

Trust Deed

Baptist Union
Superannuation Scheme

The Baptist Union of New Zealand
(*Union*)

Baptist Retirement Trustee Limited (*Trustee*)

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BAPTIST UNION SUPERANNUATION SCHEME – TRUST DEED

Date: 30 June 2020

PARTIES

The Baptist Union of New Zealand, a body corporate incorporated under the Baptist Union Incorporation Act 1923 (*Union*)

Baptist Retirement Trustee Limited, a company incorporated in New Zealand with its registered office in Wellington (*Trustee*)

BACKGROUND

- A The Baptist Union Superannuation Scheme (*Scheme*) is a restricted workplace savings scheme registered under the Financial Markets Conduct Act 2013 (*Act*).
- B The Scheme was established by a trust deed dated 17 November 1992 and is currently governed by a trust deed dated 26 October 2016 (*Existing Deed*).
- C The Trustee wishes to amend the Existing Deed by substituting this Deed for the Existing Deed in order to:
- (a) enable certain additional denominationally approved pastoral leadership students to join the Scheme as Class D Members in anticipation of commencing Active Service;
 - (b) extend the appointment term for a Member-elected Trustee director from 2 to 3 years;
 - (c) add an express facility for short-term membership continuation where a Minister or Missionary leaves Active Service (as defined) but is seeking a return to Active Service as a Minister or Missionary or intends, or reasonably expects, to return to Active Service as a Minister or Missionary:
 - (i) within two years after the date of leaving Active Service; or
 - (ii) if their reason for leaving Active Service is to take up immediately an appointment with another Trustee-approved organisation to a position involving Christian mission or ministry work substantially corresponding to the regular work of a Minister or Missionary, forthwith on the cessation of that appointment;
- and to make other minor amendments for the more efficient operation of the Scheme.
- D The Union (through the Assembly Council) has consented to the proposed amendments (as evidenced by its execution of this Deed).
- E The Financial Markets Authority has consented, pursuant to sections 139(1)(a) and 139(2)(a)(ii) of the Act, to the amendments comprised in this Deed.

- F The Trustee has obtained a certificate from its solicitor to the effect that the Existing Deed, as amended by this Deed, will continue complying with sections 135 to 137 of the Act on the basis set out in the certificate.

BY THIS DEED, with the intent that the Scheme:

- (a) will continue being held on the same trusts as before; and
- (b) will otherwise be governed and administered as provided in this Deed;

the Existing Deed is amended by substituting all of its provisions with the provisions of this Deed as set out below.

1 APPLICATION OF 1990 TRUST DEED

The provisions of the 1990 Trust Deed shall continue to apply only in respect of any amendment to the 1990 Trust Deed which would reduce or adversely affect the returns in the Scheme of any Member who joined the Scheme before 1 December 1992 and to which such Member may not have consented in writing, but in all other respects the provisions of this Deed shall apply to such Members.

2 INTERPRETATION AND DEFINITIONS

2.1 In the Deed unless inconsistent with the subject matter or precluded by the context:

- (a) any reference to a statute shall include any subsequent statutory modification or re-enactment or any act passed in lieu and for the time being in force and any regulations made under that statute (and, in the case of the Act, to any applicable framework or methodology issued by the FMA under that statute);
- (b) words describing the singular include the plural;
- (c) the headings to clauses are for convenience and reference only and shall not affect the interpretation of this Deed;
- (d) for convenience, words and phrases defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition;
- (e) notwithstanding any other provision of this Deed, in the event of any inconsistency between this Deed and the Act or the Regulations the Act and the Regulations will prevail;
- (f) footnotes used in this Deed do not form part of the Deed, are a guide only, do not affect the interpretation of the Deed and (where they refer to legislative provisions) are not intended to incorporate those provisions in the Deed;
- (g) a reference to any person, body or organisation defined or otherwise mentioned in this Deed shall include that person's successors and assigns.

- (h) terms implied into this Deed by the Act will apply for so long as they are implied into this Deed under the Act (despite anything to the contrary in this Deed) and any provision in this Deed that is contrary to any such implied term will be void to the extent that it is contrary;
- (i) where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Scheme and relate to any matter which is required by the Act to be provided for adequately in this Deed, the provisions of this Deed which deal with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of the Scheme;
- (j) any reference to an action taken or thing done (*Action*) under, in accordance with or pursuant to a provision of this Deed at or in respect of a date before the date of this Deed (*Relevant Date*) shall be a reference to an equivalent Action taken under, in accordance with or pursuant to a materially corresponding provision in the deed governing the Scheme as at the Relevant Date;
- (k) any reference to the operation or effect of a provision of this Deed at or in respect of a date before the Relevant Date shall be a reference to the operation or effect of a materially corresponding provision in the deed governing the Scheme as at the Relevant Date;
- (l) this Deed shall be interpreted and administered in accordance with New Zealand law.
- (m) the following words and expressions shall have the following meanings:

1990 Trust Deed means the Trust Deed for the Scheme entered into as at 1 December 1990;

1996 Amendment Date means 10 December 1996;

1999 Amendment Date means 9 April 1999;

2007 Amendment Date means 31 December 2007;

Accredited Worker means any person (other than a Minister, Missionary or Pastoral Worker) employed by a Church, the Union, the Missionary Society, an Association, a Trust or any other organisation recognised by the Trustee for this purpose;

Act means the Financial Markets Conduct Act 2013;

Active Service means the regular work (for an Employer) of a Minister, Missionary, Pastoral Worker or Accredited Worker and may include service partly in one capacity and partly in another;

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

Annual Review Date means 30 June each year or such other date as the Trustee may determine in any year;

Assembly means the annual meeting held by the Union attended by delegates from the churches and fellowships belonging to or recognised by the Union, Officers of the Union and others as defined in Section VII of the Constitution and rules of the Union;

Assembly Council means the executive body of the Union elected from time to time by the Assembly.

Assets of the Scheme means all the moneys, investments and other real and personal property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall include:

- (a) contributions by Members;
- (b) contributions by Employers;
- (c) returns and dividends arising from any investment and the accumulation thereof;
- (d) profits and other benefits arising from any investment and the accumulation thereof; and
- (e) moneys, investments and other property transferred to the Scheme from any other retirement scheme, including that transferred from the Scheme with the consent of each Member;

Association means an Association of the Union as defined in the Constitution and Rules of the Union, and shall include any person, organization, body or bodies succeeding such Association;

Auditor means a person who is a licensed auditor or registered audit firm under the Auditor Regulation Act 2011 and is appointed by the Trustee as the auditor of the Scheme, or the firm of persons so appointed;

Beneficiary means a Member or Dependant presently beneficially entitled to receive a benefit pursuant to the provisions of this Deed;

Benefit means any amount paid or payable (as the case requires) by the Trustee out of the Assets of the Scheme pursuant to the provisions of this Deed to or in respect of a Member or Dependant;

Church means a Baptist Church or fellowship in membership with the Union or recognised by the Union;

College Student means a denominationally approved pastoral leadership student who is studying theology full-time or part-time at:

- (a) Carey Baptist College; or
- (b) the Auckland City Training School (currently operating as Equippers College); or
- (c) Activate Training Centre Limited (currently operating as ATC New Zealand), including the division currently known as Vision College;
- (d) any other theological tertiary training institution approved by the Trustee from time to time for the purposes of this definition.

A person shall cease to be defined as a "College Student" immediately upon ceasing or completing any theological course of study at the relevant tertiary training institution;

Complying Fund Rules has the same meaning as in section YA 1 of the Income Tax Act 2007;

Complying Superannuation Fund means a workplace savings scheme that is identified as a complying superannuation fund on the register of managed investment schemes maintained under the Act (or, as applicable, the section of that scheme that is subject to the Complying Fund Rules);

Contributions means payments to the Scheme by Members and Employers pursuant to clause 5 of this Deed;

Conversion Date means 1 December 1990;

CSF Balance in relation to a Member shall have the meaning given in clause 6.3;

Custodian means a person appointed to hold any of the Assets of the Scheme under clause 13.6 and includes, to the extent the context permits, any sub custodian appointed by the Custodian to hold any Assets of the Scheme under clause 13.7;

Deed means this Trust Deed as amended from time to time;

Dependant means any person whom the Trustee in its absolute discretion determines to be or have been receiving material financial support either in full or in part from the Member at the relevant time. For the purposes of determining whether a dependent relationship existed at the time of the death or Total and Permanent Disablement of a Member, the Trustee may have regard (non-exhaustively) to whether:

- (a) the Member's partner is wholly or substantially dependent on the Member;
- (b) there is a child or children of the relationship;
- (c) there is a history of support and/or maintenance;
- (d) there is a moral obligation or evidence of a promise to support the dependant;

- (e) there is a legal obligation to maintain;
- (f) there is an absence of other resources available to the dependant; and
- (g) the Member and the dependant are legally married (though this on its own is not a sufficient indicator of a permanent bona fide relationship);

Director means a director of the Trustee;

Earnings Rate means the rate of return (whether positive, negative, or zero) determined by the Trustee from time to time under clause 6.8 with respect to the Scheme;

Employee means a Member or potential Member permanently employed by the Union, the Missionary Society, an Association, a Church, a Fellowship, a Hospital, a Rest Home, a Trust, a Club, an Institution or any other organisation recognised by the Trustee as being the Member's employer, and includes any Member as aforesaid on Leave of Absence;

Employer in relation to a Member means:

- (a) the Union, the Missionary Society, an Association, a Church, a Fellowship or a Church trust; or
- (b) any other organisation which has agreed with the Trustee and the Member to make employer contributions for the Member's benefit in accordance with this Deed while the Member is in its service (and has accordingly been recognised by the Trustee as being the Member's Employer);

Equivalent Overseas Scheme means an equivalent overseas retirement scheme as defined in regulation 82(3) of the Regulations¹;

Fellowship means any body of people listed as a fellowship in the Baptist Union Year Book;

Financial Year means the period beginning on 1 July and ending on 30 June in each year or such other period as the Trustee may determine from time to time;

FMA means the Financial Markets Authority or any successor entity;

Frozen Member means a Member to whom clause 21 applies for the time being;

General Account means the General Account maintained under clause 6.4;

Insurer means a Life Insurer with whom the Trustee has effected a policy to procure benefits under the Scheme;

KiwiSaver Act means the KiwiSaver Act 2006;

¹ Regulation 82(3).

KiwiSaver Scheme means a KiwiSaver scheme as defined in the Act;

Leave of Absence means leave of absence from Active Service as agreed by the Employer and determined by the Trustee at its sole and absolute discretion;

Licensed Independent Trustee means a licensed independent trustee for the purposes of the Act whose licence covers the Scheme and who is independent as defined in the Act²;

Life Insurer means a life insurer as defined in Section 6 of the Insurance (Prudential Supervision) Act 2010;

Member (except where such term is used in the Second Schedule to the 1990 Trust Deed) means a Minister, Missionary, Pastoral Worker, Accredited Worker or College Student who has been duly admitted to membership of the Scheme in accordance with the Rules, the provisions of the 1990 Trust Deed or the provisions of this Deed and has not relinquished their membership.

For the purposes of this Deed, there shall be four classes of Members:

Class A - Ministers, Missionaries and Pastoral Workers with Employer contributions;

Class B - Accredited Workers with Employer contributions;

Class C - Any persons (including College Students who are not Accredited Workers) without Employer contributions who are not Class D Members; and

Class D - College Students approved by the Union or ACTS Churches NZ;

Member's No 1 Account means a Member's Account maintained under clause 6.1(a);

Member's No 2 Account means a Member's Account maintained under clause 6.1(b);

Member's Remuneration means a Member's gross remuneration from time to time (excluding taxable and tax-free allowances) from Active Service;

Membership means the period of Active Service whilst a Member of the Scheme (excluding, for the avoidance of doubt, any period as a Frozen Member) PROVIDED THAT where the Trustee consents to the transfer of a benefit from another Retirement Scheme in accordance with clause 5.10 (or has consented to such a transfer under the corresponding provision in the Existing Deed or any former trust deed for the Scheme) "Membership" may include such period of membership in such other Retirement Scheme as shall be agreed between the Member and the Trustee. For Members who were members of the Scheme at the Conversion Date, it shall also include the

² Section 131(3).

period of contributory membership of the Scheme prior to the Conversion Date;

Minister means:

- (a) a person whose name appears on Sections I or II of the Official List together with such persons whose names appear on Section IV of the Official List whose applications to remain in the Scheme have been approved by the Trustee; or
- (b) a person who is a minister (or holds a similar position) within a church or any other Christian organisation recognised by the Trustee for Scheme purposes;

Missionary means a Missionary or Probationary Missionary on the staff of the Missionary Society;

Missionary Society means the Baptist Missionary Society;

Official List means the Official List of Ministers and Missionaries published from time to time by the Union;

Pastoral Worker means a person listed as a Pastoral Worker in the Baptist Union Year Book;

Register means the register of Members maintained for the Scheme pursuant to the Act³;

Regulations means the Financial Markets Conduct Regulations 2014;

Related Party has the meaning given to it by the Act⁴;

Related Party Benefit has the meaning given to it by the Act⁵;

Reserve Fund means the Reserve Fund maintained under clause 6.5;

Resignation means voluntary termination of employment with an Employer by a Member, and *resign* has a corresponding meaning;

Retirement Age means the age at which a Member elects to retire from active service or permanent employment, provided however that such age shall not be less than fifty (50) years;

Retirement Scheme means a retirement scheme as defined in the Act;

Rules means the rules of the Annuity Fund with amendments up to and including 17 December 1986;

³ Section 215.

⁴ Section 172(2).

⁵ Section 172(1).

SIPO has the meaning given to it by the Regulations⁶;

Standard Stipend means the recommended basic annual stipend as determined from time to time by the Union;

Total and Permanent Disablement means disablement from an illness, accident or injury which results in the Member being continuously absent from their normal occupation for at least six consecutive months where the Trustee and the Insurer acting on medical advice and/or actuarial and statistical data or opinion determine that it is unlikely that the Member will ever be able to engage in any regular remunerative work for which they are reasonably fitted by education, training or experience PROVIDED HOWEVER that in the event of any conflict between this definition and the definition contained in any relevant policy of an Insurer then the definition in the insurance policy shall apply;

Trustee means Baptist Retirement Trustee Limited or such other person as is appointed from time to time as the trustee of the Scheme;

Trusts Legislation means the Trustee Act 1956 or, on and from 30 January 2021, the Trusts Act 2019;

Union means the Baptist Union of New Zealand, including its Departments, Councils, Committees, Trusts, Societies, Schemes, Clubs, Auxiliaries, Associations, Organisations and Institutes, whether incorporated or unincorporated PROVIDED HOWEVER that for the purposes of consent to any repeal, alteration or addition to the provisions of this Deed such term shall be confined to meaning the Assembly Council as hereinbefore defined.

3 CONTINUATION, ADMINISTRATION AND OBJECTIVES OF THE SCHEME

3.1 Continuation and Administration

- (a) The Scheme is continued as a restricted workplace savings scheme for the purposes of the Act, on the terms and conditions contained in this Deed.
- (b) The Scheme shall be administered in accordance with the provisions of this Deed, which shall be binding on the Trustee and all Members and Beneficiaries (and any person claiming under this Deed) as if each of them were a party to this Deed.
- (c) The Trustee is responsible for managing the Scheme and (in particular) for performing the functions of the manager set out in the Act⁷, and must ensure that the Scheme and the Trustee continue to meet all registration requirements applying to the Scheme and the Trustee under the Act⁸.
- (d) The Scheme shall be known as the Baptist Union Superannuation Scheme. The Trustee may change the name of the Scheme by resolution at any time.

⁶ Regulation 5.

⁷ Section 142(1).

⁸ Sections 127, 130, 131 and 133.

- (e) The Assets of the Scheme shall continue being held upon trust by the Trustee for the purposes of the Scheme and shall be administered by the Trustee in accordance with this Deed.
- (f) In addition to any other powers granted under this Deed, the Act or by law, but subject to the Act, the Trustee may do anything it considers necessary or expedient to enable it to discharge its duties under this Deed⁹.

3.2 **Scheme Objectives**

- (a) The purposes of the Scheme are to provide:
 - (i) retirement, death and disability benefits for Members and their Dependants; and
 - (ii) benefits to Members on ceasing employment with an Employer (whether immediately on ceasing that employment or subsequently);including (except as provided elsewhere in this Deed) additional benefits for Members when such Members cease to be employed because of age, disability or death.
- (b) The Trustee may do all such acts, matters or things as may be necessary or appropriate in furtherance of the aforementioned objectives.

3.3 **Investment Objectives**

The Trustee's investment objectives for the Scheme are:

- (a) to manage the Assets of the Scheme with due care, diligence and skill and for such purposes to engage staff, actuaries, accountants, administration managers, investment managers, solicitors, legal counsel and such other personnel as may be necessary or appropriate;
- (b) to invest the Assets of the Scheme in all of the ways authorised by law for the investment of trust moneys and in such other manner as the Trustee may consider appropriate from time to time;
- (c) to formulate and review from time to time a strategy with a view to achieving investment growth; and
- (d) to do all such acts, matters or things as may be necessary or appropriate in furtherance of the aforementioned objectives.

4 **MEMBERSHIP**

- 4.1 All Members of the Scheme at the date of this Deed shall continue to be Members of the Scheme.
- 4.2 Any other Minister, Missionary, Pastoral Worker or College Student may apply to the Trustee to become a Member at any time.
- 4.3 Class B and Class C of the Scheme are closed to new Members.

⁹ Section 135(1)(k)(iii).

- 4.4 Every person who is eligible to become a Member shall, before becoming a Member, be provided with a product disclosure statement prepared in accordance with the Act and the Regulations.
- 4.5 If the person applying in accordance with clause 4.2 above elects to become a Member then they shall enter into an agreement or complete an application form in such form as the Trustee may from time to time prescribe to be bound by the provisions of this Deed together with any amendments which may be made thereto.
- 4.6 Membership of the Scheme shall unless otherwise agreed to by the parties thereto commence on the date that such agreement is entered into.
- 4.7 Membership of the Scheme shall cease on the date on which the Member:
- (a) dies; or
 - (b) ceases to be in Active Service (other than on Leave of Absence or through closure of the Employer), subject to clause 21; or
 - (c) having ceased to be a College Student (in Class C or Class D) fails to become a Class A Member in accordance with clause 4.8; or
 - (d) elects to cease to be a Member and receive a benefit in accordance with clause 7;
- as determined by the Trustee but subject to its absolute discretion.
- 4.8 Twelve months after a Class C or Class D Member ceases to be a College Student the Member shall cease to be a Member unless, before that date:
- (a) the Member gives written notice to the Trustee (signed by an Employer) that they are employed by that Employer as a Minister, Missionary or Pastoral Worker; and
 - (b) the Employer and the Trustee consent in writing to the Member becoming a Class A Member (in which case the Member will become a Class A Member effective on and from the date notified when that consent is granted).
- 4.9 Each Member shall have the right upon request:
- (a) to receive an estimate of the Member's Benefits;
 - (b) to look at, at any reasonable time, a copy of this Deed;
 - (c) to receive, upon payment of a reasonable fee, a copy of this Deed.
- 4.10 Where any disclosure document or register entry relating to the Scheme contains a statement to the effect that a document or other information is available from the Trustee on request, the Trustee must (after receiving such a request) provide the

document or other information requested as soon as practicable but in any event within 5 working days¹⁰.

5 CONTRIBUTIONS

5.1 Each Member (except a Class D Member) shall as from the date of joining the Scheme contribute an amount equal to a percentage of the Member's Remuneration. Such percentage shall be specified by the Member but shall not be less than the minimum contribution set out as follows:

- (a) for a Class A Member, 6% of the Member's Remuneration; and
- (b) for a Class B Member, 6% of the Member's Remuneration PROVIDED HOWEVER that all persons who were Class B Members of the Scheme prior to the 1999 Amendment Date may continue to make contributions of 5% of Remuneration if they so elect; and
- (c) for a Class C Member, 5% of the Member's Remuneration;

PROVIDED HOWEVER that:

- (d) any Member may elect to raise their contribution in multiples of 1% of Remuneration. All such voluntary contributions over and above the minimum contribution must be contributed through a deduction from the Member's Remuneration, together with the minimum contribution. All such voluntary contributions over and above the minimum contribution shall be either:
 - (i) accounted for by the Trustee in a separate and identifiable sub-account within the Member's No 1 Account; or
 - (ii) if the Member is subject to the Complying Fund Rules in accordance with clause 20 and so elects, credited to the Member's CSF Balance; and
- (e) where a person became a Class A or Class B Member after the 2007 Amendment Date or is otherwise subject to the Complying Fund Rules in accordance with clause 20, the portion of their contributions under this clause 5.1 which is at least equal to the minimum employee contribution rate required pursuant to the Complying Fund Rules (or any greater rate agreed by the Member and the Trustee) shall be subject to the Complying Fund Rules.

Contributions by the Member shall be remitted to the Trustee monthly. Class D Members cannot contribute to the Scheme.

5.2 Each Member (except a Class D Member) shall have once a year the option to change their rate of contribution to the Scheme. Such option, if exercised, must be made by the Member in writing to the Trustee at least one month prior to the Annual Review Date from which date the option shall be effective.

5.3 Each Member shall have the option to contribute from time to time a lump sum to be credited, where the Member is subject to the Complying Fund Rules in accordance with clause 20, to the Member's CSF Balance, provided that any such lump sum contribution made in any 12 month period ending on 30 June shall not exceed in aggregate, when combined with any other contributions made pursuant to clause 20

¹⁰ Regulation 53.

by or in respect of the Member, the amount required to enable the Member to maximise any Crown contribution payable in respect of the Member's contributions for that 12 month period as provided for in section MK 4 of the Income Tax Act 2007.

- 5.4 A Member making contributions to the Scheme may elect to suspend those contributions by giving at least three months' written notice to this effect to the Trustee. Years of membership shall be frozen as at the date the Member ceased contributing. NOTWITHSTANDING the other provisions of this Deed and having regard to any relevant medical, actuarial and/or statistical data or opinion, the benefit payable to such a Member who has ceased contributing and subsequently dies or becomes Totally and Permanently Disabled shall be restricted to the benefit payable on resignation under clause 9.
- 5.5 Should a Member who has elected to suspend contributions under clause 5.4 wish to resume contributions, PROVIDED THAT at least one (1) year has elapsed since the date of cessation the Member may with the Trustee's consent be allowed to do so and the years of membership will recommence from the previously frozen level.
- 5.6 The Employer shall contribute to the Reserve Fund in respect of each Class A and Class B Member the amount determined by the Trustee as necessary to provide the benefits of this Deed. This amount may be amended from time to time by the Trustee, after taking into account the level of the General Account, the Reserve Fund and the amount to be credited to the Member's No 2 Account. The Employer contribution for Class A and Class B Members shall include employer's contribution superannuation tax.
- 5.7 The Employer shall not be required to contribute to the Reserve Fund in respect of any Class C or Class D Members except to the extent that may be considered necessary or desirable from time to time in order to fund some or all of the premiums payable in respect of any death and disablement cover obtained by the Trustee in respect of those Members under clause 8.8.
- 5.8 The Employer may suspend, reduce or terminate contributions to the Scheme in the following circumstances (all of which, in respect of a Member who joined the Scheme on or after the 1996 Amendment Date, shall be deemed to be good reasons in terms of section 65 of the Human Rights Act 1993):
- (a) the Member no longer being in Active Service;
 - (b) the suspension or dismissal of the Member by the Employer;
 - (c) the resignation or redundancy of the Member;
 - (d) the bankruptcy, physical or mental incapacity or death of the Member;
 - (e) the bankruptcy, receivership or liquidation of the Employer;
 - (f) the closure of the Employer;
 - (g) the reconstruction, merger or amalgamation of the Employer with another person or organisation which is unwilling or unable to assume the Employer's obligations under this Deed.

- 5.9 In the event of the suspension or termination of the Employer's contributions pursuant to clause 5.8 above, the Trustee may (after obtaining such medical, actuarial and/or statistical data or opinion as it sees fit and provided that the Member is not prejudiced thereby) pay the Member a lump sum pursuant to (and calculated in accordance with) clause 9.1 or 10.
- 5.10 Subject to clause 5.11 and to legislation:
- (a) a Member who was previously a member of another Retirement Scheme may with the Trustee's consent transfer to the Scheme the amount of any benefit available from the previous scheme; and
 - (b) such amount shall be credited to the Member's No 1 Account, No 2 Account or CSF Balance or apportioned between these accounts in the Trustee's absolute discretion PROVIDED THAT any amount transferred from another Complying Superannuation Fund shall be credited to the Member's CSF Balance.
- 5.11 No transfer amount shall be accepted by the Trustee from an overseas scheme other than an Australian complying superannuation scheme (as defined in the KiwiSaver Act) unless the Trustee has complied with the conditions of any applicable exemption from the requirements of the AML Act in relation to any such contribution, where the Trustee has determined to rely on such exemption.
- 5.12 If a Class A, B or C Member is no longer in Active Service or otherwise is eligible to receive a benefit from the Scheme and becomes a member, or is eligible to become a member, of another Retirement Scheme or an Equivalent Overseas Scheme (*Transferee Plan*) the Trustee shall if the Member requests in writing, instead of granting the Member the benefit to which they are entitled under the Scheme, transfer to the Transferee Plan a lump sum equal to the value of that Benefit.
- 5.13 Contributions made pursuant to this clause 5, the property for the time being representing the same, and the income thereof, shall form part of the Assets of the Scheme.
- 5.14 If a Class A, B or C Member is granted Leave of Absence then they shall remain a Member of the Scheme. Notwithstanding that neither the Member nor the Employer shall be required to make contributions during the period of the Leave of Absence, any contribution made voluntarily by the Member shall be accepted and credited to their Member's No 1 Account or if the Member so elects, to their CSF Balance. Unless the Member pays the appropriate premium as determined by the Trustee from time to time or allows the deduction of such premiums from their Member's No 1 Account the amount payable in the event of the Member's death or Total and Permanent Disablement shall be limited, NOTWITHSTANDING the other provisions of this Deed and having regard to any relevant medical, actuarial and/or statistical data or opinion as to life expectancy, accidents or sickness or any other matter, to the amount payable in the event of withdrawal under clause 9. The Member's years of membership shall be frozen for the period of the Leave of Absence.

Voluntary member contributions made during a Member's unpaid leave of absence shall not exceed (as to either amount or frequency) the contributions being paid by the Member immediately prior to commencing unpaid leave of absence. The Trustee

must comply with the conditions of any applicable exemption from the requirements of the AML Act in relation to any such contribution, where the Trustee has determined to rely on such exemption.

- 5.15 Where a Member is subject to the Complying Fund Rules in accordance with clause 20 and has made voluntary contributions under clause 5.1(d) which are accounted for in a sub-account within the Member's No 1 Account, the Member may with the Trustee's agreement transfer any amount or amounts from that sub-account into the Member's CSF Balance.

6 ACCOUNTS

6.1 The Trustee shall in respect of the Scheme maintain:

- (a) A Member's No 1 Account in the name of each Member to which shall be credited contributions made by the Member in terms of clause 5, less those credited to any CSF Balance. In addition, the Member's No 1 Account of each Member who had accrued benefits attributable to Membership in the Scheme prior to the Conversion Date shall be credited with an initial amount, as disclosed in the First Schedule to the 1990 Trust Deed. The Member's No 1 Account shall also be credited with returns at the Earnings Rate determined in accordance with clause 6.8 and transferred from the General Account. The credit in each Member's No 1 Account shall be applied in accordance with the terms and conditions of this Deed;

PROVIDED HOWEVER that any Member's No 1 Account held for a Class C Member may be debited (by way of transfer to the Reserve Fund) with:

- (i) the cost of any death and disablement cover obtained for the Member or the Member's Dependents;
- (ii) such further or other expenses as the Trustee may think fit.

In respect of a Class C Member who joined the Scheme on or after the 1996 Amendment Date, if there are no contributions held in the Member's No 1 Account, then the cost of any death and disablement cover shall be paid by the Trustee from the Reserve Fund.

- (b) A Member's No 2 Account in the name of each Class A and Class B Member to which shall be credited out of the Reserve Fund One Dollar (\$1.00) (less employer's superannuation contribution tax) for each dollar (\$1.00) contributed by the Class A or Class B Member from time to time under clause 5.1 up to the point where the annual gross amount contributed by the Class A or Class B Member is equivalent to 6% of the Class A or Class B Member's Remuneration less the total of:
- (i) any amount transferred from the Reserve Fund to the Member's CSF Balance under subclause 6.3(b); and
 - (ii) any amount of contribution to the Member's KiwiSaver Scheme that the Employer makes in respect of the same period
- (before the deduction of any employer's superannuation contribution tax).

In addition, the Member's No 2 Account of each Class A or Class B Member who had accrued benefits attributable to Membership in the Scheme prior to the Conversion Date shall be credited with an initial amount, as disclosed in the First Schedule to the 1990 Trust Deed. The Member's No 2 Account shall also be credited with returns at the Earnings Rate determined in accordance with clause 6.8 and transferred from the General Account. No Employer contribution will apply to any funds contributed by the Class A or Class B Member in terms of clause 5.3, 5.10, or 5.14. The credit in each Class A and Class B Member's No 2 Account shall be applied in accordance with the terms and conditions of this Deed.

- 6.2 The Trustee shall maintain a CSF Balance in accordance with clause 6.3 in respect of each Class A or Class B Member who makes contributions that are subject to clause 20.
- 6.3 A CSF Balance at any given time in relation to a Member means an amount equal to the sum of:
- (a) any contributions made by the Member that are subject to clause 20;
 - (b) in relation to a Class A or Class B Member, an amount transferred from the Reserve Fund equal to the minimum percentage of the Member's Remuneration specified from time to time in the KiwiSaver Act as the 'CEC rate' (or any greater amount agreed by the Member and the Trustee) less employer's superannuation contribution tax;
 - (c) the amount of any transfer value in respect of the Member from any other scheme that is to form part of the CSF Balance;
 - (d) any amount transferred from the Member's No 1 Account to the CSF Balance pursuant to clause 5.15; and
 - (e) returns (net of tax) to such given date at the Earnings Rate determined in accordance with clause 6.8 and transferred from the General Account;
- less:
- (f) such administration expenses as the Trustee considers equitable; and
 - (g) any amount paid to or in respect of a Member in accordance with this Deed under the Complying Fund Rules.
- 6.4 The Trustee shall maintain a General Account to which shall be credited income, capital gains and upward revaluations of property and to which shall be debited income tax (except as otherwise provided in this Deed), capital losses, downward revaluations of property, and returns transferred to Member's No 1 Accounts and No 2 Accounts pursuant to clause 6.1, to a Member's CSF Balance pursuant to clause 6.3 and to the Reserve Fund.
- 6.5 The Trustee shall maintain a Reserve Fund to which shall be credited:
- (a) Investment returns at the Earnings Rate determined in accordance with clause 6.8 and transferred from the General Account.
 - (b) Any insurance proceeds from an Insurer.

- (c) Any death benefits for which beneficiaries cannot be ascertained by the Trustee within a period of six (6) years from the date of death of the Member.
 - (d) Any benefits forfeited in terms of clause 9.
 - (e) All benefits forfeited in terms of clause 11.2 and not applied for the benefit of dependants.
 - (f) Any contributions made by the Employer under subclause 5.6 and 5.7.
 - (g) Other money not required for the payment of benefits from the Scheme, including the excess of any Member's account balance over and above any benefit paid or payable to or in respect of a Member.
 - (h) Death and disablement premiums and other expenses transferred from the No 1 Account of any Class C Member pursuant to the proviso to clause 6.1(a).
 - (i) All benefits forfeited in terms of subclause 11.4.
- 6.6 The Reserve Fund or such part as the Trustee may decide may be applied from time to time for the following purposes:
- (a) Meeting any of the expenses of the Scheme.
 - (b) Crediting to each Member's No 2 Account the amount required under clause 6.1(b).
 - (c) Meeting all or part of the Employer's contributions to the Scheme.
 - (d) Increasing the retirement benefits of Members on an equitable basis.
 - (e) Providing death and disability benefits for a Member or Members of the Scheme on an equitable basis.
 - (f) Providing personal benefits for Members or their Dependants in the case of hardship.
 - (g) Providing additional benefits for a Member or Members of the Scheme on an equitable basis.
 - (h) Premiums in respect of any death and disablement insurance obtained by the Trustee under clause 8.8.
 - (i) Such further or other purposes as the Trustee may think fit from time to time; provided that no Frozen Member shall be entitled to receive a benefit under or pursuant to any of paragraphs (b) to (i) of this clause 6.6.
- 6.7 Before determining the Earnings Rate applying to the Scheme from time to time the Trustee shall determine the net market value of the Assets of the Scheme using a methodology determined by it from time to time which accords with generally accepted accounting practice as defined in the Act.
- 6.8 The Trustee shall determine from time to time (but no less frequently than as at the Annual Review Date) the Earnings Rate applying to the Scheme (whether positive, negative or zero) using a methodology determined by the Trustee from time to time and taking into account (without limitation):

- (a) the nature of the investments and the investment performance of the Scheme and the extent to which gains are realised or unrealised;
- (b) the earnings of the Scheme;
- (c) taxation liabilities and provisions;
- (d) the liquidity of investments; and
- (e) such other matters as the Trustee may consider relevant;

and which is determined after deducting any amounts that the Trustee considers appropriate:

- (f) to hold in the General Account; and
- (g) to provide for expenses, fees, charges or costs associated with the administration and management of the Scheme.

6.9 For the purposes of this clause 6 the Earnings Rate shall be applied as at the Annual Review Date each year except in the case of a Member retiring, dying or leaving Active Service, in which case earnings as determined by the Trustee shall be credited or debited in respect of the Benefit then payable (using a methodology determined by the Trustee from time to time) for the period between:

- (a) the last date at which accounts were credited or debited with an Earnings Rate in accordance with clause 6.8; and
- (b) the date on which the Member's benefit entitlement arose.

6.10 The Trustee shall to the extent required by the Act and the Regulations:

- (a) correct any material error or non-compliance in an Earnings Rate determined pursuant to clause 6.8 or 6.9; and
- (b) take any steps prescribed in that regard by any applicable law¹¹;

PROVIDED THAT if the amount of any reimbursement or compensation required (after all relevant corrections have been made) is less than such minimum level of reimbursement or compensation as the Trustee may determine from time to time then no reimbursement or compensation shall be required to be provided.

6.11 The Trustee shall report to the FMA any material error in an Earnings Rate determined pursuant to clause 6.8 or 6.9, or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law.

6.12 The Trustee shall, as soon as is reasonably practicable, take all reasonable steps (in consultation with FMA) to notify disadvantaged current or former Members of any such error, and of any action that has been taken to compensate or reimburse those persons, to the extent required by the Act.

7 **BENEFIT ON RETIREMENT**

In the event of a Class A, B or C Member retiring from the Active Service of the Employer:

¹¹ Regulation 99

- (a) on attaining Retirement Age; or
- (b) on the grounds of ill health as determined by the Trustee;

the Member shall be entitled to receive as a lump sum a benefit equal to the total amount standing to the credit of the Member's No 1 and No 2 Accounts and (subject to clause 20) the Member's CSF Balance. Where a Member has attained age 65 years and remains in Active Service, the Member may elect to cease to be a Member and receive a benefit determined as if the Member had retired from Active Service at the date that the election is made. At the request of the Member payment of the lump sum may be deferred on such terms and conditions as are determined by the Trustee PROVIDED THAT the payment of a Member's CSF Balance shall only be made pursuant to clause 20. The Trustee may purchase on behalf of the Member an annuity in accordance with the wishes of the retiring Member.

8 BENEFIT ON DEATH OR TOTAL DISABLEMENT IN SERVICE

8.1 In the event of the death of a Member, their legal personal representative shall be entitled to receive (subject to clause 8.3):

- (a) all voluntary contributions over and above the minimum contributions set out in clause 5.1 and any voluntary lump sum contributions made from time to time (which voluntary contributions or lump sums shall be excluded for the purpose of calculating any benefit payable under this clause 8); and
- (b) returns accruing thereon;

together with the following lump sum benefit according to the Member's category, in lieu of the other amounts standing to the credit of the Member's accounts:

- (c) Members currently contributing under clause 5.1 or paying the appropriate premium as specified under clause 5.14: four (4) times the then current Standard Stipend less any funds withdrawn from the Member's accounts less than five (5) years before their death;
- (d) College Students: twice the then current Standard Stipend;
- (e) other Members: an amount equivalent to the benefit on retirement payable under clause 7.

8.2 If a Member retires from Active Service, or ceases to be a College Student, owing to Total and Permanent Disablement, then subject to clause 8.3 the Member shall be entitled to a lump sum equivalent to the amount that would have been payable had they died on the date of becoming Totally and Permanently Disabled.

8.3 The lump sum to which a Member shall be entitled under this clause 8 shall not be less than the total amount standing to the credit of the Member's No 1 and No.2 Accounts and the Member's CSF Balance.

8.4 In respect of Members who joined the Scheme prior to the 1996 Amendment Date but not otherwise, the Trustee in its absolute discretion may arrange death and disablement cover for the spouses of such Members for an amount to be decided by the Trustee, with the cost of providing such cover to be charged to the Reserve Fund.

- 8.5 Any Member who joined the Scheme after the 1996 Amendment Date and was previously a member of a scheme which provided spousal benefits, and who joined the Scheme as a result of a requirement or the exercise of a right to leave the first scheme because of a merger, takeover or restructuring by their employer, may continue to enjoy the spousal benefit under the Scheme.
- 8.6 Any spousal benefit arranged by the Trustee as set out above shall, subject to the provisions of any relevant insurance policy, continue notwithstanding the remarriage of the spouse.
- 8.7 When the health of the applicant for membership of the Scheme is in the opinion of the Trustee in its absolute discretion such as might involve the Scheme in an undue risk or liability in respect of the death or disablement benefits provided under the Scheme it may decline the application for membership or limit the liability of the Scheme in the applicant's case in respect of those benefits in such manner as it may think fit as a condition of acceptance of the applicant as a Member, PROVIDED HOWEVER that such declination of membership or limitation of liability is justified on the basis of medical, actuarial and/or statistical data or opinion, or is assessed or required by any Insurer.
- 8.8 If an arrangement of insurance has been made by the Trustee by means of a policy of insurance (*Insurance Policy*) with an insurer (*Insurer*) to cover the benefits which may be payable to a Member under clauses 8.1, 8.2, or 8.4 to 8.6 then the entitlement to such benefits shall be subject to the terms and conditions of the Insurance Policy. Members shall submit to any medical examination and shall deliver any statement of health required by the Insurer. Failing this the benefits provided under clauses 8.1, 8.2, or 8.4 to 8.6 shall be reduced in accordance with the Insurance Policy's terms and conditions. Should the Insurer limit or otherwise decline responsibility on the death or disablement of a Member, the Member shall not be entitled to any benefits under clauses 8.1, 8.2, or 8.4 to 8.6 and shall be entitled only to such benefits (if any) as the Trustee in its absolute discretion shall determine subject to a minimum of the benefits described in clause 8.3.
- 8.9 The costs of any death and disablement cover shall, in the case of each Class C or Class D Member, be met by the Trustee from the Reserve Fund.

9 **BENEFIT ON LEAVING SERVICE**

- 9.1 Subject to clause 21, in the event of a Class A, Class B or Class C Member leaving or ceasing to be in Active Service without being granted Leave of Absence or through closure of the Employer, otherwise than in the circumstances provided for in clauses 7 and 8, or the Trustee electing to pay the Member a lump sum pursuant to subclause 5.9, the Member shall cease to be a Member of the Scheme and shall be entitled to:
- (a) a lump sum benefit equal to the sum of:
- (i) the amount standing to the credit of the Member's No 1 Account, and
 - (ii) 10% of the Member's No 2 Account for each complete year of Membership in excess of 2 years, with a maximum of 100% of the Member's No 2 Account; plus

- (iii) notwithstanding the provisions of paragraph (ii) above, the Trustee may, at its discretion, increase the percentage of the Member's No.2 Account determined under the said paragraph (ii) subject always to a maximum of 100% of the Member's No. 2 Account; plus
 - (b) an amount equal to the Member's CSF Balance (with the payment of the amount determined under this subclause 9.1(b) being made pursuant to clause 20); and
 - (c) all voluntary contributions over and above the minimum contributions set out in clause 5.1, and any voluntary lump sum contributions made from time to time, together with returns accruing thereon.
- 9.2 Notwithstanding subclause 9.1(a) above, should a Class A, B or C Member be dismissed from Active Service (or should a Class A, B or C Member leave Active Service to avoid dismissal) on the grounds that the Member owes money to the Employer then any benefit payable under clause 9.1(a) in excess of the Member's contributions shall be forfeited to the Scheme and conversely any Member's contributions in excess of any benefit payable to the Member under this Deed (with the exception of the Member's CSF Balance) shall be forfeited to the Scheme PROVIDED THAT the Trustee may with the approval of the Employer pay to the Member all or part of the forfeited benefit if it so decides.

10 WITHDRAWAL WHILST IN SERVICE

No Class A, B or C Member whilst still in Active Service shall be entitled to withdraw, in full or in part, any Member's or Employer's contributions including, for the avoidance of doubt, any voluntary contributions over and above the minimum contributions set out in clause 5.1 and any voluntary lump sum contributions made from time to time, and returns accruing thereon made on or after that date PROVIDED HOWEVER that a Member shall upon giving not less than 3 months' notice in writing of such withdrawal and with the consent of the Trustee be entitled to a lump sum if it is utilised for and applied towards:

- (a) alleviation of serious financial hardship; or
- (b) a settlement agreed upon or ordered under the Property (Relationships) Act 1976; or

in respect of a Member who joined the Scheme prior to the 1996 Amendment Date:

- (c) full or part repayment of a mortgage: or
- (d) alleviation of financial hardship; or
- (e) the purchase of a residential property for occupation by the Member as the Member's principal residence; or
- (f) such further or other purpose as may be approved by the Trustee;

PROVIDED FURTHER THAT a withdrawal from a Member's CSF Balance shall only be made pursuant to clause 20.

11 ALIENATION, BANKRUPTCY, INCAPACITY AND NON-SUCCESSION

- 11.1 Benefits and rights of a Member under the Scheme are personal to the Member and no Member may (except as required by law) assign, transfer, charge, alienate or

borrow against the security of their benefits under this Scheme. Without limiting the preceding provisions of this clause 11.1, CSF Balances shall be subject to section 127 of the KiwiSaver Act, which shall take priority to the extent of any inconsistency between that section and the preceding provisions of this sub-clause.

- 11.2 To the extent (if any) permitted by law, in the event of a Member becoming bankrupt all benefits to which such Member is entitled in the Scheme shall be forfeited to the Scheme PROVIDED THAT the Trustee may in its absolute discretion apply in respect of such Member an amount not exceeding the amount of the benefit which has been forfeited for the maintenance support or otherwise for the benefit of the Member or such of their dependants as the Trustee may in its discretion determine and PROVIDED FURTHER THAT this provision shall not apply to a CSF Balance if precluded by the Complying Fund Rules.
- 11.3 In the event of a Member becoming physically, mentally or otherwise incapable of managing their own affairs the Trustee shall pay the Member's benefits in accordance with the decision of any committee or person duly appointed to manage the affairs of the Member or in the event of no such committee or person being appointed the Trustee shall apply the benefits for the maintenance support or otherwise for the benefit of the Member or such of their dependants as the Trustee may in its discretion determine.
- 11.4 In the event of:
- (a) any Member dying without leaving successors dependants or any persons beneficially entitled thereto, and
 - (b) no claim being made within a period of six (6) years from the date of death of the Member,

then all benefits to which such Member is entitled in the Scheme shall be forfeited to the Scheme.

12 TRUSTEE

- 12.1 The Union shall appoint a corporate body as the sole trustee of the Scheme PROVIDED THAT the corporate body is permitted under the Act (and any other applicable legislation) to be the trustee of the Scheme and has complied with all applicable registration requirements. The Union shall have power by deed to remove such Trustee and to appoint in its place another corporate body as Trustee. The Trustee must also be removed if required under the Act.
- 12.2 The Trustee shall have the Union as its sole or principal shareholder, and a constitution which prescribes that the Trustee's sole purpose is to act as the trustee of the Scheme. The Trustee's constitution shall also prescribe that it must have not fewer than 3 and not more than 7 appointed Directors, of whom:
- (a) the Union shall in its absolute discretion appoint up to 3, at least one of whom shall be appointed by the Union on the recommendation of the ACTS Churches NZ;
 - (b) another 3 shall be appointed by the Union having been elected by the Members who are not members of the ACTS Churches NZ; and

- (c) one shall be a Licensed Independent Trustee appointed by the other Directors.
- 12.3 Each Director appointed under clause 12.2(b) shall hold office for a term of 2 years (or, for any new or renewed appointment effected on or after the date of this Deed, 3 years) PROVIDED HOWEVER that at least one of them shall retire annually. Any retiring Director may stand for re-election.
- 12.4 The Trustee may open and operate such bank accounts as it thinks fit.
- 12.5 The Trustee's constitution must prescribe that a signature of any two Directors shall be sufficient for the execution of all deeds, documents and other instruments to be executed in connection with the conduct of the business of the Scheme.
- 12.6 The Trustee may regulate its decision-making and meetings as it thinks fit. The Trustee's constitution must also prescribe that:
- (a) the Trustee shall elect each year from among the Directors a Chairperson;
 - (b) the Directors may elect or appoint a Minute Secretary, but such Minute Secretary need not be a Director and may be the administration manager engaged from time to time by the Trustee;
 - (c) the quorum for Directors' meetings shall be 50% of the Directors from time to time and a properly constituted meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in the Trustee generally;
 - (d) subject to clause 12.6(g) all questions shall be decided by a majority decision, with each Director having one vote;
 - (e) any decisions made at a meeting at which all the Directors then in office are not present shall be advised in writing to all the Directors immediately thereafter;
 - (f) each Director being a Beneficiary may retain for their own benefit subject to the conditions of this Deed all moneys and benefits accruing to them as a Beneficiary and no decision of the Directors nor the exercise of any power by a Director shall be invalidated on the grounds that a Director had an interest in the exercise of any such power;
 - (g) the Trustee may not amend this Deed unless approved by 75% of the directors.
- 12.7 The Trustee may with the consent of the Union appoint from time to time any person, firm, company, corporation, organisation or agent to enable the carrying out of the Trustee's purposes, powers, authorities or discretions (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions) with the same power to sub-delegate, and the Trustee may agree with each such delegate the fees that may be charged and the extent to which expenses will be reimbursed from the Assets of the Scheme as the Trustee may consider suitable having regard to normal commercial terms PROVIDED THAT the Trustee:

- (a) must comply with the requirements of the Act¹² if contracting out any of its functions as the trustee of the Scheme; and
- (b) remains liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority.

12.8 Subject to the Act, a corporate body shall cease to be a Trustee if:

- (a) it resigns its office in writing to the Union; or
- (b) a receiver, manager or liquidator is appointed in respect of it; or
- (c) a resolution is passed or an order is made for its winding up; or
- (d) it is disqualified from office by operation of law; or
- (e) required under the Act¹³.

12.9 Subject to the Trustee's constitution and, in the case of the Licensed Independent Trustee, to the requirements in the Act¹⁴, the Union may at any time and from time to time, subject to clauses 12.1 and 12.2:

- (a) remove any or all Directors from office other than any Director appointed by the Members;
- (b) appoint one or more new Directors;
- (c) appoint such additional Directors as it may consider desirable;

and when exercising those powers the Union shall give prompt written notice of the action to the Directors for the time being and to any appointee.

12.10 Subject to the Act, neither the Trustee nor any Director shall be liable for:

- (a) any losses other than those arising from its or their own fraud or wilful default; or
- (b) the act or defaults of another Director; or
- (c) any act done bona fide in conformity with the decisions of the Trustee hereunder; or
- (d) the act or default of any solicitor, bank, accountant, broker, person, firm, company, corporation, organisation or agent or officer employed in good faith by the Trustee.

12.11 Subject to the limits on permitted indemnities applying under the Act, if contrary to clause 12.10 either the Trustee or any Director is found personally liable:¹⁵

- (a) the Trustee and each Director shall be indemnified from and against all claims, actions, demands, proceedings, costs, losses, expenses and liabilities incurred in the execution or attempted execution of the trusts, powers, authorities, discretions and duties vested in them under this Deed and shall

¹² Section 146.

¹³ Section 185.

¹⁴ Section 185(1)(c) and (3)

¹⁵ Sections 135(1)(f) and 136(2).

have a lien on and may use the Assets of the Scheme for and in pursuance of this indemnity; and

- (b) this indemnity shall extend to any payments made to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that such person was not in fact so entitled.

12.12 Any Director shall be entitled to charge and be paid all usual and proper charges for all services provided for the Scheme in the same manner as if (not being a Director) they had been employed by the Trustee to provide such services. The Licensed Independent Trustee shall be paid out of the Assets of the Scheme such fees as are approved by the Trustee from time to time.

12.13 The Trustee may agree:

- (a) to limit the liability (in connection with its services in respect of the Scheme) of; and/or
- (b) to indemnify out of the Assets of the Scheme;

any administration manager, investment manager or Custodian appointed in respect of the Scheme, to the fullest extent permitted by the Act¹⁶, in respect of any debt, liability or obligation incurred by or on behalf of the Trustee or Custodian in respect of the Scheme or any action taken or omitted for or in connection with the Scheme (including, without limitation, legal fees and disbursements).

12.14 In acting as the Trustee of the Scheme, the Trustee must comply at all times with the requirements of the Act¹⁷.

13 INVESTMENTS

13.1 All money belonging to the Scheme and available for investment shall be invested in accordance with the provisions of the Trusts Legislation as to the investment of trust funds (including without limitation the requirement to maintain a SIPO for the Scheme which complies with the requirements of the Act)¹⁸.

13.2 Notwithstanding anything to the contrary in the Trusts Legislation or the Act, the Trustee shall, in exercising the power of investment, exercise the care, diligence and skill required by section 144 of the Act.

13.3 In the case of an investment manager, the Trustee shall impose an obligation that it will, in exercising the power of investment, exercise the care, diligence, and skill required by section 144(1) of the Act.

13.4 The Trustee shall have power as it sees fit to sell any investments and to vary or transpose any investments into others authorised by this Deed.

13.5 The Trustee may enter into contracts or arrangements from time to time to underwrite or sub-underwrite the issue of any securities which are authorised for the

¹⁶ Sections 135(1)(f) and 136(2).

¹⁷ Sections 142 to 151.

¹⁸ Section 164.

investment of the Assets of the Scheme upon such terms as to commission or otherwise as it thinks fit.

13.6 Without prejudice to the powers conferred upon it by general law or under this Deed the Trustee may:

- (a) by deed from time to time appoint one or more persons as investment managers to the Scheme (*Investment Managers*) on such terms and conditions as may be agreed between the Trustee and the Investment Managers and delegate to each Investment Manager such of the Trustee's authorities, powers and discretions in relation to the investment of the Assets of the Scheme as the Trustee may think fit (and the Investment Managers shall be entitled to charge fees as agreed between the Trustee and the Investment Managers);
- (b) from time to time remove an Investment Manager;
- (c) authorise an Investment Manager to further delegate and authorise further delegation of any authorities, powers and discretions delegated to the Investment Manager to any other person to the extent approved by the Trustee and in accordance with the approval of and any conditions imposed by the Trustee; and
- (d) by deed engage a Custodian (which must meet the requirements for such a person under the Act¹⁹) to hold and handle the Assets of the Scheme on terms to be agreed between the Trustee and the Custodian (including as to the fees that may be charged and the extent to which expenses may be reimbursed).

13.7 If authorised in writing by the Trustee, a Custodian appointed under clause 13.6 may itself appoint one or more sub-custodians in which any of the Assets of the Scheme are to be vested. Any sub-custodian appointed under this clause 13.7 must meet the requirements for such a person under the Act²⁰.

14 TRUSTEE POWERS

14.1 In addition to all other powers conferred by law or hereinbefore granted to it by this Deed, the Trustee shall have the following powers:

- (a) To borrow and raise money for any of the purposes of the Scheme on such terms and conditions as it thinks fit and 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 enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (b) To settle, compromise, grant effectual discharges and receipts or submit to arbitration any claims, matters or things relating to this Deed, the Assets of the Scheme or to the rights of Members, former Members and Beneficiaries;
- (c) To commence carry on or defend proceedings relating to the Assets of the Scheme or to the rights of Members, former Members and Beneficiaries, and to obtain the opinion of legal counsel in relation thereto;

¹⁹ Sections 127(1)(f) and 156(2).

²⁰ Section 156.

- (d) To insure with an Insurer any risks or contingencies of the Scheme, including the benefits payable on death or disablement under clause 8;
- (e) To retain the services of professional advisers and other service providers (whether persons, firms or companies) in relation to the management, administration or investment of the Assets of the Scheme, and to determine and to pay out of the Assets of the Scheme the remuneration payable to the said professional advisers;
- (f) Without limiting clause 14.1(e), to delegate to any persons such powers and discretions as it shall see fit from time to time, and to determine and to pay out of the Assets of the Scheme the remuneration payable to the said persons, PROVIDED THAT the Trustee:
 - (i) must comply with the requirements of the Act²¹ if contracting out any of its functions as the trustee of the Scheme; and
 - (ii) remains liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority;
- (g) To make rules or to adopt procedures not inconsistent with the provisions of this Deed in relation to the calculation and rounding off of contributions or benefits or returns, or to the determination of periods of time or to such other matters as shall be appropriate for the convenient administration of the Assets of the Scheme;
- (h) To acquire and dispose of any real or personal property whether by sale purchase lease exchange or otherwise howsoever and upon and subject to such terms and conditions as the Trustee thinks fit;
- (i) To maintain manage and improve any property or any interest which forms part of the Assets of the Scheme in whatever manner the Trustee thinks fit and for those purposes to pay and apply the capital and income of the Scheme as the Trustee thinks fit;
- (j) To act alone or in conjunction with any other person or persons in the formation, acquisition, amalgamation, restructuring or merger of a company;
- (k) Generally to do all such acts and things as the Trustee may consider necessary or expedient for the administration maintenance and preservation of the Assets of the Scheme and in performance of its obligations under this Deed, provided that in acting as the Trustee of the Scheme, the Trustee must comply at all times with the requirements of the Act²².

15 ADMINISTRATION

15.1 The Trustee shall ensure that there are kept (in such form as it may determine):

- (a) minutes of resolution in a book provided for that purpose; and
- (b) records of Members showing:
 - (i) the full names and addresses of Members;

²¹ Section 146.

²² Sections 142 to 151.

- (ii) the particulars of each Member's No 1 Account and No 2 Account and CSF Balance; and
- (iii) the particulars of payments in respect of Members and former Members.

15.2 The Trustee shall ensure that an account is kept of the money received and disbursed and that a statement of account is made up annually. The accounts shall be audited by an Auditor appointed by the Trustee.

15.3 The Trustee shall ensure the preparation and distribution of annual reports for the Scheme in accordance with the requirements of the Regulations²³.

15.4 Every person who is eligible to join and applies to join the Scheme shall:

- (a) submit such evidence of their age and such evidence of the state of their health as may be required by the Trustee;
- (b) provide any other information which may reasonably be required by the Trustee;
- (c) agree in writing to be bound by the terms and conditions of this Deed if their application is accepted.

15.5 The Trustee shall not refuse to admit an eligible person who complies with all the foregoing requirements but shall admit such person to Membership. Such admission to Membership shall be notified to the Member as soon as practicable, and the Member shall be advised in writing of brief details of this Deed and of their principal rights and benefits.

16 GENERAL

16.1 Nothing in this Deed shall affect or restrict the powers of the Employer with regard to remuneration, terms of employment or dismissal of an Employee, or any other dealings of the Employer with the Employee, and the benefits to which a Member or former Member might claim to be entitled shall not be used as grounds for increasing or as means of assessing damages in any claim made or action brought by a Member or former Member against the Employer.

16.2 No Member shall have any claim against any of the Employers or their property or funds in respect of any moneys payable pursuant to the provisions of this Deed.

16.3 Nothing in this Deed shall require the Trustee to make any payments other than in New Zealand and in New Zealand currency.

16.4 The Employers and every Member under this Deed shall furnish to the Trustee such information as it shall require in order to fulfil its duties under this Deed.

16.5 A copy of this Deed shall be kept by the Union and any Member shall at any reasonable time have the right to peruse it. Any Member upon payment of such fee

²³ Regulations 62 and 63.

as the Trustee considers appropriate shall be entitled to receive and hold a copy of this Deed.

- 16.6 The Trustee may require any Member to execute a Form of Receipt and Discharge prior to paying to any Member any benefits to which such Member may be entitled under this Deed.
- 16.7 In making any decisions under and pursuant to the provisions of this Deed, the Trustee may take into account any reasonable medical, actuarial or statistical data relating to life expectancy, financial circumstances, accidents or sickness, or any other relevant matter. In particular, but without in any way limiting the generality of this provision, it shall be lawful for the Trustee to provide for different treatment in respect of the following areas, provided it is based on the aforesaid data and it is necessary and appropriate:
- (a) different benefits for members of each sex on the basis of the same contributions;
 - (b) the same benefits for members of each sex on the basis of different contributions;
 - (c) different contributions for Members;
 - (d) different benefits for Members by reason of their ages or disabilities.
- 16.8 Nothing in the Human Rights Act 1993 shall be interpreted in such a way as to require the Trustee to withdraw or reduce any benefit of any person who became a Member of the Scheme before 1 January 1996.
- 16.9 Without limiting any other provision of this Deed, the Trustee must keep or ensure there are kept and reconciled records that:
- (a) identify the Assets of the Scheme;
 - (b) show when the Assets of the Scheme were received; and
 - (c) if the Assets of the Scheme have been disposed of, show when the Assets of the Scheme were disposed of and to whom;
- and have those records audited (and give reports about the Assets of the Scheme) in accordance with the requirements of the Act²⁴ and the Regulations²⁵.
- 16.10 Each Member shall be given annual confirmation information in accordance with the Act²⁶ and the Regulations²⁷.
- 16.11 The Trustee shall cause accounting records to be kept in accordance with the Act and Regulations.²⁸ The Trustee shall allow for inspection of the accounting records relating to the Scheme to the extent required by the Act²⁹.

²⁴ Sections 158 and 159.

²⁵ Regulations 86 to 88.

²⁶ Section 100.

²⁷ Regulations 69 to 71.

²⁸ Sections 455 to 458 of the Act.

²⁹ Section 459 of the Act.

16.12 The Trustee shall ensure that financial statements are prepared, audited and lodged with the Registrar of Financial Service Providers in respect of the Scheme in accordance with the Act³⁰.

16.13 The Trustee shall ensure that a Register is kept and maintained in New Zealand with respect to the Scheme and is kept in the manner, contains the information, is audited and is available for inspection as required by the Act and the Regulations³¹. The Register may be kept electronically. The Trustee shall be entitled to treat the Register as being correct if it reasonably believes that the Register has been adequately maintained.

16.14 The Trustee shall provide the FMA with reports and information (including, for the avoidance of doubt, in relation to SIPO limit breaks) to the extent required by the Act.³²

17 AMENDMENT

17.1 Subject to the restrictions in the Act³³, with the consent of the Union given by the Assembly Council the Trustee may from time to time by instrument in writing repeal, alter or add to any of the provisions of this Deed or any amendments thereof.

17.2 No consent of the Union as aforesaid, nor or of any Member, shall be required if the amendment of the provisions of this Deed is required by statute, irrespective of whether it reduces or adversely affects any Member's interest in the Scheme.

18 WINDING UP

18.1 If the Trustee or the Union resolves that the Scheme shall be wound up (or the Scheme is required to be wound up under the Act³⁴) then the Trustee shall:

- (a) in each case comply with all of the provisions of the Act relating to the wind-up of the Scheme³⁵; and
- (b) after deducting costs and expenses of winding up distribute any moneys remaining:
 - (i) by paying to each Member the total credits standing to that Member's No 1 and No 2 Accounts as at the date of winding up of the Scheme,
 - (ii) dealing with the amount standing to the credit of each Member's CSF Balance as at the date of winding up of the Scheme pursuant to clause 20;

PROVIDED ALWAYS THAT if the moneys remaining are insufficient to allow the full payment of all Member's No 1 Accounts, Member's No 2 Accounts and CSF Balances then the distribution payments shall be reduced proportionately after having due

³⁰ Sections 460 to 461 of the Act.

³¹ Sections 215 to 223 of the Act and Regulations 109 and 110 of the Regulations.

³² Sections 147, 149 to 151, 167 and 168 of the Act and Regulations 83, 94 to 98 and 100 of the FMC Regulations.

³³ Section 139.

³⁴ Sections 195 and 211.

³⁵ Sections 212 and 213.

regard to each Member's accrued rights to their No 2 Account in accordance with clause 9.1(a)(ii) and their CSF Balance in accordance with clause 9.1(b).

- 18.2 If any moneys remain following the payments detailed in clause 18.1 above then the distribution of such moneys shall (subject to the requirements of the Act) be dealt with by the Trustee on the advice of the Union PROVIDED THAT no Frozen Member shall receive any additional benefit pursuant to this clause 18.2 and any distribution to Members of such moneys shall otherwise be equitable as between all Members.
- 18.3 No part of the assets of the Scheme may revert to the Union on winding up of part or all of the Scheme without the prior written consent of the FMA.

19 **ARBITRATION**

Any dispute which may at any time arise between any Member, or any person claiming to be or to become a Member and the Trustee, arising out of any decision of the Trustee affecting such Member or other person, and whether involving any question or interpretation of this Deed or not, and generally any matter as to which a discretion is by this Deed vested in the Trustee shall upon request by either party thereto be referred to the Assembly Council which may refer the matter to the arbitration either of a single arbitrator appointed by mutual agreement between the parties, or of two arbitrators, one of whom shall be appointed by each party. In the case of disagreement between the arbitrators, the dispute shall be referred to the decision of an umpire who shall have been appointed by the arbitrators in writing before entering on the reference, and who shall sit with the arbitrators. The award of the arbitrator or arbitrators or of the umpire, when communicated in writing to the said Council, shall be conclusive and binding on all parties, and it shall be a condition precedent to any right of action on the part of such Member or person that such award shall be first obtained.

20 **COMPLYING FUND RULES**

- 20.1 The Complying Fund Rules shall apply to the following Members of the Scheme:
- (a) all Class A and Class B Members who joined the Scheme on or after the 2007 Amendment Date; and
 - (b) any Class A or Class B Member who was a Member of the Scheme on the day immediately preceding the 2007 Amendment Date who elected that some or all future contributions by or on behalf of the Member shall be subject to the Complying Fund Rules.

The amount contributed by or on behalf of a Member under the Complying Fund Rules must be at least equal to the amount required under Schedule 28 of the Income Tax Act 2007.

- 20.2 Any contributions made under this clause 20 shall form part of a Member's CSF Balance.
- 20.3 Notwithstanding the provisions of clauses 7, 8, 9 or 10 of the Trust Deed, a Member shall only be permitted to withdraw a CSF Balance in accordance with:
- (a) clause 4 (Withdrawal age) of Schedule 1 of the KiwiSaver Act;

- (b) clause 8 (Withdrawal for purpose of purchase of first home) of Schedule 1 of the KiwiSaver Act;
- (c) clause 10 (Withdrawal in cases of significant financial hardship) of Schedule 1 of the KiwiSaver Act. For the purpose of this subclause, significant financial hardship shall have the meaning set out in clause 11 of Schedule 1 of the KiwiSaver Act;
- (d) clause 12 (Withdrawal in cases of serious illness) of Schedule 1 of the KiwiSaver Act;
- (e) clause 12B (Withdrawal in cases of life-shortening congenital conditions) of Schedule 1 of the KiwiSaver Act;
- (f) clause 14 (Withdrawal or transfer to foreign scheme in cases of permanent emigration) of Schedule 1 of the KiwiSaver Act;

as if the Member were a member of a KiwiSaver Scheme and the provisions of the KiwiSaver Act relating to the withdrawal of benefits applied to a Member's CSF Balance.

For the purpose of this clause 20.3, any application to make a withdrawal due to significant financial hardship, serious illness or a life-shortening congenital condition shall be subject to the provisions of clause 13 of Schedule 1 of the KiwiSaver Act.

- 20.4 Where a Member ceases to be in Active Service without being granted Leave of Absence or through closure of the Employer, in circumstances where the Member's CSF Balance cannot be withdrawn then the provisions of clause 20.6 shall apply.
- 20.5 A Member's CSF Balance must be transferred to another Complying Superannuation Fund or to a KiwiSaver Scheme if the Member requests such transfer, and in the case of a transfer to a KiwiSaver Scheme, the requirements of the KiwiSaver Act are met.
- 20.6 A Member's CSF Balance must be transferred to a KiwiSaver Scheme if:
- (a) the Member ceases to be eligible to be a Member of the Scheme and does not request a transfer pursuant to clause 20.5;
 - (b) the Member may not remain a Member of the Scheme for any reason except a transfer in accordance with clause 20.5 or 20.6(c) or a withdrawal of all or a part of the Member's CSF Balance in accordance with the Complying Fund Rules; or
 - (c) the FMA revokes the approval of the Scheme as a Complying Superannuation Fund or the Scheme is wound up and the CSF Balance is not transferred to a KiwiSaver Scheme or another Complying Superannuation Fund.
- 20.7 The Trustee must notify the Commissioner of Inland Revenue that a Member's CSF Balance must be transferred pursuant to clause 20.6 and the notice must include the name, address and tax file number of the Member, the name and address of the Member's Employer and the name and tax file number of the Scheme.
- 20.8 In the event of any inconsistency at any time between a provision in this clause 20 (or any other provision in this Deed applying in respect of a CSF Balance) and the

Complying Fund Rules, the Complying Fund Rules shall prevail to the extent of that inconsistency.

21 FROZEN MEMBERS

21.1 Without limiting any other provision of this Deed, a Minister or Missionary who leaves Active Service shall be entitled on request to remain in the Scheme as a Frozen Member if they advise the Trustee (and the Trustee is, and while the Trustee remains, reasonably satisfied) that they either:

- (a) are seeking a return to Active Service as a Minister or Missionary; or
- (b) intend returning (or reasonably expect to return) to Active Service as a Minister or Missionary:
 - (i) within two years after the date of leaving Active Service; or
 - (ii) if their reason for leaving Active Service is to take up immediately (with another organisation approved by the Trustee for the purposes of this clause) an appointment to a position involving Christian mission or ministry work substantially corresponding to the regular work of a Minister or Missionary, forthwith on the cessation of that appointment.

21.2 A Frozen Member:

- (a) may retain their full Member's No 1 Account, Member's No 2 Account and CSF Balance in the Scheme for up to two years (or for such other period as the Trustee may determine at its discretion) after the date of leaving Active Service:
 - (i) during which their Member's No 1 Account, Member's No 2 Account and CSF Balance shall (for the avoidance of doubt) continue being credited with Earnings Rates; and
 - (ii) after which (subject to any earlier return to Active Service) the Member shall exit the Scheme under whichever of clauses 7 to 9 applies; but
- (b) shall receive their full entitlement from the Scheme and cease to be a Member (subject to the requirements of clause 20) if, before the relevant period elapses:
 - (i) clause 7 or clause 9 electively applies; or
 - (ii) clause 8 is triggered; or
 - (iii) the Trustee is no longer reasonably satisfied that they meet the requirements of paragraph (a), (b)(i) or (b)(ii) (as applicable) of clause 21.1 and advises them accordingly; and
- (c) may make a prior withdrawal in accordance with either clause 10 or clause 20.

21.3 A Frozen Member shall not be a *Member* for the purposes of clause 5 (other than sub-clause 5.12) and shall not be entitled to contribute to the Scheme or to receive any Employer Contribution credits.

- 21.4 Unless the Frozen Member allows the deduction from their Member's No 1 Account of the full premium applying for the time being and the Insurer allows continued cover, the amount payable in the event of a Frozen Member's death or Total and Permanent Disablement shall be limited to the amount payable on any withdrawal under clause 7 or clause 9 (as applicable).
- 21.5 Without limiting clause 21.4 and for the avoidance of doubt, a Frozen Member's entitlements under clause 8 shall be subject at all times to the terms and conditions of the Insurance Policy as they apply to the Frozen Member.
- 21.6 For the avoidance of doubt, a Frozen Member:
- (a) shall not be permitted to withdraw any amount from their CSF Balance other than in accordance with clause 20; but
 - (b) may elect at any time to transfer all or part of their CSF Balance to another Complying Superannuation Fund or to a KiwiSaver Scheme in accordance with clause 20.5.

22 RELATED PARTY TRANSACTIONS

- 22.1 The Trustee and any Related Party of the Trustee must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the Act.³⁶
- 22.2 The Trustee must not acquire any new in-house asset contrary to the Act, and shall sell down any in-house assets held by the Scheme to the extent required by the Act.³⁷
- 22.3 Neither the Trustee nor any Related Party shall be liable to account to the Scheme or any Member for any profit, loss, fees, brokerage or commissions arising from any transaction entered into in accordance with clause 22.1
- 22.4 A failure to comply with clause 22.1 does not affect the validity of a transaction (subject to any Court order to the contrary).³⁸

23 AUDITOR

- 23.1 The Trustee shall appoint as Auditor of the Scheme a person qualified in terms of the Act³⁹ and entitled by law to act as such, to provide services in accordance with the requirements of the Act and the Regulations.⁴⁰
- 23.2 The remuneration of the Auditor shall be fixed by the Trustee on an arm's length basis and shall be paid as an expense of the Scheme unless paid by the Union.
- 23.3 The Auditor may at any time be removed by the Trustee and may retire upon the expiration of not less than ninety (90) days' notice to the Trustee.

³⁶ Sections 172 to 175.

³⁷ Section 176 and clause 39 of Schedule 4.

³⁸ Section 173(6) of the Act.

³⁹ Section 461E.

⁴⁰ Section 218 of the Act and regulations 108 and 109 of the Regulations.

23.4 Any vacancy in the office of Auditor occurring under clause 23.3 shall be filled by the Trustee appointing as Auditor of the Scheme a person qualified for appointment in terms of clause 23.1.

24 MEETINGS

When required by the Act, the Trustee must call a meeting of Members in the manner and on the basis set out in the Act and the Regulations⁴¹. A meeting of Members shall be conducted in accordance with the requirements of the Act and the Regulations⁴².

25 DELIVERY

For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Deed will be delivered by each party on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the relevant party, into the custody of the other party or the other party’s solicitors; or
- (b) transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant party, to the other party or the other party’s solicitors.

EXECUTED AND DELIVERED AS A DEED

Signed by **The Baptist Union of New Zealand** (by affixing its common seal) in the presence of:



Signature

National Administrator

Title/Occupation



Maisey

Signature

Office administrator

Title/Occupation

⁴¹ Sections 161 to 163 of the Act and regulation 83 of the Regulations.

⁴² Sections 162 and 163 of the Act and regulations 83 and 91 of (and Schedule 11 to) the Regulations.

Baptist Retirement Trustee Limited by:



Director



Director

BAPTIST UNION SUPERANNUATION SCHEME

Solicitor's Certificate – Replacement Trust Deed

As solicitors to Baptist Retirement Trustee Limited as trustee of the Baptist Union Superannuation Scheme (*Scheme*), we hereby certify that the Trust Deed of the Scheme dated 26 October 2016 (*Trust Deed*), when amended as proposed by the draft replacement Trust Deed attached to this certificate:

- (a) will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 (*Act*); and
- (b) will not contain any provision that is contrary to those implied in the Trust Deed by (or that contravenes) either the Act or the Financial Markets Conduct Regulations 2014.

The replacement Trust Deed to which this certificate relates is yet to be executed, and the certificate is given on the basis that the replacement Trust Deed will not be executed until after the Financial Markets Authority has consented to the proposed amendments (as contemplated by section 139(1)(a) of the Act).

Yours faithfully
Chapman Tripp


Mike Woodbury
Partner

Date: 2 June 2020