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## **FIRESUPER TRUST DEED**

**FIRE AND EMERGENCY NEW ZEALAND  
FIRESUPER TRUSTEE LIMITED**

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## PARTIES

**Fire and Emergency New Zealand (Fire and Emergency)**

**FireSuper Trustee Limited (Trustee)**

## BACKGROUND

- A The New Zealand Fire Service Superannuation Scheme (**Scheme**) was established by a trust deed dated 2 December 1987 (**Original Trust Deed**) and the provisions of the Original Trust Deed were then amended by deeds dated 4 July 1990, 25 July 1991, 25 March 1993, 13 August 1993, 4 September 1995, 16 December 1996, 14 December 2001, 10 June 2003, 1 July 2005, 21 December 2006, 26 June 2007, 11 May 2009, 27 March 2012, 20 August 2013, 29 November 2013, 22 April 2014 and 14 September 2016. The Original Trust Deed was amended and restated by a deed dated 15 September 2016 (**Current Trust Deed**) and the provisions of the Current Trust Deed have been amended by deeds dated 19 February 2020 and 10 December 2020.
- B The Trustee is the present duly appointed Trustee of the Scheme.
- C The Current Trust Deed is the governing document of the Scheme.
- D Under clause 19.1 of the Current Trust Deed Fire and Emergency and the Trustee may amend the Current Trust Deed subject to certain conditions and requirements.
- E The Trustee and the Fire and Emergency wish to amend the provisions of the Current Trust Deed and are satisfied that the amendments under this Deed are permissible and that all conditions and requirements of clause 19.1 of the Current Trust Deed have been complied with.
- F The Trustee has obtained a certificate from the solicitors to the Scheme that the Current Trust Deed, as amended by this Deed, will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 and will not contain any provision that is contrary to those implied in the Current Trust Deed by or under the Act.

## NOW THIS AMENDING DEED WITNESSES AS FOLLOWS:

### 1 AMENDMENT AND RESTATEMENT

The Trustee and Fire and Emergency, with effect from the Effective Date, hereby rescind each and every one of the existing clauses and schedules of the Current Trust Deed and

substitute them with the provisions of this Trust Deed so that the Current Trust Deed is replaced in its entirety by the clauses of this Trust Deed.

## PART 1: PRELIMINARY MATTERS

### 2 CONTINUATION, PURPOSES AND DEFINITIONS

#### Continuation of Scheme

- 2.1 The Scheme is continued as a restricted Workplace Savings Scheme for the purposes of the Act on the terms and conditions contained in this Deed.

#### Purposes

- 2.2 The purposes of the Scheme are to provide:
- 2.2.1 retirement benefits directly and indirectly to individuals; and
  - 2.2.2 benefits to eligible individuals on ceasing Service;
- on the terms of this Deed.

#### Definitions

- 2.3 In this Trust Deed the following definitions apply:

**Accounts** means in respect of a Member (and as applicable) the Fire and Emergency Regular Account, Fire and Emergency Complying Fund Account, Member Regular Account, Member Complying Fund Account and Member Voluntary Account for that Member.

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

**Auditor** means a Qualified Auditor appointed as auditor of the Scheme under clause 35.5.

**Canterbury Earthquake** means the earthquake, centred 40km west of Christchurch, on 4 September 2010 and the aftershock, centred in Lyttelton, on 22 February 2011.

**Canterbury Earthquake Member** means a Member who was residing in one of the following territorial authorities during the Canterbury Earthquake Period:

- (a) Ashburton District Council;

- (b) Christchurch City Council;
- (c) Hurunui District Council;
- (d) Selwyn District Council;
- (e) Waimakariri District Council.

**Canterbury Earthquake Period** means 4 September 2010 to 31 December 2011 (inclusive).

**Commencing Date** means 17 April 1987.

**Complying Fund Member** means a Member who has elected to participate in the Complying Superannuation Fund section of the Scheme under clause 5.1 and has not ceased to be a Complying Fund Member.

**Complying Fund Retirement Accumulation** means in respect of a Member at any given date the sum of the Member's:

- (a) Member Complying Fund Account; and
- (b) Fire and Emergency Complying Fund Account.

**Complying Fund Rules** means the complying fund rules as defined in the Income Tax Act 2007.<sup>1</sup>

**Complying Superannuation Fund** has the meaning given in the Act<sup>2</sup>.

**Declared State of Emergency** means (as applicable):

- (a) a state of national emergency declared under section 66 of the Civil Defence Emergency Management Act 2002 (*CDEMA*); or
- (b) a state of local emergency declared under section 68 or section 69 of the *CDEMA*.

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

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<sup>1</sup> Section YA 1.

<sup>2</sup> Section 6(1).

**Dependants** for the purposes of this Deed means the widow or widower and children of the Member and any other persons whom the Trustee in its absolute discretion determines to have been dependent either wholly or in part on the Member at the date of the Member's death.

**Director** means a director of the Trustee.

**Effective Date** means 1 March 2024.

**Earning Rates Policy** means the earning rates policy of the Scheme under clause 14.1.

**ESCT** means employer's superannuation contribution tax or a similar tax or charge.

**Employee** means any person who is employed by Fire and Emergency as a National Commander, Deputy National Commander, Regional Commander, Executive Officer, Officer, Firefighter, Control Room Staff member, Black Watch Staff member or Trainee Firefighter (or in each case in a corresponding operational role as confirmed by Fire and Emergency to the Trustee in writing for the purposes of this definition).

**Equivalent Overseas Retirement Scheme** means an equivalent overseas retirement scheme as defined in the FMC Regulations.<sup>3</sup>

**Financial Markets Legislation** has the meaning set out in the Act<sup>4</sup>.

**Fire and Emergency Complying Fund Account** means in respect of a Member any account established for that Member under clause 13.5.

**Fire and Emergency Complying Fund Contributions** means with respect to a Complying Fund Member the Complying Superannuation Fund contributions determined under clause 9.5.

**Fire and Emergency Regular Account** means in respect of a Member the account established for that Member under clause 13.4.

**Fire and Emergency Regular Contributions** means contributions payable by Fire and Emergency with respect to a Member under clause 9.1.1 less any Fire and Emergency Complying Fund Contributions.

**FMA** means the Financial Markets Authority.

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<sup>3</sup> Regulation 82(3).

<sup>4</sup> Section 6(1).

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

**Fund** means the accumulation of moneys under this Deed and shall comprise all contributions paid pursuant to this Deed, all other moneys from time to time received and held by the Trustee under this Deed, and the investments made pursuant to the provisions of this Deed including all income derived from those investments.

**In-House Asset** has the meaning given in the Act<sup>5</sup>.

**Investment Election** means an election made by a Member under clause 31.4 or clause 31.6.

**Issuer Obligation** has the meaning given in the Act<sup>6</sup>.

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

**KiwiSaver Scheme** has the meaning set out in the Act.

**Licensed Independent Trustee** means a licensed independent trustee under the Act<sup>7</sup> whose licence covers the Scheme and who is independent under the Act<sup>8</sup>.

**Managed Investment Scheme** has the meaning given in the Act<sup>9</sup>.

**Member** means a person who is or becomes a Member pursuant to the provisions of clauses 3 and 4 and shall include any such person so long as any benefit remains to be paid in respect of that person under the Scheme.

**Member Regular Account** means in respect of a Member the account established for that Member under clause 13.1.

**Member Complying Fund Account** means in respect of a Member any account established for that Member under clause 13.3.

**Member Complying Fund Contributions** means any contributions elected by a Complying Fund Member under clause 8.6.

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<sup>5</sup> Section 176(3).

<sup>6</sup> Section 6(1).

<sup>7</sup> Section 131.

<sup>8</sup> Section 131(3).

<sup>9</sup> Section 9(1).

**Member Regular Contributions** means contributions payable by a Member under clause 8.2 or clause 8.3 less any Member Complying Fund Contributions.

**Member Voluntary Account** means in respect of a Member any account established for that Member under clause 13.2.

**Member Tax Credit** means in respect of a Member at any given date any tax credit paid to the Scheme in respect of the Member in accordance with the Income Tax Act 2007<sup>10</sup>.

**NZ Super Entitlement Date** means the day a Member becomes entitled to New Zealand Superannuation by virtue of the Member's age in accordance with the New Zealand Superannuation and Retirement Income Act 2001<sup>11</sup>.

**Portfolio** means an investment portfolio established pursuant to clause 31.1.

**Product Disclosure Statement** has the meaning given in the Act<sup>12</sup>.

**Prior Benefit** means any of the following withdrawals made by (or benefits paid to or in respect of) a Member from the Scheme while the Member is still in Service (excluding any amount paid out of any Member Voluntary Account):<sup>13</sup>

- (a) a life-shortening congenital condition withdrawal under clause 19;
- (b) a Significant Financial Hardship withdrawal under clause 20;
- (c) a first home withdrawal under clause 21; or
- (d) a Specified Financial Hardship withdrawal under clause 22 (other than as a result of the Canterbury Earthquake, if the Member joined the Scheme before the Effective Date); or
- (e) an early access benefit under clause 23; or
- (f) if the Member joined the Scheme on or after the Effective Date, a withdrawal made from the Member's Retirement Accumulation by reason of the Trustee

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<sup>10</sup> Section MK 1(1).

<sup>11</sup> Section 7.

<sup>12</sup> Section 6(1)

<sup>13</sup> Prior Benefits are taken account of in determining any augmentation amount payable under (as applicable) clause 16 (Death), clause 17 (Loss of Medical Fitness), or clause 18 (Loss of Physical Fitness).

being required to release funds under an enactment (including because of an order of a court under that enactment); or

- (g) if the Member first had a Complying Fund Retirement Accumulation on or after the Effective Date, a withdrawal made from that accumulation:
  - (i) in the circumstances described in clause 4, clause 7 or clause 12 of Schedule 1 to the KiwiSaver Act; or
  - (ii) without limiting section 144 of the KiwiSaver Act, to give effect to a transfer under clause 27.2.

**Qualified Auditor** has the meaning given in the Act<sup>14</sup>.

**Register Entry** has the meaning given in the Act<sup>15</sup>.

**Registered Scheme** means a managed investment scheme that is for the time being registered under the Act as a superannuation scheme, KiwiSaver Scheme or Workplace Savings Scheme.

**Related Party** has the meaning given in the Act<sup>16</sup>.

**Related Party Benefit** has the meaning given in the Act<sup>17</sup>.

**Relevant Law** means all laws applicable to the Trustee and/or the Scheme at an applicable time, which may include (without limitation) the Public Service Act 2020, the Fire and Emergency New Zealand Act 2017, the Financial Markets Legislation, the FMC Regulations, and any methodologies or frameworks issued by the FMA under such legislation.

**Reserve Fund A** means an account established under clause 13.6.

**Reserve Fund B** means an account established under clause 13.8.

**Retirement Accumulation** means in respect of a Member at any given date the sum of the Member's:

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<sup>14</sup> Section 461E.

<sup>15</sup> Section 6(1).

<sup>16</sup> Section 172(2).

<sup>17</sup> Section 172(1).

- (a) Member Regular Account;
- (b) Fire and Emergency Regular Account;
- (c) Member Voluntary Account (if any);

and any amount of Reserve Fund B monies distributed pursuant to clause 13.9.

**Salary** in relation to a Member at any given date means:

- (a) for employees who are on a wage, the annual amount of the "total weekly wage" paid, plus any bonuses or allowances paid with every wage payment and for which no specific claim has to be made by the employee; and
- (b) for employees who are on a salary, the annual salary plus the assessed value of the free benefit received for accommodation.

**Scheme** means FireSuper, formerly called the New Zealand Fire Service Superannuation Scheme, which is registered on the register of managed investment schemes as a Workplace Savings Scheme that is a restricted scheme.<sup>18</sup>

**Scheme Property** means all property, rights, and income of the Scheme.

**Scheme Year** means each period of 12 months ending on 31 March in any year or on such other date as the Trustee may determine from time to time.

**Service** means, subject to clause 6, service with Fire and Emergency.

**Significant Financial Hardship** has the meaning given to it in the KiwiSaver Act<sup>19</sup>.

**SIPO** means the statement of investment policy and objectives for the Scheme in the form and with the content required by the Act.<sup>20</sup>

**Special Resolution** has the meaning given in the Act<sup>21</sup>.

**Specified Financial Hardship** means, in respect of a Member to whom clause 22 applies, either or both of the following:

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<sup>18</sup> Financial Markets Conduct (Restricted Schemes) Order 2016.

<sup>19</sup> Clause 11(1), Schedule 1, KiwiSaver Act.

<sup>20</sup> Sections 6(1) and 164.

<sup>21</sup> Section 6(1).

- (a) the destruction of or damage to the Member's property;
- (b) costs incurred by the Member (including costs associated with relocating to a new home or dealing with trauma).

**Transferred Member** means a Member in respect of whom a credit has been made to the Fund during that Member's Service pursuant to clause 27.1.1.

**Union** means the New Zealand Professional Firefighters Union Incorporated.

**Workplace Savings Scheme** has the meaning set out in the Act.<sup>22</sup>

### **Interpretation**

- 2.4 In the interpretation of this Deed the following provisions apply unless the context otherwise requires:
- 2.4.1 Headings and footnotes are inserted for convenience only and do not affect the interpretation of this Deed.
  - 2.4.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
  - 2.4.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 2.4.4 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 2.4.5 A reference in this Deed to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
  - 2.4.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 2.4.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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<sup>22</sup> Section 6(1).

- 2.4.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.4.9 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- 2.4.10 A reference to the word 'include' or 'including' is to be interpreted without limitation.
- 2.4.11 A reference:
- (a) to an account established, maintained, credited or debited, an election made or any other action taken or thing done (each an **Action**) under, in accordance with or pursuant to a provision of this Deed shall include an equivalent Action under, in accordance with or pursuant to any materially corresponding provision in a deed governing the Scheme before the Effective Date; and
  - (b) to the operation or effect of a provision of this Deed at or in respect of a date before the Effective Date shall be a reference to the operation or effect of a materially corresponding provision in the deed governing the Scheme as at that earlier date.

### Trusts Act

- 2.5 The following provisions of the Trusts Act 2019, and any other rules at law that correspond to those provisions, are excluded from the provisions of this Deed and this Deed is modified accordingly:
- 2.5.1 Section 31 (duty not to exercise power for own benefit).
  - 2.5.2 Section 32 (duty to consider exercise of power).
  - 2.5.3 Section 33 (duty not to bind or commit trustees to future exercise of discretion).
  - 2.5.4 Section 34 (duty to avoid conflict of interest).
  - 2.5.5 Section 36 (duty not to profit).
  - 2.5.6 Section 37 (duty to act for no reward).

**Name of Scheme**

- 2.6 The name of the Scheme is changed from the New Zealand Fire Service Superannuation Scheme to FireSuper on and from the Effective Date.

**PART 2: MEMBERSHIP****3 GENERAL****Offers of Membership**

- 3.1 The Trustee must not make a regulated offer of membership of the Scheme unless:
- 3.1.1 the Scheme is registered under the Act;<sup>23</sup>
  - 3.1.2 a Product Disclosure Statement has been prepared and registered with the Registrar of Financial Service Providers in respect of the Scheme; and
  - 3.1.3 Register Entries containing all information required by the Act have been uploaded on the public register in respect of the Scheme.<sup>24</sup>
- 3.2 Employees shall become Members in accordance with clause 4.
- 3.3 Each Member shall do all things necessary to enable the Trustee to secure the benefits payable in respect of that Member under this Deed.

**4 ELIGIBILITY**

- 4.1 A new Employee is entitled to join the Scheme from their first day of becoming an Employee.
- 4.2 Any Employee who does not become a Member within three months of first becoming eligible to do so shall not be entitled to become a Member at a later date except with the consent of the Trustee.
- 4.3 Subject to clause 4.2, in order to become a Member an Employee shall complete such form as shall be required by the Trustee.

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<sup>23</sup> Section 125(1).

<sup>24</sup> Section 57(1)(b).

## **5 COMPLYING FUND MEMBER**

- 5.1 A Member may elect to participate as a Complying Fund Member.

## **6 RE-ENTRY INTO SERVICE**

- 6.1 Notwithstanding anything to the contrary that is contained or implied in this Deed, if an Employee has retired from or left Service having been at that time a Member of the Scheme and subsequently re-enters it then, for the purposes of this Deed:

- 6.1.1 Service prior to such re-entry shall be deemed not to be Service; and  
6.1.2 the Employee shall be deemed never to have been a Member previously.

## **7 RIGHTS OF A MEMBER ARE PERSONAL**

- 7.1 A Member's interest in the Scheme is personal and may not be transferred, redeemed or otherwise dealt with except as expressly provided by this Deed or at law.

## **PART 3: CONTRIBUTIONS**

### **8 MEMBERS' CONTRIBUTIONS**

#### **Normal contributions**

- 8.1 Each Member's contributions shall be determined in accordance with clauses 8.2 and 8.3 and shall be payable until the Member:
- 8.1.1 ceases to be in Service; or  
8.1.2 has elected to cease contributing pursuant to this Deed,  
whichever is earlier.
- 8.2 Subject to the provisions of clauses 8.3, 10.1 and 11.1 each Member shall contribute at the rate of 6% of the Member's Salary.
- 8.3 A Member who was an Employee on the Commencing Date can elect to contribute at such rate of salary as the Member determines subject to a maximum rate according to the age of the Member at the Commencing Date according to the following Scale:

Under age 30	6%
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Age 30-34	7%
Age 35-39	8%
Age 40-44	9%
Age 45-49	10%
Age 50 or over	11%

PROVIDED THAT any such Member who has elected to contribute at a rate less than 6% has the right to increase such rate up to a maximum of 6%.

#### **Voluntary contributions**

8.4 Subject to the provisions of clause 8.5 a Member may with the consent of the Trustee at any time whilst the Member is contributing to the Scheme pursuant to clause 8.2 or clause 8.3 make voluntary contributions, or contribute at such greater rate and for such period as may be agreed with the Trustee, PROVIDED THAT any contributions made pursuant to this clause 8.4 must:

8.4.1 be calculated as a percentage of the Member's Salary;

8.4.2 not exceed 10% of the Member's Salary; and

8.4.3 otherwise be made in accordance with the requirements of any applicable exemptions or regulations<sup>25</sup>.

8.5 Fire and Emergency shall deduct from the Salary of each Member the contributions to be made by the Member as provided above and the amount of such contributions so deducted by Fire and Emergency shall be paid to the Trustee.

#### **Complying Superannuation Fund contributions**

8.6 If a Member wishes to be a Complying Fund Member:

8.6.1 The Member may elect that a portion of the Member's contributions paid under clause 8.2 or clause 8.3 are Complying Superannuation Fund contributions.

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<sup>25</sup> See in particular paragraphs (a), (c) and (d) of the definition of 'limited employer superannuation scheme' in regulation 20A of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011.

- 8.6.2 The Complying Superannuation Fund contributions elected by the Member under clause 8.6.1 shall be any rate permitted under the Complying Fund Rules.
- 8.6.3 If the Member has elected a rate of contribution under clause 8.3 of less than the minimum contribution rate under the Complying Fund Rules, the Member cannot be a Complying Fund Member unless the Member increases their contribution rate to the minimum rate required under the Complying Fund Rules.
- 8.6.4 The Member may at such time or times as the Trustee permits elect to change their Complying Superannuation Fund contribution rate to another permitted rate.
- 8.7 Any Member Complying Superannuation Fund contributions shall be deducted from the contributions made under clause 8.2 or clause 8.3.

#### **Savings suspension**

- 8.8 A Complying Fund Member may apply to the Trustee to stop and recommence making Complying Superannuation Fund contributions in the circumstances and subject to the timing restrictions set out in the provisions of the KiwiSaver Act which relate to savings suspensions.<sup>26</sup>

### **9 FIRE AND EMERGENCY'S CONTRIBUTIONS**

#### **Normal contributions**

- 9.1 Fire and Emergency's contributions shall, subject to clause 12, be equal to the sum of:
- 9.1.1 in respect of each Member who has elected for the time being to contribute to the Scheme and is contributing pursuant to clause 8.2 or clause 8.3, 1.52 times the amount of those contributions; and
- 9.1.2 any lump sum Fire and Emergency decides to contribute, which must be calculated in accordance with any applicable exemptions or regulations.<sup>27</sup>
- 9.2 The contributions payable by Fire and Emergency under clause 9.1.1 are expressed on a net of ESCT basis.

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<sup>26</sup> Sections 102 to 108 of the KiwiSaver Act.

<sup>27</sup> Refer footnote 25.

- 9.3 Fire and Emergency shall have no obligation whatsoever to make any contribution in respect of a Member who has ceased to be in Service.
- 9.4 Fire and Emergency shall also make such special contributions, in accordance with the requirements of any applicable exemptions or regulations,<sup>28</sup> as may be required pursuant to clauses 16, 17 or 18 to make good any shortfall occurring in Reserve Fund B.

**Fire and Emergency's Complying Superannuation Fund contributions**

- 9.5 If a Member is a Complying Fund Member:
- 9.5.1 for the purposes of section 101E of the KiwiSaver Act the Fire and Emergency Complying Superannuation Fund contribution rate with respect to the Member shall be the compulsory employer contribution rate prescribed in the KiwiSaver Act; and
- 9.5.2 any Complying Superannuation Fund contributions paid by Fire and Emergency in respect of a Member under clause 9.5.1 shall be deducted from the contributions payable by Fire and Emergency in respect of that Member under clause 9.1.1.

**10 REDUCED CONTRIBUTIONS**

- 10.1 Notwithstanding anything to the contrary contained or implied in this Deed:
- 10.1.1 during any period while a Member is temporarily absent from Service without Salary or with reduced Salary or while the Member is working part-time or with reduced Salary the Member's Salary shall be deemed to be such amount as shall be agreed upon between the Member, Fire and Emergency and the Trustee;
- 10.1.2 during any period in which clause 10.1.1 applies or any part of such period or during circumstances of hardship a Member may, with the consent of Fire and Emergency and the Trustee, suspend contributions pursuant to this Deed or contribute at such lesser rate of Salary than that which would otherwise be applicable as shall be agreed upon between the Member, Fire and Emergency and the Trustee.

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<sup>28</sup> Refer footnote 25.

## 11 DISCONTINUANCE BY A MEMBER

- 11.1 Any Member may at any time give notice in writing to the Trustee that the Member intends from a date not earlier than the date of the notice to discontinue contributions to the Scheme. Unless the notice has earlier been withdrawn from the date contained in the notice the Trustee shall determine, in respect of the Member, a benefit in lieu of all other benefits under this Deed equivalent to the amount of the capital sum which would have become available for the benefit of the Member, had the Member resigned from Service on the date on which the Member discontinued contributions to the Scheme.
- 11.2 The Trustee shall hold the benefit determined under clause 11.1 within the Scheme and shall pay the benefit at the same time and upon the same terms and conditions as applied to the benefits previously secured in respect of the Member under this Deed.

## 12 DISCONTINUANCE OF CONTRIBUTIONS BY FIRE AND EMERGENCY

- 12.1 If Fire and Emergency at any time gives written notice to the Trustee of its intention to cease making contributions to the Scheme, then, as from the date specified in such notice (**Closing Date**), which shall not be earlier than six months after the date of such notice, unless the notice has been withdrawn the following provisions shall apply:
- 12.1.1 no further Employees may become Members;
  - 12.1.2 no further contributions shall be payable pursuant to clause 9 except any which become due prior to the Closing Date;
  - 12.1.3 the Trustee shall provide in respect of each person for whom benefits were secured pursuant to this Deed immediately prior to the Closing Date a benefit in lieu thereof equivalent to the amount determined by the Trustee to be that person's equitable apportionment of the Fund. The benefit so determined shall be payable by the Trustee at the same time and upon the same terms and conditions (*mutatis mutandis*) as applied to the benefit previously secured in respect of the person concerned pursuant to this Deed; and
  - 12.1.4 the Trustee shall notify all Members of the discontinuance of contributions by Fire and Emergency.
- 12.2 Fire and Emergency with the agreement of the Trustee may at any time, by notice in writing given to the Trustee, revoke the notice issued pursuant to clause 12.1 and recommence making contributions to the Scheme from a date agreed between Fire and Emergency and the Trustee and from that date:

- 12.2.1 clauses 12.1.1 and 12.1.2 shall cease to apply; and
- 12.2.2 the Trustee shall notify all Members of the recommencement of contributions by Fire and Emergency.

## **PART 4: ACCOUNTS**

### **13 ACCOUNTS**

#### **Member Regular Account**

- 13.1 The Trustee shall establish and maintain in the records of the Scheme an account in the name of each Member to be known as the Member Regular Account which shall at any given date represent with respect to that Member the sum of:
  - 13.1.1 the Member Regular Contributions made by the Member during the Member's Service; and
  - 13.1.2 the amount of any Reserve Fund A monies to be credited to or debited from, as the case may be, the amounts described in 13.1.1, pursuant to clause 13.7 at the rate or rates determined by the Trustee from time to time in accordance with its Earning Rates Policy,

less the amount of any benefits and any individual action fees paid or payable to or in respect of the Member from the Member Regular Account in accordance with this Deed.

#### **Member Voluntary Account**

- 13.2 The Trustee shall establish and maintain in the records of the Scheme an account in the name of each Member to be known as the Member Voluntary Account which shall at any given date represent the sum of:
  - 13.2.1 any contributions made by the Member pursuant to clause 8.4 during the Member's Service;
  - 13.2.2 in the case of a Transferred Member, the amount transferred into the Fund in respect of the Member during the Member's Service in accordance with the provisions of clause 27.1.1; and
  - 13.2.3 the amount of any Reserve Fund A monies to be credited to or debited from, as the case may be, the amounts described at 13.2.1 and 13.2.2 pursuant to

clause 13.7 at the rate or rates determined by the Trustee from time to time in accordance with its Earning Rates Policy,

less the amount of any benefits paid or payable to or in respect of the Member from the Member Voluntary Account in accordance with this Deed.

#### **Member Complying Fund Account**

13.3 The Trustee shall establish and maintain in the records of the Scheme an account in the name of each Complying Fund Member to be known as the Member Complying Fund Account which shall at any given date represent with respect to that Member the sum of:

13.3.1 the Member Complying Fund Contributions made by the Member during the Member's Service;

13.3.2 any Member Tax Credits received by the Scheme in respect of the Member during the Member's Service; and

13.3.3 the amount of any Reserve Fund A monies to be credited to or debited from, as the case may be, the amounts described at 13.3.1 and 13.3.2 pursuant to clause 13.7 at the rate or rates determined by the Trustee from time to time in accordance with its Earning Rates Policy,

less the amount of any benefits and any individual action fees paid or payable to or in respect of the Member from the Member Complying Fund Account in accordance with this Deed or the Complying Fund Rules.

#### **Fire and Emergency Regular Account**

13.4 The Trustee shall establish and maintain in the records of the Scheme an account in the name of each Member to be known as the Fire and Emergency Regular Account which shall at any given date represent with respect to that Member the sum of:

13.4.1 the Fire and Emergency Regular Contributions paid with respect to that Member during the Member's Service; and

13.4.2 the amount of any Reserve Fund A monies to be credited to or debited from, as the case may be, the amount described at 13.4.1 pursuant to clause 13.7 at the rate or rates determined by the Trustee from time to time in accordance with its Earning Rates Policy,

less the amount of any benefits paid or payable to or in respect of the Member from the Fire and Emergency Regular Account in accordance with this Deed.

**Fire and Emergency Complying Fund Account**

- 13.5 The Trustee shall establish and maintain in the records of the Scheme an account in the name of each Complying Fund Member to be known as the Fire and Emergency Complying Fund Account which shall at any given date represent with respect to that Member the sum of:

- 13.5.1 the Fire and Emergency Complying Fund Contributions paid with respect to that Member during the Member's Service; and
- 13.5.2 the amount of any Reserve Fund A monies to be credited to or debited from, as the case may be, the amount described in 13.5.1 pursuant to clause 13.7 at the rate or rates determined by the Trustee from time to time in accordance with its Earning Rates Policy,

less the amount of any benefits paid or payable to or in respect of the Member from the Fire and Emergency Complying Fund Account in accordance with this Deed or the Complying Fund Rules.

**Reserve Fund A**

- 13.6 The Trustee shall establish an account known as Reserve Fund A which shall be credited or debited, as the case may be, with the capital gains or losses, dividends, interest and other income or earnings which have been derived from the investments of the Scheme. For the avoidance of doubt, Reserve Fund A may have a positive or negative value at any point in time.
- 13.7 The Trustee may apply Reserve Fund A at the rate or rates determined from time to time by the Trustee in accordance with its Earning Rates Policy and in any of the following ways:
- 13.7.1 increasing or decreasing the retirement benefits of all Members on an equitable basis;
  - 13.7.2 providing benefits other than retirement benefits for all Members on an equitable basis; or
  - 13.7.3 paying the expenses of administering the Fund.

**Reserve Fund B**

- 13.8 The Trustee shall establish an account known as Reserve Fund B which shall represent, at any time, monies held in the Fund at that time which have been derived from the following sources and are not specifically required or allocated for any other purpose:

- 13.8.1 unclaimed benefits;
  - 13.8.2 other money not required for the payment of benefits under the Scheme;
  - 13.8.3 any contributions made by Fire and Emergency pursuant to clause 9.4 of the Deed.
- 13.9 The Trustee may apply Reserve Fund B in any of the following ways:
- 13.9.1 providing any benefit that may be required in respect of any Member pursuant to (as applicable) clause 16.2, clause 16.3, clause 17.2 or clause 18.1; or
  - 13.9.2 providing personal benefits for Members or their Dependants in the case of hardship; or
  - 13.9.3 providing any other benefits for all Members on an equitable basis; or
  - 13.9.4 paying the expenses of administering the Fund.

#### **Other Accounts**

- 13.10 The Trustee may at any time establish other accounts or sub-accounts.

### **14 EARNING RATES POLICY AND VALUATION**

#### **Earning Rates Policy**

- 14.1 The Trustee must, from time to time and in accordance with such policy or policies as the Trustee establishes from time to time (**Earning Rates Policy**), set or cause to be set a rate or rates (which may include, without limitation, an interim monthly and an annual declared rate) that is or are applicable to the application of the Reserve Fund A under clause 13.7. For the avoidance of doubt, the rate or rates determined pursuant to the Earning Rates Policy may be positive or negative.

#### **Valuation of Scheme Property**

- 14.2 Before determining the earning rate applying to the Fund or, where the Trustee has established Portfolios, each respective Portfolio, from time to time in accordance with its Earning Rates Policy, the Trustee shall determine the net market value of the assets of the

Fund or of that Portfolio using a methodology determined by it from time to time which accords with generally accepted accounting practice as defined in the Act.<sup>29</sup>

## **PART 5: BENEFITS**

### **15 RETIREMENT AND LEAVING SERVICE**

15.1 If a Member retires from or leaves Service in circumstances when no other benefit is payable under this Deed, there shall be payable for the Member's benefit a capital sum equal to the sum of the Member's:

15.1.1 Retirement Accumulation; plus

15.1.2 Complying Fund Retirement Accumulation.

PROVIDED THAT the Complying Fund Retirement Accumulation shall only be paid in accordance with the Complying Fund Rules.

### **16 DEATH**

16.1 Subject to clauses 16.2 and 16.3, if a Member dies, there shall be payable a capital sum equal to the Member's:

16.1.1 Retirement Accumulation; plus

16.1.2 Complying Fund Retirement Accumulation,

as at the date when the Trustee receives formal notice of the Member's death (and that capital sum shall be held by the Trustee in accordance with clause 16.5 until paid).

16.2 Subject to clauses 16.3 and 16.4, if, as at the date when the Trustee receives formal notice of the death of a Member who has died while in Service, the aggregate of:

16.2.1 the Member's Retirement Accumulation (excluding any Member Voluntary Account); plus

16.2.2 the Member's Complying Fund Retirement Accumulation; plus

16.2.3 if a Prior Benefit has been paid to or in respect of the Member:

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<sup>29</sup> Section 6(1) and section 135(1)(d).

- (a) the amount of that Prior Benefit; and
- (b) in the case of a Prior Benefit paid in any of the circumstances described in paragraphs (a) to (d), (f) and (g) (and, if the Member joined the Scheme on or after the Effective Date, paragraph (e)) of the *Prior Benefit* definition in clause 2.3, the additional amount (as estimated by the Trustee) that would have remained in the Member's Retirement Accumulation and Complying Fund Retirement Accumulation had that Prior Benefit not been paid;

is less than the amount that is two times the Member's Salary (that amount being for the purposes of this clause 16 the **Salary Multiple**), then the death benefit under clause 16.1 shall be augmented by an amount equal to that shortfall, which shall be paid out of Reserve Fund B (and, to the extent Reserve Fund B is insufficient, met by a special contribution from Fire and Emergency under clause 9.4).

16.3 Subject to clause 16.4, if, as at the date when the Trustee receives formal notice of the death of a Member who had a Complying Fund Retirement Accumulation before the Effective Date and has died while in Service, the aggregate of:

- 16.3.1 the Member's Retirement Accumulation (excluding any Member Voluntary Account); plus
- 16.3.2 if a Prior Benefit has been paid to or in respect of the Member from the Member's Retirement Accumulation:
  - (a) the amount of that Prior Benefit; and
  - (b) in the case of a Prior Benefit paid from the Member's Retirement Accumulation in any of the circumstances described in paragraphs (a) to (d) of the *Prior Benefit* definition in clause 2.3, the additional amount (as estimated by the Trustee) that would have remained in the Member's Retirement Accumulation had that Prior Benefit not been paid;

is less than the Salary Multiple, then the death benefit under clause 16.1 shall be augmented by an amount equal to that shortfall, which shall be paid out of Reserve Fund B (and, to the extent Reserve Fund B is insufficient, met by a special contribution from Fire and Emergency under clause 9.4).

16.4 In the case of a Member who was an Employee on the Commencing Date (or joined the Scheme after 1 August 1993) and at date of death was contributing pursuant to clause 8.2 or

clause 8.3 at a rate less than 6% of the Member's Salary, the Salary Multiple applying under clause 16.2 or clause 16.3 shall be pro-rated accordingly.

#### **Payment of Death benefit**

- 16.5 Subject to clauses 16.6 and 16.7, any benefit payable under the Scheme in respect of a Member after the Member's death and expressed in this Deed to be held in accordance with this clause shall be held by the Trustee in trust and shall be paid to the legal personal representatives of that Member PROVIDED THAT if the Member has, prior to the Member's death, advised the Trustee of those persons whom the Member considers for the purposes of this clause 16.5 to be the Member's named beneficiaries then the Trustee may determine that the benefit shall be paid to or applied for the benefit of the named beneficiaries in such shares and manner as the Trustee in its absolute discretion shall think fit.
- 16.6 When a Complying Fund Member dies the Trustee must pay the Complying Fund Retirement Accumulation held for the Member to the legal personal representatives of that Member on application by those legal personal representatives.
- 16.7 Following the death before 1 September 2024 of a Member who joined the Scheme before the Effective Date and who has left Service, notwithstanding the provisions of clause 16.5 the Member's death benefit from the Scheme shall be payable in the manner prescribed by clause 16.1 of the trust deed governing the Scheme immediately before the Effective Date.

### **17 LOSS OF MEDICAL FITNESS**

- 17.1 Subject to clause 17.2, if a Member is required to leave Service before the Member's NZ Super Entitlement Date due to the Member being certified by two medical practitioners, nominated by Fire and Emergency, to be substantially medically unfit to perform any specified duties in Service which Fire and Emergency considers suitable for the Member then there shall become available for the Member's benefit a capital sum equal to the Member's:

17.1.1 Retirement Accumulation; plus

17.1.2 Complying Fund Retirement Accumulation,

PROVIDED THAT the Complying Fund Retirement Accumulation shall only be paid in accordance with the Complying Fund Rules.

- 17.2 Subject to clauses 17.3 and 17.4, if, as at the date on which the Member leaves Service, the aggregate of:

- 17.2.1 the Member's Retirement Accumulation (excluding any Member Voluntary Account); plus
- 17.2.2 the Member's Complying Fund Retirement Accumulation; plus
- 17.2.3 if a Prior Benefit has been paid to or in respect of the Member:
  - (a) the amount of that Prior Benefit; and
  - (b) in the case of a Prior Benefit paid in any of the circumstances described in paragraphs (a) to (d), (f) and (g) (and, if the Member joined the Scheme on or after the Effective Date, paragraph (e)) of the *Prior Benefit* definition in clause 2.3, the additional amount (as estimated by the Trustee) that would have remained in the Member's Retirement Accumulation and Complying Fund Retirement Accumulation had that Prior Benefit not been paid;

is less than the amount that is two times the Member's Salary (that amount being for the purposes of this clause 17 the **Salary Multiple**), then the benefit under clause 17.1 shall be augmented by an amount equal to that shortfall, which shall be paid out of Reserve Fund B (and, to the extent Reserve Fund B is insufficient, met by a special contribution from Fire and Emergency under clause 9.4).

- 17.3 In the case of a Member who was an Employee on the Commencing Date (or joined the Scheme after 1 August 1993) and who is contributing pursuant to clause 8.2 or clause 8.3 at a rate less than 6% of the Member's Salary, the Salary Multiple applying under clause 17.2 shall be pro-rated accordingly.
- 17.4 In the case of a Member who is within two years of the Member's NZ Super Entitlement Date, would ordinarily have remained in Service and would have earned less than the equivalent of two times Salary in the period to the Member's NZ Super Entitlement Date, the Salary Multiple applying under clause 17.2 shall be reduced to the amount that the Member could have earned in that period if the Member had remained in Service.

## 18 LOSS OF PHYSICAL FITNESS

- 18.1 If a Member is required to leave Service before the Member's NZ Super Entitlement Date due to the Member being unable to meet the physical fitness standards required by Fire and Emergency and in the opinion of Fire and Emergency is unable to or does not respond to remedial action, there shall be made available for the Member's benefit a capital sum equivalent to the amount provided for loss of medical fitness pursuant to clause 17,

PROVIDED THAT the Complying Fund Retirement Accumulation shall only be paid in accordance with the Complying Fund Rules.

## **19 LIFE-SHORTENING CONGENITAL CONDITIONS**

- 19.1 Subject to this clause 19, a Member who would be eligible (if they were a member of a KiwiSaver Scheme) for a life-shortening congenital condition-based withdrawal under clause 12B of Schedule 1 of the KiwiSaver Act may apply for a life-shortening congenital condition withdrawal.
- 19.2 If the Member has a Complying Fund Retirement Accumulation or an interest in a KiwiSaver Scheme, the Member may only make a withdrawal from the Member's Retirement Accumulation under this clause 19 if that Member is also making a life-shortening congenital condition-based withdrawal from their Complying Fund Retirement Accumulation or KiwiSaver Scheme.
- 19.3 Except to the extent the Trustee determines otherwise, the Member must apply for a withdrawal under this clause 19 in the same manner and subject to the same requirements as if the Member were making a withdrawal under clause 12B of Schedule 1 of the KiwiSaver Act.
- 19.4 A Member who applies for a withdrawal under this clause 19 may choose the amount of the withdrawal, which shall be up to the value to the Member's Retirement Accumulation and Complying Fund Retirement Accumulation.
- 19.5 A withdrawal under this clause 19 does not prevent the Member continuing in Service and continuing to make contributions.

## **20 SIGNIFICANT FINANCIAL HARDSHIP**

- 20.1 If the Trustee is reasonably satisfied that:
- 20.1.1 a Member is suffering or is likely to suffer from Significant Financial Hardship; and
  - 20.1.2 reasonable alternative sources of funding have been explored and have been exhausted,

the Member may, on application to the Trustee, make a Significant Financial Hardship withdrawal in accordance with this clause.

- 20.2 The Trustee may direct that the amount withdrawn be limited to a specified amount that, in the opinion of the Trustee, is required to alleviate the particular hardship, and a Member may not make a withdrawal under this clause 20 of more than the sum of:
- 20.2.1 the Member's Retirement Accumulation; plus
  - 20.2.2 the Member's Complying Fund Retirement Accumulation (excluding the amount of Member Tax Credits received by the Scheme in respect of the Member).
- 20.3 The application must include a completed statutory declaration in respect of the Member's assets and liabilities in the case of a withdrawal sought from a Complying Fund Retirement Accumulation, but the Trustee may otherwise prescribe from time to time the form of application required (including, but not limited to, any supporting documentation) and:
- 20.3.1 may require that any medical matter asserted in support of the application for withdrawal be verified by medical evidence; and
  - 20.3.2 may require that any other documents or information produced in support of the application be verified by oath, statutory declaration or otherwise.
- 20.4 The Trustee may at its absolute discretion vary the terms or conditions of this clause 20 to ensure the benefit is payable in a manner consistent with the Significant Financial Hardship withdrawal facility in clause 10 of Schedule 1 of the KiwiSaver Act and to ensure the requirements of the Complying Fund Rules continue to be met by the Scheme.

## **21 FIRST HOME WITHDRAWAL**

- 21.1 A Member who would be eligible (if they were a member of a KiwiSaver Scheme) for a first home withdrawal under or pursuant to clause 8 of Schedule 1 of the KiwiSaver Act may apply for a first home withdrawal. The Trustee may permit such withdrawal only if satisfied, based on whatever supporting evidence it may reasonably require, that if the Member's Scheme membership was membership of a KiwiSaver Scheme then the withdrawal would be permitted pursuant to clause 8 of Schedule 1 of the KiwiSaver Act.<sup>30 31</sup>

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<sup>30</sup> This clause applies if a Member has not made a withdrawal under this clause 21 before and has not made a first home withdrawal from a KiwiSaver Scheme or other Complying Superannuation Fund (other than to assist with the same purchase as the amount to be withdrawn under this clause), and:

- (a) at least three years have passed since the Trustee received the first contribution in respect of the Member; or
- (b) the Member has been a member of one or more KiwiSaver Schemes or Complying Superannuation Funds for at least three years.

<sup>31</sup> Subject to the consent of the Trustee, a Member to whom this clause 21 applies may make a withdrawal from the Scheme for the purchase of an:

21.2 A Member may not make a withdrawal under this clause 21 of more than the sum of:

21.2.1 the Member's Retirement Accumulation; plus

21.2.2 the Member's Complying Fund Retirement Accumulation,

less (in the case of a Complying Fund Member) any amount prescribed by clause 8(4) of Schedule 1 of the KiwiSaver Act in respect of a permitted withdrawal payable under that clause.

21.3 Payment shall be made from the Member's Complying Fund Retirement Accumulation (excluding the amount of Member Tax Credits received by the Scheme in respect of the Member), then from the Member Tax Credits amount and then from the Member's Retirement Accumulation.<sup>32</sup>

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(a) estate in land located in New Zealand (whether alone or as a joint tenant or tenant in common) if the land is, or is intended to be, the principal place of residence for the Member or for the Member and members of their family; or

(b) interest in a dwellinghouse on Māori land if the dwellinghouse is, or is intended to be, the principal place of residence for the Member or for the Member and their family;

and either of the following applies:

(c) the Member has not, at any time before applying to make a withdrawal under this clause, held an estate in land (whether alone or as a joint tenant or tenant in common); or

(d) if the Member has previously held an estate in land, the Trustee is satisfied (or Kāinga Ora for a Complying Fund Member has given notice that it is satisfied) that the assets and liabilities of the Member represent a financial position that would be expected of a person that has never held an estate in land (whether alone or as a joint tenant or tenant in common).

<sup>32</sup> It is also a condition that:

(a) any withdrawal made must be paid to a practitioner (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) acting on behalf of the Member; and

(b) the Trustee must require from that practitioner, before payment of the withdrawal:

(i) a copy of an agreement for the sale and purchase of the estate in land or of the interest in a dwellinghouse on Māori land, showing the Member as purchaser;

(ii) for an interest in a dwellinghouse on Māori land, evidence of the Member's right to occupy the Māori land;

(iii) an undertaking that the agreement is unconditional at the time the Trustee makes the request or, if the agreement is conditional, an undertaking that payment of any amount of the withdrawal will be held by a stakeholder; and that the stakeholder is obliged to hold the amount while the agreement is conditional;

(iv) if the agreement is unconditional at the time the Trustee makes the request, an undertaking that the amount will be paid to the vendors as part of the purchase price or will be repaid to the Trustee on account of the Member if settlement of the agreement is not completed in accordance with the agreement by the due date or any extended date; and

(v) if the agreement is conditional at the time the Trustee makes the request, an undertaking that the stakeholder is obliged to repay the amount to the practitioner if settlement of the agreement is not completed in accordance with the agreement by the due date or any extended date (non-completion), but excepting non completion due to the purchaser's default, and that the practitioner will repay the amount that the practitioner receives from the stakeholder to the Trustee on account of the Member.

- 21.4 The Trustee may reasonably require the Member to provide evidence of the facts necessary to establish the Member's eligibility to make a withdrawal under this clause 21.
- 21.5 The Trustee may at its absolute discretion vary any terms or conditions of this clause 21 to ensure the benefit is payable in a manner consistent with the first home withdrawal facility in clause 8 of Schedule 1 of the KiwiSaver Act and to ensure the requirements of the Complying Fund Rules continue to be met by the Scheme.

## **22 SPECIFIED FINANCIAL HARDSHIP**

- 22.1 If the Trustee is reasonably satisfied that:

- 22.1.1 a Canterbury Earthquake Member is suffering from Specified Financial Hardship that arose as a result of the Canterbury Earthquake; or
- 22.1.2 a Member has suffered Specified Financial Hardship as a result of any other natural disaster or any pandemic illness:
- (a) occurring in an area where the Member is or was resident or employed; and
  - (b) resulting in a Declared State of Emergency;

the Member may apply for a Specified Financial Hardship benefit in accordance with this clause.

- 22.2 Subject to the Trustee's consent, a Specified Financial Hardship benefit may be payable to the Member before their NZ Super Entitlement Date or leaving Service. The amount of the Specified Financial Hardship benefit under this clause will be determined by the Trustee in its absolute discretion but shall be no greater than the sum of 50% of the Member's Retirement Accumulation.
- 22.3 The application for a Specified Financial Hardship benefit under this clause must be made in the form required by the Trustee from time to time. The Trustee may also require the application to be supported by such information as it deems necessary, including but not limited to:
- 22.3.1 a completed statutory declaration in respect of the Member's assets and liabilities,
  - 22.3.2 certified evidence of costs incurred by the Member.

**23 EARLY ACCESS**

- 23.1 A Member may apply to the Trustee for, and the Trustee may pay to the Member, an early access benefit on the terms and conditions set out in this clause. With respect to each Member, the value of an early access benefit shall be no greater than the sum of 50% of the value of their Member Regular Account at the time of the application to the Trustee.
- 23.2 The payment of an early access benefit to a Member shall be subject to the following conditions:
- 23.2.1 any application for an early access benefit under this clause must be made in the manner and form required by the Trustee from time to time;
  - 23.2.2 only the Member Regular Account and any Member Voluntary Account of the Member may be used to pay an early access benefit and in no circumstances shall the Fire and Emergency Regular Account, Fire and Emergency Complying Fund Account or Member Complying Fund Account be available to provide for an early access benefit;
  - 23.2.3 an early access benefit shall not be accessed until, in respect of the relevant Member and at the date of the application by the Member for the benefit, the aggregate value of the Fire and Emergency Regular Account and Member Regular Account exceeds the value of three times the Member's Salary;
  - 23.2.4 a Member shall not be entitled to receive an early access benefit more than twice during the period of their membership of the Scheme; and
  - 23.2.5 the Trustee shall not approve a second payment of an early access benefit to a Member until at least five years have passed since the first payment of an early access benefit was made to that Member.
- 23.3 Notwithstanding the provisions of this clause 23, the Trustee may determine at any time in its sole discretion that early access benefits will no longer be granted (whether for a particular time period or indefinitely) if it considers the circumstances deem it necessary and appropriate.

**24 MEMBERS WHO HAVE LEFT SERVICE**

- 24.1 A Member who has left Service may remain as a Member PROVIDED THAT within one month of leaving Service they notify the Trustee in writing of their intention to continue as a Member.

- 24.2 A Member who has left Service shall remain a Member only so long as any benefit remains to be paid in respect of that person under the Scheme.
- 24.3 A Member who has left Service shall not be entitled to make further contributions to the Scheme.
- 24.4 A Member who leaves Service but continues as a Member under clause 24.1 shall be entitled to withdraw all or part of their Member's Retirement Accumulation and Member's Complying Fund Retirement Accumulation subject to clause 24.5 and to such conditions and restrictions as the Trustee may impose from time to time.
- 24.5 The maximum amount that the Member shall be entitled to withdraw under clause 24.4 shall be no more than the sum of:
- 24.5.1 the Member's Retirement Accumulation; plus
- 24.5.2 the Member's Complying Fund Retirement Accumulation,
- PROVIDED THAT the Complying Fund Retirement Accumulation shall only be paid in accordance with the Complying Fund Rules.
- 24.6 The funds of any Member who leaves Service shall be administered in the manner, and subject to such fees, as the Trustee in its absolute discretion shall determine.

## **25 COMPLYING FUND BENEFITS**

### **Locked In**

- 25.1 Except as otherwise prescribed in this Deed, Member Complying Fund Accounts and Fire and Emergency Complying Fund Accounts shall be locked in on terms corresponding to the provisions of clauses 4 and 17 of Schedule 1 of the KiwiSaver Act.

### **Withdrawal Restrictions**

- 25.2 Member Complying Fund Accounts and Fire and Emergency Complying Fund Accounts may only be withdrawn in the circumstances described in clauses 4, 7, 9 or 12 of Schedule 1 to the KiwiSaver Act or as otherwise contemplated by this Deed.

## **26 MINIMUM BENEFITS**

- 26.1 Notwithstanding any provision of this Deed the benefit payable to or in respect of a Member on ceasing to be a Member for any reason shall not be less than the total of the contributions

made by the Member to the Scheme together with any amount transferred to the Fund pursuant to clause 27.

## **27 TRANSFER FROM OR TO ANOTHER SCHEME**

27.1 Notwithstanding anything to the contrary contained or implied in this Deed:

27.1.1 if a Member is entitled to a benefit from any Registered Scheme or Equivalent Overseas Retirement Scheme from which a transfer to the Scheme is permitted under Relevant Law, the transfer value of the Member's benefit in such scheme can, if the Member elects, be transferred into the Fund where it shall form part of the Member Voluntary Account;

27.1.2 if a Member on leaving Service becomes a member of another Registered Scheme or Equivalent Overseas Retirement Scheme, then if the Member so elects the value of the benefit attributable to that person's membership of the Scheme, to the extent that it would otherwise be payable for the Member's benefit under the Scheme, shall be transferred to such other Registered Scheme or Equivalent Overseas Retirement Scheme. If such transfer is made then the Fund shall be debited accordingly and, subject to the Complying Fund Rules, no further benefit shall be payable in respect of the Member under the Scheme; and

27.1.3 if a Member becomes a member of another Registered Scheme while remaining in Service then the Trustee and the Member may agree that the Member's Retirement Accumulation shall be transferred to the other Registered Scheme and the Member shall become entitled to such benefits under the other Registered Scheme as are agreed between the Trustee, the Member and the manager of the other Registered Scheme. If such transfer is made then the Fund shall be debited accordingly, the Member's Complying Fund Retirement Accumulation (if any) shall be transferred to a KiwiSaver Scheme in accordance with clause 28.1, and no further benefits shall be payable in respect of the Member under the Scheme.

27.2 If a Member requests all or part of the Member's Complying Fund Retirement Accumulation to be transferred to another Complying Superannuation Fund or to a KiwiSaver Scheme, the Trustee shall comply with that request PROVIDED THAT any such transfer shall only be permitted to the extent the Complying Fund Rules allow and shall be subject to the requirements of the Complying Fund Rules or the KiwiSaver Act as applicable.

## **28 CESSATION OF COMPLYING FUND MEMBERSHIP**

28.1 Notwithstanding the provisions of clause 27, a Member's Complying Fund Retirement Accumulation shall be transferred to a KiwiSaver Scheme if:

- 28.1.1 the Member ceases to be eligible to be a Member of the Scheme; or
  - 28.1.2 the Member may not remain a Member for any reason except a transfer in accordance with either of clauses 28.1.3 and 28.2, or a withdrawal of all or part of their Complying Fund Retirement Accumulation in accordance with the Complying Fund Rules; or
  - 28.1.3 the FMA revokes approval of the Scheme as a Complying Superannuation Fund and the Member's Complying Fund Retirement Accumulation is not transferred to another Complying Superannuation Fund and is not subject to the Complying Fund Rules.
- 28.2 In the event that the Member's Complying Fund Retirement Accumulation must be transferred in accordance with clause 28.1, the Trustee shall give prior notice to the Commissioner of Inland Revenue, including the name, address, and tax file number of the Member, the name and address of their employer, and the name and tax file number of the Member's Complying Superannuation Fund.

## **29 BANKRUPTCY, INCAPACITY OR ASSIGNMENT**

- 29.1 If any person being entitled to any interest in any benefit payable under the Scheme shall be or become bankrupt, then (to the maximum extent permitted by law) the benefit in respect of that person shall be forfeited to the Trustee who shall then apply such benefit (or so much of it as would otherwise have been payable to that person) as and when it arises for the benefit of that person and/or any Dependant of that person in such manner as the Trustee in its absolute discretion thinks fit.
- 29.2 If any person being entitled to any interest in any benefit payable under the Scheme shall be, or become, in the opinion of the Trustee, incapable of managing their own affairs, the Trustee may during such period of incapacity apply any such benefit (or such amount as would otherwise have been payable to that person) as and when it arises for the benefit of that person and for any Dependant of that person.
- 29.3 No person being entitled to any interest in any benefit payable under the Scheme shall assign, charge, alienate or borrow against the security of any such benefit. Without limiting the preceding provision, a Member's interest in (or any future benefits that will or may become payable to the Member from) the Member's Complying Fund Retirement Accumulation must not be assigned or charged or passed to another person whether by way of security, operation of law or any other means, except as required by the provisions of any enactment (including a requirement by order of the court under an enactment).

## PART 6: INVESTMENT

### 30 POWER OF INVESTMENT

- 30.1 The Trustee shall invest the Fund in accordance with the law relating to trusts as to the investment of trust funds.
- 30.2 Despite anything to the contrary in the law relating to trusts, the Trustee and any investment manager of the Scheme appointed under clause 33.13 shall, in exercising the power of investment, exercise the care, diligence and skill required of that person as described by law.
- 30.3 The Trustee and any investment manager so authorised by the Trustee may invest the Fund or any part thereof in any Managed Investment Scheme offered by the investment manager and for this purpose may apply for membership of any other Managed Investment Scheme in which the Trustee determines in its discretion to invest all or any part of the Fund.

### 31 PORTFOLIOS

#### Establishment of Portfolios

- 31.1 The Trustee may, from time to time, specify one or more investment portfolios (consisting of specified kinds of assets in specified proportions) each of which corresponds to a particular investment strategy.

#### No segregation of Portfolios

- 31.2 A Portfolio is not a separate fund and the Trustee is not required to hold property of the Scheme which is referable to a Portfolio as a separate fund.

#### Termination of Portfolios

- 31.3 The Trustee may, subject to Relevant Law generally and clause 31.1 in particular, determine that a Portfolio (**Terminating Portfolio**) shall terminate with effect from a particular date (**Termination Date**), in which event:
- 31.3.1 the Trustee shall notify in writing all Members affected by such determination;
- 31.3.2 each Member referred to in clause 31.3.1 shall be given the option to elect in writing, in such form as the Trustee may determine from time to time, to transfer, on the Termination Date, that part of the Accounts of the Member which is invested in the Terminating Portfolio to such other Portfolio or Portfolios as the Trustee may offer to such Member; and

- 31.3.3 any part of the Accounts of a Member in respect of which the Member fails to sign and return a valid transfer election under clause 31.3.2 prior to the Termination Date shall, with effect from the Termination Date, cease to be invested in the Terminating Portfolio and shall be invested in such manner as the Trustee may determine and notify to the Member, as appropriate.

#### **Investment elections**

- 31.4 The Trustee may at its absolute discretion invite any Member to give to the Trustee an Investment Election in respect of the Accounts of that Member. Such Investment Election shall become operative and apply at such time or times as the Trustee may in its absolute discretion determine after the delivery of the Investment Election to the Trustee. The Trustee may withdraw any invitation made to a Member pursuant to this clause, notwithstanding that such Investment Election may have been actioned in full or in part.
- 31.5 Except where the Trustee has not invited the Member to make an Investment Election or has withdrawn such invitation the Trustee shall invest the Accounts subject to the Investment Election in accordance with the Member's Investment Election. This shall constitute a modification to the Trustee's general power to invest in section 58 of the Trusts Act 2019.
- 31.6 A Member may at any time with the consent of the Trustee in such form as the Trustee may prescribe vary or amend an Investment Election and that Investment Election as varied or amended shall become operative in accordance with and be subject to Clause 31.4 and may be subject to such reasonable terms and conditions as the Trustee may impose in consenting to the variation or amendment.
- 31.7 The Trustee shall have an absolute discretion as to which Portfolios are made available from time to time for the purposes of a Member's Investment Election and may from time to time exclude any Portfolio from those made available for the purposes of a Member's Investment Election or the investment of the Accounts of the Member or any part of those Accounts.
- 31.8 If or to the extent that a Member has not been invited to make an Investment Election or (having been invited) fails to make an Investment Election, or if the Trustee withdraws or closes a relevant Portfolio and the Member does not amend their Investment Election accordingly, the relevant amounts shall be invested by the Trustee in a manner permitted by this Deed.
- 31.9 Any investment of a Member's Accounts in a Portfolio pursuant to an Investment Election shall be subject to this Deed and the SIPO and any fees (including switching fees or other charges) applying in respect of the investment of the Accounts in any Portfolio or the withdrawal or switching of such investments may be debited against the Accounts of the Member in such proportions as the Trustee determines to be appropriate.

**Statement of investment policy and objectives**

- 31.10 All money belonging to the Scheme and available for investment shall be invested in accordance with the SIPO.

**PART 7: TRUSTEE POWERS OF ADMINISTRATION****32 TRUSTEE'S PROCEDURE****Corporate Trustee**

- 32.1 Subject to clause 32.10 the Scheme shall have a sole trustee:
- 32.1.1 that is a body corporate incorporated and registered in New Zealand; and
  - 32.1.2 that has not less than seven Directors, at least one of whom is a Licensed Independent Trustee.
- 32.2 FireSuper Trustee Limited is the Trustee of the Scheme as at the date of this Deed.

**Appointment and removal of directors**

- 32.3 The requirements and process for the appointment and removal of Directors shall be as prescribed in the Constitution for the Trustee, PROVIDED THAT there shall always be:
- 32.3.1 three Directors appointed by Fire and Emergency;
  - 32.3.2 three Directors appointed by the Union; and
  - 32.3.3 a Licensed Independent Trustee, who shall be appointed by the six Directors otherwise appointed in accordance with this clause.

**Chairperson**

- 32.4 The Directors shall nominate as Chairperson one of their number, and in the absence of the Chairperson one of the other Directors shall act as Chairperson.

**Removal of Trustee**

- 32.5 The Trustee shall cease to hold office if the Trustee is substituted by the High Court under section 209 of the Act.
- 32.6 In addition, subject to clause 32.11, the office of Trustee shall become vacant if:

- 32.6.1 the Trustee resigns from office as Trustee by notice in writing addressed to Fire and Emergency;
- 32.6.2 an order is made or an effective resolution is passed for the Trustee's winding up, or the Trustee is placed in liquidation or receivership;
- 32.6.3 the Trustee is removed from office by Fire and Emergency by notice in writing addressed to the Trustee on the basis that it is not in the best interests of the Members for the Trustee to continue as Trustee; or
- 32.6.4 in the opinion of Fire and Emergency communicated in writing, the Trustee becomes for any reason unable to perform the duties of the Trustee.

#### **Removal of the Licensed Independent Trustee**

- 32.7 The Licensed Independent Trustee shall cease to hold office if:
  - 32.7.1 the Licensed Independent Trustee's licence expires or is cancelled under Part 6 of the Act; or
  - 32.7.2 the Licensed Independent Trustee is removed by the FMA on the basis that it is satisfied the Licensed Independent Trustee no longer meets the requirements in section 131(1)(d) of the Act.
- 32.8 A Licensed Independent Trustee may not:
  - 32.8.1 be removed or resign in accordance with this Deed unless:
    - (a) all functions and duties of the position have been performed; or
    - (b) another Licensed Independent Trustee has been appointed, and accepted appointment, in their place; or
    - (c) the court consents;
  - 32.8.2 despite anything to the contrary in this Deed, be removed under this Deed without the FMA's consent.

#### **Effect of removal**

- 32.9 If the Trustee ceases to hold office, the Trustee and any delegate of the Trustee must immediately desist from all activities relating to the Scheme.

**Appointment of new Trustee**

- 32.10 If at any time the Trustee ceases to hold office Fire and Emergency and the Union shall appoint a body corporate incorporated and registered in New Zealand with not less than seven Directors, at least one of whom is a Licensed Independent Trustee, with the process for the appointment of Directors set out in clause 32.3 being followed.

**Licensed Independent Trustee**

- 32.11 If the Scheme does not, for any reason, have a Licensed Independent Trustee or a sole corporate Trustee that has at least one director who is a Licensed Independent Trustee then the provisions of the Act shall apply in relation to the temporary appointment of a person to fill the vacancy in the office until a substitute appointment may be made under this Deed.

**Quorum**

- 32.12 The Trustee's Constitution must prescribe that four Directors, including one appointed by the Union and one appointed by Fire and Emergency, shall constitute a quorum.

**Alternate Director**

- 32.13 The Trustee's Constitution must prescribe that if a Director is unable to attend a Directors' meeting then that Director (with the prior written consent of the Director's appointor(s)) may appoint in writing an alternate Director to attend that meeting. The alternate Director will have the full power of proxy.

**Voting**

- 32.14 The Trustee's Constitution must prescribe that at a meeting of Directors questions shall be decided by a majority of votes and in the case of an equality of votes the Chairperson shall have a second or casting vote.

**Trustee procedures**

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

**Reimbursement of expenses**

- 32.16 Subject to Relevant Law, the Trustee shall be entitled to be reimbursed for any reasonable expenses incurred by it in the administration of the Scheme.

### 33 GENERAL POWERS OF THE TRUSTEE

#### **Trustee deemed to be Manager**

33.1 The Trustee has responsibility for performing the functions and duties of a manager under the Act and in particular the following functions:

- 33.1.1 offering membership of the Scheme;
- 33.1.2 accepting Members into the Scheme;
- 33.1.3 managing the Scheme Property and investments; and
- 33.1.4 administering the Scheme.

#### **Trustee's general duties**

33.2 The Trustee must:

- 33.2.1 act honestly and in good faith in acting as a manager; and
- 33.2.2 in exercising any powers or performing any duties as a manager:
  - (a) act in the best interests of the Members; and
  - (b) treat Members equitably; and
- 33.2.3 not make use of information acquired through being the manager in order to:
  - (a) gain an improper advantage for itself or any other person; or
  - (b) cause detriment to the Members.

#### **Compliance with relevant requirements**

33.3 The Trustee must also carry out the functions of a manager in accordance with this Deed, the SIPO, and all other Issuer Obligations.

#### **Standard of care**

33.4 In exercising any powers or perform any duties:

- 33.4.1 the Trustee and (except as prescribed in clause 33.4.2) each Director must exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances; and

- 33.4.2 the Licensed Independent Trustee and any other Director whose profession or business is or includes acting as a trustee or investing money on behalf of others must, in exercising any powers or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

#### **General Power**

- 33.5 The Trustee may do all acts and things it considers necessary or expedient for the administration, maintenance and preservation of the Scheme and the performance of its authorities, powers and discretions under this Deed.

#### **Power to enter into contracts, deeds and documents**

- 33.6 The Trustee may in its absolute discretion enter into and execute all such contracts, deeds and documents and do all such acts, matters and things as it deems expedient for the purpose of carrying out the trusts, authorities, powers and discretions conferred upon it by this Deed.

#### **Absolute and uncontrolled discretion**

- 33.7 The Trustee shall have an absolute and uncontrolled discretion in the exercise of the trusts, authorities, powers and discretions vested in it under this Deed and may refrain from exercising all or any of such trusts, authorities, powers and discretions from time to time or at all PROVIDED THAT the Trustee shall at no time contravene the provisions of the Act in the exercise of such trusts, authorities, powers and discretions.

#### **Reliance on advice**

- 33.8 The Trustee 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 Trustee 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 Trustee may delegate to such professional persons as may be consulted by it such of its powers as it may think fit and may at any time revoke or modify such delegation of power. The cost of obtaining such advice shall form part of the expenses incurred by the Trustee in connection with the Scheme.

#### **Power to borrow**

- 33.9 The Trustee may at any time and from time to time borrow and raise money for any of the purposes of the Scheme either with or without security. If security is given then it may be by mortgage or charge over all or any of the assets of the Scheme. No lender shall be concerned

to enquire as to the necessity for any such borrowing or as to the purpose for which it is required or as to the application of the money required.

**Power to delegate**

- 33.10 The Trustee may delegate the performance of any of its duties or functions and any of its discretionary powers to any person, firm, company or corporation appointed to manage the investment of all or any part of the Scheme Property or to undertake any function or duty exercisable by the Trustee under this Deed where such delegation is considered by the Trustee in its sole and uncontrolled discretion to be necessary or desirable for the efficient management of those investments or of the Scheme.

**Trustee's obligations in relation to delegates**

- 33.11 Where the Trustee delegates or contracts out any of its functions as manager of the Scheme:

33.11.1 the Trustee must take all reasonable steps to:

- (a) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Trustee were performing them directly; and
- (b) monitor the performance of those functions;

33.11.2 subject to this Deed, the terms of appointment of any delegate may grant a right of indemnity out of the Scheme; and

33.11.3 the Trustee remains liable for the performance of any functions delegated or contracted out to a third party.

**Power to appoint nominees and agents**

- 33.12 The Trustee shall not be bound to act personally and may employ such nominees, brokers, or dealers as it considers appropriate for carrying out transactions in relation to the assets of the Scheme.

**Appointment of Investment Manager or Administration Manager**

- 33.13 Without prejudice to the powers conferred upon it by general law or under this Deed:

33.13.1 the Trustee may 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 Trustee and the investment managers and:

- (a) the Trustee may delegate to the investment managers such of its 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 30, as are decided by the Trustee and the investment managers;
- (b) the Trustee shall require the investment managers to comply with any obligation they have under the Act;
- (c) the Trustee shall require the investment managers, in exercising their powers or performing any duties, to exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances;
- (d) the Trustee may from time to time remove any investment manager;
- (e) the investment managers shall be entitled to charge fees as agreed between the Trustee and each investment manager, and the fees may be paid out of the Scheme; and
- (f) if the Trustee so agrees in the contract between the Trustee and an investment manager, the investment manager may be indemnified for liabilities or expenses incurred in relation to the performance of the investment manager's contracted functions, provided such indemnity is available only in relation to the proper performance of the duty of care in subclause (c) above,

and a duly appointed investment manager shall otherwise have whatever powers and duties in relation to the investment of the Scheme Property that the Trustee decides, except that all investments must be held by the Trustee (or a custodian or sub-custodian appointed under clause 33.15 or clause 33.16); and

- 33.13.2 the Trustee may appoint and remove from office an administration manager on terms to be agreed between the Trustee and the administration manager and the administration manager shall be entitled to charge a fee or fees as agreed between the Trustee and the administration manager and the fee or fees may be paid out of the Scheme.

### **Trust**

- 33.14 The Scheme Property shall be held by the Trustee on trust to be applied for the purposes of paying the benefits provided by this Deed.

**Trustee may appoint custodian**

33.15 The Trustee shall be entitled to appoint a person (**custodian**) from time to time on such terms as the Trustee may determine for all or part of the Scheme Property where the custodian:

33.15.1 is a body corporate that the Trustee believes, on reasonable grounds, to be appropriate to hold and safeguard the Scheme Property; and

33.15.2 is not associated with the Trustee (other than by virtue of the custodianship).

**Custodian may appoint sub-custodian as permitted under the Act<sup>33</sup>**

33.16 A custodian may, if authorised in writing by the Trustee, in turn contract the holding of the Scheme Property to another person.

**Duties of appointing entity**

33.17 If the holding of the Scheme Property is contracted out to another person (the **nominee**) under clause 33.15 or clause 33.16 then the person contracting out that function:

33.17.1 must take all reasonable steps to:

- (a) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person were performing it directly; and
- (b) monitor the performance of that function; and
- (c) ensure that the nominee complies with sections 157 to 159 of the Act; and

33.17.2 is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with clause 33.17.1.

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<sup>33</sup> Section 156(3).

## 34 TRUSTEE'S INDEMNITY AND LIABILITY

### **No exemption from liability**

- 34.1 No provision of this Deed has the effect of exempting the Trustee or any Director from, or indemnifying the Trustee or any Director against, any liability to the extent that doing so would be void under the Act<sup>34</sup> or any other statute.

### **Limitation of liability**

- 34.2 Subject to the indemnity limitations applying under the Act:<sup>35</sup>

- 34.2.1 neither the Trustee nor any Director shall be liable for:

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

- 34.2.2 the liability of Trustee and the Directors under this Deed, the Act or at law should at all times be limited to the assets of the Fund;

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

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<sup>34</sup> Sections 136(1)(b), 143(1) and 144.

<sup>35</sup> Sections 135(1)(f) and 136(1)(b).

## 35 FINANCIAL INFORMATION AND REPORTING REQUIREMENTS

### Reporting requirements

- 35.1 In acting as Trustee of the Scheme the Trustee must comply with the reporting requirements of the Act and the FMC Regulations.<sup>36</sup>

### Accounting records

- 35.2 The Trustee shall ensure that there are kept at all times accounting records that:<sup>37</sup>
- 35.2.1 correctly record the transactions of the Scheme;
  - 35.2.2 enable the Trustee to ensure that the financial statements of the Scheme comply with generally accepted accounting practice and any prescribed requirements; and
  - 35.2.3 enable the financial statements of the Scheme to be readily and properly audited.
- 35.3 In keeping or causing to be kept the accounting records under clause 35.2:<sup>38</sup>
- 35.3.1 the Trustee must have appropriate systems of control and oversight;
  - 35.3.2 the Trustee must keep such accounting records at a suitable location accessible to each Director, the Auditor, and the FMA; and
  - 35.3.3 the Trustee must comply with the applicable provisions of Part 7 of the Act.

### Audit

- 35.4 The Trustee shall ensure that, within 4 months after the end of each Scheme Year:
- 35.4.1 the Scheme's financial statements for that Scheme Year are audited and reported on by the Auditor in accordance with the requirements of the Act<sup>39</sup>; and

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<sup>36</sup> These include:

- (a) sections 147, 149 to 151, 167 and 168 of the Act and regulations 94 to 98 – reports to FMA including as to pricing errors, SIPO limit breaks and related party transactions;
- (b) section 96 of the Act and regulations 62 and 63 – Annual Reports;
- (c) section 461A – Financial Statements; and
- (d) section 100 of the Act and regulations 69 and 71 – Annual Confirmations.

<sup>37</sup> Section 455.

<sup>38</sup> Sections 455 and 456.

<sup>39</sup> Section 461D.

- 35.4.2 those financial statements, together with the Auditor's report on the financial statements, are delivered to the Registrar of Financial Service Providers for lodgement<sup>40</sup>.

#### **Auditor**

- 35.5 A person or firm selected by the Trustee must be appointed Auditor of the Scheme PROVIDED THAT such person or firm is a Qualified Auditor and meets the requirements of Relevant Law.

### **36 RELATED PARTY BENEFITS**

- 36.1 Subject to Clause 36.2, the Trustee (and any investment manager, administration manager or other person to whom the Trustee has contracted out some or all of its functions as manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 36.2 Clause 36.1 does not apply to a transaction or series of transactions if one of the following applies and the Trustee (with the consent of the Licensed Independent Trustee) certifies to that effect:
- 36.2.1 the transaction or series of transactions are in the best interests of the Members;  
or
  - 36.2.2 section 174 of the Act applies to the transaction or transactions or all Related Party Benefits to be given; or
  - 36.2.3 the transaction or series of transactions is or are approved by or contingent on approval by a Special Resolution of the class of Members affected or potentially affected by the transaction or transactions.
- 36.3 Subject to Relevant Law, the Trustee (or any person to whom the Trustee has contracted out some or all of its functions as a manager) must not acquire any new In-House Asset if, as a result of the acquisition, the Scheme would have, or increase, an In-House Asset ratio of 5% or more in relation to any Related Party or Member.<sup>41</sup>

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<sup>40</sup> Section 461H.

<sup>41</sup> Section 176.

**PART 8: GENERAL****37 PAYMENT OF DUTY OR TAX**

- 37.1 If any estate, succession, probate or other duty or any other form of tax shall be payable in respect of any benefit due to any person under the Scheme, then the Trustee may deduct the amount of each duty or tax (including any interest that may be payable) from such benefit and account for it to the proper authorities before paying any such benefit or any portion of such benefit to the person entitled and may if necessary postpone payment of such benefit until such duty or tax and any interest has been paid or provided for to the satisfaction of the Trustee.

**38 MEETINGS**

- 38.1 When required by Relevant Law, the Trustee shall call a meeting of Members in the manner and on the basis set out in the Act and the FMC Regulations. A meeting of Members shall be conducted in accordance with Relevant Law.

**39 CONTRACT OF SERVICE NOT AFFECTED**

- 39.1 Nothing contained in this Deed, whether express or implied, shall:
- 39.1.1 in any way restrict the right of Fire and Emergency to determine or suspend the employment of any Member; or
  - 39.1.2 in any action brought against Fire and Emergency by or in respect of an employee (whether or not a Member) affect or extend the employee's contract of service with Fire and Emergency in any way or be used in any way as a ground for awarding damages or increasing any award of damages or for conferring any right whatsoever.

**40 UNCLAIMED MONEY**

- 40.1 Where any money or benefit, or any sum, is payable and owing but has not for the period of two years been collected and remains unclaimed that sum shall be credited to Reserve Fund B of the Scheme.

**41 NO REVERSION TO FIRE AND EMERGENCY**

- 41.1 All moneys contributed by Fire and Emergency shall cease to be the property of Fire and Emergency and in no event shall any part of the Fund be paid to or revert to Fire and

Emergency (or its assigns or any liquidator or receiver of them) except that any prepayments of contributions by Fire and Emergency in respect of a particular Member may be repaid or paid from that Member's benefit, and notwithstanding anything contained in this Deed no amendment shall be made to this Deed which would have the effect of authorising any such payment or reversion without the prior written consent of the FMA.

## **42 DISPUTES**

- 42.1 If any dispute or doubt arises as to the interpretation of any of the provisions of this Deed or the rights of any Member or other person, the ruling of the Trustee on such dispute or doubt shall be absolute and final. This does not limit the rights of either party to proceedings in the High Court of New Zealand.

## **43 AMENDMENTS TO THIS DEED**

- 43.1 Subject to clause 41 and the Act<sup>42</sup>, and provided always that no amendment shall result in any provision of paragraphs (a) to (f) in clause 14 of Schedule 8 to the Public Service Act 2020 ceasing to apply to the Scheme, Fire and Emergency and the Trustee may at any time by deed executed by Fire and Emergency and the Trustee amend all or any of the provisions of this Deed.

## **44 WINDING UP OF THE SCHEME**

- 44.1 Unless the Trustee determines otherwise, the Scheme shall be wound up if an act is passed to dissolve Fire and Emergency (other than for the purpose of reconstruction or replacement by another statutory body or bodies) or if Fire and Emergency and/or the Trustee resolves to wind up the Scheme. As from the effective date of such wind-up (**Wind-Up Date**), which shall be determined by Fire and Emergency and/or the Trustee but shall not be earlier than six months after the date of such act or resolution, the following provisions shall apply:

- 44.1.1 no further benefits shall be payable pursuant to this Deed except any which became due prior to the Wind-Up Date;
- 44.1.2 no further contributions shall be payable pursuant to this Deed except any which became due prior to the Wind-Up Date;
- 44.1.3 the Trustee shall convert into cash the investments comprising the Fund;

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<sup>42</sup> Section 139.

- 44.1.4 any amounts received by the Trustee pursuant to the provisions of this clause shall be paid or applied by the Trustee to or for the benefit of all persons for whom benefits were secured pursuant to this Deed immediately prior to the Wind-Up Date and in such proportions as the Trustee shall determine to be equitable; and
  - 44.1.5 if any person dies before receiving the whole of the benefit to which that person is entitled under this clause then the remainder of the benefit in respect of that person shall be held by the Trustee in accordance with clause 16.5.
- 44.2 Without limiting clause 44.1, if the Scheme is wound up the Trustee shall comply with the requirements of the Act.<sup>43</sup>

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<sup>43</sup> Sections 212 and 213.

**EXECUTION AND DATE**

Executed as a deed.

Date: 22 February 2024


**Signed for and on behalf of Fire and  
Emergency New Zealand by:**

Attorney's signature

BRETT PATRICK DUNNE

Attorney's full name (please print)

In the presence of:



Witness signature

Nicola Megan Daly

Full name (please print)

Legal Counsel


Occupation (please print)

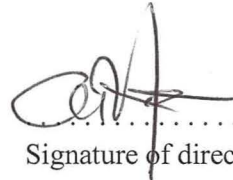
Level 7, 42-52 Willis St, Wellington.

Address (please print)

FireSuper Trustee Limited by:

  
.....  
Signature of director

  
.....  
Name of director (print)


  
.....  
Signature of director

  
.....  
Name of director (print)

## Certificate of non-revocation of power of attorney

I, **Bryan Patrick Dunne**, of Wellington, **Deputy Chief Executive Office of the Chief Executive**, certify that:

- 1 By deed dated **30 June 2023**, Fire and Emergency New Zealand appointed, as its attorneys, the persons then from time to time holding certain offices within Fire and Emergency New Zealand (such offices being specified in the said deed), to execute on its behalf any of the following documents (and documents that are incidental to or give effect to the following), on the terms and subject to the conditions set out in the said deed:
  - 1.1 the sale, disposal or purchase of land;
  - 1.2 the leasing or licensing of land (whether such lease or licence is registered or unregistered and whether Fire and Emergency is the landlord, tenant, licensor or licensee);
  - 1.3 the renewal, surrender, variation, sublease, sublicence, transfer or assignment of a lease or a licence;
  - 1.4 the caveating of land (and withdrawals of caveat and caveator's consents);
  - 1.5 the grant, creation, variation, surrender, discharge, revocation or extinguishment of an easement, covenant or encumbrance;
  - 1.6 the merger of any estate or interest in land;
  - 1.7 the subdivision or amalgamation of land (including boundary adjustments);
  - 1.8 the creation of new land titles;
  - 1.9 a service agreement, management agreement, transfer arrangement or facilities deed relating to any response asset or other facility located on any land;
  - 1.10 the review, variation or adjustment of any rent, fee or other amount payable under any of the documents specified in this Schedule; and
  - 1.11 any document in the form of a deed.
- 2 The said deed was deposited under instrument number **12777081.1** with the Registrar General of Land on **6 July 2023**.
- 3 I hold the above-mentioned office specified in the said deed or my position replaces or succeeds one of the specified offices in the deed.
- 4 I have not received notice of any event revoking the power of attorney.

  
.....  
Signature of **Bryan Patrick Dunne**

**22/2/2024**  
.....  
Date signed