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# Christian KiwiSaver Scheme

## Trust Deed

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The New Zealand Anglican Church Pension Board  
(*Trustee*)



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Date: 13 March

2018

## **PARTIES**

**The New Zealand Anglican Church Pension Board** (*Trustee*)

## **INTRODUCTION**

- A The Koinonia KiwiSaver Scheme (*Scheme*), originally called the Koinonia Fund, is registered on the register of managed investment schemes as a restricted KiwiSaver scheme under the Financial Markets Conduct Act 2013 (*Act*).
- B The Scheme was established by a trust deed dated 29 June 2007 and is currently governed by a trust deed dated 10 August 2016 (*Existing Deed*).
- C The Trustee wishes to amend the Existing Deed by replacing the provisions of the Existing Deed with the provisions of this Trust Deed in order to:
- C.1 rename the Scheme the *Christian KiwiSaver Scheme*; and
  - C.2 more clearly express the entry criteria for admission of members to membership of the Scheme.
- D The Financial Markets Authority (*FMA*) has consented, pursuant to section 139(1)(a) of the Act, to the amendments comprised in this Trust Deed.
- E The Trustee has obtained a certificate from its solicitor to the effect that the Existing Deed, as amended by this Trust Deed, will continue complying with sections 135 to 137 of the Act on the basis set out in the certificate.

**BY THIS DEED**, effective on and from the Effective Date and 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 Trust Deed;

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

## **1 INTERPRETATION AND DEFINITIONS**

### **1.1 Interpretation**

In the interpretation of this Trust Deed, unless the context otherwise requires:

- (a) *Defined terms*: words or phrases (other than proper names) appearing with capitalised initial letters are defined terms and have the meanings given to them in this Trust Deed;
- (b) *Headings*: the headings in this Trust Deed are for convenience only, and shall not affect its interpretation;
- (c) *Related terms*: where a word or expression is defined in this Trust Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;



- (d) *Singular, plural and gender:* the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (e) *Clauses:* references to clauses are to clauses of this Trust Deed;
- (f) *Statutory references:* any reference to a statute or regulation includes any amendment or re-enactment and, in the case of a statute, any regulations made under that statute;
- (g) *Money:* references to money are references to New Zealand currency;
- (h) *Agreements:* references to any deed, agreement or other instrument shall be read as referring to such deed, agreement or instrument as amended or novated from time to time;
- (i) *Governing law:* this Trust Deed shall be governed and construed, and shall take effect, in accordance with the laws of New Zealand. All parties to this Trust Deed and all Members shall accept and be subject to the jurisdiction of the Courts of New Zealand;
- (j) *Footnotes:* footnotes used in this Trust Deed do not form part of the Deed, are a guide only, do not affect interpretation and (where they refer to legislative provisions) are not intended to incorporate those provisions in the Trust Deed; and
- (k) *References:* any reference to:
  - (i) an action taken or thing done (*Action*) under, in accordance with or pursuant to a provision of this Trust Deed at or in respect of a date before the Effective Date (*Relevant Date*) shall constitute 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; or
  - (ii) the operation or effect of a provision of this Trust Deed at or in respect of a date before the Effective Date shall constitute a reference to the operation or effect of a materially corresponding provision in the deed governing the Scheme as at the Relevant Date.

## 1.2 Definitions

In this Trust Deed, unless the context requires otherwise:

*Account* means an account established and maintained by the Trustee under clause 5;

*Administration Manager* means the person or company (if any) to whom the Trustee has contracted some or all of the administration of the Scheme;

*Auditor* means the person (being a licensed auditor or registered audit firm under the Auditor Regulation Act 2011) appointed by the Trustee as the auditor of the Scheme, or the firm of persons so appointed;

*Business Day* means a day other than Saturday or Sunday on which registered banks are open for business in Auckland and Wellington;



*Church or the Church* means the Anglican Church in Aotearoa, New Zealand and Polynesia;

*Custodian* means a person appointed to hold any of the assets of the Scheme under clause 9.4(d) and includes, to the extent the context permits, any sub custodian appointed by the Custodian to hold any assets of the Scheme under clause 9.5;

*Effective Date* means 15 March 2018;

*FMA* means the Financial Markets Authority or any successor entity;

*FMCA* means the Financial Markets Conduct Act 2013;

*Income Tax Act* means the Income Tax Act 2007 and, as the context requires, the Tax Administration Act 1994;

*Investment Fund* means any Investment Fund established by the Trustee under clause 10;

*KiwiSaver Act* means the KiwiSaver Act 2006;

*KiwiSaver Member Tax Credit* means the member tax credit provided for in subpart MK of the Income Tax Act and paid to the Scheme in respect of a Member;

*Licensed Independent Trustee* means a licensed independent trustee who is independent as defined in the FMCA<sup>1</sup> and whose licence covers the Scheme;

*Member* means a member of the Scheme;

*Member's Interest* has the same meaning as in section 4(1) of the KiwiSaver Act;

*PIE* means a portfolio investment entity as defined in the Tax Act;

*PIE Legislation* means the provisions of the Tax Act and the Tax Administration Act 1994 that relate to a PIE;

*PIE Tax Liability* means the tax liability for the Scheme as calculated under the PIE Legislation;

*Register* means the register of Members maintained for the Scheme pursuant to the FMCA;<sup>2</sup>

*Regulations* means the Financial Markets Conduct Regulations 2014;

*Related Party* has the meaning given to it by the FMCA;<sup>3</sup>

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<sup>1</sup> Section 131(3).

<sup>2</sup> Section 215.





*Related Party Benefit* has the meaning given to it by the FMCA;<sup>4</sup>

*Retirement Scheme* means a retirement scheme as defined in the FMCA;

*SIPO* has the meaning given to it by the Regulations;<sup>5</sup>

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

*Trustee* means the trustee for the time being of the Scheme.

### 1.3 **Terms defined in KiwiSaver Act**

Each of the terms *Commissioner*, *Contribution*, *Crown Contribution*, *Employer*, *Employer's Chosen KiwiSaver Scheme*, *KiwiSaver Scheme*, *KiwiSaver Scheme Rules*, *Member's Interest*, *Permitted Withdrawal* and *ESCT Rules* has the meaning given to that term by the KiwiSaver Act, and is capitalised for ease of reference.

### 1.4 **Implied Terms**

Terms implied into this Trust Deed by the FMCA or the KiwiSaver Act will apply for so long as they are implied into this Trust Deed under the FMCA or the KiwiSaver Act (despite anything to the contrary in this Trust Deed) and any provision in this Trust Deed that is contrary to any such implied term will be void to the extent that it is contrary.

### 1.5 **Frameworks and methodologies**

Where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, apply to the Scheme and relate to any matter which is required by the FMCA to be provided for adequately in this Trust Deed, the provisions of this Trust 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.

## 2 **CONTINUATION AND ADMINISTRATION OF SCHEME**

### 2.1 **Continuation of Scheme**

The Scheme is continued as a restricted KiwiSaver Scheme for the purposes of the FMCA, effective on and from the Effective Date, on the terms and conditions contained in this Trust Deed.

### 2.2 **Purpose of Scheme**

The purpose of the Scheme is to provide retirement benefits directly to individuals in accordance with the FMCA and the KiwiSaver Act.<sup>6</sup>

### 2.3 **Management of Scheme**

The Scheme shall be administered in accordance with the provisions of this Trust Deed. The Trustee is responsible for managing the Scheme and (in particular) for

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<sup>3</sup> Section 172(2).

<sup>4</sup> Section 172(1).

<sup>5</sup> Regulation 5.

<sup>6</sup> Section 128(1)(b).



performing the functions set out in the FMCA<sup>7</sup>, and must ensure that the Scheme and the Trustee meet (and continue to meet) all initial and ongoing registration requirements applying to the Scheme and the Trustee under the FMCA.<sup>8</sup>

#### 2.4 **Name of Scheme**

The Scheme shall on and from the Effective Date be known as the “Christian KiwiSaver Scheme”. The Trustee may, by resolution, change the name of the Scheme at any time.

#### 2.5 **Assets of Scheme**

The assets of the Scheme shall consist of:

- (a) Contributions paid to the Scheme pursuant to clause 4 and the KiwiSaver Act by Members, Employers and the Crown;
- (b) amounts transferred to the Scheme in accordance with this Trust Deed, the FMCA and the KiwiSaver Act; and
- (c) income from any source whatsoever, together with all other property received, derived, or acquired by the Trustee for the purposes of the Scheme;

less any amounts paid from the Scheme from time to time by the Trustee pursuant to this Trust Deed.

#### 2.6 **Assets held on trust**

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 Trust Deed.

#### 2.7 **Inconsistency with Act**

Notwithstanding any other provision of this Trust Deed, in the event of any inconsistency between this Trust Deed and the FMCA or the Regulations the FMCA and the Regulations will prevail.

#### 2.8 **Annual reports**

The Trustee shall ensure the preparation and distribution of annual reports for the Scheme in accordance with the requirements of the Regulations<sup>9</sup>.

#### 2.9 **Receipts and payments**

The Trustee shall ensure that all necessary arrangements are made for dealing with receipts and payments under the Scheme and may resolve that cheques should be drawn or endorsed by any person it may appoint for the purpose or in such other manner as the Trustee may from time to time resolve and may give, vary and revoke instructions as to:

- (a) the custody and disposal of any investments;
- (b) the signature of proposals, forms and confirmations of membership; and

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<sup>7</sup> Section 142(1).

<sup>8</sup> Sections 127, 128, 131 and 133.

<sup>9</sup> Regulations 62 and 63.



- (c) the giving of receipts and discharges;  
in connection with the Scheme on behalf of the Trustee.

#### 2.10 **Records**

Without limiting any other provision of this Trust 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 FMCA<sup>10</sup> and the Regulations<sup>11</sup>.

#### 2.11 **Financial statements**

The Trustee shall cause financial statements to be prepared, audited and lodged with the Registrar of Financial Service Providers in respect of the Scheme in accordance with the FMCA.

#### 2.12 **Register**

The Trustee shall ensure that a Register is maintained with respect to the Scheme which is kept in the manner, contains the information, is audited and is available for inspection as required by the FMCA and the Regulations<sup>12</sup>. The Register may be kept electronically.

### 3 **ADMISSION OF MEMBERS**

#### **Admission**

3.1 Membership of the Scheme shall be offered only to:

- (a) employees of organisations whose primary activities are in the Trustee's opinion Christian mission or ministry (including employees of charitable entities associated with or operating in the Christian Church, or employees of entities which the Trustee approves as having a Christian special character); and
- (b) persons who express a Christian faith and have a commitment to Christian community involvement when applying (and their immediate family members and dependants).

3.2 A natural person shall be admitted to membership of the Scheme:

- (a) by completing an application for membership of the Scheme (in such form and in such manner as the Trustee may prescribe or otherwise require from time to time) and contracting directly with the Trustee to become a Member of the Scheme in accordance with section 45 or section 55 of the

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<sup>10</sup> Sections 158 and 159.

<sup>11</sup> Regulations 86 to 88.

<sup>12</sup> Sections 215 to 223 of the FMCA and regulations 109 and 110 of the Regulations.



KiwiSaver Act as applicable, PROVIDED THAT the Trustee may determine (at its discretion) whether the person will then be admitted to membership of the Scheme or whether the application will be declined; or

- (b) in accordance with section 48 of the KiwiSaver Act, by reason of the Scheme being the Employer's Chosen KiwiSaver Scheme for an organisation which is permitted by the Trustee to designate the Scheme as its Employer's Chosen KiwiSaver Scheme by reason of its primary activities being (in the Trustee's opinion) Christian mission or ministry;

and in each case the Trustee may (or, if required by the KiwiSaver Act, shall) also effect transfers into the Scheme in respect of those persons under subpart 3 of Part 2 of the KiwiSaver Act or otherwise in accordance with the KiwiSaver Act.

### 3.3 **Deemed acceptances**

On admission to membership of the Scheme pursuant to clause 3.2(b), a Member shall be deemed to have consented to the Trustee obtaining, holding, using and disclosing personal information in respect of the Member in the same manner, and to the same extent, as if the Member has been admitted to membership of the Scheme pursuant to clause 3.2(a).

### 3.4 **Cessation of membership**

A person shall cease to be a Member on the first to occur of the person:

- (a) receiving from the Scheme the Member's Accumulation in accordance with the KiwiSaver Scheme Rules (which are implied in the Trust Deed under section 116 and Schedule 1 of the KiwiSaver Act);
- (b) transferring from the Scheme to another KiwiSaver Scheme in accordance with the requirements of subpart 3 of Part 2 of the KiwiSaver Act, or to any other Retirement Scheme if permitted by law; and
- (c) receiving notice from the Trustee under rule 4(5)(b) of the KiwiSaver Scheme Rules.

### 3.5 **Ceasing to issue interests**

Subject at all times to the provisions of the FMCA and the KiwiSaver Act, the Trustee may determine at any time or times that from a specified date no further membership interests in the Scheme or interests in any Investment Fund or Investment Funds will be issued either for a specified period or until the Scheme (or the relevant Investment Fund or Investment Funds) is or are terminated. In that case the Trustee shall not, after the date specified and for the relevant period, issue any further membership interests under this Trust Deed or interests in relation to such Investment Fund or Investment Funds.

### 3.6 **Equal but not specific interests**

Members' interests in the Scheme (or, if applicable, an Investment Fund):

- (a) shall be of one class and shall confer identical rights and interests;
- (b) shall confer on each Member an equivalent interest in all of the investments comprised in the Scheme (or the relevant Investment Fund) corresponding to the Member's Interest (or the relevant portion of the Member's Interest), but shall not confer any interest, to the exclusion of any other Member, in any particular investment comprised in the Scheme



or the relevant Investment Fund (with the result that no Member will be entitled to require the transfer of any investment to the Member);

- (c) shall not (where there are two or more Investment Funds) confer any right or interest in the assets of any other Investment Fund; and
- (d) shall confer on each Member the right to be treated as if there were assigned to that Member an interest in a proportion of the net returns from the investments comprised in the Scheme or the relevant Investment Fund corresponding to the Member's Interest (or the relevant portion of the Member's Interest).

### 3.7 **Availability of information**

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 days.<sup>13</sup>

### 3.8 **Rights of a Member are personal**

The rights and interests of a Member are personal and may not be transferred, charged or otherwise dealt with except as expressly provided in section 127 of the KiwiSaver Act or permitted by this Trust Deed (or as required by law).

## 4 **CONTRIBUTIONS**

### 4.1 **Contributions that must be accepted**

Members and Employers shall contribute to the Scheme in accordance with Part 3 of the KiwiSaver Act and the Trustee shall accept:

- (a) Contributions that are payable to the Scheme by or in respect of a Member via the Commissioner under the KiwiSaver Act, unless the Trustee has reasonable cause to believe that:
  - (i) those Contributions have not been correctly deducted or remitted to the Scheme in terms of Part 3 of the KiwiSaver Act; or
  - (ii) the Commissioner has not provided, with respect to those Contributions, the information required under section 79 of the KiwiSaver Act;
- (b) Crown Contributions; and
- (c) amounts transferred from another KiwiSaver Scheme or Retirement Scheme in respect of a Member in accordance with subpart 3 of Part 2 of the KiwiSaver Act.

### 4.2 **Contributions that may be accepted**

The Trustee may accept, but shall not be required to accept, Contributions and monies payable to the Scheme by or in respect of a Member other than those referred to in clause 4.1, including (without limitation) Contributions made via the Commissioner pursuant to subpart 3 of Part 3 of the KiwiSaver Act. The Trustee may impose such terms and conditions for such acceptance (including, without

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<sup>13</sup> Regulation 53.



limitation, as to the amount and mode of payment) as it determines from time to time.

#### 4.3 **Tax rebates**

If the Scheme is a PIE and receives a tax rebate for tax credits or tax losses in respect of Members or former Members, the Trustee may allocate that tax rebate among the Members or former Members in such manner as the Trustee in its complete discretion consider appropriate (subject to the requirements of the PIE Legislation). Any amount allocated to a former Member may be paid to that former Member following receipt of the rebate. Any amount allocated to a Member shall be treated as a Contribution to be invested in the Scheme (or, if applicable, the relevant Investment Fund) on behalf of the Member.

### 5 **ESTABLISHMENT OF ACCOUNTS**

#### 5.1 **Member Account**

The Trustee shall establish and maintain for each Member a Member Account, to which shall be credited:

- (a) Contributions to the Scheme from the Member;
- (b) any amount transferred into the Scheme in respect of the Member which the Trustee determines to allocate to the Member Account;
- (c) the Crown Contributions paid in respect of the Member;
- (d) any other amount received by or payable to the Scheme which the Trustee considers should be credited to the Member Account, including (for the avoidance of doubt) any tax rebates received by the Scheme which the Trustee allocate to the Member Account;
- (e) where there are two or more Investment Funds, any amount comprised in the Member Account that is switched from one Investment Fund to another Investment Fund; and
- (f) investment returns (net of tax) calculated, in accordance with clause 6, at such rates (whether positive, negative, or zero) and in such manner as the Trustee shall from time to time determine;

and from which shall be debited:

- (g) any amount that the Trustee determines to debit from the Member Account with respect to costs, expenses, fees or tax payable in respect of the Member pursuant to this Trust Deed;
- (h) any amount comprised in the Member Account that is transferred out of the Schemed to another KiwiSaver Scheme, or to a permitted Retirement Scheme, in accordance with the FMCA or the KiwiSaver Act;
- (i) the Permitted Withdrawal of any amount comprised in the Member Account;
- (j) where there are two or more Investment Funds, any amount comprised in the Member Account that is switched from one Investment Fund to another Investment Fund; and
- (k) any other amount comprised in the Member Account which the Trustee considers should be debited to the Member Account.



## 5.2 **Employer Accounts**

The Trustee may establish and maintain for a Member an Employer Account, to which shall be credited:

- (a) contributions made to the Scheme by an Employer for the Member's benefit;
- (b) any amount transferred into the Scheme in respect of the Member which the Trustee determines to allocate to the Employer Account;
- (c) any other amount received by or payable to the Scheme which the Trustee considers should be credited to the Employer Account, including (for the avoidance of doubt) any tax rebates received by the Scheme which the Trustee allocates to the Employer Account;
- (d) where there are two or more Investment Funds, any amount comprised in the Employer Account that is switched from one Investment Fund to another Investment Fund; and
- (e) investment returns (net of tax) calculated, in accordance with clause 6, at such rates (whether positive, negative, or zero) and in such manner as the Trustee shall from time to time determine;

and from which shall be debited:

- (f) any amount that the Trustee determines to debit from the Employer Account with respect to costs, expenses, fees or tax payable pursuant to this Trust Deed;
- (g) any amount comprised in the Employer Account that is transferred out of the Scheme to another KiwiSaver Scheme, or to a permitted Retirement Scheme, in accordance with the FMCA or the KiwiSaver Act;
- (h) the Permitted Withdrawal of any amount comprised in the Employer Account;
- (i) where there are two or more Investment Funds, any amount comprised in the Employer Account that is switched from one Investment Fund to another Investment Fund; and
- (j) any other amount comprised in the Employer Account which the Trustee considers should be debited to the Employer Account.

## 5.3 **Varying Accounts**

The Trustee may from time to time establish other Accounts, establish sub-accounts within Accounts or amalgamate two or more Accounts, in each case on such terms and conditions as the Trustee considers appropriate.

## 5.4 **Register deemed to be accurate**

Subject to the FMCA, where the Trustee has appointed a registrar to keep the Scheme's accounts and maintain the Register, the Trustee:

- (a) shall be entitled to rely absolutely on those accounts and the Register as being correct;
- (b) shall not be required to enquire into the authenticity of the accounts or the Register; and
- (c) shall not incur any liability or responsibility by reason of any mistake in the accounts or the Register.



## 5.5 **Members to notify changes**

Any change of name or address, Tax File Number or prescribed investor rate of any Member shall be notified by the Member in writing, or in any other manner approved by the Trustee, to the Trustee or any registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

## 6 **VALUATIONS AND RETURNS**

### 6.1 **Valuations**

For the purpose of determining the investment earnings available from the Scheme (or, if applicable, each Investment Fund) for distribution to Members' Accounts, the Trustee shall calculate the net market value of the assets of the Scheme (or each Investment Fund) as frequently as the Trustee may consider necessary or desirable from time to time (but at least once every five Business Days, or at such longer intervals as the Trustee may determine from time to time but no less frequently than as at quarterly intervals) by deducting the liabilities attributable to the Scheme (or that Investment Fund) from the market value of its assets.

### 6.2 **Determining market value**

For the purpose of determining the value of the Scheme (or, if applicable, an Investment Fund) under clause 6.1 the Trustee shall determine the market value of each asset in the Scheme or that Investment Fund on such basis as it considers to be fair and equitable using a methodology determined by it from time to time and having regard to generally accepted accounting practice as defined by the Financial Reporting Act 2013 (except to the extent that the Trustee considers it need not have regard to such practice) and may from time to time engage any valuer or other suitably qualified person for the purpose of fixing the market value of any such asset (but is not under any duty to do so).

### 6.3 **Determining liabilities**

For the purpose of determining the net market value of the assets of the Scheme (or, if applicable, an Investment Fund) under clause 6.1 the Trustee shall determine the liabilities attributable to the Scheme (or that Investment Fund) on such basis as it considers to be fair and equitable using a methodology determined by it from time to time and having regard to generally accepted accounting practice as defined by the Financial Reporting Act 2013 (except to the extent that the Trustee considers it need not have regard to such practice) and in doing so may (subject to clause 10.2):

- (a) where there are two or more Investment Funds, apportion the liabilities of the Scheme generally among the Investment Funds on such basis as it considers appropriate; and
- (b) take account of each debt, liability, provision, cost, charge, expense, outgoing, tax obligation or other matter as it considers appropriate;

and, for the avoidance of doubt, may exclude certain liabilities from the liabilities taken into account, such as any PIE Tax Liability or expenses charged to Accounts (whether or not those amounts are required to be treated as liabilities for accounting purposes).





#### 6.4 **Calculation of returns**

After determining the net market value of the assets of the Scheme (or, if applicable, an Investment Fund) under clause 6.1 the Trustee shall, using a methodology determined by it from time to time, determine from time to time (but no less frequently than as at quarterly intervals) the rates of return to be allocated to Accounts for the period between the last date at which returns were credited or debited to those Accounts and the date at which the returns were calculated.

#### 6.5 **Allocation of returns**

Returns shall be credited or debited (as the case may be) to Accounts at such times and in such manner as the Trustee determines from time to time (but no less frequently than as at quarterly intervals).

#### 6.6 **Interim returns**

When the Trustee is required under the KiwiSaver Scheme Rules to calculate an amount representing a Member's Interest:

- (a) returns 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:
  - (i) the last date at which Accounts were credited or debited with returns in accordance with clause 6.5; and
  - (ii) the date on which the obligation to calculate an amount representing a Member's Interest arose; and
- (b) returns as determined by the Trustee may, at the Trustee's discretion, be credited or debited in respect of the amount then payable (using a methodology determined by the Trustee from time to time) for the period between:
  - (i) the date on which the obligation to calculate an amount representing a Member's Interest arose; and
  - (ii) the date on which that amount is paid.

#### 6.7 **Earnings Rate Corrections**

The Trustee shall to the extent required by the FMCA<sup>14</sup> and the Regulations<sup>15</sup>:

- (a) correct any material error or non-compliance in the calculation of returns or interim returns made pursuant to clause 6.4 or clause 6.6; and
- (b) take any steps prescribed in that regard by any applicable law;

PROVIDED THAT if the amount of any reimbursement or compensation required (after all relevant earnings adjustments 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.

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<sup>14</sup> Section 168.

<sup>15</sup> Regulations 97 to 99.



## 6.8 **Notice to FMA**

The Trustee shall report to the FMA any material error in an earnings rate determination made pursuant to clause 6.4 or clause 6.6, or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law.<sup>16</sup>

## 6.9 **Notification of errors**

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 FMCA.<sup>17</sup>

## 7 **BENEFITS**

### 7.1 **Benefit calculations**

Benefits shall be payable from the Scheme in accordance with the KiwiSaver Scheme Rules (which are implied in the Trust Deed under section 116 and Schedule 1 of the KiwiSaver Act) and, subject to clause 7.2, when the Trustee is required under the KiwiSaver Scheme Rules to calculate an amount representing a Member's Interest the Trustee shall calculate that amount by:

- (a) applying investment earnings to the Accounts maintained for the Member based on the valuations made under, and in the manner contemplated by, clause 6 on the next day after the Trustee determines that a benefit should be paid; and
- (b) deducting any amount that the Trustee considers appropriate to deduct with respect to costs, expenses, fees or (subject to clause 20) tax payable pursuant to this Trust Deed, except that if the Scheme is a PIE and the Trustee in its complete discretion considers it appropriate not to do so, no deduction shall be made from a benefit on account of any PIE Tax Liability.

### 7.2 **Different method of calculation**

Subject to clause 7.3, the Trustee:

- (a) must adopt a method of calculating the amount representing the Member's Interest that is different from that set out in clause 7.1 if the Trustee determines that the method does not comply with the KiwiSaver Act; and
- (b) may adopt a method of calculating that amount that is different from that set out in clause 7.1 if the Trustee considers it appropriate to do so.

### 7.3 **Different method of calculation must meet certain requirements**

Any different method adopted by the Trustee under clause 7.2 must comply with the KiwiSaver Act.

### 7.4 **Deferring payment**

Subject to the requirements of the FMCA and the KiwiSaver Act, the Trustee may defer giving effect to a Permitted Withdrawal or any transfer out of the Scheme, or any switch between Investment Funds pursuant to clause 10.4(a), if (and for so long as) the Trustee determines that having regard to the realisation of assets

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<sup>16</sup> Section 168 of the FMCA and regulations 97 to 99 of the Regulations.

<sup>17</sup> Section 168 of the FMCA and regulations 97 to 99 of the Regulations.



required in order to make the withdrawal or transfer or the occurrence or existence of any other circumstance or event relating to the Scheme or generally, earlier withdrawal or transfer would be imprudent or is impracticable.

#### 7.5 **Partial withdrawals**

Where a Member has reached the KiwiSaver End Payment Date, the Trustee may:

- (a) permit the Member to withdraw from the Scheme an amount or amounts less than the Member's Interest by way of one or more lump sums and/or regular withdrawals; and
- (b) subject to the KiwiSaver Act, determine from time to time:
  - (i) the minimum amount for each such withdrawal;
  - (ii) the permitted manner and frequency of such withdrawals; and
  - (iii) the minimum balance which the Member must retain in the Scheme or an Investment Fund immediately after each such withdrawal;

and the Trustee may make different determinations under this clause 7.5 with respect to particular Investment Funds.

### 8 **SCHEME EXPENSES**

All costs, expenses, fees and tax payable by or to the Trustee in relation to the management and administration of the Scheme and which are to be paid from the assets of the Scheme may be either deducted from the assets of the Scheme or charged to a particular Member's Account or Accounts in such manner as the Trustee considers fair and equitable (provided that in any case all such charges must comply with the PIE Legislation if applicable).

### 9 **INVESTMENTS**

- 9.1 All money belonging to the Scheme and available for investment shall be invested by and under the control of the Trustee in accordance with the provisions of the Trustee Act 1956 and the FMCA 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 FMCA).<sup>18</sup>
- 9.2 Notwithstanding anything contrary in the Trustee Act 1956 or the FMCA the Trustee shall in exercising the power of investment exercise the care, diligence and skill required of by section 144 of the FMCA.
- 9.3 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 FMCA.
- 9.4 Without prejudice to the powers conferred upon it by general law or under this Trust Deed the Trustee may:

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<sup>18</sup> Section 164.



- (a) from time to time appoint and remove one or more persons as investment managers to the Scheme (in this clause 9, *Investment Managers*) on such terms and conditions as may be agreed between the Trustee and each Investment Manager. The Trustee may 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. 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) appoint and remove from office a Custodian (which must meet the requirements for such a person under the FMCA<sup>19</sup>) in respect of the whole or any part of the Scheme on terms to be agreed between the Trustee and the Custodian (and any Custodian shall be paid its proper fees, and shall not be precluded by its appointment from conducting any other business for the Scheme).
- 9.5 If authorised in writing by the Trustee, a Custodian appointed under clause 9.4(d) 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 9.5 must meet the requirements for such a person under the FMCA<sup>20</sup>.
- 9.6 If the PIE Legislation applies to the Scheme then in managing and making decisions relating to investments (including the investment, reinvestment or realisation of any investment and the exercise of any voting rights associated with any investment) neither the Trustee nor an Investment Manager may act in a manner which contradicts the PIE Legislation and the Trustee shall ensure that the investments of the Scheme are such that the Scheme meets the eligibility requirements for PIE status.

## 10 INVESTMENT FUNDS

### 10.1 Separate Investment Funds

The Trustee may establish and maintain separate Investment Funds within the Scheme, designed to enable Members to have their savings invested by reference to particular asset classes or mixes of asset classes, on such terms and conditions as the Trustee may determine. Those terms and conditions:

- (a) must be set out in a SIPO for the Scheme which complies with the requirements of the FMCA<sup>21</sup>; and
- (b) may be amended or replaced by the Trustee from time to time subject to the requirements of the FMCA;

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<sup>19</sup> Sections 127(1)(f) and 156(2).

<sup>20</sup> Section 156.

<sup>21</sup> Section 164.



and the Trustee must comply at all times, in relation to the SIPO, with the requirements of the FMCA<sup>22</sup> and the Regulations<sup>23</sup>, including ensuring that:

- (c) all moneys available for investment in an investment portfolio are invested in accordance with the SIPO;
- (d) the SIPO or any alteration to it (as applicable) are lodged with the Registrar of Financial Service Providers as required by the FMCA;<sup>24</sup> and
- (e) reports are provided to the FMA as to any breaches of the SIPO, as required by the FMCA and the Regulations.<sup>25</sup>

## 10.2 **Single trust fund**

Notwithstanding any establishment of separate Investment Funds within the Scheme pursuant to clause 10.1, the assets of the Scheme shall comprise a single trust fund, but without prejudice to the generality of the foregoing the value of each Member's Interest shall be determined by reference to the amount (or amounts) held for the Member in relation to an Investment Fund (or Investment Funds) and:

- (a) all liabilities incurred in relation to an Investment Fund shall be met in the first instance from the assets held for that Investment Fund;
- (b) the liabilities incurred in relation to an Investment Fund may only be met from other Scheme assets (and in such equitable manner as the Trustee sees fit) if and to the extent that, the assets held for that Investment Fund are insufficient to meet such liabilities;
- (c) except to the extent necessary (pursuant to clause 10.2(b)) to meet the liabilities incurred in relation to another Investment Fund, all investments made with the moneys of an Investment Fund shall be held by the Trustee:
  - (i) exclusively for that Investment Fund; and
  - (ii) for the exclusive benefit of the Members who have interests in that Investment Fund;
- (d) provided that the Trustee may (subject to clause 20.1) transfer value between Investment Funds to accommodate the Scheme being a single taxpayer.
- (e) The Trustee shall keep separate records and accounts in respect of each Investment Fund, and (subject to this clause 10.2) shall not permit the property, assets or liabilities of any Investment Fund to become intermingled with those of any other Investment Fund (provided that nothing in this subclause shall prevent the assets of any Investment Fund being lent to, deposited with or invested in another Investment Fund); and
  - (i) the provisions of this Trust Deed relating to the indemnities in favour of the Trustee, the fees payable to the Trustee and the reimbursement of the Trustee shall be construed in a manner consistent with this clause, that is to say:

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<sup>22</sup> Sections 166 and 167.

<sup>23</sup> Regulations 94 to 96.

<sup>24</sup> Section 166.

<sup>25</sup> Section 167 and Regulations 94 to 96.



- (ii) any amount payable to the Trustee shall be payable from the Investment Fund or Investment Funds to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Investment Funds); and
- (f) where the amount payable to the Trustee relates to more than one Investment Fund, that amount shall be apportioned between those Investment Funds on such fair and equitable basis as the Trustee may determine.

### 10.3 **Winding up or alteration of Investment Funds**

The Trustee may at its discretion close, wind up or alter any Investment Fund as and when and on such terms and conditions as they determine.

### 10.4 **Member entitled to choose Investment Fund(s)**

If two or more Investment Funds are established, then the Trustee may permit a Member to choose the Investment Fund or Investment Funds in which the Member's savings will be invested from time to time. In exercising their choice under this clause 10.4, Members shall comply with all rules prescribed by the Trustee from time to time regarding:

- (a) changing their choice of Investment Funds (in relation to either amounts already invested or amounts to be invested in the future);
- (b) the manner in which choices should be communicated; and
- (c) any other matters relating to the choice of Investment Funds by Members.

### 10.5 **Contrary intention**

- (a) All monies available for investment in an Investment Fund shall be invested in accordance with the investment policy for that Investment Fund.
- (b) The choice of a default Investment Fund by an Employer and the choice of an Investment Fund or Investment Funds by a Member under clause 10.4 shall both be directions given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956, and the investment obligations of the Trustee under the Trust Deed shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956.

### 10.6 **Winding up an Investment Fund**

If an Investment Fund is wound up under clause 10.3, the Trustee must notify each Member with an interest in that Investment Fund, specifying the Investment Fund to which the Member will be deemed to have elected to transfer the relevant amount if no choice of replacement Investment Fund is exercised within the period prescribed in the notice.

### 10.7 **General**

No direction by a Member under clause 10.4 shall exempt the Trustee from its responsibilities under the FMCA<sup>26</sup>.

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<sup>26</sup> Section 144.



## 11 POWERS OF THE TRUSTEE

### 11.1 General powers

In addition to any other powers granted under the Trust Deed or by law, the Trustee may:

- (a) appoint and remove any person as an Administration Manager, advisory trustee, agent or nominee on terms and conditions and with such powers, duties, discretions and remuneration as are agreed by the Trustee and the other person;
- (b) borrow or raise money for any of the purposes of the Scheme or an Investment Fund on such terms and conditions as the Trustee thinks fit and secure the repayment of moneys so borrowed, and interest on those moneys, by mortgage over all or any of the assets of the Scheme or that Investment Fund;
- (c) take such actions as the Trustee reasonably considers to be required in order to pay any refunds required or desirable under sections 81 and 101 of the KiwiSaver Act; and
- (d) do anything the Trustee considers necessary or expedient for the administration of the Scheme.

In addition to any other powers granted under this Deed, the FMCA or by law, but subject to the FMCA, the Trustee may do anything the Trustee considers necessary or expedient to enable it to discharge the Trustee's duties under this Deed.<sup>27</sup>

### 11.2 Exercise of Trustee's powers

Subject to the other provisions of the Trust Deed and to a Court of law deciding otherwise, no decision or exercise of a power by the Trustee will be invalidated on the ground that either of the Trustee (or any board member of the Trustee) had a direct or personal interest in the result of that decision or in the exercise of that power.

### 11.3 Specific delegations

Without limiting any other provision of this Trust Deed, the Trustee shall have the power to delegate to any person or persons (on agreed terms) the duty to undertake all or any of the Trustee's management and administration functions in relation to the Scheme and Members and the exercise of such other powers, authorities, functions and discretions as are incidental to the Trustee's functions as the Trustee may determine from time to time, and to pay the fees and expenses payable to those persons (which shall be such fees as are agreed) from the assets of the Scheme.

### 11.4 Trustee's duties when delegating

When delegating the performance of any of the functions exercisable by it under the FMCA, the KiwiSaver Act or this Trust Deed, the Trustee must:

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<sup>27</sup> Section 135 (1)(k)(iii).



- (a) take all reasonable steps to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Trustee were performing them directly<sup>28</sup>; and
- (b) take all reasonable steps to monitor the performance of those functions<sup>29</sup>; and
- (c) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause<sup>30</sup>.

### 11.5 Trustee Committees

The Trustee may delegate any of its powers to committees consisting of such persons (including such board members of the Trustee) as it thinks fit. Any committee so formed shall in the exercise of the powers delegated conform to any directions or regulations that may be imposed on it by the Trustee and subject thereto a committee may meet and adjourn as it thinks proper and shall make regulations (not inconsistent with this Trust Deed) for the conduct of its business, the running of committee meetings, the appointment of a chairperson, minutes of meetings, and all other matters in connection with its work. Questions arising at any meeting of a committee shall be determined by a majority vote of the members of the committee present and in the case of an equality of votes the chairperson shall have a second or casting vote.

## 12 REMUNERATION OF TRUSTEE

### 12.1 Trustee's fees

Subject to rule 2 of the KiwiSaver Scheme Rules, the Trustee may charge for its services with respect to the Scheme such annual or other administration, management, membership, transaction or other fees as the Trustee determines from time to time. The amount of such fees and the method of their payment shall be determined by the Trustee from time to time. The Trustee is entitled to receive, in addition to the fees referred to in this clause 12.1, any goods and services tax or duty or similar tax or duty payable in respect of such fees.

### 12.2 Alteration or waiver of fees

The Trustee may waive part or all of its Trustee fee or decrease that fee and (subject to rule 2 of the KiwiSaver Scheme Rules) the Trustee may:

- (a) increase the Trustee fees payable in respect of the Scheme or any Investment Fund; or
- (b) provided that any such fee is permitted under this Trust Deed, commence charging a fee which is not currently being charged.

## 13 LIABILITY AND INDEMNITIES

### 13.1 No personal liability of Trustee

Subject to the indemnity limitations applying under the FMCA<sup>31</sup> the Trustee, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Trust Deed for or in connection with the Scheme or an

<sup>28</sup> Section 146(2)(a)(i).

<sup>29</sup> Section 146(2)(a)(ii).

<sup>30</sup> Section 146(2)(b).

<sup>31</sup> Sections 135(1)(f) and 136(1)(b).





Investment Fund, is deemed to be acting for and on behalf of the Scheme and not in its own personal capacity, and the Trustee is not under any personal liability, nor may resort be had to its private property, for the satisfaction of any obligation or claim relating to the Scheme (and only the assets of the Scheme are available for that purpose).

### 13.2 **Indemnification from Scheme assets**

If, contrary to the provisions of clause 13.1, the Trustee is held personally liable to any third party in respect of any debt, liability or obligation incurred by or on behalf of the Scheme or an Investment Fund or any action taken or omitted in connection with the Scheme or an Investment Fund, then the Trustee is entitled to indemnity and reimbursement out of the assets of the Scheme to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined (including, without limitation, legal fees and disbursements).

### 13.3 **Reimbursement of Trustee**

Subject to the indemnity limitations applying under the FMCA<sup>32</sup> the Trustee is entitled to be reimbursed out of the assets of the Scheme (whether from income or capital or both), and to the extent applicable from particular Investment Funds, for and in respect of all direct and indirect expenses, losses, costs or liabilities incurred by it in or about acting as Trustee under this Trust Deed (including, without limitation, any expense, cost or liability which may be incurred by the Trustee in bringing or defending any action or suit in respect of the Scheme) and for all expenses, losses, costs or liabilities incurred in connection with the formation of the Scheme.

### 13.4 **Breach of duty**

No provision of clauses 13.1 to 13.3 has the effect of exempting the Trustee from, or indemnifying the Trustee against, any liability for breach of trust where it fails to show the degree of care and diligence required of it in that capacity, having regard to the provisions of and the powers, authorities and discretions conferred by this Trust Deed.

### 13.5 **Reliance upon advice**

The Trustee may accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Trustee or instructed by the Trustee and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Trustee and believed by the Trustee in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. The Trustee is not liable for anything done or suffered in good faith in reliance upon any such opinion, advice, statement or information.

### 13.6 **Trustee's discretion and authority**

Except as otherwise expressly provided in this Trust Deed, the Trustee has absolute and uncontrolled discretion as to the exercise of all the powers, authorities and discretions vested in them by this Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise.

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<sup>32</sup> Sections 135(1)(f) and 136(1)(b).



### 13.7 **Trustee's limited liability to Members**

Notwithstanding anything contained in this Trust Deed but subject to the indemnity limitations applying under the FMCA<sup>33</sup>, in no event is the Trustee bound to make any payment to Members except out of the assets of the Scheme or to be liable to Members to any greater extent than the investments vested in or received by the Trustee in accordance with this Trust Deed.

### 13.8 **Reliance upon apparently genuine documents**

The Trustee is not liable for any action taken or thing suffered by that Trustee in reliance upon any document or writing of any type reasonably believed by the Trustee to be genuine.

### 13.9 **Attributed tax indemnity**

If a Member's Account balances are insufficient to meet any liability for tax payable by the Scheme or the Trustee (whether current or deferred) which is:

- (a) attributed under the Income Tax Act to a Member; or
- (b) determined by the Trustee to be attributable to a Member;

then the Member shall indemnify the Trustee for that shortfall.

### 13.10 **Trustee may limit liability for delegates**

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 FMCA<sup>34</sup>, in respect of any debt, liability or obligation incurred by or on behalf of the manager 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).

### 13.11 **Indemnity only to extent permitted by law**

No provision of this Trust Deed has the effect of exempting the Trustee or any board member of the Trustee from, or indemnifying the Trustee or any board member against, any liability to the extent that doing so would be void under the FMCA or any other statute.<sup>35</sup>

## 14 **AMENDMENTS**

Subject to the restrictions in the FMCA<sup>36</sup> and any other applicable legislation, the Trustee may by deed amend all or any of the provisions of this Trust Deed at any time.

<sup>33</sup> Sections 135(1)(f) and 136(1)(b).

<sup>34</sup> Sections 135(1)(f) and 136(2).

<sup>35</sup> Section 143(1) and 144.

<sup>36</sup> Section 139.



## 15 APPOINTMENT AND REMOVAL OF TRUSTEE

### 15.1 Appointment

A corporate body with at least 1 director who is a Licensed Independent Trustee<sup>37</sup> shall be the trustee of the Scheme.

### 15.2 Removal

Subject to the FMCA and clause 15.4, the Church may remove the Trustee from office:

- (a) with immediate effect, by giving the Trustee written notice of such removal, if the Church reasonably believes that the Fund will be adversely affected if the Trustee continues to hold office (such notice to specify the grounds on which the Church has formed this belief); and
- (b) otherwise upon giving the Trustee no fewer than 60 Business Days' written notice of such removal.

### 15.3 Retirement

Subject to the FMCA and clause 15.4, the Trustee may retire at any time upon giving the Church no fewer than 60 Business Days' written notice of such retirement.

### 15.4 Restrictions on removal/retirement

Subject to the FMCA, no removal or retirement under clause 15.2 or clause 15.3 will take effect until a new Trustee has been appointed pursuant to clause 15.5, and the new Trustee has executed the deed referred to in clause 15.6 and all of the investments of the Scheme have been vested in the new Trustee (or any permitted nominee).

### 15.5 New appointment

The power of appointing a new Trustee of the Scheme (in place of a trustee which has been removed from office or retired) is vested in the Church.

### 15.6 Restrictions on new appointment

Any new Trustee must forthwith upon appointment execute a deed in such form as the Church may require whereby the new Trustee consents to being appointed as the Trustee and undertakes to the Church and the Members to be bound by all the covenants on the part of the former Trustee under the Trust Deed from the date of such appointment.

### 15.7 Release of Trustee

From the date of execution by a new Trustee of a deed in accordance with clause 15.6, the retiring Trustee is absolved and released from all such covenants under this Trust Deed (except in respect of prior breach) and the new Trustee must thereafter exercise all powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the Trustee under this Trust Deed in all respects as if such trustee had been originally named as a party to this Trust Deed.

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<sup>37</sup> Section 131(3).



## 16 WINDING UP SCHEME

### 16.1 Triggering wind-up

The Scheme shall be wound up if the Trustee resolves in writing that the Scheme is to be wound up, or if the Scheme is required to be wound up by the FMCA.<sup>38</sup> If the Trustee resolves in writing that the Scheme is to be wound up then the Trustee shall, as soon as practicable after passing that resolution, provide a copy of the resolution to the Church, and the wind-up shall take effect on the date specified for that purpose in the resolution.

### 16.2 Procedure for wind-up

In winding up the Scheme, the Trustee shall comply with the provisions the FMCA relating to the winding up of a KiwiSaver Scheme.<sup>39</sup>

## 17 MEMBERS BOUND BY THIS TRUST DEED

### 17.1 Provisions benefit Members

Except where this Trust Deed expressly provides otherwise or the context otherwise requires, the terms and conditions of this Trust Deed are for the benefit of and binding on each Member (including, for the avoidance of doubt, any Member admitted to membership of the Scheme pursuant to clause 3.2(b)) and all persons claiming through each Member as if the Member had been party to and had executed this Trust Deed.

### 17.2 No interference in management

Subject to the rights created for Members by this Trust Deed and the FMCA, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Trustee of any of the rights, powers, authorities or discretions conferred upon it by this Trust Deed or in respect of all or any of the assets of the Scheme, or to exercise any right, power or privilege in respect of any investment comprised in the Scheme.

## 18 LIMITATION OF LIABILITY OF MEMBERS

### 18.1 No personal obligation to indemnify

Except as expressly provided by this Trust Deed no Member is, by reason solely of being a Member or of the relationship hereby created with the Trustee, under any personal obligation to indemnify the Trustee or any creditor of the Trustee in the event of there being any deficiency in the assets of the Scheme as compared with the liabilities to be met from those assets.

### 18.2 Limited recourse to Assets of Scheme

Subject to clause 13.9, the rights (if any) of the Trustee or of any creditor to seek indemnity are limited to having recourse to the assets of the Scheme and do not extend to a Member personally in such person's capacity as a Member.

### 18.3 No liability to contribute to any shortfall

On the winding up of the Scheme, no Member will have any liability to contribute to any shortfall in the Assets of the Scheme.

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<sup>38</sup> Sections 195 and 211.

<sup>39</sup> Sections 212 and 213.



## 19 NOTICES AND INFORMATION TO MEMBERS

### 19.1 Notices

A notice under this Trust Deed, and any other Scheme-related communication intended for a Member, may be given to the Member personally by:

- (a) leaving it at the Member's registered address; or
- (b) sending it addressed to the Member at the Member's registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post or advertisement; or
- (c) subject to the Member having given his or her electronic address to the Trustee or having otherwise consented to accept Scheme-related information in an electronic form, by means of an electronic communication.

A Member must notify the Trustee of any change to the Member's registered or electronic address and the Register shall be altered accordingly.

### 19.2 Manner of notice

Any notice sent by post will be deemed to have been given at the expiration of five Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. A notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a Business Day, or the transmission is sent after 5 p.m. on a Business Day, then the notice will be deemed to have been given on the next Business Day after the date of confirmation of transmission).

### 19.3 Signature of notice

The signature to any notice to be given by the Trustee may be written or printed or otherwise provided in accordance with the Electronic Transactions Act 2002.

### 19.4 Calculation of notice periods

Where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.

### 19.5 Receipt of notice

Any notice or document delivered or sent by post or electronic communication to or left at the registered address for service of any Member pursuant to the provisions of this Trust Deed will (notwithstanding that the Member is then deceased and whether or not the Trustee has notice of such deceased Member's death) be deemed to have been duly given until some other person is registered in the place of the Member.

## 20 TAXATION AND KIWISAVER MEMBER TAX CREDITS

### 20.1 PIE tax compliance

The Trustee may elect that the Scheme will be and remain a PIE, or cease to be a PIE, at its complete discretion. While the Scheme is a PIE, the Trustee shall also have the powers and discretions (having regard to Members' best interests generally and to the requirements of the Income Tax Act Tax Act) to determine



for the purposes of the PIE Legislation (and on such basis as the Trustee considers appropriate in its complete discretion):

- (a) the classes of Members;
- (b) the attribution period for the Scheme;
- (c) the assessable income (for tax purposes) of the Scheme for an attribution period and to allocate such income to each investor class for that attribution period;
- (d) the deductions incurred in deriving the assessable income allocated to an investor class of Members for an attribution period;
- (e) the class net income or the class net loss, as the case may be, for each investor class for an attribution period;
- (f) the attributed PIE income or attributed PIE loss, as the case may be, for each investor class for an attribution period and for a tax year;
- (g) each Member's investor fraction or percentage for any period, based on what that Member's proportionate interest in any distribution from the Scheme to Members would be in that period, if such a distribution were to be made;
- (h) the Scheme's tax liability or rebate, as the case may be, for the applicable calculation period, and whether (and to what extent) to take into account any tax liability of the Scheme for the purposes of determining the liabilities of the Scheme for any period;
- (i) from the available options under the PIE Legislation (taking into account such factors as the Trustee considers relevant in its complete discretion) the method for paying the Scheme's tax liability and to make any elections provided for in the PIE Legislation required to give effect to that selection;
- (j) to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner of Inland Revenue pursuant to the PIE Legislation;
- (k) to make any other elections as to the method of calculation, allocation or attribution of tax as the Trustee thinks fit having regard to the interests of Members generally and the requirements of the PIE Legislation;
- (l) the amounts of any rebates of tax available to the Scheme by virtue of any relevant provision in the PIE Legislation;
- (m) the amount of any rebate of tax referred to in paragraph (l) that is attributable to a Member (and to make available to the Member the benefit of that rebate in such manner as the Trustee considers appropriate at its complete discretion);
- (n) the amount of any credits against income tax payable by the Scheme that are available to the Scheme;
- (o) the amount of any tax credit that is available to be allocated to an attribution period (and to allocate, in such manner and on such basis as the Trustee considers appropriate at its complete discretion, such tax credit to that attribution period);
- (p) the amount of tax paid or payable by the Scheme that is attributable to a Member;



- (q) to carry out any other tax calculations, allocations or attributions required by the Income Tax Act;
- (r) to adjust a Member's Interest in such manner as the Trustee thinks necessary or desirable at its complete discretion, whether in accordance with the PIE Legislation or otherwise to the extent permitted by law, at any time (including immediately before paying a benefit or accepting a switching request), having regard to the effect of:
  - (i) the Member's prescribed investor rate; and
  - (ii) the income (and the losses and associated tax credits) allocated to the Member under the PIE Legislation, as adjusted for any expenses which the Trustee determines it is appropriate to charge to the particular Member,on the Scheme's PIE Tax Liability, and the amount of any rebate, under the PIE Legislation;
- (s) to allocate tax rebates received by the Scheme, or anticipated to be received by the Scheme, to Members;
- (t) to elect to offset tax liabilities and refunds in respect of more than one Investment Fund (where there are two or more Investment Funds) or more than one Member, to the extent permitted by the Income Tax Act, and to make such adjustments as the Trustee thinks fit;
- (u) where there are two or more Investment Funds, to make a payment to one Investment Fund from another in order to compensate for:
  - (i) any loss suffered by the relevant Investment Fund in respect of which the other Investment Fund has obtained a benefit as a result of the two Investment Funds not being separate entities for tax purposes; or
  - (ii) any benefit which the relevant Investment Fund would have obtained if it was a separate entity for tax purposes, but which the Investment Fund has not obtained because the two Investment Funds are not separate entities for tax purposes;
- (v) to allocate the costs associated with the Fund being a PIE between Members (and, where applicable, Investment Funds) on such basis as the Trustee thinks appropriate, to the extent practical;
- (w) to take all steps that the Trustee considers necessary or desirable to ensure that the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Income Tax Act relating to PIEs, including (at the Trustee's complete discretion) declining contributions or switching some or all of a Member's interest from one Investment Fund to another as if the Trustee had received a request to that effect from the relevant Member pursuant to clause 11.4;
- (x) to require that on request from the Trustee at any time a Member must conform his or her Tax File Number, prescribed investor rate and any other information required by the PIE Legislation;
- (y) to disclose any information, including issuing any statements and providing any information to Members, required by the PIE Legislation in respect of their tax position in relation to the Fund, and to provide any information



(including personal information) to the Commissioner or any other person where the Trustee considers it reasonably necessary or desirable to do so in order to administer the Scheme's taxation obligations; and

- (z) to value tax losses of the Scheme or an Investment Fund, for the purpose of valuing the Scheme or that Investment Fund, in such manner as the Trustee thinks appropriate at its complete discretion having regard to the PIE Legislation, generally accepted accounting practice as defined by the Financial Reporting Act 2013 and the Scheme's stated policies (if any) from time to time;

and to take all steps and to do all things that the Trustee thinks necessary or desirable from time to time at its complete discretion to convert the Scheme to or from being a PIE or to administer the Scheme as a PIE.

## 20.2 Information

The Trustee may request any Member to provide information to the Trustee to enable the Trustee to determine whether the Scheme continues to meet the PIE eligibility requirements and the Member shall provide the information requested by the Trustee within 30 days of the request.

## 20.3 Revisions

Without limiting clause 1.1(f), following any amendment to or re-enactment of the Income Tax Act (a *Revision*):

- (a) all of the discretions and powers available to the Trustee where the Scheme is a PIE, whether under this clause 20.3 or otherwise, shall continue to apply with such modifications as are necessary to reflect the Revision;
- (b) the Trustee shall have the discretion to apply all of the requirements of the Revision to the Scheme and its Members on such basis as the Trustee considers appropriate and taking into account such factors as the Trustee considers relevant; and
- (c) to the extent reasonably possible taking into account the nature of the Revision, any references in this Trust Deed to terms defined in the Income Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

## 20.4 Withholding tax from benefits

If the Trustee is obliged by law to make, or may make and determine to make, any deduction or withholding on account of taxes from any payment to be made to a Member, the Trustee shall make such deduction or withholding and pay such amount to the Commissioner or other taxing authority. On payment of the net amount to the relevant Member, the full amount payable to the relevant Member shall be deemed to have been duly paid and satisfied.

## 20.5 KiwiSaver Member Tax Credits

For the purposes of obtaining and administering KiwiSaver Member Tax Credits payable to the Scheme in respect of Members, the Trustee shall have the following additional powers and discretions in respect of the Scheme:





- (a) to make claims for KiwiSaver Member Tax Credits in accordance with section 68C of the Tax Administration Act 1994;
- (b) in the case of a Member with savings invested in two or more Investment Funds, to credit any KiwiSaver Member Tax Credit paid in respect of the Member on a pro rata basis between the Investment Funds;
- (c) to require a Member wishing to withdraw from the Scheme any amount arising from a KiwiSaver Member Tax Credit to provide a statutory declaration stating the periods for which the Member has his or her principal place of residence in New Zealand.

## 21 AUDITOR

### 21.1 Appointment and remuneration

The Trustee shall appoint as Auditor of the Scheme a person qualified in terms of the FMCA<sup>40</sup> and entitled by law to act as such, to provide services in accordance with the requirements of the FMCA and the Regulations.<sup>41</sup> 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.

### 21.2 Removal/retirement

The Trustee may at any time and from time to time remove the Auditor. The Auditor may retire upon giving the Trustee 30 days' notice in writing.

### 21.3 New appointment

Any vacancy in the office of Auditor occurring under clause 21.2 shall be filled by the Trustee appointing as Auditor of the Scheme a person qualified for appointment in terms of clause 21.1.

### 21.4 Restrictions on Auditor

The Auditor may be the Auditor of the Trustee, of any Administration Manager or Investment Manager, or of any other trust whether of a similar nature to the Scheme or otherwise.

## 22 PAYMENTS TO MEMBERS

### 22.1 Method of payment

Subject to the KiwiSaver Act, any moneys payable by the Trustee to a Member or the Member's personal representative under the provisions of this Trust Deed may be paid by cheque or direct credited to any bank account nominated by the Member or the Member's personal representative.

### 22.2 Satisfaction of moneys payable

Payment of every cheque, if duly presented and paid, and in respect of direct credits the giving by the Trustee of the encoded payment instructions to the paying bank, will be due satisfaction of the moneys payable and will be good discharge to the Trustee.

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

<sup>41</sup> Section 218 of the FMCA and regulations 108 and 109 of the Regulations.



## 23 TRANSFERS

The Trustee shall effect transfers to or from the Scheme in accordance with the requirements of the KiwiSaver Act, the FMCA and any other applicable law, and the transfer of a substantial number of Members without Member consent (but with the consent of the FMA) in accordance with the FMCA is authorised for this purpose.<sup>42</sup>

## 24 MEMBER'S INTEREST NOT ASSIGNABLE

Except as expressly provided in the FMCA or otherwise required by law, a Member's interest or and any future benefits that will or may become payable to a Member under this Trust Deed must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.<sup>43</sup>

## 25 RELATED PARTY TRANSACTIONS

### 25.1 Related Party transactions prohibited

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 FMCA.<sup>44</sup>

### 25.2 Trustee may not acquire in-house assets

The Trustee must not acquire any new in-house asset contrary to the FMCA, and shall sell down any in-house assets held by the Scheme to the extent required by the FMCA.<sup>45</sup>

### 25.3 Trustee or Related Party will not be liable

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 25.1.

### 25.4 Failure to comply will not affect validity

A failure to comply with clause 25.1 does not affect the validity of a transaction (subject to any Court order to the contrary).<sup>46</sup>

## 26 MEETINGS

When required by the FMCA, the Trustee must call a meeting of Members in the manner and on the basis set out in the FMCA and the Regulations.<sup>47</sup> A meeting of Members shall be conducted in accordance with the requirements of the FMCA and the Regulations.<sup>48</sup>

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<sup>42</sup> Sections 179 to 182.

<sup>43</sup> Section 127 of the KiwiSaver Act 2006.

<sup>44</sup> Sections 172 to 175.

<sup>45</sup> Section 176 and clause 39 of Schedule 4.

<sup>46</sup> Section 173(6).

<sup>47</sup> Sections 161 to 163 of FMCA and regulation 83 of the Regulations.

<sup>48</sup> Sections 162 and 163 of the FMCA and regulations 83 and 91 of (and Schedule 11 to) the Regulations.



27 **DELIVERY**

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

- (a) physical delivery of an original of this Trust Deed, executed by the relevant party, into the custody of the other party; 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 Trust Deed, executed by the relevant party, to the other party or the other party’s solicitors.

**IN WITNESS WHEREOF** this Deed has been executed the day and year first appearing above.

**The Deed has been signed by the Trustee**

The Common Seal )  
of The New Zealand )  
Anglican Church )  
Pension Board was affixed in the )  
presence of )



  
Authorised Signatory

  
Authorised Signatory