
BCF KiwiSaver Scheme Trust Deed

BCF Limited (*BCF*)

Arotahi Trust Limited (*Trustee*)

TABLE OF CONTENTS

1	INTERPRETATION AND DEFINITIONS	2
1.1	Interpretation	2
1.2	Definitions	3
1.3	Terms defined in KiwiSaver Act.....	5
1.4	Terms defined in Income Tax Act.....	5
1.5	Implied Terms.....	5
1.6	Frameworks and methodologies	5
2	CONTINUATION AND ADMINISTRATION OF SCHEME	5
2.1	Continuation of Scheme.....	5
2.2	Purpose of Scheme	5
2.3	Management of Scheme	6
2.5	Name of Scheme	6
2.6	Assets of Scheme	6
2.7	Assets held on trust.....	6
2.8	Inconsistency with Act.....	6
2.16	Register	8
3	ADMISSION OF MEMBERS	8
3.1	Eligibility	8
3.2	Admission	8
3.3	Cessation of membership.....	8
3.4	Re-admission to the Scheme	9
3.5	Ceasing to issue interests	9
3.6	Equivalent but not specific interests	9
3.7	Availability of information	10
3.8	Rights of a Member are personal.....	10
4	CONTRIBUTIONS	10
4.1	Contributions that must be accepted	10
4.2	Contributions that may be accepted	10
4.3	Tax Credits	11
5	ESTABLISHMENT OF ACCOUNTS	11
5.1	Member Account.....	11
5.2	Employer Accounts	12
5.3	Varying Accounts.....	13
5.4	Register deemed to be accurate.....	13
5.5	Members to notify changes	13
6	VALUATIONS AND RETURNS	13
6.1	Valuations	13
6.2	Determining market value	14

6.3	Determining liabilities.....	14
6.4	Calculation of returns.....	14
6.5	Allocation of returns.....	15
6.6	Interim returns	15
6.7	Earnings Rate Corrections.....	15
6.8	Notice to FMA	15
6.9	Notification of errors	16
7	BENEFITS	16
7.1	Benefit calculations.....	16
7.2	Deferring payment.....	16
8	SCHEME EXPENSES AND FORMATION COSTS.....	16
9	INVESTMENTS	17
10	POOLS AND INVESTMENT FUNDS	18
10.1	Separate Pools	18
10.2	Exclusive assets and liabilities	18
10.3	Members' Pools	19
10.4	Investment Funds within a Pool	19
10.5	Each Pool is a Single trust fund.....	20
10.6	Winding up or alteration of Pool or Fund	21
10.7	Members in a Pool may choose Investment Fund(s).....	21
10.8	General.....	21
10.9	Contrary Intention	21
10.10	Member ceases to break bread with the Brethren	22
10.11	Requirements for transfers between Pools.....	22
11	POWERS OF THE TRUSTEE	23
11.1	General powers	23
11.2	Exercise of Trustee's powers	24
11.3	Specific delegations	24
11.4	Trustee's duties when delegating	24
11.5	Trustee Committees.....	24
12	REMUNERATION OF TRUSTEE.....	25
12.1	Trustee's fees	25
12.2	Alteration or waiver of fees	25
13	LIABILITY AND INDEMNITIES	25
13.1	No personal liability of Trustee	25
13.2	Indemnification from Scheme assets	25
13.3	Reimbursement of Trustee	26
13.4	Breach of duty	26

13.5	Reliance upon advice.....	26
13.6	Trustee's discretion and authority	26
13.7	Trustee's limited liability to Members.....	26
13.8	Reliance upon apparently genuine documents.....	27
13.9	Attributed tax indemnity	27
13.10	Trustee may limit liability for delegates.....	27
13.11	Indemnity only to extent permitted by law	27
14	AMENDMENTS.....	27
15	APPOINTMENT AND REMOVAL OF TRUSTEE.....	27
15.1	Appointment.....	27
15.2	Removal.....	27
15.3	Restrictions on removal/retirement	28
15.4	New appointment	28
15.5	Restrictions on new appointment	28
15.6	Release of Trustee	28
15.7	Release of records	28
16	WINDING UP THE SCHEME.....	28
17	MEMBERS BOUND BY TRUST DEED	29
17.1	Provisions benefit Members.....	29
17.2	No interference in management.....	29
18	LIMITATION OF MEMBERS' LIABILITY	29
18.1	No personal obligation to indemnify.....	29
18.2	Limited recourse to assets of the Scheme	29
18.3	No liability to contribute to any shortfall.....	29
19	NOTICES AND INFORMATION TO MEMBERS	30
19.1	Notices	30
19.2	Manner of notice	30
19.3	Signature of notice	30
19.4	Calculation of notice periods.....	30
19.5	Receipt of notice.....	30
20	TAXATION AND KIWISAVER MEMBER TAX CREDITS.....	31
20.1	PIE tax compliance	31
20.2	Information	34
20.3	Withholding tax from benefits.....	34
20.4	Provision of Information where the Scheme is a PIE.....	34
20.5	Changes in tax legislation	34
20.6	KiwiSaver Member Tax Credits	35

21	PAYMENTS TO MEMBERS.....	35
21.1	Method of payment.....	35
21.2	Satisfaction of moneys payable.....	35
22	TRANSFERS	35
23	AUDITOR	35
23.1	Appointment and remuneration	36
23.2	Removal/retirement.....	36
23.3	New appointment	36
23.4	Restrictions on Auditor	36
24	RELATED PARTY TRANSACTIONS	36
24.1	Related Party transactions prohibited.....	36
24.2	Trustee may not acquire in-house assets	36
24.3	Trustee or Related Party will not be liable.....	36
24.4	Failure to comply will not affect validity	36
24.5	Notice to FMA	36
25	MEETINGS	37
26	DELIVERY	37

Date: 10 August 2016

PARTIES

BCF Limited (*BCF*)

Arotahi Trust Limited (*Trustee*)

BACKGROUND

- A The BCF KiwiSaver Scheme (*Scheme*) is a KiwiSaver scheme registered under the KiwiSaver Act 2006 (*KiwiSaver Act*).
- B The Scheme was established and is governed by a trust deed dated 31 August 2010 (*Existing Deed*).
- C The Trustee and BCF wish to amend the Existing Deed by replacing the provisions of the Existing Deed with the provisions of this Trust Deed in order to comply with the requirements of the Financial Markets Conduct Act 2013 (*FMCA*) and the Financial Markets Conduct Regulations 2014 (*Regulations*) and make other amendments for the more efficient operation of the Scheme.
- D The Trustee is satisfied that no member consents are required under section 119 of the KiwiSaver Act to the amendments proposed in this Trust Deed.
- E Prior to executing this Trust Deed, the Trustee obtained a certificate from its solicitor as required by section 129 of the KiwiSaver Act.

BY THIS DEED, effective on and from the Effective Date:

- 1 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.
- 2 The Scheme is continued as a restricted KiwiSaver scheme for the purposes of the FMCA, on the basis set out in this Trust Deed.
- 3 The Trustee continues as the trustee of the Scheme upon and subject to the terms and conditions contained or implied in, or prescribed pursuant, to this Trust Deed, the FMCA and any other applicable legislation (and will observe and perform its obligations under this Trust Deed the FMCA and any other applicable legislation).

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 initial capitals are defined terms with 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 replacement and, in the case of a statute, any regulations made under that statute;
- (g) *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 Deed and all Members shall accept and be subject to the jurisdiction of the Courts of New Zealand;
- (h) *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 Deed; and
- (i) *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;

Brethren Member means a Member who:

- (a) the Trustee determines is a member of the Brethren Christian Fellowship; and
- (b) has not (to the Trustee's knowledge) ceased to break bread with the Brethren Christian Fellowship;

and any other person whom the Trustee, in its sole and absolute discretion, determines to treat as a Brethren Member;

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

Custodian means a person appointed to hold any of the assets of the Scheme under clause 9.4(c) 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 the date that the Trustee elects under clause 19(1)(a) of Schedule 4 to the FMCA to be the date that the Scheme is treated as a registered scheme under the FMCA;

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 or *Fund* means an Investment Fund established and maintained by the Trustee within a Pool under clause 10.4;

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 FMCA¹ and whose licence covers the Scheme;

Main Pool means the Pool maintained by the Trustee for all Brethren Members under clause 10.1;

Member means a natural person who has been admitted to membership 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 Income Tax Act;

PIE Tax Liability means in respect of the Scheme the tax liability for the Scheme as calculated under the Tax Act.

Pool means (as the case may be) the Main Pool or the Segregated Pool;

Register means the register of Members maintained for the Fund pursuant to the FMCA;²

Regulations means the Financial Markets Conduct Regulations 2014;

Segregated Pool means the Pool maintained under clause 10.1 primarily for Members who have ceased to break bread with the Brethren Christian Fellowship;

Related Party has the meaning given to it by the FMCA;³

Related Party Benefit has the meaning given to it by the FMCA;⁴

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

SIPO has the meaning given to it by the Regulations;⁵

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

¹ Section 131(3).

² Section 215

³ Section 172(2).

⁴ Section 172(1).

⁵ Regulation 5.

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

1.3 Terms defined in KiwiSaver Act

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

1.4 Terms defined in Income Tax Act

Each of the terms *Attributed PIE Income, Attributed PIE Loss, Attribution Period, Calculation Period, Income Tax Liability, Investor Class, Investor Interest, Net Income, Net Loss, Portfolio Investment Entity or PIE, Prescribed Investor Rate, Tax Credit, Tax File Number, Tax Loss, Tax Year* and *Taxable Income* has the meaning given to that term by section YA 1 of the Income Tax Act and is capitalised for ease of reference. If the relevant sections of the Income Tax Act are wholly or partly amended or replaced, then the provisions of this Deed relating to taxation of PIEs will be interpreted as necessary to give effect to their purpose in the context of the amended or successor sections of the Income Tax Act.

1.5 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.

1.6 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.⁶

⁶ Section 128(1)(b) of the FMCA.

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 performing the functions set out in the FMCA⁷, 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.⁸

- 2.4 In acting as the trustee of the Scheme, the Trustee must comply at all times with the requirements of the FMCA and the duties applicable to it as manager of the Scheme⁹.

2.5 Name of Scheme

The Scheme shall be known as the "BCF KiwiSaver Scheme". The Trustee (with BCF's consent, which may not be unreasonably withheld) may, by resolution, change the name of the Scheme at any time.

2.6 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 which the Trustee pays from the Scheme from time to time pursuant to this Trust Deed.

2.7 Assets held on trust

The Trustee shall hold the assets of the Scheme (and of each Pool and Investment Fund) on trust for the purposes of the Scheme and administer those assets in accordance with this Trust Deed.

2.8 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.

Reports, records and accounts

⁷ Section 142(1).

⁸ Sections 127, 128, 131 and 133.

⁹ Sections 142 to 151.

- 2.9 The Trustee shall ensure the preparation and distribution of annual reports for the Scheme in accordance with the requirements of the Regulations¹⁰.
- 2.10 The Trustee shall provide FMA with such reports and information (including, for the avoidance of doubt, in relation to SIPO limit breaks) as are required by the FMCA¹¹.
- 2.11 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
 - (c) the giving of receipts and discharges;
- in connection with the Scheme on behalf of the Trustee.
- 2.12 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 FMCA¹² and the Regulations¹³.
- 2.13 The Trustee shall keep or cause to be kept such accounting and other records as are required by law.¹⁴
- 2.14 The Trustee shall allow for inspection of the accounting records relating to the Scheme to the extent required by law.¹⁵

¹⁰ Regulations 62 and 63.

¹¹ Sections 147 to 151, 167 and 168 of FMCA and regulations 94 to 98 and 100 of Regulations.

¹² Sections 158 and 159.

¹³ Regulations 86 to 88.

¹⁴ Sections 158 and 455 to 458 of the FMCA.

¹⁵ Section 459 of the FMCA.

- 2.15 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.¹⁶

2.16 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 Regulations¹⁷. The Register may be kept electronically. Without limiting clause 5.4, The Trustee shall be entitled to treat the Register as being correct if it reasonably believes that the Register has been adequately maintained.

3 ADMISSION OF MEMBERS

3.1 Eligibility

The Trustee may invite any natural person to join the Scheme if the Trustee determines that:

- (a) the person is a member of the Brethren Christian Fellowship to whom section 6(1) of the KiwiSaver Act applies; and
- (b) the Trustee (in its sole and absolute discretion) determines to allow that person's admission to membership.

3.2 Admission

An eligible person may only be admitted to membership of the Scheme after:

- (a) 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
- (b) contracting directly with the Trustee to become a Member of the Scheme in accordance with the KiwiSaver Act;

and 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. The Trustee may 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 Cessation of membership

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

¹⁶ Section 460.

¹⁷ Sections 215 to 223 of the FMCA and regulations 109 and 110 of the Regulations.

- (a) receiving from the Scheme the Member's Interest in accordance with the KiwiSaver Scheme Rules;
- (b) transferring from the Scheme to another KiwiSaver Scheme, or to a superannuation scheme, 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.

3.4 **Re-admission to the Scheme**

If a person has ceased to be a Member under clause 3.3, then that person may only rejoin the Scheme with the specific written permission of the Trustee (and subject to compliance with clause 3.1 and any other conditions that the Trustee may impose).

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 admissions to membership of the Scheme or new elections to invest in a Pool or Investment Fund will be permitted, either for a specified period or until the Scheme (or the relevant Investment Fund) is terminated. In that case the Trustee shall not, after the date specified and for the relevant period, permit any further admissions to membership of the Scheme under this Trust Deed or action any new elections to invest in such Investment Fund.

3.6 **Equivalent but not specific interests**

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

- (a) shall be of one class and shall confer identical rights and interests relative to the size of each interest;
- (b) shall, confer on each Member an equivalent interest in all of the investments comprised in the Scheme (or the relevant Pool or 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 Pool or Fund (with the result that no Member will be entitled to require the transfer of any investment to the Member); and
- (c) shall not (while there are two or more Pools or Funds) confer any right or interest in the assets of any other Pool or Fund.

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.¹⁸

3.8 Rights of a Member are personal

Except as expressly provided in the KiwiSaver Act or otherwise required by law, a Member's interest or and any future benefits that will or may become payable to a Member under the Scheme must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.¹⁹

4 CONTRIBUTIONS**4.1 Contributions that must be accepted**

Members and employers shall contribute (and Members may, subject to and in accordance with applicable law, change the amount of contributions they are required to make) 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 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

¹⁸ Regulation 53.

¹⁹ Section 127 of the KiwiSaver Act 2006.

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

4.3 Tax Credits

If the Scheme is a PIE and receives a refund for Tax Credits in respect of Members or former Members, the Trustee may allocate that refund among the Members or former Members in such manner as the Trustee in its complete discretion considers 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 refund. Any amount allocated to a Member shall be treated as a Contribution to be invested in the Scheme (or, if applicable, the relevant Pool or 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 Credits received by the Scheme which the Trustee allocates to the Member Account;
- (e) where there are two or more Pools or Investment Funds, any amount comprised in the Member Account that is switched from one such Pool or Fund to another Pool or 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 (or that is otherwise required to be paid to the Commissioner in respect of the Member under the KiwiSaver Act);

- (h) any amount comprised in the Member 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;
- (i) the Permitted Withdrawal of any amount comprised in the Member Account;
- (j) where there are two or more Pools or Investment Funds, any amount comprised in the Member Account that is switched from one such Pool or Fund to another Pool or 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 Credits received by the Scheme which the Trustee allocates to the Employer Account;
- (d) where there are two or more Pools or Investment Funds, any amount comprised in the Employer Account that is switched from one such Pool or Fund to another Pool or Fund; and
- (e) investment returns (net of tax) calculated, in accordance with clause 6 (whether positive, negative or zero), at such rates 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 (or that is otherwise required to be paid to the Commissioner in respect of the Member under the KiwiSaver Act);

- (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 Pools or Investment Funds, any amount comprised in the Employer Account that is switched from one such Pool or Fund to another Pool or 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, subject to the requirements of clause 13 the Trustee:

- (a) shall be entitled to rely absolutely on those accounts and the Register as being correct; and
- (b) shall not be required to enquire into the authenticity of the accounts or the Register.

5.5 Members to notify changes

Any change to the 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 of the Scheme 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, a Pool or Investment Fund) for distribution to Members' Accounts, the Trustee shall calculate the net market value of the assets of the Scheme (or of that Pool or Fund) as frequently as the Trustee may consider necessary or desirable from time to time by deducting the liabilities attributable to the Scheme (or that Pool or 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, a Pool or Investment Fund) under clause 6.1 the Trustee shall determine the market value of each asset in the Scheme (or that Pool or Fund) on such basis as it considers 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, a Pool or Investment Fund) under clause 6.1 the Trustee shall determine the liabilities attributable to the Scheme (or that Pool or 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) while there are two Pools, apportion the liabilities of the Scheme generally between those two Pools on such basis as it considers appropriate; and
- (b) while there are two or more Investment Funds, apportion the liabilities of the Scheme or the Main Pool (as applicable) generally among those Funds on such basis as it considers appropriate; and
- (c) 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, a Pool or 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 the Scheme's annual balance date) 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 the Scheme's annual balance date).

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 FMCA²⁰ and the Regulations²¹:

- (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.

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-

²⁰ Section 168.

²¹ Regulations 97 to 99.

compliance with an FMA notice relating to pricing methodology, to the extent required by law.²²

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.²³

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), withdrawals of all or part of a Member's Accumulation must only be made in accordance with the KiwiSaver Act and the KiwiSaver Scheme Rules, and 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 Income Tax Liability.

7.2 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 to any switch between Pools or Investment Funds pursuant to clause 10, if (and for so long as) the Trustee determines that having regard to the realisation of assets 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.

8 SCHEME EXPENSES AND FORMATION COSTS

All costs, expenses, fees and tax which are payable by or to the Trustee in

²² Section 168 of the FMCA and regulations 97 to 99 of the Regulations.

²³ Section 168 of the FMCA and regulations 97 to 99 of the Regulations.

relation to the management and administration of the Scheme (including the fees of any Investment Manager, Administration Manager or Custodian) and which are to be paid from the assets of the Scheme, and all costs and expenses incurred in connection with the formation of the Scheme which have been charged to the Trustee and for which the Trustee has agreed to accept responsibility, may be either deducted from the assets of the Scheme, a Pool or an Investment Fund or charged to a particular Member's Account or Accounts, in such manner and at such time or over such period as the Trustee considers fair and equitable (provided that in any case all such charges must comply with rule 2 of the KiwiSaver Scheme Rules and 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 a SIPO for the Scheme which complies with the requirements of the FMCA).²⁴
- 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:
- (a) from time to time appoint and remove one or more persons as 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 and the Trustee shall be entitled to pay those fees and expenses from the assets of the Scheme;
 - (b) 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

²⁴ Section 164.

- (c) appoint and remove from office a Custodian (which must meet the requirements for such a person under the FMCA²⁵) 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). The Trustee shall be jointly and severally liable with the Custodian for the due and faithful performance and observance by the Custodian of all the duties and obligations imposed on it pursuant to this clause and otherwise by law.

9.5 If authorised in writing by the Trustee, a Custodian appointed under clause 9.4(c) 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 FMCA²⁶.

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 POOLS AND INVESTMENT FUNDS

10.1 Separate Pools

The assets of the Scheme shall be held by the Trustee in two separate and distinct pools, to be known as the "Main Pool" (intended for Brethren Members) and the "Segregated Pool" (intended primarily for Members who have ceased to break bread with the Brethren Christian Fellowship, as determined by the Trustee). The Main Pool and the Segregated Pool will each be a "Pool" for the purposes of this clause 10.

10.2 Exclusive assets and liabilities

Although the Scheme comprises a single trust fund and is treated as one KiwiSaver Scheme (with the statutes and other obligations applying to it construed accordingly) the assets of each Pool shall be the exclusive property of that Pool and all liabilities incurred in relation to a Pool shall be the exclusive liabilities of that Pool, and the Trustee shall in all respects act so as to give effect to these intentions. Without prejudice to the generality of the foregoing:

- (a) the assets held for a Pool shall not be available to meet the liabilities incurred in relation to the other Pool;

²⁵ Sections 127(1)(f) and 156(2).

²⁶ Section 156.

- (b) all investments made for a Pool shall be held by the Trustee as the exclusive property of that Pool and for the exclusive benefit of members who have an interest in that Pool;
- (c) the Trustee shall keep separate records and accounts in respect of each Pool and shall not permit the property, assets or liabilities of either Pool to become intermingled with those of the other Pool; and
- (d) the provisions of this Trust Deed relating to the indemnities in favour of the Trustee and the reimbursement of the Trustee shall be construed in a manner consistent with this clause, such that:
 - (i) any amount payable to the Trustee shall be payable from the Pool to which the matter giving rise to the amount relates; and
 - (ii) where an amount payable to the Trustee relates to more than one Pool, that amount shall be apportioned between the two Pools on such fair and equitable basis as the Trustee determines.

10.3 Members' Pools

Subject to clauses 10.10 and 10.11, the Trustee shall hold Brethren Members' Accounts in the Main Pool and other Members' Accounts in the Segregated Pool.

10.4 Investment Funds within a Pool

The Trustee at its sole discretion may establish and maintain separate Investment Funds within either Pool, or both Pools, designed to enable the relevant 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 from time to time determine. Those terms and conditions:

- (a) must be set out in a SIPO for the Investment Fund which complies with the requirements of the FMCA²⁷; and
- (b) may be amended or replaced by the Trustee from time to time subject to the requirements of the FMCA;

and the Trustee must comply at all times, in relation to the SIPO, with the requirements of the FMCA²⁸ and the Regulations²⁹, including ensuring that:

- (c) all moneys available for investment in an Investment Fund 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;³⁰ and

²⁷ Section 164.

²⁸ Sections 166 and 167.

²⁹ Regulations 94 to 96.

- (e) reports are provided to the FMA as to any breaches of the SIPO, as required by the FMCA and the Regulations.³¹

10.5 Each Pool is a Single trust fund

Notwithstanding the establishment of separate Investment Funds within a Pool the assets of that Pool shall continue comprising 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 assets of the relevant Pool (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 10.5(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 (subject to clause 20.1) the Trustee may 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 clause 10.2(b)) 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:

³⁰ Section 166.

³¹ Section 167 and Regulations 94 to 96

- (ii) any amount payable to the Trustee from a Pool 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 in the Pool); and
- (f) where an 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.

10.6 Winding up or alteration of Pool or Fund

The Trustee may at its discretion close, wind up or alter either Pool, or any Investment Fund, as and when (and on such terms and conditions) as it determines. If a Pool or Fund is wound up under this clause 10.6 then the Trustee must notify each Member with an interest in that Pool or Fund, specifying the Pool or Fund to which the Member will be transferred as a consequence.

10.7 Members in a Pool may choose Investment Fund(s)

If two or more Investment Funds are established within a Pool then the Trustee may permit a Member to choose the Investment Fund or Investment Funds in which that Member's savings will be invested from time to time. In exercising choices under this clause 10.7, Members shall comply with all rules prescribed by the Trustees from time to time regarding:

- (a) changing their choice of Fund or 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 Funds by Members whose account balances are held in the relevant Pool.

The Trustee shall also prescribe the default Investment Fund applying to the Member's Interest of a Member in the relevant Pool who does not select a Fund (and may prescribe different default Funds for different Members or groups of Members).

10.8 General

No direction by a Member under clause 10.7 shall exempt the Trustee from its responsibilities under the FMCA³².

10.9 Contrary intention

- (a) All monies available for investment in a Pool or Investment Fund shall be invested in accordance with the investment policy for that Pool or Fund,

³² Section 144.

which policy shall accord with investment principles as taught and generally accepted among the Brethren.

- (b) 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.

10.10 Member ceases to break bread with the Brethren

- (a) If the Trustee determines that a Member has ceased to break bread with the Brethren Christian Fellowship then, subject to clause 10.11, the Trustee may transfer the Member's Accounts from the Main Pool to the Segregated Pool to be held there until such time as:
 - (i) the Trustee determines that the Member has resumed breaking bread with the Brethren Christian Fellowship; or
 - (ii) the Member's Accounts are transferred from the Scheme to another KiwiSaver Scheme, or to a superannuation scheme, in accordance with the requirements of the KiwiSaver Act.
- (b) If the Trustee determines that the Member has resumed breaking bread with the Brethren Christian Fellowship then, subject to clause 10.11, the Trustee may at its discretion transfer the Member's Accounts from the Segregated Pool back to the Main Pool.

10.11 Requirements for transfers between Pools

The Trustee shall not invoke clause 10.10 in relation to a Member unless:

- (a) the Member has consented in writing, before or after becoming a Member, to his or her Member's Accounts being transferred:
 - (i) from the Main Pool to the Segregated Pool, should the Trustee determine that the Member has ceased to break bread with the Brethren Christian Fellowship; and
 - (ii) from the Segregated Pool to the Main Pool, should the Trustee determine that the Member has resumed breaking bread with the Brethren Christian Fellowship; and
- (b) the Trustee has given or sent to the Member, in accordance with clause 19 and no fewer than 5 Business Days before the proposed transfer, a written statement advising:
 - (i) the nature of and the reason for the proposed transfer; and

- (ii) how the Member's Accounts will be invested immediately post-transfer; and
- (iii) any implications that may materially affect the future investment returns the Member may receive and/or the fees to be debited from the Member's Accounts; and
- (iv) that the Member may transfer from the Scheme to another KiwiSaver Scheme or superannuation scheme, at any time, subject to the requirements of the KiwiSaver Act.

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) except where otherwise specified, determine all questions and matters of doubt arising in connection with the Scheme in any particular case, including determining any question as to permitting the admission of any applicant to membership of the Scheme;
- (b) appoint and remove any person as an Administration Manager, advisory trustee, agent or Custodian on terms and conditions and with such powers, duties, discretions, and remuneration as are agreed by the Trustee and the other person;
- (c) borrow or raise money for any purpose of the Scheme, a Pool 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 Pool or Fund;
- (d) apply any monies borrowed under clause 11.1(c) in any manner for the purposes of the Scheme which, in its absolute discretion, the Trustee thinks fit;
- (e) take such actions as the Trustee reasonably considers to be required in order to pay any refunds required or desirable under sections 59D, 81 and 101 of the KiwiSaver Act; and
- (f) do anything the Trustee considers necessary or expedient for the administration of the Scheme (and in addition to any other powers granted under this Trust Deed, the FMCA or by law, but subject to the FMCA, the

Trustee may do anything it considers necessary or expedient to enable it to discharge its duties under this Deed³³.

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 the Trustee or any director 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 (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions) to any person, with the same power to sub-delegate, including any Associated Person (as defined in the FMCA) of the Trustee, and to pay the fees and expenses payable to those persons (which shall be such fees as are agreed between any such person and the Trustee) 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:

- (a) must 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 directly³⁴; and
- (b) must take all reasonable steps to monitor the performance of those functions³⁵; and
- (c) at all times remains liable and responsible for the acts and omissions of any person appointed pursuant to this clause³⁶.

11.5 **Trustee Committees**

The Trustee may delegate the exercise of any of its powers to committees consisting of such persons (including such directors of the Trustee) as it thinks fit. Any committee so formed shall in the exercise of the powers delegated to it 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

³³ Section 135(1)(k)(ii).

³⁴ Section 146(2)(a)(i) of FMCA.

³⁵ Section 146(2)(a)(ii).

³⁶ Section 146(2)(b).

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 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 any such fees.

12.2 Alteration or waiver of fees

The Trustee may waive all or any of its fees or decrease those fees and (subject to section 117 of the KiwiSaver Act and rule 2 of the KiwiSaver Scheme Rules) the Trustee may increase the Trustee fees payable in respect of the Scheme or any Pool or Investment Fund or (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 FMCA, 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, a Pool or an Investment Fund, is deemed to be acting for and on behalf of the Scheme and not in its own 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

Subject to the indemnity limitations applying under the FMCA³⁷ 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 a Pool or Fund or any action taken or omitted in connection with the Scheme or a Pool or 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).

³⁷ Sections 135(1)(f) and 136(1)(b).

13.3 Reimbursement of Trustee

Subject to the indemnity limitations applying under the FMCA³⁸ 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 a particular Pool or Fund, 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 fail 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 and the FMCA.

13.5 Reliance upon advice

The Trustee may accept and act upon the opinion or advice of (or information obtained from) solicitors or other consultants 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 it by this Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise.

13.7 Trustee's limited liability to Members

Notwithstanding anything contained in this Trust Deed but subject to the indemnity limitations applying under the FMCA³⁹, 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 the Members to any greater extent than the investments vested in or received by the Trustee in accordance with this Trust Deed.

³⁸ Sections 135(1)(f) and 136(1)(b)

³⁹ Sections 135(1)(f) and 136(1)(b)

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 attributed under the Income Tax Act to a Member or 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 FMCA⁴⁰, 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 or any other person from, or indemnifying the Trustee or any other person against, any liability to the extent that doing so would be void under the FMCA or any other statute.⁴¹

14 AMENDMENTS

Subject to the restrictions in the FMCA⁴² and any other applicable legislation, this Trust Deed may at any time be amended by deed executed by BCF and the Trustee.

15 APPOINTMENT AND REMOVAL OF TRUSTEE**15.1 Appointment**

A corporate body with at least one director who is a Licensed Independent Trustee⁴³ shall be the trustee of the Scheme.

15.2 Removal

⁴⁰ Sections 135(1)(f) and 136(2).

⁴¹ Section 143(1) and 144.

⁴² Section 139.

⁴³ Section 131 (3)

Subject to the FMCA and clause 15.3, BCF may remove the Trustee from office upon giving the Trustee no fewer than 20 Business Days' written notice of such removal. The Trustee may otherwise be removed in the circumstances set out in the FMCA.⁴⁴

15.3 Restrictions on removal/retirement

Subject to the FMCA no removal under clause 15.2 will take effect until a new Trustee has been appointed pursuant to clause 15.4 and has executed the deed referred to in clause 15.5, and all of the investments of the Scheme have been vested in the new Trustee (or any permitted nominee).

15.4 New appointment

Subject to the FMCA the power of appointing a new Trustee of the Scheme is vested in BCF and shall apply upon the vacancy in office of the trustee of the Scheme.

15.5 Restrictions on new appointment

Any new Trustee must forthwith upon appointment execute a deed in such form as BCF may require whereby the new Trustee consents to being appointed as Trustee and undertakes to BCF 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.

15.6 Release of Trustee

From the date of execution by a new trustee of a deed in accordance with clause 15.5, 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 the 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. For the avoidance of doubt, the former Trustee shall be entitled to payment of all fees, and reimbursement of all expenses, incurred or accrued in respect of the Scheme before it ceased to hold office under this Trust Deed.

15.7 Release of records

A former Trustee must hand over records and give reasonable assistance to the new Trustee in accordance with the requirements of the FMCA.⁴⁵

16 WINDING UP THE SCHEME

The Trustee shall wind up the Scheme if BCF resolves in writing that the Scheme is to be wound up, or if the Scheme is required to be wound up by the FMCA.⁴⁶ If BCF resolves in writing that the Scheme is to be wound up then BCF shall as

⁴⁴ Section 185

⁴⁵ Section 190 of the FMCA.

⁴⁶ Sections 195 and 211.

soon as practicable copy that resolution to the Trustee, and the wind-up shall take effect on the date specified for that purpose in the resolution. In winding up the Scheme, the Trustee shall comply with the provisions of the FMCA and the KiwiSaver Act relating to the winding up of a KiwiSaver Scheme.⁴⁷

17 MEMBERS BOUND BY 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 the Trustee, and each Member, each former Member (to the extent a term or condition contains or affects that former Member's rights or obligations as a Member, notwithstanding that that former Member is no longer a Member) 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 MEMBERS' LIABILITY

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 thereby 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 or a Pool or Investment Fund as compared with the liabilities to be met from those assets.

18.2 Limited recourse to assets of the 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, a Pool or a Fund.

⁴⁷ Sections 171, 212 and 213 of the FMCA and sections 50 to 52 and subpart 3 of part 2 of the KiwiSaver Act.

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 either by hand delivery or by:

- (a) 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
- (b) 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 expiry of 2 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 pm 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 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, 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 determine, on such basis as the Trustee thinks appropriate at its complete discretion, the Taxable Income or any Tax Losses for each Investor Class for an Attribution Period and for a Tax Year, in each case for the purposes of the Income Tax Act;
- (k) to determine each Member's Investor Interest for any period, based on what that Member's proportionate interest in any distribution by the Scheme to Members would be in that period if such a distribution were to be made;

- (l) to determine, on such basis as the Trustee thinks appropriate at its complete discretion, the Scheme's PIE Income Tax Liability or Tax Credit, as the case may be, for the applicable Calculation Period, for the purposes of the Income Tax Act;
- (m) to elect (taking into account such factors as the Trustee considers relevant at its complete discretion) whether to determine the Scheme's PIE Income Tax Liability pursuant to the Income Tax Act, and to make any elections required to give effect to such determination;
- (n) to retain any amount to which a Member otherwise would be entitled if that amount must be paid to the Commissioner of Inland Revenue pursuant to the PIE Legislation;
- (o) 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;
- (p) the amounts of any rebates of tax available to the Scheme by virtue of any relevant provision in the PIE Legislation;
- (q) the amount of any rebate of tax referred to in paragraph (p) that is attributable to a Member and to make available to the Member the benefit of that rebate of tax in such manner as the Trustee considers appropriate at its complete discretion;
- (r) the amount of any Tax Credits available to be offset against income tax payable by the Scheme that are available to the Scheme;
- (s) the amount of any Tax Credit that is available to be attributed 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);
- (t) the amount of tax paid or payable by the Scheme that is attributable to a Member;
- (u) to carry out any other tax calculations, allocations or attributions required by the Income Tax Act;
- (v) 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), having regard to the effect of:

- (i) the Member's Prescribed Investor Rate; and
- (ii) the Member's Attributed PIE Income, Attributed PIE Loss and allocated Tax Credits as adjusted for any expenses and any other amount required by the Income Tax Act from time to time which the Trustee determines it is appropriate to charge to the particular Member,

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

- (w) to deduct or credit any amount on account of PIE Income Tax Liability from or to any withdrawal amount in respect of a Member on such basis as the Trustee considers necessary or desirable, whether in accordance with section HM 48 of the Income Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the withdrawal or switch of the Member's Interest) having regard to the effect of:

- (i) the Member's Prescribed Investor Rate; and
- (ii) the Member's Attributed PIE Income, Attributed PIE Loss and allocated Tax Credits as adjusted for any expenses and any other amount required by the Income Tax Act from time to time which the Trustee determines it is appropriate to charge on a Member specific basis,

on the Scheme's PIE Income Tax Liability and the amount of any Tax Credits under the Income Tax Act or, where the Trustee and the Member have agreed in writing, to reflect an income tax liability, right or benefit of another trust in respect of that Member's current or prior interest in that other trust;

- (x) to elect to offset tax liabilities and refunds in respect of more than one Pool or more than one Investment Fund or more than one Member, to the extent permitted by the Income Tax Act, and to make such adjustments as the Trustee thinks fit;
- (y) to allocate the costs associated with the Scheme being a PIE between Members (and, where applicable, Pools or Funds) on such basis as the Trustee thinks appropriate, to the extent practical;;
- (z) to take all steps that the Trustee considers necessary or desirable to ensure that the Scheme is or remains eligible to be 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 Pool or Investment

Fund to another as if the Trustee had received a request to that effect from the relevant Member pursuant to clause 11;;

- (aa) to require that on request from the Trustee at any time a Member must confirm his or her Tax File Number, Prescribed Investor Rate and any other information required by the PIE Legislation; and
- (bb) to disclose any information, including issuing any statements and providing any information to Members, required by PIE Legislation in respect of its tax position in relation to the Scheme (including pursuant to section 31B of the Tax Administration Act 1994), and to provide any information (including personal information) to the Commissioner (including pursuant to section 57B of the Tax Administration Act 1994) 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 the Trustee may take all other steps and 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 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 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.

20.4 Provision of Information where the Scheme is a PIE

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 if the Trustee requests a Member to provide information to the Trustee pursuant to this clause, the Member shall supply such information within 30 days of the request.

20.5 Changes in tax legislation

Without limiting clause 1.4, 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 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 section numbers (or 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 section numbers (or defined terms) as amended by the Revision.

20.6 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; and
- (b) to require a Member or other person 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 had his or her principal place of residence in New Zealand.

21 PAYMENTS TO MEMBERS

21.1 Method of payment

Subject to the KiwiSaver Act, any moneys payable by the Trustee to a Member (or in respect of the Member following his or her death) pursuant to this Trust Deed may be paid by cheque or direct credited to any bank account nominated by the Member (or the permitted recipient).

21.2 Satisfaction of moneys payable

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

22 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.

23 AUDITOR

23.1 Appointment and remuneration

The Trustee shall appoint as Auditor of the Scheme a person qualified in terms of the FMCA⁴⁸ and entitled by law to act as such, to provide services in accordance with the requirements of the FMCA and the Regulations.⁴⁹ 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.

23.2 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.

23.3 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 23.1.

23.4 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.

24 RELATED PARTY TRANSACTIONS**24.1 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.⁵⁰

24.2 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.⁵¹

24.3 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 24.1.

24.4 Failure to comply will not affect validity

A failure to comply with clause 24.1 does not affect the validity of a transaction (subject to any Court order to the contrary).⁵²

24.5 Notice to FMA

The Trustee must provide the FMA with such reports on transactions that provide

⁴⁸ Section 461E.

⁴⁹ Section 218 of the FMCA and regulations 108 and 109 of the Regulations.

⁵⁰ Sections 172 to 175.

⁵¹ Section 176 and clause 39 of Schedule 4.

⁵² Section 173(6) of the FMCA.

for Related Party Benefits as are required by the FMCA and the Regulations⁵³.

25 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.⁵⁴ A meeting of Members shall be conducted in accordance with the requirements of the FMCA and the Regulations.⁵⁵

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

The parties acknowledge that this deed may be executed in several counterparts, shall be binding on the parties when each has executed an identical copy and shall be treated as having been made when the last party executes a copy.

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

BCF Limited by:



Director

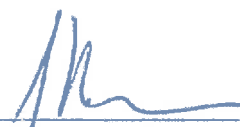


Director

Arotahi Trust Limited by:



Director



Director

⁵³ Section 147 and regulation 100.

⁵⁴ Sections 161 to 163 of FMCA and regulation 83 of Regulations.

⁵⁵ Sections 162 and 163 of the FMCA and regulations 83 and 91 of (and Schedule 11 to) the Regulations.