

**MEDICAL ASSURANCE SOCIETY NEW ZEALAND LIMITED**

**TRUST DEED  
IN RESPECT OF THE**

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**MEDICAL ASSURANCE SOCIETY  
KIWISAVER PLAN  
(a Registered KiwiSaver Scheme)**

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**THIS DEED** is made the 7th day of September 2016 ("**Deed**")

## **PARTIES**

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

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

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

## **INTRODUCTION**

- A. The Medical Assurance Society Retirement Savings Plan ("**Plan**") was established by trust deed dated 1 December 1993 ("**Trust Deed**") as amended by deeds of modification dated 4 December 1996, 6 December 2000, 27 February 2002, and 7 May 2003.
- B. The Trust Deed was further amended on 22 June 2007 to create an umbrella trust called the Medical Assurance Society Retirement Trust ("**Trust**") and to establish a registered KiwiSaver scheme called the Medical Assurance Society KiwiSaver Plan ("**Scheme**") within the Trust.
- C. The Trust Deed was further amended on 5 April 2012, 21 September 2012 and 22 March 2013 ("**Existing Trust Deed**").
- D. Under clause 18(1)(a) of Schedule 4 of the Financial Markets Conduct Act 2013 (Act) an interest in a KiwiSaver scheme continues to be registered in the KiwiSaver Scheme register during the transition period.
- E. Under section 4(1)(d) of the Financial Markets (Repeals and Amendments) Act 2013, the Superannuation Schemes Act 1989 was repealed on 1 December 2014.
- F. Under clause 18(1)(b) of Schedule 4 of the Financial Markets Conduct Act 2013 (Act) and clause 13 of Schedule 1 of the Financial Markets Conduct Regulations 2014 (Regulations), an interest in a superannuation scheme continues to be subject to the Superannuation Schemes Act 1989 during the transition period.
- G. Under clause 19 of Schedule 4 of the Act, the transition period is the period commencing on 1 December 2014 and ending on the close of the day before the earlier of the following dates:
  - (a) the date that the issuer of the security elects (in the case of interests in the Plan and the Scheme, the issuer is the trustees of the respective schemes), or
  - (b) 1 December 2016.

- H. By the end of the transition period, the Plan and the Scheme must comply with the governance requirements of the Act and be registered under the Act. One of the governance requirements is that the Existing Trust Deed as it applies to the Plan and the Scheme must comply with the requirements of the Act.
- I. The Trustees wish to amend the Existing Trust Deed with effect from the Effective Date by rescinding the Existing Trust Deed and immediately replacing it with this deed in respect of the Scheme (and a separate replacement trust deed in respect of the Plan) in order to incorporate such provisions as may be necessary or desirable for compliance with the FMC Act as well as make certain other amendments.
- J. The Trustees are satisfied that the amendment and replacement of the Existing Trust Deed by this deed is permissible without the written consent of the Members being required under either the KiwiSaver Act or clause 22.1 of the Existing Trust Deed and that all requirements of clause 22 of the Existing Trust Deed have been complied with in relation to the amendment and replacement.
- K. The Founder consents to the amendment as evidenced by the signature of the Founder attested hereto.
- L. The Trustees are satisfied that this deed when it takes effect will comply with the requirements of the FMC Act.

## **OPERATIVE PROVISIONS**

- 1.1 With effect from the Effective Date, the Existing Trust Deed is rescinded and replaced with this Deed in respect of the Scheme, so that from the Effective Date, the Scheme will be operated, administered and governed in accordance with the provisions of this Deed, but without disrupting the continuation of the trusts of the existing Trust Deed. The Funds for the Scheme shall consist of all Assets held by the Trustees upon the trusts of this Deed for the Scheme.
- 1.2 The Trustees will at all times treat each Fund as separate and distinct trust funds with their separate assets and liabilities on the terms and conditions of this Deed.
- 1.3 Each Fund shall be vested, controlled and administered by the Trustees upon the trusts and subject to the terms and conditions powers authorities and provisions of this Deed.

### **Confirmation**

- 1.4 Notwithstanding the foregoing it is expressly declared that the Trustees and the Founder confirm their respective obligations, covenants, rights, powers and duties under the Existing Trust Deed as they may be altered or added to by this Deed.

## **A1 ESTABLISHMENT OF THE SCHEME**

- A1.1 **Constitution of the Scheme:** The MEDICAL ASSURANCE SOCIETY KIWISAVER PLAN shall be subject to the terms set out in this Deed which shall be binding upon the Trustees, the Founder and the Members of the Scheme.
- A1.2 **Trustees:** The Trustees are the trustees of the MEDICAL ASSURANCE SOCIETY KIWISAVER PLAN.
- A1.3 **Purpose:** The principal purpose of the Scheme is to provide retirement benefits directly to Members in accordance with the KiwiSaver Act.

## **A2 DEFINITIONS AND INTERPRETATION**

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

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

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

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

"**Assets**" means:

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

"**Auditor**" means the Qualified Auditor for the time being holding the office of auditor of the Scheme,

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

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

"**Consumer Price Index**" means the consumer price index (all groups) published by the Government statistician or by such other person or body as may be appointed in that person's place or such other consumer price index as may be established in place of the consumer price index (all groups) or where no such index is published

such other index or indicator of consumer prices in each case as determined by the Trustees to be appropriate.

**"Contribution"** means any sum paid by or in respect of a Member (including an employer contribution) to the Trustees as a contribution to the Scheme in accordance with this Deed.

**"Contribution Holiday"**, in respect of an employee, means a period in respect of which the deduction of contributions is not required to be made from his or her salary or wages in accordance with the KiwiSaver Act.

**"Crown Contribution"** has the meaning given to that term by the KiwiSaver Act.

**"Date of Termination"** means the date of termination of the Scheme in accordance with clause A27.

**"Deed"** means this deed as amended from time to time and includes the KiwiSaver Rules.

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

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

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

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

**"Employer"**, in relation to a person (A), means a person who pays, or is liable to pay, salary or wages to A.

**"Fee"** –

- (a) means a fee charged directly or indirectly in respect of a Member's membership of the Scheme; and
- (b) includes a fee charged to a Member's Account for –

- (i) administration of the Member's Account:
- (ii) management of the Member's funds in the Scheme:
- (iii) the transfer of the Member's Account or the Member's funds in the Scheme to a different KiwiSaver scheme; and
- (c) includes any other fee or charge prescribed to be a fee for the purposes of the KiwiSaver Act; but
- (d) does not include a fee referred to in the KiwiSaver Act or charged under regulations made under section 228(c) of the KiwiSaver Act except in the context of those provisions.

**"Financial Year"** means the annual period from 1 April to 31 March of the following year and in respect of the first Financial Year of the Scheme means the period from the Commencement Date of the Scheme to the next 31 March.

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

**"FMA"** means the Financial Markets Authority.

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

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

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

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

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

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

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

**"Investment Direction"** in respect of a Member means an operative direction to invest in Units in an Investment Portfolio given or made in respect of that Member's Member Account pursuant to clause A12.4 and includes a varied investment direction.

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

**"Investment Portfolio"** means a separate investment portfolio established pursuant to clause A12.3 and where there is only one investment portfolio means the Fund in respect of the Scheme.

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



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

**"KiwiSaver Act"** means the KiwiSaver Act 2006.

**"KiwiSaver Rules"** means the rules set out in the KiwiSaver Act.

**"KiwiSaver Scheme"** has the same meaning given to that term in the KiwiSaver Act.

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

**"Member"** means a natural person who has been accepted for membership of the Scheme and who is, or may become, entitled to benefits under the Scheme.

**"Member Account"** in respect of each Member means the account maintained by the Trustees for a Member under clause A8.1.

**"Member's Accumulation"** in respect of the Scheme has the meaning given in clause A19B.

**"Month"** means a calendar month.

**"Net Value"** means, in respect of an Investment Portfolio, the value of that Investment Portfolio as calculated under section A19A on a Valuation Day.

**"New Zealand Superannuation Qualification Age"** means the age specified in section 7(1) of the New Zealand Superannuation and Retirement Income Act 2001, irrespective of whether or not the particular person qualifies for New Zealand superannuation at that or any other age.

**"Offer Document"** means the document or documents, however described, by which membership of the Scheme may be offered;

**"Participating Agreement"** means an agreement in the form prescribed by the Trustees from time to time, which once executed will form part of this Deed. The Participating Agreement in respect of a Member means the Participating Agreement in respect of the Participating Employer by whom the Member is employed.

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

**"Permitted withdrawal"** has the meaning given to that term by the KiwiSaver Act;

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

**"PIE Tax"** means the tax liability for the Scheme (as applicable) as determined in accordance with the Income Tax Act where the Scheme is a PIE.

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

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

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

**"Register"** means the register of members of the Scheme pursuant to clause A25.

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

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

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

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

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

**"Salary" or "Wages"** has the meaning ascribed to it in the KiwiSaver Act.

**"Scheme"** means the Medical Assurance Society KiwiSaver Plan.

**"Scheme Provider Agreement"** means the scheme provider agreement applying from time to time with respect to the Scheme under the KiwiSaver Regulations 2006.

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

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

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

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

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

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

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

**"Trustee Act"** means the Trustee Act 1956.

**"Unit"** means a unit in an Investment Portfolio as referred to in section A19.

**"Unit Price"** means the price for a Unit calculated under clauses A19.5 and A19.6.

**"Valuation Day"** means a day on which an Investment Portfolio is valued under section A19A.

**"Winding Up Date"** means the effective date of winding up of the Scheme in accordance with section A27.

**"Withdrawal Fee"** means a fee to be deducted from a Member's Member Account in accordance with clause A17.5.

#### A2.2 Implied terms under the KiwiSaver Act

- (a) The KiwiSaver Rules contained in the KiwiSaver Act shall apply to all Members. If there is any inconsistency between the provisions contained in this Deed and the provisions of the KiwiSaver Rules, the provisions of the KiwiSaver Rules shall prevail.
- (b) The implied terms above will apply for so long as they are implied in this Deed under the KiwiSaver Act despite anything to the contrary in this Deed and any provision in this Deed that is contrary to any such implied term will be void to the extent that it is contrary.

#### A2.3 **Interpretation:** In the interpretation of this Deed:

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

### A3 **APPOINTMENT AND REMOVAL OF TRUSTEES**

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

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

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

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

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

A3.4 **Office vacant:** The office of a Trustee shall become vacant if the Trustee:

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

Any continuing Trustee may act during any vacancy in the office of a Trustee.

A3.4.2 In addition to clause A3.4.1 a vacancy in the office of the Licensed Independent Trustee shall arise if:

- (a) the Trustee's licence to act as Licensed Independent Trustee expires or is cancelled under the FMC Act; or
- (b) the Trustee is removed by the FMA if it is satisfied that the Trustee no longer meets the requirements in the FMC Act; or
- (c) the Trustee is substituted by the High Court under the FMC Act; or
- (d) the Trustee is otherwise removed or resigns in accordance with this Deed.

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

A3.6 A Licensed Independent Trustee may not:

- (a) be removed or resign in accordance with this Deed unless:
  - (i) all functions and duties of the position have been performed; or
  - (ii) another Licensed Independent Trustee has been appointed, and accepted appointment, in its place; or

- (iii) the High Court consents;
  - (b) (despite anything to the contrary in this Deed) be removed under this Deed without the FMA's consent.
- A3.7 If the Scheme does not at any time, for any reason, have a Licensed Independent Trustee the FMA must appoint a temporary Licensed Independent Trustee in accordance with the FMC Act.
- A3.8 Any new Trustee must immediately upon appointment execute a deed in such form as the Trustees may require whereby the Trustee undertakes to the Trustees and the relevant Members to be bound by all the covenants on the part of the Trustees under this Deed from the date of such appointment.
- A3.9 From the date of execution by the new Trustee of a deed in accordance with clause A3.8, the retiring Trustee is absolved and released from all such covenants under this Deed in relation to the Scheme (except in respect of any prior breach) and the new Trustee must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Trustees under this Deed in all respects as if the new Trustee had been originally named as a party to this Deed as Trustee of the Scheme.
- A4 PROCEEDINGS OF TRUSTEES**
  - A4.1 **Procedures:** Subject to compliance with the provisions of all Relevant Law, the Trustees may despatch the business of the Scheme and otherwise regulate their procedures as they think fit. When required by Relevant Law, the Trustees shall call a meeting of Members in the manner and on the basis set out in the FMC Act and the FMC Regulations. A meeting of Members shall be conducted in accordance with Relevant Law.
  - A4.2 **Quorum:** Except where a sole corporate Trustee holds office the quorum for any meeting of the Trustees shall be two.
  - A4.3 **Chairpersons casting vote:** Where there is more than one Trustee in the case of an equality of votes the chairperson shall have a second casting vote.
  - A4.4 **Records:** The Trustees shall keep full and proper records of their decisions relating to the Scheme including all minutes, resolutions and proceedings of meetings. Without limitation the Trustees shall keep, or cause to be kept, a complete record of:
    - (a) Members;
    - (b) Participating Employers;
    - (c) the Members employed by each Participating Employer; and
 all other matters, information and data necessary or expedient for the proper and efficient working of the Scheme or required by Relevant Law.
  - A4.5 **Secretary:** The Trustees may from time to time appoint a secretary and other officers if necessary to assist the Trustees in carrying out the Trustees' duties and functions upon such terms as the Trustees think proper and may also revoke and amend any such appointments.
  - A4.6 **Trustees' discretions:** Subject to Relevant Law, the Trustees in the exercise of the Scheme's authorities, powers, and discretions conferred upon the Trustees by this

Deed, shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the Scheme's authorities, powers, and discretions or may refrain from exercising all or any of the same from time to time or at all.

- A4.7 **Payments and receipts:** The Trustees shall make all necessary arrangements for dealing with receipts and payments under the Scheme and may resolve that cheques should be drawn or endorsed by any one person duly authorised by the Trustees or in such manner as it may from time to time resolve. The Trustees may give, vary and revoke instructions as to the custody and disposal of any Assets of the Scheme and the signature of forms and documents on behalf of the Trustees.
- A4.8 **Advice of experts:** The Trustees may in administering the Scheme rely upon the advice or opinion (whether or not obtained by them) of any professional person or upon any advice the Trustees may obtain directly or indirectly from any person as shall in their opinion be qualified to advise them and the Trustees shall not be responsible for any loss occasioned by relying on such advice. The reasonable cost of obtaining any such advice shall form part of the expenses incurred by the Trustees in connection with the Scheme.
- A4.9 **Acts of officers, agents:** Any action taken by a duly authorised officer, agent, employee or servant of the Trustees to give effect to any resolution of the Trustees shall be effective as an act of the Trustees.
- A4.10 **Resolutions in writing:** A resolution in writing signed by the Trustees, or where there is a sole corporate Trustee signed by that Trustee, shall have the same force and effect as a resolution passed at a duly constituted meeting of the Trustees.
- A4.11 **Nominees:** The Trustees shall ensure that the Scheme is held in accordance with the FMC Act.
- A4.12 The Trustees shall hold the Scheme in one of the following ways:
- (a) by a body corporate that is either the sole corporate trustee of the Scheme or that has, as its directors, only persons who are Trustees; or
  - (b) by a body corporate to whom the Trustees have contracted the holding of the Scheme and who:
    - (i) is a body corporate that the Trustees believe, on reasonable grounds, to be appropriate to hold, and safeguard the Scheme; and
    - (ii) is not the same person as, or associated with, any of the Trustees (other than by virtue of the custodianship).
- A4.13 Subject to clause A4.12 the Trustees may contract out the holding of the Scheme Property to another person provided the Trustees:
- (a) take all reasonable steps to:
    - (i) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person had performed them directly; and
    - (ii) monitor the performance of a function,

- (b) are jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with clause A4.13(a).
- A4.14 **Trustees' reports:** The Trustees must, in accordance with Relevant Law, prepare and provide the FMA with reports that contain the information that is required by the FMC Regulations.
- A4.15 If the Trustees have reasonable grounds to believe that the Trustees have contravened, may have contravened or are likely to contravene any of their Issuer Obligations in a material respect then the Trustees must, as soon as practicable:
  - (a) report the contravention or possible contravention to the FMA; and
  - (b) advise the FMA of the steps (if any) that the Trustees have taken or intend to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.
- A4.16 **Fund Update:** The Trustees shall prepare and make available Fund Updates as required by the FMC Act.
- A4.16 **Regulatory compliance:** The Trustees shall at all relevant times file or lodge all reports, returns, statements, information or other material required by Relevant Law to be filed or lodged with any public registry or regulatory authority (and FMA upon request) in respect of the Scheme.

## **A5 TRUSTEES' INDEMNITY AND LIABILITY**

- A5.1 **No liability:** Subject to Relevant Law, the Trustees shall not be liable for:
  - (a) Any losses or damages except losses or damages arising out of their own wilful default or wilful breach of trust or wilful failure to comply with Relevant Law; or
  - (b) Any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in the Trustees by this Deed; or
  - (c) Any omission or omissions or non-exercise in respect of any trust power or discretion of the Trustees under this Deed unless such omission or omissions or non-exercise is in breach of clause A5.1(a).
- A5.2 **Indemnity:** Subject to the Relevant Law, and in the case of the Trustees subject to the proper performance of the Trustees' duties under sections 143(1) and 144 of the FMC Act, the Trustees and every other person acting on behalf of the Trustees shall be indemnified out of the Scheme's Assets against all liabilities and expenses incurred by them, including Tax, in the exercise or attempted exercise of the Scheme's powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the Scheme (other than a liability for which the Trustees are liable under clause A5.1(a) above). This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled thereto although it may be subsequently found that the person was not in fact so entitled. The Trustees will also be indemnified by a Member for any shortfall if the value of Units in a Member's Accounts is insufficient to meet any liability for Tax payable in respect of that Member by the Scheme or the Trustees (whether current or deferred). The Trustees shall have a lien or charge on the Scheme's Assets and may retain and

pay out of any moneys in the Scheme, all sums and amounts necessary to give effect to such indemnity.

- A5.3 **Indemnity benefits officers and agents:** Any Investment Manager, Administration Manager, manager or agent acting for or on behalf of the Trustees shall have the benefit of any exclusions or indemnities given to the Trustees whether contained in this Deed or in any application for membership of the Scheme or otherwise at law. If an Investment Manager is to be so indemnified, the terms of appointment of the Investment Manager must include its right to be indemnified with the indemnity only available in relation to the proper performance of the Investment Manager's duties, including the duty of complying with the relevant professional standard of care of the Investment Manager under the FMC Act. The Trustees will remain liable for the acts or omissions of any Investment Manager.
- A5.4 **Limitation:** Unless the Trustees are liable pursuant to clause A5.1(a) of this Deed the liability of the Trustees under this Deed, the FMC Act, the KiwiSaver Act or other Relevant Law shall at all times be limited to the Scheme's Assets.
- A5.5 **Licensed Independent Trustee protected:** No Trustee nor any other party to this Deed may take any action against the Licensed Independent Trustee by reason of the Licensed Independent Trustee having made a report or disclosure to the FMA under the conditions of the licence granted to the Licensed Independent Trustee by the FMA under the FMC Act.

## **A6 ADMISSION OF MEMBERS**

- A6.1 **Admission:** Subject to A6.1A natural persons shall be admitted to membership of the Scheme as follows:
- (a) in respect of any Employees of any Employer who has arranged with the Trustees for that Employer's Employees to become Members of the Scheme under section 47 of the KiwiSaver Act, in accordance with section 48 of that Act; or
  - (b) in respect of any natural person who is not admitted to membership of the Scheme under (a) above, by contracting directly with the Trustees to become a Member of the Scheme in accordance with sections 45 or 55 of the KiwiSaver Act, as applicable.

### **A6.1A**

The following persons may become a Member of the Scheme:

- (a) persons who are Eligible Members;
- (b) persons who are employed by Medical Assurance Society New Zealand Limited;
- (c) any member of Medical Assurance Society New Zealand Limited from a profession other than a member described in paragraphs (a) and (b) above, at the Trustees' complete discretion and considered on a case by case basis (Other Members), provided that the Trustees remain satisfied that Medical Assurance Society New Zealand Limited continues to have a definable community of interest, taking into account the nature and number of Other Members and the proportion of Other Members to total Members of Medical Assurance Society New Zealand Limited; and



- (d) persons who are immediate family members, or are wholly or partially financially dependent on, a person in one or more of the classes persons described in paragraphs (a) to (c) above. For the purposes of this paragraph (d), immediate family member in relation to a person means a person's spouse, civil union partner, de facto partner, parent, child, step parent or step child.

#### **A6.1AB Deemed acceptance**

On admission to Membership of the Scheme pursuant to clause A6.1(a), a Member shall be deemed to have consented to the Trustees and the Administration Manager obtaining, holding, using and disclosing personal information in respect of the Member in the same manner, and to the same extent, as if the Member had been admitted to Membership of the Scheme pursuant to clause A6.1(b).

#### **A6.2 Cessation of membership**

A person shall cease to be a Member on the first to occur of:

- (a) the person's personal representative receiving the person's full benefit from the Scheme in the event of the person's death;
- (b) the person receiving the person's full benefit from the Scheme and ceasing to have any further entitlement under the Scheme in accordance with the KiwiSaver Scheme Rules;
- (c) the person transferring from the Scheme to another KiwiSaver Scheme or a foreign superannuation scheme in accordance with the requirements of the KiwiSaver Act and ceasing to have an entitlement under the Scheme; and
- (d) receipt of a notice by that person under rule 4(5)(b) of the KiwiSaver Scheme Rules.

### **A7 CONTRIBUTIONS**

#### **A7.1 Member/Employer contributions**

A Member and/or that Member's Employer (if applicable):

- (a) must contribute to the Scheme any minimum contribution required by the KiwiSaver Act; and
- (b) may contribute to the Scheme other amounts in accordance with clause C5.3.

#### **A7.2 Contributions that must be accepted**

The Trustees shall accept:

- (a) contributions required to be made to the Scheme in respect of a Member under the KiwiSaver Act;
- (b) Crown Contributions or other amounts payable in respect of a Member; and
- (c) amounts transferred from another KiwiSaver Scheme in respect of a Member.

### **A7.3 Contribution that may be accepted**

The Trustees may accept other amounts in respect of a Member subject to such terms and conditions (including, without limitation, as to the amount and mode of payment) as the Trustees may agree from time to time.

### **A7.4 Vesting of Employer contributions**

Subject to the KiwiSaver Act, every Employer contribution in respect of a Member shall vest completely in the Member immediately after the contribution is made except to the extent specified in a relevant Participating Agreement.

## **A8 MEMBER ACCOUNT**

### **A8.1 Establishment of Member Account**

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

### **A8.2 The Member Account shall be comprised of Units issued in respect of:**

- (a) Contributions received by the Scheme from or in respect of the Member;
- (b) any amount received into the Scheme from another KiwiSaver Scheme or superannuation scheme in respect of the Member;
- (c) any Crown Contribution received in respect of the Member;
- (d) any distributions to the Member Account which the Trustees may make from the Reserve Account;
- (e) any amounts representing rebates in respect of any Tax attributable to that Member;
- (f) amounts transferred from another Investment Portfolio; and
- (g) any amount received by the Scheme in respect of the Member which the Trustees consider should be credited to the Member Account in respect of the Member,

less Units cancelled in respect of:

- (h) any amount debited to the Member Account to meet fees, charges or Tax that may be debited to the Member Account;
- (i) any amount transferred out of the Scheme to another KiwiSaver Scheme in respect of the Member;
- (j) an amount paid in respect of any permitted withdrawal in respect of the Member;
- (k) any amount in the Member Account forfeited or paid to the Reserve Account pursuant to the provisions of this Deed;
- (l) amounts transferred to another Investment Portfolio; and

- (m) any other amount which the Trustees consider should be debited to the Member Account in respect of the Member.

## **A9 MEMBER'S BENEFITS**

### **A9.1 Calculation of Member's Accumulation**

It is acknowledged that for the purpose of calculating benefits under the Scheme, the KiwiSaver Act will require the calculation of amounts representing the "member's accumulation" as that term is defined in the KiwiSaver Act. Subject to clause A9.2(a) below, those amounts shall be calculated in accordance with the provisions of clause A19B.

### **A9.2 Different method of calculation**

Subject to clause A9.1, the Trustees:

- (a) must adopt a method of calculating amounts representing the "member's accumulation" that is different to that set out in clause A19.B if the Trustees determine that the method set out in clause A19.B does not comply with the KiwiSaver Act; and
- (b) may adopt a method of calculating those amounts that is different to that set out in the said section A19.B if the Trustees consider it appropriate to do so.

### **A9.3 Different method of calculation must meet certain requirements**

Any different method adopted by the Trustees under clause A9.2 must comply with the KiwiSaver Act and other New Zealand laws.

## **A10 TRANSFERS**

The Trustees shall effect transfers to or from the Scheme in accordance with the requirements of the KiwiSaver Act.

## **A11 ARRANGEMENTS WITH EMPLOYERS**

### **A11.1 Participating Agreement**

The Trustees and an Employer may enter into an agreement that determines some of the conditions on which the Employer's Employees may be Members of the Scheme (being matters that are supplemental or additional to the matters contained in this Deed), including conditions relating to:

- (a) the contributions payable by the Employer;
- (b) the vesting of those contributions to Members;
- (c) the treatment of unvested contributions;
- (d) the Investment Portfolios applicable to those Members; and
- (e) such other matters as the Trustees and Employer consider appropriate.

It is acknowledged that any Employer contribution meeting the requirements of section 66 of the KiwiSaver Act must, pursuant to this Deed, vest completely in the Employee immediately after the contribution is made.

### **A11.2 Participating Agreement forms part of Deed**

Any Participating Agreement shall form part of this Deed.

### **A11.3 Terms of Participating Agreement prevail**

Subject to clause A11.4, in the event of any conflict or inconsistency between the terms of a Participating Agreement and the other terms contained in this Deed, the terms of the Participating Agreement shall prevail.

### **A11.4 KiwiSaver Act prevails**

Notwithstanding any other term in this Deed, no term in a Participating Agreement may be contrary to the requirements of the KiwiSaver Act and any such term shall be void to the extent that it is contrary.

### **A11.5 Permitted benefits**

A Member shall only be entitled to a benefit where and to the extent that the KiwiSaver Act allows, subject to compliance with any rules prescribed by the Trustee from time to time regarding minimum withdrawals.

### **A11.6 Ceasing participation**

- (a) A Participating Employer shall cease to participate in the Scheme if:
  - (i) the Participating Employer gives 90 days prior notice in writing to the Trustees of the effective date that it intends to cease to continue participating in the Scheme for any reason; or
  - (ii) an order is made or resolution is passed for the liquidation or bankruptcy of the Participating Employer except for the purposes of amalgamation or reconstruction.
- (b) If written notice is given under clause A11.6(a)(i) or an order is made or a resolution is passed for the liquidation or bankruptcy of the participating employer under clause A11.6(a)(ii) the Participating Employer will cease to participate in the Scheme and:
  - (i) the Scheme will continue in respect of the Employees of the Employer;
  - (ii) the Member shall continue to contribute, subject to the KiwiSaver Act, to the Scheme in a manner agreed to by the Trustees;
  - (iii) the Trustees will release the Employer from all future obligations under the Scheme; and
  - (iv) the participating Member will be entitled to a withdrawal benefit in accordance with this Deed.

## **A12 INVESTMENTS**

### **A12.1 Trustees' Powers of Investment:**

- (a) All money belonging to the Scheme and available for investment shall be invested in accordance with the SIPO and the provisions of the Trustee Act 1956 as to the investment of trust funds.
- (b) In respect of any moneys subject to an Investment Direction (but subject to clause A12.1(a)) such amount shall be invested in Units in accordance with the Investment Portfolio Objectives of the Investment Portfolio to which the Investment Direction relates.

**A12.2 Standard of care:** Notwithstanding the foregoing and anything to the contrary in section 13D(1) of the Trustee Act 1956, any Investment Manager shall, in exercising the power of investment, exercise the care, diligence, and skill required of that person by section 13B or section 13C of that Act, as is applicable. Any Investment Manager appointed by the Trustees to exercise their power of investment must, in exercising those powers, or performing those duties, exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances.

**A12.3 Establishment of Investment Portfolios:**

- (a) As at the date of this Deed the Trustees in consultation with the Founder have established several Investment Portfolios. Notwithstanding the establishment of separate Investment Portfolios and the provisions of clauses A12.5 and A12.7, but subject to clause A20.1(b)(iii), there shall only be one Fund in respect of the Scheme.
- (b) The Trustees may with the written consent of the Founder add other Investment Portfolios to the Scheme or may delete an Investment Portfolio or portfolios from the Scheme. If the Trustees delete an Investment Portfolio, Members investing in that portfolio will be required to switch to other Investment Portfolios. Any such switch will not incur a Switching Fee.

**A12.4 Member's Directions:**

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

**A12.5 Trustees to Invest in Accordance with Investment Direction:** Upon accepting an application for membership, the Trustees (but subject to any subsequent varied Investment Direction approved by the Trustees pursuant to clause A12.7) shall invest the Contributions made in respect of a Member and any other amounts from time to time available for investment in Units in the same Investment Portfolio in accordance with the proportions stated in the Investment Direction.

**A12.6 Contributions to the Scheme where no Investment Direction:** Where a Member of the Scheme does not have a current and fully operative Investment Direction and until the Member provides such an Investment Direction to the Trustees, the Trustees may:

- (a) Subject to the KiwiSaver Act, refuse to accept any Contributions from the Member; or

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

**A12.7 Amendment of Investment Direction:** A Member may at any time vary the Investment Direction with the prior approval of the Trustees in respect of future Contributions or future amounts standing to the credit of their Member Account which are available for investment. Such variation will be in a form prescribed by the Trustees from time to time and shall be effective from a date no later than 21 days after the Trustees receive written notice of the variation.

**A12.8 Transfer Between Investment Portfolios of Scheme:**

- (a) Subject to the consent of the Trustees a Member may transfer all or part of a Member's interest in one Investment Portfolio to another Investment Portfolio or portfolios within the Scheme on giving notice in writing to the Trustees in such form as the Trustees may from time to time prescribe whereupon the Trustees shall realise and transfer all or part of the Member's interest in the relevant Investment Portfolio of the Scheme, making, at the discretion of the Trustees, provision for Tax, PIE Tax or any other amount the Trustees consider appropriate, and reinvest such realised amount in Units in another Investment Portfolio within the Scheme (as applicable) nominated by the Member.
- (b) Members shall be entitled to one free switch per Financial Year. Switches not used shall be forfeited. Any amount payable for a Switching Fee will be deducted from the Member Account by the cancellation of Units in accordance with clause A19.10. The Trustees may in their absolute discretion waive payment of a Switching Fee in any particular instance.
- (c) A transfer of a Member's interest in an Investment Portfolio pursuant to the terms of this clause may be postponed or effected over such period as the Trustees consider prudent if the Trustees (in their absolute discretion) consider that it is in the best interest of all Members with Units in the Investment Portfolio from which the Member is transferring to ensure the stability and continued viability of that Investment Portfolio and its investments.

**A12.9 Investment Directions:** An Investment Direction by a Member under clause A12.5 is a direction by the Member pursuant to Section 13G of the Trustee Act 1956 subject only to the terms of this clause.

**A12.10 Member's Interest in the Investments of an Investment Portfolio:**

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

Investment Portfolio in each Member Account and the relevant Reserve Account.

- A12.11 **Investment of Reserve Account:** The balance of the Reserve Account available for investment shall be invested in Units in such Investment Portfolios of the Scheme as the Trustees determine from time to time with full power to transfer such investments to Units in the other Investment Portfolios.
- A12.12 **Units Register:** The Trustees shall maintain a register or other suitable record of investments of the Scheme in which the Trustees shall record the Unit holdings which are for the time being included in the Scheme and in respect of each Investment Portfolio and such other information as the Trustees shall determine.
- A12.13 **SIPO:** The Trustees must ensure that there is a SIPO for the Scheme that complies with Financial Markets Legislation.
- A12.14 **Limit breaks:** The Trustees must report to the FMA any material breaches of any limits under a SIPO to the extent required by Relevant Law.
- A12.15 **Pricing errors:** The Trustees must report to the FMA in relation to any material error in the calculation of a managed investment product or material non-compliance with any methodology for pricing managed investment products set out in this Deed or notices issued by the FMA, and must correct such error or non-compliance and take any prescribed steps, to the extent required by Relevant Law.
- A12.16 Subject to Relevant Law, for the purpose of clause A12.15 a “material error” (unless the Trustees agree otherwise from time to time) is an error that equals or exceeds 0.30% of Member’s Net Value:
- A12.17 If, under Relevant Law, reimbursement and compensation is payable to a Member or former Member, the Trustee must comply with all their obligations under those requirements except that the Trustee may choose not to pay any reimbursement or compensation to a Member or former Member for an amount less than \$20 (or such other amount as the Trustee may agree from time to time).

### A13 RELATED PARTY BENEFITS

- A13.1 Subject to clause A13.2, the Trustees (and any Investment Manager, Administration Manager or other person to whom the Trustees have contracted out some or all of its functions as manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- A13.2 Clause A13.1 does not apply to a transaction or series of transactions if one of the following applies and the Trustees (with the consent of the Licensed Independent Trustee) certify to that effect:
- (c) the transaction or series of transactions are in the best interests of the Members; or
  - (d) section 174 of the FMC Act applies to the transaction or transactions or all Related Party Benefits to be given; or
  - (e) the transaction or series of transactions are approved by or contingent on approval by a Special Resolution of the class of Members affected or potentially affected by the transaction or transactions.

- A13.3 Subject to Relevant Law, the Trustees (or any person to whom the Trustees have contracted out some or all of its functions as trustee) must not acquire any new In-House Asset if, as a result of the acquisition, the Scheme would have, or increase, an In-House Asset ratio of 5% or more in relation to any Related Party or Member.

#### **A14 TRUSTEES' FUNCTIONS, DUTIES AND POWERS**

- A14.1 **Trustees' Functions:** In accordance with the FMC Act, the Trustees are deemed to be the manager of the Scheme. The Trustees are appointed to manage the Scheme and are responsible for performing the functions and duties of a manager of a managed investment scheme under the FMC Act. In particular the Trustees are responsible for performing the following functions:

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

- A14.2 **Trustees' Duties:** The Trustees, in exercising their powers and performing their duties as the trustees of Scheme, must:

- (a) act honestly; and
- (b) not make use of information acquired through being Trustees in order to:
  - (i) gain an improper advantage for itself or any other person; or
  - (ii) cause detriment to the Members; and
- (c) carry out the functions as manager of this Scheme in accordance with this Deed, the SIPO and all other Issuer Obligations and comply with any requirements applying to the Trustees as a result of holding all or part of the Scheme property, and
- (d) comply with any requirements applying as a result of the Trustees holding all or part of the Scheme Fund.

- A14.2 **Standard of care:** In exercising any powers or performing any duties:

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



A14.4 **Trustees' Powers:** The Trustees shall administer the Scheme in accordance with the powers, duties, authorities and discretions conferred on it by this Deed or at law and shall pay or cause to be paid from the Scheme, the Benefits provided for in accordance with the terms of this Deed and Relevant Law, as applicable. Subject to Relevant Law the Trustees shall in addition to the other powers vested in the Trustees pursuant to this Deed or at law have all the powers over and in respect of the Scheme and the Scheme's Assets as if it were the absolute and beneficial owner of the Scheme and the Scheme's Assets.

## **A15 BORROWING POWERS**

A15.1 **Borrowing:** The Trustees may, with the consent of the Founder, (which consent shall not be unreasonably withheld) in respect of the Scheme:

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

A15.2 **Limitation:** All borrowings, raising of money, charging of investments or other transactions entered into or undertaking pursuant to clause A15.1 ("Security Transactions") shall only be entered into or made where the Trustees in good faith determine that the Security Transactions are necessary or desirable in the general interests of the Members of the Scheme, or for the purposes of conducting the investment or management or other operation of the Scheme pursuant to this Deed. Furthermore no Security Transactions shall be entered into if the result will be that the total amount owing under the Security Transactions will exceed ten per cent of the gross value of the Assets of the Scheme.

## **A16 DELEGATION BY TRUSTEES**

A16.1 **Delegation:** The Trustees may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) or contract any person or persons to perform any act, or exercise any discretion within the Trustees' power. The authorisation must be written. In doing this:

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

A10.2 The Trustees may include provisions to protect and assist those dealing with the delegate in the authorisation as the Trustees thinks fit. The delegate or contracted party may be a Related Party of the Trustees.

## **A17 TRUSTEES' FEE AND REIMBURSEMENT OF EXPENSES**

**A17.1 Trustees' Fee:** Subject to the KiwiSaver Act, the Trustees shall be paid out of the Fund in respect of their services under this Deed a fee equal to an amount agreed between the Trustees and the Founder, such fee to be reviewed annually provided that the Trustees may waive payment of any fee or part of any agreed fee from time to time in accordance with any arrangement from time to time agreed with the Founder.

**A17.2 Expenses:** Subject to the KiwiSaver Act, as applicable, the Trustees shall also be reimbursed out of the Scheme (whether from income or capital or both) for and in respect of the following:

- (a) All costs, charges and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with investments and Assets of the Scheme including real estate and Solicitors' fees and commissions, bank charges and stamp duty, and the expenses of any agents or nominated company of the Trustees both within and outside New Zealand;
- (b) All costs incurred by the Trustees in calculating the value of each Investment Portfolio whenever the Trustees are required to do so in accordance with the provisions of this Deed;
- (c) Any costs and expenses including all legal costs, expenses and registration fees incurred by the Trustees to or in connection with the preparation, approval and execution of this Deed and any amendments, modifications or additions to the provisions of this Deed or any deed supplemental to this Deed or obtaining any approvals which may be required by law or otherwise in respect of any such supplemental deed;
- (d) The fees and expenses of the Auditor;
- (e) Expenses in connection with the annual accounts and the annual reports;
- (f) All Tax charged to or payable by the Trustees, the Scheme (whether by any taxing authority or any other person) in connection with the Scheme, or any Member of any account whatsoever;
- (g) Interest on borrowings and discounts and acceptance fees in respect of bill facilities for the Scheme;
- (h) The fees, costs and expenses of any manager delegate (other than the Administration Manager or Investment Manager) or any other agent or person engaged contracted or employed by the Trustees as provided in this Deed;
- (i) The fees and expenses of any Solicitor, barrister, valuer, accountant, Actuary or other person from time to time employed by the Trustees in the discharge of its duties under this Deed;
- (j) Expenses in connection with the keeping of the Register;
- (k) Any reasonable amounts incurred by the Trustees in respect of the administration of the Fund, management of any investment or in investigating any proposed investment of the Scheme;

- (l) The costs of preparing taxation returns and other costs arising in respect of taxation matters relating to the Scheme or the Members of the Scheme;
- (m) Any other expenses properly and reasonably incurred by the Trustees in connection with carrying out their duties under this Deed;
- (n) All costs in or in connection with the retirement or removal of the Trustees under this Deed and the appointment of any person in substitution;
- (o) All costs, expenses, duties and disbursements incurred by the Trustees in connection with the closing or winding up of the Scheme;
- (p) All costs in connection with the initiation, conduct and settlement of any court proceedings (including any negotiations and demands relating to them) including, without limitation, proceedings against the Trustees arising from any neglect, breach or default under this Deed. If in any proceedings against the Trustees they are found to be in breach of clause A5.1(a), the Trustees are not entitled to any right of reimbursement or indemnity under this clause;
- (q) The amount of any rates, land tax, insurance premiums, property repairs and maintenance costs and other outgoings incurred in respect of any investment;
- (r) All management fees, commissions and other fees and expenses paid to any real estate agents, property managers or other persons appointed to manage any investments; and
- (s) All costs in preparing, printing and distributing performance reports or bulletins for Members, provided that a corporate Trustee shall always bear its own internal administration costs.

**A17.3 Administration Manager:** Subject to the KiwiSaver Act, as applicable, the Trustees shall pay out of the Scheme (whether from income or capital or both) the fees, costs and expenses of any Administration Manager or Investment Manager contracted or employed by the Trustees as provided in this Deed. The Trustees may agree such fees and agree from time to time to vary such fees.

**A17.4 Withdrawal Fee:** Subject to the KiwiSaver Act, as applicable, where an application for early withdrawal is received by the Trustees in respect of the Scheme the Trustees shall be entitled to charge and deduct from the Member's Account a Withdrawal Fee in respect of the withdrawal. The Trustees may, with the consent of the Founder, waive all or part of the Withdrawal Fee in their absolute discretion.

**A17.5 Deductions from Member Accounts:** Without limiting the foregoing, and subject to the KiwiSaver Act, as applicable, the Trustees may deduct from a Member Account the following fees:

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

## **A18 TRUSTEES' POWER TO REVIEW FEES AND OTHER AMOUNTS**

- A18.1 **Review:** Subject to compliance with clause A28.1, and Relevant Law, the Trustees may at any time increase or reduce the amount of any penalties, fees or other charges payable by a Member or from the Scheme pursuant to this Deed.
- A18.2 **Date of Reduction:** In any case where the Trustees reduce the amount of any penalties, fees or other charges pursuant to clause A28.1, the reduction shall take effect from a date determined by the Trustees.
- A18.3 **Date of Increase:** In any case where the Trustees determine to increase the amount of any penalties, fees or other charges pursuant to clause A28.1 then the increase shall become effective from a date determined by the Trustees subject to all Members affected by such increase being given not less than one month's prior notice in writing of the new penalties, fees or other charges or amounts, and subject to compliance with Relevant Law.

## **A19 UNITISATION**

- A19.1 The Trustees will operate each Investment Portfolio on a unitised basis.
- A19.2 The beneficial interest in each Investment Portfolio will be divided into Units (including, if the Trustees so determine, fractions of Units) which may be consolidated or divided in such manner as the Trustee may from time to time decide.
- A19.3 All Units referable to an Investment Portfolio will be of one class and confer identical rights and interests.
- A19.4 A Unit will not confer any right or interest in any particular Asset that is attributable to, and that is comprised in, the Investment Portfolio to which it relates and no Member is entitled to require the transfer of any of the assets to the Member.
- A19.5 In the case of Units issued on establishment of each Investment Portfolio, the initial Unit Price will be \$1.00.
- A19.6 After establishment of each Investment Portfolio, the Unit Price for each Investment Portfolio will be determined on each Valuation Day by dividing the Net Value of the assets of the relevant Investment Portfolio by the number of Units then on issue in respect of that Investment Portfolio. For the avoidance of doubt, the assets used to determine the Unit Price on a Valuation Day will:
- (a) not include amounts received from which Units are to be but have not been issued; and
  - (b) include amounts deducted, transferred or withdrawn from Member Accounts for which Units are to be but have not been cancelled,
- at the time of such determination.
- A19.7 Subject to clauses A19.8 and A19.9, the Trustees will in respect of:
- (a) each Contribution and other amounts received by the Scheme from or in respect of a Member (including, if applicable, any Crown Contribution or rebate in respect of tax credits or tax losses);
  - (b) any amount transferred into the Scheme from another KiwiSaver Scheme in respect of a Member;

- (c) any amount transferred into an Investment Portfolio of the Scheme from another Investment Portfolio within the Scheme under clause A12.8;
- (d) any amount transferred to the Reserve Account;
- (e) any other amount received by the Scheme which the Trustees consider should give rise to the issue of Units,

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

A19.8 Without limiting clause A19.7 and subject to the KiwiSaver Act, the Trustees may delay the conversion into Units under clause A19.7 of any Contributions accepted into the Scheme in respect of a Member or group of Members until such time as the Trustees are reasonably satisfied that those Contributions do not exceed the amount required to be paid to the Scheme in respect of the Member (or those Members collectively) under the KiwiSaver Act and this Deed and have not otherwise been paid in error.

A19.9 Without limiting clause A19.6 or any other provision of this Deed (but subject at all times to the provisions of the KiwiSaver Act and clause A23.1), the Trustees may determine at any time or times that from a specified date no further Units will be issued pursuant to this Deed, or in relation to a specified Investment Portfolio or Investment Portfolios, either:

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

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

A19.10 The Trustees will in respect of:

- (a) amounts deducted from Member Accounts and/or the Reserve Account to meet fees, charges, costs, expenses, or premiums payable that may be deducted to the Member Accounts and/or the Reserve Account;
- (b) amounts transferred out of the Scheme to another KiwiSaver Scheme;
- (c) permitted withdrawals or Benefits (as applicable);
- (d) any amount transferred from one Investment Portfolio of the Scheme to another Investment Portfolio within the Scheme under clause A12.8;
- (e) amounts deducted in respect of PIE Tax that is or may be calculated, assessed against or payable by or in respect of the Member, or the Member's interest in an Investment Portfolio or Fund and/or the Reserve Account; and any amount transferred from a Member's Account to the Reserve Account under clause A21.2(c) (other than where that transfer or debiting is implemented through a transfer of Units); and

- (f) any other amount which the Trustees consider should be deducted from Member Accounts and/or the Reserve Account,

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

- A19.11 Subject to Relevant Law, the Trustees may defer giving effect to a permitted withdrawal in respect of the Scheme or any transfer out of the Scheme, or any transfer between Investment Portfolios, if (and for so long as) the Trustees determine that, having regard to the realisation of assets required in order to make the withdrawal or transfer or the occurrence or existence of any other circumstance or event relating to the Scheme or generally, earlier withdrawal or transfer would be imprudent or is impracticable.
- A19.12 Units issued against uncleared funds may be treated as void if the funds are not subsequently cleared.
- A19.13 Subject to the requirements of the KiwiSaver Act and the Scheme Provider Agreement, Units that the Trustees determine have been issued in error may be treated as void unless a Member has altered his or her position in good faith to the Member's detriment in reliance on the validity of those Units (in circumstances where relevant law does not require the Units to be treated as void).

## **A19A VALUATION**

- A19A.1 The Trustees will calculate the Net Value of each Investment Portfolio on each Business Day, or, subject to clause A19A.2, at such other intervals (not exceeding 30 Business Days) as they may determine, by deducting the liabilities attributable to that Investment Portfolio from the market value of its assets.
- A19A.2 If, due to factors beyond their reasonable control, the Trustees cannot complete a valuation of each Investment Portfolio within 30 Business Days of the last valuation, the Trustees must calculate the Net Value of each Investment Portfolio on the first Business Day following those factors ceasing to exist.
- A19A.3 The Trustees will determine the market value of each asset in the Investment Portfolio on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice as defined in the Financial Reporting Act 1993 (except to the extent that the Trustees determine that they need not have regard to that practice) and may from time to time engage any valuers or other suitably qualified persons for the purposes of fixing the market value of any asset (but are not under any duty to do so).
- A19A.4 The Trustees will determine the liabilities attributable to an Investment Portfolio on such basis as it considers to be fair and equitable having regard to generally accepted accounting practice as defined in the Financial Reporting Act 1993 (except to the extent that the Trustees determine that they need not have regard to that practice) and in doing so may (subject to clause A12.10):
  - (a) apportion the liabilities of the Scheme generally amongst the Investment Portfolios on such basis as the Trustees consider appropriate; and

- (b) take account of each debt, liability, provision, cost, charge, expense and outgoing, contingent liability, provision, liability to Tax, unpaid remuneration, reimbursement or indemnity or other matter as they consider appropriate.

A19A.5 Notwithstanding clause A19A.1, the Trustees may exclude certain liabilities from the liabilities that are deducted from the market value of the assets of an Investment Portfolio. For example, but without limitation, the Trustees may exclude:

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

A19A.6 **Trustees' decision is final:** In the absence of manifest error, the Trustees' determination of Net Value and the Unit Price will be final and binding on all persons including, without limitation, the Trustee, the Founder and any Member.

## A19B Calculation of Member's Accumulation

A19B.1 Where this Deed requires the Trustees to calculate an amount representing the "member's accumulation" in respect of a Member for the purposes of calculating a Benefit or permitted withdrawal (as the case may be) payable to or in respect of the Member the amount will be calculated by:

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

## A20 PROVISION FOR AND PAYMENT OF TAX

### A20.1 PIE Tax

- (a) The Trustees may elect that the Scheme be a PIE, or cease to be a PIE at its discretion, and may allocate the costs of being a PIE as they consider appropriate. The Trustees shall ensure that any PIE Tax is calculated in accordance with the Income Tax Act.
- (b) Subject to the requirements of the Income Tax Act, the Trustees have the power and discretion for as long as the Scheme is a PIE to:
  - (i) make any elections as to the method of calculation for allocation or attribution of income, expenses, tax credits or PIE Tax as they think fit;

- (ii) take all steps necessary to ensure that the Scheme is eligible or continues to be eligible as a PIE or otherwise to comply with the requirements of the Income Tax Act relevant to PIEs;
- (iii) elect to offset tax liabilities and credits or losses in respect of an Investment Portfolio or Fund and/or Member and make such adjustments as the Trustees consider appropriate;
- (iv) allocate any tax rebate received for tax credits or tax losses in respect of Members or former Members among the Members or former Members in such manner as the Trustees in their complete discretion consider appropriate;
- (v) exercise, or decline to exercise any power or discretion relevant to PIEs granted under any enactment as the Trustees consider appropriate.

## A20.2 **Payment of Tax**

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

## A21 **RESERVE ACCOUNT**

A21.1 **Reserve Account:** The Trustees shall establish a Reserve Account or accounts for the Scheme to which shall be allocated from time to time:

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

A21.2 **Use of Reserve Account:** The Reserve Account may, subject to the KiwiSaver Act, as applicable, be used at the Trustees' discretion:



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

## **A22 GENERAL PROVISIONS APPLYING TO BENEFITS**

- A22.1 Payment of Benefits:** The Trustees shall not be bound to see to the application of any money paid by it as a Benefit or otherwise in accordance with this Deed and the receipt by any person of money paid or distributed by the Trustees as a Benefit or otherwise in accordance with this Deed, shall be a full and complete discharge of all the Trustees' obligations in respect of such payment or distribution and in respect of the Benefit represented by such payment or distribution.
- A22.2 Lump sum:** Benefits payable under this Deed shall, except as otherwise specifically provided, be payable by way of lump sum to the Member or such other person entitled to the Benefit.
- A22.3 Bankruptcy:** If a Member who is entitled to a Benefit under the Scheme becomes bankrupt:
- (a) The Member shall not be entitled to receive any Benefit; and
  - (b) The Trustees may, as they in their absolute discretion think fit, apply the Member's Accumulation in any manner for the benefit of the Dependants of the Member.
- A22.4 Incapacity:** If a Member is, in the opinion of the Trustees formed on the basis of evidence satisfactory to them, incapable of managing that Member's own affairs, the Trustees shall be entitled to withhold payment of any Benefit payable in terms of this Deed. The Trustees shall then apply such Benefit to or for the benefit of the Member or of other Members contingently entitled to such Benefit, in such manner as the Trustees may in their absolute discretion determine.
- A22.5 Forfeiture:** The Trustees shall exercise reasonable diligence in tracing Members entitled to immediate Benefits from the Scheme. If the Trustees are unable to trace a Member of the Scheme, the provisions of the KiwiSaver Act shall apply.
- A22.6 Information:** Any Member shall provide such evidence or information as may be reasonably required by the Trustees concerning the Member's entitlement under the Scheme. Until such evidence or information is produced the Trustees may withhold the payment of any Benefit to such Member.
- A22.7 Tax:** If the Trustees are required by law to deduct from any Benefit due to a Member any amount for the payment of any duty or Tax or otherwise, the Trustees shall be entitled to deduct the amount so payable from that Member's Benefit or account for the amount as otherwise provided in accordance with clause A20.2 and to pay or apply the amount deducted as required by law. The balance of the Benefit shall be paid to the Member in accordance with this Deed in full satisfaction of the Member's entitlement to Benefits under the Scheme.

- A22.8 **Minors:** If any Benefit under this Deed is payable to a person who is a minor or who is under a legal incapacity, or if for any other reason the Member so requests, the Trustees may pay the Benefit or any part of it to such person for the benefit of the minor or other person as the Trustees shall think fit. Upon the receipt of the Benefit by that person the provisions of clause A22.1 shall apply.
- A22.9 **Interest:** Where an entitlement to a Benefit in respect of a Member arises from the Scheme and payment of the Benefit is not made until after the date upon which the Trustees are required to pay the Benefit, the Trustees may (but shall not be obliged to) increase the Benefit by the addition of interest, at a rate determined by the Trustees, in respect of all or part of the period from that date to the date of payment.
- A22.10 **Manner and time of payment:** Subject to the express terms of this Deed, Benefits becoming payable hereunder shall be paid as soon as practicable after the date on which application for the Benefit is made. Payment of a Benefit may be effected by cheque delivered to or posted to the last known address of the Member entitled to the Benefit or such other means agreed to by the Trustees and the person entitled to payment. Payment made by cheque payment will be deemed to have been made on the date of the posting of the cheque.
- A22.11 **Evidence of Entitlement:** Any Member or any other person purporting or claiming to be qualified or entitled to any Benefit under the Plan shall on request produce to the Trustees such evidence as the Trustees may require.

## **A23 SUSPENSION RIGHTS**

### **A23.1 Right to suspend:** If by reason of:

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

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

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

whichever is the earlier.

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

A23.2 **Withdrawal request:** Where withdrawal requests are suspended pursuant to clause A23.1 a Member may revoke a withdrawal request at any time prior to cancellation of the suspension notice or the expiration of twelve months whichever is the earlier.

## **A24 ACCOUNTING RECORDS**

A24.1 **Accounting Records:** The Trustees shall ensure that there are kept at all times accounting records that:

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

A24.2 In keeping or causing to be kept the Trustees' proper records or accounts under clause A24.1:

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

A24.3 **Inspection by the Auditor:** The accounting and other records of the Trustees in respect of the Scheme shall be open to the inspection of the Auditor. The Trustees shall provide to the Auditor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

A24.4 **Financial Statements:** Subject to Relevant Law, the Trustees must ensure that within 4 months after the end of each financial year end for the Scheme, financial statements that comply with generally accepted accounting practice are:

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

A24.5 **Audit:** The Trustees shall ensure that, within 4 months after the end financial year end for the Scheme:

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

A24.6 **The Auditor:** A person or firm of accountants selected by the Trustees must be appointed Auditor of the Scheme provided that such person or firm of accountants is licensed under the Audit Regulation Act 2011 and meets the requirements of Relevant Law.

**A24.7 Annual Report:** The Trustees must:

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

**A25 REGISTER OF MEMBERS**

**A25.1 Register:** The Trustees shall keep and maintain or cause to be kept and maintained a Register of Members in respect of the Scheme.

**A25.2** The Register shall take the form of a computer file compiled in a manner required by the FMA.

**A25.3** The Register shall be kept or caused to be kept by the Trustees at its offices or such other place as the Trustees may from time to time approve.

**A25.4** On request by the FMA, the Trustees will provide the FMA with a copy of the Register in such form as the FMA may approve and the FMA shall be entitled to inspect the Register at any time during the normal working hours of the Trustees.

**A25.5** There shall be entered in each Register:

- (a) the names, addresses and Prescribed Investor Rates (if given) of the Members having an interest in the Scheme;
- (b) the number and type of interests held by each Member in the Scheme;
- (c) the date on which any person ceased to be a Member having an interest in the Scheme;
- (d) in respect of Members who are employees of Employers, the name of the relevant Employers; and
- (e) such other details as the Trustee may require or as may be required by law from time to time.

**A25.6 Information in Register:** There shall be entered in the Register:

- (a) The names, addresses and Prescribed Investor Rates (if given) of the Members in the Scheme.
- (b) The number and type of Units in a Member's Member Account.
- (c) The date on which the name of every person was entered in the Register as a Member having an interest in the Scheme;

- (d) The date on which every person became a Member of the Scheme and the date on which any person ceased to be a Member.
- (e) in respect of Members who are employees of Participating Employers, the name of the relevant Participating Employers;
- (f) The date Contributions were made and the amount of each Contribution made by a Member and the date Benefits were paid and withdrawals were made and the amount thereof; and
- (g) such other details as the Trustees determine or as are required by law.

**A25.7 Audit of Register:** The Trustees shall cause the Register to be audited by the Auditor at annual intervals or as required by the FMC Act. Such audit shall be completed in accordance with the FMC Act and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of the FMC Act has not been complied with. The FMA may at any time for a specified and reasonable purpose request the Trustees to cause each Register or one or more of them to be audited.

**A25.8 Inspection of Register:** The Register shall be open for inspection by the Auditor and any Member free of charge at any time during the normal business hours of the Trustees.

**A25.9 Registered Holder:** The Trustees shall be entitled to treat the registered holder of a Member Account as the absolute owner thereof.

**A25.10 Reliance on Information:** The Trustees will be entitled to rely on the validity and accuracy of the information in the Register or provided to it by Members, and upon the validity of any signature on any transfer, form of application or other instrument and will not be liable in any way to make good out of its own funds any loss, liability or penalty incurred by any person in the event of such information being incorrect or such signature being forged or otherwise ineffective; that loss (if any) will, subject to any right of reimbursement from any other person, be borne by the relevant Fund.

## **A26 PERIOD OF SCHEME**

**A26.1 Trust Period:** The Scheme shall (subject to the provisions of Relevant Law) continue until the Date of Termination which shall be whichever of the following dates first occurs:

- (a) The Winding Up Date specified by the Trustees pursuant to clause A27;
- (b) The date falling 80 years less two days from the original date of registration of the Scheme under the KiwiSaver Act as applicable, (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964).

## **A27 WINDING UP OF THE SCHEME**

**A27.1 Resolution:** Subject to the KiwiSaver Act, the Scheme shall be wound up and dissolved if:

- (a) The Trustees (after first giving to the Founder not less than ten days' prior notice in writing of their intention) resolve in writing to wind up the Scheme in whole or in part; or

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

**A27.2 Effect of resolution to wind up:**

- (a) Every resolution to wind up the Scheme shall specify an effective Winding Up Date of the Scheme and the provisions of the KiwiSaver Act relating to the winding up of the KiwiSaver Schemes shall apply to the Scheme;
- (b) On or after the Winding Up Date:
  - (i) No further natural persons or Trustees of Registered Superannuation Schemes shall be admitted as Members to the Scheme;
  - (ii) No further Contributions shall be made to the Scheme; and
  - (iii) The Scheme's Assets shall thereupon be realised by the Trustees as soon as reasonably possible having regard to the nature of the Assets to be realised.

**A27.3 Notice to Members:** Immediately after the passing of the resolution to wind up the Scheme each Member of the Scheme shall be promptly given notice in writing of the resolution.

**A27.4 Application of Proceeds:** Subject to clause A27.4A the proceeds obtained from realising the Scheme's Assets shall be applied by the Trustees in the following order of priority:

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

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

A27.4A Where any proceeds are payable to a Member in accordance with A27.4, that part of the proceeds which relate to a UK Transfer received on and after 6 April 2012 shall be applied by the Trustee by way of:

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

Any residual proceeds shall be paid to the Member in accordance with clause A27.4 as applicable.

A27.5 **Advice to Financial Markets Authority and Inland Revenue:** The Trustees shall, within 10 Business Days after the winding up resolution is made, lodge a copy of that resolution with the FMA, and in the case of the winding up of the Scheme, give (i) a copy of that resolution to the Commissioner of Inland Revenue and (ii) notice to the Commissioner of Inland Revenue of the name, tax file number, and address of each member of the Scheme.

A27.6 **Final Accounts:** The Trustees shall ensure that final accounts of the Scheme showing the financial position of the Scheme as at the Winding Up Date are prepared in accordance with generally accepted accounting practice within 4 months after the date on which the winding up takes effect and audited.

A27.7 **Copies of Final Accounts:** The Trustees shall, within 20 Business Days after the final accounts have been audited ensure that:

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

A27.8 **Advice to Financial Markets Authority of distribution:** The Trustees shall inform the FMA of the date on which the distribution of the Scheme's Assets is completed.

A27.9 **Members' rights to information:** All Members who were Members of the Scheme immediately before its winding up shall continue to have the right to the information as specified in the KiwiSaver Rules for Members of the Scheme.

## **A28 ALTERATION OF THIS DEED**

A28.1 **Alteration:** Subject to the FMC Act, the Trustees may, with the consent of the Founder, by deed from time to time rescind, alter, modify or add to any of the provisions of this Deed.

A28.2 The Trustees may permit minor amendments to the format of the Participating Agreement from time to time.

### A28.3 TRANSFERS

Subject to the FMC Act:

- (a) Subject to Relevant Law where it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of Members of the Scheme to another KiwiSaver Scheme the Trustees shall, at least one month before the implementation of the proposed transfer, notify all Members in writing of the proposal and of its implications for Members and shall also forward a copy of such notification to the FMA.
- (b) The giving of notice under subclause (b) above shall not derogate from the need to comply with Relevant Law.

A28.4 **Copies with Financial Markets Authority:** Within 5 Business Days after any amendment to this Deed is made the Trustees shall ensure that notice of the amendment is lodged Registrar.

### A29 NOTICES

A29.1 **Method of Service:** Any document or notice to be served or required to be given to the Trustees or the Founder may be delivered personally to the registered office of the Trustees or the principal place of business of the Founder or may in the Trustees' discretion be made by facsimile, orally, or in such other manner as is acceptable to or prescribed by the Trustees. A notice given to the Trustees or the Founder shall only be effective when received by the Trustees or the Founder as the case may be.

A29.2 **Deemed service of Members:** Any notice or other document to be served on a Member shall be deemed served if:

- (a) Delivered to that Member personally or to the Member's principal place of business or place of abode;
- (b) Sent by prepaid post to the address of the Member last known to the Trustees. Any notice sent by prepaid post to a Member shall be deemed to be served three days after the date of posting; or
- (c) Sent to that Member by telephone, facsimile, computer, videophone or other electronic medium approved by the Trustees subject to such conditions as the Trustees considers appropriate as to identification of the person making the communication or verification of the content of the communication.

### A30 NEW ZEALAND LAW

A30.1 **Governing Law:** This Deed shall be construed according to the laws of New Zealand.

### A31 CURRENCY


A31.1 **Payment in New Zealand dollars:** Contributions shall be paid in New Zealand currency. All amounts and Benefits payable by the Trustees in respect of this Deed shall be paid in New Zealand currency.



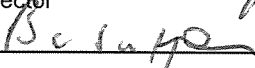
A31.2 **Conversion of foreign currencies:** Where, for the purposes of any provision of this Deed, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on a consistent basis fixed by the Trustees and any liability that is payable in a non-New Zealand currency shall, for the purposes of this Deed, be treated as being a liability of an amount equal to the New Zealand currency equivalent determined as aforesaid provided always that in determining the New Zealand currency equivalent of a liability payable or an amount expressed in a non-New Zealand currency, account may be taken of any contractual arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the liability.

**EXECUTED AS A DEED**

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

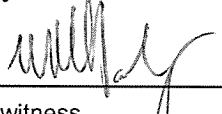
  
\_\_\_\_\_  
Signature of director

*Richard Tyler*  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

*Brett Sutton*  
\_\_\_\_\_  
Name of director

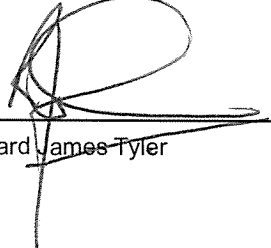
**SIGNED by RICHARD JAMES TYLER:**

  
\_\_\_\_\_  
Signature of witness

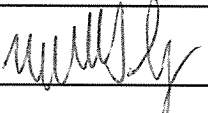
*MICHAEL DALK*  
\_\_\_\_\_  
Name of witness

*ANALYST*  
\_\_\_\_\_  
Occupation of witness

*WELLINGTON*  
\_\_\_\_\_  
City/town of residence

  
\_\_\_\_\_  
Signature of Richard James Tyler

**SIGNED by ALASTAIR CHARLES  
HERCUS:**

  
\_\_\_\_\_  
Signature of witness

*MICHAEL DALK*  
\_\_\_\_\_  
Name of witness

*ANALYST*  
\_\_\_\_\_  
Occupation of witness

*WELLINGTON*  
\_\_\_\_\_  
City/town of residence

  
\_\_\_\_\_  
Signature of Alastair Charles Hercus

**SIGNED by DANELLE RAEWYN  
DINSDALE:**

\_\_\_\_\_  
Signature of Danelle Raewyn Dinsdale


\_\_\_\_\_  
Signature of witness

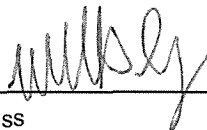
\_\_\_\_\_  
Name of witness


\_\_\_\_\_  
Occupation of witness


\_\_\_\_\_  
City/town of residence

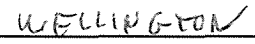
**SIGNED by BRETT CHRISTOPHER  
SUTTON:**

  
\_\_\_\_\_  
Signature of Brett Christopher Sutton


  
\_\_\_\_\_  
Signature of witness

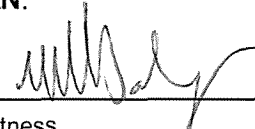
  
\_\_\_\_\_  
Name of witness

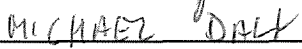
  
\_\_\_\_\_  
Occupation of witness

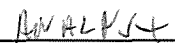
  
\_\_\_\_\_  
City/town of residence


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

  
\_\_\_\_\_  
Signature of Brendan Gerard O'Donovan

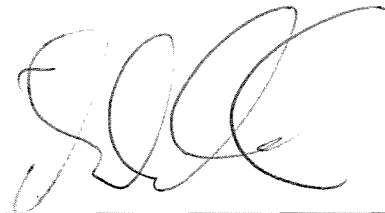
  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name of witness

  
\_\_\_\_\_  
Occupation of witness

  
\_\_\_\_\_  
City/town of residence

**SIGNED by DANELLE RAEWYN  
DINSDALE:**



\_\_\_\_\_  
Signature of Danelle Raewyn Dinsdale

\_\_\_\_\_  
Signature of witness  
Andrew Wares  
\_\_\_\_\_  
Name of witness  
Schuter  
\_\_\_\_\_  
Occupation of witness  
Napier  
\_\_\_\_\_  
City/town of residence

**SIGNED by BRETT CHRISTOPHER  
SUTTON:**

\_\_\_\_\_  
Signature of Brett Christopher Sutton

\_\_\_\_\_  
Signature of witness  
\_\_\_\_\_  
Name of witness  
\_\_\_\_\_  
Occupation of witness  
\_\_\_\_\_  
City/town of residence

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

\_\_\_\_\_  
Signature of Brendan Gerard O'Donovan

\_\_\_\_\_  
Signature of witness  
\_\_\_\_\_  
Name of witness  
\_\_\_\_\_  
Occupation of witness  
\_\_\_\_\_  
City/town of residence