

**New Zealand Universities' Superannuation Scheme**

**Trust Deed**

**Consolidated and amended with effect from  
31 March 2009**

**Kensington Swan  
Solicitors  
Wellington & Auckland**

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**Deed** dated 13 February 2009

## **Parties**

- 1 **Lindsay Stuart Taiaroa** of Wellington, Chairperson, **Wayne Grenfell Morgan** of Wellington, **Adrienne Pearl Cleland** of Auckland, **Neville Richard Bennett** of Christchurch and **Grant Andrew McKenzie** of Dunedin (“the Trustees”) [5] [8]

## **Background**

- A By deed dated 1 March 1993 between the “Establishing Universities” specified therein of the one part and James Denis Tait, Bruce Jerome Ross and Douglas William Girvan as “the Initial Trustees” of the other part there was established a superannuation scheme known as the New Zealand Universities’ Superannuation Scheme (“the Original Deed”).[2]
- B The Trustees are the current trustees of the Scheme. [5]
- C The terms of the Original Deed were amended by a Deed of Amendment dated 20 June 1996 (“the 1996 Deed”), by a Consolidating Trust Deed dated 23 December 1998 (“the 1998 Deed”) and by a Consolidating Trust Deed dated 26 March 2002 (“the 2002 Deed”). [3]
- D The 2002 Deed was amended by a further consolidating Trust Deed dated 20 August 2004 (“the 2004 Deed”) [5]
- E The 2004 Deed was amended by a further consolidating Trust Deed dated 30 May 2007 (“the First 2007 Deed”). [6] [7] [8]
- F The 2007 Deed was amended by a further consolidating Trust Deed dated 28 September 2007 (“the Second 2007 Deed”). [7] [8]
- G The Second 2007 Deed was amended by a further consolidating Deed dated 31 March 2008. [8]
- H The Trustees wish to further amend and consolidate the provisions of the Trust Deed as specified in this Deed to reflect relevant provisions of the Taxation (Urgent Measures and Annual Rates) Act 2008 which comes into force on 1<sup>st</sup> April 2009 as they relate to the Scheme and make certain other changes consequent upon the passing of that Act. [8]
- I The Universities have consented to the Amendments and the consolidation recorded in this Deed. [2]
- J The Trustees have obtained a certificate from the solicitor for the Scheme certifying that the Trust Deed when amended as proposed in this Deed would not have any of the effects specified in Section 9 of the Act or in clause 21 of the Trust Deed and will comply with Section 7 of the Act and not contain any provision that will be contrary to Sections 8 to 10 of the Superannuation Schemes Act 1989 or Section 84B of the State Sector Act 1988. [3].

## Operative Part

Pursuant to the powers of amendment contained in clause 21 of the Trust Deed, it is hereby agreed and declared by the parties that the Trust Deed shall, with effect from 1<sup>st</sup> April 2009 be consolidated and amended by replacing each and every one of the provisions thereof as at that date and by substituting therefore the following: [8]

## Covenants

### 1 Establishment of Scheme

A superannuation scheme known as the New Zealand Universities' Superannuation Scheme (hereinafter called 'the Scheme') was established with effect from the 1st day of March 1993 and shall be managed and administered in accordance with the provisions of this Deed. [2]

### 2 Definitions and Interpretation

In this Deed unless precluded by the context:

a. The following words and expressions shall have the following meanings:

“**Act**” means the Superannuation Schemes Act 1989. [5]

“**Actuary**” means a person who is a Fellow of the New Zealand Society of Actuaries and has been appointed by the Trustees to advise them regarding the Scheme.

“**Auditor**” means a chartered accountant (within the meaning of Section 19 of the Institute of Chartered Accountants of New Zealand Act 1996) who has been appointed by the Trustees as Auditor of the Scheme.

“**CFA Member**” means a Member whether a Subsidised Member or an Unsubsidised Member who has been admitted as a CFA Member pursuant to clause 3g and who has not ceased to be a CFA Member. [5]

“**CFA Superannuation Accumulation**” in respect of a Member has the same meaning as ‘employee’s superannuation accumulation’ in the Tax Act from time to time, and includes any other amounts which are by virtue of the provisions of this Deed included in the Member’s CFA Superannuation Accumulation. [7]

“**Clause**” means unless the context otherwise requires a clause of the Deed.

“**Commissioner**” has the same meaning as in the Tax Act. [5]

“**Complying Fund Rules**” has the same meaning as set out in the Tax Act from time to time. [5]

“**Complying Superannuation Fund**” means a superannuation scheme which is a complying superannuation fund for the purposes of the Tax Act. [5]

“**Contribution Holiday**” for the purposes of clause 4l means a period of not less than 3 months and not more than 5 years during which the Member shall not be required to

contribute as specified in the Member's application for a Contribution Holiday provided that a Member may take successive Contribution Holidays. [5]

**"Crown Contribution"** has the same meaning as in the KiwiSaver Act. [5] [7]

**"Deed"** means this trust deed as amended from time to time.

**"Deferred Member"** means a Member who is entitled to a deferred benefit under clause 10B.

**"Designated Person"** means in relation to a Member:

- i. any person or persons that the Member personally (or if the Member is incapacitated, any manager duly appointed to manage the affairs of the Member under the Protection of Personal and Property Rights Act 1988 or any person appointed by the Member as attorney under an enduring power of attorney pursuant to the Protection of Personal and Property Rights Act 1988) at the request of the Trustees, notifies in writing to the administration manager of the Scheme or the Trustees, whether before or after the date of the event giving rise to the application of Clause 12b or Clause 12c, as being a person the Member wishes the Trustees to consider for the purposes of the application of those clauses and in respect of whom the notification has not been subsequently withdrawn in writing by the Member or any manager or attorney appointed as aforesaid. [1]
- ii. any other person or persons directly associated with the Member whom the Trustees, based on information available or made available to them, determine in their absolute discretion to be a person or person that it would be appropriate to consider as a Designated Person for the purposes of Clause 12b or Clause 12c. Such person or persons shall include any person or persons (whether or not related by blood or marriage) whom the Trustees in their absolute discretion from time to time determine to have been financially dependent either in whole or in part on the Member at the relevant time where this is permitted by Section 74 of the Human Rights Act 1993. [1]

**"Elective Investment Pool"** means any investment pool which the Trustees have established pursuant to clause 17k for the investment of the Fund or any part of the Fund pursuant to Members' Investment Choice Elections but excludes the Principal Pool. [4]

**"Employee"** means a person who is in Service.

**"Employer"** means:

- i. In respect of each of Establishing Universities the Vice-Chancellor or other chief executive officer, person, persons or body (whether incorporated or unincorporated) from time to time having all the rights duties and powers of an Employer in respect of such University or in respect of any such University where there is no such person or body shall mean the University; [4]

- ii. In respect of any other New Zealand University means the Vice-Chancellor or other chief executive officer, person, persons or body (whether incorporated or unincorporated) from time to time having all the rights duties and powers of an employer in respect of that University or where there is no such person or body shall mean the University;
- iii. In respect of a private university in New Zealand means the Vice-Chancellor or other chief executive officer, person, persons or body (whether incorporated or unincorporated) from time to time having all rights duties and powers of an employer in respect of that private university (or, where the private university itself is the employer as defined in the Act shall mean the private university) as the Trustees with the consent of such of the Universities as are from time to time bound by this Deed agree to admit as an Employer; and
- iv. any company or other body (whether incorporated or unincorporated) which, for the purposes of this Deed, the Vice-Chancellor, council or other governing body of a University declares to be a company or other body (whether incorporated or unincorporated) associated with that University; and
- v. any other employer as defined in the Act which such of the Universities as are from time to time bound by this Deed agree from time to time to admit as an Employer for the purposes of this Deed

and which shall have agreed in writing to be bound, or is by statute bound by the provisions of this Deed; and in respect of a Member means the Employer with whom the Member is (or where the context requires was) in Service.

**“Employer Contributions”** in respect of a Member means the contributions an Employer contributes to the Scheme under clauses 4f and 4fa (adjusted if required by clause 4fb) and includes any contributions made to the Scheme pursuant to clause 4g. [7]

**“Employer’s Superannuation Contribution”** has the same meaning as in Section RD 65 of the Tax Act. [5] [7]

**“Establishing Universities”** means the University of Auckland, University of Waikato, Massey University, Victoria University of Wellington, University of Canterbury, Lincoln University, and University of Otago. [4]

**“Fund”** means the fund consisting of:

- i. the assets of the Scheme from time to time held by the Trustees and subject to the terms of this Deed;
- ii. Contributions paid to the Scheme by Members pursuant to clause 4;
- iii. Contributions paid to the Scheme by the Employers pursuant to clause 4 together with any contributions in relation to expenses pursuant to clause 11;
- iv. Transfer Benefits received by the Trustees from any Transferor Plan pursuant to clause 20;

- v. other receipts, property, income, dividends or gains received, derived, acquired or earned or held by the Trustees from time to time for the purpose of the Scheme.

The Fund shall be reduced from time to time by the payment of money out of the Fund as provided in this Deed, by any realised losses, and at the discretion of the Trustees any unrealised losses on the investments or property of the Scheme.

**“Ill Health”** means physical or mental impairment suffered by any Member which in the absolute discretion of the Trustees is determined to be of such an extent that, having regard to the previous employment and other characteristics of the Member, the earning capacity of the Member in the future is likely to be substantially reduced.

**“Investment Fund Election”** means an election in writing by the Member in respect of which the Member directs the Trustees to apply contributions by the Member or by the Employer on the Member’s behalf or both of them as allowed by the Trustees, or to apply the amount in the Member’s No. 1 Account or the Member’s No. 2 Account or both of them from time to time as allowed by the Trustees, to one or more Investment Funds as offered by the Trustees in terms of clause 17. [4]

**“Investment Fund”** means a fund established by an Investment Manager or a Registered Scheme for the purposes of investing the assets of a Registered Scheme.

**“Investment Manager”** means a person (if any) to whom the Trustees have contracted the investment of some or all of the Fund.

**“Investment Choice Election”** means an election made by a Member in accordance with clause 17m. [4]

**“KiwiSaver Act”** means the KiwiSaver Act 2006. [5]

**“KiwiSaver Rules”** means the rules contained in the First Schedule of the KiwiSaver Act for the operation of KiwiSaver Schemes as amended by the KiwiSaver Act or by regulations made under the KiwiSaver Act from time to time. [5]

**“KiwiSaver Scheme”** means a KiwiSaver Scheme registered in accordance with the KiwiSaver Act. [5]

**“Leave of Absence”** means in relation to a Member, leave of absence from Service as determined by the Trustees at their sole and absolute discretion having received the advice of the Employer and includes parental leave for the purposes of the Parental Leave and Employment Act 1987 where this is permitted by section 74, section 151 or any other section of the Human Rights Act 1993 or by any other legislation. [1]

**“Locked In Account”** means a Member’s Locked In No. 1 Account and/or Member’s Locked In No. 2 Account or both as the context requires. [5]

**“Member”** means an Employee who has been admitted to membership of the Scheme and who is still in the Service of an Employer or who remains entitled to receive a benefit under the Scheme. The term “Member” shall include both a

Subsidised Member and an Unsubsidised Member, and when the context requires also includes a Member no longer in Service who has deferred his or her entitlement pursuant to clause 8f or clause 10B as applicable. [5]

**“Member’s Accumulation”** has the same meaning as in the KiwiSaver Act unless otherwise stated. [5]

**“Member’s Locked In No. 1 Account”** means in respect of a Member the sub-account (if any) established under clause 5ab and which forms part of the Member’s No. 1 Account and which is subject to the Complying Fund Rules. [5]

**“Member’s Locked In No.2 Account”** means in respect of a Member the sub-account (if any) established under clause 5bb and which forms part of the Member’s No. 2 Account and which is subject to the Complying Fund Rules. [5]

**“Member’s No. 1 Account”** means in respect of a Member the account established under clause 5a and includes a Member’s Locked In No. 1 Account forming part of that account (if any). [5]

**“Member’s No. 2 Account”** means in respect of a Member the account established under clause 5aa and includes a Member’s Locked In No. 2 Account forming part of that account (if any). [5]

**“New Zealand Superannuation Qualification Age”** means the age at which persons of the Member’s age ordinarily qualify for New Zealand Superannuation under Section 7 of the New Zealand Superannuation and Retirement Income Act 2001. [5]

**“Normal Retirement Age”** means the age of sixty-five (65) years.

**“Overseas University”** means a university situated outside New Zealand which in the absolute discretion of the Trustees is recognised as a university.

**“Post June 2007 Member”** means a Member who joins the Scheme after 30<sup>th</sup> June 2007. [5]

**“Post March 2009 Member”** means a Member who joins or rejoins the Scheme after 31<sup>st</sup> March 2009. [8]

**“Principal Pool”** means the investment pool holding the assets of the Fund which are not represented by an Elective Investment Pool or an Investment Fund pursuant to an Investment Fund Election. [4]

**“Registered Scheme”** means a superannuation scheme registered under the Act.

**“Research Facility”** means any company, organisation or body (whether incorporated or unincorporated) whose principal objective is research situated inside or outside New Zealand which in the absolute discretion of the Trustees is recognised as a research facility.

**“Reserve Fund”** means the Reserve Fund established under clause 5b.

**“Redundancy”** means the termination by an Employer of the employment of a Member before Normal Retirement Date because that Member’s position has ceased

to exist. Redundancy does not mean termination of employment through the expiry of a Member's contract of employment or termination of employment on account of misconduct, dishonesty or unsatisfactory performance. If there is any doubt as to whether a Member has had their employment terminated by reason of Redundancy then the Employer shall have the final determination.

**"Review Date"** means the 31<sup>st</sup> of December in any year or such other date as determined by the Trustees.

**"Salary"** means the remuneration paid by an Employer to a Member by way of salary or wages but excluding any remuneration by way of bonus, overtime, penal payments or any other allowances. In respect of a Member on Leave of Absence in respect of whom contributions are being received, "Salary" shall mean the Member's annual rate of Salary at the date of commencement of Leave of Absence.

**"Service"** in respect of a Member who joined the Scheme prior to 1 January 1999 means continuous full time or part time permanent employment with an Employer and;

- i. may include at the absolute discretion of the Trustees after consultation with the Member's Employer all or part of any prior employment with an Overseas University or a Research Facility;
- ii. a Member's Service shall not be deemed to have been broken by interruptions which in the opinion of the Trustees on the advice of the Employer are of a temporary nature, or by Leave of Absence;
- iii. where a Member has transferred to the Scheme a Transfer Benefit, Service may at the request of the Employer include such additional service as is agreed between the Member and Trustees;
- iv. in the event of any doubt as to whether the requirements of Service have been fulfilled by a Member the decision of the Employer in respect of that Member shall be final. [2]

**"Service"** in respect of a Member who joins or rejoins the Scheme on or after 1 January 1999 means:

- i. continuous full time or part time permanent employment with an Employer after the Member last joined the Scheme and; [3]
- ii. a Member's Service shall not be deemed to have been broken by interruptions which in the opinion of the Trustees on the advice of the Employer are of a temporary nature, or by Leave of Absence; [3]
- iii. where a Member has transferred to the Scheme a Transfer Benefit, part of which has been paid into the Member's No. 2 Account, Service may at the request of the Employer include such additional service as is agreed between the Member and the Trustees; [3]
- iv. where a person who was previously a Member of the Scheme rejoins the Scheme and in respect of whom there is held as at the date the Member

rejoins the Scheme a Deferred Benefit pursuant to clause 8f or the Member is at that time a Deferred Member Service in respect of such renewed period of membership may at the request of the Employer include such additional Service as is agreed between the Member and the Member's Employer provided that such additional Service shall not exceed the Years of Scheme Membership completed by the Member as at the date the Member last left Service and elected to defer payment of his or her Benefit; [3] [5]

and in the event of any doubt as to whether the requirements of Service have been fulfilled by a Member the decision of the Employer in respect of that Member shall be final. [3]

and in the case of a Post June 2007 Member excludes any period of temporary employment as provided in Section 12 of the KiwiSaver Act unless the Member's Employer agrees such period of temporary employment shall count as Service. [5]

**"State Sector Act"** means the State Sector Act 1988.

**"Subsidised Member"** means an Employee who has been admitted as a Subsidised Member of the Scheme under clause 3a.

**"Subsidised Superannuation Scheme"** means a superannuation scheme other than the Scheme to which an Employer is contributing or is required under the terms and conditions of the superannuation scheme to contribute towards the benefits provided by the superannuation scheme. If there is any doubt as to whether an Employee is a member of a Subsidised Superannuation Scheme the decision of the Trustees shall be final.

**"Subsidised Member Contributions"** in respect of a Member means the contributions each Subsidised Member contributes to the Scheme under clause 4a.

**"Tax Act"** means the Income Tax Act 2007. [5] [7].

**"Transfer Benefit"** means any benefit transferred to the Scheme from another Registered Scheme or superannuation scheme under clause 20.

**"Trustees"** means the trustees of the Scheme for the time being appointed to administer the Scheme. [2]

**"University"** means a university established under the Education Act 1989. In respect of a particular Member "University" means "the University at which the Member is or was last employed".

**"Unsubsidised Employer Contribution"** means in respect of an Unsubsidised Member any contribution made by that Member's Employer pursuant to clause 4fa. [7]

**"Unsubsidised Member"** means an Employee who has been admitted as an Unsubsidised Member of the Scheme under clause 3b.

**"Unsubsidised Member Contributions"** in respect of a Member means the contribution each Unsubsidised Member contributes to the Scheme under clause 4c.

**“Years of Scheme Membership”** at any relevant time in respect of a Member means, the number of years (calculated in years and proportionately for partly completed days) that the Member has been a Member of the Scheme calculated from the date the Member last joined the Scheme. [5]

The Trustees shall for the purposes of this definition deem any period of Service to be included as Years of Scheme Membership provided no double counting shall occur.

In calculating Years of Scheme Membership (except where provided to the contrary in the Deed) no account shall be taken of any period of Scheme membership which would not be counted as Service. [1]

- b. Any reference to any Act shall include any amendments or consolidation thereof and includes any regulations thereunder and/or any Act or regulations or notices passed in substitution therefore. [5]
- c. Words describing the singular include the plural and vice versa. Words relating to one gender shall include the other gender.
- d. Headings are for guidance only and shall not affect the interpretation of this Deed. References to clauses are references to the clauses of this Deed.
- e. This Deed shall be interpreted and administered in accordance with the New Zealand law.
- f. In this Deed “[1]” indicates an amendment made on 20 June 1996, “[2]” indicates an amendment made on 1 January 1999, “[3]” indicates an amendment made on 26 March 2002, “[4]” indicates an amendment made on 20<sup>th</sup> August 2004, “[5]” indicates an amendment made on 30 May 2007, “[6]” indicates an amendment made 28 September 2007, “[7]” indicates an amendment made on 31 March 2008 and “[8]” indicates an amendment made or a provision added by this consolidation. These notations are for ease of reference only and shall not affect the interpretation of this Deed. [4] [5] [6] [7] [8]

### 3 **Membership**

- a. Each Employee who is not a member of another Subsidised Superannuation Scheme (where for the purposes of this clause 3a and 3b Subsidised Superannuation Scheme includes but is not limited to a KiwiSaver Scheme) may elect to become a Subsidised Member of the Scheme. An Employee who is a Member of a KiwiSaver Scheme may elect to become a Subsidised Member of the Scheme on the invitation of his or her Employer. [2] [7]
- b. Each Employee who is a member of another Subsidised Superannuation Scheme or any Employee not eligible or not wishing to be a Subsidised Member under clause 3a may elect to become an Unsubsidised Member.
- c. A Member may not withdraw from the Scheme whilst still in Service.
- d. Each Employee who elects to become a Member shall enter into an agreement in such form as the Trustees may from time to time prescribe and undertake to be

bound by the provisions of this Deed together with any amendments which may be made thereto.

- e. Membership of the Scheme shall unless otherwise agreed to by the parties thereto commence on the date that such agreement is entered into.
- f. A Subsidised Member who ceases contributions will become an Unsubsidised Member unless the Employer determines otherwise.
- g. Subject to the consent of the Trustees (which may be given in advance on a global basis in respect of any particular Employer) any Member or applicant for membership who is not over the New Zealand Superannuation Qualification Age may be invited by his or her Employer to become a CFA Member. Upon acceptance of the Employer's invitation the Employer shall notify the Trustees and provided the Employee is not over the New Zealand Superannuation Qualification Age the Member shall become a CFA Member from the date his or her application to become a CFA Member is accepted by the Trustees, or from such other date as the Trustees and the Member agree. A Member must in applying to become a CFA Member provide the Trustees with any information required by the Trustees to comply with their obligations under clause 10Ae and the Complying Fund Rules and the Trustees shall not be obliged to accept an application unless such information is provided. [5] [7]
- h. A CFA Member must notify the Trustees of any change to his or her address and in the absence of any such notification the Trustees may assume the CFA Member's address is that last notified to the Trustees by the Member. [5]

#### 4 Contributions

- a. Subject to clause 4A each Subsidised Member shall contribute to the Scheme a minimum amount equal to three percent (3%) of Salary, or such greater amount as the Member elects provided that this greater amount shall be an integer multiple of zero point five percent (0.5%) of Salary. Contributions shall be made by way of a deduction from Salary as that Salary becomes due and payable, and shall be remitted to the Trustees by the Employer within the month following the month in which the deduction is made.
- b. At the time of first becoming eligible to become a Subsidised Member a person who at that time elects to become a Member may elect to backdate membership to the commencement of the Member's employment with the Employer **provided** that:
  - i. membership shall not be backdated beyond the later of:
    - A. the date twelve (12) months prior to the date on which the Subsidised Member joins the Scheme as a Subsidised Member;
    - B. the 1<sup>st</sup> July 1992; and
    - C. the date on which the Employer ceased to make contributions on behalf of the Member to another Subsidised Superannuation Scheme.

- ii. the provisions of this clause 4b shall not apply in respect of any person who joins or rejoins the Scheme on or after 1 January 1999. [3]

Each Subsidised Member who elects to backdate membership as aforesaid shall in addition to the obligation to make Subsidised Member Contributions in respect of the Member's ongoing Service make additional Subsidised Member Contributions ("Backdated Subsidised Member Contributions") in respect of the backdated period of membership equivalent to the Subsidised Member Contributions that would have been payable by the Member if the Member had joined the Scheme at the commencement of the backdated period of membership. Such Backdated Subsidised Member Contributions shall be payable in equal instalments over the twelve (12) months immediately following the date the Member joined the Scheme at the same time as the ongoing Subsidised Member Contributions fall due for payment and shall be by way of a deduction from Salary as that Salary becomes due and payable. The Backdated Subsidised Member Contributions shall be remitted to the Trustees by the Employer within the month following the month in which the deduction is made. Nothing in this clause shall prevent the Member bringing forward the date of payment of the Backdated Subsidised Member Contributions subject to one (1) month's notice of any such change in payment frequency being given to the Trustees. If the Subsidised Member had, prior to becoming eligible as a Subsidised Member, been making contributions to the Scheme as an Unsubsidised Member, then the Member may elect to have the contributions made whilst an Unsubsidised Member during the backdated period of membership treated as Backdated Subsidised Member Contributions for the purpose of this subclause. Any Transfer Value brought into the Scheme by the Member shall not be included in assessing that Member's Backdated Subsidised Member Contributions.

c.

- i. Each Unsubsidised Member, other than a Post June 2007 Member or a CFA Member, shall contribute to the Scheme a minimum amount equal to two percent (2%) of Salary, or such greater amount as the Member elects provided this greater amount shall be an integer multiple of zero point five percent (0.5%) of Salary. [5] [7]
- ii. Subject to clause 4civ each Unsubsidised Member who is a Post June 2007 Member and who is not a CFA Member shall contribute to the Scheme a minimum amount equal to four percent (4%) of Salary, or such greater amount as the Member elects provided this greater amount shall be an integer multiple of zero point five percent (0.5%) of Salary. [5] [8]
- iii. Subject to clause 4A each Unsubsidised member who is a Post June 2007 Member and who is a CFA Member and not a Post March 2009 Member shall contribute to the Scheme a minimum amount equal to four percent (4%) of Salary or such greater amount as the Member elects provided this amount shall be an integer multiple of zero point five percent (0.5%) of Salary. A Member to whom this subclause applies may on or after 1<sup>st</sup> April 2009 by notice to their Employer and the Trustees reduce their contribution to a rate of two percent (2%) of Salary so long as this is not prevented by the application of the Complying Fund Rules, would not prejudice the ability of any Employer

to obtain or retain exempt employer status under section 25 of the KiwiSaver Act and would not prejudice the Government Actuary's approval of the Scheme as a complying superannuation fund. Notwithstanding the provisions of this sub-clause an amount equal to at least 4% of the Member's Salary (which may be made up in a manner permitted by section 26 of the KiwiSaver Act) must continue to be contributed to or otherwise credited within the Scheme by or in respect of the Unsubsidised CFA Member so that the Scheme continues to comply with section 25(1)(d) of the KiwiSaver Act (except during any period and to the extent the Unsubsidised Member is pursuant to the provisions of this Deed temporarily relieved from contributing at that rate). Nothing in this sub-clause shall require the Member's Employer to pay into the Scheme in respect of the Unsubsidised CFA Member any contribution in excess of any contribution the Employer is required to make under clause 4fa and any shortfall required to make up the 4% of Salary contribution referred to in section 25 of the KiwiSaver Act including as a result of the Employer reducing or ceasing its contribution to the Scheme in respect of the Member shall be paid by the Member. [8]

- iv. Subject to clause 4A each Unsubsidised Member who is a Post March 2009 Member and who is a CFA Member shall contribute to the Scheme a minimum amount equal to four (4%) of Salary (which may for so long as the Scheme's approval as complying superannuation fund would not be prejudiced and the Scheme continues to meet the requirements of section 25 of the KiwiSaver Act permitting employers to be approved as exempt employers be made up in a manner permitted by section 26 of the KiwiSaver Act) or such greater amount as the Member elects provided this amount shall be an integer multiple of zero point five (0.5%) of Salary except during any period the Member is temporarily relieved from contribution at that rate in accordance with the provisions of this Deed. Nothing in this clause shall require the Member's Employer to pay into the Scheme in respect of the Unsubsidised CFA Member any contribution in excess of any contribution the Employer is required to pay under clause 4fa, and any shortfall required to make up the 4% of Salary contribution referred to in section 25 of the KiwiSaver Act including as a result of the Employer reducing or ceasing its contributions to the Scheme in respect of the Member. [8]
  - v. Unsubsidised Member Contributions shall be made by way of a deduction from Salary as that Salary becomes due and payable, and shall be remitted to the Trustees by the Employer within the month following the month in which the deduction is made.
- d. Subject to any minimum contribution requirements in clause 4c and clause 4A (if applicable) each Member may at any Review Date, or at such other times as the Trustees permit, elect a new rate of Subsidised Member Contributions or Unsubsidised Member Contributions as appropriate provided the Member shall give the Trustees one (1) month's written notice of this alteration or such other period of notice as the Trustees may determine. [5] [8]

- e. Notwithstanding the provisions of clause 4d a Member may from time to time with the consent of the Trustees make additional voluntary lump sum contributions to the Scheme in such amounts as the Member may decide subject to the Member giving to the Trustees written notice in this regard and subject to such minimum requirements as to amounts and maximum number of such contributions per annum and such other conditions as the Trustees may in their absolute discretion impose from time to time. Voluntary lump sum contributions shall be made to the Member's No. 1 Account or the Member's Locked In No. 1 Account as the Member directs but if no direction is given then to the Member's No. 1 Account.
- f. Subject as hereafter appears each Employer shall contribute in respect of each Subsidised Member in Service and who is under Normal Retirement Age an amount equal to one point three five (1.35) times the Subsidised Member Contributions provided that the maximum contribution by the Employer in respect of any Subsidised Member shall be equal to six point seven five percent (6.75%) of the Subsidised Member's Salary from time to time. In the case of a Post June 2007 Member who is a Subsidised Member except during any period during which the Member is by virtue of this Deed temporarily relieved from making contributions, the minimum contributions payable by the Member must be at least equal to:
- (i) the minimum rate of Salary specified in clause 4a; or
  - (ii) except during any period the Member is temporarily relieved from contributions at that rate any minimum amount or rate of annual gross base salary or wages specified in Section 25 of the KiwiSaver Act which may be made up as provided in Section 26 of the KiwiSaver Act provided the rate of contribution actually paid by the Member to the Scheme exceeds that specified in clause 4a and the Scheme's approval as a complying superannuation fund would not be prejudiced; or
  - (iii) the lowest rate of the employee's Salary applying (in respect of the Member) as required by the complying fund rules from time to time,

whichever is the greater and where the Member's contribution is made up as permitted by section 26 of the KiwiSaver Act the Subsidised Members' Contributions shall be adjusted accordingly to ensure the minimum contribution required under section 25 of the KiwiSaver Act continues to be met after the Member's Employer ceases to contribute. [8]

- fa. Subject as hereafter appears each Employer shall contribute in respect of each Unsubsidised Member who is a CFA Member and who is under Normal Retirement Age the amount of any compulsory Employer Superannuation Contribution required to be paid in respect of that Unsubsidised CFA Member pursuant to subpart 3A of Part 3 of the KiwiSaver Act. [7]
- fb. Notwithstanding anything to the contrary in this Deed, and unless the Member's Employer otherwise agrees in writing with the Trustees, if a Member's Employer contributes to a KiwiSaver Scheme in respect of a Member (and in the case of a Member who joined on or before 31<sup>st</sup> March 2008 subject to the written consent of the Member) the Employer's contribution may at the option of the Employer be reduced by

one (1) dollar for each one (1) dollar paid by the Employer to any KiwiSaver Scheme (including but not limited to any compulsory contributions the employer is required to pay) in respect of that Member and the Trustees may rely upon written notification from the Employer as to the extent of the application of this clause 4fa as at each date an Employer contribution is due or made by the Employer, and in the case of a Post June 2007 Member who is a Subsidised Member, or a Member who is a CFA Member, the Member's contributions shall be adjusted to ensure that any minimum contribution required to be made by the Member continues to be met after allowing for any adjustment made to the Employer's contribution pursuant to this clause. [6] [7] [8]

- g. Subject as hereafter appears each Employer shall in addition to contributions paid pursuant to clause 4f in respect of each Subsidised Member in Service and who is under Normal Retirement Age who is making Backdated Subsidised Member Contributions in respect of backdated membership under clause 4b contribute an amount equal to one point three five (1.35) times the Backdated Subsidised Member Contributions **provided that** the maximum additional contribution by the Employer in respect of any such Subsidised Member shall be equal to six point seven five percent (6.75%) of the Subsidised Member's Salary earned by the Member during the period of membership to which the backdating relates **provided further that** the provisions of this clause 4g shall not apply in respect of any person who joins the Scheme on or after 1 January 1999. [2]
- h. Employer Contributions made in respect of clauses 4f, 4fa and 4g shall be made coincidentally as the Salary of the Subsidised Member becomes due and payable in respect of ongoing contributions and coincidentally with the Member's actual payment of Backdated Subsidised Member Contributions. The level of the Employer's Contributions stated in clause 4f, 4fa and 4g are expressed at gross levels. All taxes, charges or levies required to be deducted by the Employer or the Trustees shall be deducted therefrom prior to the balance being paid to the Scheme or to the Member's No.2 Account.
- i.
  - i. Subject to the Act (and in respect of any compulsory employer contribution under subpart 3A of subpart 3 of the KiwiSaver Act to the provisions of that Act) an Employer may reduce, cease or suspend contributions to the Scheme prescribed by clauses 4f and 4g in respect of all of its Employees who are Subsidised Members by giving the Trustees and the Subsidised Members employed by it one (1) month's notice in writing. [7]
  - ii. On a cessation or suspension of an Employer's contributions, a Subsidised Member who is not a Post June 2007 Member and who is an Employee of that Employer may continue, cease or suspend Subsidised Member Contributions as from the date of such cessation or during such suspension (as the case may be) of the Employer's contributions and in the case of a reduction may reduce the Subsidised Member Contributions in the same proportion as the Employer's contribution has been reduced. [5]
  - iii. On a cessation or suspension of an Employer's contributions a Subsidised Member who is a Post June 2007 Member and who is an Employee of that

Employer may continue, cease or suspend Subsidised Member Contributions as from the date of such cessation or during such suspension (as the case may be) of the Employer's Contributions and in the case of a reduction may reduce the Subsidised Member's Contributions in the same proportion as the Employer's Contributions have been reduced **provided that** except during any period during which the Member is, by virtue of this Deed, temporarily relieved from making contributions, the minimum contribution payable by or in respect of the Member after allowing for any ongoing contribution by the Employer in respect of the Member must be equal to at least 4% of Salary (which shall (subject to clause 4i iv) be treated as satisfied if after adjustment the provisions of Section 26(1)(b) of the KiwiSaver Act are met) and the Subsidised Member's Contributions shall be adjusted accordingly. [5]

- iv. In the case of a CFA Member the provisions of this clause 4i shall be subject to clause 4A. [5]
- v. If an Employer gives notice to the Trustees pursuant to this subclause in circumstances where in terms of the Act such reduction, cessation or suspension of contributions may only be effected by way of amendment to this Deed in accordance with Section 12 of the Act then subject to the Act the Trustees shall take all reasonable steps to amend this Deed to enable the reduction, cessation or suspension of contributions as aforesaid.
- j. No Employer shall be required to make any contributions in respect of any Member's contributions made under clause 4c or clause 4e.
- k. Subject to the Act, notwithstanding the provisions of clauses 4f and 4g and without prejudice to the Employer's right under clause 4i, the Employer of a Subsidised Member may with the written consent of the Subsidised Member and the Trustees elect to alter the Employer's Contributions to such a sum multiple or rate as the Employer shall from time to time see fit provided that in the case of a Post June 2007 Member the minimum contribution payable to the Scheme by or in respect of the Member must (except during any period during which the Member is, by virtue of this Deed, temporarily relieved from making contributions) equal at least 4% of Salary (which shall be treated as satisfied if after any adjustments the requirements of Section 26(1)(b) of the KiwiSaver Act are met) and provided further in the case of a CFA Member (except during any period the Member is temporarily relieved from making contributions) this clause 4k shall be subject to clause 4A. [5] [8]
- l.
  - i. Each Member who is not a Post June 2007 Member or a CFA Member may cease Subsidised Member Contributions or Unsubsidised Member Contributions and where the Member so ceases the Member shall become a non-contributing Unsubsidised Member and the Employer shall not be required to continue Employer Contributions. A non-contributing Unsubsidised Member may recommence contributions at any time. An Unsubsidised Member who has recommenced contributions will only be readmitted as a Subsidised Member upon application to and with the consent of the Unsubsidised Member's Employer. [5]

- ii. Each Post June 2007 Member or CFA Member may, on application to the Trustees, take a Contribution Holiday but where the Member is a Subsidised Member the Member shall, as from the date the Contribution Holiday commences, become a non contributing Unsubsidised Member for the duration of the Contribution Holiday and thereafter shall continue as an Unsubsidised Member unless readmitted as a Subsidised Member upon application to and with the consent of the Member's Employer. The Member's Employer shall not be required during the period of the Contribution Holiday to make an Employer Superannuation Contribution in respect of the Member unless the Employer is required to make compulsory contributions in respect of that period under subpart 3A of Part 3 of the KiwiSaver Act. [5] [7]
- m. In respect of each Member or Employee who was previously a member of another Registered Scheme, superannuation scheme, or Complying Superannuation Fund and who transfers to the Scheme the amount of any Transfer Benefit in terms of clause 20a the Trustees shall determine having regard to any terms and conditions applicable to such said transfer the proportions of such Transfer Benefit which shall be deemed by the Trustees to be contributions by the Member or by an employer of the Member and such contributions shall be credited to the Member's No. 1 Account, and Member's No. 2 Account respectively **provided that** any amounts transferred to the Scheme which are subject to the Complying Fund Rules shall be credited to the Member's Locked In No. 1 Account and/or the Member's Locked In No. 2 Account as determined by the Trustees. The Trustees shall similarly determine the proportions (if any) of such Transfer Benefit which shall be credited to the Reserve Fund. [5]
- n. Notwithstanding the provisions of clause 4a or clause 4c each Member who is granted Leave of Absence shall remain a Member of the Scheme and shall not be required to make contributions during any period of Leave of Absence. [1]
- o. A Member who is on Leave of Absence may continue to make contributions during any period of Leave of Absence and the period of Leave of Absence during which continued contributions are made shall count as Service for the purposes of determining the Member's Years of Scheme Membership for the purposes of Clause 8bii. [1]
- p. The Member's Employer shall not be required to make contributions in respect of a Member under clause 4f, clause 4fa and clause 4g during any period of Leave of Absence unless the Employer at its sole discretion decides otherwise or in the case of a CFA Member is required by virtue of the KiwiSaver Act to make compulsory contributions during such period. [1] [7]
- q. For each member who has been granted a Leave of Absence and ceases contributions, then during the period of the Leave of Absence during which contributions are not paid, the Member shall continue in Service but any period of Leave of Absence (other than parental leave for the purposes of the Parental Leave and Employment Protection Act 1987 where any preferential treatment granted to such persons by virtue of the application of this clause is permitted by section 74 of the Human Rights Act 1993 or any other section of that Act or any other legislation) during which contributions are not paid, shall not count in determining the Member's

Years of Scheme Membership for the purposes of clause 8bii if and when that clause applies to the Member. [1]

- r. Each Member shall provide all necessary written authorisations to enable the Employer to make the deduction of contributions from Salary.

**4A Application of Contributions for CFA Members [5]**

- a. The amount or proportion of the contributions paid by or in respect of a CFA Member pursuant to clauses 4a, 4ciii, 4civ, 4f, 4fa and 4k which are to be allocated to the Member's Locked In No. 1 Account and/or the Member's Locked In No. 2 Account shall be as agreed between the CFA Member and his or her Employer and notified to the Trustees in writing from time to time provided that, except during any period during which the Member is, by virtue of this Deed, temporarily relieved from making contributions, the minimum contributions allocated to the Member's Locked In No. 1 Account must equal at a minimum the same contributions as those provided by section 66 of the KiwiSaver Act (ignoring the 4% contribution rate if permitted by the Complying Fund Rules and ignoring the 8% contribution rate) and in respect of the Member's Locked In No. 2 Account the amount of any compulsory employer contribution required under subpart 3A of Part 3 of the KiwiSaver Act during any period such compulsory contribution is payable. Nothing in this clause shall prevent an Employer offering a range of options under this clause for selection by the Employer's CFA Members so long as any minimum contribution requirements set out in this clause or the Compulsory Fund Rules continue to be met. [5] [7] [8]
- b. Unless the Trustees and the CFA Member's Employer otherwise agree (and except during any period during which the CFA Member is temporarily relieved from making contributions) the minimum contribution paid by the CFA Member under clause 4a and allocated to the Member's Locked In No. 1 Account must equal:
  - i in the case of a CFA Member who is not a Post March 2009 Member at least 4% of the Member's Salary unless the Member has given written notice to their Employer and the Trustees changing the minimum contribution rate to 2% of Salary (and so long as the giving of such notice is permitted by the complying fund rules without prejudicing the Government Actuary's approval of the Scheme as a complying superannuation fund) in which case that rate or such other rate as is required at the relevant time under the Complying Fund Rules be the minimum contribution rate to be allocated to the Member's Locked In No. 1 Account [8].
  - ii In the case of a Post March 2009 Member the rate specified in Section 66 (ignoring the 8% and 4% rates) of the KiwiSaver Act or such other minimum rate as is required at the relevant time under the Complying Fund Rules. [8]
- c. For the purposes of calculating the total minimum contributions allocated to the Locked In Accounts the minimum amount may up to and including 31<sup>st</sup> March 2008 be calculated as provided in Section 26 of the KiwiSaver Act (with necessary modifications) but a contribution does not count unless the contribution is for the payment of future benefits, or for fees under the Scheme. [5] [7]

- d. Notwithstanding anything to the contrary in this Deed, any Employer's Superannuation Contributions paid in respect of a CFA Member and allocated to the Member's Locked In No. 2 Account that count towards the total to the minimum superannuation contribution referred to in clause 4Aa shall vest completely in the Member, immediately after the contribution is made. For the purposes of this sub-clause 4A any Employer's Superannuation Contributions paid in respect of a CFA Member shall only count towards the minimum amount to the extent that the total contributions paid by the Member and credited to the Member's Locked In No. 1 Account are insufficient to make up the minimum contribution. [5] [7]
- e. In respect of any Employer's Superannuation Contributions credited to the Member's Locked In No. 2 Account which do not count towards the minimum amount the same shall vest in the Member and be treated as part of CFA Superannuation Accumulation. [7]

## 5 Accounts

### a. Member's No. 1 Account

The Trustees shall establish and maintain in the records of the Scheme an account in the name of each Member to be known as the Member's No. 1 Account. The Member's No. 1 Account shall be credited or debited from time to time as appropriate with:

- i. contributions paid by the Member (including contributions paid by the Member subject to the Complying Fund Rules and required to be allocated to the Member's Locked In No. 1 Account within the Member's No. 1 Account); [5]
- ii. any amount whether positive or negative allocated to the Member's No. 1 Account pursuant to subclauses 5ci, 5cv, 5cvi, 5cvii or 5cviii;
- iii. the part of any Transfer Benefit received and deemed to be contributions by the Member in terms of clause 4m and allocated to the Member's No. 1 Account;
- iv. any benefits payable to or in respect of the Member from the Member's No. 1 Account in accordance with this Deed;
- v. any amounts in the Member's No. 1 Account forfeited pursuant to the provisions of this Deed;
- vi. meeting all or part of the costs of insuring any benefits payable under or in connection with the Scheme as the Trustees from time to time determine to be attributable to the Member;
- vii. any expenses of the Scheme which the Trustees determine from time to time to allocate to the Member's No. 1 Account to the extent such costs are not paid by the Employers or from the Reserve Fund or there are insufficient funds in the Member's No. 2 Account to meet the same pursuant to clause 11.

- vii. any amount allocated to the Member's No. 1 Account pursuant to clause 17p. [4]
- viii. any other amounts required to be debited or credited to the Member's No. 1 Account in terms of this Deed including in the case of a CFA Member adjustments between the Member's No. 1 Account and Member's Locked In No. 1 Account as contemplated by clause 5ab. [5]

ab. **Member's Locked In No. 1 Account [5]**

The Trustees shall establish and maintain as part of a Member's No. 1 Account a sub-account to be known as the Member's Locked In No. 1 Account in respect of each CFA Member. [5]

Subject to the Complying Fund Rules, the Member's Locked In No. 1 Account shall be credited or debited from time to time as appropriate with:

- i. contributions paid by the Member and subject to the Complying Fund Rules;
- ii. any additional voluntary lump sum contributions paid by the Member and directed by the Member to be held in the Member's Locked In No. 1 Account; [8]
- iii. such share of any amount whether positive or negative allocated to the Member's No. 1 Account pursuant to subclause 5ci, 5cv, 5cvi, 5cvii and 5cviii as the Trustees determine should be attributed to the Member's Locked In No. 1 Account or is required under the Complying Fund Rules to be attributed to that account;
- iv. that part of any Transfer Benefit received under clause 5a(iii) which is subject to the Complying Fund Rules and determined by the Trustees to be allocated to the Member's Locked In No. 1 Account;
- v. any benefits payable to or in respect of the Member from the Member's Locked In No. 1 Account in accordance with this Deed;
- vi. To the extent permitted by the Complying Fund Rules the Member's Locked In No. 1 Account's share of any amounts in the Member's No. 1 Account forfeited or not paid to the Member on the Member ceasing to be a Member pursuant to the provisions of this Deed as determined by the Trustees in their absolute discretion;
- vii. Such share of any expenses of the Scheme which the Trustees determine from time to time to allocate to the Member's No. 1 Account to the extent such costs are not paid by the Employer or from the Reserve Fund pursuant to clause 11 as the Trustees determine in their absolute discretion should be attributed to the Member's Locked In No. 1 Account;
- viii. Such share of any amount allocated to the Member's No. 1 Account pursuant to clause 17p as the Trustees determine should be attributed to the Member's Locked In No. 1 Account;

- ix. Any Crown Contribution paid by the Commissioner to the Trustees in respect of a CFA Member who meets the requirements for the payment of that Crown Contribution under the KiwiSaver Act; [5] [7]
- x. any other amounts required or permitted to be debited or credited to the Member's Locked In No. 1 Account in terms of this Deed or the Complying Fund Rules or the Tax Act including adjustments between the Member's No. 1 Account and Member's Locked In No. 1 Account as contemplated by this clause. [5]

aa. **Member's No. 2 Account**

The Trustees shall establish and maintain in the records of the Scheme an account in the name of each Member to be known as the Member's No. 2 Account. The Member's No. 2 Account shall be credited or debited from time to time as appropriate with:

- i. contributions paid by the Employer (including contributions paid by the Employer and subject to the Complying Fund Rules which are required to be allocated to the Member's Locked In No. 2 Account ); [5]
- ii. any amount whether positive or negative allocated to the Member's No. 2 Account pursuant to subclause 5ci, 5cv, 5cvi, 5cvii and 5cviii;
- iii. the part of any Transfer Benefit received and deemed to be contributions by the Employer in terms of clause 4m and allocated to the Member's No. 2 Account;
- iv. any benefits payable to or in respect of the Member from the Member's No. 2 Account in accordance with this Deed;
- v. any amounts in the Member's No. 2 Account forfeited or not paid to the Member on ceasing to be a Member pursuant to the provisions of this Deed or forfeited;
- vi. meeting all or part of the costs of insuring any benefits payable under or in connection with the Scheme as the Trustees from time to time determine to be attributable to the Member;
- vii. any expenses of the Scheme which the Trustees determine from time to time to allocate to the Member's No. 2 Account to the extent such costs are not paid by the Employer or from the Reserve Fund pursuant to clause 11;
- viii. any amount allocated to the Member's No. 2 Account pursuant to clause 17p; [4]
- ix. any other amounts required to be debited or credited to the Member's No. 2 Account in terms of this Deed including adjustments between the Member's No. 2 Account and Member's Locked In No. 2 Account as contemplated by clause 5bb.

**bb. Member's Locked In No. 2 Account [5]**

The Trustees shall establish and maintain as part of a Member's No. 2 Account a sub-account to be known as the Member's Locked In No. 2 Account in respect of each CFA Member. [5]

Subject to the Complying Fund Rules, the Member's Locked In No. 2 Account shall be credited or debited from time to time as appropriate with:

- i. contributions paid by the Member's Employer and subject to the Complying Fund Rules including any compulsory employer contributions made in respect of the Member pursuant to subpart 3A of Part 3 of the KiwiSaver Act; [5] [7]
- ii. such share of any amount whether positive or negative allocated to the Member's No. 2 Account pursuant to subclause 5ci, 5cv, 5cvi, 5cvii and 5cviii as the Trustees determine should be attributed to the Member's Locked In No. 2 Account or is required under the Complying Fund Rules to be attributed to that account; [5]
- iii. that part of any Transfer Benefit received under clause 5aaiii which is subject to the Complying Fund Rules and determined by the Trustees to be allocated to the Member's Locked In No. 2 Account; [5]
- iv. any benefits payable to or in respect of the Member from the Member's Locked In No. 2 Account in accordance with this Deed;
- v. Subject to the Complying Fund Rules the Member's Locked In No. 2 Account's share of any amounts in the Member's No. 2 Account forfeited or not paid to the Member on his ceasing to be a Member pursuant to the provisions of this Deed as determined by the Trustees in their absolute discretion; [5]
- vi. Such share of any expenses of the Scheme which the Trustees determine from time to time to allocate to the Member's No. 2 Account to the extent such costs are not paid by the Employer or from the Reserve Fund pursuant to clause 11 as the Trustees determine in their absolute discretion should be attributed to the Member's Locked In No. 2 Account; [5]
- vii. Such share of any amount allocated to the Member's No. 2 Account pursuant to clause 17p as the Trustees determine should be attributed to the Member's Locked In No. 2 Account; [5]
- viii. any other amounts required or permitted to be debited or credited to the Member's Locked In No. 2 Account in terms of this Deed or the Complying Fund Rules or the Tax Act including adjustments between the Member's No. 2 Account and Member's Locked In No. 2 Account as contemplated by this clause. [5]

b. **Reserve Fund**

The Trustees shall establish an account known as the Reserve Fund which shall comprise the Fund less the sum of all the Member's No. 1 Accounts and Member's No. 2 Accounts from time to time. The Trustees shall establish such accounting records as they may require to maintain the portion of the Reserve Fund attributable to each Employer and in clause 5c reference to the use of the Reserve Fund means the use in respect of that portion of the Reserve Fund attributable to each Employer and to that Employer's Members or to the total Reserve Fund and all Members as the Trustees in their absolute discretion determine.

c. The Reserve Fund or such part thereof as the Trustees determine may be used from time to time at the Trustees' discretion in:

- i. crediting or debiting interest to Member's No. 1 Accounts and Member's No. 2 Accounts on an equitable basis in accordance with clause 5d;
- ii. subject to clause 17p, meeting any of the expenses of the Scheme; [4]
- iii. meeting all or part of the costs of insuring any benefits payable under or in connection with the Scheme as the Trustees from time to time determine;
- iv. meeting all or part of the Employer contributions to the Scheme;
- v. increasing the retirement benefits of all Members, other than Deferred Members on an equitable basis; [5]
- vi. providing benefits other than retirement benefits for all Members other than Deferred Members on an equitable basis;
- vii. increasing the Member's No. 1 Accounts, or Member's No. 2 Accounts of all Members other than Deferred Members on an equitable basis;
- viii. in such other manner as the Trustees may from time to time consider appropriate and which is not prohibited by the Act.

d. The rate at which interest shall be allocated to each Member's No. 1 Account, and Member's No. 2 Account shall be determined from time to time by the Trustees. In determining such rate the Trustees may have regard to the actual and also the potential future of:

- i. the earnings of the Scheme;
- ii. the nature of the investments and the investment performance of the Fund;
- iii. the liquidity of the investments of the Fund;
- iv. the taxation liabilities of the Scheme including any future or deferred taxation;
- v. any losses or gains of the Fund (including at the discretion of the Trustees unrealised losses or gains);
- vi. changes in the market value of the assets comprising the Fund;

- vii. the costs of realising the assets of the Fund for cash;
  - viii. the expenses of the Scheme to the extent such expenses are not otherwise debited to the Fund or any Member's No. 1 Account, or Member's No. 2 Account;
  - ix. Where a Member has made an Investment Fund Election the investment income, expenses and any losses and gains of the Investment Fund(s) in which the Member's contributions are or were invested in respect of the appropriate period or the value of the Member's interest in the Investment Fund(s) or both (including at the discretion of the Trustees unrealised losses or gains in the Investment Fund(s)); [4]
  - ixa. where a Member has made an Investment Choice Election, the investment income, expenses and any losses and gains of the Elective Investment Pool(s) and the Principal Pool in which the Member's contributions are or were invested in respect of the appropriate period or the value of the Member's interest in the relevant Elective Investment Pool(s) and the Principal Pool or both (including at the discretion of the Trustees unrealised losses or gains in those pools); and [4]
  - x. such other matters as the Trustees consider appropriate.
- e. If the rate of interest determined by the Trustees in clause 5d is negative then the Trustees may determine that such negative rate of interest shall be allocated as a debit to Member's No. 1 Account, and Member's No. 2 Account.
- f. Interest determined in terms of clauses 5d and 5e shall be allocated as at each Review Date and in the case of a benefit becoming payable to a Member an interim rate of interest shall be allocated to the Member's No. 1 Account and Member's No. 2 Account as at the date of such event. The Trustees in their absolute discretion may amend the interim rate of interest allocated and may adjust the benefit paid to a Member to take account of the amendment to the interim rate.

5A Where a person who was previously a Member of the Scheme rejoins the Scheme and in respect of whom there is as at the date the Member rejoins the Scheme held in the Scheme a Deferred Benefit or the Member is a Deferred Member: [3] [5]

- (a) The Trustees shall establish and maintain in the name of the Member an additional Member's No. 1 Account and Member's No. 2 Account and if the Member rejoins as a CFA Member an additional Member's Locked In No. 1 Account and Member's Locked In No. 2 Account as applicable and in respect of such renewed period of membership any reference in this Deed to the Member's No. 1 and Member's No. 2 Account will be to the additional Member's No. 1 and Member's No. 2 Account including any Locked In Account as applicable established pursuant to this clause and not to the Member's No. 1 Account and Member's No. 2 Account, (including any Locked In Account as applicable) held in respect of the Deferred Benefit or the Deferred Member. [3] [5]

- (b) The Member's No. 1 Account and Member's No. 2 Account (including any Locked In Account, if applicable) held in respect of the Deferred Benefit or Deferred Member shall continue to be dealt with as if the Member had not rejoined the Scheme. [3] [5]

## 6 Retirement Benefit

- a. In the event of a Member who is in Service:
- i. Deleted [1]; or
  - ii. Electing to retire from Service after attaining the age of sixty (60) years; or
  - iii. Deleted [1]; or
  - iv. Leaving the Service of an Employer at any time as a result of Ill Health.

The Member shall receive as a lump sum a benefit equal to the total credit standing in the Member's No. 1 Account and Member's No. 2 Account (less any amount in a Locked In Account forming part of the relevant Account) adjusted for interest as provided in clause 5f **provided that** a Member may elect to apply all or part of the benefit payable to the Member towards the purchase of an annuity from a life insurance company and any moneys not so applied shall be paid as a lump sum to the Member. [1] [5]

- b. In the event of a Member who is entitled to a Deferred Benefit in terms of clause 8f attaining age 60 the Member shall receive as a lump sum a benefit equal to the total credit standing in the Member's No. 1 Account and Member's No. 2 Account (less any amount in a Locked In Account forming part of the relevant Account) adjusted for interest as provided in clause 5f; **provided that** a Member may elect to apply all or part of the benefit payable to the Member towards the purchase of an annuity from a life insurance company and any moneys not so applied shall be paid as a lump sum to the Member. [5]

## 6A Early Retirement Benefit

In the event of a Member who is in Service electing to retire from Service after attaining the age of 50 years but before attaining the age of 60 years in circumstances where the Employer agrees to payment of an early retirement benefit pursuant to this clause the Member will receive as a lump sum a benefit equal to the total credit standing in the Member's No. 1 Account and Member's No. 2 Account (less any amount in a Locked In Account forming part of the relevant Account) adjusted for interest as provided under clause 5f; **provided that** a Member may elect to apply all or part of the benefit payable to the Member towards the purchase of an annuity from a life insurance company and any moneys not so applied shall be paid as a lump sum to the member and the provisions of Clause 6b, if applicable, shall apply in respect of such Member. [1] [5]

## 7 Benefit on Death

In the event of the death of a Member whilst in Service or who has left Service with an entitlement to a Deferred Benefit in terms of clause 8f the Member's legal personal representative shall be entitled to receive as a lump sum a benefit equal to the total credit

standing in the Member's No. 1 Account, Member's No. 2 Account (including any amount in the Member's Locked In Accounts) as at the date of the Member's death adjusted for interest as provided in clause 5f. [5]

## 8 Benefit on Leaving Service

- a. Each Member leaving the Service of an Employer in order to commence Service with another Employer shall continue to be a Member of the Scheme and Service shall continue unbroken subject to the terms of this Deed.
- b. Each Member leaving or ceasing to be in the Service of an Employer otherwise than in the circumstances provided for in clauses 6, 7 and 9 and subject to clauses 8c, 8d and 8f shall be entitled to receive a lump sum benefit equal to:
  - i. the credit standing in the Member's No. 1 Account but excluding any sum in the Member's Locked In No. 1 Account ; and
  - ii. twenty percent (20%) of the credit standing in the Member's No. 2 Account (but excluding any sum in the Member's Locked In No. 2 Account) times the Member's Years of Scheme Membership up to a maximum of one hundred percent (100%) of the Member's No. 2 Account (but excluding any sum in the Member's Locked In No. 2 Account) on completing five (5) complete Years of Scheme Membership provided that the Trustees may in their absolute discretion at the request of the Employer pay such additional proportion of the Member's No. 2 Account (but excluding any sum in the Member's Locked In No. 2 Account) as they shall determine irrespective of the number of Years of Service of such a Member provided that the benefit payable under this clause shall not exceed a maximum of one hundred percent (100%) of the Member's No. 2 Account (but excluding any sum in the Member's Locked In No. 2 Account),

in each case adjusted for interest as provided in clause 5f. [5] [7]

- c. In the event of a Member leaving the Service of an Employer in order to commence employment with an Overseas University or a Research Facility then the Trustees at the written request of the Member shall subject to clause 8e instead of paying the Member the benefit that would have been payable under clause 8b transfer the total credit standing in the Member's No. 1 Account and the Member's No. 2 Account (but excluding any sum in a Locked In Account) adjusted for interest as provided in clause 5f to the trustees of the superannuation scheme to which the Overseas University or Research Facility contributes **provided that** the trustees of the superannuation scheme to which the Overseas University or Research Facility contributes consent to the transfer. [5]
- d. In the event of a Member leaving the Service of an Employer and ceasing to be a Member of the Scheme then the Trustees shall at the written request of the Member and subject to clause 8e instead of paying the Member the benefit that would have been payable to that Member under clause 8b transfer the Member's Accumulation adjusted for interest as provided for in clause 5f to the trustees of another Registered Scheme or KiwiSaver Scheme to the extent transfers are available to that Registered Scheme or KiwiSaver Scheme. [5]

- e. For the purposes of clause 8c the credit standing in the Member's No. 2 Account shall not include unless previously agreed otherwise under clause 20 any portion of the Transfer Benefit that has been deemed to be Employer Contributions and credited to the Member's No. 2 Account and in such event such portion excluded shall be dealt with by the Trustees in respect of the Member as previously agreed under clause 20. [5]
- f. In the event of a Member leaving or ceasing to be in the Service of an Employer having completed five (5) Years of Scheme Membership, and at the request of the Member instead of paying the Member the benefit that would have been payable to that Member under clause 8b the Trustees shall defer payment of that benefit (the "Deferred Benefit") until such other date as agreed between the Member and the Trustees (the "Deferred Benefit Payment Date") and when determining the Deferred Benefit to be paid on the Deferred Benefit Payment Date the Deferred Benefit shall be recalculated under clause 8b so that the period between leaving the Service of an Employer and the Deferred Benefit Payment Date shall be also deemed to be Service for the purpose of this recalculation and during the period of deferral the Member's No. 1 Account and Member's No. 2 Account will be subject to clause 5 save that no further contributions shall be allocated and no benefit shall be payable before the Deferred Benefit Payment Date **provided that** should a Member die before the Deferred Benefit Payment Date then a Death Benefit calculated in terms of clause 7 shall immediately be payable to the legal personal representatives of the deceased Member in lieu of the Deferred Benefit **provided further that** should the Member attain age 60 or suffer Ill Health then a Retirement Benefit calculated in terms of clause 6b shall be payable in lieu of the Deferred Benefit. This clause shall not apply to a CFA Member or to a Post June 2007 Member. [1] [5]

## 9 **Benefit on Redundancy**

Each Member leaving the Service of an Employer through Redundancy shall be entitled to a lump sum benefit equal to the total credit standing in the Member's No. 1 Account and Member's No. 2 Account (less any amount in the Member's Locked In Accounts) adjusted for interest as provided in Clause 5(f); [5]

## 10 **Limitation of Benefits**

Notwithstanding any other provision of this Deed, the sum of all benefits (including any lump sum payments, annuities and other benefits) payable from the Scheme in respect of any Member shall not exceed the sum of:

- a. Contributions paid by or on behalf of the Member and investment earnings thereon; and
- b. Any allocations to the Member from the Reserve Fund.

10A **Special Provisions relating to Locked In Accounts [5]**

- a. The following provisions shall apply in respect of the Member's Locked In Accounts and to the extent of any inconsistency between the provisions of this clause and any other clause in this Deed this clause shall prevail to the extent of the inconsistency in respect of a CFA Member and the CFA Member's Locked In Accounts:
- i. Except as provided in clause 7 and sub-clause iv of this clause, a Member shall not be paid a benefit from a Member's Locked In Accounts until the later of:
    - A. the date on which the Member reaches the New Zealand Superannuation Qualification Age; or
    - B. the date on which the Member has been a member of a Complying Superannuation Fund and/or a KiwiSaver Scheme for 5 years.
  - ii. A Member may withdraw the CFA Superannuation Accumulation from the Member's Locked In Accounts (including any unvested Employer's Superannuation Contributions in a Locked In Account which shall form part of the Member's CFA Superannuation Accumulation and be deemed to have vested from the date the Member became entitled to a benefit under this clause) at any time after the later date referred to in clause 10Ai but shall not be obliged to provide that unless a CFA Member who becomes entitled to a benefit under this clause becomes a Deferred Member the CFA Member shall cease to be eligible to be a CFA Member of the Scheme on leaving Service unless the Trustees and the Member otherwise agree.
  - iii. The Trustees must comply with the provisions of any enactment which requires them to release funds from a Locked In Account in accordance with that enactment including a requirement by order of any Court under any enactment (including an order made under Section 31 of the Property (Relationships) Act 1976).
  - iv. A CFA Member may make withdrawals from the Locked In Accounts in the circumstances set out in clauses 14(1) and 14(2) of Schedule 1 of the KiwiSaver Act. [7]
  - v. Withdrawals cannot be made from a Locked In Account in any circumstances other than those described in clause 10Aai to 10Aaiv and clause 7 of this Deed. [5]
  - vi. A CFA Member's CFA Superannuation Accumulation must be used to fund benefits that are calculated only by reference to the amount of the CFA Superannuation Accumulation.
  - vii. At the Member's request the Trustees must pay any withdrawal permitted by this clause 10a as a lump sum. [7]
- b. The Trustees shall transfer all or part of the CFA Superannuation Accumulation to another Complying Superannuation Fund or to a KiwiSaver Scheme, if the CFA Member requests such a transfer and in the case of a KiwiSaver Scheme, the

requirements of the KiwiSaver Act are met and in the case of a Complying Superannuation Fund the Member's CFA Superannuation Accumulation would be subject to Complying Fund Rules if transferred. The Trustees shall give any notices required to be given in respect of such transfer as required under the Tax Act. [5]

c. If the Member does not request a transfer in accordance with clause 10Ab, and the Member:

- i. Ceases to be eligible to a Member of the Scheme; or
- ii. May not remain a Member for any reason except a transfer in accordance with clauses 10Ab or 10Ad, or a withdrawal of all or part of the Member's CFA Superannuation Accumulation in accordance with the Complying Fund Rules

the Trustees shall transfer the Member's Accumulation to a KiwiSaver Scheme. [5]

d. If the Government Actuary revokes approval of the Scheme as a Complying Superannuation Fund and the CFA Superannuation Accumulation is not transferred to another Complying Superannuation Fund and is not subject to Complying Fund Rules the Trustees shall transfer the Member's CFA Superannuation Accumulation to a KiwiSaver Scheme. [5]

e. The Trustees shall notify the Commissioner that the Member's CFA Superannuation Accumulation must be transferred in accordance with clause 10Ac or 10Ad, and the notification must include any information required to be supplied to the Commissioner under the Complying Fund Rules. [5]

f. A CFA Member must continue to be a CFA Member unless otherwise provided in clauses 10Aa to 10Ae or clause 7. [5]

g. In the event of an inconsistency at any time between the provisions of this clause 10A and the Complying Fund Rules in respect of a Locked In Account or in respect of a Crown Contribution and its application or otherwise, the Complying Fund Rules shall prevail to the extent of the inconsistency. [5]

h. Where the Trustees have given a notification pursuant to clause 10Ae the Trustees shall transfer the Member's CFA Accumulation in accordance with Section 57(1)(d) of the KiwiSaver Act. [5]

i. Any amount left in a Member's Locked In No. 2 Account subsequent upon a transfer pursuant to clause 10A(b) to 10A(d) and not required to be transferred pursuant to clause 10A(b) to 10A(d) (inclusive) or otherwise in accordance with the Complying Fund Rules shall be transferred to the Reserve Fund provided that the Trustees may in their discretion at the request of the Employer include such amount in the sum transferred, or treat the amount as comprised in the balance of the Member's No. 2 Account (if applicable).

j. If a CFA Member will be entitled within 2 months to withdraw an amount from the Scheme under clause 10Aa(ii) the Trustees must take any action required under section 101G of the KiwiSaver Act at the relevant time. [7]

**10B Deferral of Benefits [5]**

- 10B.1 With the consent of the Member's Employer and the Trustees a Member entitled to receive a benefit under clause 6, 6A, 8, 9 or 10Aii (and in the case of a Member to whom clause 8 applies the Member has not exercised his or her rights under clause 8(f)) may if the total amount of the benefit he or she is entitled to receive is over any prescribed minimum determined by the Trustees for the time being at their absolute discretion elect by notice in writing to the Trustees (on such form as the Trustees shall from time to time prescribe) to leave all or part of his or her benefits in the Scheme and to become a Deferred Member provided that any amount left in must be more than the prescribed minimum set by the Trustees [5].
- 10B.2 Subject to clause 22 the only benefits a Deferred Member in his or her capacity as a Deferred Member is entitled to are the benefits specified in this clause 10B or in respect of a Member's Locked In Accounts clause 10A if the Member has not ceased to be a CFA Member [5].
- 10B.3 Unless the Trustees otherwise agree, an election under clause 10B must be made by the Member no later than 5 working days or such longer period as the Trustees may in their absolute discretion permit after the Member leaves Service, retires, or leaves Service as a result of being made redundant [5].
- 10B.4 A Deferred Member is not required to make any contributions, although with the Trustees' consent he or she can continue to make contributions under clause 4e. [5]
- 10B.5 Where a Member becomes a Deferred Member his or her Member's No. 2 Account, to the extent it is able to be paid to the Member at that time and is not withdrawn by the Member shall be transferred to the Member's No. 1 Account which will remain subject to clause 5a save that, other than allocations made pursuant to clause 5ci (determined pursuant to clause 5d) or clause 5f, no further allocations shall be made to the Deferred Member's Member's No. 1 Account from the Reserve Fund.
- 10B.6 In the event of the death of a Deferred Member the Member's legal personal representative shall be entitled to receive in respect of the Deferred Member a lump sum benefit equal to the total credit then standing in the Member's No. 1 Account adjusted for interest as provided in clause 5f. [5]
- 10B.7 A Deferred Member may require the payment of the whole of his or her deferred benefit at any time by giving the Trustees at least 28 days' written notice (unless the Trustees agree to a lesser period). [5]
- 10B.8 Notwithstanding clause 10B.1 the Trustees may, in their absolute discretion resolve that a Deferred Member is no longer eligible to be a Deferred Member and, terminate the membership of a Deferred Member as a Deferred Member by giving the Member 21 days' written notice of their intention to do so. In this instance, the Deferred Member's deferred benefit is to be paid as soon as practicable after the expiration of the notice period.
- 10B.9 Notwithstanding clause 10B.5 the Trustees may deduct from any benefit payable to a Deferred Member or debit the Deferred Member's No. 1 Account with:

- a. any expenses of the Scheme incurred in relation to the Deferred Member or the Deferred Member's benefit; and/or
  - b. a proportion of the general expenses of the Scheme which the Trustees in their absolute discretion determine is fair and reasonable; and/or
  - c. a withdrawal fee in respect of each withdrawal from the Deferred Member's Member's No. 1 Account of such amount as the Trustees determine from time to time [5].
- 10B.10 A Deferred Member may withdraw from the Deferred Member's No. 1 Account an amount not exceeding the total credit in the Deferred Member's No. 1 Account adjusted for interest pursuant to clause 5f provided that except in the case of a withdrawal pursuant to clause 10B.8 only one withdrawal may be made in any 12 month period (unless the Trustees agree to allow more regular withdrawals) and if after any withdrawal the balance in the Member's No. 1 Account would be less than the prescribed minimum determined by the Trustees from time to time pursuant to clause 10B.1 the total credit in the Deferred Member's No. 1 Account must be withdrawn and the Deferred Member shall cease to be a Deferred Member. [5]
- 10B.11 All benefits paid under this clause shall be subject to adjustment for interim interest as provided in clause 5f. [5]
- 10B.12 Notwithstanding this clause 10B, except where the benefit deferred is a benefit to which the Member is entitled pursuant to clause 10Aaii, all Locked In Accounts shall remain subject to the Complying Fund Rules. [5]
- 10B.13 A Member who has elected pursuant to clause 8f to defer the benefit that would have been payable to the Member under clause 8b may, if the total amount of the Deferred Benefit he or she is entitled to receive at the date of the Member's election is over any prescribed minimum determined by the Trustees for the time being at their absolute discretion, elect by notice in writing to the Trustees (on such form as the Trustees shall from time to time prescribe) to have the Deferred Benefit (calculated as if the date of the Member's election was the Deferred Benefit Payment Date referred to in clause 8f) dealt with from the date of the Member's election as if the Member had elected to become a Deferred Member in which event:-
- a. The Deferred Benefit calculated as aforesaid shall as from the date of the Member's election, be subject to the provisions of clause 10B.2 to 10B.12 of this Deed; and
  - b. No further benefits shall be payable to the Member under clause 8f. [6]

## 11 Expenses

Except to the extent that clause 17p requires otherwise, the costs and expenses of the management, administration and investment (to the extent that such investment costs and expenses are not included in the returns declared) of the Scheme shall, except where the Employers have agreed to pay the said costs and expenses in addition to any contributions payable under clause 4, or to the extent the same are charged to Deferred Members pursuant to clause 10B.9, be paid by the Trustees from the Reserve Fund and if there are insufficient

funds in the Reserve Fund, from the Member's No. 2 Accounts in terms of clause 5aavii and from the Member's No. 1 Accounts in terms of clause 5avii if there are still insufficient funds. [4]

## 12 Alienation, Bankruptcy or Incapacity

- a. No Member may assign charge alienate or borrow against the security of benefits under this Scheme.
- b. In the event of a Member becoming bankrupt then all benefits to which such Member is entitled in the Scheme shall be forfeited to the Scheme to the greatest extent permitted at law **provided that** the Trustees may in their absolute discretion apply in respect of such Member an amount not exceeding the amount of the benefit which has been forfeited for the maintenance support or otherwise for the benefit of the Member or such of that Member's Designated Persons as the Trustees may in their absolute discretion determine. [1]
- c. In the event of a Member becoming physically, mentally or otherwise incapable of managing his or her own affairs the Trustees shall pay the Member's benefits in accordance with the decision of any person committee or body (whether unincorporated or incorporated) duly appointed to manage the affairs of the Member or in the event of no such appointment the Trustees shall apply the benefits for the maintenance support or otherwise for the benefit of the Member or such of that Member's Designated Persons as the Trustees may in their absolute discretion determine. [1]
- d. Notwithstanding anything to the contrary contained in this Deed, no Member shall be entitled to:
  - i. any part of their Member's No. 2 Account (adjusted for interest as provided in Clause 5f) unless and until the Member or the Member's personal representatives are eligible to make application for, and do in fact make application for a Benefit under this Deed or in any circumstance where no application is required until the Trustees otherwise make a payment to or in respect of the Member or the Member's Designated Beneficiaries from the Member's No. 2 Account pursuant to the provisions of this Deed.
  - ii. In respect of Members other than Post June 2007 Members no part of a Member's No. 2 Account shall vest in the Member until an application is made in accordance with the provisions of this Deed or until a payment is made as otherwise provided in clause 12c or until the Member's Account is otherwise applied in manner permitted by this Deed. [5]
  - iii. In respect of Post June 2007 Members except to the extent required to meet the requirements of Section 26(1)(c)(ii) of the KiwiSaver Act or the requirements of the Complying Fund Rules or (if applicable) the requirements of the Tax Act as they apply to any compulsory employer contributions or any Crown contribution no part of the Member's No. 2 Account (other than in the case of a CFA Member any amounts in the Member's Locked In No. 2 Account required by the Complying Fund Rules to vest immediately in the

Member) shall vest in the Member until an application is made in accordance with the provisions of this Deed for a benefit, or until a payment is made as provided in clause 12c or until the Member's No. 2 Account is otherwise applied in manner permitted by this Deed. [5]

- iv. In the event of a Member other than a CFA Member becoming bankrupt before the payment to or in respect of the member of the whole of the Member's No. 2 Account, that account or that part of the Member's No. 2 Account to which the Member would have been entitled had the Member left Service on the date of the Member's bankruptcy shall immediately be forfeited to the Scheme and shall be subject to the proviso to clause 12b. In the case of a CFA Member this clause shall continue to apply except in respect of amounts in a Locked In Account.
- v. Clause 12d shall not apply to any person who was a Member of the Scheme as at 20 June 1996 if the Member or the Member's personal representatives or other person entitled by this Deed to make application for the Member's benefit (other than the official assignee in bankruptcy) whether before or after the Member's bankruptcy, advises the Trustees that he or she does not wish it to apply to him or her.
- vi. Nothing in this clause 12d shall prevent the Trustees applying any amounts forfeited to the Scheme in manner provided in clause 12b or clause 12c. [1]
- e. Notwithstanding the preceding provisions of this clause Locked In Accounts shall be subject to section 196 of the KiwiSaver Act which section shall take priority to the extent of any inconsistency between that section and the preceding provisions of this clause.

### 13 **Appointment of Trustees**

- a.
  - i. There shall be five (5) Trustees of the Scheme and except as provided in subclause (ii) below and clause 13.2c each Trustee shall hold office for a period of three years from the date of that Trustee's appointment.
  - ii. The Universities shall appoint two (2) Trustees. The first such Trustee appointed by the Universities shall hold office for a period of two (2) years from the date on which that Trustee takes office and the second shall hold office for a period of four (4) years from the date on which that Trustee takes office. On a Trustee appointed by the Universities reaching the end of his or her term of office that Subsequent Trustee shall be eligible for reappointment.
  - iii. The Members shall, in accordance with the procedure set out in subclause (v) below elect two (2) Trustees.
  - iv. The Trustees appointed by the Universities and the Trustees elected by the Members shall whenever it becomes necessary to make such appointment appoint an additional Trustee who shall be the independent chair of Trustees and who shall have a deliberative and casting vote. If the Trustees appointed

by the Universities and the Trustees elected by the Members are unable to agree as to the appointment of an independent chair of Trustees within one month of the position of independent chair of Trustees becoming vacant the Universities shall appoint such independent chair. In the absence of the independent chair of Trustees from any meetings of Trustees, one of the other Trustees as selected by the Trustees present shall preside as chair, but shall not have a casting vote.

v.

- A. The Trustees to be elected by the Members shall be elected by way of postal ballot conducted by the Trustees for the time being in such manner and in accordance with such procedures subject to subclause (c) of this subclause as the Trustee in their absolute discretion see fit with the highest polling candidate, or the two highest polling candidates in the case where two Trustees are being elected, being deemed to be the Trustee or Trustees elected by the Members.
- B. In the event of a tie then the outcome shall be determined by the toss of a coin.
- C. Whenever the position of a Trustee elected by the Members becomes vacant the Trustees for the time being shall call for nominations at least one (1) month prior to any such postal ballot taking place.
- D. A nomination shall be valid if endorsed by at least 7 Members.
- E. If no valid nomination is received in respect of the office of a Trustee to be elected by the Members the Universities may appoint the Trustee to that office in lieu of the Members.
- F. A Trustee retiring on account of reaching the end of the term of office who was elected by the Members shall be eligible for re-election.
- G. In the event that the remaining Trustees are unable to agree the manner and procedure for the ballot the Universities shall determine such procedure.

b.

- i. The Universities may remove any Trustees appointed by the Universities with the exception of the independent chair of Trustees on any grounds and without being required to assign any reason therefore.
- ii. The Universities may remove any Trustees elected by the Members after receiving a written request from each of the other Trustees without being required to assign any reason therefore.
- iii. The independent chair of Trustees can only be removed by a majority vote of the other Trustees but these Trustees are not required to give a reason.
- iv. In the event of a vacancy of the independent chair of Trustees then the Trustees shall immediately appoint another independent chair of Trustees.

- c. The office of a Trustee shall become vacant if that person:
- i. Resigns office by notice in writing addressed to the other Subsequent Trustees and to the Universities;
  - ii. Dies;
  - iii. Becomes bankrupt or makes an assignment to creditors;
  - iv. Is by notice in writing addressed to the Trustees removed from office by the Universities in terms of clauses 13bi or 13bii;
  - v. Is for any reason unable to perform the duties of a Trustee;
  - vi. Reaches the end of his or her term of office and is not re-elected;
  - vii. Becomes of unsound mind or is the subject of a protection order under the Protection of Personal and Property Rights Act 1988 or is convicted for an indictable offence involving dishonesty.

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

- d. In the event of a vacancy occurring in the office of Trustees where that Trustee was appointed by the Universities, the vacancy shall be filled forthwith by the Universities appointing to office such person as it thinks fit whether or not that person is a Member of the Scheme.
- e. In the event of a vacancy occurring in the office of a Trustee prior to the expiration of that Trustee's term of office by passage of time and where that Trustee was elected by Members under clause 13a, the vacancy shall be filled by an extraordinary election conducted in accordance with the provisions of clause 13av and the Trustee so elected shall be deemed to have been elected on the date on which the Trustee whom that Trustee replaces was elected or deemed to have been appointed as the case may be except where the Trustee whose office has been vacated has less than 12 months to run, in which case the Trustee appointed by extraordinary election shall remain in office until that Trustee's office would have been vacated had such Trustee been elected at a duly constituted election at the expiration of the normal term of office of the Trustee in whose place and stead the Trustee has been elected.
- f. The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. The independent chair of Subsequent Trustees shall convene a standard meeting of the Trustees by requesting the secretary to the Trustees to provide prior written notice to each of the Trustees. There shall be a minimum of three (3) standard meetings a year. Three (3) Trustees shall form a quorum, except in the case of special meetings of the Trustees, as described in the following paragraph.
- g. Any Subsequent Trustee may call a special meeting of the Trustees where a matter arises requiring urgent action by the Trustees. Four (4) Trustees shall form a quorum in the case of a special meeting. Notice of a special meeting shall be given to each of the other Trustees by the Trustee who calls the special meeting. [2]

## 14 Trustees Powers, Advisors and Nominees

- a. The Trustees shall keep minutes of all meetings and resolutions in a book provided for that purpose together with records of Members in such form as they may determine.
- b. The Trustees may open and operate on such bank accounts as they think fit. The signature of all Trustees shall be required for the execution of all trust deeds or amendments thereto. The signature of any two (2) Trustees shall be sufficient for the execution of any other instruments to be executed in connection with the conduct of the business of the Scheme.
- c. A resolution in writing and signed by the majority of the Trustees but of which prior notice shall have been given to all of the Trustees individually shall be as effectual as if it had been passed at a meeting of the Trustees. The resolution may consist of one or more documents in the same form each signed by one or more of the Trustees.
- d. The Trustees shall have power to delegate all or any of the powers or authorities vested in them to committees consisting of such one (1) or more of the Trustees or to any other person or persons or body or bodies corporate and may revoke or modify that delegation of power.
- e. The Trustees may in administering the Scheme rely upon the advice or opinion (whether or not obtained by it) of any professional person or upon any advice the Trustees may obtain directly or indirectly from any company firm or person as shall in its opinion be qualified to advise it and shall not be responsible for any loss occasioned thereby. The Trustees may delegate to such professional persons as may be consulted by them such of their powers as they may think fit and may at any time revoke or modify such delegation of powers. The cost of obtaining such advice shall form part of the expenses incurred by the Trustees in connection with the Scheme.
- f. The Trustees may do all acts and things they consider necessary or expedient for the administration, maintenance and preservation of the Scheme and the performance of its authorities, powers and discretion under the Deed.
- g. Any Trustee may be remunerated out of the Scheme or by the Universities as determined by the Universities at a rate approved by the Universities and being a person engaged in any profession or business may charge and be paid all usual charges for business done by his or her firm or company in connection with the Scheme and shall be entitled to reimbursement from the Fund for any expenses reasonably incurred by that Trustee in connection with the Scheme.
- h. Subject to the Act and without prejudice to the right to indemnity by law given to trustees and subject to clause 14i the Trustees shall except in the case of fraud or wilful neglect default breach of duty or breach of trust or wilful breaches of provisions of the Act be entitled to be indemnified out of the Scheme in respect of all liabilities and expenses incurred by the Trustees in the execution or purported execution of the trusts of the Scheme or in the exercise of any powers authorities or discretion vested in the Trustees by the Deed and against all actions proceedings costs expenses claims or demands in respect of any matter or thing done or omitted in any way

relating to the Deed and the Trustees and each of them shall have a lien on the Fund for the preceding indemnities.

- i. No beneficiary or Member shall have any claim for benefits hereunder against any Employer or its funds and no Trustee shall be liable for:
  - i. any losses other than those arising from its own fraudulent acts or omissions, wilful neglect or breach of trust;
  - ii. any fraudulent acts, omissions, wilful neglect or breach of trust of a co-Trustee except in the case where the Trustee has actual prior knowledge;
  - iii. any act done or omitted to be done bona fide in conforming with the decision of the Trustees;
  - iv. the acts, omissions or defaults of any actuary, solicitor, banker, administrator, insurer, accountant, broker, adviser or other agent or any clerk employed in good faith by the Trustees.
- j. Except as otherwise required by law a decision made by the Trustees on any question as to the construction or meaning or interpretation of the Deed or in respect of the administration of the Scheme shall be final and binding on everyone affected by or interested in the Deed.
- k. The Trustees may in their absolute discretion enter into all such contracts, deed and documents and do all such acts, matters and things as the Trustees may deem expedient for the purpose of securing the benefits mentioned in the Deed or for otherwise effectuating the carrying out of the trusts, authorities, powers and discretion conferred on the Trustees in the Deed.
- l. The payment by the Trustees of any benefit to a person to whom such benefit is determined to be payable as set forth in this Deed shall be a complete discharge to the Trustees for any liability the Trustees have in respect of the benefit so paid. The Trustees shall be under no liability to see to the application of the benefit so paid.
- m. The Trustees may employ such nominees or agents as thought fit by the Trustees carrying out of all power, authorities, and discretion conferred on them by the Deed including the holding of assets or the administration of the records of the Scheme or the payment of benefits and any valid receipt thereof given to such agents shall be a good and sufficient discharge to the Trustees.
- n. A Trustee being a beneficiary may retain for his or her own absolute benefit subject to the conditions of the Scheme all moneys and benefits accruing to or in respect of him or her as a beneficiary and no decision or act of the Trustee save a decision made or act done by any person exercising delegated authority from the Trustees where the person exercising such authority has a direct or personal interest in such decision or act shall be invalidated on the ground that the Trustee has a direct or personal interest in the result of any decision or act in the exercising of any power under the Deed.
- o. The Trustees may conduct meetings by telephone link with the same effect as if they had met together for the conduct of the business discussed.

- p. Any power, authority, question or discretion may be decided by the Trustees or exercised by a majority of the Trustees or in accordance with a resolution of the Trustees passed by a majority of votes at a meeting of the Trustees at which a quorum is present. In the case of an equality of votes the independent chair of Trustees shall have a second or casting vote.
- q. The Trustees may establish any sub-account or sub-Fund within the Scheme to assist with the administration of the Scheme.
- r. The Trustees may at any time and shall as directed by the Universities:
  - i. Close the Scheme to the admission of new Members.
  - ii. Close the Scheme to new contributions by or in respect of Members.
  - iii. Reopen the Scheme or such part of the Scheme that is closed from time to time to the admission of new Members or new contributions.

## 15 **Accounts and Audit**

- a. The Trustees shall keep account of the money received and disbursed and a statement of account shall be made up annually as at the Review Date in each year. The statement of accounts unless not required under the Act shall be audited by the Auditor. A copy of the statement of accounts and of the Auditor's report shall be furnished to each Employer.
- b. The Trustees shall within six (6) months of each Review Date, or such shorter period required by law from time to time, prepare a report on the Scheme for that year. The report shall include the matters specified from time to time in the Second Schedule to the Act or as are required by law to be included in such report. If required by the Act, the Trustees on completing such report shall send a copy of it to the Government Actuary. [4]

## 16 **Communications with Members**

- a. Each Member shall be given, within six (6) months of the Review Date or within such shorter period as is required at law, a copy of the annual report of the Trustees prepared pursuant to clause 15b in respect of that year together with a personal benefit statement which shows the balance in the Member's No. 1 Account and the Member's No. 2 Account at the Review Date.
- b. Each Member shall have the right, upon request:
  - i. To look at, at any reasonable time, a copy of the Deed, or
  - ii. To receive, upon payment of a reasonable fee, a copy of the Deed.
- c. A copy of the statement of accounts and of the Auditor's report shall be provided to each Member.
- d. Each Member shall be advised as soon as practicable after request, an estimate of the Member's benefits.

17 **Investments**

- a. The Trustees shall invest the Fund in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.
- b. Notwithstanding anything to the contrary in Section 13D(I) of the Trustee Act 1956, the Trustees and any Investment Manager of the Scheme shall, in exercising the power of investment, exercise the care, diligence and skill required of that person by Section 13B or Section 13C of the Trustee Act 1956, as applicable.
- c. Without prejudice to the powers conferred upon it by general law or under the Deed the Trustees may with the consent of the Universities:
  - i. By deed from time to time appoint one or more persons as Investment Managers to the Scheme on such terms and conditions as may be agreed between the Trustees and the Investment Managers and the Trustees may delegate to the Investment Managers such of their powers and duties in relation to the investment of the assets of the Scheme including the power to determine and make particular investments in accordance with clause 17 as decided by the Trustees and the Investment Managers and the Investment Managers so authorised may be empowered to hold any investment in their own names or names of their nominees in trust for the Scheme and the Trustees may from time to time remove the Investment Managers. The Investment Managers shall be entitled to charge a fee or fees as agreed between the Trustees and the Investment Managers.
  - ii. By deed from time to time appoint and remove from office a custodian trustee in respect of the whole or any part of the assets of the Scheme on terms to be agreed between the Trustees and the custodian trustee. Any custodian trustee shall be paid its proper fees and shall not be precluded by its appointment from any other business for the Scheme.
  - iii. By deed from time to time appoint and remove from office an administration manager on terms to be agreed between the Trustees and the administration manager. The administration manager shall be entitled to charge a fee or fees as agreed between the Trustees and the administration manager.
- d. The Trustees and any Investment Manager so authorised by Trustees may invest the Fund or any part thereof in any other Registered Scheme or in any separate Investment Fund or Investment Funds comprised within such Registered Scheme or in any Investment Fund offered by the Investment Manager and for this purpose may apply for membership of any other Registered Scheme in which the Trustees determine in their absolute discretion to invest all or any part of the Fund.
- e. If at any time the Fund is invested in any other Registered Scheme offering a choice of Investment Funds or where any Investment Manager makes available a choice of investment classes which are available to the Trustees for the investment of the Fund or any part thereof the Trustees may at their absolute discretion invite any Member to give to the Trustees an Investment Fund Election to become operative and to apply after the expiration of fourteen days from the delivery of the Investment Fund Election to the Trustees. [4]

- f. An Investment Fund Election by a Member is a direction by the Member in terms of Section 13G of the Trustee Act 1956 with respect to the investment by the Trustees. [4]
- g. A Member may at any time with the consent of the Trustees in such form as the Trustees may prescribe vary or amend an Investment Fund Election and that Investment Fund Election as varied or amended may be subject to such reasonable terms and conditions as the Trustees may impose in consenting to the variation or amendment. [4]
- h. The Trustees shall have an absolute discretion as to which Investment Funds are made available from time to time for the purposes of a Member's Investment Fund Election and may from time to time exclude an Investment Fund from those made available for the purposes of a Member's Investment Fund Election. [4]
- i. Where a Member has not been invited to make an Investment Fund Election or having been invited to make an Investment Fund Election fails to make an Investment Fund Election or where the Trustees withdraw any Investment Fund for the purposes of a Member's Investment Fund Election or an Investment Fund is closed and no amendment or variation of the Member's Investment Fund Election has been made by the Member, the contributions by and in respect of the Member or Member's No. 1 or No. 2 Accounts or parts thereof in respect of which the Investment Fund Election is unable to be actioned shall be invested by the Trustees in accordance with a Member's Investment Choice Election, if any, or otherwise in the manner permitted by this Deed. [4]
- j. Any investments in an Investment Fund pursuant to a Member's Investment Fund Election shall be subject to the trust deed or rules of the Registered Scheme or the requirements of the Investment Manager through which the Investment Fund is made available and any fees, switching fees or other charges made in respect of the investment or any part thereof in any Investment Fund pursuant to an Investment Fund Election or the withdrawal or switching of such investment may except to the extent they are deducted from the earnings of the Investment Fund or are reflected in any unit price applicable in respect of such investment be debited against the Member's No. 1 or No. 2 Account as determined by the Trustees. [4]
- k. Without limiting the powers of the Trustees to invest money belonging to the Fund or to invite Members to make Investment Fund Elections, the Trustees may establish and maintain for the purpose of Members' Investment Choice Elections such number of Elective Investment Pools as they may from time to time decide for the investment of amounts in Member's No. 1 Accounts and Member's No. 2 Accounts, subject to such terms and conditions as the Trustees may prescribe from time to time. [4]
- l. The Trustees shall, within 30 days of establishment, notify all Members in writing of any new Elective Investment Pool established for the purposes of a Member's Investment Choice Election and prior to a person becoming a Member shall notify that person in writing of the Elective Investment Pools which are at that time available for the purposes of Member's Investment Choice Elections. [4]

- m. The Trustees may at their absolute discretion invite a Member to give to the Trustees an Investment Choice Election in respect of that Member's Member's No. 1 Account and Member's No. 2 Account. An Investment Choice Election shall become operative in respect of all amounts held in the Member's No. 1 Account and Member's No. 2 Account on the first day of the calendar month following receipt of the Investment Choice Election by the Trustees or by any person authorised by the Trustees for that purpose, or on such other date as the Trustees agree or prescribe from time to time for the purposes of Investment Choice Elections. [4]
- n. The Investment Choice Election shall nominate the Elective Investment Pool or, if the Trustees agree that Members shall be entitled to nominate more than one Elective Investment Pool, Elective Investment Pools (which may in both cases for the purposes of the Investment Choice Election include the Principal Pool) in which the Member's Member's No. 1 Account and Member's No. 2 Account are to be invested and, where the Trustees have agreed that Members shall be entitled to nominate more than one pool, a percentage proportion in respect of relevant pool or pools selected by the Member so that the total of the percentage proportions across all pools chosen by the Member is 100%. [4]
- o. Subject to any Investment Fund Election a Member has made, any amounts held in the Scheme and not subject to an Investment Choice Election, or in respect of which an Investment Choice Election is ineffective or not fully effective, shall be held in the Principal Pool. If at any time an Elective Investment Pool ceases to be available for the purposes of Investment Choice Elections or the Trustees desire to disestablish an Elective Investment Pool any amounts held in that Elective Investment Pool shall be transferred to the Principal Pool pending the Trustees seeking a further Investment Choice Election from the Member and/or a further Investment Choice Election being given in respect of the same. If an Elective Investment Pool is suspended or closed for ongoing contributions any new contributions which would otherwise have been paid into the relevant Investment Pool shall be paid into the Principal Pool for the period of closure or suspension unless a further Investment Choice Election is given in respect of the same. [4]
- p. To the extent which the costs in establishing and maintaining an Elective Investment Pool are not included in the returns declared for that Elective Investment Pool or taken into account in determining the rate of interest for the Member's No. 1 Accounts and Member's No. 2 Accounts of Members who have made an Investment Choice Election in favour that Elective Investment Pool, those costs must be debited to the Member's No. 1 Accounts and Member's No. 2 Accounts of those Members in such equitable manner as the Trustees determine. [4]
- q. The purpose and effect of an Investment Choice Election is to direct the Trustees in terms of Section 13G of the Trustee Act 1956 with respect to the investment of the Member's No. 1 Account and Member's No. 2 Account as required by clause 17a provided that a Member's right to give an Investment Choice Election is limited to a right to direct the Trustees to invest such accounts in the Elective Investment Pools' and the Principal Pool comprising the Fund from time to time available for the investment of the Fund's assets at the time of delivery of the Investment Choice Election to the Trustees and in the proportions ascertained pursuant to clause 17n. [4]

- r. The Trustees may permit or invite a Member at such time or times as the Trustees determine from time to time and in such form as is prescribed by the Trustees from time to time to vary or amend an Investment Choice Election, subject to such terms and conditions as the Trustees may impose including in respect of apportionments of interest to be allocated in accordance with clause 5d for periods after the date of the variation or amendment and that Investment Choice Election as varied or amended shall be operative in accordance with and subject to clause 17m. [4]
- s. The Trustees may by notice in writing to Members of an Elective Investment Pool:
  - i. close that Elective Investment Pool (either in respect of ongoing contributions or for the purposes of future Investment Choice Elections); or
  - ii. suspend (for such period or periods as the Trustees determine) that Elective Investment Pool for the purposes of Members' Investment Choice Elections; or
  - iii. disestablish that Elective Investment Pool
 and in each such case the provisions of clause 17o shall apply as applicable. [4]
- t. Notwithstanding anything to the contrary in clauses 17a to 17s inclusive the amount of any Crown Contributions to the extent it comprises a tax credit under subpart MK of the Tax Act in respect of the Member must be allocated across the Elective Investment Pools and the Principal Pool in the manner permitted by the Tax Act from time to time. [7]
- u. Notwithstanding anything to the contrary in clauses 17a to 17s the amount of any compulsory employer contribution must be allocated as required by section 101G of the KiwiSaver Act at the relevant time. [7]

## 18 **Borrowing**

The Trustees may from time to time borrow and raise money for the payment of benefits or for any of the purposes of the Scheme on such terms and conditions as they think fit **provided that** the total of such borrowing or raising of money outstanding at any time shall not exceed twenty percent (20%) of the value of the Fund at the time the money was borrowed or raised and may secure the repayment of moneys so borrowed and interest thereon by mortgage or charge over all or any part of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money.

## 19 **General**

- a. Nothing contained in this Deed shall in any way restrict the rights of an Employer to determine the employment of a Member at any time and without assigning any cause for such determination.
- b. A copy of this Deed shall be kept by each Employer.

- c. No Member shall have any claim against any Employer or its property or funds in respect of any moneys payable pursuant to the provisions of this Deed.
- d. The accounts and reports of the Scheme shall be expressed in New Zealand currency and nothing in this Deed shall require the Trustees to make any payments other than in New Zealand and in New Zealand currency.
- e. Every Employer and Member under this Deed shall furnish to the Trustees such information as they shall require in order to fulfil their duties under this Deed.
- f. Except in the case of a Post June 2007 Member or a CFA Member where the Scheme is being wound up in accordance with clause 22 a benefit payable upon a Member ceasing to be a Member of the Scheme for whatever reason shall not be less than the Member's contributions to the Scheme adjusted for interest (either positive or negative) and any expenses allocated to the Member's No. 1 Account.
- g. Any benefits for which beneficiaries cannot be ascertained or located by the Trustees within a period of six (6) years from the date of the event giving rise to the entitlement to such benefit shall be forfeited to the Scheme and credited to the Reserve Fund provided that this provision shall not apply to a Locked In Account if precluded by the Complying Fund Rules.

## 20 Transfers

- a. In respect of a Member or an Employee who was previously a member of another Registered Scheme or superannuation scheme ("the Transferor Plan") and who wishes to transfer a benefit from the Transferor Plan the Trustees shall accept from the Transferor Plan or the Member an amount of the benefit which its trustees or other person having the necessary power thereunder may be authorised to pay or transfer to the Scheme in respect of that Member or Employee. The Trustees shall, after taking into account any conditions imposed on the transferred amount by the trustees of the Transferor Plan, allocate the amount of the benefit in accordance with clause 4m and with the consent of the Employer of the Member or Employee may subject to the Act and the Complying Fund Rules (to the extent applicable) make such other arrangements or impose such conditions in regard to such Member or Employee with the written consent of that Member or Employee as in all the circumstances of each case shall in the opinion of the Trustees be just and equitable and provided such arrangements or conditions would not be prohibited by virtue of the Human Rights Act 1993. [1]
- b. In respect of a Member who remains in Service and becomes eligible to join another superannuation scheme sponsored by an Employer ("the Transferee Plan") the Trustees may with the agreement of the Member and the Members Employer in lieu of any other benefit to which the Member may be entitled under the Deed, transfer to the trustees of the Transferee Plan such portion of the assets of the Fund as in the opinion of the Trustees is just and equitable and shall inform the trustees of the Transferee Plan the proportion of any of the amount so paid which is deemed to be contribution by the Member or by the Members Employer and no further benefits shall be payable in respect of the Member under the Deed provided that in respect of a Locked In Account any transfer shall only be permitted to the extent the Complying

Fund Rules allow and shall be subject to the Complying Fund Rules and to the extent a transfer of a Locked In Account is precluded by this clause the Complying Fund Rules shall continue to apply to the Locked In Account. [5]

- c. Each Post June 2007 Member who becomes entitled to a benefit and who ceases to be a Member may transfer the Member's Accumulation to another Registered Scheme or KiwiSaver Scheme (to the extent transfers are available to those other schemes) provided that in respect of that part of the Member's Accumulation which comprises CFA Superannuation Accumulation such transfer shall be subject to the Complying Fund Rules [5].

## 21 Amendment

- a. The Trustees may with the consent of the Universities and shall upon written request from the Universities, subject to compliance with the Act and so long as the amendments would not result in any provision of paragraphs (a) to (h) of Section 84B of the State Sector Act 1988 ceasing to apply to the Scheme by deed amend, revise, alter, add to and/or consolidate any of the provisions of the Deed and such amendments may have retrospective effect.
- b. Within 14 days after the execution of any amendment to the Deed in accordance with clause 21 a, the Trustees shall lodge with the Government Actuary a copy of the amendment together with any additional documentation as required by the Act.

## 22 Winding Up

- a. The Scheme shall be wound up if the Universities resolve to wind up the Scheme or if the Trustees resolve that the Scheme shall be wound up or if subject to the Act the Government Actuary orders that the Scheme shall be wound up in which case the Trustees shall after deducting costs and expenses of winding up distribute any moneys remaining thereafter with the following priorities:
  - i. First in payment of any benefits including deferred benefits which fell due prior to the date of winding up and in respect of which an application to pay the benefit has been made by the Members but which have not been paid as at that date; **then**
  - ii. each Member who was a Member of the Scheme before 1 October 2004 and who has not at any time made an Investment Choice Election in accordance with clause 17m shall receive an amount equal to the total credit standing in the Member's No. 1 Account as at the date of winding up the Scheme provided that in the case of a CFA Member an amount equivalent to the Member's CFA Superannuation Accumulation as at the effective date of winding up shall be dealt with in accordance with the Complying Fund Rules and the payment to the Member shall be adjusted accordingly and **provided that** if the moneys remaining are less than the total of such said credits then the moneys remaining shall be distributed or applied in proportion to such credits; **then** [4]



accordance with clause 22a above as if such provisions referred to such Members only.

- c. In the event of a complete or partial wind up of the Scheme under clause 22a or 22b above, the appropriate proportion of the total Fund in respect of the Members affected by the complete or partial wind up may be transferred to the trustees of another Registered Scheme or superannuation scheme subject to the agreement of the trustees of such other scheme and to their written undertaking to treat for all purposes those Member's No. 1 Account and Member's No. 2 Accounts as having arisen from Members' and Employers' contributions respectively **provided that** each Member's written consent to the transfer shall be obtained by the Trustees prior to such transfer taking place and in respect of a CFA Member and the CFA Superannuation Accumulation the provisions of this clause shall be subject to the Complying Fund Rules.
- d. No part of the assets of the Scheme may revert to any Employer on the total or partial winding up of the Scheme without the prior consent of the Government Actuary.
- e. The Trustees shall within fourteen (14) days after a winding up resolution is made, lodge a copy of that resolution with the Government Actuary and ensure that all other requirements of the Act are completed.

### **23 Trustees Liability for Tax**

The Trustees shall be entitled to deduct from any payment or benefit payable under this Deed a sum equal to the amount of any income tax or other tax, duty, impost, levy or charge imposed by statute or regulations thereunder for which the Trustees may directly or indirectly become liable in consequence of such payment.

### **24 Counterparts**

This Deed may be signed in any number of counterparts (which may be assembled by facsimile or other means of communication) all of which, when taken together, constitute one and the same instrument.

**Execution**

**Signed by**  
**Lindsay Stuart Taiaroa**  
in the presence of:

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Witness Signature

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Witness Full Name

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Witness Occupation

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Witness Address

**Signed by**  
**Wayne Grenfell Morgan**  
in the presence of:

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Witness Signature

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Witness Full Name

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Witness Occupation

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Witness Address

**Signed by**  
**Adrienne Pearl Cleland**  
in the presence of:

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Witness Signature

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Witness Full Name

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Witness Occupation

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Witness Address

**Signed by**  
**Neville Richard Bennett**  
in the presence of:

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Witness Signature

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Witness Full Name

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Witness Occupation

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Witness Address

**Signed by**  
**Grant Andrew McKenzie**  
in the presence of:

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Witness Signature

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Witness Full Name

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Witness Occupation

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Witness Address