

# Trust Deed – Ports Retirement Plan

Rail and Maritime Transport Union  
Incorporated (*Union*)

Ports Retirement Trustee Limited  
(*Trustee*)



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## TRUST DEED – PORTS RETIREMENT PLAN

Date:

11 September

2019

### PARTIES

**Rail and Maritime Transport Union Incorporated**, incorporated under the Incorporated Societies Act 1908 (*Union*)

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

### BACKGROUND

- A The Ports Retirement Plan (*Plan*) is a restricted workplace savings scheme registered under the Financial Markets Conduct Act 2013 (*Act*).
- B The Plan was established by a trust deed dated 15 October 1985 and is currently governed by a trust deed dated 20 December 2018 (*Existing Deed*).
- C The Trustee wishes to amend the Existing Deed (by substituting this Deed for the Existing Deed) in order to:
  - C.1 enable a Member who remains in Service after reaching his or her Normal Retirement Date (and is therefore entitled to withdraw from the Plan) to elect the Conservative Portfolio for the investment of all or some of the amount retained in the Plan by him or her; and
  - C.2 enable a Member to make a withdrawal from his or her Member Account to purchase an estate in land in a circumstance where if the Member's Plan membership was membership of a KiwiSaver Scheme then the withdrawal would be permitted pursuant to clause 8 of the KiwiSaver Scheme Rules.
- D Subject to the requirements of the Act, the Trustee is authorised by clause 18.1 of the Existing Deed to amend the Existing Deed with the Union's consent and the Union (as evidenced by its execution of this Deed) grants that consent.
- 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 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 that certificate.

**BY THIS DEED**, effective on and from the Effective Date and with the intent that the Plan:

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

the Existing Deed is amended by revoking all of its provisions and replacing them with the provisions of this Deed as set out below.



## PART A

### GENERAL PROVISIONS

#### 1 DEFINITIONS AND INTERPRETATIONS

- 1.1 a) Headings and marginal notes are for convenience only and shall be deemed not to be part of this Deed and shall not affect its interpretation.
- b) In this Deed where the context permits words importing the singular shall include the plural and vice-versa and words importing the masculine shall include the feminine in each case unless a contrary intention appears.
- c) Any reference to a statute (or to any particular part or section) shall include a reference to any subsequent statutory modification or re-enactment thereof and regulations made thereunder.
- d) This Deed shall be governed and construed and shall take effect in accordance with the laws of New Zealand. All parties to this Deed and all Beneficiaries shall accept and be subject to the jurisdiction of the Courts of New Zealand.
- e) All references to a party to this Deed shall in each case include a reference to the executors, administrators, successors and assigns of such party.
- f) Footnotes used in this 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 Deed.
- g) Any reference to:
- (i) 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 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 Plan as at the Relevant Date; or
  - (ii) the operation or effect of a provision of this 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 Plan as at the Relevant Date.

- 1.2 In this Deed the following words and expressions shall, unless the context requires otherwise, have the following meanings:

*Act* means the Financial Markets Conduct Act 2013.

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



*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 Plan, or the firm of persons so appointed.

*Balanced Portfolio* means, if and for as long as the Trustee maintains a Conservative Portfolio, that part of the Fund which is not held in the Conservative Portfolio.

*Beneficiary* means any Member, Deferred Member or other person either presently or contingently entitled to any benefit from the Plan.

*Clause* means a clause of this Deed.

*Conservative Portfolio* means any investment portfolio established and maintained under Rule B14.

*Deed* means this deed as amended from time to time and includes (unless the context requires otherwise) the Rules.

*Deferred Member* means a former Member who has retained all or part of a benefit within the Plan pursuant to Rule B12.3.

*Director* means a director of the Trustee and any alternate director.

*Earnings* means in respect of a Member the gross taxable earnings received by that Member from an Employer.

*Effective Date* means 12 September 2019.

*Employer* means:

- a) an employer listed in the Schedule to this Deed and any related body corporate (within the meaning of the Act) of that employer; and
- b) another employer admitted to participation in the Plan in accordance with Clause 19; and
- c) an employer carrying on business in succession to an employer to which (a) or (b) applies;

and, in respect of a Member, means the Employer by which the Member is employed.

*Employer Account* means an account maintained in accordance with Rule B6.2.

*Equivalent Overseas Scheme* means an equivalent overseas retirement scheme as defined in the Regulations.<sup>1</sup>

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

*Fund* means the assets for the time being held by or on behalf of the Trustee for the purposes of the Plan.

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<sup>1</sup> Regulation 82(3).



*Governing Legislation* means the Act, the Regulations and, where the context so requires, the Trustee Act 1956 and any regulations or notices promulgated under the relevant legislation.

*KiwiSaver Act* means the KiwiSaver Act 2006.

*KiwiSaver Scheme* means a KiwiSaver scheme as defined in section 4(1) of the KiwiSaver Act.

*KiwiSaver Scheme Rules* means the KiwiSaver Scheme Rules set out in Schedule 1 to the KiwiSaver Act.

*Insurer* means any insurance company with whom the Trustee has made an arrangement by means of a policy of insurance to cover death or permanent incapacity benefits which may be payable to a Member pursuant to this Deed.

*Investment Manager* means a person (if any) to whom the Trustee has contracted the investment of some or all of the Fund.

*Investment Portfolio* means, as applicable, the Balanced Portfolio or the Conservative Portfolio.

*Licensed Independent Trustee* means a licensed independent trustee for the purposes of the Act whose licence covers the Plan and who is independent as defined in the Act.<sup>2</sup>

*Member* means an employee of an Employer who has been admitted to membership of the Plan and who is in Service.

*Member Account* means an account maintained in accordance with Rule B6.1.

*Nominated Beneficiaries* has the meaning set out in Rule B9.3(c).

*Normal Retirement Date* for a Member means the later of:

- a) the age specified in section 7(1) of the New Zealand Superannuation and Retirement Income Act 2001 (irrespective of whether or not the Member qualifies for New Zealand superannuation at that or any other age); or
- b) for a person who became a Member before 1 January 1995 a date between the Member's 60th birthday and the Member's 65th birthday (inclusive) determined in accordance with the Member's conditions of employment with the Employer.

*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.

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<sup>2</sup> Section 131(3).



*PIE Tax Liability* means the tax liability for the Plan as calculated under the PIE Legislation.

*Plan* means the retirement scheme governed by this Deed known as the Ports Retirement Plan.

*Plan Participant* means a Member or a Deferred Member.

*Qualifying Member* means a Deferred Member or a Member who remains in Service after their Normal Retirement Date.

*Register* means the register of Plan Participants maintained for the Plan pursuant to the Act.<sup>3</sup>

*Regulations* means the Financial Markets Conduct Regulations 2014.

*Related Party* has the meaning given to it by the Act.<sup>4</sup>

*Related Party Benefit* has the meaning given to it by the Act.<sup>5</sup>

*Reserve Account* means the account maintained in accordance with Rule B6.3.

*Retirement Scheme* means a retirement scheme as defined in the Act<sup>6</sup>.

*Rules* means the Rules (as amended from time to time) set out in Part B of this Deed and *Rule* has a corresponding meaning.

*Service* of a Member means continuous permanent employment with one or more Employers and for this purpose Service shall be deemed to be continuous and unbroken if the Member leaves the Service of one Employer and joins the Service of another Employer before the payment to the Member of a benefit in terms of this Deed.

*SIPO* has the meaning given to it by the Regulations.<sup>7</sup>

*Tax Act* means the Income Tax Act 2007.

*Temporary Absence* has the meaning set out in Rule B5.2.

*Totally and Permanently Disabled* means such physical and mental disablement of a Member as shall be covered by an insurance policy effected by the Trustee from time to time to cover such risks.

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<sup>3</sup> Section 215.

<sup>4</sup> Section 172(2).

<sup>5</sup> Section 172(1).

<sup>6</sup> Section 6.

<sup>7</sup> Regulation 5.





*Transfer Value* means either that part of any assets received or that part of the Fund paid by the Trustee as representing the value determined by it to be a Beneficiary's interest under a retirement benefits scheme.

*Union* means the Rail and Maritime Transport Union Incorporated.

- 1.3 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.
- 1.4 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.
- 1.5 Where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Plan 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 Plan.

## **2 TRUSTEE**

- 2.1 The Union shall appoint a corporate body as the sole trustee of the Plan, provided that the corporate body is permitted under the Act (and any other applicable legislation) to be the trustee of the Plan and has complied with all applicable registration requirements. The Union shall have power by deed to remove such Trustee and, if it sees fit, to appoint in its place another corporate body as Trustee. The Trustee must also be removed and/or replaced if required under the Act.<sup>8</sup>
- 2.2 The Trustee shall have the Union as its sole or principal shareholder, and a constitution which prescribes that its sole purpose is to act as the trustee of the Plan. The Trustee's constitution shall also prescribe that there shall be up to nine Directors of whom:
  - (a) up to four, at least one of whom is a Licensed Independent Trustee, shall be appointed by the Union for a period of up to 2 years (after such consultation with the Members as the Union shall from time to time decide) by notice in writing to the Trustee;
  - (b) up to four shall be appointed by a unanimous decision of the Directors referred to in Clause 2.2(a), who shall determine the periods for which such persons are to hold office, and failing such decision shall be appointed by the Union; and
  - (c) one (*Chairman*) shall be appointed by a unanimous decision of the Directors referred to in Clauses 2.2(a) and (b), who shall determine the period for

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<sup>8</sup> Section 185.



which such person is to hold office, and failing such decision shall be appointed by the Union;

and at least 1 of the Directors must be a New Zealand resident.

- 2.3 The Directors shall each be paid out of the Plan such fees as are approved by the Union from time to time. Neither the Trustee nor any Director shall otherwise receive from the Plan any remuneration in respect of the performance of their obligations, but the Trustee and each Director (with the approval of the Union):
- (a) may arrange to have paid from the Plan; or
  - (b) shall be reimbursed from the Plan for;
- any costs or expenses which they may bona fide pay or incur in the administration of the Plan.
- 2.4 The Trustee's constitution shall also prescribe that:
- (a) each Director and any alternate Director shall hold office until he or she resigns or dies or (subject, in the case of the Licensed Independent Trustee, to the requirements of the Act<sup>9</sup>):
    - (i) if appointed by the Union, until the expiry of his or her term of office (subject to re-appointment) or earlier removal by the Union; or
    - (ii) if appointed by the Directors referred to in Clause 2.2(a), until the expiry of his or her term of office (subject to re-appointment) or earlier removal by those Directors; and
  - (b) the Chairman shall hold office until expiry of the period for which he or she was appointed or until he or she resigns or dies (but may be removed from office by the unanimous decision of the remaining Directors at any time).
- 2.5 Subject to Clauses 2.2 and 2.4 any power, authority or discretion vested in the Trustee under this Deed shall be exercised on the Trustee's behalf by the Directors in the manner required by the Trustee's constitution.
- 2.6 The Trustee shall be free to make rules or to adopt procedures appropriate for the convenient administration of the Plan so long as those rules or procedures do not conflict with, alter or add to the terms of this Deed and comply with any relevant requirements in the Act.
- 2.7 The Trustee may, subject to the provisions of this Deed and of the Governing Legislation, enter into and execute all contracts, deeds and documents and do all acts matters and things which it may deem expedient for the purpose of securing any benefits to be provided by or from the Plan and for otherwise effecting and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed.
- 2.8 A receipt in writing by the Trustee or by the Secretary, Administration Manager or Investment Manager given on behalf of the Trustee for any moneys owing or payable to the Plan shall be sufficient discharge to the persons paying such moneys.

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<sup>9</sup> Section 185(1)(c) and (3).



- 2.9 The Trustee shall, as regards the authorities, powers and discretions conferred upon it by this Deed, have an absolute discretion as to the exercise or non-exercise thereof, subject only to the provisions of the Governing Legislation.
- 2.10 The Trustee's decision on the interpretation of the Deed in the case of any dispute or doubt in respect of its provisions or the rights of the Plan Participants shall be final and binding.
- 2.11 To the extent permitted by law, the Trustee and each Director shall be answerable and accountable only for the Trustee's or that Director's own acts, receipts, neglects or defaults, and not for those of any other Director or any bank, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss.
- 2.12 A Director who is a Beneficiary may retain for the Director's own absolute benefit subject to the conditions of the Plan all money and benefits accruing to the Director as a Beneficiary and no decision of the Trustee or exercise of any power by the Trustee shall be invalidated on the ground that the Director had a direct or personal interest in the result of any such decision or in the exercising of any such power.
- 2.13 The Trustee is responsible for managing the Plan and (in particular) for performing the functions set out in the Act<sup>10</sup>, and must ensure that the Plan and the Trustee meet (and continue to meet) all initial and ongoing registration requirements applying to the Plan and the Trustee under the Act.<sup>11</sup>
- 2.14 In acting as the Trustee of the Plan, the Trustee must comply at all times with the requirements of the Act.<sup>12</sup>

### **3 THE FUND**

- 3.1 The Fund shall be vested in and controlled and administered by the Trustee upon trust in accordance with the Deed.
- 3.2 The Fund shall comprise:
- (a) contributions made by Members pursuant to the Rules;
  - (b) contributions made by Employers pursuant to the Rules;
  - (c) any other moneys or assets paid or transferred to the Trustee for the purposes of the Plan;
  - (d) the income arising from the investments of the Plan;
  - (e) any accretions to or diminutions from the Fund arising from profits or losses on realisation or revaluation of investments; and
  - (f) any other moneys, assets or investments which become subject to the trusts of the Plan.

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<sup>10</sup> Section 142(1).

<sup>11</sup> Sections 127, 130, 131 and 133.

<sup>12</sup> Sections 142 to 151.



#### **4 INVESTMENTS OF THE PLAN**

- 4.1 All money belonging to the Plan and available for investment shall be invested by the Trustee in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.
- 4.2 The Trustee must maintain a SIPO for the Plan and comply at all times, in relation to the SIPO, with the requirements of the Act<sup>13</sup> and the Regulations<sup>14</sup>, including ensuring that:
- (a) all moneys available for investment are invested in accordance with the SIPO; and
  - (b) the SIPO or any alteration to it (as applicable) are lodged with the Registrar of Financial Service Providers as required by the Act.
- 4.3 Notwithstanding anything to the contrary in section 13D(1) of the Trustee Act 1956 the Trustee shall, in exercising the power of investment, exercise the care, diligence, and skill required by section 144 of the Act.
- 4.4 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.

#### **5 INSURANCE POWERS**

The Trustee may insure, against loss or damage by fire, earthquake or any other cause whatsoever, any asset of the Plan to the full insurable value thereof or the full replacement value thereof as the Trustee in its discretion from time to time thinks fit and may also insure against any risk, liability or loss and pay the premiums for such insurance out of the Fund as the Trustee may think fit.

#### **6 BORROWING POWERS**

The Trustee may for the purposes of the Plan borrow money up to such amounts and upon such terms and conditions as it in its absolute discretion thinks fit and may secure the repayment thereof by charge, mortgage, deposit or otherwise of all or any of the property comprised in the Plan.

#### **7 DELEGATION BY TRUSTEE**

- 7.1 The Trustee may delegate any of the powers, duties, authorities, functions and discretions conferred on it under this Deed, or by the Act, to any person or company on such terms as the Trustee thinks fit (and, to the extent permitted by law, shall not be liable for any loss occasioned by the acts of any person or body corporate to whom such delegation was made) and may pay to any such person such remuneration as the Trustee considers reasonable and appropriate, provided that

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<sup>13</sup> Sections 164, 166 and 167.

<sup>14</sup> Regulations 94 to 96.



the Trustee must comply with the requirements of the Act<sup>15</sup> if contracting out any of its functions as the manager of the Plan.

- 7.2 The Trustee may appoint such officers on such terms as it may think fit and may delegate such duties to those officers as it thinks fit.
- 7.3 The Trustee may appoint or retain the services of, and remove, one or more Administration Managers, Investment Managers, custodians, Auditors and other professional advisers and service providers in relation to the management, administration or investments of the Plan on terms to be agreed between the Trustee and such persons, and may pay from the Fund the expenses, fees, charges and costs payable to those persons (which shall be as are agreed between those persons and the Trustee).
- 7.4 The Investment Managers may have such powers and duties delegated to them in relation to the investment of the assets of the Plan as the Trustee may determine.
- 7.5 The Trustee may hand over investments and moneys belonging to the Plan to any custodian trustee (which must meet the requirements for such a person under the Act<sup>16</sup>) to be invested in the name of that custodian trustee or to be held or dealt with by the custodian trustee but always subject to and in accordance with the directions of the Trustee as given from time to time and may delegate to that custodian trustee such powers, discretions and authorities in relation to the collection, investment and payment of moneys as it thinks fit and may revoke the same at any time. The Trustee shall be jointly and severally liable with the custodian trustee for the due and faithful performance and observance by the custodian trustee of all the duties and obligations imposed on it pursuant to this Clause and otherwise by law.
- 7.6 The Trustee may employ any person or persons as professional advisors to advise on any aspects of the Plan and any fees or charges thereby incurred shall together with all usual administration expenses be borne by the Plan.

## **8 EXPENSES OF TRUSTEE**

The Trustee shall be reimbursed by the Plan, in such manner as the Trustee shall decide, for all expenses of and incidental to the management and administration of the Plan, and all expenses, fees, charges and costs associated with the investments of the Plan shall be met by deduction from investment earnings as provided for in Clause 11.2.

## **9 RECORDS AND ACCOUNTS**

- 9.1 The Trustee shall keep records relating to Plan Participants and the Plan in such form and in such manner as is required by the Act, including:
  - (a) the full names and addresses of Plan Participants;

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<sup>15</sup> Section 146.

<sup>16</sup> Sections 127(1)(f) and 156(2).



- (b) the particulars of each Member Account, each Employer Account and the Reserve Account; and
- (c) the particulars of payments in respect of current and former Plan Participants.

9.2 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 Plan;
- (b) show when the assets of the Plan were received; and
- (c) if any asset of the Plan has been disposed of, show when the asset was disposed of and to whom;

and have those records audited (and give reports about the assets of the Plan) in accordance with the requirements of the Act<sup>17</sup> and the Regulations<sup>18</sup>.

9.3 Each Plan Participant shall be given annual confirmation information in accordance with the Act<sup>19</sup> and the Regulations<sup>20</sup>.

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

9.5 The Trustee shall ensure that a Register is maintained with respect to the Plan which is kept in the manner, contains the information, is audited and is available for inspection as required by the Act and the Regulations<sup>21</sup>. The Register may be kept electronically.

9.6 Trustee shall be entitled to treat the Register as being correct if it reasonably believes that the Register has been adequately maintained.

## 10 **ANNUAL REPORTS**

The Trustee shall ensure the preparation and distribution of annual reports for the Plan in accordance with the requirements of the Regulations<sup>22</sup>.

## 11 **REVALUATIONS AND INVESTMENT EARNINGS RATES**

11.1 Before determining the rate of investment earnings applying to the Fund (or, where Rule B14 applies, each respective Investment Portfolio) from time to time, the Trustee shall determine the net market value of the Fund (or of that Investment Portfolio) using a methodology determined by it from time to time which accords with generally accepted accounting practice as defined in the Act.

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<sup>17</sup> Sections 158 and 159.

<sup>18</sup> Regulations 86 to 88.

<sup>19</sup> Section 100.

<sup>20</sup> Regulations 69 to 71.

<sup>21</sup> Sections 215 to 223 of the Act and Regulations 109 and 110 of the Regulations.

<sup>22</sup> Regulations 62 and 63.



11.2 The Trustee shall determine from time to time (but no less frequently than as at quarterly intervals) the rate of investment earnings applying to the Fund (or, where Rule B14 applies, each respective Investment Portfolio) using a methodology determined by the Trustee from time to time after taking into account (without limitation):

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

and after deducting any amounts that the Trustee considers appropriate;

- (e) to hold in the Reserve Account; and
- (f) to provide for expenses, fees, charges or costs associated with the operation and administration of the Plan and the investments of the Plan (or of that Investment Portfolio);

and the Trustee shall as soon as practicable after the end of each Plan year determine a rate of investment earnings for (as applicable) the Fund or each Investment Portfolio with respect to that Plan year (for crediting or debiting, as the case may be, to Member and Employer Accounts and the Reserve Account) using a methodology determined by the Trustee from time to time after taking into account not only the preceding factors but also the Plan's audited accounts for that year.

11.3 The expenses of the administration of the Plan as ascertained by the Trustee at the end of each year shall be debited to the Employers' Accounts and/or the Members' Accounts on an equitable basis according to the degree of administration attributable to the particular Plan Participants.

11.4 In the case of a Beneficiary's retirement or death or leaving service, or (where permitted) notice of full withdrawal, a return in respect of the investments of (as applicable) the Fund or each Investment Portfolio (as determined by the Trustee using a methodology determined by the Trustee from time to time) shall be credited or debited to the Beneficiary's Accounts for the period between:

- (a) the date as at which returns were credited or debited to the Beneficiary's Accounts in accordance with Clause 11.2; and
- (b) the date of the Beneficiary's retirement or death or leaving service (or notice of full withdrawal).

11.5 The Trustee shall to the extent required by the Act<sup>23</sup> and the Regulations<sup>24</sup>:

- (a) correct any material error or non-compliance in an earnings rate determination made pursuant to Clause 11.2 or Clause 11.4; and

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<sup>23</sup> Section 168

<sup>24</sup> Regulations 97 to 99



(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 need be provided.

- 11.6 The Trustee shall report to the FMA any material error in an earnings rate determination made pursuant to Clause 11.2 or Clause 11.4, or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law.<sup>25</sup>
- 11.7 The Trustee shall, as soon as is reasonably practicable, take all reasonable steps (in consultation with FMA) to notify disadvantaged current or former Plan Participants 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.<sup>26</sup>

## **12 PLAN PARTICIPANT'S INTEREST INALIENABLE**

- 12.1 The entitlement of a Plan Participant to any benefit under the Plan shall be inalienable, and contingent upon the Plan Participant qualifying for the benefit under the Rules.
- 12.2 In the event of the bankruptcy of a Plan Participant who joined the Plan prior to 1 April 1990, the sum then standing to the credit of such Plan Participant shall become forfeited to the Plan and the Trustee may in its absolute discretion apply the same for the benefit of such Plan Participant, or the spouse or children or other relatives or dependants of such Plan Participant, in such manner and in such proportions as the Trustee shall think fit.

## **13 PROOFS**

The Trustee may request any person claiming to be entitled to any benefits under the Plan to produce such evidence and do such acts as they may reasonably require and may act upon such evidence whether or not the same would be strictly permissible in a court of law.

## **14 LIABILITY AND INDEMNITY**

- 14.1 No Plan Participant shall have any claim for benefits under this Deed against any Employer or the Union or the funds of either of them.
- 14.2 Subject to the requirements of the Act (including without limitation sections 142 to 150) to the extent permitted by law:
- (a) neither the Trustee nor any Director shall be subject to any duties except the duty to act honestly and the duty not to commit wilfully any act known by the Trustee or such Director to be a breach of trust and the duty not to omit wilfully any act when the omission is known by the Trustee or such Director to be a breach of trust;

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<sup>25</sup> Section 168 of the Act and Regulations 97 to 99 of the Regulations

<sup>26</sup> Section 168 of the Act and Regulations 97 to 99 of the Regulations





- (b) neither the Trustee nor any Director shall be liable for the consequences of any act or omission or for any loss not attributable to the Trustee's or such Director's own dishonesty or to the wilful commission by the Trustee or such Director of any act when that commission is known by the Trustee or that Director to be a breach of trust; and
- (c) in particular neither the Trustee nor any Director shall be liable for any act or omission done *bona fide* in conformity with the decisions of the Trustee under this Deed or for the acts or omissions of any solicitor, banker, accountant, broker, or other agency or any clerk employed in good faith by the Trustee.

14.3 Subject to the indemnity limitations applying under the Act<sup>27</sup>, the Trustee and each Director shall be absolutely indemnified by and out of the funds of the Plan for and in respect of any loss or liability which the Trustee or Director may sustain or incur by reason of the carrying out or omission of any function duty or power of the Trustee under this Deed unless such loss or liability is attributable to the Trustee's or such Director's dishonesty or to the wilful commission by the Trustee or such Director of an act known by the Trustee or such Director to be a breach of trust or to the wilful omission by the Trustee or such Director of any act when that omission is known by the Trustee or such Director to be a breach of trust.

14.4 No provision of this Deed has the effect of exempting the Trustee or any Director from, or indemnifying the Trustee or any Director against, any liability to the extent that doing so would be void under the Act or any other statute.

14.5 The Trustee may agree:

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

any Administration Manager, Investment Manager or custodian appointed in respect of the Plan, to the fullest extent permitted by the Act<sup>28</sup>, in respect of any debt, liability or obligation incurred by or on behalf of that person in respect of the Plan or any action taken or omitted for or in connection with the Fund or the Plan (including, without limitation, legal fees and disbursements).

## 15 **POWERS OF EMPLOYER NOT AFFECTED**

Nothing in this Deed shall be deemed in any way to affect, prejudice or alter the powers of any Employer with regard to the dismissal or remuneration of or any dealings whatsoever with any Member. Any benefits to which any Plan Participant or other person may be or may claim to be entitled under this Deed shall not be used as a basis for damages or as grounds for increasing damages in any action or claim by that Plan Participant or by anyone claiming on behalf of that Plan Participant against an Employer in respect of any dismissal or dealings.

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<sup>27</sup> Sections 135(1)(f) and 136(1)(b).

<sup>28</sup> Sections 135(1)(f) and 136(2).



## 16 WINDING UP

16.1 The Plan shall be wound up as at a date specified in a resolution of the Trustee as the date of winding up (*Dissolution Date*) if:

- (a) the Union directs in writing that the Plan is to be wound up or the Trustees (with the written consent of the Union) determine to wind up the Plan; or
- (b) the Plan is required to be wound up under the Act<sup>29</sup>;

and the Trustee shall in each case comply with all of the provisions of the Act relating to the wind-up of the Plan.<sup>30</sup>

16.2 Upon the Plan being wound up the Trustee shall notify each Plan Participant and any other person entitled to benefits and realise the Fund to the extent and in such manner as it shall determine to be in the best interests of the Beneficiaries. Thereafter the Trustee shall apply the Fund in the following priorities:

- (a) To meet any expenses of the administration and dissolution of the Plan.
- (b) To pay any benefit due on or before the Dissolution Date.
- (c) To determine each Plan Participant's share of the Fund as follows:

$$NF \times \frac{MA + EA}{TMA + TEA}$$

Where: *NF* is the net Fund after setting aside the amount referred to in Clauses 16.2(a) and (b);

*MA* is the amount standing to the credit of the Member Account of the Plan Participant at the Dissolution Date;

*TMA* is the total amount standing to the credit of all Member Accounts at the Dissolution Date;

*EA* is the amount standing to the credit of the Plan Participant's Employer Account at the Dissolution Date;

*TEA* is the total amount standing to the credit of all Employer Accounts at the Dissolution Date.

The Trustee shall pay such share to the Plan Participant as a lump sum and such payment may if the Trustee so decides be made in more than one payment provided that the Trustee shall be entitled to adjust any amounts due to or in respect of the Beneficiary to allow for investment earnings and any change in the value of the Fund for any period between the Dissolution Date and the date on which such amount or amounts shall be paid.

16.3 No part of the Fund shall revert to any Employer.

16.4 The provisions of the Act relating to the winding up of the Plan<sup>31</sup> shall apply to the winding up of the Plan.

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<sup>29</sup> Sections 195 and 211.

<sup>30</sup> Sections 212 and 213.



## 17 UNCLAIMED BENEFITS

17.1 The Trustee shall exercise reasonable diligence in tracing Beneficiaries entitled to immediate benefits from the Plan but if it is not successful any moneys payable out of the Plan which are not claimed within six years after the date on which they become due shall (unless the Trustee otherwise directs) be forfeited and the proceeds shall revert to the Plan.

17.2 If a Beneficiary dies intestate and is not survived by:

- a) any person who in the opinion of the Trustee would be included in the class of Nominated Beneficiaries relating to such Beneficiary (if, where relevant, such Beneficiary were for the purposes of Rule B9.3(c) deemed to be a Member); or
- b) a person described in section 77 of the Administration Act 1969 to whom apart from the provisions of this Clause there would be a benefit payable pursuant to the provisions of the Trust Deed,

then such benefit shall be forfeited and the proceeds shall revert to the Plan.

## 18 AMENDMENTS

18.1 The Trustee may with the consent or shall at the written direction of the Union at any time by deed change all or any of the provisions of this Deed, subject to the restrictions in the Act<sup>31</sup> and any other applicable legislation.

18.2 Notwithstanding anything in this Deed, no amendment pursuant to this Clause 18 shall be binding on an Employer who is or would be directly or indirectly affected by the proposed amendment unless such Employer has given its prior written consent to the proposed amendment; provided that such Employer may grant or withhold such consent in its absolute discretion. This provision may be enforced by such Employer under section 4 of the Contracts Privity Act 1982.

18.3 Subject to the Act, no Plan Participant will be transferred to another Retirement Scheme without his or her written consent.

18.4 Where it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of Plan Participants:

- a) from the Plan to any other Retirement Scheme; or
- b) from any other Retirement Scheme to the Plan,

the Trustee shall, at least one month before the implementation of the proposed transfer, notify all Plan Participants in writing of the proposal and of its implications for Beneficiaries, and shall also forward a copy of such notification to the FMA.

## 19 EMPLOYERS

19.1 Each employer who becomes an Employer after the date of this Deed shall enter into a deed by which the Employer covenants with the Trustee to comply with and

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<sup>31</sup> Sections 171, 212 and 213 of the Act.

<sup>32</sup> Section 139.



observe the provisions of this Deed so far as they are to be applicable to the person as an Employer. The FMA shall be notified of each such Employer.

19.2 If all or any of the Employers shall be dissolved for the purpose of reconstruction or amalgamation with any other organisation the Trustee may make such arrangements and enter into such deeds and agreements as it may in its discretion think requisite for the continuation of the Plan by an organisation resulting from or involved in the reconstruction or amalgamation.

19.3 All deeds entered into before 25 August 2016 whereby the Employers listed in the Schedule to this Deed:

- (a) covenanted with the former Trustees of the Plan to comply with and observe the provisions of the Plan's trust deed applicable to them as Employers; and
- (b) were accordingly admitted to participation in the Plan;

shall continue unaffected by the amendments prescribed in this Deed effective on and from the Effective Date.

## 20 CLOSING THE PLAN

The Trustee may by resolution close the Plan for the admission of new members and from the date of such notice no further members shall be admitted provided that the Trustee may reopen the Plan for the admission of new members.

## 21 RELATED PARTY TRANSACTIONS

21.1 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.<sup>33</sup>

21.2 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 Fund to the extent required by the Act.<sup>34</sup>

21.3 Neither the Trustee nor any Related Party shall be liable to account to the Plan or any Plan Participant for any profit, loss, fees, brokerage or commissions arising from any transaction entered into in accordance with Clause 21.1.

21.4 A failure to comply with Clause 21.1 does not affect the validity of a transaction (subject to any Court order to the contrary).<sup>35</sup>

21.5 The Trustee must provide the FMA with such reports on transactions that provide for Related Party Benefits as are required by the Act and Regulations.

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<sup>33</sup> Sections 172 to 175.

<sup>34</sup> Section 176.

<sup>35</sup> Section 173(6) of the Act.



## 22 AUDITOR

- 22.1 The Trustee shall appoint as Auditor of the Plan a person qualified in terms of the Act<sup>36</sup> and entitled by law to act as such, to provide services in accordance with the requirements of the Act and the Regulations.<sup>37</sup>
- 22.2 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 Plan.
- 22.3 The Auditor may be removed by the Trustee at any time and may retire upon the expiration of not less than ninety (90) days' notice to the Trustee.
- 22.4 Any vacancy in the office of Auditor occurring under Clause 22.3 shall be filled by the Trustee appointing as Auditor of the Plan a person qualified for appointment in terms of Clause 22.1.

## 23 MEETINGS

When required by the Act, the Trustee must call a meeting of Plan Participants in the manner and on the basis set out in the Act and the Regulations.<sup>38</sup> A meeting of Plan Participants shall be conducted in accordance with the requirements of the Act and the Regulations.<sup>39</sup>

## 24 TAXATION

### 24.1 PIE tax compliance

The Trustee may elect that the Plan will be and remain a PIE, or will cease to be a PIE, in its complete discretion. While the Plan is a PIE, the Trustee shall also have the powers and discretions (having regard to Plan Participants' best interests generally and to the requirements of the 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 attribution period for the Plan;
- (b) the assessable income (for tax purposes) of the Plan for an attribution period and to allocate such income to Plan Participants for that attribution period;
- (c) the deductions incurred in deriving the assessable income allocated to Plan Participants for an attribution period;
- (d) the net income or the net loss or other loss used for Plan Participants for each attribution period;
- (e) the attributed PIE income or attributed PIE loss for Plan Participants for an attribution period and for a tax year;
- (f) each Plan Participant's investor fraction or percentage for any period, based on what that Plan Participant's proportionate interest in any distribution from

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<sup>36</sup> Section 461E.

<sup>37</sup> Section 218 of the Act and regulations 108 and 109 of the Regulations.

<sup>38</sup> Sections 161 to 163 of the Act and regulation 83 of the Regulations.

<sup>39</sup> Sections 162 and 163 of the Act and regulations 83 and 91 of (and Schedule 11 to) the Regulations.



the Plan to Plan Participants would be in that period if such a distribution were to be made;

- (g) the Plan's tax liability or rebate for the applicable calculation period and whether (and to what extent) to take into account any tax liability of the Plan for the purposes of determining its liabilities for any period;
- (h) 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 Plan's PIE Tax Liability and to make any elections provided for in the PIE Legislation required to give effect to that selection;
- (i) to retain any amount to which a Plan Participant otherwise would be entitled if it is required to be paid to Inland Revenue pursuant to the PIE Legislation;
- (j) 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 Plan Participants generally and the requirements of the PIE Legislation;
- (k) the amounts of any rebates of tax available to the Plan by virtue of any relevant provision in the PIE Legislation;
- (l) the amount of any rebate of tax referred to in paragraph (k) that is attributable to a Plan Participant (and to make available to the Plan Participant the benefit of that rebate in such manner as the Trustee considers appropriate in its complete discretion);
- (m) the amount of any credits against income tax payable by and available to the Plan;
- (n) the amount of any tax credit available to be allocated to an attribution period (and to allocate, in such manner and on such basis as the Trustee considers appropriate in its complete discretion, such tax credit to that period);
- (o) the amount of tax payable by the Plan (whether current or deferred) that is attributed under the Tax Act to a Plan Participant or determined by the Trustee to be attributable to a Plan Participant.
- (p) to carry out any other tax calculations, allocations or attributions required by the Tax Act;
- (q) to adjust a Plan Participant's interest<sup>40</sup> in such manner as the Trustee considers necessary or desirable in its complete discretion, whether in accordance with the PIE Legislation or otherwise as permitted by law, at any time (including immediately before paying any benefit) having regard to the effect of:
  - (i) the Plan Participant's prescribed investor rate; and
  - (ii) the income (and the losses and associated tax credits) allocated to the Plan Participant under the PIE Legislation, as adjusted for any expenses which the Trustee considers appropriate to charge to the particular Plan Participant;

on the Plan's PIE Tax Liability, and the amount of any rebate, under the PIE Legislation;

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<sup>40</sup> Section 170 of the Act.



- (r) to allocate tax rebates received by the Plan, or anticipated to be received by the Plan, to Plan Participants;
- (s) to take all steps the Trustee considers necessary or desirable to ensure the Plan is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act;
- (t) to require that before a Member is accepted into the Plan he or she provides their tax file number, prescribed investor rate and any other information required by the PIE Legislation, and that at any time a Plan Participant must confirm such details on request from the Trustee;
- (u) to disclose any information, including issuing any statements and providing any information to Plan Participants, required by the PIE Legislation in respect of Plan Participants' tax positions in relation to the Plan, and to provide any information (including personal information) to Inland Revenue or any other person where the Trustee considers it reasonably necessary or desirable in order to administer the Plan's tax obligations;
- (v) to value tax losses of the Plan for the purpose of valuing the Fund in such manner as the Trustee thinks fit having regard to the PIE Legislation, generally accepted accounting practice as defined in the Financial Reporting Act 2013 and the Plan's stated policies (if any) from time to time;

and to take all steps and do all things that the Trustee considers necessary or desirable in its complete discretion to convert the Plan to or from being a PIE or to administer the Plan as a PIE.

#### 24.2 **Changes in Tax legislation**

Without limiting Clause 1.1(c), following any amendment to or re-enactment of the Tax Act (*Revision*):

- (a) all discretions and powers available to the Trustee if the Plan is a PIE shall continue applying with such modifications as are necessary to reflect the Revision;
- (b) the Trustee may apply all the requirements of the Revision to the Plan and Plan Participants on such basis as it considers appropriate and taking into account such factors as it considers relevant; and
- (c) to the extent reasonably possible taking into account the nature of the Revision, any references in this Deed to terms defined in the Tax Act which are amended or replaced by the Revision shall be deemed to be references to those defined terms as amended or replaced.

#### 24.3 **Withholding Tax from benefits**

If the Trustee is obliged by law to make, or may make and determines to make, any deduction or withholding on account of taxes from a payment to be made to a Plan Participant, it shall make such deduction or withholding and pay such amount to Inland Revenue and on payment of the net amount to the Plan Participant, the full amount payable to the Plan Participant shall be deemed to have been duly paid and satisfied.



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
- (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.





## **PART B**

### **PLAN RULES**

#### **B1 CONTINUATION OF PLAN**

##### **B1.1 Continuation of Plan**

The trusts of the Plan are hereby confirmed and the Plan is continued as a restricted workplace savings scheme for the purposes of the Act, effective on and from the Effective Date, on the terms and conditions contained in this Deed.

##### **B1.2 Name of Plan**

The Trustee may, subject to compliance with all legal and regulatory requirements, change the name of the Plan by written notice to the Union. The Trustee shall notify Plan Participants of any change of name of the Plan when next convenient for the Trustee.

##### **B1.3 Purpose of Plan**

The principal purposes of the Plan are to provide:

- a) retirement benefits for Plan Participants; and
- b) benefits to Members on ceasing employment with an Employer (whether immediately on ceasing that employment or subsequently).

##### **B1.4 Composition of Plan**

The Plan shall comprise all assets relating to the Plan from time to time held by the Trustee upon the trusts of this Deed including the income arising therefrom. The Plan assets shall be held on trust by the Trustee and shall be managed and administered by the Trustee on the terms contained and implied in this Deed.

##### **B1.5 Deed binding**

The provisions of this Deed shall be binding on the Union, the Trustee, the Employers, and all Beneficiaries (and any person claiming under this Deed) as if each of them were a party to this Deed.

#### **B2 MEMBERSHIP**

**B2.1** An employee of an Employer shall be eligible to join the Plan on or subsequent to commencement of such employment provided that no employee shall be eligible to become a Member without the consent of the Employer where the Employer is making contributions to another Retirement Scheme for that employee.

**B2.2** An employee shall complete such forms of application and produce such evidence or information as the Trustee may reasonably require and shall submit to any medical examination and produce any statement of health required by a life insurance company.

**B2.3** An employee shall cease to be a Member on ceasing Service.



- B2.4 A Member shall not be entitled to withdraw from membership of the Plan while the Member remains in the employment of an Employer except in the case of a Member who remains in Service after Normal Retirement Date.

**B3 PLAN PARTICIPANTS' RIGHTS TO INFORMATION**

- B3.1 Each person, before becoming a member of the Plan, shall be given a Product Disclosure Statement for the Plan which complies with the Regulations.
- B3.2 The Trustee shall provide Plan Participants with all information, notices and disclosures required to be given to Plan Participants under the Act.<sup>41</sup>
- B3.3 Where any disclosure document or register entry relating to the Plan 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>42</sup>

**B4 CONTRIBUTIONS**

- B4.1 Each Member shall complete an application form which shall include an election to contribute at 2%, 3%, 4%, 5% or 6% of the Member's Earnings. A Member may elect to contribute a greater amount if the Member's Employer agrees to match the amount. Such contributions shall be deducted from the Member's Earnings by the Employer and shall be paid to the Trustee and credited to the Member's Account. A Member may elect to contribute at a nil rate where the Member's Employer agrees to make additional contributions under Rule B4.5.
- B4.2 Subject to Rule B4.6 (and to the Member's employment agreement as defined in the Employment Relations Act 2000) an Employer shall contribute to the Plan in respect of each of its employees who is a Member the same percentage of Earnings of the Member as the Member elects to contribute pursuant to Rule B4.1, provided that nothing in this Deed shall require an Employer to contribute more than 6% of a Member's Earnings. Such contributions shall cease at the Member's Normal Retirement Date (unless the Employer in its sole discretion otherwise determines). Such contributions (less employer's superannuation contribution tax) shall be payable at the same time as the Member's contributions and shall be paid to the Trustee and credited to the Member's Employer Account.
- B4.3 A Member may elect at any time to increase or reduce his or her contributions by way of deduction from the Member's Earnings and such election shall be made on such terms and in such manner as the Trustee may from time to time decide. A Member may also (with the consent of the Trustee and on such terms and conditions as the Trustee shall decide) elect with effect from any date to stop his or her contributions.
- B4.4 Where (other than pursuant to Rule B4.5) a Member is not contributing under Rule B4.1, the Death or Disablement Benefits payable under Rules B9 and B10 shall be

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<sup>41</sup> Sections 96, 97 and 100 of Act and regulations 56, 62 and 65 of Regulations.

<sup>42</sup> Regulation 53.



limited to the Member's Member Account and Employer Account at the date of the Member's death.

B4.5 With the agreement of the Trustee an Employer may elect at any time to pay additional contributions, either as lump sums or as additional regular sums, for any of its Employees who are Members.

B4.6 An Employer may elect to reduce its before-tax contributions to the Plan for a Member's benefit by an amount not exceeding the before-tax amount of any contributions which the Employer is making for the Member's benefit to a KiwiSaver Scheme. In that case the Employer's contribution liability under Rule B4.2 shall reduce accordingly.

#### **B5 TEMPORARY ABSENCE**

B5.1 In the event of the Temporary Absence (as defined in Rule B5.2) of a Member Rules B8.1 and B8.2 shall not apply.

B5.2 *Temporary Absence* shall mean:

- a) at the election of Member any period of absence from Service due to "parental leave" or a "period of preference" (both as contemplated by the Parental Leave and Employment Protection Act 1987); or
- b) at the election of the Member any period of absence from Service for up to two years (other than any period contemplated in the definition of *Totally and Permanently Disabled* in Clause 1.2).

B5.3 If on the expiry of the Temporary Absence of a Member the Member does not return to Service the Member shall thereupon be deemed to have left Service and Rule B8 shall apply to the Member Account and Employer Account of the Member at the expiry of such Temporary Absence.

#### **B6 MEMBER, EMPLOYER AND RESERVE ACCOUNTS**

B6.1 The Trustee shall establish an account for each Member known as a "Member Account" to which shall from time to time be credited or debited:

- a) contributions to the Plan by the Member under Rule B4;
- b) any distributions from the Reserve Account to Member Accounts under Rule B7.1 and any amounts calculated under Clause 11;
- c) the proportionate share of the expenses of administration of the Plan as determined by the Trustee under Clause 11.3;
- d) any Transfer Value received from another Retirement Scheme relating to the Member's employment with an employer other than an Employer;
- e) if a Member has joined the Plan on or after 18 September 2015 or has elected as at Normal Retirement Date to retain insurance cover for Plan purposes, insurance premiums as described in Rule B6.2(d), to the extent that there are insufficient funds in the Member's Employer Account to pay that premium; and
- f) such other amounts as are required either expressly or impliedly to be credited or debited in terms of the Trust Deed;



and such account shall be the Member Account of such Member.

B6.2 The Trustee shall establish an account for each Member known as an "Employer Account" to which shall from time to time be credited or debited:

- a) contributions to the Plan for the Member under Rule B4.2 and Rule B4.5;
- b) any distributions from the Reserve Account to Employer Accounts under Rule B7.1 and any amounts calculated under Clause 11.1;
- c) the proportionate share of the expenses of administration of the Plan as determined by the Trustee under Clause 11.3;
- d) any insurance premium paid by the Trustee for or on behalf of the Member to secure the benefit payable in terms of Rule B9.1(a)(ii) and/or that part of the benefit payable in terms of Rule B10 as is calculated by reference to Rule B9.1(a)(ii); and
- e) such other amounts as are required either expressly or impliedly to be credited or debited in terms of the Trust Deed;

and such account shall be the Employer Account of such Member.

B6.3 The Trustee shall establish an account known as the "Reserve Account". The following shall be credited or debited to the Reserve Account:

- a) any amount standing to the credit of a Member's Account and/or Employer Account which is not required to pay the benefits of the Member hereunder;
- b) any amounts received by the Trustee other than as required to meet obligations hereunder;
- c) interest or losses on the Reserve Account as determined by the Trustee from time to time; and
- d) any benefits forfeited to the Plan under Clause 17.

#### **B7 APPLICATION OF RESERVE ACCOUNT**

B7.1 The Trustee may apply the Reserve Account in any one or more of the following ways:

- a) To meet all or part of the contributions of all Members on an equitable basis;
- b) To meet all or part of the contributions of the Employers on an equitable basis;
- c) To increase the retirement benefits of all Members on an equitable basis;
- d) To provide benefits other than retirement benefits for all Members on an equitable basis;
- e) To pay the expenses (including any taxation payable) of the Plan and of the Trustee in connection with the Plan; and
- f) In any other manner which the Trustee considers to be equitable to all Members of the Plan.



## **B8 BENEFITS ON LEAVING SERVICE**

- B8.1 If a Member (other than a Member to whom Rule B5.2 applies) shall leave Service without being entitled to a benefit under Rule B9 or Rule B10, the Member shall be entitled to a lump sum equal to the sum of the Member's Member Account and Employer Account at the date of his or her leaving Service.
- B8.2 Where a Member remains in service after the Member's Normal Retirement Date, the Member shall be entitled at his or her option to receive payment of some or all of the benefit that would be payable to him or her if leaving Service on the date of the withdrawal. Payment of the Member's benefit shall otherwise be deferred until either the date of the Member's retirement or such earlier date as the Member may nominate at any time.
- B8.3 Subject to Rule B8.4, where a Member does not return to Service within two years of the date of commencement of his or her Temporary Absence the benefit payable under this Rule shall be payable at the expiry of such two year period.
- B8.4 If a Member shall attain age 60 while on Temporary Absence a benefit under this Rule shall be payable following the date on which the Member attains age 60 and on the earlier to occur of:
- a) the Member's electing to receive payment of the benefit, and
  - b) the expiry of two years from the date of commencement of the Member's Temporary Absence.
- B8.5 A Member shall be entitled to receive the benefit calculated under this Rule B8 as a lump sum as soon as practicable after the Member leaves Service.

## **B9 BENEFITS ON DEATH**

- B9.1 a) Subject to Rules B4.4, B9.4, B9.5 and B9.6 if a Member dies in Service before age 70 (provided that, if applicable, the Member elected as at Normal Retirement Date to retain insurance cover for Plan purposes) there shall be payable in terms of Rule B9.3 a lump sum equal to the aggregate of:
- i. the amount calculated at the date of the Member's death in terms of Rule B8.1, and
  - ii. a multiple of the Member's basic weekly wage (such basic weekly wage being 40 times the ordinary time hourly rate applicable to the Member) at the date of the Member's death, the multiple being:
    - 104 if the Member is aged 40 or less at the date of death;
    - 78 if the Member is aged 41 to 49 inclusive at the date of death, and
    - 52 if the Member is aged 50 or over at the date of death.
- b) If a Member who was on Temporary Absence having elected in terms of Rule B5.2(b) shall die before age 70 (provided that, if applicable, the Member elected as at Normal Retirement Date to retain insurance cover for Plan purposes) or before an occurrence in terms of Rule B8.4(a) or (b) there shall be payable in terms of Rule B9.3 a lump sum equal to the aggregate of:



- i. the amount calculated at the date of the Member's death in terms of Rule B8.1; and
- ii. the amount calculated in terms of Rule B9.1(a)(ii) where such amount is covered by an insurance policy effected by the Trustee pursuant to Rule B9.4 but only to the extent that such policy is current in respect of the Member.

B9.2 If a Member to whom Rule B4.4 applies dies in Service before age 70 (provided that if applicable, the Member elected as at Normal Retirement Date to retain insurance cover for Plan purposes) there shall be payable in terms of Rule B9.3 a death benefit equal to the amount calculated at the date of the Member's death in terms of Rule B8.1.

- B9.3
- a) The Trustee shall pay the benefit payable to a Member from the Plan after his or her death to such one or more of the Member's Nominated Beneficiaries (as defined in this Rule), and in such proportions, at such times and in such manner, as the Trustee thinks fit.
  - b) The Trustee may pay the death benefit into a separate bank account and hold it for the benefit of and subject to any claims by one or more of the Nominated Beneficiaries as the Trustee may decide. If no such claim is made within a period of six years from the date of the death of the Member the death benefit shall (unless the Trustee otherwise decides) be forfeited and the proceeds shall revert to the Plan under the provisions of Clause 17.
  - c) In this Rule the expression *Nominated Beneficiaries* means each of:
    - i. Any person whose name and particulars have been notified to the Trustee by the Member, and accepted by the Trustee in writing, as being a person whom the Member may wish the Trustee to consider for inclusion as one of the Nominated Beneficiaries;
    - ii. The Member's spouse or former spouse;
    - iii. The following relatives of the Member (whether by birth or adoption) living or *en ventre sa mere* at the date of death of such Member, namely each parent, child, stepchild, brother or sister of the Member or the wife, husband or child then living of any such relative;
    - iv. Any other person who was at any time prior to the date of death of the Member (in the sole opinion of the Trustee) wholly or partly maintained by the Member; and
    - v. The Member's personal representatives.

B9.4 The Trustee may make an arrangement by means of a policy of insurance (*Policy*) with a life insurance company to cover the benefits which may be payable to or for Members under Rule B9.1(a)(ii). A Member shall submit to any medical examination and shall deliver any statement of health required by the life insurance company. Where the life insurance company after considering the personal statement of health or the report of any medical examination of a Member:



- a) declines to grant any or part of the cover under the Policy for that Member; or
  - b) imposes special restrictions; or
  - c) modifies the sum insured; or
  - d) charges an extra premium for such cover; or
  - e) declines after death to admit a claim under the Policy for such Member;
- then with effect from the date of the life insurance company's decision to that effect any death benefit payable under the Plan in respect of that Member shall be modified accordingly.

B9.5 If a Member who joined the Plan on or after 1 June 2014 is not automatically accepted for cover under the Policy then, until:

- a) the Member has submitted to any medical examination and delivered any statement of health required by the life insurance company; and
- b) the life insurance company has considered the report of the examination and the statement (as applicable) and made a determination about cover under the Policy;

the Member shall have no benefit entitlement under Rule B9.1(a)(ii).

B9.6 The benefits payable for a Member under Rules B9.1(a) and B10.2 may be reduced at the option of the Member either:

- a) to include only the greater of the sums payable under Rule B9.1(a)(i) and (ii); or
- b) to include only the sum payable under Rule B9.1(a)(i).

Such option shall be exercisable by written notice given by a Member at a time and in a form acceptable to the Trustee. Upon acceptance of such a notice the benefits payable under Rules B9.1(a) and B10.2 shall be reduced accordingly. The decision of the Trustee as to acceptance or rejection of an option notice shall be final and binding in all respects.

B9.7 If a Member dies in Service after age 70 there shall be payable in terms of Rule B9.3 a lump sum calculated at the date of the Member's death in terms of Rule B8.1.

#### **B10 DISABLEMENT BENEFIT**

B10.1 A Member (other than a Member to whom Rule B10.3 applies) shall qualify for a benefit (*Disablement Benefit*) if the Member becomes Totally and Permanently Disabled while in Service before age 70. Such Member is referred to in this Rule B10 as the *Disabled Member*. The date as at which the Disabled Member shall be deemed to be Totally and Permanently Disabled (*Date of Disablement*) shall be the first day on which the Member was absent from regular employment due to the illness or injury which led to the Member being declared Totally and Permanently Disabled. This Rule shall be read subject to Rules B9.6 and B10.6.



B10.2 The amount of the Disablement Benefit shall be equal to the benefit which would have been payable under Rule B9.1(a) had the Disabled Member died on the Date of Disablement.

B10.3 Where a Member on Temporary Absence under Rule B5.2(b) becomes Totally and Permanently Disabled before his or her Normal Retirement Date or before an occurrence in terms of Rule B8.4(a) or (b) there shall be payable in terms of Rule B10.4 a lump sum equal to the aggregate of:

- a) the amount calculated in terms of Rule B8.1, and
- b) the amount payable under Rule B9.1(a)(ii) where such amount is covered by an insurance policy effected by the Trustee pursuant to Rule B10.6 but only to the extent that such policy is current in respect of the Member.

B10.4 The Disablement Benefit or the benefit calculated in terms of Rule B10.3 shall be paid to the Disabled Member or for the Disabled Member's benefit in the form of a lump sum. Where a Disablement Benefit is payable pursuant to the Policy (as defined in Rule B10.6) it shall not be paid unless and until a benefit is paid in accordance with the Policy.

B10.5 The Trustee shall decide whether or not a Member is entitled to a Disablement Benefit after obtaining any medical information the Trustee deems necessary. For this purpose a Member may be required to undergo such medical examination as the Trustee may require. In all dealings regarding whether or not the payment of a Disablement Benefit shall be made the Trustee's decision shall be final and binding on all parties.

B10.6 The Trustee may make an arrangement by means of a policy of insurance (*Policy*) with a life insurance company to cover the benefits which may be payable to a Member under Rule B10.1. A Member shall submit to any medical examination and shall deliver any statement of health required by the life insurance company. Where the life insurance company after considering the personal statement of health or the report of any medical examination of a Member:

- a) declines to grant any or part of the cover under the Policy for that Member; or
- b) imposes special restrictions; or
- c) modifies the sum insured; or
- d) charges an extra premium for such cover; or
- e) declines after the Date of Disablement to admit a claim under the Policy for such Member

then with effect from the date of the life insurance company's decision to that effect any Disablement Benefit payable under the Plan in respect of that Member shall be modified accordingly.

B10.7 If a Member who joined the Plan on or after 1 June 2014 is not automatically accepted for cover under the Policy then, until:





- a) the Member has submitted to any medical examination and delivered any statement of health required by the life insurance company; and
- b) the life insurance company has considered the report of the examination and the statement (as applicable) and made a determination about cover under the Policy;

the Member shall be treated for the purposes of Rule B10.2 as having no benefit entitlement under Rule B9.1(a)(ii).

## **B11 HARDSHIP**

B11.1 If the Trustee is satisfied that a Member is suffering or is likely to suffer from significant financial hardship, the Member may, on application to the Trustee in accordance with Rule B11.6, make a significant hardship withdrawal in accordance with this Rule.

B11.2 The amount of that significant financial hardship withdrawal may, subject to the Trustee's approval under Rule B11.3, be up to the value of the Member's Member Account on the date of withdrawal.

B11.3 The Trustee:

- a) must be reasonably satisfied that reasonable alternative sources of funding have been explored and have been exhausted; and
- b) may direct that the amount withdrawn be limited to a specified amount that, in the Trustee's opinion, is required to alleviate the particular hardship.

B11.4 For the purposes of this Rule, *significant financial hardship* includes significant financial difficulties that arise because of:

- a) a Member's inability to meet minimum living expenses; or
- b) a Member's inability to meet mortgage repayments on his or her principal family residence, resulting in the mortgagee seeking to enforce the mortgage on the residence; or
- c) the cost of modifying a residence to meet special needs arising from a disability of a Member or a Member's dependent; or
- d) the cost of medical treatment for an illness or injury of a Member or Member's dependent; or
- e) the cost of palliative care for a Member or a Member's dependent; or
- f) the cost of a funeral for a Member's dependent; or
- g) the Member suffering from a serious illness.

B11.5 For the purposes of this Rule "serious illness" means an injury, illness, or disability:

- a) that results in the member being unable to engage in work for which he or she is suited by reason of experience, education or training, or any combination of those things; or
- b) that poses a serious and imminent risk of death.



B11.6 The application for a withdrawal under Rule B11.1 must be in the form required by the Trustee and must include a completed statutory declaration in respect of the Member's assets and liabilities.

B11.7 The Trustee:

- a) may require that any medical matter asserted in support of the application for withdrawal be verified by medical evidence;
- b) may require that any other documents, things or information produced in support of the application be verified by oath, statutory declaration or otherwise.

## **B12 GENERAL**

B12.1 Upon becoming entitled to payment of a benefit under these Rules any Member shall have the right by notice in writing to the Trustee no later than 14 days after becoming so entitled to ask the Trustee to apply such benefit in the purchase of an annuity from a life insurance company (if available). The annuity shall be purchased in the name of the Member as the property of the Member and thereafter the Member shall have no further claim upon the Trustee or the Fund.

B12.2 The benefit of a Member in any case shall be not less than the Member's total contributions to the Plan and to any previous retirement benefits scheme which are comprised in any Transfer Value received by the Trustee.

B12.3 Where a Beneficiary (including a Beneficiary to whom Rule B8.2 applies) leaves Service (or becomes entitled to a benefit from the Plan under Rule B10) the Beneficiary may request the retention of all or part of the benefit within the Plan. Such retention shall be for such period and upon such terms and conditions as may be agreed with the Trustee, and shall include agreement as to the share of expenses to be met by the Beneficiary.

B12.4 The death benefit distribution provisions in Rule B9.3 shall continue applying to a Deferred Member as if he or she remained a Member.

## **B13 TRANSFER OUT OF PLAN**

B13.1 If a Member leaves Service or is otherwise eligible to receive a benefit from the Plan 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 he or she is entitled under the Plan, transfer to the Transferee Plan a lump sum equal to the value of that Benefit.

B13.2 A Member in respect of whom a transfer is made under Rule B13.1 shall not be entitled to any other Benefit from the Plan and a receipt issued on behalf of the Transferee Plan shall be a complete discharge to the Trustee of all liability in respect of the Member under the Plan (or, as applicable, with respect to the amount so transferred) and the Trustee shall be under no liability as to the application of the amount so transferred.



## **B14 QUALIFYING MEMBERS – CONSERVATIVE PORTFOLIO OPTION**

B14.1 The Trustee may create and maintain a conservative portfolio within the Fund, for the investment of all or some of the amounts retained in the Plan by Qualifying Members, on such terms and conditions as the Trustee determines. Those terms and conditions must be set out in the SIPO.

B14.2 If the Trustee has established a Conservative Portfolio then it may offer Qualifying Members the option of electing to invest all or (at the Trustee's discretion and on such terms and conditions as it may determine from time to time) a prescribed portion of their retained balances in the Conservative Portfolio.

B14.3 The following provisions shall apply to any election made by a Qualifying Member in response to an offer made under Rule B14.2:

- a) the election must be made when and in the manner required by the Trustee;
- b) the election will be a binding direction from the Qualifying Member for the purposes of section 13G of the Trustee Act 1956 (and the Trustee's investment obligations under this Deed shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956);
- c) the election may only be changed with the Trustee's consent and subject to any conditions and fees imposed by the Trustee; and
- d) making the election shall be solely the responsibility of the Qualifying Member and the Trustee (by offering, accepting or implementing the election) shall not be regarded as directly or indirectly representing that any particular investment strategy is appropriate for the Qualifying Member.

B14.4 The Trustee may determine at its sole discretion such other matters as it considers appropriate in relation to the operation of any Conservative Portfolio choice facility (including whether and how to alter or withdraw the facility).

B14.5 No election made by a Qualifying Member pursuant to this Rule B14 shall exempt the Trustee from its responsibilities under the Act.<sup>43</sup>

B14.6 If (or to the extent that) a Qualifying Member does not make an election pursuant to this Rule B14, the amount retained in the Plan for that Qualifying Member shall remain invested in the Balanced Portfolio.

## **B15 FIRST HOME PURCHASE**

B15.1 A Member who:

- a) has either completed 3 years' Plan membership or been a member of one or more KiwiSaver Schemes for at least 3 years in total; and
- b) has not previously made a withdrawal under either this Rule B15 or (other than to assist with the same purchase as the amount to be withdrawn under this Rule B15) clause 8 of the KiwiSaver Scheme Rules;

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<sup>43</sup> Section 144.



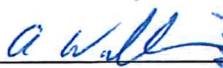
may apply to the Trustee to withdraw an amount not exceeding the value of the Member's Member Account on the date of withdrawal if intending to purchase an estate in land in a circumstance specified in or prescribed pursuant to clause 8 of the KiwiSaver Scheme Rules.

B15.2 The Trustee may permit such withdrawal only if satisfied, based on whatever supporting evidence it may reasonably require, that if the Member's Plan membership was membership of a KiwiSaver Scheme then the withdrawal would be permitted pursuant to clause 8 of the KiwiSaver Scheme Rules.

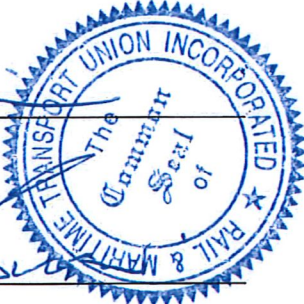


**EXECUTED AND DELIVERED AS A DEED**

The Common Seal of the **Rail and Maritime Transport Union Incorporated** was affixed in the presence of:

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
General Secretary



**Ports Retirement Trustee Limited by:**

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director



## **SCHEDULE – EMPLOYERS**

CentrePort Limited  
Grey District Council  
Lyttelton Port Company Limited  
Ports of Auckland Limited  
Port Marlborough New Zealand Limited  
Port of Napier Limited  
Port Nelson Limited  
Port Otago Limited  
Port Taranaki Limited  
Port of Tauranga Limited  
Primeport Timaru Limited  
Rail and Maritime Transport Union Incorporated  
South Port New Zealand Limited