consultation with the Board and shall be wound up in accordance with any such direction.
- 30/3/93     30.2       Upon a winding up of this Scheme and subject to prior notice of such intention having been given to the FMA, the assets of this Scheme shall be realised and the proceeds thereof (less the reasonable costs of the winding up) allocated pro rata between the remaining Contributors, and Members and other Beneficiaries then in receipt of a Pension, on a basis that takes account of their interests in this Scheme.
- 21/7/93  
20/10/16
- 20/10/16   30.2A      On the winding up of this Scheme, no part of the assets of this Scheme shall revert to:
- 30.2A.1    any person other than as provided for in **clause 30.2** without the written consent of the FMA; or
- 30.2A.1    any employer who has contributed to this Scheme.
- 20/10/16   30.3       The Board shall advise the FMA of its intention to wind up the Scheme by providing a copy of its resolution to do so within 10 working days in accordance with section 212 of the FMC Act.
- 20/10/16   30.4       [**RESERVED**]
- 20/10/16   **31**     **REGISTER**
- 31.1       A register of Members and Beneficiaries must be kept by the Board in a form and manner required by the FMC Act.
- 31.2       Such register may be in electronic form and compiled by a delegate of the Board in a manner approved by the Board.
- 31.3       The following details shall be entered on the register:
- 31.3.1      the names and addresses of each Member or Beneficiary;
- 31.3.2      the date on which the Member or Beneficiary became a Member or

Beneficiary of the Scheme;

31.3.3 such other information as the Board requires or as is required by the Act or the FMC Act.

31.4 The Board must ensure that the register is audited at intervals of not more than 12 months or as required by and in accordance with the provisions of the FMC Act.

31.5 The Board must advise the Registrar of the place where its registers are kept and of any change in that place. Changes must be advised to the Registrar within 10 working days of the change in place.

20/10/16 **32 ACCOUNTING RECORDS**

32.1 The Board shall ensure that there are kept at all times accounting records that comply with the requirements of section 455 of the FMC Act.

32.2 In keeping or causing to be kept the accounting records under **clause 32.1** the provisions of Part 7 of the FMC Act must be complied with.

20/10/16 **33 FINANCIAL STATEMENTS**

33.1 Subject to any law relevant to the Board or the Scheme (including the FMC Act), the Board must ensure that financial statements are prepared that comply and are in accordance with the requirements of Part 7 of the FMC Act.

20/10/16 **34 AUDIT**

34.1 The Board shall ensure that:

34.1.1 the Scheme's financial statements are audited and reported on by the Auditor in accordance with the requirements of the FMC Act; and

34.1.2 those financial statements, together with the Auditor's report on those financial statements, are delivered and lodged in accordance with any requirements of the FMC Act.

20/10/16 **35 THE AUDITOR**

35.1 A person or firm selected by the Board must be appointed Auditor of the Scheme. Such person or firm must be a Qualified Auditor (as defined in the FMC Act) and meet the requirements of any law relevant to the Board or the

Scheme.

20/10/16 **36 INTENTION TO BE LEGALLY BINDING**

36.1 It is intended that this deed be legally enforceable as between the Board, the Members and the Beneficiaries.

**ANNEX**

30/3/93

**SECTION 38 NATIONAL PROVIDENT FUND RESTRUCTURING ACT 1990**

38 (1) No person is entitled to be a contributor to any existing scheme unless that person -

- (a) was a contributor to that scheme immediately before the transfer day; or
- (b) was a contributor to another existing scheme immediately before the transfer day and is a person, or a person of a kind, whom the Board, in its discretion and after consultation with the Minister, has agreed may contribute to that scheme.

(2) Any person -

- (a) who has, before the transfer day, contributed to an existing scheme; and
- (b) whose contributions, or part of whose contributions, remain in the scheme on the transfer day -

shall, for the purposes of this section, be deemed to have been a contributor to that existing scheme immediately before the transfer day.

(3) Any employer -

- (a) who was not a contributor to an existing scheme immediately before the transfer day; and
- (b) who, after the transfer day, is or becomes the employer of an employee who was a contributor to an existing scheme immediately before the transfer day -

may, notwithstanding subsection (1) of this section but subject to the terms of the existing scheme, contribute to any existing scheme to which that employee contributes, as a corporate contributor, for the purpose of subsidising that employee's contributions or obtaining a benefit for that employee.

(4) Nothing in this section limits -

- (a) the terms of any existing scheme; or

(b) any other provision of this Act.