

Trust Deed

Dairy Industry Superannuation Scheme

**Dairy Industry Superannuation Scheme Trustee
Limited**

Table of contents

Parties	1
Background	1
Covenants	2
Operative provisions	2
1 Establishment of Scheme and Fund	2
2 Interpretation and definitions	3
3 Membership.....	10
4 Determination of Salary	12
5 Contributions	12
5A Contributions to Locked-In Accounts.....	15
6 Accounts.....	17
6A Special provisions relating to Locked In Accounts	22
7 Investment of funds	25
8 Appointment and removal of Trustee	26
9 Trustees powers and duties	28
10 Custody	32
11 Related party transactions.....	34
12 Pensioners and Deferred Pensioners	34
13 Retirement benefits	36
14 Benefit on death in Service	36
15 Benefit on Permanent Incapacity before retirement.....	38
16 Group life and Permanent Incapacity Insurance	39
17 Benefit on death of Pensioner	41
18 Benefit on withdrawal or partial withdrawal while still in Service.....	42
19 Benefit on withdrawal from Service	44
20 Benefit for Significant Financial Hardship	46
21 Benefit for first home withdrawal	47
22 Benefit for life-shortening congenital condition	48

23	Individual Members	49
24	Preserved Members	51
25	Transfers	52
26	Leave of absence	54
27	Records and financial reporting.....	56
28	Action following actuarial investigation.....	58
29	Prohibition against alienation	58
30	General.....	60
31	Meetings	61
32	Amendment of this Deed.....	61
33	Winding up.....	62
34	No adverse effect	63
35	Governing law.....	64
	Execution.....	64
Schedule 1	Deferred Pensioners as at the First Consolidation Date	65

Deed dated 28 JULY 2020

Parties

- 1 **Dairy Industry Superannuation Scheme Trustee Limited** a company incorporated in New Zealand and having its registered office in Wellington ('Trustee').

Background

- A The Dairy Industry Superannuation Scheme ('Scheme') was established by a trust deed dated 25 November 1980 ('Original Trust Deed') to provide retirement and other benefits for Employees invited to become members of the Scheme.
- B The Original Trust Deed has been subsequently amended by deeds dated 21 June 1982, 30 August 1984, 11 March 1987, 2 June 1987, 26 September 1989, 11 December 1989, 12 August 1991, 1 July 1994 and 30 September 1994, consolidated and amended by a deed dated 28 May 1996 ('First Consolidating Deed'), amended by a deed dated 31 March 1999, consolidated and amended by deeds dated 21 September 2001, 15 February 2002, and 19 December 2002, amended by a deed dated 19 September 2003, and consolidated and amended by deeds dated 4 September 2007 and 1 April 2008 (together, 'Former Trust Deed').
- C The Former Trust Deed was further amended and consolidated on 6 March 2009, 22 May 2012, 1 April 2013, 10 June 2014, 7 March 2016, and 15 September 2016. The Scheme is currently governed by a consolidated trust deed dated 29 September 2017 ('Governing Trust Deed').
- D As at the date of this Deed, the Scheme is registered under the Financial Markets Conduct Act 2013 ('Act') as a restricted workplace savings scheme.
- E Pursuant to clause 31 of the Governing Trust Deed, the Trustee may by instrument in writing amend or replace any of the provisions of the Governing Trust Deed with the consent of the Financial Markets Authority ('FMA'), which the FMA may only give in the situations outlined in that clause.
- F The Trustee has resolved to amend the Governing Trust Deed by substituting this Deed for the Governing Trust Deed to:
 - a restrict the payment of the benefit on death in service to personal representatives with the restriction coming into effect in two stages based on when the relevant Member joined the Scheme;
 - b provide the Trustee with the ability to provide certain Members with a rebate of expenses incurred under the Crediting Rate Policy where the Trustee can identify the relevant Member did not receive an entitlement to which the expense relates;
 - c make a new life-shortening congenital condition withdrawal benefit available to eligible Members as set out in clause 22 of this Deed;
 - d reflect changes made to the KiwiSaver Act and the Complying Fund Rules on 1 April 2020; and

e make a number of other minor changes the Trustee considers necessary or desirable.

G Prior to executing this Deed:

- a the FMA confirmed to the Trustee that it was satisfied the amendments to be made to the Governing Trust Deed by this Deed do not have a material adverse effect on Members or Pensioners;
- b the Trustee obtained the FMA's consent to the execution of this Deed as required by section 139(1)(a) of the Act and clause 31 of the Governing Trust Deed; and
- c the Trustee obtained a certificate from its solicitor to the effect that the Governing Trust Deed, when amended by this Deed, will comply with sections 135 to 137 of the Act.

Covenants

- i In accordance with the powers of amendment contained in clause 31.1 of the Governing Trust Deed, with effect from the Effective Date the Governing Trust Deed is amended and consolidated by substituting the provisions of the Governing Trust Deed (including the schedule) with all of the provisions of this Deed, so that from the Effective Date the Scheme will be administered in accordance with the provisions of this Deed.
- ii Nothing in this Deed shall prejudice or reduce the accrued rights of any Member of the Scheme as at the Effective Date. From the Effective Date all Members shall be entitled to the benefits under and subject to the terms of the Governing Trust Deed (all of which have now been incorporated in or superseded by this Deed) as amended by this Deed.

Operative provisions

1 Establishment of Scheme and Fund

1.1 Commencement

The Scheme shall be managed and administered in accordance with the provisions of this Deed.

1.2 Fund

The Fund comprises:

- a all moneys not paid in benefits or expenses under the Scheme remaining from moneys already contributed and paid to the Trustee, Custodian, or Sub-Custodian for the purposes of the Scheme, by the Employers and past or present Members (including Members as defined in the Original Trust Deed from time to time);
- b all future contributions by the Employers and the Members;
- c the investments of the Fund and earnings from the investments of the Fund; and
- d all other moneys including reserves in respect of the Scheme now held by the Trustee, Custodian, or Sub-Custodian and any further reserves created or other moneys received by the Trustee, Custodian, or Sub-Custodian for the purposes of the Scheme from time to time.

1.3 Trust

The Fund shall continue to be held by the Trustee, Custodian, or Sub-Custodian upon trust to apply the same for the purposes of paying pensions and other benefits provided by this Deed.

1.4 Purposes of Scheme

The purposes of the Scheme are to provide:

- a retirements benefits directly or indirectly to individuals; and
- b benefits to eligible individuals on ceasing employment or engagement with an Employer (whether immediately or subsequently),

on the terms of this Deed.

2 Interpretation and definitions

2.1 Definitions

In this Deed:

'Account' means in respect of a Member, any Member's Account, Employer's No. 1 Account or Employer's No. 2 Account maintained in respect of that Member as the context so requires or admits.

'Act' means the Financial Markets Conduct Act 2013.

'Actuary' means a person who is a Fellow of the New Zealand Society of Actuaries appointed by the Trustee to advise regarding the Scheme.

'Administration Manager' means a person to whom the Trustee has contracted some or all of the administration of the Scheme.

'Associate' has the same meaning as 'Associated Person' in the Act.

'Auditor' means the auditor of the Scheme appointed by the Trustee in accordance with clause 27.1.

'Balance Date' means 31 March in each year or such other date as determined from time to time by the Trustee for the purpose of determining the end of each financial year of the Scheme.

'Beneficiary' means:

- a in relation to Members who joined the Scheme on or before 31 July 2020:
 - i where the Member's death occurs on or before 31 January 2021 means and includes in relation to a deceased Member one or more of the following nominated beneficiaries (as the Trustee in its absolute discretion shall determine):
 - A any natural person whose name and particulars have been notified in writing (which, for the avoidance of doubt, includes written notification by electronic means) by the Member to the Trustee as being a person whom the deceased Member may wish the Trustee to consider as being a person entitled to any

benefit from the Scheme and in respect of whom the Member has not withdrawn such nomination by notice in writing to the Trustee;

- B the Member's personal representatives;
- C any person who is or was at any time prior to the date of death of the Member (in the sole opinion of the Trustee) wholly or partly maintained by the deceased Member;
- D in the case of a Member who joined the Scheme prior to 1 January 1996, the Member's Spouse or former Spouse; or
- E any other person whom the Trustee in its sole discretion considers the Member would have wished to be considered as a nominated beneficiary; or

ii where the Member's death occurs on or after 1 February 2021, means and includes in relation to a deceased Member, the Member's personal representatives; and

b in relation to Members who join the Scheme on or after 1 August 2020, means and includes in relation to a deceased Member, the Member's personal representatives.

'**Commissioner**' means the Commissioner of Inland Revenue.

'**Complying Fund Rules**' has the same meaning as set out in the Tax Act from time to time.

'**Complying Superannuation Fund**' has the same meaning as set out in the Act from time to time.

'**Contribution Holiday**' means a period of not less than 3 months and not more than 5 years during which the Employee Member shall not be required to contribute as specified in the Member's application for a Contribution Holiday provided that a Member may take successive Contribution Holidays.

'**Crediting Rate Policy**' means the document adopted by the Trustee that:

- a sets out the policies which the Trustee has adopted for allocating investment earnings to Members, and includes any amendments to the document; and
- b is available on the Disclose Register.

'**Crown Contribution**' has the same meaning as in subclause (b) of that definition in the KiwiSaver Act.

'**Custodian**' has the meaning given to that term in clause 10.1.

'**Deed**' means this trust deed.

'**Deferred Pensioner**' means a person who was a Member under this Deed or a person who was 'a Member' as defined under the Original Trust Deed or the Former Trust Deed but has left service and is entitled to a pension on the attainment of age sixty (60).

'**Disclose Register**' means the register for information about an offer in the Scheme.

'**Effective Date**' means 28 July 2020.

'Elective Member' means:

- a a Totally Remunerated Member whose Employer has certified to the Trustee that the Totally Remunerated Member is an Elective Member and in respect of whom such certification has not been withdrawn; provided that
- b in respect of a person who is a Totally Remunerated Member immediately prior to the Employer's certification under subclause a of this definition such person shall not become an Elective Member until the Member has applied in writing to the Trustee to be treated as an Elective Member for the purposes of this Deed and the Member's application has been accepted by the Trustee.

'Employee' means any person in the employment of an Employer and includes a director or other officer of an Employer if the director or other officer is in full time employment of an Employer.

'Employee Member' means a Member who is an Employee provided that any Member who joins the Scheme after 21 September 2001 will be considered to have become a Member on the date they most recently joined the Scheme, and subject to clause 3.3 will not be entitled to have any previous period of membership taken into account when assessing rights, benefits or obligations pursuant to this Deed.

'Employer' means a co-operative dairy company in New Zealand or any subsidiary or associated company, or any other corporate body operating in the dairy industry in New Zealand which may have been or shall hereafter be invited by the Trustee to participate in the Scheme and which shall have agreed in writing with both the Trustee and Fonterra to be bound by the terms of this Deed and where the context permits includes Fonterra to the extent of its involvement with the Scheme and the term **'Employers'** shall bear a corresponding meaning, provided that any entity satisfying the requirements for an Employer immediately prior to 19 December 2002 shall not be required to agree in writing with Fonterra to be bound by the terms of the Deed in order to continue satisfying the requirements of this definition on and after 19 December 2002.

'Employer's No. 1 Account' means in respect of a Member, the Account (if any) maintained in respect of that Member under clause 6.1b.

'Employer's No. 2 Account' means in respect of a Member, the Account (if any) maintained in respect of that Member under clause 6.1c.

'Employer's Superannuation Cash Contribution' has the same meaning as in section RD 65(1) of the Tax Act.

'Equivalent Overseas Retirement Scheme' has the meaning given to that term in the Act.

'First Consolidation Date' means 1 June 1996.

'FMA' means the Financial Markets Authority.

'Fonterra' means Fonterra Co-operative Group Limited, established by the Dairy Industry Restructuring Act 2001, and includes any company resulting from a further amalgamation involving Fonterra Co-operative Group Limited and any other company carrying on business

in succession thereto or in amalgamation therewith and which in each case agrees to be bound by the provisions of this Deed.

'Fund' means the fund originally known as the 'Dairy Industry Superannuation Fund' established under the Original Trust Deed, now being the fund governed by this Deed, as referred to in clause 1.2.

'Governing Requirements' means, to the extent applicable in the context, the Act, the KiwiSaver Act (including the KiwiSaver Rules), the Tax Act and any regulations or notices promulgated under any of those Acts.

'Grandparented Member' means an Employee Member who holds a Locked In Account and either:

- a first held a Locked In Account before 1 July 2019; or
- b first became a member of a Complying Superannuation Fund before 1 July 2019, if the Employee Member holds a Locked In Account as a result of a transfer from a Complying Superannuation Fund,

provided that:

- c with effect from 1 April 2020, this definition will not include any such Employee Member who has given the Trustee notice of the Employee Member's election that this definition does not apply to them; and
- d this definition will not include any such Employee Member with a Locked In Account who makes a congenital condition withdrawal from their Locked In Account in accordance with clause 12B of the KiwiSaver Rules (as provided for in clause 22 of this Deed), or who makes a congenital condition withdrawal from a KiwiSaver Scheme or other Complying Superannuation Fund in accordance with clause 12B of the KiwiSaver Rules).

'Individual Member' means a Member who has ceased to be an Employee and who has elected under clause 19.3bii or 23.1 to leave all or part of his or her benefit in the Scheme.

'Investment Election' means an election made by a Member in accordance with clause 7.1Ab.

'Investment Manager' means a person to whom the Trustee has contracted the investment of some or all of the Fund.

'Investment Portfolio' means any investment portfolio which the Trustee has nominated for the investment of the Fund or any part of the Fund, pursuant to clause 7.1c.

'Insurer' means such insurance company or society with which the Trustee may from time to time insure all or part of the death or Permanent Incapacity benefits provided by this Deed.

'Issuer Obligations' has the same meaning as in the Act.

'KiwiSaver Act' means the KiwiSaver Act 2006.

'KiwiSaver Rules' means the rules contained in the First Schedule of the KiwiSaver Act for the operation of KiwiSaver Schemes as amended by the KiwiSaver Act or by regulations made under the KiwiSaver Act from time to time.

'KiwiSaver Scheme' means a KiwiSaver scheme that is registered on the register of managed investment schemes (as defined in the Act) as a KiwiSaver scheme.

'Licensed Independent Trustee' means a trustee, or director of a sole corporate trustee, whose licence covers the Scheme and who is independent (as defined in the Act).

'Listed Condition' means a congenital condition identified as a life-shortening congenital condition by a regulation made under section 228(1)(mb) of the KiwiSaver Act.

'Locked In Account' means a Member's No 1 Locked In Account and/or Member's No 2 Locked In Account or both as the context requires.

'Locked In Superannuation Accumulation' in respect of a Member has the same meaning as employee's superannuation accumulation in the Tax Act from time to time, which as at the date of this Deed means the total of the Member's superannuation contributions, together with any return on them, to which the Complying Fund Rules apply, and are:

- a Employer's Superannuation Cash Contributions:
- b any Crown Contribution:
- c withheld from the Member's salary or wages (as that term is defined in the Complying Fund Rules),

and includes any other amounts which are by virtue of the provisions of this Deed included in the Member's Locked In Superannuation Accumulation.

'Medical Practitioner' has the same meaning given to that term in the definition set out in schedule 2 of the Social Security Act 2018.

'Member' means any person for whom there is maintained a Member's Account or an Employer's No. 1 Account or an Employer's No. 2 Account.

'Member's Account' means in respect of a Member, the Account (if any) maintained in respect of the Member under clause 6.1a.

'Member's Accumulation' has the same meaning as in the KiwiSaver Act unless otherwise stated.

'Member's No 1 Locked In Account' means in respect of a Member the sub-account (if any) established under clause 6.1aa and which forms part of the Member's Account and which is subject to the Complying Fund Rules.

'Member's No 2 Locked In Account' means in respect of a Member the sub-account (if any) established under clause 6.1bb and which forms part of the Employer's No 1 Account and which is subject to the Complying Fund Rules.

'New Zealand Superannuation Qualification Age' means the age at which persons of the Member's age ordinarily qualify for New Zealand Superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001.

'Non-Listed Condition' means a congenital condition for which the Member has medical evidence to verify that the condition is expected to reduce the life expectancy below the New

Zealand Superannuation Qualification Age for the Member or for persons in general with the condition.

'Pensioner' means a person who as at the date of this Deed is in receipt of, or becomes entitled to receive, a pension under this Deed.

'Permanent Incapacity':

- a in respect of any Employee Member who was a Member on the day before the First Consolidation Date and who has not accepted the Trustee's invitation under clause 16.7, means permanent physical or mental incapacity suffered by the Employee Member that is of such an extent that having regard to the previous employment and other characteristics of that person, the Employee Member is unlikely to have in the opinion of the Trustee acting on medical advice a significant earning capacity in the near future; or
- b in respect of any Employee Member who either became an Employee Member on or after the First Consolidation Date, or has accepted an invitation from the Trustee under clause 16.7, if the definition of 'Permanent Incapacity' (or similar expression) in the policy of group life insurance arranged under clause 16.1 in respect of the Member is different from the definition in paragraph a above, then the definition in the policy shall apply, but otherwise means the definition in paragraph a of this definition.

'Post 31 March 2009 Locked In Member' means a Member who has held a Locked In Account since 1 April 2009.

'Pre-31 March 2009 Locked In Member' means a Member who holds a Locked In Account and has held a Locked In Account since 31 March 2009 or earlier.

'Preserved Member' means a Member who has ceased to be an Employee and who is not an Individual Member or a Deferred Pensioner but for whom there is maintained a Member's Account and/or an Employer's No. 1 Account and/or an Employer's No. 2 Account.

'Register' means the register of Members and Pensioners maintained by the Trustee in accordance with clause 27.3.

'Related Party Benefit' has the meaning given to that term in the Act.

'Retirement Scheme' has the meaning given to that term in the Act.

'Reserve Fund' means the reserve account maintained under clause 6.2.

'Salary' means:

- a in respect of a Member (other than an Elective Member) salary or wages, bonuses, holiday pay, taxable allowances or similar remuneration (but excluding the taxable portion of any retiring allowance or similar payment paid on termination of service) declared or declarable to the Inland Revenue Department and derived from employment with an Employer; or
- b in the case of an Elective Member, the amount nominated by that Member's Employer and advised to the Trustee from time to time as being the total remuneration of the Member for the purposes of this Deed; or

c such other amount fixed by the Trustee in terms of clauses 4.1 to 4.5.

'Scheme' means the Dairy Industry Superannuation Scheme governed by this Deed.

'Significant Financial Hardship' has the meaning given to that term in the KiwiSaver Act.

'SIPO' means the statement of investment policy and objectives for the Scheme.

'Special Resolution' means a resolution approved by no less than 75% of the Members who are entitled to vote and who vote on the question.

'Spouse' includes in relation to any person, the person (if any) whom the Trustee, in its sole and unfettered discretion, regards that person as having been married to, in a civil union with, or living with in a relationship in the nature of a marriage or civil union (including a person of the same sex), immediately before that person's death, whether or not:

- a the relationship was one of legal marriage, civil union or otherwise; and/or,
- b such person was, at the relevant time, married to or in a civil union with any other person.

'Sub-Custodian' has the meaning given to that term in clause 10.2.

'Tax Act' means the Income Tax Act 2007.

'Totally Remunerated Member' means an Employee Member:

- a who is for the time being (or was in respect of any relevant period certified by the Employer) paid on a total remuneration basis;
- b whom the Employer certifies to the Trustee as being, or having been, in respect of any period of membership, paid on a total remuneration basis and in respect of the Member's ongoing membership such certification has not been withdrawn by the Employer; and
- c who agrees in writing with the Trustee to being treated as a 'Totally Remunerated Member' for the purpose of this Deed.

'Totally Remunerated Membership' means the period(s) of membership of the Scheme whilst an Employee Member is a Totally Remunerated Member.

'Trustee' means the trustee of the Scheme appointed in accordance with this Deed from time to time.

2.2 Interpretation

In this Deed unless content otherwise requires:

- a any reference to a statute or regulation shall include any subsequent statutory modification or re-enactment thereof or any Act passed in lieu thereof and for the time being in force and any Regulations made thereunder, and, in the case of the Act, to any framework or methodology issued by the FMA under the Act;
- b words or phrases (other than proper names) appearing with capitalised initial letters are defined terms and shall bear the meanings given to them in this Deed;

- c where a word or expression is defined in this Deed other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- d the singular includes the plural and vice versa and words importing the one gender shall include the other genders;
- e 'expenses' includes taxes, insurance premiums, fees or costs of the Scheme; and
- f references to 'clauses' are to clauses of this Deed.

2.3 Implied terms

Any statutory provisions or other terms implied in this Deed under the Governing Requirements, or otherwise at law apply for so long as they are implied in this Deed despite anything to the contrary in this Deed, and any provision in this Deed that is contrary to any such implied term is void to the extent that it is contrary.

2.4 Frameworks or methodologies

Where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Scheme and relate to any matter which is required by the Act to be provided for adequately in this Trust Deed, the provisions of this Trust Deed dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of the Scheme.

2.5 Requirements reflected in Trust Deed

Where:

- a a provision of this Deed replicates a specific compulsory requirement of the Act (whether or not in its entirety); but
- b such requirement of the Act is subsequently repealed, replaced, or amended, or an exemption or other regulatory relief from that requirement subsequently applies to the Scheme,

the provisions of this Trust Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make the Trust Deed consistent with such amended requirement other than to the extent that doing so would be void under the Act (including section 139 of the Act).

3 Membership

3.1 Invitation

Any Employee may be invited by his or her Employer to become a Member of the Scheme (with or without a Locked In Account) **provided that** every Employee who becomes a permanent employee (as that term is defined in section 147(3) of the KiwiSaver Act) of any Employer who has exempt employer status (obtained by reference to the Scheme) under the KiwiSaver Act, and is aged 18 or over and less than the New Zealand Superannuation Qualification Age, is eligible and shall be invited to be a Member with a Locked in Account,

and any Employee so invited may, on receiving such information as may be required at law from time to time, become an Employee Member of the Scheme by:

- a entering into an agreement in such form as the Trustee may prescribe from time to time to be bound by the provisions of this Deed together with any amendments which may be made thereto;
- b completing a health declaration in a form acceptable to the Trustee; and
- c authorising the Employer to deduct the Employee Member's contributions from the Employee Member's Salary in accordance with this Deed.

3.2 Elective Members

For the purposes of the Scheme:

- a a Totally Remunerated Member may be designated as an Elective Member by his or her Employer, either:
 - i at the time he or she joins the Scheme, or
 - ii subsequently, provided that the Member has applied in writing to the Trustee to be treated as an Elective Member and the Member's application has been accepted by the Trustee; but
- b if an Elective Member's Employer withdraws its certification that the Member is an Elective Member, the Member shall cease to be an Elective Member from the date the Trustee receives notification that such certification is withdrawn and the Member shall elect to contribute any whole percentage between two percent (2%) and six percent (6%) of Salary (inclusive) but if no election is made the Member shall contribute at three percent (3%) of Salary.

3.3 Commencement

Membership shall commence from the first day of the pay period next following acceptance by the Trustee of the Employee as a Member. Subject to clauses 5.10 and 25.5, if the Trustee so determines in respect of any Member joining the Scheme after 19 December 2002, and for such purposes under this Deed as the Trustee considers appropriate, membership shall be deemed to commence on such earlier date as the Trustee may permit in order to reflect membership of any Retirement Scheme or other superannuation scheme to which the Member previously belonged.

3.4 Information

Prior to becoming a Member, each Employee shall be given such information at such times as may be required at law from time to time, including any information required under the Act.

3.5 Changes to eligibility for membership

The conditions required to become a Member must not be changed in a way that expands, or is likely to expand, the classes of people who may become Members without the FMA's consent.

4 Determination of Salary

4.1 Reduction of income

Where due to the amalgamation of dairy companies, ill-health or any other reason that the Trustee may approve, except for a reduction in the hours of work (refer clause 4.4), an Employee Member's income from dairy company employment is permanently reduced, the Trustee may ignore the reduction in income and fix an assumed Salary. The Trustee may from time to time vary the assumed Salary by having regard to any subsequent movement in the awards applying to the position held prior to the reduction in income. Where the Trustee fixes an assumed Salary for an Employee Member by reason of ill health, the consent of the Member shall be required to the assumed Salary fixed by the Trustee or to any variation thereof.

4.2 Leave of Absence

Subject to clause 26.5, when an Employee Member's earnings cease due to leave of absence, military service, etc., for a period not exceeding three (3) calendar months, the Employer will after taking into account the Member's normal hours of work and current award rates fix an assumed Salary for the calculation of contributions and include contributions calculated by reference to such Salary in the monthly remittance to the Trustee under clause 5.11, as an advance to the Member concerned.

4.3 Reimbursement

In the event of any amount paid under clause 4.2 not being recovered directly from the Member by the Employer on return to work, death, retirement or withdrawal of the Member, the Trustee will, provided prompt advice is received, reimburse the Employer and recover the amount due by way of deduction from benefits or any refund of contributions, payable in respect of the Member concerned.

4.4 Advice

Should the rate of Salary of an Employee Member be reduced for any reason, other than a reduction in award rates of the number of hours worked, it is the responsibility of the Employer to promptly advise the Trustee of the reasons for the decrease in earnings.

4.5 Assumed Salary

If it appears to the Trustee that the earnings for any year ending 31 March are abnormally low, the Trustee may fix an assumed Salary for an Employee Member and recover contributions on the basis of such an assumed Salary.

5 Contributions

5.1 Member contributions

With the exception of Elective Members, each Employee Member shall, in respect of any period in which he or she is an Employee Member, by written notice to the Trustee, elect a rate of contribution which shall be any whole percentage between two percent (2%) and six percent (6%) of Salary (inclusive) **provided that** if an Employee Member has a Locked In Account the Employee Member must contribute at the minimum contribution rate set out in

clause 5A.1. Contributions made by an Employee Member to a Locked In Account shall count towards the required contribution rates for Members in this clause 5.1.

5.2 Elective Member contributions

Each Elective Member shall, as from the date of joining the Scheme, or as from the date of becoming an Elective Member, contribute to the Scheme such percentage or amount of the Member's Salary as the Elective Member shall notify in writing to the Trustee but if no percentage or amount is notified shall contribute an amount equal to three percent (3%) of the Member's Salary **provided that** if an Elective Member has a Locked In Account the Elective Member must contribute at the minimum contribution rate set out in clause 5A.1.

Contributions made by an Elective Member to a Locked In Account shall count towards the required contribution rates for Members in this clause 5.2.

5.3 Vary contributions

An Employee Member other than an Elective Member may, by giving the Trustee at least one (1) month's prior written notice amend his or her rate of contribution to take effect from the next 1 April or from such other date in any year as the Trustee in its absolute discretion permits provided that the amended rate of contribution shall be a whole percentage between two percent (2%) and six percent (6%) of Salary (inclusive) **and further provided that** if the Employee Member also has a Locked In Account then the Employee Member must contribute at the minimum contribution rate set out in clause 5A.1.

5.4 Elective Member's variation of contributions

An Elective Member may once in each financial year (or more than once as permitted by the Trustee) on a date or dates determined by the Member's Employer and advised to the Trustee, or in the absence of such determination on the Balance Date or such other date as the Trustee may permit, vary the percentage or amount of the Member's Salary that the Member contributes to the Scheme **provided that** if the Elective Member also has a Locked In Account then the Elective Member must contribute at the rate set out in clause 5A.1.

5.5 Member voluntary contributions

Each Employee Member may make voluntary additional contributions **provided that**:

- a all voluntary additional contributions will be made to the Member's Account unless that Employee Member has given express written instruction to the Employer that the voluntary additional contributions are to be made to the Employee Member's Locked In Account (if any); and
- b other than contributions made pursuant to clauses 5A.7 and 26.5, all voluntary additional contributions must be deducted from the relevant Employee Member's Salary through the payroll of the Member's Employer.

5.6 Employer contributions

In respect of each Member it employs, other than an Elective Member, each Employer shall contribute an amount equal to one point five (1.5) times the Employee Member's contribution made under clause 5.1, or as varied in accordance with clause 5.3. Employer contributions

made in accordance with clause 5A.2 (if any) shall be included in calculating the required contributions from an Employer in accordance with this clause 5.6.

5.7 Employer contributions for Elective Members

Subject to clause 5.8, in respect of each Elective Member it employs, each Employer shall contribute:

- a such percentage or amount of the Member's Salary as the Member and the Member's Employer shall agree and notify in writing to the Trustee in the Member's application for membership of the Scheme or in the Member's application to become an Elective Member **provided that** if the Elective Member has a Locked In Account the Employer shall contribute at the minimum contribution rate set out in clause 5A.2, but
- b if no percentage or amount is notified, four and a half percent (4.5%) of the Member's Salary for so long as the Member remains an Elective Member, until varied in accordance with clause 5.8.

5.8 Variation of Employer contributions for Elective Members

- a An Elective Member and his or her Employer may (and shall if required by the Employer) once in each financial year of the Scheme (or more often if permitted by the Trustee), on a date or dates determined by the Member's Employer and advised to the Trustee (or in the absence of such determination on the Balance Date) or on such other date or dates as the Member's Employer with the consent of the Trustee permits, vary the percentage or amount of the Member's Salary that the Employer contributes to the Scheme to such percentage or amount of the Member's Salary as the Elective Member and the Employer agree **provided that** if the Elective Member has a Locked In Account the Employer shall contribute at the minimum contribution rate set out in clause 5A.2.
- b No variation of the Employer's contribution in respect of an Elective Member shall be effective until notified in writing to the Trustee by the Member's Employer unless otherwise agreed by the Trustee **provided however** that if the Employer advises the Trustee that the Employer and the Member have been unable to agree to such a varied percentage or amount of the Member's Salary that the Employer contributes, the Employer's contribution shall be an amount equal to one point five (1.5) times the Elective Member's contribution up to a maximum Employer contribution of nine percent (9%) of Salary until such time as the Member and the Employer advise the Trustee that agreement has been reached.

5.9 Employer voluntary contributions

Each Employer may make voluntary additional contributions in respect of any Employee Member in the employment of the Employer, or in respect of any other Member or group of Members or Members in general **provided that** such voluntary additional Employer contributions are not made to the Locked In Account (if any) of the relevant Employee Member.

5.10 Transfers from other schemes

Any Employee who becomes a Member and who is entitled to the benefit of a transfer value from any Retirement Scheme or other superannuation scheme of which he or she was

previously a member may contribute that transfer value to the Scheme and the Trustee may accept such transfer value giving such undertakings as may be required by the terms of the transfer as it may determine on the advice of the Actuary **provided that** an Employee Member who has a Locked In Account who was previously a member of another Retirement Scheme or other superannuation scheme shall be able to transfer the amount of their Member's Accumulation in relation to that other scheme (if permitted by that scheme) to the Scheme **and further provided that** any amount transferred to the Scheme which must be subject to the Complying Fund Rules shall only be credited to the Member's Locked In Account (as applicable).

5.11 Monthly remittance of contributions

At the end of each calendar month every Employer shall remit to the Trustee the contributions deducted from the Salary of Employee Members during that month and payments not received by the Trustee by the twentieth (20th) of the following month shall be subject to an interest charge at the rate determined by the Trustee from time to time.

5.12 Reconciliation

As soon as practicable after 1 April in each year, or such other date as the Trustee may from time to time determine and notify all Employers, each Employer shall forward to the Trustee a return reconciling the total contributions of Employee Members for the preceding twelve (12) months with the total of the twelve (12) monthly remittances.

5.13 Contributions of any kind

The Trustee may in its absolute discretion accept contributions from Members (including transfer values) contributed pursuant to any of clauses 5.10, 5A.7, or 25.5 (but, for the avoidance of doubt, not pursuant to any other provision of this Deed) in any form, including cash and assets. Any contributions made in a form other than cash shall be accepted into the Scheme (if at all) at their market value as determined by the Trustee on a case by case basis.

5.14 Priority rules with KiwiSaver

In respect of any Member who joins the Scheme on or after 1 April 2008, or any Member who elects to hold a Locked In Account, where that member is also a member of a KiwiSaver Scheme or a Complying Superannuation Fund (other than this Scheme) any Employer contributions required under this Deed in respect of that Member shall be reduced by any amount the Employer is required to pay to that Member's KiwiSaver Scheme or Complying Superannuation Fund.

5A Contributions to Locked-In Accounts

5A.1 Employee Member contribution

The contribution payable by an Employee Member to his or her Locked In Account must (except during any period in which the Member has been granted a Contribution Holiday) equal 4% of salary (calculated in accordance with the Complying Fund Rules) **provided that** on or after 1 April 2009 and as long as it is not prevented by the Governing Requirements at any time and would not prejudice the Scheme's registration as a Complying Superannuation Fund:

- a the contribution payable by an Employee Member who is also a Pre-31 March 2009 Locked In Member to his or her Locked In Account may be reduced to the minimum percentage of salary permitted by the Complying Fund Rules from time to time (calculated in accordance with the Complying Fund Rules) by the Employee Member giving written notice to his or her Employer; and
- b the contribution by an Employee Member who is also a Post 31 March 2009 Locked In Member to his or her Locked In Account must equal the minimum percentage of salary permitted by the Complying Fund Rules from time to time (calculated in accordance with the Complying Fund Rules).

5A.2 Employer contribution

Each Employer of an Employee Member who has a Locked In Account must make a contribution equal to 4% of an Employee Member's salary (calculated in accordance with the Complying Fund Rules) to the relevant Employee Member's Locked In Account **provided that** any payment additional to the payment of 4% of the relevant Employee Member's salary shall be paid into the Member's Employer's No. 1 Account **and further provided that** on or after 1 April 2009, if:

- a the Member is a Pre-31 March 2009 Locked In Member and elects, pursuant to clause 5A.1a to reduce their contribution to their Locked In Account to the minimum percentage of salary permitted by the Complying Fund Rules from time to time (calculated in accordance with the Complying Fund Rules), the Employer shall contribute the minimum amount prescribed by law in respect of employer contributions required to a Complying Superannuation Fund to the Member's Locked In Account with any Employer contribution in excess of such minimum amount being paid into the Member's No. 1 Account, if permitted by the Complying Fund Rules; or
- b the Member is a Post-31 March 2009 Locked In Member, who pursuant to clause 5A.1b contributes to their Locked In Account at the minimum percentage of salary permitted by the Complying Fund Rules from time to time (calculated in accordance with the Complying Fund Rules), the Employer shall contribute the minimum amount prescribed by law in respect of employer contributions required to a Complying Superannuation Fund (calculated in accordance with the Complying Fund Rules) to the Member's Locked In Account with any Employer contribution in excess of such minimum amount of salary being paid into the Member's No. 1 Account, if permitted by the Complying Fund Rules.

5A.3 Contribution Holiday

An Employee Member who has a Locked In Account may make an application to the Trustee to take a Contribution Holiday. If an Employee Member is granted a Contribution Holiday then any Employer contributions made in respect of that Member pursuant to clause 5A.2 that are not required by law to continue to be paid during the Contribution Holiday shall also be temporarily suspended for the same period as the Contribution Holiday.

5A.4 Allocation of contributions

All contributions paid by or in respect of an Employee Member pursuant to clauses 5A.1 and 5A.2 shall be allocated to the Member's Locked In Account in accordance with this Deed.

5A.5 Immediate vesting

All Employer's Superannuation Cash Contributions paid in respect of a Member who has a Locked In Account and allocated to that Member's Locked In Account shall vest completely in the Member immediately after the contribution is paid.

Exempt employer status

5A.6 Notwithstanding the minimum contribution amounts required under clauses 5A.1 and 5A.2, the combined Employee Member and Employer contributions must always equal or exceed the minimum required for the relevant Employer to obtain or retain exempt employer status under the KiwiSaver Act.

5A.7 Voluntary contributions other than from Salary

In addition to any contributions made pursuant to any other clause of this Deed, each Employee Member who meets the requirements for the payment of a Crown Contribution under the Tax Act may make voluntary additional contributions (from Salary through payroll or otherwise) to his or her Locked In Account, **provided that** voluntary additional contributions pursuant to this clause that are not from Salary through payroll may only be made to the extent (after taking into account any other contributions made by the Employee Member to his or her Locked In Account during the relevant period) necessary to enable the relevant Employee Member to maximise the amount of that Crown Contribution.

6 Accounts

6.1 Maintain Accounts

The Trustee shall maintain in respect of the Scheme:

a Member's Account

A Member's Account in the name of each Employee Member, Individual Member and where applicable a Preserved Member, to which shall be allocated contributions made by the Member in terms of clauses 5.1 to 5.5 (inclusive) as applicable, plus:

- i any Crown Contribution paid by the Commissioner to the Trustee in respect of an Employee Member who has a Locked In Account and who meets the requirements for the payment of that Crown Contribution under the Tax Act;
- ii any expense rebate calculated in accordance with clause 6.6; plus
- iii any other amount or amounts transferred into or held in this Account as provided for in this Deed,

together with interest at the rate declared by the Trustee and transferred from the Reserve Fund. The credit in each Member's Account shall be applied in accordance with the terms and conditions of this Deed.

aa Member's No 1 Locked In Account

As part of an Employee Member's Member's Account, a sub-account to be known as the Member's No 1 Locked In Account in respect of each Member who is invited by his or

her Employer, and agrees, to have a Locked In Account to which shall be credited, subject to the Complying Fund Rules:

- i contributions made by the Member in terms of clause 5A;
- ii any Crown Contribution credited to the Member's Account under clause 6.1a;
- iii any relevant amount which has been transferred from another scheme which is required as a term of transfer to be subject to the Complying Fund Rules;
- iv any voluntary contributions directed by the Member to be made to the Member's No 1 Locked-In Account in terms of clause 5.5; plus
- v any expense rebate calculated in accordance with clause 6.6,

together with interest specified at the rate declared by the Trustee as being the appropriate proportionate return in respect of amounts held in the Member's No 1 Locked In Account as required under the Complying Fund Rules and transferred from the Reserve Fund.

The credit in each Employee Member's No 1 Locked In Account shall be applied in accordance with the terms of this Deed and the Complying Fund Rules. To the extent that there is any inconsistency between the Deed and the Complying Fund Rules, the Complying Fund Rules shall apply.

b Employer's No. 1 Account

An Employer's No. 1 Account in the name of each Employee Member and where applicable a Preserved Member who had an Employer's No. 1 Account immediately before becoming a Preserved Member, to which shall be allocated:

- i any contributions made in respect of the Member by his or her Employer in terms of clauses 5.6 to 5.9 (inclusive) or 5A.2 less any amount of tax payable on the Employer contribution in accordance with the Tax Act;
- ii any expense rebate calculated in accordance with clause 6.6; plus
- iii any other amount or amounts transferred into or held in this Account as provided for in this Deed,

together with interest at the rate declared by the Trustee and transferred from the Reserve Fund. The credit in each Employer's No. 1 Account shall be applied in accordance with the terms and conditions of this Deed.

bb Member's No 2 Locked In Account

As part of an Employee Member's Employer's No 1 Account, a sub-account known as the Member's No 2 Locked In Account in respect of each Member who is invited by his or her Employer, and agrees to have a Locked In Account to which shall be credited, subject to the Complying Fund Rules:

- i contributions made in respect of the Member by his or her Employer in terms of clause 5A.2 or any amount paid by an Employer in accordance with the Complying

Fund Rules and the Tax Act less any amount of tax payable on the Employer contribution in accordance with the Tax Act; plus

- ii any other amount which has been transferred from another scheme which is required as a term of transfer to be subject to the Complying Fund Rules (not otherwise held in the Member's No 1 Locked In Account); plus
- iii any expense rebate calculated in accordance with clause 6.6,

together with interest specified at the rate declared by the Trustee as being the appropriate proportionate return in respect of amounts held in the Member's No 2 Locked In Account as required under the Complying Fund Rules and transferred from the Reserve Account.

The credit in each Employee Member's No 2 Locked In Account shall be applied in accordance with the terms of this Deed and the Complying Fund Rules. To the extent that there is any inconsistency between the Deed and the Complying Fund Rules, the Complying Fund Rules shall apply.

c Employer's No. 2 Account

Where applicable an Employer's No. 2 Account in the name of each Member who was a Member as at 1 April 1990, in which shall be held:

- i any amount transferred to the Employer's No. 2 Account consequent upon an election by the Member under clause 3.4 of the Original Trust Deed;
- ii any expense rebate calculated in accordance with clause 6.6; plus
- iii any other amount required to be allocated to such Account in terms of this Deed,

and interest shall be allocated at the rate declared by the Trustee and transferred from the Reserve Fund.

6.2 Reserve Fund

The Trustee shall maintain a Reserve Fund to which shall be credited:

- a any income, capital gains, upward revaluations of investments or receipts which are not directed in accordance with this Deed to be credited to Member's Accounts and Employer's No. 1 and Employer's No. 2 Accounts and to which there shall be debited income tax, capital losses and downward revaluations of investments;
- b any death benefits for which beneficiaries cannot be ascertained by the Trustee within a period of six (6) years from the date of death of the Member **provided that** this provision shall not apply to a Locked In Account if precluded by the Complying Fund Rules;
- c all amounts forfeited under clause 19.4 and all benefits forfeited in terms of clauses 29.3, 29.4 or 30.7 and not applied for the benefit of dependants **provided that** this provision shall not apply to a Locked In Account if precluded by the Complying Fund Rules; and
- d other money not required for payment of benefits from the Scheme.

6.3 Application of Reserve Fund

Subject to the provisions of this Deed, the Reserve Fund or such part as the Trustee may decide may be applied from time to time for any of the following purposes:

- a allocating interest to Members' Accounts and Employers' No. 1 and Employers' No. 2 Accounts;
- b meeting any expenses of the Scheme;
- c meeting all or part of the Employers' contributions to the Scheme;
- d increasing all retirement benefits on an equitable basis;
- e providing benefits other than retirement benefits (being incidental or secondary benefits) for all Members of the Scheme on an equitable basis;
- f meeting the cost of any expense rebate calculated in accordance with clause 6.6,

provided that if there are insufficient funds in the Reserve Fund to meet the expenses of the Scheme or if the Scheme or any Investment Portfolio has incurred a negative earning rate at the end of any accounting period then the Trustee may determine that such expenses or negative earnings be debited to Members' Accounts and Employers' No. 1 and Employers' No. 2 Accounts in proportion to these account balances at the end of that accounting period, or in the case of a negative earning rate incurred in respect of an Investment Portfolio then on such proportionate basis as the Trustee considers equitable having regard to any relevant Investment Elections.

6.4 Interest Rates

a Calculation of declared interest rates

The Trustee shall calculate interest rates in respect of the Scheme's Investment Portfolios in accordance with the Crediting Rate Policy which provides for:

- i a monthly interest rate at the end of each month based on:
 - A where the Investment Portfolio does not invest in a managed fund:
 - the Investment Portfolio's actual return (gross of tax and investment management fees); less
 - a provision for tax, fees and expenses; and
 - B where the Investment Portfolio invests in a managed fund, the change in the unit price of the managed fund in which the Investment Portfolio invests,

provided that the interest rates for March are interim rates which are revised once the Scheme's audited financial statements have been prepared; and

- ii a final interest rate based on the Scheme's audited financial statements to 31 March, being:
 - A the Scheme's earnings for the year to 31 March, net of tax and expenses; plus

- B the difference between the amounts that the Trustee determines are required to be held in the Reserve Account and amounts held to meet the costs of the Scheme's remaining pensioners,

the final interest rate for each Investment Portfolio is determined by comparing the amount calculated by clause 6.4(a)(ii) to the amount credited to Members' Accounts and Employer's No. 1 and Employer's No. 2 Accounts through the application of the monthly interest rates determined during the year. The March interest rate is adjusted retrospectively to allocate the available Scheme's earnings and expenses to Members' Accounts and Employer's No. 1 and Employer's No. 2 Accounts.

b Calculation of interim interest rates

In addition to the declared monthly and final crediting rates, the following interim rates are applied for the period between declared rates:

- i a weekly crediting rate (applied for the period between declared monthly crediting rates); and
- ii a daily rate (applied for the period between declared weekly crediting rates) which may be nil calculated in accordance with the Crediting Rate Policy.

c Allocation of interest rates

The Trustee shall allocate interest (whether positive, zero or negative) to each Member's Account, Employer's No. 1 Account and Employer's No. 2 Account having regard to:

- i the investment performance of the Investment Portfolio nominated by the relevant Member pursuant to clause 7.1A;
- ii in the case of any Member's Account, Employer's No. 1 Account or Employer's No. 2 Account that is not subject to any operative Investment Election at the time, the investment performance of one or more of the Investment Portfolios as determined by the Trustee; and
- iii at any time where there is no Investment Portfolio nominated by the Trustee, the investment performance of the Fund.

For the purposes of this clause interest shall be credited at such time as the Trustee, in its absolute discretion, determines but no less frequently than annually at the Balance Date, except in the event of all or part of the Scheme being wound up under clause 33 or except in the event of a benefit being payable to a Member, in which case interest shall be allocated to that person, or the affected person's accounts on the date the benefit becomes payable or the date of the winding up, as applicable.

6.5 Totally Remunerated Members

Notwithstanding the provisions of clause 6.4, in respect of a Totally Remunerated Member who has completed less than five (5) years' membership of the Scheme the rate at which interest would be otherwise allocated to the Member's Account, Employer's No. 1 Account and Employer's No. 2 Account of the Totally Remunerated Member shall be adjusted by an amount (if any) determined by the Trustee on the recommendation of the Actuary as

necessary to ensure that the rate at which interest is allocated to the Member's Account, Employer's No. 1 Account and Employer's No. 2 Account of members who are not Totally Remunerated Members in respect of any accounting period would not be any less or the adjustments to those Accounts under clause 6.3 any greater in respect of the appropriate accounting period, than if clause 19.2c did not apply to the Totally Remunerated Members.

6.6 Account expenses

The Trustee shall be entitled at its sole discretion at any time and from time to time to waive or reduce any expenses attributable to insurance premiums calculated in accordance with the Crediting Rate Policy and included in the declared interest rate either generally, or in relation to a Member or category of Member, who at any time is not covered by an insurance policy obtained by the Trustee pursuant to clause 16. Any expense reductions shall be applied by rebate to be effected by payment to or for the credit of the relevant Member's Member Account and Employer's No. 1 and Employer's No. 2 Account, immediately after the allocation of interest in accordance with clause 6.4 or else effected on such other basis as the Trustee determines.

6A Special provisions relating to Locked In Accounts

6A.1 Withdrawal of funds

- a Except as provided in clauses 6A.1c, 14, 20, 21, and 22, a Grandparented Member shall not be paid a benefit from the Member's Locked In Account until:
 - i the later of:
 - A the date on which the Member reaches the New Zealand Superannuation Qualification Age; or
 - B the earliest of:
 - the date that is 5 years after the day on which the Member first became a member of a KiwiSaver Scheme; or
 - the date that is 5 years after the day, under section 85 of the KiwiSaver Act, on which the Commissioner first received a contribution for a KiwiSaver Scheme in relation to the Member; or
 - the date that is 5 years after the day on which the Member first became a member of a Complying Superannuation Fund; or
 - ii the date on which the Member first makes a congenital condition withdrawal in accordance with clause 12B of the KiwiSaver Rules (regardless of whether that withdrawal is made from the Complying Superannuation Fund section of the Scheme as provided for in clause 22 of this Deed or is made from a KiwiSaver Scheme or another Complying Superannuation Fund in accordance with clause 12B of the KiwiSaver Rules).

- b Except as provided in clauses 6A.1c, 14, 20, 21, and 22, an Employee Member who is not a Grandparented Member shall not be paid a benefit from the Member's Locked In Account until:
 - i the date on which the Member reaches the New Zealand Superannuation Qualification Age; or
 - ii the date on which the Member first makes a congenital condition withdrawal in accordance with clause 12B of the KiwiSaver Rules (regardless of whether that withdrawal is made from the Complying Superannuation Fund section of the Scheme as provided for in clause 22 of this Deed or is made from a KiwiSaver Scheme or another Complying Superannuation Fund in accordance with clause 12B of the KiwiSaver Rules).
- c An Employee Member may withdraw the Locked In Superannuation Accumulation from the Member's Locked In Account at any time on or after the applicable date referred to in clause 6A.1a (in respect of a Grandparented Member), or the applicable date referred to in clause 6A.1b (in respect of any other Employee Member) **provided that** the amount of any Crown Contribution held in a Member's Locked In Account may only be withdrawn when the Trustee has received any information required to be provided by a Member in accordance with the Complying Fund Rules and can confirm the amount of Crown Contribution owing to the Member is correct. A Member shall not be obliged to withdraw from the Scheme on becoming eligible for a benefit under clauses 6A.1a or 6A.1b (as applicable), unless the Member ceases to be eligible to be a Member of the Scheme, does not join the Scheme as an Individual Member and does not want his or her Locked In Superannuation Accumulation transferred to another Complying Superannuation Fund or KiwiSaver Scheme in accordance with the Complying Fund Rules.
- d The Trustee must comply with the provision of any enactment which requires it to release funds from a Locked In Account in accordance with that enactment including a requirement by order of any Court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

6A.2 **Transfer of Locked In Superannuation Accumulation**

The Trustee shall transfer all or part of an Employee Member's Locked In Superannuation Accumulation to another Complying Superannuation Fund or to a KiwiSaver Scheme, if a Member with a Locked In Account requests such a transfer and in the case of a KiwiSaver Scheme, the requirements of the KiwiSaver Act are met and in the case of a Complying Superannuation Fund the Locked In Superannuation Accumulation would be subject to Complying Fund Rules if transferred. The Trustee shall give any notices required to be given in respect of such transfer as required under the Complying Fund Rules.

6A.3 **Member ceases to be eligible**

If an Employee Member does not request a transfer in accordance with clause 6A.2 and the Member:

- a ceases to be eligible to be a Member of the Scheme; or

- b may not remain an Employee Member for any reason except a transfer in accordance with clauses 6A.2 or 6A.4, or a withdrawal of all or part of the Locked In Superannuation Accumulation in accordance with the Complying Fund Rules,

the Trustee shall transfer the Employee Member's Locked In Superannuation Accumulation to a KiwiSaver Scheme.

6A.4 **FMA revokes approval**

If the FMA revokes approval of the Scheme as a Complying Superannuation Fund and an Employee Member's Locked In Superannuation Accumulation is not transferred to another Complying Superannuation Fund and is not subject to Complying Fund Rules the Trustee shall transfer the Employee Member's Locked In Superannuation Accumulation to a KiwiSaver Scheme.

6A.5 **Commissioner shall be notified**

The Trustee shall notify the Commissioner if an Employee Member's Locked In Superannuation Accumulation must be transferred in accordance with clause 6A.3 or 6A.4 and the notification must include any information required to be supplied to the Commissioner under the Complying Fund Rules.

6A.6 **Transfer in accordance with KiwiSaver Act**

Where the Trustee has given a notification pursuant to clause 6A.5 the Trustee shall transfer the Employee Member's Locked In Superannuation Accumulation in accordance with section 57(1)(d) of the KiwiSaver Act.

6A.7 **Member must continue to hold**

A Member with a Locked In Account must continue to hold a Locked In Account unless otherwise provided in clauses 6A.1 to 6A.6 or clause 14 of this Deed.

6A.8 **Benefits**

Notwithstanding any other provision in this Deed an Employee Member's Locked In Superannuation Accumulation may only be used to fund benefits that are calculated only by reference to the amount of that accumulation.

6A.9 **Clause 6A prevails in the event of inconsistency with other clauses in this Deed**

Subject to the Governing Requirements, in the event of any inconsistency between the provisions of this clause 6A and any other clause in this Deed, this clause shall, in respect of an Employee Member who holds a Locked In Account, prevail to the extent of the inconsistency in respect of that Employee Member and that Member's Locked In Accounts.

6A.10 **Complying Fund Rules shall prevail**

In the event of an inconsistency at any time between the provisions of this clause 6A and the Complying Fund Rules in respect of a Locked In Account or in respect of a Crown Contribution and its application or otherwise, the Complying Fund Rules shall prevail to the extent of the inconsistency.

7 Investment of funds

7.1 Investment

- a The Trustee must ensure that there is a SIPO for the Scheme which complies with the Act. Subject to the requirements of the Act, the Trustee may amend the SIPO from time to time by resolution of its directors.
- b The Trustee and any Investment Manager shall invest the Fund in accordance with the SIPO, the Act, and the provisions of the Trustee Act 1956 as to the investment of trust funds.
- c Without limiting the powers of the Trustee to invest the Fund, the Trustee may:
 - i nominate such number of Investment Portfolios (if any) as it may from time to time decide for the investment of the Scheme or any part of the Scheme subject to such terms and conditions as the Trustee may formulate and set out in the SIPO for the Scheme; and
 - ii subject to the Governing Requirements, merge, vary, close or terminate any such Investment Portfolio at any time by written notice to affected Members.

7.1A Investment Election

- a The Trustee shall from time to time, as it considers appropriate, notify each Member of the Investment Portfolios which are at that time utilised by the Trustee for the investment of the Fund or any part of the Fund.
- b The Trustee shall invite each Member to give the Trustee an Investment Election, in such form and subject to such terms and conditions as may be prescribed from time to time by the Trustee in respect of amounts in the Member's Account, Employer's No. 1 Account and Employer's No. 2 Account together with (as applicable) any amounts accruing to any of those accounts (including future contributions to be made to the Fund by the Member and interest allocated to those accounts) during the period in which the Investment Election is operative.
- c The Investment Election shall nominate:
 - i a single Investment Portfolio or if the Trustee so permits, Investment Portfolios; and
 - ii a percentage proportion in respect of each Investment Portfolio so that the total of the percentage proportions is 100%.
- d The purpose and effect of an Investment Election is to direct the Trustee for the purposes of clause 6.4 that the investment performance of the nominated Investment Portfolio or Investment Portfolios shall be adopted by the Trustee in determining the rate or rates at which interest shall be allocated to a Member's Account and Employer's No. 1 Account and Employer's No. 2 Account (as applicable) in relation to the period during which the relevant Investment Election is operative.
- e A Member may with the consent of the Trustee and in such form and subject to such terms and conditions as may be prescribed from time to time by the Trustee, vary or replace an Investment Election.

- f For the purposes of this clause 7.1A, the term 'Member' includes any Employee who applies to become a Member during any period in which a nomination by the Trustee under clause 7.1 is operative.
- g Notwithstanding anything to the contrary in this clause 7.1A, the amount of the Crown Contribution, to the extent it comprises a tax credit under Subpart MK of the Tax Act in respect of the Member, must be allocated across the Investment Portfolios in the manner permitted by the Tax Act.

7.2 Action on limit breaks

- a The Trustee must take any action required by the Act if a limit break (within the meaning of section 167 of the Act) or material pricing error or non-compliance (in terms of section 168 of the Act) occurs.
- b For the purposes of section 168 of the Act and regulation 99 of the Financial Markets Conduct Regulations 2014, the minimum reimbursement or compensation level for pricing errors or non-compliance is an amount determined on a case-by-case basis by the Trustee based on relevant industry guidelines which take into account the size, type, and /or frequency of the issue and the costs of reimbursement or compensation.

8 Appointment and removal of Trustee

8.1 Number of Trustees

- a Subject to paragraph c, the Scheme shall have a sole Trustee that meets the following requirements:
 - i it is a body corporate incorporated and registered in New Zealand;
 - ii subject to paragraph b, it has not more than seven directors, at least one of whom is a Licensed Independent Trustee; and
 - iii the directors of the body corporate appointed by the board of the body corporate are constituted as follows (provided that at least one director must be a Licensed Independent Trustee):
 - A four (4) representatives appointed on recommendation of the Employers, one of whom will be a Licenced Independent Trustee;
 - B one (1) member representing managers of contributing factories on the recommendation of The New Zealand Institute of Food Science & Technology Incorporated;
 - C one (1) member representing workers of contributing factories appointed by the Trustee on the recommendation of the New Zealand Dairy Workers Union; and
 - D one (1) member representing contributing administrative, clerical, transport and trading employees appointed by the Trustee on the recommendation of one or more of the Employers identified by the Trustee as being appropriate.

Dairy Industry Superannuation Scheme Trustee Limited is the Trustee of the Scheme as at the Effective Date.

- b The continuing directors may act upon the office of a director becoming vacant, provided that:
 - i the process for appointing a replacement director has commenced;
 - ii if the office of Licensed Independent Trustee becomes vacant, clause 8.5 is complied with; and
 - iii a quorum is present at each meeting of directors of:
 - A if there are seven directors, at least five (5) directors; or
 - B if there are less than seven directors, more than 50% of the Directors,
 and in either case at least one of such directors must be a director appointed under clause 8.1aiiiA .
- c If at any time the Trustee ceases to hold office, the Employers may in accordance with clause 8.5 appoint:
 - i not more than seven individual trustees, at least one of whom is a Licensed Independent Trustee; or
 - ii a body corporate incorporated and registered in New Zealand that has not more than seven directors, at least one of whom is a Licensed Independent Trustee.

8.2 Removal and resignation of Trustee and Licensed Independent Trustee

- a The Trustee or Licensed Independent Trustee shall cease to hold office if:
 - i the Trustee is substituted by the High Court under section 209 of the Act;
 - ii in the case of the Licensed Independent Trustee:
 - A the Licensed Independent Trustee's licence expires or is cancelled under Part 6 of the Act; or
 - B the Licensed Independent Trustee is removed by the FMA if it is satisfied that the Licensed Independent Trustee no longer meets the requirements in section 131(1)(d) of the Act.
- b In addition, subject to clause 8.3, the office of Trustee shall become vacant if:
 - i the Trustee resigns office as Trustee by notice in writing addressed to the Employers;
 - ii an order is made or an effective resolution is made for its winding up, or it is placed in liquidation or receivership;
 - iii the Trustee is removed from office by the Employers by notice in writing addressed to the Trustee, the Employers first having formed the opinion the Trustee is unable to perform the duties of a Trustee or that it is not in the best interests of the Members for the person to continue as a Trustee; or

- iv in the opinion of the Employers communicated in writing, the Trustee becomes for any reason unable to perform the duties of a trustee.
- c Subject to clause 8.3, the office of Licensed Independent Trustee shall also become vacant if:
 - i the Licensed Independent Trustee resigns from office as Licensed Independent Trustee by notice in writing addressed to all other directors of the Trustee; or
 - ii the Licensed Independent Trustee is removed by the board of the Trustee on recommendation of the Employers.

8.3 Restrictions on removal and resignation

A Licensed Independent Trustee may not:

- a be removed or resign under clause 8.2b or 8.2c unless:
 - i all functions and duties of the position have been performed; or
 - ii a new Licensed Independent Trustee has been appointed, and accepted the appointment, in the previous Licensed Independent Trustee's place; or
 - iii the High Court consents; or
- b be removed without the FMA's consent.

8.4 Effect of removal

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.

8.5 New Trustee appointment

The Employers may appoint a new Trustee or Trustees who meet the requirements of clause 8.1a or 8.1c (as applicable) on any vacancy in office arising. If the Scheme does not, for any reason, have a Licensed Independent Trustee, the FMA must appoint a temporary Licensed Independent Trustee in accordance with the Act.

9 Trustees powers and duties

9.1 Administration

The Trustee shall manage and administer the Fund according to the provisions of this Deed and the Act, and subject to the terms of this Deed (and, in particular, clause 30.10) may pay out of the Fund all expenses of and incidental to the management and administration of the Fund and the carrying out of the provisions of this Deed (including any fees or expenses payable to an Investment Manager or Administration Manager under the terms of the relevant entity's appointment, or the remuneration of the directors of the Trustee).

9.2 Trustee deemed to be manager of the Scheme

In accordance with the Act, the Trustee is deemed to be the manager of the Scheme. The Trustee is appointed to manage the Scheme and is responsible for performing the functions

and the duties of a manager of a managed investment scheme under the Act. In particular, the Trustee is responsible for performing the following functions:

- a offering interests in the Scheme;
- b issuing interests in the Scheme;
- c managing the Scheme property and investments; and
- d administering the Scheme.

9.3 Trustee's general duties

The Trustee must:

- a act honestly in acting as a manager;
- b in exercising any powers or performing any duties as a manager:
 - i act in the best interests of the Members; and
 - ii treat the Members equitably;
- c not make use of information acquired through being the manager in order to, and ensure that no director or senior manager of the Trustee makes use of information acquired through being a director or senior manager of the Trustee in order to:
 - i gain an improper advantage for itself, himself, herself, or any other person; or
 - ii cause detriment to the Members; and
- d not make improper use of its position as manager, and ensure that no director or senior manager of the Trustee makes improper use of their position as a director or senior manager of the Trustee, to gain, directly or indirectly, an advantage for itself, himself, herself, or any other person or to cause detriment to Members.

9.4 Compliance with relevant requirements

The Trustee must carry out its functions as manager of the Scheme in accordance with this Deed, the SIPO, and all other Issuer Obligations.

9.5 Trustee's liability

For avoidance of doubt, the Trustee has the same duties and liability in the performance of its functions as manager as it has in the performance of its functions as trustee of the Scheme (except to the extent that those duties are altered by or inconsistent with the Act).

9.6 Standard of care

In exercising any powers or performing any duties:

- a the Licensed Independent Trustee of the Scheme must exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances;
- b any other Trustee of the Scheme whose profession or business is or includes acting as a trustee or investing money on behalf of others must exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances; and
- c any other Trustee must exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances.

9.7 Provision of information

The Trustee will, by the date specified in the relevant requirement:

- a file, lodge, or report or cause to be filed, lodged, or reported with or to the relevant authority; and
- b send or otherwise make available to every Member and / or Pensioner,

any information required by the Act or any other law to be filed, lodged, reported, sent, or made available.

9.8 No action against Licensed Independent Trustee

No Trustee or any other party to this Deed may take any action against a Licensed Independent Trustee by reason of the Licensed Independent Trustee having made a report or disclosure to the FMA under the conditions of the Licensed Independent Trustee's licence.

9.9 Powers

The Trustee, in addition to all other powers conferred upon it, shall have and may exercise, either alone or together with any other person or persons, the following powers, authorities and discretions, namely:

- a to borrow moneys on mortgage, bank overdraft, or otherwise howsoever for such reasons upon such security by way of mortgage or otherwise, on such terms and subject to such conditions as the Trustee may think fit;
- b on the terms of this Deed, to employ, appoint or contract, upon such terms and conditions as to salary, fee or remuneration or otherwise, and to discharge such managers, servants, agents, overseers, employees, valuers, surveyors, architects, engineers, solicitors, accountants, insurance brokers or salesmen, actuaries and other persons as the Trustee may think fit (including an Investment Manager or Administration Manager) and to pay such fees, salaries, wages or other remuneration as in every case the Trustee may deem expedient and generally at the uncontrolled discretion of the Trustee, instead of acting personally to employ, pay or remunerate any person, firm, company or corporation whether incorporated, unincorporated or statutory, to do any act

of any nature whatsoever relating to the trusts hereof, including the receipt and payment of money and the investment of the Fund;

- c to appoint or remove a Custodian or Sub-Custodian in accordance with clause 10 to hold all or any investments of the Fund that may be made in the name of, or may be transferred to, the Custodian or Sub-Custodian;
- d to place, or permit to be placed, any property forming part of the Fund in the name of a Custodian or Sub-Custodian in accordance with clause 10 for such period or such periods as the Trustee in its absolute discretion thinks fit, without, to the extent permitted by this Deed and the Act, being liable for any loss occasioned to the Fund; and
- e subject to this Deed and the Act, generally to do all such acts and things as the Trustee may consider necessary or expedient for the execution, maintenance, preservation, investment and administration of the Scheme and of the rights of the contributors, Members and others therein.

9.10 Director remuneration

The Trustee may pay out of the Fund the remuneration of the directors of the Trustee and reimbursement of their expenses:

- a the directors are entitled to be reimbursed for their travel, accommodation and other incidental costs and expenses in attending meetings and otherwise attending to the affairs of the Scheme. The recovery of expenses is not limited; and
- b the directors are entitled to annual remuneration as set by the board of directors of the Trustee from time to time.

9.11 Delegation

- a The Trustee may delegate the performance of any of its duties, 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 property of the Scheme 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 the Scheme.
- b Subject to this Deed, the terms of appointment of any delegate may grant a right of indemnity out of the Fund. Where the Trustee delegates or contracts out any of its functions as manager of the Scheme, the Trustee must take all reasonable steps to:
 - i ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Trustee were performing them directly; and
 - ii monitor the performance of those functions.

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

- c Where the Trustee appoints an Investment Manager:
 - i the Investment Manager must comply with any obligations it has under the Act;
 - ii the Investment Manager 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; and
 - iii if the Trustee agrees in the contract between the Trustee and 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 that** such indemnity is available only in relation to the proper performance of the duty in clause 9.11cii.

9.12 Meetings

The Trustee may dispatch the business of the Scheme and otherwise regulate its procedures as it thinks fit. Where there is more than one (1) Trustee the quorum for a meeting of Trustees shall be five (5). Any power, authority, question or discretion may be decided by the Trustee or, if there is more than one (1) Trustee exercised by a majority of the Trustees or in accordance with a resolution of the Trustees passed by a majority of votes at a meeting of the Trustees at which a quorum is present. In the case of an equality of votes the chairman shall have a second or casting vote.

9.13 Act by resolution

The Employers or any corporate Trustee may act by resolution of its board of directors or by an officer or other person appointed for the purpose by resolution of its directors whether or not the exercise of a discretion is involved provided that the resolution under which such person is appointed shall define the circumstances in which that person is empowered to act.

9.14 Exercise of functions by Employers

Where any power, authority, question or discretion is to be exercised by the Employers under this Deed then each Employer shall have such number of votes as represent the number of Employee Members of that Employer. Decisions shall be by majority except in respect of clauses 8.1c and 8.5 (relating to trustee removal and appointment), clause 28.1 (funding an actuarial deficit), clause 28.3 (approving an increase to pensions) and clause 33.1 (winding up the Scheme) which shall require 75% of the vote.

10 Custody

10.1 Trustee may appoint Custodian

The Trustee is entitled to appoint a person ('**Custodian**') from time to time on such terms as the Trustee may determine to hold all or part of the Fund where the Custodian:

- a is a body corporate that the Trustee believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Fund; and
- b is not the Trustee or an Associate of the Trustee (other than by virtue of the custodianship).

10.2 Custodian may appoint Sub-Custodian

A Custodian shall be entitled, if authorised in writing by the Trustee, to appoint another person ('**Sub-Custodian**'), to hold all or part of the Fund that would otherwise be held by the Custodian where the Sub-Custodian:

- a is a body corporate that the Custodian believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Fund; and
- b is not the Trustee or an Associate of the Trustee (other than by virtue of the custodianship).

10.3 Duties of entity holding Fund

Any person holding all or part of the Fund as custodian (as defined in the Act), including the Trustee and any Custodian and/or Sub-Custodian, must comply with sections 157 to 159 of the Act.

10.4 Duties of appointing entity

If a person contracts the holding of all or part of the Fund to another person (in this clause, '**Nominee**'), the person contracting out that function:

- a must take all reasonable steps to:
 - i ensure that the function is performed by the Nominee in the same manner and subject to the same duties and restrictions as if that person were performing it directly;
 - ii monitor the performance of that function; and
 - iii ensure that the Nominee complies with sections 157 to 159 of the Act; and
- b 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 10.4a.

10.5 Fees and expenses of Custodian

If the Trustee agrees, the fees and expenses of a Custodian or Sub-Custodian may be paid out of the Fund and shall be as agreed between the Trustee and the Custodian or the Sub-Custodian from time to time.

10.6 Indemnification of Custodian

The terms of appointment of a Custodian or (if expressly permitted by the Trustee) Sub-Custodian may indemnify the Custodian or Sub-Custodian out of the Fund for liabilities or expenses incurred in relation to the performance of its contracted functions.

11 Related party transactions

11.1 General prohibitions on Related Party Benefits

The Trustee (and any Investment Manager, Administration Manager, or other person to whom the Trustee has contracted out some or all of its management functions) must not enter into a transaction that provides for a Related Party Benefit to be given.

11.2 Certain benefits permitted

Clause 11.1 does not apply to a transaction or a series of transactions if:

- a the transaction is or transactions are in the best interests of the Members and Pensioners;
- b the transaction or transactions or all Related Party Benefits to be given are permitted under the Act; or
- c the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the class of Members and / or Pensioners affected, or potentially affected, by the transaction or transactions,

and the Trustee certifies to that effect in accordance with section 175 of the Act.

11.3 Restriction on Trustee certification

The Trustee may not certify under clause 11.2 unless the Licensed Independent Trustee has consented to the certification.

11.4 Additional restrictions on acquisitions of in-house assets

The Trustee (and any other person to whom the Trustee has contracted out some or all of its management functions) will comply with any additional restrictions on acquisitions by restricted schemes of in-house assets (as defined in the Act) applying to the Scheme in accordance with the Act.

12 Pensioners and Deferred Pensioners

12.1 Pensions

The annual pensions being paid and which were determined under the Original Trust Deed as of the date of this Deed shall continue to be paid as determined under the Original Trust Deed and shall be guaranteed for a five (5) year period from the date the pension commenced or commences to be paid and shall be payable for life thereafter and shall be paid by monthly instalments commencing to accrue on the day following the last day of paid service or in the case of a Deferred Pensioner commencing to accrue on the Deferred Pensioner's sixtieth (60th) birthday.

Instalments will be paid on or about the tenth (10th) day of each month by cheque or subject to the completing of the appropriate form of authority by way of direct credit to either a trading or savings bank account. The estate of a Pensioner shall be entitled to retain any pension paid or payable in the month in which the Pensioner dies.

12.2 Evidence

The Trustee may require the production of life certificates in respect of a Pensioner from time to time, and if the pension amounts to less than one thousand two hundred dollars (\$1,200) per annum the Trustee reserves the right to commute the pension to a lump sum payment equal to nine (9) times the annual pension rate following payment of which the Trustee will not be liable for any further payment.

12.3 Joint life and survivorship pensions

A Pensioner who marries, remarries or enters into a civil union, or in respect of whom the Trustee is satisfied has entered into a relationship in the nature of marriage or civil union, may apply to have his or her pension converted to a joint life and survivorship pension. The Trustee may approve such an arrangement as advised by the Actuary subject to the Pensioner obtaining a certificate of good health from a medical advisor nominated by the Trustee.

12.4 Deferred pensions

The benefits and entitlements of Deferred Pensioners are set out in the schedule to this Deed.

12.5 Purchase of Annuities

Instead of paying the benefits provided under this clause 12 directly out of the Fund the Trustee may apply the Fund in the purchase of annuities to provide those benefits.

12.6 Commutation of Spouse's pensions

The Trustee reserves the right, after consultation with its Actuary, to commute to a lump sum any Spouse's pension that is less than one thousand two hundred dollars (\$1,200) per annum.

12.7 Re-employment of Pensioner

The Trustee may reduce or suspend the pension payable to a Pensioner who without the approval of the Trustee is employed or re-employed by an Employer for a period in excess of three (3) months.

12.8 Partial surrender of pension

A Pensioner may elect to surrender a portion of his or her annual pension and to receive instead thereof a lump sum equal to nine (9) times the amount by which the annual pension has been reduced provided that the portion of pension so surrendered shall not exceed the larger of three hundred dollars (\$300) per annum or one quarter of the total pension provided that if the pension before any such surrender does not exceed one thousand two hundred dollars (\$1,200) per annum then the whole of the pension may be so surrendered.

12.9 Notice of partial surrender

A Member may deliver to his or her Employer a notice of retirement up to three (3) months prior to actual retirement and on acceptance of this notice by his Employer may exercise his right of election under clause 12.8. Once such an election has been made it may not be revoked and the appropriate payment shall be made when the Member retires.

12.10 Offer of lump sum

The Trustee may at any time, after taking the advice of the Actuary, offer a lump sum payment to all or any of the Pensioners in lieu of the benefits they are entitled to under the Deed **provided** this would not in respect of any person who was a Member, former Member or Pensioner (as those terms were defined in the Former Trust Deed) or was otherwise a member as at the First Consolidation Date and who has not accepted the offer, have one of the effects described in clauses 34.1ai to 34.1aii (inclusive).

13 Retirement benefits

13.1 Lump sum benefit

Each Employee Member retiring from the industry on or after attainment of age fifty-five (55) shall be entitled to a lump sum benefit equal to the total amount standing to the credit of the Member's Account (less any amount in a Locked In Account forming part of the Member's Account), the Employer's No. 1 Account and the Employer's No. 2 Account (if any) maintained in respect of the Member in accordance with the provisions of clause 6.1.

13.2 Purchase annuity

On the written request of an Employee Member retiring under clause 13.1 the Trustee shall apply the lump sum benefit provided thereunder in the purchase of an annuity from a reputable life insurance company or society payable on such terms as may be agreed with the Member.

14 Benefit on death in Service

14.1 Death in Service

In the event of an Employee Member dying whilst contributing to the Scheme but prior to retiring in accordance with the provisions of clause 13.1 the Trustee shall pay the death benefit to the Member's Beneficiary. Where the Member's Beneficiary includes one or more nominated beneficiaries the Trustee shall pay part or all of the death benefit to one or more of the nominated beneficiaries in such amounts and at such times and generally in such manner as the Trustee in its absolute discretion shall from time to time determine. In all other circumstances the Trustee shall pay the total amount of the death benefit to the Member's personal representatives. The total amount to be paid by the Trustee shall, subject to clauses 14.2, 16.3, 16.6 and 18.3, comprise an amount equal to:

- a a death benefit of an amount equal to fifty (50) times the contributions received by the Scheme from the Member under clauses 5.1 to 5.4 inclusive, in respect of the twelve (12) complete calendar months immediately preceding the date of death, **provided that:**

- i contributions from the Member in excess of six percent (6%) of Salary shall not count for the purpose of this calculation;
- ii in respect of Employee Members who joined the Scheme on or after 1 October 1994 and who became entitled to a death benefit:
 - A prior to 1 January 2016, this amount will be reduced by one/one thousand eight hundred and twenty-six (1/1,826) for each day by which the deceased Member's age exceeded sixty (60) years at the date of his or her death, subject to a minimum amount of zero (0) being payable under this sub-clause;
 - B on or from 1 January 2016, this amount will be reduced by one/one thousand and ninety five (1/1,095) for each day by which the deceased Member's age exceeded sixty two (62) years at the date of his or her death, subject to a minimum amount of zero (0) being payable under this sub-clause; and
- iii if a Member dies within twelve (12) months of joining the Scheme, returning from leave of absence or recommencing contributions pursuant to clause 18.6, the amount of this death benefit will be calculated in accordance with clause 14.2; and
- b a lump sum benefit calculated in accordance with clause 13.1 (assuming the Member retired on the date of death) plus the total amount standing to the credit of the Member's Locked In Account in accordance with the Complying Fund Rules.

Payment will be made after the appropriate documents have been noted by the Trustee.

14.2 **Death within 12 months of joining, returning from leave of absence or recommencing contributions**

- a In the event of an Employee Member;
 - i dying within twelve (12) months of joining the Scheme; or
 - ii subject to acceptance of cover in respect of the death benefit by the Insurer, and subject to such terms or restrictions as the Insurer may impose as a condition of that acceptance, where an Employee Member dies within twelve (12) months of returning from leave of absence or recommencing contributions pursuant to clause 18.6 and has applied for a cover extension under this clause 14.2,

the death benefit otherwise payable under clause 14.1a shall be calculated based on the contributions that the Member would have paid into the Scheme up to a maximum of six percent (6%) of Salary based on an amount equivalent to the Salary the Trustee determines in its absolute discretion, taking into account the advice of the relevant Employer, that the Member would have earned for the twelve (12) calendar months preceding the date of the Member's death had he or she been a Member or if the Member had been contributing to the Scheme for that period.

- b If premiums for life cover are increased in respect of a Member returning from leave of absence or recommencing contributions pursuant to clause 18.6 compared to the premium rate applicable immediately prior to the Member's leave of absence or cessation of contributions, any premiums over and above the premiums which would

otherwise have been payable in respect of the Member shall be deducted from the Member's Member's Account.

15 Benefit on Permanent Incapacity before retirement

15.1 Permanent Incapacity

In the event of an Employee Member suffering Permanent Incapacity whilst contributing to the Scheme but prior to retiring in accordance with the provisions of clause 13.1, there will, subject to clauses 16.3, 16.6, and 18.3, be paid to him or her:

- a in any case and including where the Employee Member remains in Service after suffering Permanent Incapacity, subject to the acceptance of the claim by the Insurer, a lump sum Permanent Incapacity benefit of an amount equal to fifty (50) times the contributions received by the Scheme from the Member under clauses 5.1 to 5.4 inclusive, in respect of the twelve (12) complete calendar months immediately preceding the date of Permanent Incapacity; provided that:
 - i contributions from the Member in excess of six percent (6%) of Salary shall not count for the purpose of this calculation;
 - ii in respect of Employee Members who joined the Scheme on or after 1 October 1994, in the case of Employee Members suffering Permanent Incapacity:
 - A prior to 1 January 2016, this amount shall be reduced by one/one thousand eight hundred and twenty six (1/1,826) for each day by which the Member's age exceeded sixty (60) years at the date of his or her Permanent Incapacity, subject to a minimum amount of zero (0) being payable under this sub-clause;
 - B on or after 1 January 2016, this amount shall be reduced by one/one thousand and ninety five (1/1,095) for each day by which the Member's age exceeded sixty two (62) years at the date of his or her Permanent Incapacity, subject to a minimum amount of zero (0) being payable under this sub-clause; and
 - iii if a Member suffers Permanent Incapacity within twelve (12) months of joining the Scheme, returning from leave of absence or recommencing contributions pursuant to clause 18.6, the amount of this Permanent Incapacity benefit will be calculated in accordance with clause 15.2; and
- b where the Employee Member retires at the time the Member suffers that Permanent Incapacity, a lump sum benefit calculated in accordance with clause 13.1. Any Employee Member who suffers Permanent Incapacity that is paid a benefit pursuant to clause 15.1a but not this clause 15.1b will become entitled to a benefit calculated in accordance with clause 13.1, as if that Employee Member had retired, upon subsequently leaving Service for any reason other than to take up an appointment with another Employer. At the time of the Employee Member subsequently leaving Service, prompt notification must be given to the Trustee by his or her Employer by the completion of a form provided by the Trustee.

Payment will be made after the appropriate documents have been noted by the Trustee. For the avoidance of doubt, where the Employee Member suffers Permanent Incapacity but does

not retire at that time, the Employee Member will only be eligible to be paid a benefit pursuant to clause 15.1a at that time.

15.2 **Permanent Incapacity within 12 months of joining, returning from leave of absence or recommencing contributions**

- a In the event of an Employee Member;
 - i suffering Permanent Incapacity within twelve (12) months of joining the Scheme; or
 - ii subject to acceptance of cover in respect of the Permanent Incapacity benefit by the Insurer, and subject to such terms or restrictions as the Insurer may impose as a condition of that acceptance, where an Employee Member suffers Permanent Incapacity within twelve (12) months of returning from leave of absence or recommencing contributions pursuant to clause 18.6 and has applied for a cover extension under this clause 15.2,

the Permanent Incapacity benefit otherwise payable under clause 15.1a shall be calculated based on the contributions that the Member would have paid into the Scheme up to a maximum of six percent (6%) of Salary based on an amount equivalent to the Salary the Trustee determines in its absolute discretion that the Member would have earned for the twelve (12) calendar months preceding the date of the Member's Permanent Incapacity had he or she been a Member or if the Member had been contributing to the Scheme for that period.

- b If premiums for Permanent Incapacity cover are increased in respect of a Member returning from leave of absence or recommencing contributions pursuant to clause 18.6 compared to the premium rate applicable immediately prior to the Member's leave of absence or cessation of contributions, any premiums over and above the premiums which would otherwise have been payable in respect of the Member shall be deducted from the Member's Member's Account.

15.3 **No further claims**

If a Member receives their full entitlements under this clause 15 of the Deed then he or she shall receive no benefit under any other clause of the Deed unless the Member has a Locked In Account in which case payment of any amount in the Member's Locked In Account shall continue to be subject to the terms of this Deed.

16 **Group life and Permanent Incapacity Insurance**

16.1 **Arrange insurance**

The Trustee shall arrange group life and Permanent Incapacity insurance cover to provide the benefits payable in accordance with clauses 14.1, 14.2, 15.1 and 15.2 and may pay the associated premiums out of the Fund.

16.2 **Terms of policy**

Any policy of group life and Permanent Incapacity insurance obtained by the Trustee in accordance with clause 16.1 shall be for such amounts and on such terms and conditions as shall be approved by the Trustee and the Trustee shall adjust and pay all premiums and

receive all payments, refunds and other monies in respect of such policy and shall dispose of all such monies in accordance with this Deed.

16.3 Non-Standard terms

If an application for a policy of group life and Permanent Incapacity insurance in respect of a Member is for any reason not accepted by an Insurer on its standard terms, the Trustee may make such arrangements with the Insurer and the Member regarding the amount of the Member's group life and Permanent Incapacity insurance and the payment of premiums or charges in respect thereof as in all the circumstances it considers suitable and the benefit payable under this Deed in respect of the Member on his or her death or Permanent Incapacity shall be adjusted accordingly. Without limiting the foregoing, in respect of any Member who joined on or after the First Consolidation Date any premiums in excess of the Insurer's standard premiums under the policy for the amount of cover in respect of the Member may be debited to the Employer's No. 1 Account maintained in respect of that Member, or if there are insufficient monies in that Account to the Member's Account or shall be paid as otherwise agreed between the Member, the Trustee and the Insurer (as the case may require).

16.4 Incorrect age

If at any time it is found that a Member's age was incorrectly stated to the Insurer in connection with the policy the benefit payable under this Deed to or in respect of the Member shall, unless the Trustee otherwise determines, be adjusted by the Trustee to take into account the Member's correct age.

16.5 Incorrect information

If at any time it is found that any information or evidence supplied by a Member when the Member joined the Scheme or in connection with any increase in the benefits being provided in respect of the Member under this Deed is either:

- a fraudulently untrue; or
- b contains any misstatement, error, mistake, omission or suppression,

the benefit payable under this Deed in respect of the Member shall, unless the Trustee otherwise determines, be adjusted to take account of the fraudulent untruth, misstatement, error, mistake, omission or suppression, including the effect of the fraudulent untruth or misstatement, error, mistake, omission or suppression on the proceeds payable under the policies of insurance (after considering the advice (if any) of the Insurer).

16.6 Insurer Declines

If the Insurer declines to admit or pay the amount of any group life or Permanent Incapacity insurance to the Trustee in respect of a Member, or if a Member is uninsurable with the Insurer, then the benefit payable under clauses 14 or 15 shall be reduced by the amounts payable under clauses 14.1a, 14.2a, 15.1a or 15.2a.

16.7 Trustee invitation

The Trustee may in its absolute discretion invite any Member who was a Member on the day before the First Consolidation Date to be treated as if he or she became an Employee Member on or after the First Consolidation Date for the purposes of the definition of 'Permanent Incapacity' in clause 2.1, on such terms and conditions as the Trustee considers fit. A Member's acceptance of an invitation from the Trustee made under this clause 16.7 shall be irrevocable.

17 Benefit on death of Pensioner

17.1 Surviving Spouse's pension

In the event of a Pensioner predeceasing the Pensioner's Spouse and the date of the marriage, civil union or entry into a relationship in the nature of marriage or civil union (as applicable) being prior to the date of retirement, there will be paid to the Spouse a pension, the first (1st) payment of which falls due on the first (1st) day of the month following the Pensioner's death, on the following terms:

- a if the Pensioner were to die during the five (5) year guarantee period referred to in clause 12.1, the amount of the pension payable to the Spouse will be equal to that which would otherwise have been paid to the Pensioner for the balance of the guarantee period and thereafter the pension will be reduced by forty per cent (40%); and
- b when the date of death is after the end of the guarantee period, the Spouse's pension will be sixty per cent (60%) of the deceased Pensioner's pension.

17.2 No Spouse

In the event the Pensioner's death is prior to the expiry of the five (5) year guarantee period with there being no Spouse of the Pensioner eligible for benefits, the pension for the remainder of the guaranteed period will, after noting the appropriate documents, be paid to the Pensioner's estate. The trustees of the estate can, as an alternative, elect to receive a lump sum equal to the present worth of the future pension payments, as calculated by the Trustee.

17.3 Death of surviving Spouse

In the event of a surviving Spouse dying whilst in the receipt of a pension, subject to the five (5) year guarantee period referred to in clause 12.1 the payment will be continued to his or her estate for the balance of the guarantee period. Alternatively the trustees or the estate can elect to receive a lump sum equal to the present worth of the future pension payments, as calculated by the Trustee.

17.4 Joint life and survivorship pensions

In instances where a Pensioner has altered the pension in terms of clause 12.3 then on the death of the Pensioner such terms and conditions as approved by the Trustee shall apply.

18 Benefit on withdrawal or partial withdrawal while still in Service

18.1 Pre-31 August 1976 Member contributions

A Member may at any time give three (3) months' notice of his or her intention to withdraw pre-31 August 1976 Member contributions. Three (3) months after receipt of the notice by the Trustee a refund of these contributions will be made together with interest if applicable.

18.2 Adjustment

Once contributions referred to in clause 18.1 have been refunded the Member's Account shall be adjusted accordingly.

18.3 Cease contributions

An Employee Member may at any time give notice in writing to his Employer that as from the commencement of the next or any subsequent pay period he or she wishes to cease to contribute to the Scheme. The Employer will forward the notice to the Trustee. As from commencement date of the pay period from which contributions are to cease the Trustee will not be liable for any benefits other than as set out in clause 18.4. If an Employee Member who is an Elective Member ceases contributing to the Scheme the Member's Employer may by notice in writing to the Trustee cease contributing on behalf of that Member unless the Member and the Employer otherwise agree and advise the Trustee in writing. Nothing in this clause shall apply to contributions to Locked In Accounts (if held by the Member) and contributions shall only cease to be made to a Locked In Account pursuant to clauses 5A.3, 6A or 14 of this Deed.

18.4 Equitable adjustment

Three (3) months after the date a notice to cease contributing in terms of clause 18.3 has been received by the Trustee all contributions paid by the Member prior to 31 August 1976 will be refunded and the Trustee shall adjust the Member's Account accordingly. The Accounts in respect of the Member shall be maintained in terms of clause 6.1 until such time as the Member ceases to be employed by an Employer for any reason whereupon the Trustee shall treat the Member as having withdrawn from service and pay benefits in accordance with clause 19.

18.5 Death in Service

In the event of death prior to leaving industry employment any benefits payable in terms of clause 18.4 will, in respect of a person who was a Member as at 31st December 1995, be paid to the Member's Beneficiary. Where the Member's Beneficiary includes one or more nominated beneficiaries the Trustee shall pay part or all of the death benefit to one or more of the nominated beneficiaries in such amounts and at such times and generally in such manner as the Trustee in its absolute discretion shall from time to time determine. In all other circumstances the Trustee shall pay the total amount of the death benefit to the Member's personal representatives.

18.6 Resume contributions

An Employee Member who ceases to contribute as set out in clause 18.3 may, at any time subsequent to ceasing his or her contributions, apply to the Trustee to be permitted to resume

contributions and the Trustee may permit the resumption of contributions without loss of accrued benefits on such terms as it may from time to time determine.

18.7 Payment of small balances

Where a Member has not contributed to the Scheme for a period of three (3) years and where the aggregate balance of all Accounts maintained in respect of that Member is less than \$2,500 the Trustee may, with the consent of the Member, elect to apply the balances in accordance with this clause as follows:

- a Any balance of a Member's Member's Account (less any amount held in the Member's Locked In Account, if any) together with accrued interest shall be paid to the Member.
- b Any balance held in an Employer's No. 1 Account in respect of a Member shall be applied in accordance with clause 19.2 as if the Member had become entitled to a leaving service benefit as at the date payment of the Employer's No.1 Account balance is paid by the Trustee.
- c Any balance held in an Employer's No. 2 Account in respect of a Member shall be applied in accordance with clauses 19.3 and 19.4 as if the Member was leaving service of the Employer.
- d Upon payment of the balance of all Accounts in respect of a Member pursuant to this clause the Member shall cease to be a Member of the Scheme.

18.8 In-Service withdrawal

- a In the event a Member attains New Zealand Superannuation Qualification Age and is still in service of any Employer, the Member may, subject to sub-clause b of this clause, prior to the date of leaving service require the Trustee to pay to him or her a lump sum benefit. The benefit available under this clause 18.8 shall be equal to all or part of the amount standing to the credit of the his or her Member's Account, Employer's No.1 Account (including any amount in a Member's Locked In Account if any) provided the Member is entitled to a withdrawal in accordance with clause 6A and Employer's No. 2 Account (if any) as at the date of attainment of New Zealand Superannuation Qualification Age. A minimum withdrawal amount of two thousand five hundred dollars (\$2,500) shall apply unless the total amount of the Member's Account, Employer's No. 1 Account and Employer's No. 2 Account (if any) is being withdrawn.
- b Members eligible under sub-clause a of this clause may in any twelve (12) month period ending 31 March make a maximum of three (3) requests for payment of all or part of the amount standing to the credit of his or her Member's Account, Employer's No.1 Account and Employer's No. 2 Account (if any) provided that in cases of severe hardship as determined by the Trustee in its absolute discretion, the number of requests that a Member may make may be increased to such number as the Trustee in its absolute discretion may determine.
- c Should a request from a Member eligible under sub-clause a of this clause for the payment of part of the amount standing to the credit of his or her Member's Account, Employer's No.1 Account or Employer's No. 2 Account result in the aggregate amount standing to the credit of his or her accounts being less than five thousand dollars

(\$5,000) in value the Trustee shall pay to the Member a lump sum equal to the total of his or her his or her Member’s Account, Employer’s No.1 Account and Employer’s No. 2 Account (if any).

- d The Trustee shall normally meet the request by a Member eligible under sub-clause a of this clause for a full or partial payment of the Member’s Account, Employer’s No.1 Account or Employer’s No. 2 Account within ten (10) working days but this period may be extended under exceptional circumstances to such other period as the Trustee, in its absolute discretion, determines.
- e No Member shall be entitled to any amount in that Member’s Locked In Account unless the entitlement is in accordance with the Complying Fund Rules.

19 Benefit on withdrawal from Service

19.1 Notification

Where an Employee Member leaves the service of an Employer other than to take up an appointment with another Employer and is not eligible for benefits as set out in clauses 13.1, 14.1 or 15.1, prompt notification must be given to the Trustee by his or her Employer by the completion of a form provided by the Trustee. The Employer must also notify the Trustee of the contributions that have been, or will be, deducted from Salary or wages, paid or payable between the previous 1 April and the last day of paid service. The cheque for refund of contributions and interest and augmentation, if applicable will be issued in the name of the Member or his authorised agent and will be forwarded, unless otherwise directed, to his Employer for onward transmission. The date of cessation of employment for the purpose of this clause will be the last day of paid service inclusive of any period of accrued leave or the last day of paid service exclusive of any accrued leave, whichever option is nominated by the Employee Member and advised in writing to the Employer and the Trustee. If neither option is nominated then the former option will apply.

19.2 Leaving Service benefit

Where an Employee Member leaves service in terms of clause 19.1 the Employee Member shall be entitled to a benefit equal to the amount standing to the credit of the Member’s Account together with the following percentage of the Employer’s No. 1 Account (less any amount in a Member’s Locked In Account if any):

Number of Completed Years of Membership of the Scheme	Percentage of Employer’s No. 1 Account
1	20
2	40
3	60
4	80
5 or more	100

provided that:

- a the percentage of the Employer’s No. 1 Account shall be one hundred per cent (100%) if the Member ceases to be employed by reason of redundancy;

- b the percentage of the Employer's No. 1 Account may be increased in respect of any Member at the discretion of the Trustee up to a maximum of one hundred per cent (100%);
- c in the case of a Totally Remunerated Member the percentage of the Employer's No. 1 Account in respect of his or her period of Totally Remunerated Membership shall be one hundred per cent (100%); and
- d in the case if an Employee Member with a Locked In Account, his or her Locked In Account must always be treated in accordance with clause 6A.3.

19.3 Employer's No. 2 Account

In the case of an Employee Member, in respect of whom an Employer's No. 2 Account is maintained, leaving service on or after 1 February 1994 for any reason, other than in circumstances where the Member or the Member's Beneficiary (as the case may be) is entitled to a benefit under clauses 13, 14 or 15, the Trustee may at the Trustee's discretion allow up to 100% of the Employer's No. 2 Account maintained in the name of the Member to remain in the Scheme without forfeiture to the Reserve Fund and without further contributions being payable by the Employer or the Member in respect of the Member, and in such event the Member shall become a Preserved Member. Any amount so permitted to remain in an Employer's No. 2 Account adjusted for interest as provided by clause 6.1b and shall be retained in the Employer's No. 2 Account until the earlier of the Member's death, Permanent Incapacity or the Member attaining the age of fifty-five (55) in which event:

- a on the death of the Member the Trustee shall pay the total amount then standing to the credit of the Employer's No. 2 Account to the Member's Beneficiary. Where the Member's Beneficiary includes one or more nominated beneficiaries the Trustee shall pay part or all of the death benefit to one or more of the nominated beneficiaries in such amounts and at such times and generally in such manner as the Trustee in its absolute discretion shall from time to time determine. In all other circumstances the Trustee shall pay the total amount of the death benefit to the Member's personal representatives.
- b on Permanent Incapacity or attainment of age fifty five (55), the Member shall be entitled to either:
 - i receive a lump sum equivalent to the total amount then standing to the credit of his or her Employer's No. 2 Account; or
 - ii become an Individual Member, or if already an Individual Member to continue membership as an Individual Member, by leaving all or part of the amount then standing to the credit of his or her Employer's No. 2 Account in the Scheme and in which event any amount so left in the Scheme shall be held in a Member's Account maintained in respect of the Member and the conditions of clauses 23.1 and 33.1d shall apply to such amount so left,

but subject in each case to any interest or other adjustments required by this Deed and provided that if the Member ceased to be employed by reasons of redundancy then the percentage of the Employer's No. 2 Account which shall be allowed to remain in the Scheme if the Trustee exercises its discretion under this clause 19.3 shall be one hundred per cent (100%) and further provided that any amount which was contributed to any Member's

Employer's No. 2 Account by way of Employer Contribution will vest immediately in the Member with effect from 1 April 2008.

19.4 **Forfeiture to Reserve Fund**

Should the Trustee not allow the Employer's No. 2 Account (or any part thereof) in the name of the Member to remain in the Scheme as provided in clause 19.3 then the amount in his or her Employer's No. 2 Account at the date on which the Member leaves service which is not allowed to remain in the Scheme shall be forfeited to the Reserve Fund.

19.5 **Application of clauses 23.1 and 23.2**

Clauses 23.1 and 23.2 shall not apply to any amount allowed to remain in a Member's Employer's No. 2 Account in accordance with clause 19.3 except any amount which the Member may elect to be held in a Member's Account in accordance with clause 19.3b.

20 **Benefit for Significant Financial Hardship**

20.1 **Withdrawal for Significant Financial Hardship**

If the Trustee is reasonably satisfied that a Member is suffering or is likely to suffer from Significant Financial Hardship, the Member may, on application to the Trustee in accordance with clause 13 of the KiwiSaver Rules, make a Significant Financial Hardship withdrawal in accordance with the KiwiSaver Rules. The Trustee may prescribe from time to time the form of application required, including, but not limited to, any supporting documentation.

20.2 **Amount of benefit**

The maximum amount of a Significant Financial Hardship withdrawal under clause 20.1 shall be determined in accordance with clause 10 of the KiwiSaver Rules. A Member may not make a withdrawal under this clause 20 of more than an amount equal to the total credit standing at the time of the withdrawal in his or her:

- a Member's Account (excluding any amount in the Member's Locked In Accounts forming part of the Member's Account);
- b Employer's No. 1 Account and Employer's No. 2 Account (if any), excluding any amounts that the Member would not be eligible to withdraw from the Member's Employer's No. 1 Account and/or Employer's No. 2 Account (if any) if the Member had left service in terms of clause 19.1 on the date of the application (including, for the avoidance of doubt, any amounts in the Member's Locked In Accounts forming part of the Employer's No. 1 Account); and
- c Locked In Accounts which represent the Member's Locked In Superannuation Accumulation less any amounts prescribed by the KiwiSaver Act from time to time in respect of the permitted withdrawal payable under clause 10 of the KiwiSaver Rules, adjusted for any interest as provided for in clause 6.4.

20.3 Payment of benefit

If the relevant Member asks, the Trustee will pay any withdrawal allowed under this clause as a lump sum, as if the withdrawal were a permitted withdrawal to which clause 5 of the KiwiSaver Rules applies, modified as necessary.

20.4 Complying Fund Rules compliance

Notwithstanding clauses 20.1 and 20.2, no Member shall be entitled to any amount in that Member's Locked In Account unless the entitlement is in accordance with the Complying Fund Rules.

21 Benefit for first home withdrawal**21.1 Application of clause**

This clause 21 applies to an Employee Member who has not made a first home withdrawal under clause 8 of the KiwiSaver Rules, this clause 21 (or any predecessor clause), or any equivalent withdrawal provision in respect of another Complying Superannuation Fund before, and:

- a at least three (3) 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 a combined total period of at least three (3) years.

21.2 Withdrawal for first home

Subject to the consent of the Trustee, a Member to whom this clause 21 applies may make a first home withdrawal, the maximum amount of which shall be an amount equal to the total credit standing at the time of the withdrawal in his or her:

- a Member's Account (excluding any amount in the Member's Locked In Accounts forming part of the Member's Account);
- b Employer's No. 1 Account and Employer's No. 2 Account (if any), excluding any amounts that the Member would not be eligible to withdraw from the Member's Employer's No. 1 Account and/or Employer's No. 2 Account (if any) if the Member had left service in terms of clause 19.1 on the date of the application (including, for the avoidance of doubt, any amounts in the Member's Locked In Accounts forming part of the Employer's No. 1 Account); and
- c Locked In Accounts which represent the Member's Locked in Superannuation Accumulation less any amounts prescribed by the KiwiSaver Act from time to time in respect of the permitted withdrawal payable under clause 8 of the KiwiSaver Rules, adjusted for any interest as provided for in clause 6.4.

21.3 Payment of benefit

If the relevant Member asks, the Trustee will pay any withdrawal allowed under this clause as a lump sum, as if the withdrawal were a permitted withdrawal to which clause 5 of the KiwiSaver Rules applies, modified as necessary.

21.4 Rules compliance

Notwithstanding clauses 21.1 and 21.2, no Member shall be entitled to any amount in that Member's:

- a Locked In Account unless the entitlement is in accordance with the Complying Fund Rules; and
- b other Accounts unless the entitlement is in accordance with the KiwiSaver Rules, applied as if the withdrawal were a permitted withdrawal to which clause 8 of the KiwiSaver Rules applies, modified as necessary.

For the avoidance of doubt, the restriction on withdrawal of any amounts prescribed by the KiwiSaver Act from time to time in respect of the permitted withdrawal payable under clause 8 of the KiwiSaver Rules, as reflected in clause 21.2c, shall only apply to a Member's Locked In Accounts.

22 Benefit for life-shortening congenital condition**22.1 Withdrawal for life-shortening congenital condition**

A Member who suffers from a Listed Condition or a Non-Listed Condition that exists from the date of the Member's birth may, on application to the Trustee in accordance with clause 13 of the KiwiSaver Rules, make a life-shortening congenital condition withdrawal in accordance with the KiwiSaver Rules if:

- a for a Listed Condition that exists for a Member from the date of their birth, the Trustee is satisfied that a medical certificate issued by a Medical Practitioner verifies the Member suffers from the Listed Condition;
- b for a Non-Listed Condition that exists for a Member from the date of their birth, the Trustee is satisfied that a medical certificate issued by a Medical Practitioner verifies that:
 - i the Non-Listed Condition is a life-shortening congenital condition for the Member or for persons in general with the condition; and
 - ii the Member suffers from the Non-Listed Condition.

22.2 Amount of benefit

A Member who makes a congenital condition withdrawal under clause 22.1 may choose the amount of the congenital condition withdrawal, provided that a Member may not make a withdrawal under this clause 22 of more than an amount equal to the total balance standing at the time of the withdrawal in his or her Locked In Account, which represents the Member's Locked In Superannuation Accumulation, less any amounts prescribed by the KiwiSaver Act

from time to time in respect of the permitted withdrawal payable under clause 12B of the KiwiSaver Rules.

22.3 Payment of benefit

If the relevant Member asks, the Trustee will pay any withdrawal allowed under this clause as a lump sum, as if the withdrawal were a permitted withdrawal to which clause 5 of the KiwiSaver Rules applies, modified as necessary.

22.4 Rules compliance

- a Notwithstanding clause 22.1, no Member shall be entitled to any amount in that Member's Locked In Account unless the entitlement is in accordance with the Complying Fund Rules.
- b The Trustee may at its absolute discretion vary any terms or conditions of this clause 22 to ensure the benefit is payable in a manner consistent with the congenital condition withdrawal payable under clause 12B of the KiwiSaver Rules and to ensure the Complying Fund Rules continue to be met by the Scheme

23 Individual Members

23.1 Leave money in

- a Notwithstanding any other provisions of the Deed where an Employee Member leaves the service of an Employer for any reason (other than to take up an appointment with another Employer) and is entitled under the Deed as at the date of leaving service to receive from the Scheme a benefit as a lump sum the Member instead of receiving all or part of his or her benefit may elect, at the invitation of the Trustee, to become an Individual Member and leave all or part of that benefit in the Scheme provided that this shall not apply to any Locked In Account held by an Employee Member, and such Locked In Account must be transferred in accordance with the Complying Fund Rules to a Complying Superannuation Fund or KiwiSaver Scheme. Any amount so left in the Scheme shall be held in a Member's Account provided that the amount of the benefit the Member elects to leave in the Scheme shall be not less than five thousand dollars (\$5,000).
- b Notwithstanding the provisions of clause 6.4, the rate at which interest shall be allocated to the Member's Accounts of Individual Members shall be a rate determined by the Trustee on the recommendation of the Actuary (which recommendation may, amongst other things, take into account the investment performance of any relevant Investment Portfolio or any expenses of the Scheme not attributable to the Individual Member's membership) provided that the rate recommended by the Actuary shall be such that the rate at which interest is allocated to the Member's Accounts and the Employer's No. 1 Accounts and Employer's No. 2 Accounts of Members (other than Individual Members) shall not be adversely affected had no amounts been held in the Scheme in respect of Individual Members. For the purposes of this clause, interest shall be credited or debited at the end of each accounting period except in the case of the Individual Member's death or when the Individual Member withdraws all of his or her total withdrawal benefit, or in the event of the Scheme being wound up, in which case interest shall be calculated as at

that date. Interest allocated to Member's Account in respect of an Individual Member may be positive or negative or zero.

- c No further Employer contributions in respect of an Individual Member shall be payable, and no further additional contributions by the Individual Member may be made.

23.2 **Withdrawal**

- a Subject to clause 23.3 an Individual Member may at any time in writing require the Trustee to pay to him or her a lump sum benefit equal to all or part of the amount standing to the credit of his or her Member's Account subject to a minimum amount for a partial withdrawal of:
 - i two thousand five hundred dollars (\$2,500); or
 - ii any lesser amount determined by the Trustee in its sole discretion from time to time.
- b The Trustee may offer an Individual Member the ability to make regular withdrawals on such terms and conditions as are set by the Trustee from time to time.

23.3 **Limit on withdrawals**

An Individual Member may in any twelve (12) month period ending 31 March make a maximum of:

- a three (3); or
- b any greater number determined by the Trustee in its sole discretion from time to time and on such terms and conditions as determined by the Trustee,

requests for payment of all or part of the amount standing to the credit of his or her Member's Account provided that in cases of severe hardship as determined by the Trustee in its absolute discretion the number of requests that an Individual Member may make may be increased to such number as the Trustee in its absolute discretion may determine.

23.4 **Minimum balance**

Should a request from an Individual Member for the payment of part of the amount standing to the credit of the Member's Account in respect of the Member result in the amount standing to the credit of the Member's Account of the Individual Member being less than five thousand dollars (\$5,000) in value the Trustee shall pay to the Individual Member a lump sum equal to the total amount of the Member's Account.

23.5 **Death**

In the event of the death of an Individual Member the total amount standing to the credit of the Member's Account and any amount standing to the credit of the Employer's No. 2 Account shall be paid to the Individual Member's Beneficiary. Where the Member's Beneficiary includes one or more nominated beneficiaries the Trustee shall pay part or all of the death benefit to one or more of the nominated beneficiaries in such amounts and at such times and generally in such manner as the Trustee in its absolute discretion shall from time to time

determine. In all other circumstances the Trustee shall pay the total amount of the death benefit to the Member's personal representatives.

23.6 **Payment**

The Trustee shall normally meet the request by an Individual Member for a full or partial payment of the Member's Account within ten (10) working days of the date for withdrawal specified in the request (or, if no date for withdrawal is specified, of the date of the request) but this period may be extended under exceptional circumstances to such other period as the Trustee, in its absolute discretion, determines.

24 **Preserved Members**

24.1 **Contributions**

From the date a person becomes or became a Preserved Member no further Employer contributions in respect of a Preserved Member shall be payable, and no additional contributions by the Preserved Member may be made.

24.2 **Benefit**

On Permanent Incapacity or attainment of age fifty five (55) the Preserved Member shall be entitled to either:

- a receive a lump sum equivalent to the total amount standing to the credit of any Member's Account, Employer's No. 1 Account and Employer's No. 2 Account maintained in respect of the Member; or
- b become an Individual Member by leaving all or part of the amount then standing to the Member's credit or of the Accounts maintained in respect of the Member in the Scheme in which event any amount so left in the Scheme shall be held in a Member's Account in the name of the Member in accordance with clause 6.1a and the conditions of clauses 23.1 to 23.6 and 33.1d shall apply to any amount so left.

24.3 **Death**

In the event of the death of a Preserved Member the Trustee shall pay a benefit calculated in accordance with clause 24.2a to the Preserved Member's Beneficiary. Where the Member's Beneficiary includes one or more nominated beneficiaries the Trustee shall pay part or all of the death benefit to one or more of the nominated beneficiaries in such amounts and at such times and generally in such manner as the Trustee in its absolute discretion shall from time to time determine. In all other circumstances the Trustee shall pay the total amount of the death benefit to the Member's personal representatives.

24.4 **Individual Membership**

Prior to attainment of age fifty five (55) a Preserved Member may request to become an Individual Member, and the Trustee in its sole discretion may grant such a request. If the Trustee so agrees the total amount standing to the credit of the Employer's No. 1 Account shall be credited to the Member's Account in addition to the amount then standing to the credit of the Member's Account and the provisions of clause 23 shall thenceforth apply to the

Member's Account. Any amount standing to the credit of the Employer's No. 2 Account shall be maintained in terms of clauses 6.1c and 19.3.

24.5 **Conflict**

In the event of any conflict between clause 19.3 and clauses 24.1 to 24.4, clause 19.3 shall prevail.

24.6 **All benefits**

Save as expressly provided in this Deed the only benefits to which a Preserved Member shall be entitled shall be as determined by this clause 24.

25 **Transfers**

25.1 **To another Employer**

In the event of an Employee Member transferring from one Employer to another Employer, the Employer from whom the Member has transferred must advise the Trustee of the transfer. The Trustee in turn will advise the Employer to whom the Member was transferred, the date from which contributions should commence. The Employer to whom the Member has transferred shall recover contributions for the period of any break in continuous service, calculated on the basic wage or salary, for the position to which the Member has been appointed. If the additional contributions amount to two point five per cent (2.5%) or more of the taxable earnings of a particular pay period, the amount due may be recovered over a number of consecutive pay periods, if the Member so requests.

25.2 **To a non-Employer**

Subject to clause 25.3 in the event of an Employee Member transferring to the employ of a company that is not an Employer the Member may either withdraw from the Scheme in accordance with the provisions of clause 19 or apply to become an Individual Member under the provisions of clause 23 **provided that** if the Employee Member has a Locked In Account the balance in the Locked In Account shall be transferred to another Complying Superannuation Fund or KiwiSaver Scheme in accordance the Complying Fund Rules.

25.3 **Re-employed within the dairy industry**

In the event that an Employee Member, upon leaving service or upon that person's employer ceasing to be an Employer:

- a is re-employed or continues to be employed within the dairy industry by Fonterra or any other entity approved by the Trustee;
- b joins or belongs to another Retirement Scheme or Equivalent Overseas Retirement Scheme; and
- c the Member so requests in writing,

the Trustee may, in accordance with the Act, as an alternative to making any payment under clause 19.2 or 19.3 direct to the Member or his or her authorised agent, transfer:

- any amount to which the Member may be entitled to under clause 19.2, including any amount under clause 19.2b; and
- in the case of a Member in respect of whom an Employer's No. 2 Account is maintained and:
 - who has attained the age of fifty five (55), any amount standing to the credit of the Member's Employer's No. 2 Account; or
 - who has not attained the age of fifty five (55), any amount standing to the credit of the Member's Employer's No 2 Account ('**the Amount**') provided that the Trustee will only approve the transfer if the manager or trustee(s) of that scheme confirm that the Amount will only become payable to a Member under that scheme when the Member attains the age of fifty five (55) or some later date specified by that manager or trustee(s), dies or ceases to be a member of that scheme (whichever is the earlier),

to the Retirement Scheme or Equivalent Overseas Retirement Scheme nominated by the Member, and thereupon the Member shall become entitled to such rights under such scheme as may be agreed between the manager or trustee(s) of that scheme and the Member **provided that** if the Employee Member has a Locked In Account that amount must also be transferred to a Complying Superannuation Fund or KiwiSaver Scheme in accordance with the Complying Fund Rules.

25.4 **No other benefits**

A Member in respect of whom a transfer is made under clause 25.3 shall not be entitled to any other benefit from the Scheme in respect of any amount so transferred but shall continue to be entitled to benefits in respect of any amount of the Employer's No. 2 Account maintained in the name of that Member which the Trustee allows to remain in the Scheme under clause 19.3. The receipt issued on behalf of the Retirement Scheme or Equivalent Overseas Retirement Scheme for any amount so transferred shall be a complete discharge to the Trustee of all liability in respect of the Member under the Scheme in respect of that amount. The Trustee shall be under no liability to see to the application of any amount so transferred.

25.5 **Transfers in**

In the event of an employee of Fonterra or any other company transferring to employment with an Employer and arranging for a direct transfer of an amount held to his credit in his previous employer's Retirement Scheme or other superannuation scheme, the Trustee may accept such amount and after consultation with the Actuary vary on such terms and conditions as it thinks fit, the benefits that would normally be payable to the Employee Member on retirement.

25.6 Transfer to another superannuation scheme

In the event that a Member joins another Retirement Scheme or other superannuation scheme approved by the Trustee, the Trustee may, in accordance with the Act, transfer:

- a any amount to which the Member would be entitled to under clause 19.2 as if the Member had left service in terms of clause 19.1, including any amount under clause 19.2b,
- b in the case of a Member in respect of whom an Employer's No. 2 Account is maintained and:
 - who has attained the age of fifty five (55), any amount standing to the credit of the Member's Employer's No. 2 Account; or
 - who has not attained the age of fifty five (55), any amount standing to the credit of the Member's Employer's No 2 Account ('**the Amount**') provided that the Trustee shall only approve the transfer if the manager or trustee(s) of that scheme confirm that the Amount will only become payable to a Member under that scheme when the Member attains the age of fifty five (55) or some later date specified by that manager or trustee(s), dies or ceases to be a member of that scheme (whichever is the earlier),

to that other scheme. The transfer will be subject to such terms and conditions as may be agreed between the Trustee, the Member and the manager or trustee(s) of the other scheme **provided that** if the Employee Member has a Locked In Account that amount must be transferred to another Complying Superannuation Fund or KiwiSaver Scheme in accordance with the Complying Fund Rules.

25.7 Other methods of transfer out

A Member may otherwise be transferred or elect to transfer their accumulation to another Registered Scheme or Equivalent Overseas Retirement Scheme in accordance with the Act.

26 Leave of absence

26.1 Leave of absence

The Employers, upon giving notice in writing to the Trustee, may grant an Employee Member employed by that Employer leave of absence in excess of three (3) months for medical or any other reason **provided that** any such leave of absence granted and applied pursuant to this clause 26 will only apply to a Member's contributions to their Locked In Account (if any) in accordance with clause 5A. Contribution Holidays granted in respect of Member's contributions to a Locked In Account will be made in accordance with the Complying Fund Rules. Except where an Employee Member has applied for a Permanent Incapacity Benefit under clause 15, the Employee Member or his or her agent, in the case of sickness or disability, must make an application for his or her period of sickness or disability deemed as leave of absence to the Trustee prior to terminating service with his Employer. If he or she fails to make such application clause 19 will apply to the Member.

26.2 Contribution rates

At the time of granting leave of absence, which will be for an initial period of not more than eighteen (18) months, but may be extended from time to time, the Trustee will determine the amount of contributions which will be payable during the period of absence, and either the Employee Member concerned will:

- a at the same time pay an additional contribution pursuant to clause 5.5; or
- b during that leave of absence contribute pursuant to clause 26.5, up to the equivalent of the subsidy rate payable, **provided that:**
 - c in determining the contributions to be paid during any period of absence, the Trustee may fix a provisional rate subject to a final adjustment on the Member's return to service. The Trustee will take into account the rate of earnings from Service both prior and subsequent to the period of absence; and
 - d the Trustee may also agree to the payment of contributions being deferred until the Member's return to service and charge interest on the amount due. When such an arrangement is made and the Member dies or suffers Permanent Incapacity during the period of absence, the Member will not be covered for death benefit or Permanent Incapacity benefit and the provisions of clause 19 will apply.

26.3 Contributions not paid

Should for any reason contributions not be paid for any period of absence granted under clause 26.1 the period of absence will be classified as non-contributory service and any such service will not be included as membership as an Employee Member in the formula used for the calculation of any benefits.

26.4 Termination

Should an Employee Member permit his or her contributions to fall into arrears for three (3) consecutive months the Trustee may terminate membership and the Accounts in respect of the Member shall be maintained in terms of clause 6.1 until such time as the Member ceases to be employed by an Employer for any reason whereupon the Trustee shall treat the Member as having withdrawn from Service as if the Member had left Service on the date of termination of Service and the provisions of clause 19 shall apply accordingly provided that this clause 26.4 will not be applied in cases where an Employer fails to remit contributions that have actually been deducted from salary or wages and provided further that, in respect of an Employee Member who has a Locked In Account, the Trustee may not terminate the Employee Member's ability to contribute to or receive benefits from their Locked In Account.

26.5 Making contributions while on leave of absence

Any contributions made by an Employee Member during that Employee Member's leave of absence pursuant to this clause 26 must:

- a not exceed (either as to amount or frequency) the contributions that were being paid by the Employee Member in accordance with this Deed immediately prior to the Employee Member commencing leave of absence; and

- b be collected by the Employee Member's Employer or the entity responsible for the administration of the Scheme from time to time.

27 Records and financial reporting

27.1 Appointment and removal of Auditor

- a The Trustee must appoint an Auditor of the Scheme.
- b The Auditor must be a qualified auditor in terms of the Act who is not precluded by the Act from acting as auditor of the Scheme.
- c The Auditor's terms of appointment will be agreed between the Trustee and the Auditor, and must:
 - i include any matters require by the Act; and
 - ii require the Auditor to, in addition to its functions as set out in this Deed, perform any other functions required by the Act and comply with any obligations it has under the Act.
- d The Trustee may at any time remove the Auditor and appoint a new Auditor in accordance with this clause 27.1.

27.2 Records

The Trustee shall keep minutes of its resolutions in a book provided for that purpose in such form as they may determine. If the Licensed Independent Trustee is absent from any meeting then the directors of the Trustee who are present must provide the Licensed Independent Trustee with the minutes of the meeting as soon as practicable following the meeting.

27.3 Maintenance of Register

The Trustee must ensure that there is kept and maintained a Register, which:

- a must be kept in New Zealand;
- b may be an electronic register or kept in any other reasonable manner that the Trustee thinks fit;
- c must contain the information required by the Act; and
- d must otherwise meet the requirements of the Act.

The Register is prima facie evidence of the matters required by the Act to be entered in it.

27.4 Audit of Register

The Trustee must ensure that the Register is audited in accordance with the Act. The Auditor, in completing its audit of the Register, shall perform any other functions required by the Act, and comply with any obligations it has under the Act.

27.5 Inspection of Register

Any Member or Pensioner is entitled to inspect the part of the Register that concerns that Member or Pensioner (as applicable) free of charge during normal working hours or as otherwise required by the Act.

27.6 Record-keeping requirements

The Trustee must keep copies of documents and information as required by the Act and otherwise maintain proper records in accordance with the Act.

27.7 Accounts

The Trustee shall keep account of the money received and disbursed and financial statements shall be prepared as at the Balance Date in each year in accordance with the Act. The financial statements shall be audited by the Auditor in accordance with the Act.

27.8 Annual Report

The Trustee shall:

- a within four (4) months after the end of each financial year or within such shorter period as may be prescribed by law, prepare a report on the Scheme for that year, including any matters required to be specified in an annual report by the Act or any other enactment; and
- b within 28 days after the annual report is prepared under clause 27.8a:
 - i give a copy of the report to the Employers and the Actuary;
 - ii send every Member a copy of the report or a notice outlining how a Member may obtain a copy of the report in accordance with regulation 62 of the Financial Markets Conduct Regulations 2014; and
 - iii lodge a copy of the report in accordance with the Act.

27.9 Right to information

Each Member shall have the right upon request:

- a to receive an estimate of his or her benefits;
- b to look at a copy of the Trust Deed and/or a copy an actuarial examination which has been performed for the purposes of the Act; and
- c to receive on payment of a reasonable fee a copy of the Trust Deed and/or such report.

27.10 Actuarial examination

The Trustee shall cause the financial position of the Scheme to be examined and reported upon by the Actuary at intervals not exceeding three (3) years. The Actuary shall embody the results of each such actuarial investigation in a written report to the Trustee given no later than seven (7) months after the date as at which the financial position was examined. A copy of the Actuary's report shall be furnished to the FMA as soon as practicable.

28 Action following actuarial investigation

28.1 Actuarial deficiency

If the Actuary's report referred to in clause 27.10 shows an actuarial deficiency then, unless the Employers agree to make such further contribution if any as the Actuary shall recommend to discharge such deficiency, the Trustee shall, after consultation with the Actuary and to the extent necessary to discharge such actuarial deficiency, reduce the benefits in such manner as shall be agreed between the Trustee and the Employers, or failing such agreement, as the Trustee shall determine provided that the benefits shall not be reduced for so long as the Employers agree to make additional contributions to the Fund equal to the amount of the reductions in benefits which would otherwise have been made.

28.2 Actuarial surplus

If the Actuary's report shows an actuarial surplus the Trustee may to an extent not exceeding that which the Actuary advises as practicable:

- a increase the benefits payable under this Deed (other than those payable to Individual Members) either on a continuing basis or for so long as the actuarial surplus continues to support the increased benefits; or
- b carry forward the surplus until the next actuarial review.

28.3 Increase in pensions

Subject to the agreement of the Employers the Trustee may to an extent not exceeding that which the Actuary recommends, grant an increase in current pensions even if the cost of such an increase exceeds the actuarial surplus.

28.4 Amendment

Any change in benefits arising from clauses 28.1, 28.2 or 28.3 shall be made by amending this Deed under the powers and provisions of clause 32.

29 Prohibition against alienation

29.1 No assignment

Other than as expressly provided by law, no Member or Pensioner may assign, charge, alienate, pass to any other person, or borrow against the security of his benefits under this Deed.

29.2 Rights of Members and Pensioners personal

The rights and interests of a Member or Pensioner are personal and may not be transferred, redeemed, or otherwise dealt with except as expressly permitted by the Trust Deed or as required by law.

29.3 Bankruptcy of Members

In the event of a Member or a Pensioner or a Deferred Pensioner becoming bankrupt then to the maximum extent permitted at law all benefits to which such Member or Pensioner or

Deferred Pensioner is entitled in the Fund shall be forfeited to the Fund for the period of such bankruptcy **provided that** the Trustee may in its absolute discretion apply in respect of such Member or Pensioner or Deferred Pensioner an amount not exceeding the amount of the benefits which have been forfeited for the maintenance and support or otherwise for the benefit of the Member or Pensioner or Deferred Pensioner or such of his or her dependants as the Trustee may determine provided that this provision shall not apply to a Locked In Account if prohibited by the Complying Fund Rules.

29.4 **Bankruptcy of Members – alternative provision**

Notwithstanding any other provision of the Deed but subject to clause 29.6 and to the extent the provisions of clause 29.3 are in the opinion of the Trustee unable to be given legal effect in respect of each Member who joined the Scheme on or after 1 April 1990 or in respect of any other person who may become eligible to derive any benefit under this Deed through any such Member, Members shall be deemed to have a contingent interest in any benefit payable under the Scheme which has not become unconditionally vested in the Member or any other person (as the case may be) in accordance with the Deed and **provided that**:

- a such contingent interest shall continue until the interest becomes vested in the Member or other person in accordance with the terms of the Deed or until the Member or other person becomes bankrupt, whichever shall first occur;
- b in the event that such a Member or other person becomes bankrupt prior to any contingent interest in any benefit payable under the Scheme becoming unconditionally vested in the Member or other person, then, to the maximum extent permitted by law, the Member's or other person's contingent interest in that part of any benefits payable under the Scheme which are attributable to contributions made by the Employer or to any monies transferred from, or contributed to the Scheme by, any third party in respect of the Member or other person (and which are not, by the terms of such transfer or contribution, deemed to be contributions made by the Member or other person) shall be forfeited to the Scheme; and
- c the Trustee may in its absolute discretion apply in respect of such Member or other person an amount not exceeding the amount of the benefit which has been forfeited for the maintenance support or otherwise for the benefit of the Member or such other person or such of their dependants as the Trustee may in its discretion determine.

29.5 **Application**

Clause 29.4 shall not apply to any person who was a Member of the Scheme as at the First Consolidation Date if the Member or any other person who may become eligible to derive any benefit under this Deed (other than the Official Assignee in Bankruptcy) at any time whether before or after the Member's bankruptcy, gives written notice, signed by the Member personally to the Trustee that he or she does not want the clause to apply to the Member or in respect of a Locked In Account if prohibited by the Complying Fund Rules.

29.6 **Incapacity**

In the event of a Member or Pensioner becoming incapable of managing his or her own affairs then all benefits to which such Member is entitled in the Scheme may be administered by the Trustee on such person's behalf.

30 General

30.1 No restriction on other rights

Nothing herein contained shall in any way restrict the rights of an Employer to determine the employment of an Employee Member at any time and without assigning any cause for such determination.

30.2 No claim against Employer

No Member or Pensioner shall have any claim against any Employer or its property or funds in respect of any monies payable pursuant to the provisions of this Deed.

30.3 Currency

The Fund shall be a New Zealand currency fund and nothing in this Deed shall require the Trustee to make any payments other than in New Zealand currency.

30.4 Provision of information

Every Employer, Member and Pensioner under this Deed shall furnish to the Trustee such information as they shall require in order to fulfil their duties under these presents.

30.5 No Prejudice

Nothing in this Deed shall affect any document made or anything whatsoever done heretofore and every such document or thing so far as is subsisting or in force at the First Consolidation Date and could have been made or done thereunder shall continue and have effect as if it had been made or done under the appropriate provision of the Deed and as if that provision had been in force when the document was made or the thing was done.

30.6 Equal treatment

The Trustee may, in the exercise of the powers granted to it under this Scheme, use its discretion in order to ensure the smooth operation of the Scheme, but in the meeting of any special cases must ensure that it does not give any one Member advantage over other Members of the Scheme except to the extent permitted or required by this Deed.

30.7 Unclaimed benefits

Should any benefits and/or refunds of contributions due to any Member or Pensioner remain unclaimed for a period of six (6) years, they will revert to the Reserve Fund.

30.8 Deduction of tax

The Trustee shall be entitled to deduct from any payment payable under this Deed a sum equal to the amount of any income tax or other tax, duty, impost or charge imposed by a government or quasi-government body for which the Trustee may directly or indirectly be liable in consequence of such payment.

30.9 Trustee's indemnity

Subject to the provisions of this Deed and the Act but otherwise without limitation, the Trustee shall be entitled to be indemnified in connection with its role as trustee in the manner provided

for by law, to the extent permitted by law, including without limitation pursuant to the Trustee Act 1956 or any amendment or successor thereto, with any such indemnification being treated as an expense of the Scheme for the purposes of this Deed.

30.10 **Limitation on indemnity**

Where liabilities or expenses are incurred in relation to the performance of the Trustee's Issuer Obligations, the Trustee's right pursuant to this Deed to be indemnified for liabilities and expenses is available only in relation to the proper performance of its duties under clauses 9.3a to 9.3c and 9.6.

30.11 **Reversion of assets**

No part of the Fund may revert to any Employer without the prior written consent of the FMA (which must be given in accordance with the Act).

30.12 **Perpetuities provision**

If the Scheme ceases to qualify under section 19 of the Perpetuities Act 1964 the Trustee may take such action as it thinks fit to prevent the operation of any rules of law relating to perpetuities which might otherwise invalidate or might be taken to invalidate any of the trusts of the Scheme.

31 **Meetings**

31.1 **Procedure at Members' meetings**

Meetings of the Members and / or Pensioners shall be called by the Trustee as prescribed by law and conducted in accordance with the meeting procedures set pursuant to the Act.

31.2 **Restrictions on voting**

Except where permitted by the Act, the Trustee and its Associates are not entitled to, and must not, vote their interest on a resolution of Members or Pensioners if they have any interest in the resolution or matter other than as a Member.

31.3 **Resolution in lieu of Members' meeting**

A written resolution is as valid as if it has been passed at a meeting if it is signed in accordance with the Act by no less than 75% of the number of Members and / or Pensioners who are entitled to vote on the resolution at a meeting of the class of Members and / or Pensioners.

32 **Amendment of this Deed**

32.1 **Amendments generally**

The Trustee may from time to time by instrument in writing amend or replace any of the provisions of this Deed or any amendments thereof with the FMA's consent, provided that the FMA may only give its consent if:

- a the FMA is satisfied that the amendment or replacement does not have a material adverse effect on Members or Pensioners; or

- b the amendment or replacement has been approved by (or is contingent on approval by):
 - i in the case of an amendment or a replacement that reduces, postpones, or otherwise adversely affects the benefits, whether vested, contingent, or discretionary, that may in due course flow from, or are attributable to, membership of the Scheme up to the date the amendment or replacement is made, the written consent of all Members and Pensioners who would be adversely affected by the amendment or replacement; or
 - ii in any other case, a Special Resolution of Members and Pensioners or of each class of Members and / or Pensioners that is or may be adversely affected by the amendment or replacement (as applicable).

32.2 Other amendments

This Deed may also be amended or replaced in any other manner permitted by the Act or any other enactment.

32.3 Procedural requirements

The Trustee will comply with any obligations it has under the Act in respect of any amendment or replacement of this Deed made under this clause.

32.4 Actuarial report

Any proposed amendment affecting the financial basis of the Scheme shall be submitted to and reported upon by the Actuary.

32.5 Tax changes

The Trustee may vary benefits at any future time to take into account of changes in taxation that may arise later (other than as a result of the passing of the Income Tax Amendment Act 1989).

32.6 Reductions in benefits

No reduction in benefits pursuant to clause 32.5 shall be made until:

- a the FMA has been provided with a copy of an opinion of an Actuary confirming that the reductions are no more than are necessary to make the benefits of the Scheme secure, and the FMA has confirmed in writing to the Trustee that he or she agrees with that opinion; and
- b the FMA has confirmed in writing that it is satisfied that the reductions in benefits are equitable as between all Members and other beneficiaries.

33 Winding up

33.1 Resolution of Employers

The Scheme shall be wound up if the Employers so resolve or if the Scheme is required to be wound up pursuant to any statutory, regulatory or other government requirements (including an order of the High Court under the Act) in which event:

- a first, the Trustee shall provide for the rights of the Pensioners and Deferred Pensioners by the purchase of annuities for such sums in respect of each Pensioner or Deferred Pensioner as shall be determined by the Actuary and payable under the conditions corresponding as nearly as may be practicable with the pensions payable under this Deed **provided that** any amounts required to provide for these pensions shall not be met from any amount held on behalf of a Member in a Locked In Account in accordance with the Complying Fund Rules;
- b secondly, in meeting all costs and expenses of winding up;
- c thirdly, to Employee Members in proportion to and up to a maximum of the total amount standing to the credit of their respective Member's Accounts, **provided that** in the case of a Member who has a Locked In Account an amount equivalent to the Locked In Superannuation Accumulation as at the effective date of winding up shall be dealt with in accordance with the Complying Fund Rules and the payment to the Member shall be adjusted accordingly, Employer's No. 1 Accounts and Employer's No. 2 Accounts as at the date of winding up;
- d fourthly, to Members who are not Employee Members in proportion to and up to a maximum of the total amount standing to the credit of their respective Member's Accounts, Employer's No. 1 Accounts and Employer's No. 2 Accounts as at the date of winding up; and
- e fifthly, to Employee Members in proportion to the amount they received in terms of clause 33.1c.

33.2 Winding up of an Employer

If at any time an Employer shall be wound up or shall cease to be an Employer or shall so resolve then that portion of the Fund determined by the Actuary as being applicable to the Employee Members then employed by such Employer shall be dealt with as laid down in this clause 33 as at that time.

33.3 Meaning of Winding Up

For the purpose of clause 33.2 the winding up of an Employer shall mean a liquidation in a manner specified in Section 241 of the Companies Act 1993 or any amendment or successor thereto. A merger between Employers or the takeover of one Employer by another Employer shall not constitute a winding up for the purposes of this Deed.

33.4 Trustee's obligations on winding up

The Trustee will comply with its obligations as set out in the Act in respect of a winding up in accordance with this clause 33 (including in respect of providing notices and information to the FMA and the Commissioner).

34 No adverse effect

34.1 Membership before First Consolidation Date

In respect of any person who was a 'Member', 'Former Member', 'Pensioner', or 'Totally Remunerated Member' or 'Beneficiary' under the Original Trust Deed (as and to the extent

those expressions are defined in the Original Trust Deed on the day immediately prior to the First Consolidation Date, and each such person in this clause being referred to as an 'existing beneficiary'):

- a if it is established (by or on behalf of that existing beneficiary) that anything in the First Consolidating Deed, other than an effect caused by an amendment made pursuant to Section 72 of the Human Rights Act 1993, has had the effect in respect of any particular existing beneficiary in the Scheme at the First Consolidation Date of:
 - i reducing postponing or otherwise adversely affecting the benefits whether vested or discretionary, that would in due course have flown from, or have been attributable to, membership of the Scheme up to the First Consolidation Date;
 - ii removing the right of the existing beneficiary to participate in the management of the Scheme; or
 - iii increasing the contributions fees or charges payable by the existing beneficiary; and
- b the written consent of the existing beneficiary has not been obtained to the First Consolidating Deed; then
- c in respect of that existing beneficiary the provisions of the Original Trust Deed (effective as at the date immediately prior to the First Consolidation Date) shall continue to apply in respect of that existing beneficiary, to the extent necessary to avoid the effect specified in clause 34.1a and in respect of such existing beneficiary nothing in the First Consolidating Deed shall entitle such existing beneficiary to any greater benefit right or entitlement to that which the existing beneficiary would have been entitled under the Original Trust Deed as at the date immediately prior to the First Consolidation Date, except where that benefit, right or entitlement arises under an amendment made pursuant to Section 72 of the Human Rights Act 1993 under the First Consolidating Deed.

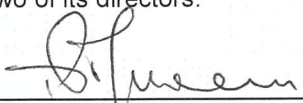
35 Governing law

35.1 Deed governed by New Zealand law

This Deed will be interpreted and administered in accordance with the law of New Zealand.

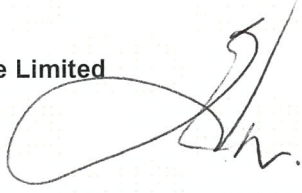
Execution

Signed on behalf of
Dairy Industry Superannuation Scheme Trustee Limited
 by two of its directors:



 Director's signature
TIMOTHY PATRICK MCGUINNESS

 Director's name



 Director's signature
BRUCE JOHN KERR

 Director's name

Schedule 1 Deferred Pensioners as at the First Consolidation Date

Name	Date of Birth	Deferred Pension
C Crowe	13/08/33	\$1,665.13
W J Francis	21/01/39	\$4,522.23
E N Gooch	16/09/33	\$2,123.77
P Huffarn	16/09/37	\$2,663.39
R A Lock	08/07/36	\$4,451.77
D T Nelson	07/08/36	\$4,181.34
J E Pikett	07/11/36	\$5,577.57
G R Robinson	14/04/37	\$1,805.74
G A Clothier (Nee Stokes)	21/11/38	\$1,304.06
G H Stretch	10/01/39	\$2,948.26
K E Vincent	27/06/36	\$3,100.04
B M Wilson	05/09/37	\$2,330.62
P T Wedlock	21/03/34	\$842.75

- 1 The deferred pension will become payable to the Deferred Pensioner as an immediate pension on and from the attainment by the Deferred Pensioner of age sixty (60).
- 2 The terms and conditions of clauses 12.1, 12.2, 12.3, 12.5, 12.6, 12.7, 12.8, 12.9, 12.10, 17.1, 17.2, and 17.3 shall apply to the payment of pensions under clause 1 of this Schedule.
- 3 In the event of a Deferred Pensioner dying prior to age 60 and being survived by a Spouse then a pension shall be paid to the Spouse. The Spouse's pension shall be sixty per cent (60%) of the amount of the pension that would have been paid to the Deferred Pensioner and shall be guaranteed for an eight and a third (8 1/3) year period and payable for life thereafter. In the event of the Spouse dying within the guarantee period the payments will continue in terms of clause 17.2.
- 4 In the event of the Deferred Pensioner dying prior to age 60 and not being survived by a Spouse the deferred pension shall immediately be payable as an immediate pension for a guaranteed period of five (5) years to the Deferred Pensioner's estate in terms of clause 17.3.
- 5 The Trustee may at any time, after taking the advice of the Actuary, offer a lump sum payment to all or any of the remaining Deferred Pensioners or any surviving Spouse or estate of a Deferred Pensioner in lieu of the benefits they are entitled to under the Deed.