



**ANNOTATED TRUST DEED  
for  
NATIONAL PROVIDENT LUMP SUM NATIONAL SCHEME  
(dated 21 September 2016, effective 20 October 2016)**

**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 sub-clause (including any subsequent clauses included under that sub-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.**

# ANNOTATED TRUST DEED

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**ANNOTATED TRUST DEED****TRUST DEED PREPARED PURSUANT TO SECTION 45 OF THE NATIONAL PROVIDENT FUND RESTRUCTURING ACT 1990 AND APPROVED BY THE MINISTER OF FINANCE PURSUANT TO SECTION 49 OF THAT ACT.****WHEREAS:**

- 30/3/93 **A.** The National Provident Lump Sum National Scheme was established under the National Provident Fund Act 1950.
- B.** The scheme document as adopted from 11 June 1987 was amended by scheme documents dated 8 December 1988, 26 April 1990 and 27 March 1991.
- 30/3/93 **C.** By section 45 of the National Provident Fund Restructuring Act 1990 ("the Act") the Board is required to prepare a Trust Deed ("this Deed") for the National Provident Lump Sum National Scheme.
- D.** Under Part IV of the Act certain provisions must or may be contained in this Deed.
- 20/10/16 **E.** This Deed has been amended from time to time.
- 20/10/16 **F.** Under section 59A of the Act, certain provisions of the Financial Markets Conduct Act 2013 ("the FMC Act") apply to the Scheme on and after the effective date for the Scheme in accordance with clause 19 of Schedule 4 of the FMC Act. In particular, the Scheme must comply with certain governance requirements of the FMC Act. One of these governance requirements is that this Deed must comply with the requirements of the FMC Act.
- 20/10/16 **G.** The effective date for the Scheme is the earlier of the following dates: (a) the date that the issuer of the Scheme elects; or (b) 1 December 2016.
- 20/10/16 **H.** This Deed has been amended to comply with the requirements of the FMC Act.
- 20/10/16 **I.** This Deed records the terms under which the Scheme is constituted and governed.

**NOW THEREFORE THIS DEED WITNESSES AS FOLLOWS:****PART I****GENERAL****1 TITLE**

- 30/3/93 This Deed is the Trust Deed for the National Provident Lump Sum National Scheme (this or the "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;
- 1A.1.2 and 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
- 2 DEFINITION AND CONSTRUCTION**
- 30/3/93 2.1 In this Deed, unless inconsistent with the context, -
- "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 31** and whose appointment has not been terminated.
- 11/4/98 **"Administration Manager"** means a person appointed by the Board to manage the administration of the Scheme under **clause 22.1**.
- 30/3/93 **"Applied Earnings Rate"** means the Earnings Rate plus any Reserve Account distributions (expressed as an annual rate) under **clause 15.4.4**.
- 20/10/16 **"Auditor"** means the person or firm appointed as auditor of the Scheme under **clause 40**.
- "Beneficiary"** means a natural person who is eligible to receive a Benefit from this Scheme.
- 30/3/93 **"Benefit"** has the same meaning as in the Act.
- 11/12/98 **"Benefit Credit"** means the amount determined under **clause 16AA**.
- 30/3/93 **"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.
- 16/5/07  
20/10/16 **"Complying Fund Rules"** means the complying fund rules as defined in section YA 1 of the Income Tax Act 2007.
- 16/5/07  
20/10/16 **"Complying Superannuation Fund"** has the same meaning as in the FMC Act.
- 16/5/07 **"Contributor"** means any person who has Elected to become a contributor to this Scheme and has contributed in accordance with Part II or Part IIIA.

- 16/5/07            **"Deed"** means this deed as amended from time to time and includes the Schedule.
- "Earnings Rate"** means the earnings rate declared by the Board from time to time under **clause 14**.
- 30/3/93            **"Elect"** means to elect in writing, addressed and delivered or posted to the Board or an authorised representative of the Board, and **"Election"** shall have a corresponding meaning.
- 30/3/93            **"Employee"** means any person who is engaged to work or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical or professional work, or otherwise.
- 30/3/93            **"Employer Contributions"** means the contributions made to this Scheme in respect of a Contributor by an employer.
- 21/12/95  
16/3/00            **"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, or such other period as may be a financial year of this Scheme as determined by the Board.
- 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.
- 1/4/08             **"KiwiSaver Act"** means the KiwiSaver Act 2006.
- 16/5/07            **"Locked-in Benefit Credit"** means the amount determined under **clause 16AA.1A**.
- 16/5/07            **"Locked-in Contributor Contributions"** means the contributions of a Contributor which the Contributor has Elected to have credited to the Contributor's Locked-in Total Credit under **clause 8A.1**.
- 16/5/07            **"Locked-in Employer Contributions"** means the Employer Contributions made in respect of a Contributor which the Contributor has Elected to have credited to the Contributor's Locked-in Total Credit under **clause 8A.1**.
- 16/5/07            **"Locked-in Total Credit"** in relation to a Contributor means the aggregate of:
- (a) the Locked-in Contributor Contributions made in respect of that Contributor;
  - (b) the Locked-in Employer Contributions made in respect of that Contributor;

- (c) any amount transferred to this Scheme from another scheme in accordance with **clause 4.3** or **clause 22E** which the Board decides or is required, or the Contributor Elects, to credit to the Contributor's Locked-in Total Credit;
- (d) any amount allocated to the Contributor on a distribution from the Reserve Account in accordance with **clause 15.4** which the Board decides or is required to credit to the Contributor's Locked-in Total Credit;
- (e) any other amount credited to that Contributor's Locked-in Total Credit under any provision of this Deed except under **clause 16AA**;
- 1/4/08  
20/10/16 (f) any tax credits paid to this Scheme in respect of the Contributor under subpart MK of the Income Tax Act 2007; and
- 16/5/07 (g) earnings added or allocated to that Contributor's Locked-in 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
- (h) any amounts debited under **rule 11** of the Schedule.
- 30/3/93 **"Locked-in Transfer Value"** means the Locked-in Benefit Credit calculated under **clause 16AA.1A.2**.
- "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.
- 29/3/11 **"Minimum Amount"** means an amount specified by the Board from time to time.
- 30/3/93 **"Minimum Pension"** means the amount determined by the Board from time to time under **clause 16G**.
- 1/5/99  
20/10/16 **"National Provident Scheme"** means any Superannuation Scheme of which the Board is the trustee or which is administered by the Board.
- 1/4/08 **"New Zealand Superannuation Qualification Age"** means, in relation to a Contributor, the age at which persons of the Contributor's age ordinarily qualify for New Zealand superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001.
- 30/3/93 **"Pension"** means a non-assignable and non-commutable annual amount calculated in accordance with **clause 16B**, payable for life to a Contributor.
- 30/3/93 **"Pension Account"** means the account established under **clause 16A**.
- 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.



- 30/3/93            **"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            **"Redundancy"** means the compulsory or voluntary termination of a Contributor's employment with an employer because of retrenchment or business closure.
- "Reserve Account"** means the account established under **clause 15**.
- 16/5/07            **"Schedule"** means the schedule at the end of this Deed.
- 30/3/93            **"Small Credit Formula"** means the formula:  
1/12/98
- $$\$5,000 \times \frac{A}{B}$$
- 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.
- 20/10/16            **"Superannuation Scheme"** has the meaning given to it in the Act.
- 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 9.1** at the time of the Contributor's death.

- 30/3/93  
21/12/95      **"Surviving Spouse"** in relation to a Contributor who had 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 the Contributor's wife or husband or partner on a permanent domestic basis for such period as the Board determines.
- 16/5/07  
20/10/16      **"Tax File Number"** means a tax file number as defined in section YA 1 of the Income Tax Act 2007.
- 30/3/93  
1/12/98  
16/5/07      **"Total Credit"** in relation to a Contributor means the aggregate of:
- (a) the Employer Contributions made in respect of that Contributor other than Locked-in Employer Contributions;
  - 16/5/07      (b) that Contributor's contributions other than Locked-in Contributor Contributions;
  - 16/5/07      (c) any Reserve Account distributions made under **clause 15.4.4** in respect of that Contributor which are credited to that Contributor's Total Credit;
  - 16/5/07      (d) any other amounts credited to that Contributor's Total Credit (other than amounts credited to that Contributor's Locked-in Total Credit) under any provision of this Deed except under **clause 16AA**; and
  - (e) 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; and
- "Total Credit"** shall not include a Contributor's Locked-in Total Credit.
- 1/12/98  
16/5/07      **"Transfer Value"** in respect of any Transferred Member and at any time, means:
- (i) the dollar amount calculated under **clause 22B.2**; plus
  - (ii) an amount equal to the earnings that have been credited at or prior to that time under **clause 22B.3**; plus
  - (iii) an amount equal to the earnings that have been credited at or prior to that time under **clause 22B.4**.
- 21/7/93      **"Transferred Member"** means a Member who has made an Election to transfer under **clause 22A** and whose Election to transfer has been accepted by the Board.
- 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;

- 16/5/07 2.3.1A references to **rules** are to rules of the Schedule;
- 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.
- 2.4 Any legislation appended to this Deed is appended for ease of reference only, is not imported into this Deed, and is the form of that legislation as at the date of the signing of this Deed, or, in the case of legislation appended as the result of an amendment to this Deed, as at the date of signing of the relevant amendment.

## PART II

### ELIGIBILITY AND CONTRIBUTIONS

30/3/93 **3 ELIGIBILITY**

- 30/3/93 3.1 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.
- 30/3/93 3.2 Only Employees may become Contributors to this Scheme.

**4 CONTRIBUTIONS**

16/5/07 Subject to Part IIIA, contributions to this Scheme shall be made as follows:

- 30/3/93 4.1 A Contributor shall make contributions at any rate agreed from time to time between the Contributor and the Contributor's employer,

**PROVIDED THAT** the rate shall not be less than 1% of the Contributor's basic remuneration or \$10.00 per week, whichever is the lesser, and

**PROVIDED FURTHER THAT** in relation to contributions to a Contributor's Locked-in Total Credit, the contributions paid under this **clause 4.1** shall not be less than the minimum amount required from time to time from the Contributor pursuant to **rule 2** of the Schedule.

- 30/3/93 4.2 The Contributor's employer shall make contributions to this Scheme in respect of the Contributor in accordance with any agreement (as to rate or otherwise) made from time to time with the Contributor,

1/4/08 **PROVIDED THAT** in relation to contributions to a Contributor's Locked-in Total Credit, the Employer Contributions paid under this **clause 4.2** shall not be less than the minimum amount required from time to time from the Contributor's employer pursuant to **rule 2** of the Schedule.

21/12/95 4.3 The credits a Contributor has accrued with any other Superannuation Scheme (as  
30/3/93 defined in the Act and including an overseas Superannuation Scheme) may be  
16/5/07 transferred to this Scheme and shall be credited to the Contributor's Total Credit,  
20/10/16

**PROVIDED THAT** if any such credit includes an amount that is subject to Complying Fund Rules, that amount will, to the extent required by those Complying Fund Rules, be credited to the Locked-in Total Credit of the Contributor.

21/12/95 **5 DEDUCTION AND PAYMENT OF CONTRIBUTIONS**  
30/3/93

5.1 The Contributor's employer shall remit the Contributor's contributions due by:

21/12/95 5.1.1 Deduction from the remuneration due to that Contributor; or  
30/3/93

21/12/95 5.1.2 Payment of other moneys of that Contributor provided by the  
30/3/93 Contributor for that purpose.

21/12/95 5.2 All contributions under **clause 5.1** together with the Employer Contributions  
30/3/93 shall be remitted to the Board by a date as may be specified by the Board.

21/12/95 5.3 Interest at such rate as may be fixed by the Board from time to time may be  
30/3/93 levied against the employer on late payments.

## **6 CEASING CONTRIBUTIONS**

21/12/95 6.1 A Contributor may Elect to suspend or cease contributions and leave the  
30/3/93 Contributor's Total Credit in this Scheme without losing any rights (including in particular any vesting rights) in respect of such Total Credit.

21/12/95 6.2 The Contributor's Total Credit left in this Scheme shall continue to attract  
30/3/93 earnings at the Applied Earnings Rate.

21/12/95 6.3 Any Contributor who Elects to cease or suspend contributions under **clause 6.1**  
30/3/93 may recommence contributions at any time,

**PROVIDED THAT** a Contributor who is not an Employee shall not be entitled to contribute to this Scheme.

16/5/07 6.4 This **clause 6** is subject to the rules prescribed in the Schedule in relation to  
contributions to a Contributor's Locked-in Total Credit.

## **PART III**

### **WITHDRAWALS**

30/3/93 **7 WITHDRAWAL RIGHTS**

16/5/07 7.1 **On Ceasing Employment Generally**

- 16/5/07 Subject to the rules prescribed in the Schedule in relation to withdrawals from Locked-in Total Credits, a Contributor who does not qualify for a Benefit under **clause 10, clause 11, clause 12 or clause 13**, having ceased to be engaged by the Contributor's employer, may Elect to withdraw from this Scheme. Upon making an Election to withdraw, the Contributor shall be entitled to a Benefit calculated as follows (but in any event not to exceed the Contributor's Total Credit and further the Benefit shall not include the Contributor's Locked-in Total Credit except to the extent (if any) permitted by the rules in the Schedule):
- 7.1.1 Contributor's own contributions; plus
- 7.1.2 20% of the Employer Contributions made in respect of that Contributor for each complete year in this Scheme; plus
- 7.1.3 earnings thereon at the Applied Earnings Rate to the date of payment; plus
- 7.1.4 such additional percentage of the Employer Contributions and earnings thereon at the Applied Earnings Rate as is agreed between the Contributor and the employer and approved by the Board.
- 7.2 On Redundancy**
- 7.2.1 Where the Board is satisfied that a Contributor is required to cease service with an employer by reason of Redundancy and prior to qualifying for a Benefit under Part V, Part VI or Part VII, the Board may, subject to **clause 7.2.2**, pay the Contributor an amount additional to the entitlement under **clause 7.1**,
- 30/3/93 **PROVIDED THAT** any Benefit payable under **clause 7.2.1** shall not exceed the Contributor's Benefit Credit.
- 16/5/07 7.2.2 No amount shall be released from a Contributor's Locked-in Total Credit on Redundancy unless the circumstances also give rise to grounds for a release under **rule 6** of the Schedule.
- 7.3 Leaving Total Credit in this Scheme**
- 7.3.1 A Contributor who, on ceasing to be engaged by the Contributor's employer, does not make an Election under the preceding provisions of this **clause 7**, may leave that Contributor's Total Credit in this Scheme where it shall continue to attract earnings at the Applied Earnings Rate until a Benefit becomes payable under the terms of this Scheme.
- 16/5/07 7.3.2 Any Contributor who leaves the Contributor's Total Credit in this Scheme under **clause 7.3.1** may, on again becoming an Employee, recommence contributions to that Contributor's Total Credit and have future contributions subsidised by the Contributor's employer in accordance with **clause 4.2**,
- PROVIDED THAT** the right to withdraw under **clause 7.1** or **clause 7.2** shall cease on the Contributor recommencing contributions and, for the avoidance of doubt, that Contributor shall have no right to withdraw under **clause 7.1** or **clause 7.2** until that new employment ceases.

- 30/3/93  
21/12/95  
1/12/98  
1/5/99
- 7.4 Election to Purchase Pension**
- Any Contributor who has attained the age of 50 years and is entitled to a Benefit under this **clause 7** may Elect to have 75 percent or more of the Benefit applied by the Board to the purchase of a Pension payable to the Contributor,
- PROVIDED THAT** no such Election shall be made where:
- 7.4.1 the Total Credit or Benefit Credit (as the case may be) does not exceed \$10,000 or such greater amount as may be determined under the Small Credit Formula; or
- 7.4.2 the Pension would be less than the Minimum Pension.
- PROVIDED FURTHER** that in relation to any Exempted Contributor who is entitled to a Benefit under this **clause 7** an election may be made under this **clause 7.4** before attainment of age 50.
- 29/3/11
- 7A TOTAL CREDIT NOT TO BE LESS THAN MINIMUM AMOUNT**
- 7A.1 If the Total Credit of a Contributor is less than the Minimum Amount and the Contributor does not have a Locked-in Total Credit then, subject to **clause 7A.2** and **clause 7A.3** but otherwise notwithstanding any other provision of this Deed, the Board may pay the Contributor's Benefit Credit to him or her and on receiving such payment the Contributor shall cease to be a Contributor or Member of this Scheme.
- 7A.2 Before paying the Benefit Credit to the Contributor under **clause 7A.1**, the Board shall give the Contributor not less than six months' written notice of the Minimum Amount and of the Board's intention to make the payment.
- 7A.3 If 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 7A.2** (or such longer period as the Board may determine in any one or more cases) then the Board shall not pay the Benefit Credit to the Contributor under **clause 7A.1**.
- 8 COMMENCEMENT OF PERIOD AS CONTRIBUTOR**
- For the purposes of **clause 7**, the period as a Contributor in this Scheme shall be deemed to have commenced:
- 8.1 from the date on which a Contributor Elected to join this Scheme; or
- 21/12/95  
20/10/16
- 8.2 where a Contributor transferred to this Scheme from an employer subsidised Superannuation Scheme (including an overseas scheme), from the date on which the Contributor joined that earlier scheme; or
- 16/5/07
- 8.3 where a Contributor transferred to this Scheme from another National Provident Scheme that is not employer subsidised, from such earlier date as the Board may determine, being not earlier than the date of commencement of the membership of that earlier scheme or any other National Provident Scheme where the Contributor's membership of National Provident Schemes has been continuous.

**LOCKED-IN TOTAL CREDIT**

- 1/4/08 8A.1 A Contributor (other than a Contributor who has attained New Zealand Superannuation Qualification Age) may Elect at any time that, if (and for so long as) this Scheme is a Complying Superannuation Fund, some or all of the contributions paid to this Scheme by or in respect of the Contributor will be credited to an account in this Scheme called the Locked-in Total Credit which account is subject to the rules prescribed in the Schedule.
- 30/3/93 8A.2 If a Contributor makes an Election under **clause 8A.1**, there shall be established and maintained in the records of this Scheme in the Contributor's name an account called the Locked-in Total Credit.
- 8A.3 A Contributor's Locked-in Total Credit must be credited with all contributions to which **clause 8A.1** applies.
- 8A.4 Any Election under **clause 8A.1** must include the Contributor's Tax File Number.

**PART IV**  
**NOMINEES**

- 21/12/95     **9     NOMINEES FOR DEATH BENEFITS**
- 30/3/93     9.1     Subject to **clause 11**, an Exempted Contributor may nominate any person as a  
21/12/95     Nominee for the purposes of **clause 11**,  
20/10/16
- PROVIDED THAT:**
- 9.1.1     the Exempted Contributor must make the nomination in writing,  
            addressed and delivered or posted to the Board or an authorised  
            representative of the Board;
- 9.1.2     the nomination shall not have effect for the purposes of **clause 11**  
            until the Board has accepted the nomination and advised the Exempted  
            Contributor in writing of that acceptance;
- 9.1.3     the Board may decline to accept a nomination under this **clause 9.1**  
            if, in the opinion of the Board, acceptance of the nomination would or  
            may jeopardise the Scheme's status under any relevant legislation or  
            for any other regulatory purpose;
- 9.1.4     the Board shall not accept more than one Nominee in respect of any  
            Exempted Contributor at any one time;
- 9.1.5     the Board may, at any time after a nomination under this **clause 9.1**  
            has been accepted, cancel the nomination by notifying the Exempted  
            Contributor in writing where the Board becomes aware of  
            circumstances that would indicate, in the opinion of the Board, that the  
            nomination would or may jeopardise the Scheme's status under any  
            relevant legislation or for any other regulatory purpose.
- 30/3/93     9.2     An Exempted Contributor may cancel a nomination under **clause 9.1** by  
21/12/95     notifying the Board in writing, addressed and delivered or posted to the Board or  
            an authorised representative of the Board,
- PROVIDED THAT** an Exempted Contributor may not cancel a nomination after  
the commencement of a Benefit under **clause 11**.
- 30/3/93     9.3     Once a nomination under **clause 9.1** has been cancelled by an Exempted  
21/12/95     Contributor in accordance with **clause 9.2**, any Benefit payable under **clause 11**  
            shall be paid as if the nomination had never been made.



**PART V**  
**RETIREMENT BENEFITS**

**10 RETIREMENT**

- 30/3/93  
1/12/98
- 10.1 A Contributor, having ceased to be engaged by the Contributor's employer, and by giving notice in writing at any time after attaining age 60 or with the consent of the Contributor's employer on or after attaining age 50, shall be entitled to elect to receive a lump sum payment of the Contributor's Benefit Credit.
- 30/3/93  
1/12/98  
1/5/99
- 10.2 Any Contributor who becomes entitled to make an Election under **clause 10.1** (including by virtue of **clause 12**) may Elect to have 75 percent or more of the Contributor's Benefit Credit applied by the Board to provide a Pension payable to the Contributor;

**PROVIDED THAT** no such Election shall be made where:

10.2.1 the Contributor's Benefit Credit does not exceed \$10,000 or such greater amount as may be determined under the Small Credit Formula; or

10.2.2 the Pension would be less than the Minimum Pension.

- 16/5/07
- 10.3 No amount shall be withdrawn or released from a Contributor's Locked-in Total Credit on the Contributor ceasing to be engaged by the Contributor's employer unless the circumstances also give rise to grounds for a withdrawal or release under the rules prescribed in the Schedule.

**PART VI**  
**DEATH BENEFITS**

**11 BENEFITS PAYABLE**

- 30/3/93  
21/12/95
- 11.1 In the event of a Contributor's death before the Contributor has commenced to receive a Benefit under any other part of this Scheme, the Board shall pay the Contributor's Benefit Credit to:

11.1.1 the Contributor's Surviving Spouse; or

11.1.2 if there is no Surviving Spouse, the Contributor's legal representative or the administrator of the Contributor's estate,

**PROVIDED THAT** where more persons than one have claims as 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 in such shares and proportions (including a nil proportion) as the Board thinks fit, and

**PROVIDED FURTHER THAT** nothing in this **clause 11.1** shall apply in respect of an Exempted Contributor.

- 30/3/93  
1/12/98
- 11.2 any person or persons entitled to a Benefit under this Part VI may defer making an Election until a later date. The Contributor's Total Credit shall continue to attract earnings at the Applied Earnings Rate until an Election is made,

**PROVIDED THAT** in the event of the person or persons entitled to the Benefit dying before making an Election, the Benefit Credit shall be paid to the estate of the person or persons entitled to it.

- 21/12/95  
1/12/98
- 11.3 In the event of an Exempted Contributor's death before the Exempted Contributor has commenced to receive a Benefit under any other part of this Scheme, the Board shall pay the Exempted Contributor's Benefit Credit to:
- 11.3.1 the Exempted Contributor's Surviving Nominee;
- 11.3.2 if there is no Surviving Nominee, the Exempted Contributor's legal representative or the administrator of the Exempted Contributor's estate.
- 11.4 any amount released from the Contributor's Locked-in Total Credit on death shall be payable in accordance with the rules prescribed in the Schedule.

## PART VII

### PERMANENT INCAPACITY BENEFITS

#### 12 PERMANENT INCAPACITY

- 30/3/93
- 12.1 In the event of the Permanent Incapacity of a Contributor before that Contributor has made an Election under **clause 7**, **clause 9** or **clause 10**, and upon producing such medical evidence as the Board may require, the Contributor may be permitted to make an Election under **clause 10.1**.
- 16/5/07  
30/3/93
- 12.2 No amount shall be released from a Contributor's Locked-in Total Credit in the event of Permanent Incapacity unless the circumstances also give rise to grounds for a release under the rules prescribed in the Schedule.

#### 30/3/93 13 DEATH AND DISABILITY INSURANCE

- 30/3/93
- 13.1 Any Contributor may Elect to participate in any arrangement for the provision of death or disability benefits in respect of the Contributor or any dependant that is made available to the Contributor by the Board.
- 13.2 The participation in any arrangement under **clause 13.1** shall be on such terms and conditions as are determined by the Board.
- 16/5/07  
30/3/93
- 13.3 The costs of participation in any arrangement under **clause 13.1** shall be met from the Contributor's contributions or, with the consent of the Contributor's employer, from the Contributor's employer's contributions, or any combination of such contributions agreed to by the Contributor's employer but may not be met from any contributions to the Contributor's Locked-in Total Credit to the extent that payment of those costs would reduce the contribution below the minimum required by **rule 2** of the Schedule.
- 13.4 Where the Contributor's contributions or the Contributor's employer's contributions are applied towards the costs of participation in any arrangement under **clause 13.1** the obligations of the Contributor or the Contributor's employer to make contributions to this Scheme shall be deemed to that extent to be satisfied,

**PROVIDED THAT:**

- 16/5/07 13.4.1 the portion of the contributions so applied shall not form part of the Contributor's Total Credit or Locked-in Total Credit and shall not be payable to the Contributor under this Scheme; and
- 13.4.2 where that portion is paid out of the Contributor's contributions it shall for all purposes cease to be part of the Contributor's contributions.

## PART VIII FINANCIAL

### 14 EARNINGS RATES AND ALLOCATION

- 30/3/93 14.1 As soon as practicable after the end of each Financial Year the Board shall  
16/5/07 declare an Earnings Rate at which rate earnings shall be added to each Contributor's Total Credit and each Contributor's Locked-in Total Credit (if any) as at the beginning of that Financial Year,
- PROVIDED THAT** the Earnings Rate shall not be less than 4% per annum.
- 30/3/93 14.2 As soon as practicable after the end of each Financial Year the Board shall determine the basis of allocating earnings to contributions paid into this Scheme during that Financial Year.
- 20/10/92 14.2A For the purposes of **clause 14.3.1**, the Board may at any time and from time to  
30/3/93 time during any Financial Year commencing on or after 1 April 1993 declare an Earnings Rate for the period from the commencement of that Financial Year to a date that is earlier than the date of the declaration but later than the last day of any period in respect of which a declaration under this **clause 14.2A** has previously been made.
- 20/10/92 14.3 Where, during a Financial Year, a Benefit is payable in respect of a Contributor  
30/3/93 under Parts III, IV, V, VI or VII, or an Election to transfer under Part XA is  
21/7/93 accepted by the Board or a Contributor makes a withdrawal or funds are released  
16/5/07 from the Contributor's Locked-in Total Credit, in accordance with the rules prescribed in the Schedule:
- 16/5/07 14.3.1 earnings will be allocated to the Total Credit and Locked-in Total Credit (or relevant proportion thereof) (as appropriate) as at the beginning of that Financial Year for each complete calendar month from the commencement of that Financial Year to the date of payment (or Transfer Date (as defined in Part XA) in the case of the acceptance of an Election to transfer) at the rate that is the greater of 4% per annum and
- 14.3.1.1 where the Financial Year commenced before 1 April 1993, the latest rate declared pursuant to **clause 14.1**; or
- 14.3.1.2 where the Financial Year commenced on or after 1 April 1993, the latest rate declared in respect of that Financial Year pursuant to **clause 14.2A**, or, where no such rate has been declared in respect of that Financial Year, the latest rate declared pursuant to **clause 14.1**;

- 16/5/07 14.3.2 earnings will be allocated to contributions paid into this Scheme during that Financial Year on a basis determined by the Board from time to time;
- 30/3/93 14.3.3 in the event that no Earnings Rate has been declared under **clause 14.1** in respect of the previous Financial Year, earnings will be added to the Contributor's Total Credit and Locked-in Total Credit (if any) as at the beginning of that previous Financial Year at the latest rate declared pursuant to **clause 14.1** and earnings will be allocated to contributions paid into this Scheme during that previous Financial Year on a basis determined by the Board.
- 16/5/07 14.4 Where a Contributor's credit from another scheme is transferred to this Scheme, the amount transferred will attract earnings at the latest rate declared under **clause 14.1** applied pro rata for the number of complete calendar months from the date of transfer to the end of the Financial Year in which the transfer was effected or such earlier date on which a Benefit becomes payable under Part III, Part IV, Part V, Part VI or Part VII of this Scheme (or, where an Election to transfer is accepted under Part XA, the Transfer Date or where a withdrawal is made or funds are released from a Locked-in Total Credit, the date of the withdrawal or release).
- 30/3/93 **15 RESERVE ACCOUNT**
- 30/3/93 15.1 A Reserve Account shall be established for this Scheme.
- 30/3/93 15.2 The Reserve Account shall be credited with:
- 21/7/93 15.2.1 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 Reserve Account) or debited, in the case of negative earnings;
- 16/5/07 15.2.2 the balance of any Contributor's Total Credit or Locked-in Total Credit not transferred or otherwise disbursed in accordance with the provisions of this Scheme;
- 15.2.2A the balance of any Transfer Value not transferred or otherwise disbursed in accordance with the provisions of this Scheme;
- 16/05/07 15.2.3 all other credits to this Scheme other than amounts referred to in **clause 4** or **clause 8A.1**; and
- 15.2.4 any debits to the Pension Account made under **clause 16A.6**,  
and all other moneys of this Scheme other than moneys held in the Pension Account or forming part of Contributors' Total Credits or Locked-in Total Credits shall be held in the Reserve Account.
- 15.3 The Reserve Account shall be debited with:
- 15.3.1 earnings applied or allocated under **clause 14**;
- 15.3.1A earnings credited to Transfer Values under **clause 22B.3** and **clause 22B.4**;
- 15.3.1B amounts included in Transfer Values under **clause 16AA.1.2**;

- 15.3.1C amounts added to Contributors' Total Credits under **clause 16AA.1.1**;
  - 15.3.1D amounts added to Contributors' Locked-in Total Credits under **clause 16AA.1A.1**;
  - 15.3.1E amounts included in Locked-in Transfer Values under **clause 16AA.1A.2**;
  - 15.3.2 earnings credited to the Pension Account under **clause 16A.4.1** (or, in the case of a negative earnings rate, the Reserve Account shall be credited with earnings debited under that clause);
  - 15.3.3 tax and management (as defined in the Act) expenses not already deducted from investment earnings; and
  - 15.3.4 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 16A.4.2**).
- 30/3/93 15.4 The Board in its discretion after receiving advice from the Actuary may use the balance of the Reserve Account from time to time to do any or all of the following:
- 15.4.1 meet all or part of the contributions of all Contributors to this Scheme on an equitable basis;
  - 15.4.2 meet all or part of the employers' contributions to this Scheme;
  - 15.4.3 increase the Pensions of all pensioners on an equitable basis;
- 16/5/07 15.4.4 increase all Contributors' Total Credits and Locked-in Total Credits on an equitable basis;
- 15.4.5 provide Benefits other than retirement Benefits for all Contributors on an equitable basis.
- 30/3/93 15.5 The Board in its discretion may use the balance of the Reserve Account from time to time to do either or both of the following:
- 15.5.1 make hardship payments to Contributors or their dependants;
  - 15.5.2 pay any expenses of this Scheme.

## **16 ELECTION NOT TO PARTICIPATE IN RESERVE ACCOUNT**

- 30/3/93 16.1 Any Contributor may by notice in writing to the Board, Elect that on and from a date specified by the Contributor that Contributor shall not be entitled to participate in any distribution from the Reserve Account in respect of the membership of that Contributor in this Scheme (including any distribution of that Account on winding up of this Scheme) on or after the date specified by the Contributor,

**PROVIDED THAT** any Election under this **clause 16.1** shall not apply to any distribution under **clause 15.3**.

30/3/93 16.2 Where any Election is made under **clause 16.1**, the Contributor shall be deemed for the purposes of **clause 15.4** and **clause 15.5** not to be a Contributor of this Scheme in respect of the period to which the Election relates.

#### **16A PENSION ACCOUNT**

21/12/95 16A.1 At any time any Pension is payable from this Scheme, an account to be known as  
30/3/93 the Pension Account shall be maintained within this Scheme.

30/3/93 16A.2 Subject to **clause 16F**, whenever an Election is made under this Scheme to  
1/12/98 receive a Pension, the Total Credit or Benefit Credit (as the case may require) of  
1/5/99 the relevant Contributor (or the relevant proportion of that Total Credit or Benefit Credit) to be applied to provide for that Pension shall be credited to the Pension Account.

21/12/95 16A.3 Any Reserve Account distributions made under **clause 15.4.3** and any other  
30/3/93 Reserve Account distributions to be paid in the form of a Pension shall be credited to the Pension Account.

30/3/93 16A.4 The Pension Account shall also be credited with:

16A.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

16A.4.2 all amounts debited to the Reserve Account under **clause 15.3.4**.

30/3/93 16A.5 All Pensions payable from this Scheme shall be paid out of the Pension Account.  
1/5/99

30/3/93 16A.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 Reserve Account.

#### **30/3/93 16B ASSESSMENT OF PENSIONS**

30/3/93 16B.1 Whenever an Election is made under this Scheme to receive a Pension, the Total  
1/12/98 Credit or Benefit Credit (as the case may require) of the relevant Contributor (or  
1/5/99 the relevant proportion of that Total Credit or Benefit Credit) 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 16F**.

30/3/93 16B.2 The pension tables may be varied by the Board on the recommendation of the Actuary.

30/3/93 16B.3 Any changes to the pension tables will not affect the Pension entitlement of any existing pensioner.

#### **30/3/93 16C PAYMENT OF PENSION**

30/3/93 16C.1 Any Pension payable from this Scheme will be paid by instalments in advance at  
1/5/99 intervals of 4 weeks or as the Board may direct.

- 30/3/93 16C.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 25**, 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 **16D INCREASES IN PENSIONS**
- 30/3/93 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 resolutions.
- 16E GUARANTEED MINIMUM PAYMENTS**
- 1/5/99 Subject to **clause 34**, where a Contributor who has commenced to receive a Pension under this Scheme dies prior to having received the minimum guaranteed payment as advised to the Contributor by the Board, there shall be payable to the Contributor's estate the then present value of the balance of the minimum guaranteed payment, as determined by the Board.
- 1/5/99 **16F TRANSFER OF PENSIONERS TO PENSION SCHEME**
- 1/5/99 16F.1 Subject to **clause 16F.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 16F.2 Subject to **clauses 16F.7** and **16F.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 16F.3 Any Pension to be transferred under **clause 16F.1** or **16F.2** shall include 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 16F.4 On transfer of the liability to pay any Pension under **clause 16F.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.
- 16F.5 On transfer of the liability to pay any Pensions under **clause 16F.2** the Board shall transfer from this Scheme to the Pension Scheme, assets with a value as determined by the Board equal to the balance of the Pension Account as at the date of transfer of the liability.
- 1/5/99 16F.6 On transfer of the liability to pay any Pension under **clauses 16F.1** or **16F.2** and assets under **clause 16F.4** or **16F.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.
- 16F.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:

- 16F.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
- 1/5/99 16F.7.2 the transfer of assets from this Scheme to the Pension Scheme under **clause 16F.4** or **16F.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 16F.8 In accordance with section 179 of the FMC Act, any transfer under **clause 16F.2** is subject to the prior written consent of either (i) the person who is the subject of the transfer or (ii) the FMA.

## 16G MINIMUM PENSIONS

- 1/5/99 16G.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.
- 16G.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.
- 1/12/98 16G.3 Where any person receives a payment under **clause 16G.2**, he or she will cease to be a Member, Contributor or Beneficiary from the date of the payment.

## 16AA SHARE OF RESERVES

- 1/12/98 16AA.1 A Contributor's 'Benefit Credit' shall be:
- 29/3/11 16AA.1.1 for the purposes of the determination of a Benefit payable under any of **clauses 7.2, 7A.1** or **10 to 12**, or for the purposes of applying any of **clauses 7.4.1, 16A.2** or **16B.1**, the Contributor's Total Credit plus a share (as determined under **clause 16AA.2.1**) of any positive reserves of the Scheme; or
- 1/12/98 16AA.1.2 for the purposes of the calculation of a Transfer Value under **clause 22B.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 16AA.2.2**) of any positive or negative reserves of the Scheme.
- 16/5/07 16AA.1A A Contributor's "Locked-in Benefit Credit" shall be:



- 16/5/07 16AA.1A.1 for the purposes of determination of a Benefit payable under any of **rules 6, 7 and 9** of the Schedule, the Contributor's Locked-in Total Credit plus a share (as determined under **clause 16AA.2.1**) of any positive reserves of the Scheme; or
- 16/05/07 16AA.1A.2 for the purposes of calculation of a Locked-in Transfer Value under **rule 8** of the Schedule, the Contributor's Locked-in Total Credit as at the date the Board is satisfied that all the requirements of **rule 8.1** of the Schedule for a transfer have been met, plus or minus (as the case may be) a share (as determined under **clause 16AA.2.2**) of any positive or negative reserves of the Scheme.
- 16AA.2 The share of any:
- 16/5/07 16AA.2.1 reserves to be added to a Contributor's Total Credit under **clause 16AA.1.1**, or to a Contributor's Locked-in Total Credit under **clause 16AA.1A.1**, shall be an equitable share (as determined by the Board) of any positive reserves (as defined in **clause 16AA.3.1**) of this Scheme as at the date of determination of that Total Credit or Locked-in Total Credit; or
- 16/5/07 16AA.2.2 reserves to be added to or deducted from a Contributor's Total Credit under **clause 16AA.1.2** or added to or deducted from a Contributor's Locked-in Total Credit under **clause 16AA.1A.2** shall be an equitable share (as determined by the Board) of any reserves (as defined in **clause 16AA.3.2**) of this Scheme as at the Transfer Date (or in the case of an addition to or deduction from the Contributor's Locked-in Total Credit, as at the date the Board is satisfied the requirements of **rule 8.1** of the Schedule for a transfer have been met), and in the event that this Scheme has negative reserves as at that date, the Contributor's Total Credit or Locked-in Total Credit shall be reduced by an equitable share of those negative reserves.
- 16/5/07 16AA.3 The term "reserves" means:
- 16/5/07 16AA.3.1 for the purposes of **clauses 16AA.1.1, 16AA.1A.1 and 16AA.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 Reserve Account, but does not include negative reserves; or
- 16/5/07 16AA.3.2 for the purposes of **clauses 16AA.1.2, 16AA.1A.2 and 16AA.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 Reserve Account, and includes negative reserves.

- 16AA.4 In determining (under **clause 16AA.2**) the equitable share of reserves to be added to the Contributor's Total Credit under **clause 16AA.1**, or to a Contributor's Locked-in Total Credit under **clause 16AA.1A**, 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 14.1**. 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 16AA.1**, or to a Contributor's Locked-in Total Credit under **clause 16AA.1A** may be reduced to reflect that fact.

## PART IX

### TRUSTEE PROVISIONS

#### 17 TRUSTEES - APPOINTMENT AND REMOVAL

- 20/10/16 17.1 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.
- 17.2 The members of the Board hold office in accordance with Part II of the Act.
- 17.3 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.

#### 18 POWERS OF BOARD

- 30/3/93  
20/10/16 18.1 The Board may give guarantees, undertakings and (subject to section 135(1)(f) of the FMC Act) indemnities and incur all such obligations relating to this Scheme
- 18.2 The Board may borrow money for the purposes of:
- 18.2.1 Making any investment; or
  - 18.2.2 Paying any Benefit; or
  - 18.2.3 Meeting any liability (as defined in the Act); or
  - 18.2.4 The management (as defined in the Act) of this Scheme.
- 18.3 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 18.4 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:
- 18.4.1 Offering the interests in the Scheme;
  - 18.4.2 Issuing the interests in the Scheme;
  - 18.4.3 Managing the Scheme's Property and investments; and
  - 18.4.4 Administering the Scheme.

- 30/3/93  
20/10/16
- 19 POWER OF AMENDMENT**
- 19.1 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 LIMITATION OF LIABILITY**
- 20.1 No member of the Board shall be liable to the Board or any other person, nor shall the Board be liable, for any losses:
- 20.1.1 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
- 20.1.2 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
- 20.1.3 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
- 20.2 Without limiting **clause 20.1**, 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
- 20.3 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 20** shall be limited to the assets of this Scheme.
- 30/3/93
- 20.4 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
- 20.5 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 sections 143(1) and 144 of the FMC Act.

## PART X

### INVESTMENT PROVISIONS

- 30/3/93
- 21 INVESTMENT**
- 30/3/93  
20/10/16
- 21.1 The Property of this Scheme may only be invested 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.

- 30/3/93 21.2 Nothing in **clause 21.1** 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 21.3 None of the provisions of the Trustee Act 1956 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
- 22 APPOINTMENT OF ADMINISTRATION AND/OR INVESTMENT MANAGERS**
- 20/10/16 22.1 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:
- 22.1.1 the administration of this Scheme; or
- 22.1.2 the investment of the trust fund (as defined in the Act) of this Scheme; or
- 22.1.3 both.
- 30/3/93 22.2 All fees and expenses payable to any such manager or managers shall be paid out of the trust fund of this Scheme.
- 1/4/98 22.3 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 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.
- 20/10/16 22.4 In appointing any person under **clause 22.1**, the Board shall take all reasonable steps to:
- 22.4.1 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
- 22.4.2 monitor the performance of those functions.
- 20/10/16 22.5 Any right of indemnification given to an investment manager appointed under **clause 22.1** shall only be related to the proper performance of the appointee's duties in accordance with section 136(2) of the FMC Act.

21/7/93

**PART XA****DISCRETIONARY TRANSFERS**

21/7/93

**22A ELECTIONS TO TRANSFER**21/7/93  
20/10/16

22A.1 Any Member of this Scheme, other than a Beneficiary in receipt of a Pension from this Scheme, may:

22A.1.1 elect to transfer to another Superannuation Scheme; and

- 21/7/93 22A.1.2 having made an Election to transfer and subject to this Part XA, transfer to another Superannuation Scheme.
- 1/4/98 22A.2 Any Member who Elects to transfer under this **clause 22A** shall complete an "election to transfer notice" in the form prescribed by the Board.
- 22A.2A 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 22A.3 The Board is not obliged to accept a Member's Election to transfer under this **clause 22A** unless it is satisfied that the Superannuation Scheme to which the Member has Elected to transfer (referred to below as the "other scheme") is:
- 16/3/00  
20/10/16
- 22A.3.1 able and has agreed to accept:
- 22A.3.1.1 the Member as a transferring member; and
- 22A.3.1.2 the terms on which the Member's Transfer Value will be payable; and
- 22A.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 22A.4 **[RESERVED]**  
1/4/98
- 16/5/07 22A.5 A Contributor shall only be permitted to voluntarily transfer that Contributor's Locked-in Total Credit to another scheme in the circumstances set out in and in accordance with **rule 8** of the Schedule.
- 22B CONSEQUENCES OF TRANSFER**
- 21/7/93 22B.1 Once an Election to transfer under **clause 22A** has been accepted by the Board, the Transfer Value for the Transferred Member shall be calculated by the Board.
- 21/7/93 22B.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 XA 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:

- 22B.2.1 in the case of a Transferred Member who was a Member of the arrangement known as the Contract Executive Plan immediately prior to making an Election to transfer under this Part XA, an amount equivalent to the Transferred Member's Total Credit as at the Transfer Date, which for the purposes of this Part XA 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;
- 22B.2.2 in the case of all other Transferred Members, the Transferred Member's Benefit Credit.
- 21/7/93 22B.3 Transfer Values shall remain in this Scheme until payable under **clause 22C**,  
1/12/98 and if the Board so determines as soon as practicable after the end of each  
16/3/00 Financial Year Transfer Values shall be credited with earnings (less  
withholdings, if any, required to be made by law) at the latest Transfer Value  
Earnings Rate (as defined in **clause 22B.7**) (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 22B.4 Where a Transfer Value is payable in accordance with **clause 22C**, the  
1/12/98 Transfer Value shall be credited with earnings (less withholdings, if any,  
16/3/00 required to be made by law) for each complete calendar month during the  
period from the later of the Transfer Date and the last day as at which  
earnings were credited under **clause 22B.3** to the date of payment at the  
latest Transfer Value Earnings Rate (as defined in **clause 22B.7**) which rate  
shall be applied on such proportionate basis as the Board shall determine.
- 21/7/93 22B.5 Notwithstanding any other clause of this Deed, no distributions from the  
1/12/98 Reserve Account under **clause 15.4** shall be credited to Transfer Values.  
16/3/00  
16/5/07
- 21/7/93 22B.6 Subject to **clause 22B.6A**, no contributions to this Scheme shall be payable  
1/12/98 by or on behalf of a Transferred Member and a Transferred Member shall not  
16/3/00 be a Contributor for the purposes of this Scheme. A Transferred Member  
shall however remain a Member until the Transfer Value has been paid under  
**clause 22C**. Nothing in this **clause 22B.6** shall prejudice the Transferred  
Member's ability (if any) to rejoin this Scheme, and **clause 25** shall continue  
to apply to the Transferred Member as if the Transferred Member were a  
Member.
- 16/5/07 22B.6A If the Transferred Member has a Locked-in Total Credit which is not  
transferred to another scheme under **rule 9** of the Schedule, then the  
Transferred Member shall continue to be a Contributor of this Scheme if and  
for so long as the Transferred Member has a Locked-in Total Credit.
- 22B.7 For the purposes of **clause 22B.3** and **clause 22B.4**, "Transfer Value  
Earnings Rate" means an annual earnings rate (which shall not be a negative  
rate but may be zero) which may be declared by the Board from time to  
time for the purposes of this **clause 22B**, after receiving the advice of the  
Actuary.
- 21/7/93 **22C WHEN TRANSFER VALUES PAYABLE**

21/7/93 16/3/00 20/10/16	22C.1	<p>Subject to <b>clause 22C.4</b>, the Transfer Value for a Transferred 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 (or, if applicable, the Administration Manager) in the event that the elected scheme for any reason is unable to receive such payment), on the earlier of:</p> <p style="margin-left: 40px;">22C.1.1 such date as may be agreed between the Board (or, if applicable, the Administration Manager) and the trustees of the Superannuation Scheme to which the Transfer Value is payable; or</p> <p style="margin-left: 40px;">22C.1.2 the date of the winding up of this Scheme.</p>
21/7/93 16/3/00	22C.2	<b>[RESERVED]</b>
21/7/93 16/3/00	22C.3	<b>[RESERVED]</b>
21/7/93 16/3/00 20/10/16	22C.4	<p>The Board shall not be required to pay out any Transfer Value under <b>clause 22C.1</b>, 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 <b>clause 22C.4</b> 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' interests in this Scheme.</p>
	22C.5	<b>[RESERVED]</b>
21/7/93	<b>22D</b>	<b>OTHER PROVISIONS RELATING TO TRANSFERS OUT</b>
21/7/93 1/12/98 16/5/07 20/10/16	22D.1	<p>Subject to <b>clause 22B.6</b>, nothing in this Part XA shall limit any right contained in any other Part of this Deed or the Schedule for any Contributor to transfer to any other Superannuation Scheme.</p>
21/7/93 20/10/16	22D.2	<p>Nothing in this Part XA shall confer upon any person any right to require the Board to provide for transfers from this Scheme to any other Superannuation Scheme.</p>
21/7/93 20/10/16	22D.3	<p>The Board shall be under no obligation or liability to see to the application of any amount paid (or Property transferred) to the trustees of any Superannuation Scheme or any other person under this Part XA.</p>
21/7/93	<b>22E</b>	<b>TRANSFERS IN</b>

- 21/7/93  
1/4/98  
20/10/16
- 22E.1 Subject to **clause 3** and to the provisions of this **clause 22E**, the Board (or, if the Board shall so agree in writing and subject to such terms and conditions as the Board shall determine, the Administration Manager) may accept as a Contributor to this Scheme, a person 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 PartXA.
- 1/4/98
- 22E.1A Any person who wishes to become a Contributor to this Scheme in accordance with this **clause 22E** shall complete an application form in such form as is prescribed by the Board.
- 1/4/98
- 22E.1B The Board, (or, if applicable, the Administration Manager) shall consider and decide whether to accept the application.
- 29/3/11
- 22E.1C A person may not be accepted as a Contributor to this Scheme under **clause 22E.1** if the transfer value that would be paid to the Scheme in respect of that person is less than the Minimum Amount.
- 21/7/93
- 22E.2 The transfer value paid to this Scheme from an existing scheme (as defined in the Act) in respect of a Contributor to whom **clause 22E.1** applies shall, for the purpose of determining any Benefit payable to that Contributor under this Scheme, be treated as that Contributor's own contributions.
- 16/5/07
- 22E.2A Notwithstanding **clause 22E.2**, if the transfer value paid to this Scheme from an existing scheme includes any amount that is subject to Complying Fund Rules, that part of the transfer value shall, to the extent required by those Complying Fund Rules, be credited to the Locked-in Total Credit of the Contributor in this Scheme.
- 22E.3 Notwithstanding **clause 8**, in relation to any Contributor to whom **clause 22E.1** applies, 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 **clause 7**.

## PART XI

### MISCELLANEOUS

#### 23 ELECTIONS IRREVOCABLE

- 21/7/93  
1/4/98
- 23.1 As soon as an Election under any part of this Scheme has been made it shall be irrevocable except at the discretion of the Board.
- 11/4/98
- 23.2 Any Election referred to in **clause 23.1** 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.

30/3/93  
21/7/93

**24 [RESERVED]**

#### 30/3/93 **25 PROHIBITION OF ASSIGNMENT, BORROWING AND PAYMENT OF DEBTS**

- 30/3/93
- 25.1 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.



- 16/5/07 25.2 No Contributor shall borrow against the security of any Benefits payable from this Scheme.
- 25.3 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.

## 26 BANKRUPTCY

All the Benefits of any person under this Scheme shall, to the maximum extent permissible by law, 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.

## 30/3/93 27 INABILITY TO MANAGE AFFAIRS

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

## 28 PAYMENTS IN RESPECT OF MINORS

- 30/3/93 28.1 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
- 28.2 Any receipt given by a minor or other person for money paid under **clause 28.1** shall be a good discharge to the Board.
- 21/12/95 28.3 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 28** shall mean a person under the age of 16 years.

## 29 UNCLAIMED MONEY PAYABLE OUT OF THIS 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.

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

All Benefits payable under this Scheme shall, unless the Board determines otherwise, 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.

## 5/4/01 29B MISSING PERSONS

### 5/4/01 29B.1 In this **clause 29B** –

"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 29B.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
- 29B.2.1 the right of any Contributor to receive, under **clause 14** a minimum Earnings Rate is subject to the Board’s power to deduct an amount under this **clause 29B.2**; and
- 29B.2.2 this **clause 29B.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 29B.3 The Board may allocate to any Missing Persons:
- 29B.3.1 property of this Scheme equivalent to the Missing Persons’ share in this Scheme; and
- 29B.3.2 future investment returns from that property received after the date of that allocation.
- 5/4/01 29B.4 The Board may transfer Missing Persons, the liabilities of the Scheme to those Missing Persons and any property allocated to them under **clause 29B.3**, to any other Existing Scheme without the consent of Members or Beneficiaries or any other person.
- 5/4/01 29B.5 For the purposes of **clause 29B.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 –
- 29B.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
- 29B.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 29B.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 29B**),
- PROVIDED THAT:**
- 29B.6.1 no liability may be extinguished under this **clause 29B.6** unless the Board has used reasonable endeavours to find the current address of that Missing Person; and

29B.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.

### 30 IMPLIED TERMS OR CONDITIONS

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

### 31 ACTUARY

30/3/93  
20/10/16

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.

30/3/93

### 32 INFORMATION TO MEMBERS

30/3/93  
20/10/16

32.1 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

32.2 The Board shall comply with the reporting requirements of the FMC Act.

### 33 RECOVERY OF CONTRIBUTIONS FROM LOCAL AUTHORITY

33.1 All contributions or other money from time to time due to this Scheme from a local authority (as defined in the Act) shall be deemed to be a debt due by that local authority to the Board, and may be recovered accordingly on behalf of the

30/3/93

33.2 Contributions payable by a local authority out of its funds on behalf of any person in respect of whom it is a contributing employer shall not be deemed to form part of the salary or wages of that person.

33.3 The contributions payable by a local authority shall be payable monthly, and shall be due on the last day of the month for which they are payable. Interest at a rate not exceeding 5 percent per annum may be charged as from the due date thereof on any amounts unpaid after the expiration of 14 days from that date,

30/3/93

**PROVIDED THAT** where the wage accounting period of any local authority is 4 weeks, the contributions payable by a local authority shall be due and payable on the last day of every such period of 4 weeks and interest as aforesaid may be charged as from the due date thereof on any amounts unpaid after the expiration of 14 days from that date.

33.4 If any local authority fails to make any contribution to this Scheme for which it is liable, or fails to deduct from the salary or wages of any person on whose behalf it is a contributing employer any contribution for which that person is personally liable, the total amount of those contributions may, at the request of the Board, be deducted by the Minister from any subsidy that may be payable to the local authority, and all amounts so deducted may, without further appropriation than this **clause 33**, be paid into this Scheme.

30/3/93 **34 MINIMUM VALUE OF BENEFITS**

30/3/93  
16/5/07  
20/10/16

Notwithstanding any other clause of this Deed, the value of any Benefit payable to or in respect of any Contributor from the Contributor's Total Credit shall not be less than the aggregate of contributions paid by the Contributor which have been credited to the Contributor's Total Credit and any credits the Contributor has transferred to this Scheme from any other Superannuation Scheme under **clause 4.3** or **clause 22E** which have been credited to the Contributor's Total Credit, together with earnings at the Earnings Rate on those amounts (but less any portion of those contributions applied for the provision of death or disability benefits under **clause 13**).

30/3/93

**PART XII**

~~30/3/93~~

**WINDING UP**

**WINDING UP**

**35 WINDING UP**

- 30/3/93 35.1 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 35.2 Upon a winding up of this Scheme 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 those Contributors in receipt of a Pension on a basis that takes account of their interests in this Scheme.
- 16/5/07 35.2A The Contributor's pro rata share of the assets of the Scheme, to the extent that that pro rata share is attributable to the Contributor's Locked-in Total Credit, shall be dealt with in accordance with the rules prescribed in the Schedule.
- 20/10/16 35.3 On the winding up of this Scheme, no part of the assets of this Scheme shall revert to:
- 35.3.1 any person other than as provided for in **clause 35.2** and **clause 35.2A** without the written consent of the FMA; or
- 35.3.2 any employer who has contributed to this Scheme.
- 20/10/16 35.4 The Board shall advise the FMA and Inland Revenue 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 Act.
- 20/10/16 35.5 **[RESERVED]**
- 20/10/16 **36 REGISTER**
- 36.1 A register of Members and Beneficiaries must be kept by the Board in a form and manner required by the FMC Act.
- 36.2 Such register may be in electronic form and compiled by a delegate of the Board in a manner approved by the Board.
- 36.3 The following details shall be entered on the register:

- 36.3.1 the names and addresses of each Member or Beneficiary;
- 36.3.2 the date on which the Member or Beneficiary became a Member or Beneficiary of the Scheme;
- 36.3.3 such other information as the Board requires or as is required by the Act or the FMC Act.

36.4 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.

36.5 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

### **37 ACCOUNTING RECORDS**

37.1 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.

37.2 In keeping or causing to be kept the accounting records under **clause 37.1** the provisions of Part 7 of the FMC Act must be complied with.

20/10/16

### **38 FINANCIAL STATEMENTS**

38.1 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

### **39 AUDIT**

39.1 The Board shall ensure that:

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

39.1.2 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

### **40 THE AUDITOR**

40.1 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

### **41 INTENTION TO BE LEGALLY BINDING**

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

16/5/07

**SCHEDULE****LOCKED-IN TOTAL CREDITS****1 DEFINITIONS**

16/5/07

1.1 In this **Schedule**:

**“Commissioner”** means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994.

20/10/16

**“ESCT”** means employer superannuation contribution tax or any similar tax or charge on employer contributions.

1/4/08

**“Income Tax Act”** means the Income Tax Act 2007.

20/10/16

20/10/16

**“KiwiSaver Act”** means the KiwiSaver Act 2006.

**“KiwiSaver Regulations”** means regulations made under section 228 of the KiwiSaver Act.

**“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.

**“Locked-in Payment Date”** means, in relation to a Contributor, the later of the dates specified in paragraphs (a) and (b) of **rule 5.1** of this Schedule.

**“Personal Representative”** means personal representative as defined in section 4(1) of the KiwiSaver Act.

**“Serious Illness”** means serious illness as defined in clause 12(3) of the KiwiSaver Scheme Rules.

**“Significant Financial Hardship”** means significant financial hardship as defined in clause 11 of the KiwiSaver Scheme Rules.

- 1.2 Unless inconsistent with the context, references to **clauses** are to clauses of the Deed (being the deed which precedes this Schedule) and references to **rules** are to rules of this Schedule.

16/5/07 **2 CONTRIBUTION RATE**

- 1/4/08  
20/10/16 2.1 Subject to **rule 4** of this Schedule, the total amount of contributions credited to a Contributor's Locked-in Total Credit while an Election under **clause 8A.1** of the Deed remains in force must be not less than the minimum amount required to be contributed to a locked-in account under the Complying Fund Rules as amended from time to time.

16/5/07 **3 VESTING**

- 3.1 Any Employer Contribution credited to a Contributor's Locked-in Total Credit will, notwithstanding **clause 7.1** of the Deed, vest completely in the Contributor immediately after the contribution is made.

16/5/07 **4 SUSPENSION OF CONTRIBUTIONS**

- 4.1 A Contributor may, at any time 2 or more years after first Electing to have contributions credited to a Locked-in Total Credit in this Scheme, Elect to suspend contributions to that Contributor's Locked-in Total Credit and to leave the Locked-in Total Credit in this Scheme where it shall continue to attract earnings, but a Contributor may not, in any one Election made under this **rule 4.1**, suspend contributions for a period exceeding 5 years.

- 1/4/08 4.2 During any period of suspension of contributions to a Contributor's Locked-in Total Credit under **rule 4.1** the Contributor may:

- (a) resume or continue contributing to the Contributor's Total Credit in this Scheme, subject to **clause 6.3** of the Deed; and
- (b) with the agreement of the Board, contribute to the Contributor's Locked-in Total Credit from time to time a lump sum or lump sums of any amount, to be attributed to that Contributor's Locked-in Total Credit.

16/5/07 **5 LOCK-IN REQUIREMENT**

- 5.1 Subject to **rules 6.7 to 6.14** of this Schedule, a Contributor may not make a withdrawal from a Locked-in Total Credit until the later of:

- (a) the date when the Contributor reaches New Zealand Superannuation Qualification Age; and
- (b) the date when the Contributor has been a member of a Complying Superannuation Fund (or of a Complying Superannuation Fund and a KiwiSaver Scheme) for 5 years,

or a date after that date.

- 20/10/16 5.2 For the purposes of **rule 5.1** of this Schedule, membership of this Scheme as a Complying Superannuation Fund shall commence on the later of the date this Scheme received approval as a Complying Superannuation Fund, and the date the Contributor joined this Scheme.

16/5/07      6      **RELEASE OF LOCKED-IN AMOUNT*****Release of locked-in amount on attainment of New Zealand Superannuation Qualification Age***

- 6.1 A Contributor is entitled to withdraw all of the Contributor's Locked-in Benefit Credit on the Locked-in Payment Date.
- 6.2 Any withdrawal under rule 6.1 of this Schedule is payable as a lump sum unless the Contributor Elects to purchase a Pension in accordance with rule 7 of this Schedule.
- 6.3 Nothing in rule 6.1 of this Schedule requires a Contributor to withdraw the Locked-in Benefit Credit on the Locked-in Payment Date.

***Release of locked-in amount under legislation***

- 6.4 The Board must comply with the provisions of any statute requiring it to release funds from a Contributor's Locked-in Total Credit (up to a maximum of the Locked-in Benefit Credit) in accordance with that statute.
- 6.5 The requirement under **rule 6.4** 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***

- 6.6 If a Contributor dies, the Board must, on application by that Contributor's Personal Representative, pay to that person an amount that is equal to the Contributor's Locked-in Benefit Credit at the date on which the application is accepted as part of the Contributor's estate.

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

- 6.7 A Contributor may apply to the Board to withdraw all of the Contributor's Locked-in Benefit Credit if the Contributor intends to purchase an estate in land in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules.
- 6.8 The Board in its absolute discretion may permit such withdrawal if, treating the period subsequent to 30 June 2007 (during which the Contributor was a member of this Scheme and/or one or more KiwiSaver Schemes) as membership of a KiwiSaver Scheme, the Board is satisfied, based on whatever supporting evidence it may reasonably require, that clause 8 of the KiwiSaver Scheme Rules would enable the withdrawal.

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

- 6.9 In cases of Significant Financial Hardship a Contributor may apply to the Board to withdraw all of the Contributor's Locked-in Benefit Credit.
- 6.10 The Board may in its absolute discretion permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Contributor's membership of the Scheme were membership of a KiwiSaver Scheme, clause 10 of the KiwiSaver Scheme Rules would enable the withdrawal.

***Release of locked-in amount in cases of Serious Illness***

- 6.11 In cases of Serious Illness a Contributor may apply to withdraw all of the Contributor's Locked-in Benefit Credit.



- 6.12 The Board may in its absolute discretion permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Contributor's membership of the Scheme were membership of a KiwiSaver Scheme, clause 12 of the KiwiSaver Scheme Rules would enable the withdrawal.

***Release of locked-in amount in cases of permanent emigration***

- 20/10/16 6.13 A Contributor may apply to withdraw all of the Contributor's Locked-in Benefit Credit, or transfer the Contributor's Locked-in Benefit Credit to an overseas Superannuation Scheme, in the case of permanent emigration from New Zealand.
- 6.14 The Board may in its absolute discretion permit such withdrawal or transfer if satisfied (based on whatever supporting evidence it may reasonably require) that, if the Contributor's membership of the Scheme were membership of a KiwiSaver Scheme, clause 14 of the KiwiSaver Scheme Rules would enable the withdrawal or transfer.

***Procedure for applications***

- 6.15 Any application under this **rule 6** shall be in writing, addressed and delivered to or posted to the Board or an authorised representative of the Board, and shall be accompanied by whatever supporting evidence the Board may reasonably require.

***General***

- 1/4/08 6.16 If a Contributor will be entitled within two months to withdraw an amount under **rule 6.1** the Board must send a notice to the Commissioner stating the date on which the Contributor will be entitled to withdraw.
- 6.17 This **rule 6** is subject to **rule 12**.

16/5/07 **7 PENSIONS**

- 7.1 A Contributor who is entitled to withdraw all of that Contributor's Locked-in Benefit Credit under **rule 6.1** of this Schedule may Elect, in lieu of a lump sum, to receive a Pension of such amount as may be provided by the Contributor's Locked-in Benefit Credit (or may Elect to receive up to one quarter of the Contributor's Locked-in Benefit Credit as a lump sum and the balance as a Pension) PROVIDED THAT no such Election shall be made where:
- (a) the Locked-in Benefit Credit does not exceed \$10,000 or such greater amount as may be determined under the Small Credit Formula; or
  - (b) the Pension would be less than the Minimum Pension.
- 7.2 In the event that an Election is made under **rule 7.1** of this Schedule, **clause 16F** of the Deed shall apply to that Pension as if:
- (a) the Pension had become payable under **clause 10** of the Deed, and
  - (b) for the purposes of **clause 16F.7.1**, the terms on which that Pension would have been paid under this Scheme are the same terms that apply to a Pension that is payable under **clause 10.2** of the Deed.

16/5/07 **8 VOLUNTARY TRANSFER**

- 8.1 While the Complying Fund Rules require such transfers (with the intent that this **rule 8.1** will not otherwise apply), the Board shall transfer all or part of a Contributor's Locked-in Benefit Credit to another Complying Superannuation Fund or to a KiwiSaver Scheme if:
- (a) the Contributor requests the transfer; and
  - (b) in the case of a transfer to a KiwiSaver Scheme, the requirements of the KiwiSaver Act 2006 are met; and
  - (c) in the case of a transfer to another Complying Superannuation Fund, the amount transferred will remain subject to Complying Fund Rules in the scheme to which it is transferred,

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**PROVIDED THAT** consent to the transfer shall first be obtained from the trustees of the Complying Superannuation Fund or KiwiSaver Scheme (referred to in this **rule 8** as the "new fund provider").

- 8.2 For the purposes of **rule 8.1** of this Schedule, the Contributor's Locked-in Benefit Credit shall be the Locked-in Transfer Value.
- 8.3 In relation to transfers under **rule 8.1** of this Schedule, **clauses 22B** and **22C** of the Deed shall apply (subject to **rules 8.1** and **8.2** of this Schedule), and for this purpose:
- (a) all references in those clauses to "Transfer Value" shall be read as references to the Contributor's Locked-in Transfer Value;
  - (b) the Contributor shall be deemed to be a "Transferred Member" for the purposes of those clauses; and
  - (c) for the purposes of **clause 22C** of the Deed, the Contributor shall only be permitted to transfer the Locked-in Transfer Value to a scheme that meets the requirements of **rule 8.1** of this Schedule.

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- 8.4 The new fund provider must be given notice of:
- (a) any written evidence provided to the Board by the Contributor under section MK 2(2) of the Income Tax Act;
  - (b) the amounts of tax credits received by the Board under subpart MK of the Income Tax Act; and
  - (c) any information held by the Board that would be relevant to the new fund provider making a claim under section 68C of the Tax Administration Act 1994, including information as to the periods for which claims have already been made.

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## **9 INVOLUNTARY TRANSFER**

- 9.1 The Board shall transfer a Contributor's Locked-in Benefit Credit to a KiwiSaver Scheme, unless the Contributor requests a transfer under **rule 8.1** of this Schedule, if the Contributor ceases to be eligible to be a Contributor to this

Scheme before the Locked-in Payment Date **PROVIDED THAT** the Contributor's Locked-in Benefit Credit shall not be transferred under this **rule 9.1** while the Contributor has a Total Credit in this Scheme.

9.2 The Board may in its discretion decide to transfer a Contributor's Locked-in Benefit Credit to a KiwiSaver Scheme if, before the Locked-in Payment Date, the Contributor ceases to be a Contributor under **clause 22B.6** of the Deed.

9.3 If this Scheme is wound up (or a portion of this Scheme relating to the Contributor is wound up) under **clause 35** of the Deed before the Locked-in Payment Date, the Contributor's pro rata share of the assets of the Scheme, to the extent that that pro rata share is attributable to the Contributor's Locked-in Total Credit, shall be transferred to a KiwiSaver Scheme.

20/10/16 9.4 The Board shall transfer a Contributor's Locked-in Benefit Credit to a KiwiSaver Scheme if:

- (a) the FMA revokes this Scheme's approval as a Complying Superannuation Fund; and
- (b) the Contributor's Locked-in Benefit Credit is not transferred to another Complying Superannuation Fund where it remains subject to Complying Fund Rules.

9.5 If the Board is required or decides under this **rule 9** to transfer any amount to a KiwiSaver Scheme, then:

- (a) the Board shall notify the Commissioner according; and
- (b) that notice must include:
  - (i) the relevant Contributor's name, address and Tax File Number;
  - (ii) the relevant employer's name and address; and
  - (iii) this Scheme's name and Tax File Number,

with the intent that when the Commissioner receives that notice the relevant portion of the transferred amount will be dealt with in accordance with section 57(1)(d) of the KiwiSaver Act.

## 16/5/07 10 TRANSFERS - GENERAL

If any amount is transferred out of this Scheme under **rule 8** or **9** of this Schedule, then:

10.1 the receipt of the trustees of the KiwiSaver Scheme or of the other Complying Superannuation Fund shall be a complete discharge to the Board of all liability in respect of the transferred amount;

10.2 the Board shall bear no liability in relation to the application of the amount they have transferred; and

10.3 unless the Contributor retains a Contributor's Total Credit in this Scheme the Contributor shall cease to be a Contributor and shall not be entitled to any further benefit from this Scheme.

**16/5/07 11 COSTS**

11.1 Any expenses, fees, charges or costs associated with establishing or maintaining a Locked-in Total Credit for a Contributor may be debited from that Contributor's Locked-in Total Credit at times and in a manner determined by the Board.

1/4/08 11.2 Clause 2 of the KiwiSaver Scheme Rules applies to Locked-in Total Credits as if this Scheme was a KiwiSaver Scheme.

**12 RELEASE OF TAX CREDITS**

1/4/08 12.1 The amount of any Crown contribution (as defined in the KiwiSaver Act) arising from a tax credit under section MK 3 of the Income Tax Act (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution) may not be withdrawn:

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- (a) before the Contributor gives the Board a statutory declaration stating the periods for which the person has had their principal place of residence in New Zealand since 1 July 2007; or
- (b) to the extent to which the Board has notice that the Contributor's claim for a tax credit is wrong, because the number of included days under section MK 4 of the Income Tax Act is or was wrong; or
- (c) in circumstances in which the withdrawal of that amount is not permitted under the relevant provision of the KiwiSaver Scheme Rules.

## ANNEX

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**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.