

# Trust Deed for the Maritime Retirement Scheme

Andrew Christopher Clark, Carl Gordon Findlay, David William Young, John Brodie Stevens, Joshua-Paul Donald Greer, Philippa Rosemary Drury, Raymond Paul Welson, Raymond Joseph Carroll Fife, Russell Lawrence Mayn, Walter Melville Rushbrook



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# Parties

## Trustees

Andrew Christopher Clark, Carl Gordon Findlay, David William Young, John Brodie Stevens, Joshua-Paul Donald Greer, Philippa Rosemary Drury, Raymond Paul Welson, Raymond Joseph Carroll Fife, Russell Lawrence Mayn, Walter Melville Rushbrook

# Agreed terms

## 1 Background

- 1.1 The Trustees are the current trustees of the Maritime Retirement Scheme (**Scheme**), a restricted workplace savings scheme established by deed dated 31 March 2016.
- 1.2 The Scheme is currently governed by a trust deed dated 8 September 2020 as amended (**Trust Deed**).
- 1.3 Under Section 18 of the Trust Deed, the Trustees by unanimous decision may at any time or times by instrument in writing amend the Trust Deed subject to compliance with the requirements of that Section.
- 1.4 The Trustees wish to amend the Trust Deed to consolidate previous amendments, correct outdated legislative references, make other modernising improvements and correct a previous manifest drafting error to clause 56.1.
- 1.5 The Trustees are satisfied that the amendments to the Trust Deed made in this Deed satisfy the conditions of Section 18 of the Trust Deed.
- 1.6 The Trustees have obtained a certificate from a lawyer that the Trust Deed, as amended and restated, will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 on the basis set out in that certificate.

## 2 Covenants

- 2.1 In accordance with the power contained in clause 18.1 of the Trust Deed, the Trustees amend the Trust Deed with effect from the date of this Deed (**Effective Date**) by rescinding each and every one of the existing Sections, clauses, subclauses and schedules of the Trust Deed to the extent that the entire provisions of the trust deed for the Scheme from the Effective Date are those set out in the Sections, clauses, subclauses and schedules of this Deed.

## Part A – Interpretation provisions relating to the Scheme

### 3 Interpretation

- 3.1 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

**Accounts** means the accounts established under this Deed.

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

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

**Administration Manager** means the person or persons (if any) to whom the Trustees have contracted some or all of the administration of the Scheme.

**AML Act** means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

**Auditor** shall mean in relation to the Scheme a person or firm of Chartered Accountants who is licensed under the Audit Regulation Act 2011 and who meets the requirements of Governing Legislation and is appointed by the Trustees to audit the accounts of the Scheme.

**Cash** includes funds on call or short term bank deposits (generally less than seven days) at a registered bank.

**Chairman** means the chairman of the Trustees, appointed under clause 4.2(d).

**Chartered Accountant** has the meaning given in the Act.

**Dependant** means in relation to a Member the spouse, any child of the Member or any other person whether or not related by blood or marriage to the Member whom the Trustees may in their absolute discretion from time to time determine to be or to have been dependent either wholly or in part on the Member at the time of the happening of the relevant event.

**Deputy Chairman** means in relation to the Scheme any deputy chairman of the Trustees, appointed under clause 4.11.

**Earnings** means salary or wages as defined in the KiwiSaver Act 2006.

**Employer** means any employer that is a party to an employment contract.

**Employer's Account** means an employer's account established under Section 35 or Section 55 as the case may be.

**Employment Contract** means any collective agreement or any other agreement, instrument or order prescribing terms and conditions of employment of Waterside Workers on the New Zealand Waterfront or Seafarers working in the Seafaring Industry which, in the opinion of the Trustees, is relevant to the prescription of terms and conditions of employment of Waterside Workers or a Waterside Worker on the New Zealand Waterfront or Seafarers or a Seafarer in the Seafaring Industry.

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

**First Home** means an estate in land, for which the Member is eligible under Rule 8 of the KiwiSaver Rules to make a withdrawal to purchase as a first home, or for which the Member

would have been eligible under Rule 8 of the KiwiSaver Rules to withdraw funds to purchase as a first home if the Member were a member of a KiwiSaver scheme. Rule 8 of the KiwiSaver Rules as at the date of this Deed is set out in Schedule 1.

**FMA** means the Financial Markets Authority.

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

**General Reserve Accounts** means the Waterfront General Reserve Account and the Seafarers' General Reserve Account or either of them or both of them as the case may be.

**Governing Legislation** means all legislation applicable to the Trustees and/or the Scheme at applicable points in time and which may include, without limitation, the Financial Markets Legislation, the FMC Regulations, the Trusts Act 2019, the KiwiSaver Act 2006 and any methodologies or frameworks issued by the FMA under such legislation.

**In-house Asset** has the meaning given in section 176(3) of the Act.

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

**Issuer Obligations** has the meaning given in the Act.

**KiwiSaver Rules** means the KiwiSaver scheme rules contained in Schedule 1 to the KiwiSaver Act 2006 as amended from time to time.

**KiwiSaver Scheme** means any KiwiSaver scheme registered under the Act.

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

**Maritime KiwiSaver Scheme (or MKS)** means the Maritime KiwiSaver Scheme established by trust deed dated 31 March 2016.

**Member** means a Waterside Member, a Seafarer Member or the Trustee Member as the context requires.

**Member Investment Choices** has the meaning given by clause 9.1.

**Members Account** means a Member's account established under 34, 54 or 71 as the case may be.

**Membership** means in relation to a Member, the most recent period of continuous participation in the Scheme.

**Nominated Pension Beneficiary** means such person as the Member may nominate in writing to the Trustees as provided in clause 41.3.

**NIR** means notified investor rate as defined in section HM60(1) of the Income Tax Act 2007.

**Organisation of Seafarers' Employers** means the Seafarers' EMC appointed by the employers in the Seafaring Industry or its successor.

**Organisation of Waterfront Employers** means Stevedores and Ports NZ Incorporated or its successor.

**Other Reserve Accounts** means the Death Benefit "A" Account, Death Benefit "B" Account, Pension Reserve Account and such other reserve accounts established under either clauses 33.3 or 53.3.

**Participating Employer** means any Employer who has been admitted as a Participating Employer pursuant to Section 31 or 51, but does not include any Employer who has ceased to be a Participating Employer, and in relation to a Member means that Employer by which the Member is for the time being employed.

**PIR** means prescribed investor rate as defined in section YA1 of the Income Tax Act 2007.

**Permanent Incapacity** means an illness or injury suffered by any Member the result of which, in the opinion of the Trustees acting on medical advice, the Member is unlikely ever again to follow any occupation within the Waterfront Industry or the Seafaring Industry as the case may be for which the Member is reasonably suited by training, education or experience in the future.

**Portfolio** means an investment choice made available by the Trustees for one or more categories of Member under clause 9.1.

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

**Related Party** has the meaning given in section 172 of the Act.

**Related Party Benefit** has the meaning given in section 172 of the Act.

**Review Date** means 1 April in each year or such other date as shall be determined from time to time by the Trustees.

**Review Period** means a period commencing on a Review Date and ending immediately prior to the next Review Date.

**Rule or Rules** means the rules for Waterside Members, Seafarer Members or the Trustee Member, or any or all of them as the case may be.

**Scheme** means the Maritime Retirement Scheme governed by this Deed.

**Scheme Property** has the meaning given in section 6 of the Act.

**Scheme Reserve Account** means the reserve account established under clause 10.1.

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

**Special Resolution** has the meaning given to it in the Act.

**Terminal Illness** means such illness suffered by any Member where in the opinion of the Trustees, acting on medical advice, the remaining life of the Member as a result of the illness is expected to be 6 months or less.

**Trustee Member** means the trustee of the MKS who has been admitted as a Member of the Scheme and is entitled to receive a benefit or to whom a benefit is paid.

**Trustee Member's Rules** means the Trustee Member's Rules under Part E of this Deed.

**Trustees** means the Trustees for the time being appointed to administer the Scheme.



**Union** means the Maritime Union of New Zealand or its successor or any industrial union of workers taking its place in any union reconstruction.

- 3.2 In the interpretation of this Deed in relation to the Waterfront Rules and in particular Part C the following provisions apply unless the context otherwise requires:

**Death Benefit "A" Account** means the account of that name maintained from time to time by the Trustees in accordance with clause 33.3.

**Death Benefit "B" Account** means the account of that name maintained from time to time by the Trustees in accordance with clause 33.3.

**Fixed Term Contract** means a contract of employment which provides for the employment of the Waterside Member with a Participating Employer to terminate on a date specified in the contract.

**New Zealand Waterfront** means any place within New Zealand where work in relation to or in connection with the Waterfront Industry is carried out.

**Pension Reserve Account** means the account of that name maintained from time to time by the Trustees in accordance with clause 33.3.

**Retirement Age** means the age of sixty-five years.

**Waterfront General Reserve Account** means the reserve account established under clause 33.1.

**Waterfront Industry** means waterside or waterside-related work as determined by the Trustees including:

- (a) loading and unloading ships and other seafaring vessels in New Zealand;
- (b) work within the limits of any New Zealand port involving:
  - (i) receiving and delivering or otherwise handling cargo for or from any ship or other seafaring vessel, including the packing and unpacking of containers; or
  - (ii) the driving or operation of cranes, forklift trucks, or other mechanical or logistical equipment; or
  - (iii) the carrying out of any work similar in nature to that traditionally carried out by tally clerks, foremen stevedores, or permanent hands in connection with waterside-related work; and
  - (iv) clerical and other support work directly or indirectly related to the above,

which the Trustees in their absolute discretion from time to time decide is appropriate to recognise as falling within the concept of waterfront industry work.

**Waterfront Rules** means the Waterfront Rules under Part C of this Deed.

**Waterside Member** means a Waterside Worker or such other person within the Waterfront Industry who has been admitted to membership of the Scheme at the discretion of the Trustees and who in the opinion of the Trustees remains a Member.

**Waterside Worker** means a person employed in the Waterfront Industry in accordance with an appropriate Employment Contract provided however that from the Effective Date, for the purposes of determining eligibility under clause 30.1, Waterside Worker means a person

employed in the Waterfront Industry in accordance with an appropriate Employment Contract that specifies minimum hours of work.

- 3.3 In the interpretation of this Deed in relation to the Seafarers' Rules and in particular Part D the following provisions apply unless the context otherwise requires:

**Group Insurance** means the amount of insurance cover provided under the Policy.

**Insurer** means any Life Insurer, approved for the time being by the Trustees with which a Policy is affected.

**Life Insurer** has the meaning given in section 6 of the Insurance (Prudential Supervision) Act 2010.

**Monthly Insurance Premiums** means:

- (a) for Seafarer Members such amount per month as the Trustees shall, at their discretion, determine from time to time but being not less than \$6.00 per month,

provided that:

- (b) the Trustees may, at their discretion determine that a Seafarer Member whose actual insurance premium is less than \$6.00 per month may pay the lower amount.
- (c) for any Member, the Monthly Insurance Premium shall not be less than the amount required to provide such minimum amount of Group Insurance as the Trustees shall, at their discretion, determine from time to time but being not less than \$5,000; and
- (d) for any Member who joins the Scheme on or after 1 April 2006, the Monthly Insurance Premium shall be zero.

**Normal Retirement Date** means:

- (a) in respect of a Seafarer Member who joined or joins the Scheme on or after 1 January 1996, the Member's 65th birthday, and
- (b) in respect of any other Seafarer Member, the Member's 60th birthday.

**Policy** means the contract of insurance cover (if any) effected with an Insurer in accordance with this Deed to provide Group Insurance.

**Seafarer** means a person employed in the Seafaring Industry in accordance with an appropriate Employment Contract.

**Seafarers' Rules** means the Seafarers' Rules under Part D of this Deed.

**Seafarers' General Reserve Account** means the reserve account established under clause 53.1.

**Seafaring Industry** means Seafarer or Seafarer- related work as determined by the Trustees, including:

- (a) manning of seagoing vessels, dredges and ferries;
- (b) manning of offshore facilities including oil and gas rigs and seabed operations; and
- (c) clerical and other support work directly or indirectly related to the above,

which the Trustees in their absolute discretion from time to time decide is appropriate to recognise as falling within the concept of Seafaring Industry work.

**Seafarer Member** means a Seafarer or such other person within the Seafaring Industry who has been admitted to membership of the Scheme at the discretion of the Trustees and who in the opinion of the Trustees remains a Member.

**Total and Permanent Disablement Policy** means any policy effected by the Trustees to cover the total and permanent disablement of a Member as defined in such policy.

**2003 Member** means a Seafarer who was a Member on 31 March 2003 and has remained a Member since that date.

- 3.4 Part A and Part B of this Deed contain provisions that are applicable to all Members of the Scheme.
- 3.5 Part C of this Deed contains provisions relating to Waterside Members only.
- 3.6 Part D of this Deed contains provisions applicable to Seafarer Members only.
- 3.7 Part E of this Deed contains provisions applicable to the Trustee Member only.
- 3.8 In this Deed, full Section references, i.e. Section 1, Section 2 and Section 3, are referred to throughout as "Sections". Within certain Sections there are clauses. Clause references, i.e. clause 1.1, clause 1.2 and clause 1.3 are referred to throughout as "clauses".
- 3.9 In this Deed unless precluded by the context:
  - (a) words denoting the masculine gender shall include the feminine;
  - (b) words denoting the singular shall include the plural and vice versa;
  - (c) any reference to a statute shall include any subsequent statutory modification or re-enactment thereto or any statute passed in lieu thereof and for the time being in force and any regulations made thereunder; and
  - (d) each reference to a Part shall mean whichever of Parts A-E of this Deed is appropriate in the context.
- 3.10 The Scheme shall be a New Zealand currency fund and nothing herein shall require the Trustees to make any payments other than in New Zealand and in New Zealand currency.
- 3.11 This Deed shall in all respects be governed by and interpreted according to the laws of New Zealand.

## **Part B – General provisions relating to the Scheme**

### **4 Appointment and removal of Trustees**

- 4.1 The number of Trustees of the Scheme shall be 10 or 11 unless a corporate body is appointed to act as sole Trustee in the manner provided in clause 4.12.
- 4.2 The Trustees shall comprise:

- (a) up to four Trustees appointed from time to time by the Union;
  - (b) up to two Trustees appointed from time to time by the Organisation of Waterfront Employers;
  - (c) up to two Trustees appointed from time to time by the Organisation of Seafarers' Employers. If there is no Organisation of Seafarers' Employers, the Trustees may appoint up to two Trustees to represent the interests of employers in the Seafaring Industry;
  - (d) one person appointed by the Trustees appointed under clauses 4.2(a) to 4.2(c) (inclusive) to be an independent Chairman; and
  - (e) one Licensed Independent Trustee appointed by the Trustees who are appointed under clauses 4.2(a) to 4.2(d) (inclusive).
- 4.3 The Trustees appointed under clause 4.2 may from time to time appoint an additional independent trustee, who need not be but may be a Licensed Independent Trustee, on such terms as they in their discretion determine.
- 4.4 A Licensed Independent Trustee may not:
- (a) be removed or resign in accordance with this Deed unless:
    - (i) all functions and duties of the position have been performed; or
    - (ii) another Licensed Independent Trustee has been appointed, and accepted appointment, in his or her place; or
    - (iii) the court consents;
  - (b) (despite anything to the contrary in this Deed) be removed under this Deed without the FMA's consent.
- 4.5 If the Scheme does not, for any reason, have a Licensed Independent Trustee then the provisions of the Act shall apply in relation to the appointment of a person to fill the vacancy in the office until a substitute appointment has been made under this Deed.
- 4.6 The Trustees appointed from time to time under clauses 4.2(a), 4.2(b) and 4.2(c) shall hold office for 3 years or such other term as determined by their appointors.
- 4.7 The Chairman appointed under clause 4.2(d) shall be reappointed annually and shall be reviewed at least once every three years. Following that review the Chairman may be reappointed but may be replaced at the absolute discretion of the Trustees appointed under 4.2(a) to 4.2(c) (inclusive).
- 4.8 Subject to clause 4.4, the Licensed Independent Trustee shall be reappointed annually and shall be reviewed at least once every three years. Following that review the Licensed Independent Trustee may be reappointed but may be replaced at the discretion of the remaining Trustees.
- 4.9 The office of a Trustee shall become vacant if a Trustee:
- (a) being a natural person dies or becomes of unsound mind; or
  - (b) is convicted of an indictable offence; or
  - (c) becomes bankrupt or makes an assignment to creditors; or

- (d) resigns office as a Trustee by notice in writing addressed to the other Trustees and if the Trustee is appointed under clauses 4.2(a) to 4.2(c) (inclusive) notice to the party or organisation which appointed them; or
  - (e) is removed from office by the party or parties which appointed the Trustee in the manner provided in clause 4.2; or
  - (f) being a Trustee appointed as Chairman under clause 4.2(d) is removed from office under clause 4.7; or
  - (g) being a Licensed Independent Trustee:
    - (i) the Trustee's licence expires or is cancelled under the Act; or
    - (ii) the Trustee is removed by the FMA if it is satisfied that the Trustee no longer meets the requirements in the Act; or
    - (iii) the Trustee is replaced under clause 4.8, or
  - (h) is substituted by the court under the Act.
- 4.10 The Trustees appointed under clauses 4.2(a) to 4.2(c) (inclusive) shall have the right at any time without being required to cite any reason by majority resolution to remove any independent Chairman appointed pursuant to clause 4.2(d) or any Licensed Independent Trustee appointed pursuant to clause 4.2(e) by giving such Trustee 28 days' notice in writing of such removal by registered letter addressed to the last known address or place of business of such Trustee or delivered to the Trustee personally.
- 4.11 A Deputy Chairman of the Trustees may be appointed from time to time by the vote of a majority of the Trustees. If the Chairman is absent from a meeting, the Deputy Chairman shall act as the Chairman.
- 4.12 Notwithstanding the foregoing provisions the Union, the Organisation of Waterfront Employers and the Organisation of Seafarers' Employers may agree to jointly appoint a sole corporate trustee as Trustee of the Scheme, in which case such corporate trustee shall hold office until removed by notice in writing signed by or on behalf of the Union, the Organisation of Waterfront Employers and the Organisation of Seafarers' Employers. In such case the corporate trustee must comply with Governing Legislation.

## **5 Proceedings of Trustees**

- 5.1 The Trustees shall meet, adjourn and regulate proceedings as they think fit. A Trustee may at any time convene a meeting of the Trustees by giving seven days' notice in writing to the other Trustees for the time being in office or such shorter period to which the Trustees may agree.
- 5.2 Four Trustees shall form a quorum with at least two being Trustees appointed under clause 4.2(a) and two being Trustees appointed under clause 4.2(b) and/or clause 4.2(c).
- 5.3 Meetings of the Trustees constituted in accordance with clause 5.1 shall be competent to exercise all or any of the authorised powers and discretions vested by this Deed in the Trustees generally.
- 5.4 Questions arising at any meeting shall, unless this Deed requires otherwise, be decided by a majority of votes and if there is an equality of votes the Chairman shall have a second or casting vote. However, in the event of an objection by a Trustee to the Chairman exercising a casting

vote on any particular matter, the casting vote will be withheld and the matter in question be referred to a mutually acceptable independent arbitrator for final ruling.

- 5.5 A resolution in writing signed by all the Trustees and duly entered in the minute book of the Trustees shall be as valid and effectual as if it had been duly passed at a meeting of the Trustees duly called and constituted.
- 5.6 The Trustees shall cause proper minutes of all meetings to be kept and the minutes of any meeting if purporting to be signed by the Chairman of such meeting or by the Chairman of a succeeding meeting of the Trustees shall be receivable as prima facie evidence of the matters contained in such minutes.
- 5.7 The Trustees, notwithstanding any rule of law or equity to the contrary, may delegate all or any of the functions, powers, authorities and discretions vested in them to any one or more of the Trustees or to any person or persons or body or bodies corporate.
- 5.8 Any Trustee may charge and be paid such fees or charges for services rendered in connection with the Scheme as may be deemed reasonable by the Trustees.
- 5.9 A Trustee being a beneficiary under the trusts of this Deed may retain for the Trustee's own absolute benefit subject to the conditions in the Rules all money and benefits accruing to the Trustee as a beneficiary of the Scheme and no decision of the Trustees or the exercise of any power by the Trustee shall be invalidated on the ground that the Trustee had a direct or personal interest in the result of any such decision or in the exercising of any such power.
- 5.10 The Scheme may effect insurance for each Trustee in respect of:
  - (a) liability (other than criminal liability) of a kind referred to in section 526(1)(a) of the Act;
  - (b) costs incurred by the Trustee in defending or settling any claim or proceeding relating to that liability; or
  - (c) costs incurred by the Trustee in defending any criminal proceedings:
    - (i) that have been brought against the Trustee in relation to any alleged act or omission in his or her capacity as Trustee; and
    - (ii) in which he or she is acquitted.

## **6 Trustees' functions, duties, powers and discretions**

- 6.1 The Trustees, acting together as manager of the Scheme, have responsibility for those functions and duties of a manager under the Act (and each Trustee is jointly and severally liable with the other Trustees for the performance of those functions and duties) unless the Act or the FMC Regulations otherwise provide.
- 6.2 Any default duties under the Trusts Act 2019, which would otherwise be applicable to the Trustees or the Scheme are excluded to the maximum extent permitted by the Trusts Act 2019.
- 6.3 The Trustees are responsible for performing the following functions:
  - (a) offering membership of the Scheme;
  - (b) accepting Members into the Scheme;
  - (c) managing the Scheme Property and investments; and

- (d) administering the Scheme.
- 6.4 The Trustees must:
- (a) act honestly and in good faith in acting as a manager; and
  - (b) in exercising any powers or performing any duties as a manager:
    - (i) act in the best interests of the Members; and
    - (ii) treat Members equitably; and
  - (c) not make use of information acquired through being the manager in order to:
    - (i) gain an improper advantage for themselves or any other person; or
    - (ii) cause detriment to the Members.
- 6.5 The Trustees must carry out the functions of a manager in accordance with this Deed, the SIPO, and all other Issuer Obligations.
- 6.6 Subject to clause 6.7, a Trustee must in exercising any powers or performing any duties, exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances.
- 6.7 A Licensed Independent Trustee and any other Trustee whose profession or business is or includes acting as a trustee or investing money on behalf of others must, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.
- 6.8 The Trustees shall have the powers and discretions generally to do all such acts and things as the Trustees consider necessary or expedient for the management, administration or investment of the Scheme or otherwise for the performance of the obligations under this Deed and subject to the Act to exercise all the powers in respect of the Scheme as if they were the absolute owners thereof, including not by way of limitation but by way of examples only, the power:
- (a) to retain the services of professional advisers in relation to the management, administration or investment of the Scheme including in relation to the proper exercise by the Trustees of their powers and discretion;
  - (b) to employ such agents, nominees or managers (including but without limitation any corporate or other trustee holding office as trustee from time to time or any subsidiary of such corporate or other trustee or other company or organisation associated with such corporate trustee) as reasonably thought fit by the Trustees in relation to the management, administration or investment of the Scheme; and
  - (c) without prejudice to the powers conferred upon Trustees in general law or by clauses 6.8(a) and 6.8(b), to:
    - (i) appoint and remove any Administration Manager to the Scheme on terms and conditions to be agreed between the Trustees and the Administration Manager;
    - (ii) subject to clause 6.9, appoint and remove any Investment Manager on terms to be agreed between the Trustees and the Investment Manager;
    - (iii) appoint and remove from office a custodian trustee in respect of the whole or any part of the assets of the Scheme on such terms and with such duties,

powers and discretions as may be agreed between the Trustees and the custodian trustee; and

(iv) apply for membership of any other Registered Scheme.

- 6.9 Any appointment by the Trustees of an Investment Manager must be in writing. The Trustees may include provisions to protect and assist those dealing with any Investment Manager in the terms of appointment as the Trustees see fit. An Investment Manager may be a related party of a Trustee. The terms of appointment of an Investment Manager may include rights to be indemnified for liabilities or expenses incurred in relation to the performance of the Investment Manager's contracted functions. The Trustees remain liable for the acts or omissions of an Investment Manager.
- 6.10 The Trustees must comply with the requirements of the Act where they contract out all or some of their functions and duties as manager of the Scheme.
- 6.11 The Trustees shall hold the Scheme Property in accordance with section 156(2) of the Act.
- 6.12 Nothing in this Deed shall be construed as empowering the Trustees to act in a manner which would contravene any of the provisions of the Act.
- 6.13 Nothing in this Deed shall be construed as empowering the Trustees to act in a manner which would contravene any provision of the Trusts Act 2019 unless this Deed expressly modifies or excludes a provision in the Trusts Act 2019 as permitted by the Trusts Act 2019.

## **7 Breach of trust**

- 7.1 No Member shall have any claim for benefits under this Deed against the Employers, a Participating Employer, or the Union or their funds.
- 7.2 Subject to the Act, no Trustee shall be liable for the consequences of any act or omission or for any loss not attributable to such Trustee's own dishonesty or to the wilful commission or omission by such Trustee of any act or omission known by such Trustee to be a breach of trust.
- 7.3 No Trustee shall be bound to take any proceedings against a co-trustee for any breach or alleged breach of trust by that co-trustee.
- 7.4 Subject to the Act, each Trustee shall be absolutely indemnified by and out of the Scheme (whether as to the capital or the income thereof) for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees in relation to the Scheme under this Deed unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission or omission by such Trustee of an act or omission known by such Trustee to be a breach of trust.

## **8 Investment powers**

- 8.1 The Trustees shall invest all money belonging to the Scheme and available for investment in accordance with clause 15.1. This requirement shall modify the Trustees' general power to invest under section 58 of the Trusts Act 2019.
- 8.2 Notwithstanding anything to the contrary in the Trusts Act 2019, the Trustees and any Investment Manager shall, in exercising the power of investment, exercise the care, and skill required of that person by section 30 of that Act.



- 8.3 The Trustees may at any time and from time to time, but subject to the Governing Legislation, borrow and raise money for any of the purposes of the Scheme and if they deem it necessary to secure the repayment of moneys so borrowed and interest thereon by mortgage or charge over all or any of the assets of the Scheme and no lender shall be concerned to inquire as to whether the necessity for such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.
- 8.4 The Trustees may insure against loss or damage by fire, earthquake or any other cause whatsoever any asset of the Scheme to the full insurable value thereof or the full replacement value thereof as the Trustees in their discretion from time to time think fit and also to insure against any risk, liability or loss and to pay the premiums for such insurance out of the moneys forming part of the Scheme as the Trustees may think fit.

## **9 Member Investment Choices**

- 9.1 The Trustees may from time to time, if they think fit, make investment choices available to Members in the form of different Portfolios (**Member Investment Choices**).
- 9.2 If and whenever the Trustees decide to make available Member Investment Choices, they may (without limiting the generality hereof) determine the following matters:
- (a) the Portfolios that may be chosen by Members;
  - (b) the method by which and time at which Members may choose a Portfolio;
  - (c) the number of Portfolios that may be chosen by a Member at any one time and, if more than one such Portfolio may be chosen, the basis on which the plural choices will operate (including the time and method and proportions);
  - (d) the basis on which contributions by a Member and by his or her Participating Employer will be allocated in relation to the Portfolios chosen by the Member when more than one Portfolio is in force;
  - (e) the frequency with which and method by which a Member may change any of his or her choices;
  - (f) the Portfolio that will be deemed to apply to a Member who makes no choice;
  - (g) the basis on which any partial withdrawal by or in respect of a Member may be made when more than one Portfolio is in force;
  - (h) the closure or termination of a Portfolio; and
  - (i) all other matters that the Trustees consider necessary or desirable in relation to a Portfolio or the operation of the Member Investment Choices.
- 9.3 Any additional expenses, fees, charges or costs associated with giving effect to and administering a Member's choice of Portfolio or Portfolios under this clause may be debited from the Members Account or Employer's Account of that Member, as applicable, at the times and in the manner determined by the Trustees as long as such expenses, fees, charges or costs were disclosed to the Member prior to the Member making his or her choice.
- 9.4 No such debiting may be made to the Members Account or Employer's Account of a Member if he or she was a Member immediately before Member Investment Choices became available and if he or she does not at any time choose a Portfolio that is different from the Portfolio the Member was invested in.

- 9.5 Without limiting the ability of the Trustees to determine earnings under Section 11 when the Trustees make each determination of earnings, they shall have regard to the Member's choice of Portfolio or Portfolios. For the avoidance of doubt, it is declared and acknowledged that the exercise of this power will require the determination of different earning rates in respect of different Portfolios.
- 9.6 The choice of any Portfolio or Portfolios (including any decision by a Member not to change from any existing Portfolio or Portfolios) shall be each Member's sole responsibility, and the Trustees shall not have any liability in respect of it and neither shall they in any circumstances be regarded as representing or implying that any particular Member Investment Choice or Portfolio is appropriate for the Member.
- 9.7 The requirement to comply with Member choices and decisions under clause 9.6 shall modify any general trustee powers and duties of investment provided under the Trusts Act 2019 to the extent permitted under sections 5(3) to 5(7) of that Act.
- 9.8 In this clause, a reference to Members or to a Member includes each Member:
- (a) who, in the case of a benefit arising under Sections 36, 39, 40, 56, 58 or 60 has elected pursuant to clause 36.3(b) or 56.4(b) (including, if the case requires, pursuant to clauses 39.2, 40.4 or 58.2) to defer payment of all or part of the benefit; or
  - (b) in respect of whom, in the case of a benefit arising under Section 37 or 57, an election to defer payment of the benefit has been made by his or her legal personal representative pursuant to clauses 37.6 or 57.8, and also includes the legal personal representative and any other person who has been authorised by the legal personal representative to make a Member Investment Choice.

## **10 Scheme Reserve Account**

- 10.1 Notwithstanding clauses 33.1 and 53.1, the Trustees may establish a Scheme Reserve Account from time to time in such form and manner as the Trustees determine.
- 10.2 Any Scheme Reserve Account established under clause 10.1 must not adversely affect the benefits payable to Members under this Deed.

## **11 Earnings**

- 11.1 As soon as practical after the expiration of such period as the Trustees determine, the Trustees shall allocate earnings to each Members Account, each Employer's Account, the General Reserve Accounts and each Other Reserve Account for such period and may do so more frequently if the Trustees consider it appropriate.
- 11.2 The rate of earnings to be allocated to each Account or the value of each such Account or both shall be determined by the Trustees who may have regard to:
- (a) the nature of the investments of a Portfolio;
  - (b) the investment performance and other income of the Portfolio;
  - (c) the liquidity of the investments of the Portfolio;
  - (d) the taxation liabilities of the Scheme and each Portfolio, including any future or deferred taxation;

- (e) any losses or gains of the Portfolio, whether realised or not;
  - (f) changes in the market value of the assets comprising the Portfolio;
  - (g) the costs of realising the assets of the Portfolio for cash;
  - (h) a fair and equitable proportion the expenses of the Scheme; and
  - (i) such other matters as the Trustees may consider appropriate.
- 11.3 In any case where a benefit is payable in respect of a Member, earnings in respect of the period between the last date of allocating earnings and the date of payment of such benefit may be allocated to the Members Account and the Employer's Account at such rate as the Trustees may determine.
- 11.4 The Trustees in their absolute discretion may, but shall not be obliged to, agree to make an adjustment to the earnings allocated under clauses 11.2 or 11.3 once the actual earnings for that period have been determined.
- 11.5 The rate of earnings in respect of each Account determined under this Section:
- (a) may be either positive or negative; and
  - (b) shall be fair and equitable after making due allowance in respect of each Account inter alia for any contributions or withdrawals or other amounts which are or have during the appropriate period been invested in a Portfolio or withdrawn from a Portfolio.
- 11.6 Members shall provide the Trustees with their NIR.
- 11.7 The Trustees may adjust a Member's NIR where it is inconsistent with the Member's correct PIR if the Inland Revenue directs the Trustee to do so.

## **12 Actuarial report**

- 12.1 Subject to the Governing Legislation, and only during any period in which an actuarial report is required for the Scheme pursuant to the Governing Legislation:
- (a) the Trustees shall ensure that the Actuary examines the financial position of the Scheme at dates that are no more than three years apart; and
  - (b) the Trustees shall ensure that the report of the Actuary in respect of each such examination is received no later than the time required under the Governing Legislation.
- 12.2 A copy of each such report shall be sent to the FMA within the time period required by the Governing Legislation.

## **13 Financial information and reporting**

- 13.1 The Trustees shall ensure that there are kept at all times accounting records that:
- (a) correctly record the transactions of the Scheme;
  - (b) will enable the Trustees to ensure that the financial statements of the Scheme comply with generally accepted accounting practice and any Governing Legislation; and

- (c) will enable the financial statements of the Scheme to be readily and properly audited.
- 13.2 In keeping or causing to be kept the accounting records under clause 13.1:
  - (a) the Trustees must have appropriate systems of control and oversight;
  - (b) the Trustees must keep such accounting records at a suitable location accessible to each Trustee, the Auditor, and the FMA; and
  - (c) the provisions of Part 7 of the Act must be complied with.
- 13.3 Subject to Governing Legislation, the Trustees must ensure that within four months after the end of each Review Period, financial statements that comply with generally accepted accounting practice are:
  - (a) completed in relation to the Scheme and that Review Period; and
  - (b) dated and signed on behalf of the Trustees.
- 13.4 The Trustees shall ensure that within four months after the end of each Review Period:
  - (a) the Scheme's financial statements for that Review Period are audited and reported on by the Auditor in accordance with the requirements of the Act; and
  - (b) those financial statements, together with the Auditor's report on those financial statements, are delivered to the Registrar of Financial Service Providers for lodgement.
- 13.5 The Trustees must:
  - (a) within four months after the end of each Review Period, prepare an annual report on the affairs of the Scheme during that Review Period; and
  - (b) within 28 days after the annual report is prepared:
    - (i) send to every Member:
      - (A) a copy of the annual report; or
      - (B) a notice containing the statements required by the FMC Regulations; and
    - (ii) lodge the annual report with the Registrar of Financial Service Providers.

## **14 Limit breaks and pricing errors**

- 14.1 The Trustees must report to the FMA any material breaches of any limits under a SIPO to the extent required by Governing Legislation.
- 14.2 The Trustees must report to the FMA in relation to any material error in the calculation of the price of an asset or material non-compliance with any methodology for pricing investments or allocating earnings to Accounts as set out in this Deed or notices issued by the FMA, and must correct such error or non-compliance and take any prescribed steps to the extent required by Financial Markets Legislation.
- 14.3 Subject to Financial Markets Legislation, for the purpose of clause 14.2 a "material error" (unless the Trustees agree otherwise from time to time) is an error that equals or exceeds:

- (a) 0.05%, in relation to cash held on call or short term bank deposits; or
- (b) 0.30% with respect to any other asset.

## **15 Statement of investment policy and objectives**

- 15.1 All money belonging to the Scheme and available for investment shall be invested in accordance with the SIPO.
- 15.2 Without limiting the Trustees' powers under clause 15.1 the Trustees and any Investment Manager so authorised by Trustees may (and shall to the extent required at law) invest the Scheme Property or any part thereof in any Registered Scheme and for this purpose may apply for membership of any Registered Scheme in which the Trustees determine in their absolute discretion (or as required at law) to invest.

## **16 Valuations**

- 16.1 The Trustees will determine the market price of each asset on such basis as is considered fair and equitable provided that the valuation method used is applied on a consistent basis over time.
- 16.2 The Trustees may instruct a valuer or other expert to value any property of the Scheme.

## **17 Related Party Benefits**

- 17.1 Subject to clause 17.2, the Trustees (and any Investment Manager, Administration Manager or other person to whom the Trustees have contracted out some or all of its functions and duties as manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 17.2 Clause 17.1 does not apply to a transaction or series of transactions if one of the following applies and the Trustees (with the consent of the Licensed Independent Trustee) certifies to that effect:
  - (a) the transaction or series of transactions are in the best interests of the Members; or
  - (b) section 174 of the Act applies to the transaction or transactions or all Related Party Benefits to be given; or
  - (c) the transaction or series of transactions are approved by or contingent on approval by a Special Resolution of the Members affected or potentially affected by the transaction or transactions.
- 17.3 Subject to Governing Legislation, the Trustees (or any person to whom the Trustees have contracted out some or all of its functions and duties as a manager) must not acquire any new In-house Asset if, as a result of the acquisition, the Scheme would have, or increase, an In-house Asset ratio of 5% or more in relation to any Related Party or Member.

## **18 Amendments to Trust Deed**

- 18.1 The Trustees by unanimous decision may at any time or times by instrument in writing amend this Deed by way of alteration, rescission, replacement or addition to the provisions of this Deed provided that no amendment shall be made that is in conflict with the provisions of an Employment Contract or Governing Legislation.
- 18.2 Before any amendment is made to this Deed, the requirements of the Governing Legislation must be complied with.
- 18.3 Notwithstanding clause 18.1 no amendment to this Deed shall be made which would have the effect of:
- (a) reducing, postponing or otherwise adversely affecting 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 is made; or
  - (b) removing any right of the Members or other beneficiaries to participate in the management of the Scheme; or
  - (c) increasing the contributions, fees, or charges payable by any Member; or
  - (d) providing for the reversion of any assets of the scheme to any Employer or Participating Employer to any greater extent than already provided for hereunder,

without the written consent of every Member, and of every other beneficiary who is in receipt of a benefit from the Scheme at the date the amendment is made, who would be adversely affected by the amendment.

## **19 Winding-up**

- 19.1 The Scheme shall be wound up if all the Trustees so unanimously resolve. In such an event the Trustees shall in accordance with the Governing Legislation:
- (a) within 14 days after the winding up resolution is made, lodge a copy of that resolution with the FMA;
  - (b) ensure that final accounts of the Scheme, showing the financial position of the Scheme, as at the date on which the winding up takes effect, are prepared;
  - (c) ensure that those final accounts are audited;
  - (d) as soon as practicable after the final accounts have been audited:
    - (i) send a copy of those accounts to the FMA and to every person who was a Member of the Scheme immediately before it was wound up; and
    - (ii) advise the FMA and the relevant Members in writing as to the manner in which the assets of the Scheme are to be distributed; and
  - (e) inform the FMA of the date on which the distribution of the assets is completed.
- 19.2 Each Member of the Scheme immediately before its winding up shall continue to have the right, upon request:

- (a) to look at, at any reasonable time, a copy of this Deed, or if that Member is a Waterside Member a copy of any report of an actuarial examination required under Section 12; and
  - (b) to receive, upon payment of a reasonable fee, a copy of this Trust Deed, or, if that Member is a Waterside Member, of any such actuarial report.
- 19.3 The Trustees may at any time, by unanimous resolution of all Trustees appointed under clauses 4.2(a), 4.2(b), 4.2(d) and 4.2(e), wind up the Scheme so far as it affects the Waterside Members.
- 19.4 The Trustees may at any time, by unanimous resolution of all Trustees appointed under clauses 4.2(a), 4.2(c), 4.2(d) and 4.2(e), wind up the Scheme so far as it affects the Seafarer Members.
- 19.5 The Trustees may at any time, by unanimous resolution, wind up the Scheme so far as it affects the Trustee Member.
- 19.6 The wind-up of part of the Scheme affecting the Waterside Members, Seafarer Members or the Trustee Member as the case may be shall not impact on the continued operation of the Scheme as it affects the other Members which shall continue to be operated in accordance with the relevant provisions of this Deed unless it is also wound up pursuant to clause 19.1.

## **20 Distribution of Scheme or a fund on winding-up**

- 20.1 Upon the Scheme being wound-up all moneys and other assets held by the Trustees in respect of the Scheme shall be realised, appropriated and distributed to and for or on behalf of each Member of the Scheme at the wind up date determined in accordance with clause 19.1.
- 20.2 On and from the wind up date:
  - (a) no further Waterside Workers or Seafarers shall be admitted as Members of the Scheme as the case may be; and
  - (b) no further contributions shall be made by Members or any Participating Employer to the Scheme except contributions that accrue before the wind up date.
- 20.3 Upon the Scheme being wound up all moneys shall be distributed to and for or on behalf of each Waterside Member at the wind up date in the following order of priority:
  - (a) firstly, to provide the expenses of and incidental to the winding-up;
  - (b) second, to provide for each Member who is in receipt of a pension from the Scheme by the purchase of an individual non-assignable non-commutable annuity from a reputable life insurance office or annuity company for such sum in respect of each Member as shall be determined by the Trustees acting on the advice of the Actuary in lieu of the pension otherwise payable provided that each Waterside Member who is in receipt of a pension shall be entitled to take such sum as a lump sum in lieu of an annuity by giving notice in writing to the Trustees within one month of being notified in writing by the Trustees of the winding up of the Scheme;
  - (c) third, to provide for each Member who at the wind up date has attained Retirement Age a lump sum calculated in accordance with Section 36;
  - (d) fourth, with the prior written consent of the FMA the assets representing the Death Benefit "A" Account or any other account (excluding the Death Benefit "B" Account) wholly funded by the Participating Employers shall revert to the Participating Employers together with the income attributable thereto;

- (e) fifth, to distribute to each Member who at the wind up date has not attained Retirement Age the Member's credit in the Members Account and Employer's Account; and
  - (f) finally, any balance remaining shall be distributed to Members in proportion to the credit held in each Members Account and Employer's Account.
- 20.4 Upon the Scheme being wound up, all money shall be distributed to and for or on behalf of each Seafarer Member at the wind up date in the following order of priority:
  - (a) firstly, to provide for the expenses of and incidental to the winding up;
  - (b) second, in providing for benefits payable in terms of this Deed, including any deferred benefits, which have become payable prior to the wind up date and remain unpaid at that date;
  - (c) third, to distribute to each Member who is not entitled to a benefit under clause 20.4(b), the Member's credit in the Members Account and Employer's Account provided that if the amount available is insufficient for the appropriate provision in respect of all Members then the Members Account and the Employer's Account shall be reduced pro rata for all Members; and
  - (d) finally, (if there then be any moneys still remaining) in augmenting the benefits under clause 20.4(c) above on a pro rata basis provided that there shall be no augmentation of Members Accounts to the extent that they relate to a period of membership where there are no employer contributions.
- 20.5 Upon the Scheme being wound up, all money shall be distributed to the Trustee Member at the wind up date in the following order of priority:
  - (a) firstly, to provide the expenses of and incidental to the winding-up; and
  - (b) second, to distribute to the Trustee Member the credit in the Trustee Member's Members Account.
- 20.6 Subject to the foregoing provisions of this Deed no part of the Scheme shall revert to an Employer or Participating Employer or any one of them.
- 20.7 The Trustees shall, as soon as practicable, advise the FMA that the distribution of assets has been completed.
- 20.8 If that part of the Scheme that relates to Waterside Members is wound up under clause 19.3 then the provisions of this Section 20 shall apply as appropriate.
- 20.9 If that part of the Scheme that relates to Seafarer Members is wound up under clause 19.4 then the provisions of this Section 20 shall apply as appropriate.
- 20.10 If that part of the Scheme that relates to the Trustee Member is wound up under clause 19.5 then the provisions of this Section 20 shall apply as appropriate.

## **21 Contract of employment**

- 21.1 Nothing herein shall in any way affect the right of any Participating Employer to terminate the employment of any Member, subject to any Member's right of appeal under any statute or Employment Contract.



## **22 Meetings**

- 22.1 When required by Financial Markets Legislation, the Trustees shall call a meeting of Members in the manner and on the basis set out in the Act and the FMC Regulations. A meeting of Members shall be conducted in accordance with Financial Markets Legislation.
- 22.2 A meeting of Members may be called with respect to the Scheme or a in relation to Waterside Members or Seafarer Members specifically. If it is called with respect to Waterside Members or Seafarer Members specifically, the only Members entitled to attend and vote at the meeting shall be those Members.

## **23 Benefits inalienable**

- 23.1 No person being entitled to any benefits under this Deed shall assign, charge, alienate or borrow against the security of such benefits.
- 23.2 In the event of bankruptcy of any Member or in the event of proceedings being taken by any creditor for the attachment of the benefits then such benefits shall to the full extent permitted by law become forfeited to the Trustees provided that the Trustees shall then apply any such forfeited benefits towards the support of the Member and/or any Dependants of such Member to relieve hardship or in such manner as the Trustees in their absolute discretion determine.
- 23.3 If any person is entitled to any benefits under this Deed and becomes:
- (a) the subject of any order of the court under the Protection of Personal and Property Rights Act 1988; or
  - (b) mentally disordered within the meaning ascribed to those words by the Mental Health (Compulsory Assessment and Treatment) Act 1992,

then the benefits shall be administered in accordance with such order or the decision of any manager duly appointed to manage the affairs of such person or if no such manager is appointed the Trustees may administer the said benefits in accordance with the provisions of this Deed for the maintenance and support and otherwise for the benefit of the person or the person's Dependants or such other persons as the Trustees in their absolute discretion may determine.

## **24 Delays in payment**

- 24.1 In the event of any circumstances existing as a result of which it would be impracticable for legal evidentiary or other reasons or it would unduly interfere with the orderly administration of the Scheme or it would not otherwise be in the best interests of the Member or Dependant to be made forthwith upon the event occurring giving rise to the entitlement to benefit the Trustees may (but in the latter two cases only with the consent of that Member or that Dependant) defer payment of such benefit either in whole or in part for such period as is necessary or desirable and may augment the benefit otherwise provided in accordance with this Deed on the happening of that event by such further sum as they in their discretion think proper or as they may agree with such Member or such Dependant but so that such further sum shall not exceed an amount equivalent to earnings allocated for the period of deferment at the same rate as earnings calculated in accordance with Section 11.

## **25 Information from Members or Dependants**

- 25.1 Any Member or Dependant shall produce such evidence or information as may be reasonably required by the Trustees concerning the Member's or Dependant's entitlement under the Scheme and until such evidence or information is produced the Trustees may withhold the payment of any benefit to such Member or such Dependant.

## **26 Satisfaction of claims**

- 26.1 When a benefit in respect of a Member has been paid in accordance with this Deed the Member and the Member's heirs, executors and administrators shall cease to have any claim on the Scheme.

## **27 Unclaimed benefits**

- 27.1 If a Member or a beneficiary in respect of a Member cannot be located (after all reasonable inquiries have been made by the Trustees) within seven years from the date on which a benefit became payable to or in respect of the Member or a beneficiary Member, then the benefit should be paid to the relevant General Reserve Account.
- 27.2 In event of a claim for a benefit being made later than seven years after the date on which it becomes due, the Trustees shall pay the whole benefit claimed out of the Scheme.

## **28 Disputes**

- 28.1 The Trustees shall determine any question arising as to the interpretation or application of this Deed or any amendment thereof and their decision shall be final and binding upon all parties concerned provided that any such determination or decision shall not contravene or be repugnant to the provisions of the Governing Legislation.

## **Part C – Rules relating to the Waterside Workers**

### **29 Applicability of rules**

- 29.1 These rules apply to all Waterside Members.

### **30 Membership**

- 30.1 All Waterside Workers and all other persons working within the Waterfront Industry who satisfy such terms and conditions for joining the Scheme as the Trustees may determine from time to time for the purposes of this Section shall be eligible to join the Scheme as a Waterside Member provided that any change to terms and conditions that would result in an extension to membership eligibility is first subject to separate approval by FMA.
- 30.2 A person who is eligible to join the Scheme under clause 30.1 shall do so by applying to join in such form as the Trustees may prescribe for this purpose from time to time.

- 30.3 When a Waterside Worker makes a written application to join the Scheme in accordance with clause 30.2, authorisation shall be given by the Waterside Worker to the Participating Employer to deduct from the Waterside Worker's Earnings when payment of such Earnings are made, the amount of the Waterside Worker's contribution to be applied for the purpose of the Scheme.
- 30.4 A Waterside Member's participation in the Scheme shall become effective from the date approved by the Trustees on the application to join the Scheme and shall terminate upon:
- (a) a benefit entitlement being paid in full pursuant to this Part C leaving a zero balance in the Members Account and Employer's Account; or
  - (b) a forfeiture of the Member's rights to benefits in accordance with clause 23.2.

## **31 Participating Employers**

- 31.1 The Trustees shall treat any company, partnership or incorporated or unincorporated body that employs Waterside Members as a Participating Employer in the Scheme subject to any terms and conditions imposed by the Trustees as a condition of them being treated as a Participating Employer.
- 31.2 Subject to any such terms and conditions a Participating Employer shall be subject to the same obligations and be entitled to the same benefits as are by this Deed imposed on or granted to other Participating Employers with respect to other Waterside Members in the Scheme.

## **32 Contributions**

- 32.1 Each Waterside Member shall contribute to the Scheme at least 4% of Earnings and the relevant Participating Employer shall contribute the equivalent percentage to what the Waterside Member contributes up to a maximum of 7% of the Earnings of each Member, provided that:
- (a) the relevant Participating Employer shall not be required to contribute to the Scheme in respect of a Waterside Member during any period in which the Waterside Member is not actually contributing to the Scheme pursuant this Section;
  - (b) any contributions to the Maritime KiwiSaver Scheme by or in respect of a Waterside Member shall be deemed to satisfy the obligation of the relevant contributor to contribute to the Scheme for the purposes of clause 32.1, to the extent of those contributions, but for no other purpose;
  - (c) a Waterside Member may elect to decrease his or her own contributions to the Scheme by an amount up to or equal to the amount the Waterside Member contributes to any KiwiSaver Scheme (other than the Maritime KiwiSaver Scheme) subject to a minimum contribution to the Scheme by the Waterside Member of 3%; and
  - (d) a Participating Employer's contribution to the Scheme in respect of the Waterside Member shall reduce by an amount equal to any contributions the Participating Employer is required to make to any KiwiSaver Scheme in respect of the Waterside Member, unless the Participating Employer and the Waterside Member agree otherwise.
- 32.2 With the approval of the Trustees, a Waterside Member may make additional contributions to the Scheme in any year, provided that any such additional contributions must be made through the payroll of the Member's Participating Employer. The amount of such additional contributions shall be as elected by the Member and need not be matched by the Participating Employer.

- 32.3 Notwithstanding clause 32.1, if an Employment Contract provides for greater contribution rates by a Member and/or the relevant Participating Employer, then the provisions of the Employment Contract shall prevail.
- 32.4 The Participating Employers shall also contribute equitably such additional amount as determined by the Actuary as being sufficient to fund the additional Death Benefit as provided in clause 37.1.
- 32.5 Contributions by or in respect of a Waterside Member under this Section shall cease on the earliest of the Member attaining the Retirement Age, leaving the Waterfront Industry, becoming permanently incapacitated, or dying, provided that if a Member continues working within the Waterfront Industry after the Retirement Age, the Member may continue making contributions to the Scheme through the payroll of the Member's Participating Employer (but not otherwise), on terms and conditions agreed by the Member and the Participating Employer and advised to the Trustees.

### **33 Waterfront General Reserve Account**

- 33.1 Subject to clause 10.1, there shall be established by the Trustees in connection with the Scheme a Waterfront General Reserve Account and the Trustees shall credit or debit to such account:
- (a) earnings allocated in terms of Section 11;
  - (b) any amount available for credit to the Waterfront General Reserve Account as a result of the provisions of clause 27.1;
  - (c) any benefits hereunder which in accordance with this Deed a Waterside Member and persons claiming through or under a Waterside Member cease to have the right to receive;
  - (d) any moneys arising under the Scheme in respect of a Waterside Member which are not required to pay the Waterside Member's benefit; and
  - (e) any income and gains not included in earnings allocated in terms of Section 11.
- 33.2 The Waterfront General Reserve Account may be applied from time to time by the Trustees at their discretion in any one or more of the following ways:
- (a) augmenting the rate of earnings allocated under Section 11;
  - (b) payment of the expenses of the Scheme;
  - (c) increasing the retirement benefits of all Waterside Members on an equitable basis;
  - (d) providing benefits other than retirement benefits for all Waterside Members on an equitable basis;
  - (e) providing personal benefits for Waterside Members or their Dependants in the case of hardship;
  - (f) payment of all or any part of a Participating Employers' contributions to the Scheme in respect of Waterside Members if they have suspended or terminated their contributions;
  - (g) payment of all or part of the contributions of all Waterside Members in any year on an equitable basis; and/or

- (h) payment of any benefit paid under clause 27.2,
- in such manner as the Trustees may from time to time consider appropriate.
- 33.3 The Trustees may establish such Other Reserve Accounts as the Trustees may from time to time determine. As at the date of this Deed, the Death Benefit "A" Account and the Death Benefit "B" Account have been established as Other Reserve Accounts.
- 33.4 The Trustees shall credit to the Death Benefit "A" Account:
  - (a) earnings allocated in terms of Section 11; and
  - (b) any contributions paid into the Scheme by a Participating Employer under clause 32.4.
- 33.5 The Trustees shall credit to the Death Benefit "B" Account:
  - (a) earnings allocated in terms of Section 11; and
  - (b) any unvested Employer contributions calculated in accordance with clause 40.2.
- 33.6 The Death Benefit "A" Account and Death Benefit "B" Account shall be applied from time to time by the Trustees in the payment of any additional death benefit that becomes payable under Section 37 on a pro rata basis.

## **34 Members Accounts**

- 34.1 The Trustees shall establish for each Waterside Member an Account in the Member's name to be known as the Members Account.
- 34.2 The Members Account at any date shall be the sum of:
  - (a) contributions by the Member in accordance with Section 32;
  - (b) part of any amount accepted into the Scheme in respect of the Member in accordance with Section 45; and
  - (c) earnings to that date allocated in terms of Section 11; after making such deduction therefrom in respect of:
    - (i) any benefit paid in terms of this Part C; and
    - (ii) expenses (if any) associated with any payments made in terms of clause 35.2(c)(i) above as the Trustees in their discretion consider to be equitable and prudent.

## **35 Employer's Accounts**

- 35.1 The Trustee shall establish for each Waterside Member an Account in the name of each Member to be known as the Employer's Account.
- 35.2 The Employer's Account at any date shall be the sum of:
  - (a) contributions by the Participating Employer in respect of the Member in accordance with Section 32;

- (b) part of any amount accepted into the Scheme in respect of the Member in accordance with Section 45; and
- (c) earnings to that date allocated in terms of Section 11; after making such deductions therefrom in respect of:
  - (i) any benefit made in terms of this Part C; and
  - (ii) expenses (if any) associated with any payments made in terms of clause 35.2(c)(i) above as the Trustees in their discretion consider to be equitable and prudent.

## **36 Retirement or redundancy benefit**

36.1 A Waterside Member who:

- (a) attains the Retirement Age; or
- (b) retires and leaves the Waterfront Industry having attained the age of sixty years,

shall be entitled to a retirement benefit from the Scheme consisting of the total credit standing to the Members Account and Employer's Account.

36.2 A Waterside Member shall regardless of age be deemed to have retired as provided in clause 36.1 if the Member is declared redundant or, in respect of a Waterside Member who is employed under a Fixed Term Contract, if at the expiration of the Fixed Term Contract the Employer decides not to renew the Fixed Term Contract or to offer the Member a new contract of employment. The decision of the Trustees as to whether a Member has been declared redundant shall be final and binding.

36.3 A Waterside Member who is entitled to a retirement benefit from the Scheme may elect:

- (a) to receive the retirement benefit as a lump sum; or
- (b) to defer payment of all or part of the retirement benefit in accordance with Section 47.

36.4 A Waterside Member who joined prior to 1 April 2016 who is entitled to retirement benefit from the Scheme may also elect to apply all or part of the retirement benefit to purchase a pension as provided in Section 41.

## **37 Death benefit**

37.1 In the event of the death of a Waterside Member the Trustees shall pay in accordance with this Section a death benefit from the Scheme equal to the total credit standing to the Members Account and Employer's Account plus any additional payment under clause 37.2.

37.2 An additional payment shall be payable if at the time of the Member's death:

- (a) the Member and the Member's Employer were making contributions to the Scheme as provided for in Section 32 at such a level that the aggregate of the contributions by or in respect of the Member to the Scheme was at least equal to 8% of the Member's Earnings; or

- (b) all or part of such contributions were being paid from the Waterfront General Reserve Account in accordance with clause 33.2(g); or
  - (c) the Member and the Member's Employer were making contributions to the Maritime KiwiSaver Scheme as provided for in clause 32.1(b) at such a level that the aggregate of the contributions by or in respect of the Member to the Scheme and the Maritime KiwiSaver Scheme was at least equal to 8% of the Member's Earnings.
- 37.3 The amount of this additional death benefit shall be equal to twice the contributions the Member would have made in terms of Section 32 for the year ending 31 March in which the death of the Member occurred had the Member contributed to the Scheme for the whole of that year, multiplied by the number of years and complete months between 31 March preceding the Member's death and the Member's 65th birthday, notwithstanding the fact that some or all of those contributions may have been made to the Maritime KiwiSaver Scheme. For the purpose of calculating the contributions which would have been made during the year ending 31 March in which the death occurred, the Member (if the Member joined the Scheme before 1 April 1996 and at the date of death the Member was a worker in the Waterfront Industry) shall be assumed to have received the national port average earnings for that Member's class of work as the case may be for that twelve month period as determined by the Trustees, and any other Member shall be assumed to have received for that twelve month period earnings at the rate thereof at the date of death as determined by the Trustees or such greater amount as the Trustees, having regard to the advice of the Employer, determine to be just and equitable.
- 37.4 Notwithstanding anything herein expressed or implied the Trustees may pay all or part of the death benefit from the Scheme but not in any case exceeding such sum as permitted from time to time by section 65 of the Administration Act 1969 to such of the deceased Waterside Member's Dependants or such other persons as the Trustees may in their absolute discretion determine without the necessity of any grant of probate or letters of administration and such payment shall be final and binding on all parties concerned.
- 37.5 If a benefit becomes payable in terms of this Section the Trustees shall, subject to clause 37.3 pay the said benefit in respect of the Member by way of a lump sum in such one or more of the following ways and in such shares and proportions as the Trustees in their absolute discretion determine:
- (a) in payment to the legal personal representative of the deceased Member; and/or
  - (b) in payment to or for the benefit of any one or more of the Dependants of the deceased Member.
- 37.6 With the approval of the Trustees, the legal personal representative of a deceased Waterside Member may elect to defer payment of all or part of the death benefit from the Scheme subject to the following:
- (a) during such deferral the deceased Member shall be deemed to remain a Member for the purposes of the Scheme;
  - (b) no further contributions to the Scheme shall be made pursuant to Section 32;
  - (c) the deferred death benefit (plus any further contributions in respect of it) shall continue to be held to the credit of the Members Account of the deceased Waterside Member together with earnings allocated in accordance with Section 11 less any withdrawals made in accordance with clause 37.6(d); and
  - (d) the legal personal representative of the deceased Waterside Member, or any other person approved by the legal personal representative, may elect to withdraw all or part of the deferred death benefit on such terms and conditions as may be prescribed by the Trustees from time to time.

## **38 Terminal Illness benefit**

- 38.1 If a Waterside Member is diagnosed as having a Terminal Illness and continues employment in the Waterfront Industry the Member may elect to receive a terminal illness benefit from the Scheme consisting of an amount not exceeding fifty per cent (50%) of the withdrawal benefit the Member would have been entitled to under Section 40 if the Member had left the Waterfront Industry at the date the election was made.
- 38.2 Payment of the terminal illness benefit shall be debited to the Members Account and the minimum benefit payable under clause 43.1 shall be reduced accordingly.
- 38.3 Subject to clause 38.2, the receipt of a terminal illness benefit shall not affect the Waterside Member qualifying for further benefits under the Scheme on leaving the Waterfront Industry.
- 38.4 The decision of the Trustees as to whether a Waterside Member is entitled to a terminal illness benefit shall be final and binding.

## **39 Disablement benefit**

- 39.1 If a Waterside Member leaves the Waterfront Industry before attaining Retirement Age because the Member is no longer able to continue working owing to ill-health or Permanent Incapacity the Waterside Member shall be entitled to the disablement benefit consisting of the total credit standing to the Members Account and Employer's Account.
- 39.2 The disablement benefit payable under clause 39.1 shall at the election of the Waterside Member be dealt with in the same manner as the retirement benefit as set out in Section 36 or may be transferred at the Trustee's discretion and with the consent of the Member to another superannuation scheme registered under the Act as provided for in Section 45.
- 39.3 The decision of the Trustees as to whether a Waterside Member is no longer able to continue working owing to ill-health or Permanent Incapacity shall be final and binding.

## **40 Withdrawal benefit**

- 40.1 If a Waterside Member leaves the Waterfront Industry before attaining the age of sixty years and a benefit does not become payable in accordance with Sections 36 and 39 or transfers to another employer within the Waterfront Industry in such circumstances that the Member is no longer entitled to be a Member the Member shall be entitled to a withdrawal benefit.
- 40.2 The withdrawal benefit payable from the Scheme may consist of all the credit standing to the Members Account and all or part of the total credit standing to the Employer's Account provided that subject to clause 40.3 the amount of such withdrawal benefit shall be determined by the Trustees.
- 40.3 If a Waterside Member has been a member of the Scheme for one (1) complete year twenty per cent (20%) of the Employer's Account shall vest for such Member for that complete year increasing at a rate of twenty per cent (20%) per year for each subsequent complete year of membership of the Scheme to a maximum of one hundred per cent (100%) on the fifth anniversary of the Member's membership of the Scheme.
- 40.4 The withdrawal benefit from the Scheme shall include all the credit standing in the Employer's Account in respect of every Waterside Member to whom clause 40.1 applies in either of the following cases:



- (a) where the Waterside Member elects to defer payment of all of the Member's benefit in accordance with Section 47 until the date the Member would have qualified for one hundred per cent (100%) vesting under clause 40.2; or
  - (b) where the Waterside Member elects at the Trustee's discretion to the transfer of all the Member's benefits to another superannuation scheme registered under the Act as provided for in Section 46.
- 40.5 The withdrawal benefit payable under clauses 40.1 and 40.2 from the Scheme shall at the election of the Waterside Member be dealt with in the same manner as the retirement benefit as set out in clause 36.3.
- 40.6 The decision of the Trustees as to the period during which a Waterside Member has contributed to the Scheme, whether a Member has transferred within the Waterfront Industry, the reason for the Member having left the Waterfront Industry and whether the Member is entitled to be or remain a Member shall be final and binding.

## **41 Pension benefits**

- 41.1 Each Waterside Member who became a Member on or before 1 April 2016 who is entitled to a benefit under Sections 36, 39 or 40 may within one month of being entitled to such a benefit elect to apply all or part of the Member's benefit to the purchase of a lifetime pension of such amount as the Trustees shall determine on the advice of the Actuary.
- 41.2 The annual pension payable under this Section shall be paid by monthly instalments the first instalments falling due on the last day of the month following that in which the Waterside Member elects to take a pension under clause 41.1 and a subsequent instalment falling due on the last day of each succeeding month during the lifetime of the Member.
- 41.3 Each Waterside Member retiring from the Waterfront Industry may at the time of electing to purchase an annuity surrender a portion not exceeding one-half of the pension to which the Member would otherwise be entitled in order to provide a deferred pension for a Nominated Pension Beneficiary. Such deferred pension shall be paid after the death of the Member to the Nominated Pension Beneficiary for the remainder of that person's lifetime at the level nominated by the Member.
- 41.4 If a Waterside Member and the Nominated Pension Beneficiary (if any) both die before payment has been made of an amount equal to one hundred and twenty (120) instalments of pension then the legal personal representative of the last of the Member or Nominated Pension Beneficiary to die shall be entitled to receive a lump sum equal to the difference between the total amount of pension paid to the Member and the Nominated Pension Beneficiary during their lives and the greater of:
  - (a) one hundred and twenty instalments of pension; or
  - (b) the original sum applied to purchase the pension under clause 41.4(a).

## **42 Financial hardship**

- 42.1 If a Waterside Member is suffering significant financial hardship the Waterside Member may make a written request to the Trustees to receive a significant financial hardship benefit. The provisions of Rule 10 of the KiwiSaver Rules apply to any request for financial hardship benefit.

### **43 Minimum benefit**

- 43.1 Subject to clause 36.4, if a Waterside Member ceases to be a Waterside Member of the Scheme for any reason whatsoever, the value of the benefit payable from the Scheme to or in respect of such Waterside Member shall not be less than the Member's own contributions to the Scheme together with the amount which the Trustees acting on the advice of the Actuary shall determine as the contributions made by the Member to any previous scheme from which the Member's benefits have been transferred under Section 45.

### **44 First Home withdrawal benefits**

- 44.1 A Waterside Member who:

- (a) has either completed three years' membership of the Scheme or been a member of one or more KiwiSaver schemes for a period of three years or more;
- (b) has not previously made a withdrawal under either this Section or Rule 8 of the KiwiSaver Rules; and
- (c) is not otherwise eligible for a benefit under Part C of this Deed,

may with the consent of the Trustees given in accordance with this Section withdraw from the Members Account an amount determined under this Section to assist the Member settle the purchase of a First Home. For the purpose of this Section, a withdrawal by the Member under Rule 8 of the KiwiSaver Rules shall be disregarded as a previous withdrawal if it was made to assist with the purchase of the same First Home the Member intends to purchase with the assistance of a First Home withdrawal benefit under this Section, even if technically withdrawn prior to the Member being paid a benefit under this Section.

- 44.2 The amount a Member may withdraw from his or her Members Account for a First Home withdrawal benefit is at the discretion of the Trustees, but in any case shall not exceed the total credit standing to the Members Account at the date of payment of the benefit.

- 44.3 The First Home withdrawal benefit provided under this Section is intended to be ancillary to the Scheme's principal purpose of providing retirement benefits for its Members, and is only intended to be available in the same circumstances in which a withdrawal for the purpose of purchasing a First Home would be available from a KiwiSaver Scheme. Accordingly, the Trustees shall not consent to a Member making a withdrawal under this Section where the Trustees are satisfied that the withdrawal:

- (a) would not have been permitted to be made from a KiwiSaver Scheme under Rule 8 of the KiwiSaver Rules, if the Member was a member of a KiwiSaver Scheme and was seeking a withdrawal for the purpose of purchasing a First Home under that Rule; or
- (b) is not consistent with the Member investing towards his or her retirement; or
- (c) would result in the principal purpose of the Scheme ceasing to be the provision of retirement benefits to its Members; or
- (d) would otherwise prejudice the Scheme's registration under the Act or any other regulatory status the Trustees consider is desirable for the Scheme to maintain in the interest of the membership as a whole.

- 44.4 Subject to clause 44.3, the decision as to whether or not to consent to a Member making a withdrawal under this Section, the maximum amount that may be withdrawn, and whether a

proposed purchase qualifies as the purchase of a First Home, is at the absolute discretion of the Trustees and shall be final and binding.

- 44.5 To assist in making their decision, the Trustees, or any person delegated by them, may require the Member to provide such evidence of whatever nature the Trustees consider relevant.
- 44.6 Any withdrawal for the purchase of a First Home allowed under this Section must be paid to the Member's solicitor.
- 44.7 Without limiting their discretion under clause 44.3 in any way, when paying out a First Home withdrawal benefit, the Trustees may require the Member, or the Member's solicitor, to give an undertaking before making the payment that:
- (a) the agreement for the purchase of the Member's First Home is unconditional; and
  - (b) the amount paid will be used for the purchase of the Member's First Home, or if the settlement is not completed by the due date or any extended date of settlement, repaid the Trustees.

and otherwise the Trustees shall not be required to supervise or enquire as to the application of the First Home withdrawal benefit paid under this Section.

- 44.8 Payment of a First Home withdrawal benefit under this Section shall be deemed to be attributable to the member's own contributions to the Scheme and the minimum benefit payable under clause 43.1 shall be reduced accordingly.

## **45 Transfer from another superannuation scheme**

- 45.1 The Trustees may accept into the Scheme an amount in respect of a Waterside Member arising from another superannuation or similar scheme (the **Transferor Fund**) in which the Member participated, and:
- (a) if the amount is to be paid into the Scheme by the trustees of the Transferor Fund then the amount shall either be added to the Members Account or the Employer's Account or apportioned between the two as shall be agreed between the Trustees, the trustees of the Transferor Fund and the Member and such addition or apportionment shall form part of the appropriate account provided that none of the Member's own contributions to the Transferor Fund shall be added or apportioned to the Employer's Account;
  - (b) if the amount is to be paid into the Scheme by the Member then the amount shall be added to and shall form part of the Members Account; and
  - (c) the transfer shall confer Member rights under the Waterfront Rules in addition to the rights normally available to a Member in respect of the Member's membership of the Scheme as determined by the Trustees,

provided that no such contribution shall be accepted by the Trustees from an overseas scheme unless the Trustees have complied with the conditions of any applicable exemption from the requirements of the AML Act in relation to any such contribution, where the Trustees have determined to rely on such exemption.

## **46 Transfers to another superannuation scheme**

- 46.1 Subject to the Governing Legislation, where a Waterside Member:

- (a) ceases to be a Waterside Member of the Scheme, or leaves the Waterfront Industry, or transfers to another employer within the Waterfront Industry in such circumstances that the Member is no longer entitled to be a Member of the Scheme, or is no longer entitled to receive contributions to the Scheme by that Member's Participating Employer, other than by virtue of the ability to defer payment of a benefit in accordance with clause 36.3(b); and
- (b) joins or becomes a member of another scheme registered under the Act (including a KiwiSaver scheme) operated by the Member's new employer, or in which the Member's new employer participates, or any other superannuation scheme approved from time to time by the Trustees for this purpose

the Trustees may, either at the request of the Waterside Member or in their discretion if so permitted under the Governing Legislation, transfer to any such scheme all of the benefit to which the Member is entitled to on the date of the request, on such terms and conditions as the Trustees may determine, and the Members Account and Employer's Account shall be debited accordingly and the Member shall cease to be entitled to any further benefit from the Scheme.

- 46.2 Subject to the Governing Legislation, where a Waterside Member's role or employment category changes and the Waterside Member becomes entitled to join or become a member of another Registered Scheme sponsored, contributed to or participated in by the Waterside Member's employer, the Trustees may, at the request of the Waterside Member, transfer to any such scheme the total credit standing in the Waterside Member's Member Account and Employer Account on such terms and conditions as the Trustees may determine and the Member shall cease to be entitled to any further benefit from the Scheme.

## **47 Deferment**

- 47.1 Any Waterside Member who becomes entitled to a benefit in terms of Sections 36, 39 and 40 may request the Trustees in such form as the Trustees may prescribe to defer payment of the whole or a part of the Member's benefit. During any period of deferment of the whole or a part of the Member's benefit, such benefit will continue to attract earnings in accordance with the provisions of Section 11.
- 47.2 The final settlement of a Waterside Member's deferred benefit retained in the Scheme in terms of clause 47.1 shall be paid as soon as practicable following a request by the Member, or if the Trustees have determined under clause 37.5(a) to make payment to the Member's legal personal representative, following a request by the Member's legal personal representative or any other person approved by the Member's legal personal representative, for payment of the Member's deferred benefit provided that the payment of a benefit retained in the Scheme shall be subject to the same provisions of this Deed as would have applied if payment of the benefit had been made when the Member first became eligible to receive such benefit. If a Member dies before the Member receives final settlement of their deferred benefit retained in Scheme in terms of clause 47.1, then Section 37 shall apply and such deferred benefit shall be treated as a death benefit.
- 47.3 A Waterside Member who has elected to defer the receipt of a benefit in accordance with clause 47.1 may, subject to such terms and conditions as may be prescribed by the Trustees from time to time, elect to withdraw all or part of the Member's deferred benefit as a lump sum or lump sums and/or by regular payments.

## **48 Tax liability withdrawal**

- 48.1 A Waterside Member may make a written request to the Trustees to withdraw from that Member's Account an amount to settle payment of that Member's personal income tax liabilities

owing by the Member to the Commissioner of Inland Revenue as a result of the Member's NIR being inconsistent with the Member's correct PIR.

48.2 An application under this clause must:

- (a) Be made within 24 months beginning from the end of the month in which the liability of the Member for tax is assessed;
- (b) Include a statutory declaration giving the details of the resulting liability of the Member for tax under the Income Tax Act 2007; and
- (c) Include any other documents and information that the Trustee's request.

48.3 Any withdrawal and the amount of the permitted withdrawal under this clause shall be at the Trustees discretion and the Trustee may pay the withdrawal entitlement under this Rule to the Commissioner of Inland Revenue directly.

## **Part D – Rules relating to the Seafarers**

### **49 Applicability of rules**

49.1 These rules apply to all Seafarer Members.

### **50 Membership**

50.1 All Seafarers and all other persons working within the Seafaring Industry who satisfy such terms and conditions for joining the Scheme as the Trustees may determine from time to time for the purposes of this Section shall be eligible to join the Scheme as a Seafarer Member provided that any change to terms and conditions that would result in an extension to membership eligibility is first subject to separate approval by FMA.

50.2 A person who is eligible to join the Scheme under clause 50.1 must do so by applying to join in such form as the Trustees may prescribe for this purpose from time to time.

50.3 When a Seafarer makes a written application to join the Scheme in accordance with clause 50.2, or changes Participating Employers, authorisation shall be given by the Seafarer to the relevant Participating Employer to deduct from the Seafarer's Earnings when payment of such Earnings are made, the amount of the Seafarer's contribution to be applied for the purpose of the Scheme.

50.4 A Seafarer Member's participation in the Scheme shall become effective from the date approved by the Trustees on the application to join the Scheme and shall terminate upon:

- (a) a benefit entitlement being paid in full pursuant to this Part D leaving a zero balance in the Members Account and Employer's Account; or
- (b) a forfeiture of the Member's rights to benefits in accordance with clause 23.2.

## **51 Participating Employers**

- 51.1 The Trustees shall treat any company, partnership or incorporated or unincorporated body that employs Seafarers as a Participating Employer in the Scheme subject to any terms or conditions imposed by the Trustees as a condition of them being treated as a Participating Employer.
- 51.2 Subject to any such terms and conditions a Participating Employer shall be subject to the same obligations and be entitled to the same benefits as are by this Deed imposed on or granted to other Participating Employers with respect to other Seafarer Members in the Scheme and shall give to the Trustees such indemnity and execute such document or documents as the Trustees shall require and the Seafarer Members in the employment of a Participating Employer so treated shall also be subject to the obligations and entitled to the benefits to which other Seafarer Members in the Scheme are subject or entitled respectively.

## **52 Contributions**

- 52.1 Seafarer Members shall contribute to the Scheme an amount as specified in the relevant Employment Contract, provided that where a Seafarer Member is also contributing to a KiwiSaver Scheme, the Seafarer Member's contributions to the Scheme may, at the Seafarer Member's request, be reduced by the amount the Seafarer Member is contributing to such KiwiSaver Scheme.
- 52.2 Subject to clause 52.3, each Employer shall contribute to the Scheme on behalf of each Member an amount equal to twice the amount the Member contributes under clause 52.1 or such amount as specified in the relevant Employment Contract provided that:
- (a) where the Employer is also contributing to a KiwiSaver Scheme on a Member's behalf, the Employer's contributions to the Scheme will be off-set by the amount the Employer is contributing to the KiwiSaver Scheme in respect of the Member subject to the Employer's contributions to the Scheme and such KiwiSaver Scheme being in aggregate not less than the rates set out above.
- 52.3 With the approval of the Trustees, a Seafarer Member may make additional contributions to the Scheme in any year, provided that any such additional contributions must be made through the payroll of the Member's Participating Employer. The amount of such additional contributions shall be as elected by the Member and need not be matched by the Participating Employer.

## **53 Seafarers' General Reserve Account**

- 53.1 Subject to clause 10.1, there shall be established by the Trustees in connection with the Scheme a Seafarers' General Reserve Account and the Trustees shall credit or debit to such account:
- (a) earnings allocated under Section 11;
  - (b) any amount available for credit to the Seafarers' General Reserve Account as a result of the provisions of clause 60.5;
  - (c) any benefits hereunder which in accordance with this Deed a Seafarer Member and persons claiming through or under a Seafarer Member cease to have the right to receive;
  - (d) any moneys arising under the Scheme in respect of a Seafarer Member which are not required to pay the Seafarer Member's benefit; and

- (e) any income and gains not included in earnings allocated in terms of Section 11.

53.2 The Seafarers' General Reserve Account shall be used at the Trustee's discretion for any one or more of the following purposes:

- (a) augmenting the rate of earning allocated under Section 11;
- (b) payment of the expenses of the Scheme;
- (c) increasing the retirement benefits of all Seafarer Members on an equitable basis;
- (d) providing benefits other than retirement benefits for all Seafarer Members on an equitable basis;
- (e) payment of all or part of a Participating Employer's contributions to the Scheme in respect of Seafarer Members if they have suspended or terminated their contributions;
- (f) the payment of the whole or part of the contributions of all Seafarer Members in any year on an equitable basis;
- (g) providing personal benefits for Seafarer Members and their Dependants in case of hardship; and/or
- (h) payment of any benefit paid under clause 27.2,

in such manner as the Trustees may from time to time consider appropriate.

53.3 The Trustees may establish such Other Reserve Accounts as the Trustees may from time to time determine.

## **54 Members Accounts**

54.1 The Trustees shall establish for each Seafarer Member an Account in the Member's name to be known as the Members Account.

54.2 The Members Account at any date shall be the sum of:

- (a) contributions by the Member in accordance with Section 52;
- (b) part of any amount accepted into the Scheme in respect of a Member pursuant to Section 64; and
- (c) earnings to that date allocated in terms of Section 11; after making such deduction therefrom in respect of:
  - (i) any benefit made in terms of this Part D; and
  - (ii) expenses (if any) associated with any payments made in terms of clause 54.2(c)(i) above as the Trustees in their discretion consider to be equitable and prudent.

## **55 Employer's Accounts**

- 55.1 The Trustee shall establish for each Seafarer Member an Account in the name of each Member to be known as the Employer's Account.
- 55.2 The Employer's Account at any date shall mean the sum of:
- (a) contributions by the Participating Employer in respect of the Member in accordance with Section 52; and
  - (b) part of any amount accepted into the Scheme in respect of the Member in accordance with Section 64; and
  - (c) earnings to that date allocated in terms of Section 11; after making such deductions therefrom in respect of:
    - (i) an equitable proportion of expenses (if any) of the Scheme;
    - (ii) the cost of Group Insurance (if any) in accordance with clauses 57.2 and 59.2;
    - (iii) any benefit made in terms of this Part D; and/or
    - (iv) expenses (if any) associated with any payments made in terms of clause 55.2(c)(iii) above as the Trustees in their discretion consider to be equitable and prudent.

## **56 Retirement or redundancy benefit**

- 56.1 A Seafarer Member who:
- (a) reaches the Normal Retirement Date; or
  - (b) on or after the age of sixty (60) ceases to be a Seafarer,
- shall be entitled to a benefit consisting of the total credit standing to the Members Account and the Employer's Account.
- 56.2 A Seafarer Member shall regardless of age be deemed to have retired as provided in clauses 56.1(a) and 56.1(b) if the Member is declared redundant.
- 56.3 The decision of the Trustees as to whether a Member has been declared redundant shall be final and binding.
- 56.4 A Seafarer Member who is entitled to a retirement benefit from the Scheme may elect:
- (a) to receive the retirement benefit as a lump sum; or
  - (b) to defer payment of all or part of the retirement benefit in accordance with Section 66; or
  - (c) to request that the Member's retirement benefit be applied to purchase an annuity from a Life Insurer appropriate to the Member's request.



## **57 Death benefit**

57.1 In the event of the death of a Seafarer Member and the Member not being eligible for a benefit under Sections 56, 58, 59 or 60 then, subject to clause 57.2, the Trustee shall pay in accordance with this Section a death benefit from the Scheme equal to the total credit standing in the Members Account and the Employer's Account (if any) plus Group Insurance (if any) arranged by the Trustees.

57.2 The Trustees may at their discretion effect with an Insurer a Policy on such terms and conditions as the Trustees may approve. In the event that the Trustees obtain such a Policy they may at any time pay and adjust all premiums in such manner as they consider appropriate and receive from the Insurer all payments, refunds and other moneys in respect of the Policy and may dispose of the proceeds in accordance with the following clauses.

57.3 The Group Insurance (if any) in respect of a Member shall, subject to the provisions of clauses 57.4 and 57.5, be calculated on the date the Member joins the Scheme and then at each subsequent Review Date and shall be equal to such amount as can be purchased by the Monthly Insurance Premium;

provided that Group Insurance for a Member shall cease on the earlier of:

- (a) the Review Date when the total credit standing in the Members Account and the Employer's Account and the amount of any benefit paid to the Member under the provisions of Section 62 first exceeds \$50,000; or
- (b) in respect of a Member who has requested the Trustees to defer payment of the whole or a part of the Member's benefit in terms of clause 66.1 the date the Member first became eligible to receive such benefit from the Scheme; or
- (c) the Member's sixty-fifth (65th) birthday.

57.4 The amount of Group Insurance (if any) in respect of a 2003 Member shall, subject to the provisions of clauses 57.5 and 57.6, be an amount equal to:

- (a) \$15,000 in respect of a 2003 Member who joined the Scheme on or after 1 January 1996 or a 2003 member who joined the Scheme prior to 1 January 1996 and had not attained the Normal Retirement Date; or
- (b) \$3,000 in respect of a 2003 Member who having joined the Scheme prior to 1 January 1996 who joined on or after the Member's Normal Retirement Date but prior to the Member's sixty-fifth (65th) birthday;

provided that the Group Insurance for any 2003 member shall cease on the Member's sixty-fifth (65th) birthday; and

provided further that Group Insurance in respect of any Member who has requested the Trustees to defer payment of the whole or a part of the Member's benefit in terms of clause 66.1 shall cease on the date the Member first became eligible to receive such benefit from the Scheme.

57.5 A 2003 Member may elect in writing before and effective from any Review Date coincident with or subsequent to 1 April 2003 that his or her Group Insurance shall be determined in accordance with clause 57.2 without reference to the provisions of clause 57.4. Any election made by a 2003 member under this clause shall be irrevocable.

57.6 Where the Trustees have arranged Group Insurance and the Insurer declines payment of the Group Insurance in respect of the Member's death on the grounds of material misrepresentation or non-disclosure made in connection with the Policy the benefit payable under this Section in the event of such contingencies shall be reduced to the extent that such Group Insurance is

declined and the Trustees shall notify the Member or the Member's legal personal representative or the Member's Dependants accordingly.

- 57.7 If a benefit becomes payable in terms of this Section the Trustees shall pay the said benefit in respect of the Member by way of a lump sum in such one or more of the following ways and in such shares and proportions as the Trustees in their absolute discretion determine:
- (a) in payment to the legal personal representative of the deceased Member;
  - (b) in payment to or for the benefit of any one or more of the Dependants of the deceased Member.
- 57.8 With the approval of the Trustees, the legal personal representative of a deceased Seafarer Member may elect to defer payment of all or part of the death benefit from the Scheme subject to the following:
- (a) during such deferral the deceased Member shall be deemed to remain a Member for the purposes of the Scheme;
  - (b) no further contributions to the Scheme shall be made pursuant to Section 52;
  - (c) the deferred death benefit (plus any further contributions in respect of it) shall continue to be held to the credit of the Members Account of the deceased Seafarer Member together with earnings allocated in accordance with Section 11 less any withdrawals made in accordance with clause 57.8(d); and
  - (d) the legal personal representative of the deceased Seafarer Member, or any other person approved by the legal personal representative, may elect to withdraw all or part of the deferred death benefit on such terms and conditions as may be prescribed by the Trustees from time to time.

## **57A Terminal Illness benefit**

- 57A.1 If a Seafarer Member is diagnosed as having a Terminal Illness and continues employment in the Seafaring Industry the Member may elect to receive a terminal illness benefit from the Scheme consisting of an amount not exceeding fifty per cent (50%) of the withdrawal benefit the Member would have been entitled to under Section 60 if the Member had left the Seafaring Industry at the date the election was made.
- 57A.2 Payment of the terminal illness benefit shall be debited to the Members Account.
- 57A.3 The receipt of a terminal illness benefit shall not affect the Seafarer Member qualifying for further benefits under the Scheme on leaving the Seafaring Industry.
- 57A.4 The decision of the Trustees as to whether a Seafarer Member is entitled to a terminal illness benefit shall be final and binding.

## **58 Disablement benefit**

- 58.1 If a Seafarer Member leaves the Seafaring Industry before attaining their Normal Retirement Date because the Seafarer Member is no longer able to continue working owing to ill-health or Permanent Incapacity in circumstances where a benefit is not payable under Section 59 the Member shall be entitled to a disablement benefit consisting of the total credit standing to the Members Account and Employer's Account.

- 58.2 The disablement benefit payable under clause 58.1 shall at the election of the Seafarer Member be dealt with in the same manner as the retirement benefit as set out in Section 56 or be transferred at the Trustee's discretion and with the consent of the Member to another superannuation scheme registered under the Act as provided for in Section 65.
- 58.3 The decision of the Trustees as to whether a Seafarer Member is no longer able to continue working owing to ill-health or Permanent Incapacity shall be final and binding.

## **59 Insured total and permanent disablement benefit**

- 59.1 In the event of a Seafarer Member suffering total and permanent disablement which is covered by a Policy prior to the Normal Retirement Date the Trustees shall subject to the provisions of clauses 59.3 and 59.4 provide for a Member a benefit equal to that which would have been paid in accordance with the provisions of Section 57 as though the Member had died on the date of becoming permanently incapacitated.
- 59.2 The Trustees may at their discretion effect with an Insurer a Policy on such terms and conditions as the Trustees may approve. In the event that the Trustees obtain such a Policy they may at any time pay and adjust all premiums in such manner as they consider appropriate and receive from the Insurer all payments refunds and other moneys in respect of the Policy and may dispose of the proceeds in accordance with this Section.
- 59.3 The benefit which shall become payable in accordance with clause 59.1 shall subject to the provisions of Section 23 be paid to the Member in accordance with the provisions of clause 60.2 as though the Member had become entitled to a benefit under the provisions of clause 60.1 at the date of becoming permanently incapacitated.
- 59.4 Notwithstanding the provisions of clause 59.1 if the Trustees have arranged Group Insurance and the Insurer declines after the date of total and permanent disablement to admit a claim for Group Insurance in respect of the Member, such Member shall unless the Trustees decide otherwise be deemed with effect from the date of such declination not to be entitled to a total and permanent disablement benefit under this Section and the provisions of Section 58 shall apply.

## **60 Withdrawal benefit**

- 60.1 If a Seafarer Member ceases to be a Seafarer prior to the Normal Retirement Date and a benefit does not become payable in accordance with Sections 56, 57, 58 or 59 the Member shall be entitled to a withdrawal benefit. The withdrawal benefit payable from the Scheme shall consist of all or part of the total credit standing to the Members Account and Employer's Account provided that, subject to clause 60.2, the manner of such withdrawal benefit shall be determined by the Trustees.
- 60.2 If a Seafarer Member has been a Member of the Scheme for one (1) complete years 20 per cent (20%) of the Employer's Account shall vest for such Member for that complete year increasing at a rate of twenty per cent (20%) per year for each subsequent complete year of membership of the Scheme to a maximum of one hundred per cent (100%) on the 5th anniversary of the Member's membership of the Scheme.
- 60.3 The benefit payable under clause 60.1 shall subject to the provisions of clause 66.1 be paid to the Member as a lump sum.

- 60.4 The withdrawal benefit from the Scheme shall include all the credit standing in the Employer's Account in respect of every Seafarer to whom clause 60.1 applies in either of the following cases:
- (a) where the Seafarer elects to defer payment of all of the Member's benefit in accordance with Section 66 until the date the Member would have qualified for one hundred per cent (100%) vesting under clause 60.2; or
  - (b) where the Seafarer elects at the Trustee's discretion to the transfer of all the Member's benefits to another superannuation scheme registered under the Act as provided for in Section 65.
- 60.5 Such part of the Employer's Account not required to be paid to the Member under clause 60.1 shall be credited to the Seafarers' General Reserve Account.

## **61 Benefit payments while a Member**

- 61.1 A Member who is a member on the 1st of April 2017 may on such occasions and in such circumstances as the Trustees shall at their discretion specify make a written request to the Trustees for a benefit payment from the Scheme in the manner prescribed by them for the purpose and the Trustees at their discretion may approve such written request. Any payment approved by the Trustees shall not be less than the minimum amount or more than the maximum amount the Trustees determined from time to time.
- 61.2 The benefit payable under clause 61.1 shall be paid to the Member as a lump sum.

## **62 Financial hardship**

- 62.1 If a Seafarer Member is suffering significant financial hardship the Seafarer Member may make a written request to the Trustees to receive a significant financial hardship benefit. The provisions of Rule 10 of the KiwiSaver Rules shall apply to any request for financial hardship benefit.

## **63 First Home withdrawal benefits**

- 63.1 A Seafarer Member who:
- (a) has either completed three years' membership of the Scheme or been a member of one or more KiwiSaver schemes for a period of three years or more;
  - (b) has not previously made a withdrawal under either this Section or Rule 8 of the KiwiSaver Rules; and
  - (c) is not otherwise eligible for a benefit under Part D of this Deed,

may with the consent of the Trustees given in accordance with this Section withdraw from the Members Account an amount determined under this Section to assist the Member settle the purchase of a First Home. For the purpose of this Section, a withdrawal by the Member under Rule 8 of the KiwiSaver Rules shall be disregarded as a previous withdrawal if it was made to assist with the purchase of the same First Home the Member intends to purchase with the assistance of a First Home withdrawal benefit under this Section, even if technically withdrawn prior to the Member being paid a benefit under this Section.

63.2 The amount a Member may withdraw from his or her Members Account for a First Home withdrawal benefit is at the discretion of the Trustees, but in any case shall not exceed the total credit standing to the Members Account at the date of payment of the benefit.

63.3 The First Home withdrawal benefit provided under this Section is intended to be ancillary to the Scheme's principal purpose of providing retirement benefits for its Members, and is only intended to be available in the same circumstances in which a withdrawal for the purpose of purchasing a First Home would be available from a KiwiSaver Scheme. Accordingly, the Trustees shall not consent to a Member making a withdrawal under this Section where the Trustees are satisfied that the withdrawal:

- (a) would not have been permitted to be made from a KiwiSaver Scheme under Rule 8 of the KiwiSaver Rules, if the Member was a member of a KiwiSaver Scheme and was seeking a withdrawal for the purpose of purchasing a First Home under that Rule; or
- (b) is not consistent with the Member investing towards his or her retirement; or
- (c) would result in the principal purpose of the Scheme ceasing to be the provision of retirement benefits to its Members; or

would otherwise prejudice the Scheme's registration under the Act or any other regulatory status the Trustees consider is desirable for the Scheme to maintain in the interest of the membership as a whole.

63.4 Subject to clause 63.3, the decision as to whether or not to consent to a Member making a withdrawal under this Section, the maximum amount that may be withdrawn, and whether a proposed purchase qualifies as the purchase of a First Home, is at the absolute discretion of the Trustees and shall be final and binding.

63.5 To assist in making their decision, the Trustees, or any person delegated by them, may require the Member to provide such evidence of whatever nature the Trustees consider relevant.

63.6 Any withdrawal for the purchase of a First Home allowed under this Section must be paid to the Member's solicitor.

63.7 Without limiting their discretion under clause 63.3 in any way, when paying out a First Home withdrawal benefit, the Trustees may require the Member, or the Member's solicitor, to give an undertaking before making the payment that:

- (a) the agreement for the purchase of the Member's First Home is unconditional; and
- (b) the amount paid will be used for the purchase of the Member's First Home, or if the settlement is not completed by the due date or any extended date of settlement, repaid to the Trustees.

and otherwise the Trustees shall not be required to supervise or enquire as to the application of the First Home withdrawal benefit paid under this Section.

63.8 Payment of a First Home withdrawal benefit under this Section shall be deemed attributable to the member's own contributions to the Scheme.

## **64 Transfer from another superannuation scheme**

64.1 The Trustees may accept into the Scheme an amount in respect of a Seafarer Member arising from another superannuation or similar scheme (the **Transferor Fund**) in which the Member participated, and:

- (a) if the amount is to be paid into the Scheme by the trustees of the Transferor Fund then the amount shall either be added to the Members Account or the Employer's Account or apportioned between the two as shall be agreed between the Trustees, the trustees of the Transferor Fund and the Member and such addition or apportionment shall form part of the appropriate account provided that none of the Member's own contributions to the Transferor Fund shall be added or apportioned to the Employer's Account.
- (b) if the amount is to be paid into the Scheme by the Member then the amount shall be added to and shall form part of the Members Account;

and they shall confer on the Member rights under the Scheme in addition to the rights normally available to a Member in respect of the Member's membership of the Scheme as are determined by the Trustees.

## **65 Transfers to another superannuation scheme**

65.1 Subject to the Governing Legislation, where a Seafarer Member:

- (a) ceases to be a Seafarer Member of the Scheme or leaves the Seafaring Industry, or transfers to another employer within the Seafaring Industry in such circumstances that the Member is no longer entitled to be a Member of the Scheme, or is no longer entitled to receive contributions to the Scheme by that Member's Participating Employer, other than by virtue of the ability to defer payment of a benefit in accordance with clause 56.4(b); and
- (b) joins or becomes a member of another scheme registered under the Act (including a KiwiSaver Scheme) operated by the Member's new employer, or in which the Member's new employer participates, or any other superannuation scheme approved from time to time by the Trustees for this purpose

the Trustees may, either at the request of the Seafarer Member or in their discretion if so permitted under the Governing Legislation, transfer to any such scheme all of the benefit to which the Member is entitled to on the date of the request, on such terms and conditions as the Trustees may determine, and the Members Account and Employer's Account shall be debited accordingly and the Member shall cease to be entitled to any further benefit from the Scheme.

65.2 Subject to the Governing Legislation, where a Seafarer Member's role or employment category changes and the Seafarer Member becomes entitled to join or become a member of another Registered Scheme sponsored, contributed to or participated in by the Seafarer Member's employer, the Trustees may, at the request of the Seafarer Member, transfer to any such scheme the total credit standing in the Seafarer Member's Member Account and Employer Account on such terms and conditions as the Trustees may determine and the Member shall cease to be entitled to any further benefit from the Scheme.

## **66 Deferment**

66.1 Any Seafarer Member who becomes entitled to a benefit in terms of clauses 56.1 and 58.1 or may request the Trustees in such form as the Trustees may prescribe to defer payment of the whole or a part of the Member's benefit. During any period of deferment of the whole or a part of the Member's benefit, such benefit will continue to attract earnings in accordance with the provisions of Section 11.

66.2 The final settlement of a Seafarer Member's deferred benefit retained in the Scheme in terms of clause 66.1 shall be paid as soon as practicable following a request by the Member, or if the

Trustees have determined under clause 57.7(a) to make payment to the Member's legal personal representative, following a request by the Member's legal personal representative or any other person approved by the Member's legal personal representative, for payment of the Member's deferred benefit provided that the payment of a benefit retained in the Scheme shall be subject to the same provisions of this Deed as would have applied if payment of the benefit had been made when the Member first became eligible to receive such benefit. If a Member dies before the Member receives final settlement of their deferred benefit retained in the Scheme in terms of clause 66.1, then Section 57 shall apply and such deferred benefit shall be treated as a death benefit.

- 66.3 A Seafarer Member who has elected to defer the receipt of a benefit in accordance with clause 66.1 may, subject to such terms and conditions as may be prescribed by the Trustees from time to time, elect to withdraw all or part of the Member's deferred benefit as a lump sum or periodic lump sums and/or by regular payments.

## **67 Tax liability withdrawal**

- 67.1 A Seafarer Member may make a written request to the Trustees to withdraw from that Member's Account an amount to settle payment of that Member's personal income tax liabilities owing by the Member to the Commissioner of Inland Revenue as a result of the Member's NIR being inconsistent with the Member's correct PIR.
- 67.2 An application under this clause must:
- (a) be made within 24 months beginning from the end of the month in which the liability of the Member for tax is assessed;
  - (b) include a statutory declaration giving the details of the resulting liability of the Member for tax under the Income Tax Act 2007; and
  - (c) include any other documents and information that the Trustee's request.
- 67.3 Any withdrawal and the amount of the permitted withdrawal under this clause shall be at the Trustees discretion and the Trustee may pay the withdrawal entitlement under this Rule to the Commissioner of Inland Revenue directly.

## **Part E – Rules relating to Maritime KiwiSaver Scheme**

### **68 Applicability of rules**

- 68.1 These rules apply to the Trustee Member.

### **69 Membership**

- 69.1 The Trustee Member is the only member of the Scheme to which the Trustee Member's Rules apply.
- 69.2 No further Trustee Members may join the Scheme.
- 69.3 If the MKS ceases, at any time, to be a Registered Scheme, then the Trustee Member shall, as and from the date on which the MKS ceased to be a Registered Scheme, cease to be a Member

and a payment shall be made under clause 69.5. The Trustee Member must notify the Trustees in writing as soon as practicable after they become aware that the MKS may cease to be a Registered Scheme.

- 69.4 The Trustees may at any time, by notice in writing, terminate the Membership of the Trustee Member, at and from such date, being not less than one month from the date of the notice, as the Trustees may determine provided that immediate notice will suffice where the Trustees consider that the continued participation of the Trustee Member may jeopardise the registration of the Scheme under the Act.
- 69.5 Where a payment is payable under clause 69.3 or the membership of the Trustee Member is terminated pursuant to the preceding clause, the Trustee Member shall receive the value of the Trustee Member's Members Account.
- 69.6 It is acknowledged that the Trustee Member will in that capacity be a member of the Scheme as that term is defined in the Act and they will cease to be members when they cease to have any entitlements from the Scheme.

## **70 Contributions**

- 70.1 The Trustee Member shall pay to the Scheme such contributions at such times as shall be agreed with the Trustees and shall pay such fees (if any) as shall be agreed with the Trustees.

## **71 Members Account**

- 71.1 All contributions made by the Trustee Member shall be allocated by the Trustees to a separate Members Account maintained for the Trustee Member, and the amount of those contributions, together with earnings allocated in terms of Section 11 shall constitute the Trustee Member's Members Account.

## **72 Withdrawal benefit**

- 72.1 The Trustee Member may withdraw the balance of its Members Account in whole or in part at any time upon written request by the Trustee Member subject to such terms and conditions as may be agreed with the Trustees.

## **73 Transfers**

- 73.1 The Trustee Member may in lieu of contributions to the Scheme with the agreement of the Trustees transfer to the Scheme assets or investments at an agreed value to be credited to Trustee Member's Members Account. The Trustee Member may likewise on withdrawing in whole or in part from the Scheme by agreement with the Trustee receive by way of transfer investments of the Scheme of an equivalent value (as determined by the Trustees) to its Members Account or the part thereof being withdrawn.



## **Part F – General**

### **74 Counterparts**

- 74.1 This deed may be signed in any number of counterparts all of which, taken together, will constitute one and the same instrument. A party may enter this deed by executing any counterpart.

## Schedule 1 KiwiSaver Rules – withdrawal for purpose of purchase of first home

- 1 This clause applies to a member if the member has not made a withdrawal under this clause before (whether or not from the member's current KiwiSaver scheme or from a KiwiSaver scheme to which the person previously belonged) and,
  - 1.1 at least 3 years have expired after the Commissioner received the first contribution in respect of the person (whether or not a contribution in relation to the scheme of which the member is currently a member); or
  - 1.2 the person has been a member of 1 or more KiwiSaver schemes or complying superannuation funds for a combined total period of 3 years or more.
- 2 Every amount of contribution that is deducted from salary or wages under this Act is treated, for the purpose of subclause 1(a), as received by the Commissioner on the 15th day of the month in which the deduction is made.
- 3 A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an estate in land located in New Zealand (whether alone or as a joint tenant or tenant in common) if:
  - 3.1 the purchase is made in the prescribed circumstances; or
  - 3.2 both of the following apply:
    - (a) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family; and
    - (b) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the KiwiSaver scheme) held an estate in land (whether alone or as a joint tenant or tenant in common); or
  - 3.3 both of the following apply:
    - (a) the land is, or is intended to be, the principal place of residence for the member or for the member and members of the member's family; and
    - (b) the member is a qualifying person under the regulations.
- 4 A member to whom this clause applies may make a withdrawal from the KiwiSaver scheme of which the member is currently a member for the purchase of an interest in a dwellinghouse on Maori land if:
  - 4.1 the purchase is made in the prescribed circumstances; or
  - 4.2 both of the following apply:
    - (a) the dwellinghouse is, or is intended to be, the principal place of residence for the member or for the member and the member's family; and
    - (b) the member has not, at any time before applying to make a withdrawal under this clause (whether before or after becoming a member of the KiwiSaver

scheme), held an estate in land (whether alone or as a joint tenant or tenant in common); or

4.3 both of the following apply:

- (a) the dwellinghouse is, or is intended to be, the principal place of residence for the member or for the member and the member's family; and
- (b) the member is a qualifying person under the regulations.

5 A member may not make a withdrawal under this clause of more than an amount equal to the member's accumulation, at the time of the withdrawal, less the total of the following 2 amounts:

5.1 \$1,000:

- (a) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).

6 If a person holds an estate in land in any of the following circumstances, that estate must be disregarded for the purposes of subclauses (3(b)(ii) and 4(b)(ii)):

6.1 the person holds the estate in land as a bare trustee:

- (a) the estate in land is a leasehold estate:
- (b) the estate in land is an interest in Maori land:
- (c) the person holds the estate in land as a trustee who—
  - (i) is a discretionary, contingent, or vested beneficiary under the relevant trust; but
  - (ii) has no reasonable expectation of being entitled to occupy the land as the principal place of residence for the person or the person's family until the death of the person who currently occupies the land (the occupier) or the death of the occupier's survivor.

7 In this clause:

7.1 dwellinghouse means a building that is intended to have as its principal use occupation as a private residence

- (a) estate means a fee simple estate, a leasehold estate, or a stratum estate;
- (b) Maori land has the same meaning as in the Te Ture Whenua Maori Act 1993.

8 It is a condition of subclauses 3 and 4 that:

8.1 any withdrawal made under the relevant provision must be paid—

- (a) first, from the member's accumulation excluding the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of that contribution) paid in respect of the member; and
- (b) second, from the Crown contribution (including any positive or negative returns for the purpose of calculating the amount of that contribution), less the amount paid under S; and

- (c) any withdrawal made under the relevant provision must be paid to a practitioner (within the meaning of Section 6 of the Lawyers and Conveyancers Act 2006) acting on behalf of the member; and

8.2 the manager must require from that practitioner, before payment of the withdrawal,

- (a) a copy of an agreement for the sale and purchase (the agreement) of the estate in land or of the interest in a dwellinghouse on Maori land, showing the member as purchaser; and
- (b) for an interest in a dwellinghouse on Maori land, evidence of the member's right to occupy the Maori land; and
- (c) an undertaking that the agreement is unconditional at the time the manager makes the request or, if the agreement is conditional, an undertaking that—
  - (i) payment of any amount of the withdrawal will be held by a stakeholder; and
  - (ii) the stakeholder is obliged to hold the amount while the agreement is conditional; and
- (d) if the agreement is unconditional at the time the manager makes the request, an undertaking that the amount will be paid to the vendors as part of the purchase price or will be repaid to the manager on account of the member if settlement of the agreement is not completed in accordance with the agreement by the due date or any extended date; and
- (e) if the agreement is conditional at the time the manager makes the request, an undertaking that:
  - (i) the stakeholder is obliged to repay the amount to the practitioner if settlement of the agreement is not completed in accordance with the agreement by the due date or any extended date (non-completion), but excepting noncompletion due to the purchaser's default; and
  - (ii) the practitioner will repay the amount that the practitioner receives from the stakeholder to the manager on account of the member.

9 This clause is subject to the terms of any participation agreement that restricts or prevents the withdrawal of employer vested contributions that are not compulsory employer contributions in relation to the member.

# Signature page

Executed and delivered as a deed.

Signed by **Andrew Christopher Clark** in the presence of:

*shp ct*

Signature of witness

*AC Clark*

Signature of Andrew Christopher Clark

*STEVE GRANT*

Name of witness (print)

*PRINCIPAL*

Occupation of witness

*39B CHATSWORTH RD, SILVERSTREAM  
WATER HUNT*

Address of witness

Signed by **Carl Gordon Findlay** in the presence of:

Sh Ct

Signature of witness

CG Findlay

Signature of Carl Gordon Findlay

STEVE GRANT

Name of witness (print)

Principal

Occupation of witness

39B CHATSWORTH RD, SILVERSTREAM  
WILKIN HILL

Address of witness

Signed by **David William Young** in the presence of:

Sh Ct

Signature of witness

DW Young

Signature of David William Young

STEVE GRANT

Name of witness (print)

Principal

Occupation of witness

39B CHATSWORTH RD, SILVERSTREAM  
WILKIN HILL

Address of witness

Signed by **John Brodie Stevens** in the presence of:

SL Ct

Signature of witness

J Stevens

Signature of John Brodie Stevens

STEVE GRANT

Name of witness (print)

PRINCIPAL

Occupation of witness

39B CHATSWORTH RD, SILVERSTREAM  
UTTER HUTT

Address of witness

Signed by **Joshua-Paul Donald Greer** in the presence of:

SL Ct

Signature of witness

JPGreer

Signature of Joshua-Paul Donald Greer

STEVE GRANT

Name of witness (print)

PRINCIPAL

Occupation of witness

39B CHATSWORTH RD, SILVERSTREAM  
UTTER HUTT

Address of witness

Signed by **Philippa Rosemary Drury** in the presence of:

*Sh CA*  
.....  
Signature of witness

*Philippa Drury*  
.....  
Signature of Philippa Rosemary Drury

*STEVE GRANT*  
.....  
Name of witness (print)

*PRINCIPAL*  
.....  
Occupation of witness

*39B CHATSWORTH RD, SILVERSTREAM*  
Address of witness *UPPER HUTT*

Signed by **Raymond Paul Welson** in the presence of:

*Sh CA*  
.....  
Signature of witness

*R. Welson*  
.....  
Signature of Raymond Paul Welson

*STEVE GRANT*  
.....  
Name of witness (print)

*PRINCIPAL*  
.....  
Occupation of witness

*39B CHATSWORTH RD, SILVERSTREAM*  
Address of witness *UPPER HUTT*



Signed by **Raymond Joseph Carroll Fife** in the presence of:

SH CA

Signature of witness

RJCF

Signature of Raymond Joseph Carroll Fife

STEVE GRANT

Name of witness (print)

PRINCIPAL

Occupation of witness

39B CHATSWORTH RD, SILVERSTREAM

Address of witness

WIFE MUTT

Signed by **Russell Lawrence Mayn** in the presence of:

SH CA

Signature of witness

RLM

Signature of Russell Lawrence Mayn

STEVE GRANT

Name of witness (print)

PRINCIPAL

Occupation of witness

39B CHATSWORTH RD, SILVERSTREAM

Address of witness

WIFE MUTT

Signed by **Walter Melville Rushbrook** in the presence of:

sh ca

Signature of witness

Walter Rushbrook.

Signature of Walter Melville Rushbrook

STEVE GRANT

Name of witness (print)

PRINCIPALS

Occupation of witness

396 CHATSWORTH RD, SILVERSTREAM  
WATER HUNT

Address of witness