

Beca Super Scheme Trust Deed

Beca Corporate Holdings Limited (Company)

BGS Trustee Limited (Trustee)



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BECA SUPER SCHEME TRUST DEED

Date: 18 July 2022

PARTIES

Beca Corporate Holdings Limited, a company incorporated in New Zealand having its registered office in Auckland (*Company*)

BGS Trustee Limited, a company incorporated in New Zealand having its registered office in Auckland (*Trustee*)

BACKGROUND

- A The Beca Super Scheme (*Scheme*) is an employer-related workplace savings scheme registered under the Financial Markets Conduct Act 2013 (*Act*).
- B The Scheme was established by a trust deed dated 15 June 2007 and is currently governed by a trust deed dated 29 May 2020 (*Existing Deed*).
- C The Trustee wishes to amend the Existing Deed by substituting this Deed for the Existing Deed in order to:
- C.1 allow for an employee of a Participating Company who has reached New Zealand Superannuation age to become a Member if invited by a Participating Company to join the Scheme;
 - C.2 enable a Participating Company to determine at its discretion (with the relevant Member's agreement and after consulting with the Trustee) that a Member who is employed permanently but for fewer than 24 hours per week remains in *Service* as defined for Scheme purposes; and
 - C.3 make other minor amendments to address the Trusts Act 2019 or for the more efficient operation of the Scheme.
- D Subject to the requirements of the Act, the Trustee is authorised by clause 3.35 of the Existing Deed to amend the Existing Deed with the Company's consent and the Company (as evidenced by its execution of this Deed) grants that consent.
- E The Financial Markets Authority has consented, pursuant to sections 131(1)(c), 139(1)(a) and 139(2)(a)(ii) of the Act, to the amendments comprised in this Deed.
- F The Trustee has obtained a certificate from its solicitor to the effect that the Existing Deed, as amended by this Deed, will continue complying with sections 135 to 137 of the Act on the basis set out in the certificate.

BY THIS DEED, the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Deed so that the Fund (as defined in clause 1.2) will continue being held on the same trusts as before and the Scheme will be operated, administered and governed in accordance with the provisions of this Deed.



1 INTERPRETATION AND DEFINITIONS

Interpretation

1.1 In this Trust Deed, unless the context otherwise requires:

- (a) *Defined terms*: words or phrases (other than proper names) appearing with capitalised initial letters are defined terms and have the meanings given to them in this Trust Deed;
- (b) *Headings*: the headings in this Trust Deed are for convenience only, and shall not affect its interpretation;
- (c) *Footnotes*: footnotes used in this Trust Deed do not form part of this Trust Deed, are a guide only and (where they refer to legislative provisions) are not intended to incorporate those provisions in this Trust Deed or affect the interpretation of this Trust Deed;
- (d) *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;
- (e) *Singular, plural and gender*: the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (f) *Clauses and Schedules*: references to clauses and schedules are to clauses of and schedules of this Trust Deed;
- (g) *Statutory references*: any reference to a statute or regulation includes an amendment or re-enactment and, in the case of a statute, includes any regulations made under that statute;
- (h) *Governing law*: this Trust Deed shall be governed and construed, and shall take effect, in accordance with the laws of New Zealand, with all parties to this Trust Deed accepting and being subject to the jurisdiction of the courts of New Zealand;
- (i) *Implied terms*: terms implied into this Trust Deed under the Act and Regulations will apply for so long as the relevant provisions of the Act or the Regulations remain operative (despite anything to the contrary in the Trust Deed) and any provision in the Trust Deed that is contrary to any such implied term will be void to the extent that it is contrary;
- (j) *Act and Regulations prevail*: notwithstanding any other provision of this Trust Deed, in the event of any inconsistency between the Trust Deed and the Act or the Regulations, the Act and the Regulations will prevail;
- (k) *Frameworks or methodologies*: where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Scheme and relate to any matter which is required by the Act to be provided for adequately in this Trust Deed, the provisions of this Trust Deed which deal with such matters shall be deemed to be modified to the



extent necessary to be consistent with such frameworks or methodologies in respect of the Scheme;

- (l) *References:* Any reference:
- (i) to an account established, maintained, credited or debited, an election or nomination made or any other action taken or thing done (each an *Action*) under, in accordance with or pursuant to a provision of this Trust Deed at or in respect of a date before the date of entry into force of this Trust Deed (*Relevant Date*) shall be a reference to an equivalent Action taken under, in accordance with or pursuant to a materially corresponding provision in the deed governing the Scheme as at the Relevant Date; and
 - (ii) to the operation or effect of a provision of this Trust Deed at or in respect of a date before the Relevant Date shall be a reference to the operation or effect of a materially corresponding provision in the deed governing the Scheme as at the Relevant Date; and
- (m) in the event of any inconsistency between a provision in this Trust Deed and a provision in the Trusts Act 2019 (*Trusts Act*) that applies to the Scheme unless modified or excluded by the express or implied terms of this Trust Deed:
- (i) to the extent permitted by the Trusts Act, that Trust Deed provision prevails and the Trusts Act provision is deemed modified or excluded (as appropriate) by this Trust Deed; and
 - (ii) where modification or exclusion of the relevant Trusts Act provision is not permitted, any provision in this Trust Deed that is contrary to that Trusts Act provision is void to the extent that it is contrary.

Definitions

1.2 In this Trust Deed, unless the context otherwise requires:

Act means the Financial Markets Conduct Act 2013;

Associated Company means any company or other body which is a related body corporate of the Company within the meaning of the Act and which the Company may designate as an Associated Company;

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

Base Salary in respect of a Member means at any date the Member's annual rate of gross salary or wages (excluding allowances, overtime, bonuses, commissions and other extra payments, and Director's fees in the case of a Member who is a Director) received from a Participating Company, PROVIDED THAT:

- (a) in any particular case a Member's "Base Salary" shall be the amount last advised to the Trustee by the Company or the Participating Company (as the case may be); and



- (b) if a Member's base remuneration from a Participating Company is reduced for the purpose of any arrangement whereby the Participating Company contributes to a Special Employer Account then, for the purposes of this Trust Deed, the Member's Base Salary shall be determined as if the reduction had not occurred;

BASP Beneficiary means a Member who has joined the Scheme and/or had account balances transferred to the Scheme from the Beca AMEC Superannuation Plan as a result of a compulsory transfer under section 9BAA of the Superannuation Schemes Act 1989;

Commissioner means the Commissioner of Inland Revenue as defined in section 31 of the Tax Administration Act 1994;

Company means Beca Corporate Holdings Limited and includes any other company which takes its place as a party to the Trust Deed under clause 4.4;

Complying Fund Rules means complying fund rules as defined in section YA 1 of the Income Tax Act;

Complying Superannuation Fund means a workplace savings scheme that is identified as a complying superannuation fund on the register of managed investment schemes maintained under the Act (and in paragraph 4(b) of Schedule 1, means the section of that scheme that is subject to Complying Fund Rules);

Custodian means the Trustee or a person appointed to hold the whole or any part of the Fund under clause 3.19(c), and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold the whole or any part of the Fund under clause 3.20.

Deferred Locked-in Benefit means a benefit provided, or to be provided, under paragraph 9 of Schedule 1;

Deferred Standard Benefit means a benefit provided, or to be provided, under paragraph 4 of Schedule 2;

Derivative means any derivative financial instrument (including, without limitation, a forward exchange contract, swap agreement, futures contract, option and any form of agreement creating a contingent liability);

Director means a director of the Trustee;

Equivalent Overseas Scheme means an equivalent overseas retirement scheme as defined in the Regulations;¹

Existing Plan means another Retirement Scheme which is sponsored by a Participating Company and is advised to the Trustee as an Existing Plan (and

¹ Regulation 82(3).



includes, for the avoidance of doubt, the Beca Group Superannuation Plan);

FMA means the Financial Markets Authority or any successor entity;

Fund means the assets of the Scheme for the time being held by the Trustee (and/or by a Custodian appointed pursuant to clause 3.19(c) or clause 3.20) for Scheme purposes, including the contributions and other assets referred to in clause 2.5;

Government Contributions means the member tax credits provided for in subpart MK of the Income Tax Act and paid to the Scheme in respect of a Member;

Grandparented Member means a Member for whom any of the following dates is before 1 July 2019:

- (a) the date when the Member first became a member of a KiwiSaver Scheme;
- (b) the date (under section 85 of the KiwiSaver Act) when the Commissioner first received a contribution for a KiwiSaver Scheme in respect of the Member; or
- (c) the date when the Member first became subject to the provisions of Schedule 1;

but does not include a Member who has given their KiwiSaver Scheme provider or the Trustee notice of an election that (as applicable) the *grandparented member* definition in the KiwiSaver Act or this definition does not apply to them;

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

KiwiSaver Act means the KiwiSaver Act 2006;

KiwiSaver Regulations means regulations made under section 228 of the KiwiSaver Act;

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;

Licensed Independent Trustee means a licensed independent trustee for the purposes of the Act whose licence covers the Scheme and who is independent as defined in the Act;²

Locked-in Balance in respect of a Member who is subject to the provisions of Schedule 1 means at any date the total balances in the Member Complying

² Section 131(3).



Account and Employer Complying Account maintained for the Member;

Locked-in Payment Date means, in relation to a Member who is subject to the provisions of Schedule 1, the date specified in paragraph 4 of Schedule 1;

Member means a natural person who has been admitted to membership of the Scheme and is (or may become) entitled to benefits from the Scheme;

NZSA means in relation to a Member the age specified in section 7 of the New Zealand Superannuation and Retirement Income Act 2001;

Participating Companies includes the Company and any Associated Company admitted to participation in the Scheme in accordance with clauses 4.1 and 4.2, and "Participating Company" in respect of a Member or employee means the company by which the Member or employee is employed;

Personal Representative means a personal representative as defined in section 4(1) of the KiwiSaver Act;

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

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

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

Register means the register of Members maintained for the Scheme pursuant to the Act;³

Regulations means the Financial Markets Conduct Regulations 2014;

Related Party has the meaning given to it by the Act;⁴

Related Party Benefit has the meaning given to it by the Act;⁵

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

Salary in respect of a Member means at any date the Member's annual rate of gross salary or wages (as defined in section 4(1) of the KiwiSaver Act) received from a Participating Company, PROVIDED THAT a Member's Salary for the purpose of determining a Participating Company's required rate of contributions to the Scheme will exclude, to the extent permitted by the KiwiSaver Act:

(a) parental leave payments out of public money; and

³ Section 215.

⁴ Section 172(2).

⁵ Section 172(1).



- (b) statutory loss of earnings compensation;

Scheme means the Beca Super Scheme;

Service means at any date continuous permanent employment with one or more Participating Companies either:

- (a) on a fulltime basis; or
- (b) with a Member's agreement, for no fewer than:
 - (i) 24 hours per week; or
 - (ii) such lesser number of hours per week as the relevant Participating Company may determine at its discretion (and after consultation with the Trustee);

and includes:

- (c) employment as a director; and
- (d) any period of employment (determined by the Trustee at the request of the Participating Company) before the date when the Member became a Member.

In the event of any doubt as to whether the requirements of *Service* have been fulfilled, the decision of the Company shall be final;

SIPO has the meaning given to it by the Regulations;⁶

Total Credit in respect of a Member means at any relevant date the total balances in the Member Complying Account, Employer Complying Account, Member Savings Account, Employer Savings Account and Special Employer Account (as applicable) maintained for the Member, together with the total balances in any accounts maintained for the Member under Schedule 3;

Totally and Permanently Disabled means:

- (a) in respect of a Member who is a member of an Existing Plan, that the Member has suffered "Total and Permanent Disablement" as defined in or pursuant to the relevant provisions of that Existing Plan's trust deed; and
- (b) in respect of any other Member to whom paragraph 2.1(b) of Schedule 2 applies, that the Member has satisfied the conditions required for payment of a disablement benefit under any policy of insurance applying pursuant to paragraph 2.1(b) of Schedule 2;

and, in each case, "Total and Permanent Disablement" shall have a corresponding

⁶ Regulation 5.



meaning;

Trust Deed means this trust deed, as amended from time to time; and

Trustee means BGS Trustee Limited or such other person who is appointed as trustee for the time being of the Scheme and, where the context requires or allows, this term includes any Custodian.

2 PURPOSES AND CONTINUATION OF THE SCHEME

Purposes of the Scheme

2.1 The purposes of the Scheme are to provide:

- (a) retirement benefits directly or indirectly to Members; and
- (b) benefits to Members on ceasing employment with a Participating Company (whether immediately on ceasing that employment or subsequently).

Continuation of Scheme

2.2 The Scheme is continued as an employer-related restricted workplace savings scheme for the purposes of the Act on the terms and conditions contained in this Trust Deed.

2.3 The Fund shall (subject to clauses 3.19(c) and 3.20) continue being held on trust by the Trustee for the purposes of the Scheme in accordance with the requirements of the Act and the Regulations⁷.

Trust Deed binding

2.4 The Scheme shall be administered by the Trustee in accordance with the provisions of this Trust Deed, which shall be binding on the Participating Companies, the Trustee, Members and former Members (and any person claiming under this Trust Deed) as if each of them were a party to this Trust Deed.

Composition of Fund

2.5 The Fund shall consist of:

- (a) all contributions paid to the Scheme by Members and Participating Companies and all Government Contributions paid to the Scheme for Members' benefit;
- (b) any assets transferred to the Scheme; and
- (c) income from any source whatsoever, together with all other property received, derived or acquired by the Trustee for Scheme purposes,

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

⁷ Sections 156(2) and 157 to 159.



- Participating Companies or Trustee to pay expenses of management**
- 2.6 The expenses of the management and administration of the Scheme shall be met by the Trustee out of the Fund or by the Participating Companies, as the Company and the Trustee shall from time to time agree. If no agreement is reached, the Company shall decide by whom the expenses are paid.

3 **TRUSTEE: ITS ROLE, POWERS AND DUTIES**

Trustee is Manager

- 3.1 The Trustee is the manager of the Scheme for the purposes of the Act and is responsible for performing the functions and duties attributed to it as manager of the Scheme under the Act⁸, and must ensure that the Scheme complies (and continues to comply) with, and that the Trustee meets (and continues to meet) all initial and ongoing registration requirements applying to the Scheme and the Trustee under the Act.⁹

Compliance with Act

- 3.2 In acting as the Trustee of the Scheme, the Trustee must comply at all times with the requirements of the Act and the duties applicable to it as manager of the Scheme.¹⁰

Name of Scheme

- 3.3 The Trustee may, subject to compliance with all legal and regulatory requirements, change the name of the Scheme by resolution at any time. The Trustee shall notify Members of any change of name of the Scheme when next convenient for the Trustee.

Corporate Trustee

- 3.4 The sole Trustee of the Scheme shall be a corporate body that has:
- (a) at least one Director who is a Licensed Independent Trustee; and
 - (b) at least one Director who is a New Zealand resident as defined in section YA 1 of the Income Tax Act;

PROVIDED THAT the corporate body is permitted under the Act (and any other applicable legislation) to be the trustee of the Scheme and has complied with all applicable registration requirements.

Power of appointment and removal

- 3.5 Subject to clause 3.4 and the requirements of the Act, the Company shall have power by deed to remove the Trustee and may by deed appoint in its place another corporate body as Trustee. The Trustee or the Licensed Independent Trustee must also be removed if required under the Act.¹¹

⁸ Section 142(1).

⁹ Sections 127, 130, 131 and 133.

¹⁰ Sections 142 to 151.

¹¹ Section 185.



Power of investment

- 3.6 The Trustee shall invest the Fund in accordance with the provisions of the Act as to the investment of trust funds and the Trustee and any investment manager of the Scheme shall, in exercising the power of investment, exercise the care, diligence and skill required by section 144 of the Act.
- 3.7 The Trustee must ensure there is a SIPO for the Scheme that complies with the requirements of the Act,¹² and the Trustee must comply at all times in relation to the SIPO with the requirements of the Act¹³ and the Regulations¹⁴ including, without limitation, ensuring that all moneys available for investment are invested in accordance with the SIPO.
- 3.8 The Trustee may at any time amend or replace the SIPO and must lodge any change to the SIPO with the Registrar of Financial Service Providers.¹⁵
- 3.9 Subject to clause 3.7, the Trustee may enter into, perform, close out and alter Derivatives for the purpose of investment, risk management or technical asset allocation implementation or for any other purpose, and authorise (subject to the provisions of the Trust Deed and to such other terms and conditions as the Trustee sees fit) any investment manager appointed under clause 3.19(a) to enter into, perform, close out or alter Derivatives for any purpose.

Transfer into Scheme

- 3.10 If a Member who is in Service is entitled to a benefit under any other Retirement Scheme the Trustee may accept from that other Retirement Scheme a transfer value which the manager thereof may be authorised to pay or transfer to the Scheme in respect of that Member and in the event that the Trustee accepts that transfer value it shall confer on the Member such rights under the Scheme in addition to the rights normally available to a Member in respect of his or her membership of the Scheme as are determined by the Trustee.

Transfer out of Scheme

- 3.11 Subject to paragraph 8.2 of Schedule 1, if a Member ceases to be such and becomes a member of another Retirement Scheme or an Equivalent Overseas Scheme (*the Transferee Plan*) the Trustee shall (if the Member requests and the transfer is legally permitted) instead of granting the Member the benefits to which he or she is entitled under the Scheme transfer to the Transferee Plan a transfer value determined by the Trustee to be equivalent in value to those benefits so that the Member shall become entitled to such rights under the Transferee Plan as may be agreed between the Trustee and the manager of the Transferee Plan.

Power to borrow

- 3.12 The Trustee may borrow any money for the purposes of the Scheme upon such terms and conditions as the Trustee in its absolute discretion thinks fit and may

¹² Section 164.

¹³ Sections 166 and 167.

¹⁴ Regulations 94 to 96.

¹⁵ Section 166 of the Act.



also charge all or any part of the Fund with repayment and payment of interest on any moneys so borrowed.

General power

- 3.13 Subject to the Act, the Trustee may in its absolute discretion enter into all such contracts, deeds and documents and do all such acts, matters and things as it may deem expedient for the purpose of securing the benefits mentioned in the Trust Deed or for otherwise effecting and carrying out the trusts, authorities, powers and discretions conferred on the Trustee in the Trust Deed.

Trustee's procedures

- 3.14 The Trustee shall be free to make rules or to adopt procedures appropriate for the convenient administration of the Scheme so long as those rules or procedures do not conflict with, alter or add to the terms of this Trust Deed and comply with any relevant requirements in the Act.

Receipts, cheques etc

- 3.15 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 or persons 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 (whether or not for policy moneys or payments);

in connection with the Scheme on behalf of the Trustee.

Third party indemnities

- 3.16 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 and reimburse out of the Fund;

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

¹⁶ Sections 135(1)(f) and 136(2).

**Trustee may benefit**

- 3.17 A Director or shareholder of the Trustee, being a Member, may retain for his or her own absolute benefit subject to the conditions of the Scheme all moneys and benefits accruing to or in respect of him or her as a Member and no decision of the Trustee or exercise of any power by the Trustee shall be invalidated on the ground that the Director or shareholder had a direct or personal interest in the result of any such decision or in the exercise of any power under the Trust Deed.

Reliance on professional advice

- 3.18 The Trustee may in managing, operating or administering the Scheme rely upon the advice or opinion (whether or not obtained by the Trustee) of any professional person or upon any advice the Trustee may obtain directly or indirectly from any company, firm or person as shall in its opinion be qualified to advise the Trustee and, subject to the requirements of the Act, shall not be responsible for any loss occasioned thereby. The fees, expenses, charges and costs of obtaining any such advice (which shall be as agreed between the Trustee and that adviser) shall form part of the expenses incurred by the Trustee in connection with the Scheme and shall be paid in accordance with clause 2.6.

Appointment of managers and Custodian

- 3.19 Without prejudice to the powers conferred upon the Trustee by general law or by clause 3.22 the Trustee with the consent of the Company may:
- (a) appoint and remove an administration manager (whether a company or an individual) in relation to the management, operation or administration of the Scheme on terms to be agreed between the Trustee and the administration manager;
 - (b) appoint and remove one or more investment managers (whether companies or individuals) to the Scheme on terms to be agreed between the Trustee and each such investment manager, with the investment managers having such powers and duties in relation to investing the whole or any part of the Fund (including the power to determine and make particular investments in accordance with the provisions of clause 3.6) as the Trustee decides; and
 - (c) by deed appoint, and remove from office as appropriate, a Custodian (which must meet the requirements for such a person under the Act¹⁷) to hold the whole or any part of the Fund on trust for the Scheme in accordance with the requirements of the Act¹⁸ on terms to be agreed between the Trustee and the Custodian;

and any fees, expenses, charges and costs of obtaining the services of any such administration manager, investment manager or Custodian (which shall be as agreed between the Trustee and that service provider) shall form part of the expenses incurred by the Trustee in connection with the Scheme and shall be

¹⁷ Sections 127(1)(f) and 156(2).

¹⁸ Section 157.



paid in accordance with clause 2.6.

Sub-custodian

- 3.20 If authorised in writing by the Trustee, a Custodian appointed under clause 3.19(c) may itself appoint one or more sub-custodians in which the whole or any part of the Fund is to be vested. Any sub-custodian appointed under this clause 3.20 must meet the requirements for such a person under the Act¹⁹.

Liability for sub-custodian

- 3.21 The Trustee and the Custodian shall be jointly and severally liable with the appointed sub-custodian for the due and faithful performance and observance by the sub-custodian of all the duties and obligations imposed on it in relation to the Scheme pursuant to clause 3.20 and the Act²⁰.

Power to delegate

- 3.22 Without limiting clause 3.19 and clause 3.20, the Trustee may delegate the performance of all or any of the Trustee's powers, authorities, functions and discretions under the Act or this Trust Deed to any person, with the same power to sub-delegate, and any fees, expenses, charges and costs of any such delegate (which shall be as agreed between the Trustee and that delegate) shall form part of the expenses incurred by the Trustee in connection with the Scheme and shall be paid in accordance with clause 2.6, PROVIDED THAT the Trustee:

- (a) must comply with the requirements of the Act²¹ if delegating or contracting out any of its functions as manager of the Scheme; and
- (b) at all times remains liable for the acts and omissions of any delegate appointed pursuant to this Trust Deed (whether or not the delegate is acting within the terms of its delegated authority).

Trustee's remuneration and payments

- 3.23 Subject to clause 11, any one or more of the Directors (including the Licensed Independent Trustee) may be remunerated out of the Fund or by the Company at a rate approved by the Company, and a Director who is engaged in any profession or business may charge and be paid all usual charges for business done by him or her or by his or her firm or company in connection with the Scheme.

Trustee's liability and indemnity

- 3.24 No provision of this Trust Deed has the effect of exempting the Trustee or any Director from, or indemnifying the Trustee or any such Director against, any liability to the extent that doing so would be void under the Act or any other statute²².

¹⁹ Section 156.

²⁰ Section 156(5).

²¹ Section 146.

²² Sections 143(1) and 144 of the Act.



3.25 Subject to the indemnity limitations applying under the Act²³ and to the maximum extent permitted by law, the Trustee and every Director shall except in the cases of fraud or wilful negligence be entitled to be indemnified out of the Fund in respect of all liabilities and expenses incurred by the Trustee in the execution or purported execution of the trusts of the Scheme or in the exercise of any powers, authorities or discretions vested in the Trustee by the Trust Deed and against all actions, proceedings, costs, expenses, claims or demands in respect of any matter or thing done or omitted in any way relating to the Trust Deed and the Trustee may retain and pay out of the Fund all sums necessary to give effect to such indemnity.

Accounting records

3.26 The Trustee shall ensure that there are kept (in such form as it may determine) such accounting records as are necessary for the proper administration or operation of the Scheme²⁴, containing the information required by the Act²⁵, and shall cause financial statements to be prepared in accordance with generally accepted accounting practice, audited and lodged with the Registrar of Financial Service Providers in respect of the Scheme and made available for public inspection in accordance with the Act²⁶.

Asset records

3.27 Without limiting any other provision of this Trust Deed, the Trustee must ensure that the Custodian keeps and reconciles, 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 any asset of the Scheme 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 Scheme) in accordance with the requirements of the Act²⁷ and the Regulations²⁸.

Register

3.28 The Trustee shall ensure that a Register is maintained in New Zealand in respect of the Scheme which is kept in the manner, contains the information, is audited and is available for inspection as required by the Act and the Regulations²⁹. The Register may be kept electronically³⁰. The Trustee shall be entitled to treat the

²³ Sections 135(1)(f) and 136(1)(b).

²⁴ Sections 455 to 458 of the Act.

²⁵ Section 455.

²⁶ Sections 459 to 461H.

²⁷ Sections 158 and 159.

²⁸ Regulations 86 to 88.

²⁹ Sections 215 to 223 of the Act and regulations 109 and 110 of the Regulations.

³⁰ Section 216(2)(a) of the Act.



Register as being correct if it reasonably believes that the Register has been adequately maintained.

Earnings rates

- 3.29 (a) For the purpose of calculating entitlements under a Schedule from time to time, the Trustee shall determine the net market value of the Fund using a methodology determined by it from time to time which accords with generally accepted accounting practice as defined in the Act.
- (b) The Trustee shall determine from time to time (but no less frequently than as at monthly intervals) an earnings rate or rates (whether positive, negative or zero) to be applied in accordance with the relevant Schedule using a methodology determined by the Trustee from time to time and taking into account (without limitation):
- (i) the amount of income received and accrued in respect of the Fund, including the amount of any gain or loss ascertained in relation to the revaluation of any part of the Fund and any tax payable in respect of that income or revaluation;
 - (ii) the nature of the investments and the investment performance of the Fund and the extent to which gains are realised or unrealised;
 - (iii) taxation liabilities and provisions;
 - (iv) the liquidity of investments; and
 - (v) such other factors as the Trustee may consider relevant (including the need to provide for expenses, fees, charges or costs associated with the operation and administration of the Scheme and the investments of the Scheme);
- and the Trustee shall also as soon as practicable after the end of each Scheme year determine an earnings rate for the Scheme with respect to that year using a methodology determined by the Trustee from time to time taking into account not only the preceding factors but also the Scheme's audited financial statements for that year.
- (c) Such earnings rate or rates (whether positive, negative or zero) shall be applied in accordance with the relevant Schedule at such times and in such manner as the Trustee determines from time to time.
- (d) When a Member becomes entitled to a benefit, earnings as determined by the Trustee shall be credited or debited in respect of the benefit then payable (using a methodology determined by the Trustee from time to time) for the period between the last date as at which accounts were credited or debited with an earnings rate or rates in accordance with clause 3.29(c) and the date on which the benefit is paid.



Earnings rate corrections

3.30 The Trustee shall to the extent required by the Act³¹ and the Regulations³²:

- (a) correct any material error or non-compliance in an earnings rate or rates determination made pursuant to clause 3.29(b) or (d); 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.

- 3.31 The Trustee shall report to the FMA any material error in an earnings rate or rates determination made pursuant to clause 3.29(b) or (d), or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law³³.
- 3.32 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 Act³⁴.

Payment of death benefits

3.33 Any lump sum payable from the Scheme following the death of a Member shall be paid to the Member's Personal Representative.

Amendments to Trust Deed

3.34 Subject to the requirements of the Act³⁵ and any other applicable legislation, the Trustee (with the consent of the Company) may at any time by deed amend, add to, revoke or replace (in whole or in part) any provision of this Trust Deed, and must lodge notice of such amendment or replacement deed with the Registrar of Financial Service Providers as required by the Act³⁶.

Information to Members

- 3.35 The Trustee shall provide Members with all information, notices and disclosures required to be given to Members under the Act³⁷.
- 3.36 Each Member shall be given annual confirmation information in accordance with

³¹ Section 168.

³² Regulations 97 to 99.

³³ Section 168 of the Act and regulations 97 to 99 of the Regulations.

³⁴ Section 168 of the Act and regulations 97 to 99 of the Regulations.

³⁵ Section 139.

³⁶ Section 141.

³⁷ Sections 96, 97 and 100 of the Act and regulations 56(2) and 62 of the Regulations.



the Act³⁸ and the Regulations³⁹.

3.37 The Trustee shall ensure the preparation and distribution of annual reports for the Scheme in accordance with the requirements of the Regulations⁴⁰.

3.38 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 days⁴¹.

Member Meetings

3.39 When required by the Act, the Trustee must call a meeting of Members in the manner and on the basis set out in the Act and the Regulations⁴². A meeting of Members shall be conducted in accordance with the requirements of the Act and the Regulations⁴³.

Duty to report

3.40 The Trustee shall provide the FMA with such reports and information (including, for the avoidance of doubt, in relation to SIPO limit breaks) as are required by the Act and the Regulations⁴⁴.

Legal incapacity

3.41 If any benefit under the Trust Deed (other than a Locked-in Balance) is payable to a Member who is under a legal incapacity, or if for any other reason (in respect of which payment in terms of this clause is in the opinion of the Company in the Member's best interests) the Company shall so request, the Trustee shall have power to pay the benefit or any part thereof to such person, persons or body corporate for the benefit of that person, persons or body corporate as the Trustee shall think fit and the receipt of such person, persons or body corporate shall be a complete discharge to the Trustee of all liability in respect of the benefit.

Consents or directions by companies

3.42 Where the Trust Deed requires the consent, approval or direction of a company, the Trustee shall be entitled to act on:

- (a) a resolution of the directors of that company purporting to be certified by a director or by the secretary of that company; or
- (b) a consent, approval or direction under the hand of an officer of that

³⁸ Section 100.

³⁹ Regulations 69 to 71.

⁴⁰ Regulations 62 and 63.

⁴¹ Regulation 53 of the Regulations.

⁴² Sections 161 to 163 of the Act and regulation 83 of the Regulations.

⁴³ Sections 162 and 163 of the Act and regulations 83 and 91 of (and Schedule 11 to) the Regulations.

⁴⁴ Sections 147 to 151, 167 and 168 of the Act and regulations 94 to 98 and 100 of the Regulations.



company purporting to be authorised by a resolution of the directors of that company to give such consent, approval or direction.

4 **THE COMPANY AND ASSOCIATED COMPANIES**

Admission of other companies

- 4.1 The Trustee may at the request of any Associated Company not already a Participating Company, and with the consent of the Company, extend the benefits of the Scheme to employees who satisfy the requirements of clause 7.1 and are employed by any Associated Company.
- 4.2 As from the date on which any benefits are extended pursuant to clause 4.1, the Associated Company shall be deemed to become a Participating Company and shall enter into a deed by which it covenants with the Trustee to comply with and observe the provisions of the Trust Deed so far as they are to be applicable to it as a Participating Company.

Participating Company ceases to participate

- 4.3 A Participating Company (other than the Company) shall cease to participate in the Scheme if:
- (a) it gives not less than one month's previous notice (or such shorter period of notice as the Trustee is willing to accept) in writing to the Trustee that it intends to cease to contribute to the Scheme for any reason; or
 - (b) it is placed in liquidation or receivership other than for the purpose of reconstruction or amalgamation, in which case clause 4.4 shall apply with the necessary modifications to such a Participating Company; or
 - (c) the Company gives one month's previous notice (or such shorter period of notice as the Trustee is willing to accept) in writing to the Trustee that the participation of such Participating Company shall cease at the expiry of the notice;

and upon such cessation of participation there shall be deemed to be a wind-up of such part of the Scheme as the Trustee determines to be appropriate to the Participating Company and the provisions of clause 5 shall apply with the necessary modifications to the partial wind-up.

Reconstruction of Company

- 4.4 If the Company notifies the Trustee of its intention to resign its appointment as Company under the Trust Deed or goes into liquidation for any purpose, or goes into receivership, the Trustee may make such arrangements and enter into such deeds and agreements as it may in its discretion think necessary for the continuation of the Scheme by any other company.

Closing of Scheme

- 4.5 The Company may at any time by notice in writing to the Trustee close the Scheme for the admission of new members and from the date of such notice no further members shall be admitted. However the Company may, by notice in writing and with the consent of the Trustee, reopen the Scheme for the admission



of new members and from the date agreed further members may be admitted on terms to be agreed between the Company and the Trustee.

5 WINDING UP THE SCHEME

Wind-up of the Scheme

5.1 The Scheme shall be dissolved:

- (a) if the Company resigns its appointment as Company or goes into liquidation and the Trustee does not make arrangements for another company to take its place in terms of clause 4.4, or if the Company is placed in receivership and arrangements are not made for the continuation of the Scheme under clause 4.4; or
- (b) if the Company resolves that the Scheme shall be wound up; or
- (c) if the Trustee, with the written consent of the Company, resolves that the Scheme shall be wound up; or
- (d) if the Scheme is required to be wound up under the Act⁴⁵;

and the Trustee shall in each case comply with all of the provisions of the Act relating to the wind-up of the Scheme⁴⁶.

Distribution of Fund

5.2 The Trustee shall, after taking appropriate professional advice and making provision for any debts and benefits due and unpaid before the date of winding up, arrange for the liquidation of the Fund and after deducting any amount to pay any costs, expenses, and fees of winding up required to be paid from the Fund, distribute the moneys remaining thereafter (as such money becomes available to the Trustee) in the following order of priorities:

- (a) first in distributing to each Member the Member's Total Credit, PROVIDED THAT a Member's Locked-in Balance may only be either:
 - (i) transferred to a KiwiSaver Scheme in accordance with paragraph 7(a)(ii) of Schedule 1; or
 - (ii) if the Member is eligible to make a withdrawal under paragraph 4 of Schedule 1, paid to the Member; and
- (b) second, if the Trustee with the consent of the Company shall so decide, in augmenting all or any Members' benefits under clause 5.2(a) (excluding, for the purpose of determining the additional benefit payable under this clause 5.2(b) if an equitable or pro rata basis is being used in respect of a BASP Beneficiary, the portion of his or her benefit referable to accounts maintained under Schedule 3), PROVIDED THAT Members entitled to

⁴⁵ Sections 195 and 211.

⁴⁶ Sections 212 and 213.



Deferred Locked-in Benefits and Deferred Standard Benefits shall not share in that augmentation (which shall be limited to Members still in Service).

Death benefits and unpaid benefits

5.3 Notwithstanding anything to the contrary in clause 5.2:

- (a) any assets held by the Trustee under clause 3.33 (Payment of death benefits) at the wind-up date shall be paid in accordance with that clause and shall not form part of the Fund for the purposes of distribution in accordance with clause 5.2; and
- (b) any benefit held by the Trustee in respect of a Member who ceased to be a Member before the wind-up date and who at the wind-up date is presently entitled to receive a benefit shall be paid in accordance with the relevant Trust Deed provision and shall not form part of the Fund for the purposes of distribution in accordance with clause 5.2.

Refund of unexpended balance

5.4 If after having paid the money and provided the benefits under clause 5.2(a) and any exercise of the power of augmentation under clause 5.2(b) any balance of the Fund then remains unexpended the Trustee shall with the prior consent of the Financial Markets Authority refund the balance to the Participating Companies in such proportions as the Trustee with the prior approval of the Company thinks fit.

Financial Markets Authority's refusal to consent

5.5 If the Financial Markets Authority refuses to consent to the payment to the Participating Companies as provided for in clause 5.4 then the Trustee shall apply the unexpended balance of the Fund under clause 5.2(b) and in such case the consent of the Company to such application shall not be required.

6 PROVISIONS RELATING TO BENEFITS

Benefits non assignable

6.1 Benefits and rights under the Scheme are personal to Members and no Member may charge, borrow against or (except as required by law) assign, alienate or transfer to any other person the security of his or her benefits under the Scheme. Without limiting the preceding provisions of this clause 6.1, Locked-in Balances shall be subject to section 127 of the KiwiSaver Act, which shall take priority to the extent of any inconsistency between that section and the preceding provisions of this sub-clause.

Incapacity of Member

6.2 If a Member is in the Trustee's opinion incapable of managing his or her own affairs the Trustee shall be entitled to pay any benefit payable in terms of the Trust Deed (other than as part of a Locked-in Balance) for the benefit of the Member in such manner as the Trustee may in its absolute discretion determine.

Unclaimed benefits

6.3 The Trustee shall exercise reasonable diligence in tracing Members entitled to immediate benefits from the Scheme but in the event of the Trustee being unsuccessful any moneys payable out of the Scheme 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 Scheme, provided that this provision shall not apply to a Locked-in balance if precluded by the Complying Fund Rules.

Determination of employment of Members

- 6.4 Nothing in the Trust Deed shall restrict the right of a Participating Company to determine the employment of a Member and nor shall any benefit which might otherwise have arisen hereunder be used as grounds for increasing damages in any action which may be brought by or in respect of a Member against the Participating Company.

Information from Member

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

Benefit on dismissal

- 6.6 Notwithstanding any other provision to the contrary in this Trust Deed, if a Participating Company certifies that a Member is dismissed from Service (or leaves Service in order to avoid dismissal) on the grounds of the Member's fraud or serious misconduct in relation to the Member's employment, the balance in any Employer Savings Account maintained for the Member shall be applied by the Trustee, so far as it shall extend, to make good any costs or losses (including the costs of any prosecution or civil proceedings) incurred by the Participating Company as a result of the fraud or serious misconduct. The balance of the Employer Savings Account not applied for such costs or losses shall be paid in accordance with this Trust Deed.

Deductions in respect of tax

- 6.7 If the Trustee becomes liable to pay any duty, tax or other money to any regulatory or governmental authority in respect of any benefit due to a Member the Trustee shall be entitled to deduct any such amount so payable from the benefit which would have been payable and to pay the balance of that benefit to the Member in full satisfaction of the Member's entitlement to a benefit under the Scheme.

7 ELIGIBILITY AND CONTRIBUTIONS

Eligibility

- 7.1 An employee of a Participating Company who is in Service shall be eligible to join the Scheme as a Member at any time on or after the 1st day of the month following the date of his or her being invited to join the Scheme by a Participating Company or on such other date as may be agreed between the Member and the Trustee.

Waiver of conditions

- 7.2 Subject to the Complying Fund Rules, the Trustee may with the prior approval of the Company waive all or any of the requirements in clause 7.1 but in the event



of a dispute as to the eligibility of any employee for membership of the Scheme the decision of the Company shall be final.

Becoming a Member

- 7.3 (a) To become a Member an employee shall complete such forms of application and produce such evidence or information as the Trustee may reasonably require and the employee shall become a Member with effect from the 1st day of the month following the written acceptance of his or her application by the Trustee or on such other date as may be agreed between the Member and the Trustee.
- (b) An employee eligible to join the Scheme shall before becoming a Member be provided with a Product Disclosure Statement prepared in accordance with the Act and the Regulations.

Cessation of membership

- 7.4 A Member shall cease to be a Member on the earliest to occur of:
- (a) his or her benefit being paid in full under the Trust Deed;
- (b) a transfer of his or her full benefit out of the Scheme in accordance with the provisions of the Trust Deed;
- (c) the Participating Company which employs the Member ceasing to be a Participating Company and the Scheme being partially wound up under clause 4.3; and
- (d) the Scheme being wound up under clause 5.

Cessation of contributions

- 7.5 On the earlier of:
- (a) the date when a Member ceases (other than as provided for in clause 8.1) to be in Service; and
- (b) the date when a Member reaches his or her Locked-in Payment Date (unless the Member elects before then to continue contributing to the Scheme);

no further contributions in respect of him or her shall be made and no further benefit shall accrue in respect of him or her (unless and until, if the Member has ceased to be in Service, he or she again commences Service before reaching his or her Locked-in Payment Date), PROVIDED THAT clause 7.5(b) shall not apply in respect of a Member whose Scheme membership commenced on or after 1 June 2022 and who had already reached NZSA before joining the Scheme.

No Withdrawal from Scheme

- 7.6 A Member shall not be entitled to withdraw from membership of the Scheme while he or she remains in Service (except as may be required, or permitted, in terms of any of the Schedules).



Member's contributions

- 7.7 (a) Subject to clauses 7.7(b) and 7.7(d), each Member who remains in Service shall contribute to the Scheme each year at the rate or in the amounts specified in or pursuant to the Schedule (or Schedules) applying to the Member:
- (i) until attaining NZSA (or for contributions payable under Schedule 1, until the Member's Locked-in Payment Date if it is later and the Member so elects) PROVIDED THAT the Member may elect before attaining NZSA or the Member's Lock-in Date (as applicable) to continue contributing to the Scheme on that basis; or
 - (ii) if the Member's Scheme membership commenced on or after 1 June 2022 and the Member had already reached NZSA before joining the Scheme, until the date when the Member ceases to be in Service.
- (b) A Member to whom Schedule 3 applies who was not a Member prior to 31 August 2009 shall not be required to contribute and shall be deemed to have suspended his or her contributions to the Scheme under clause 7.7(d) (the proviso to which shall not apply to the Member) PROVIDED THAT with the consent of the Participating Company the Member may elect to commence contributing to the Scheme on the same basis as other Members (in which case clause 7.7(a) shall apply).
- (c) Contributions from a Member under clause 7.7(a) shall be deducted from the Member's regular remuneration by the Participating Company and shall be paid to the Trustee in accordance with any applicable legislation⁴⁷ by the 15th day of the month following the date of the deduction.
- (d) A Member may elect, by written notice to the Trustee, to suspend his or her contributions to the Scheme either indefinitely or for such period as the Member elects, PROVIDED THAT a Member to whom Schedule 1 applies:
- (i) must, before invoking this clause 7.7(d), have contributed to the Scheme for not less than one year; and
 - (ii) may not, in any one election made under this clause 7.7(d), suspend his or her contributions to the Scheme for a period exceeding 5 years.

Participating Companies

- 7.8 (a) Subject to clause 7.8(c), each Participating Company shall contribute to the Scheme, in respect of each Member in the Service of that Participating Company:
- (i) who has not attained NZSA (or for contributions payable under Schedule 1, until the Member's Locked-in Payment Date if it is later and the Member has elected under clause 7.7(a) to continue

⁴⁷ Section 87 of the Act and regulation 49 of the Regulations.



contributing until that date); or

- (ii) whose Scheme membership commenced on or after 1 June 2022 and who had already reached NZSA before joining the Scheme, until the date when the Member ceases to be in Service;

the amount (or amounts) specified in or pursuant to the Schedule (or Schedules) applying to the Member, PROVIDED THAT the Participating Company may also agree to contribute to the Scheme such amounts as are necessary to meet premiums payable to an insurer for the provision of insured benefits under paragraph 2.1(b) of Schedule 2 or paragraph 3.1(b) of Schedule 3 (and those additional contributions need not, for the avoidance of doubt, be credited to any account maintained for the Member) and PROVIDED FURTHER THAT if a Member who has reached NZSA (or, as applicable, the Member's Lock-in Date) has elected before then to continue contributing to the Scheme and is contributing accordingly then the Participating Company shall also continue contributing to the Scheme in respect of that Member the amount (or amounts) specified in or pursuant to the Schedule (or Schedules) applying to the Member.

- (b) Participating Company contributions under clause 7.8(a) shall be paid to the Trustee in accordance with any applicable legislation⁴⁸ at the same time as Members' contributions.
- (c) If an Individual Member has suspended his or her contributions to the Scheme under clause 7.7(d) then the Participating Company may suspend its contributions to the Scheme for that Member's benefit:
 - (i) on or at any time after the effective date of the suspension of the Member's contributions; and
 - (ii) for a period which does not exceed the period of suspension of the Member's contributions under clause 7.7(d);

and the contributions that are suspended under this clause 7.8(c) shall include, for the avoidance of doubt, whatever contributions were being paid under clause 7.8(b) to meet premiums payable to an insurer for the provision of insured benefits under paragraph 2.1(b) of Schedule 2, in which case that insurance cover will cease for the period of suspension.

Government Contributions

- 7.9 Any Government Contribution paid to the Scheme in respect of a Member shall vest in the Member immediately after it is paid to the Scheme, and be dealt with as required by the Income Tax Act and the KiwiSaver Act (the relevant provisions of which are implied into the Trust Deed by section 121 of the KiwiSaver Act).

⁴⁸ Section 87 of the Act and regulation 49 of the Regulations.



8 TEMPORARY ABSENCE

Temporary Absence

8.1 In the event of the Temporary Absence (as defined in clause 8.2) of a Member then, provided there is a reasonable expectation or intention of his or her returning to Service, during the period of Temporary Absence:

- (a) contributions by the Member shall be suspended, PROVIDED THAT a Member whose Temporary Absence is taken under the Parental Leave and Employment Protection Act 1987 may elect to contribute to the Scheme during periods of casual employment with a Participating Company on the basis set out in clause 7.7, in which event the Participating Company shall contribute to the Scheme during those periods in respect of the Member on the basis set out in clause 7.8 as if in each case those periods of casual employment were periods of Service; and
- (b) no benefits shall be payable other than those provided for in clause 8.3;

except to the extent the Trustee after considering the advice of the Participating Company shall decide otherwise, PROVIDED THAT in no event shall a Member make contributions under clause 8.1(a) which exceed (as to either amount or frequency) the contributions that the Member was paying in accordance with the Trust Deed immediately before commencing Temporary Absence.

Definition of "Temporary Absence"

8.2 *Temporary Absence* means:

- (a) any period of absence from Service by reason of a Member taking leave:
 - (i) in compliance with the Holidays Act 2003 or the Parental Leave and Employment Protection Act 1987; or
 - (ii) for any longer period in accordance with the conditions of employment of that Member or permission of the Participating Company;
- (b) any period during which the Member is not in Service and serves in other work in respect of which the Participating Company decides that the provisions of this clause shall apply to the Member;
- (c) any period during which the Member is not in Service and is:
 - (i) in fulltime (or, if still permanently employed by a Participating Company but for fewer than 24 hours per week, part time) education or training connected with the Member's employment with the Participating Company; or
 - (ii) on secondment or temporary transfer to another employer; or
 - (iii) absent overseas as approved by the Participating Company; and



- (d) with the approval of the Participating Company, any temporary break in Service or absence from employment for any period and for any reason.

Member not returning to Service

- 8.3 If at the expiry of Temporary Absence (or earlier if the Participating Company determines at its absolute discretion) the conditions set out in clause 8.2 no longer apply and in either case the Member does not return to Service he or she shall thereupon be deemed to have left Service as at the commencement of Temporary Absence, PROVIDED THAT in calculating the benefit available under the Scheme any contributions made under clause 8.1 shall be taken into account (and if those contributions are paid during periods of casual employment as contemplated by clause 8.1(a) then the relevant periods of casual employment shall count as periods of Service in determining any applicable vesting period for the purposes of paragraph 1.2(a)(ii) of Schedule 2).

Member returning to Service

- 8.4 If a Member returns to Service after a period of Temporary Absence then (subject to clause 7.7(d) and unless immediately before returning to Service the Member was contributing under clause 8.1(a)) the Member shall recommence contributions and the benefits payable shall be in accordance with the Schedule(s) applicable to the Member, PROVIDED THAT (with the exception of any period of casual employment during which contributions were paid as contemplated by clause 8.1(a), which shall count as a period of Service for vesting purposes) the period of Temporary Absence shall not be included in determining any applicable vesting period for the purposes of paragraph 1.2(a)(ii) of Schedule 2 except to the extent that the Trustee (after considering the advice of the Participating Company) decides otherwise.

9 TAXATION AND GOVERNMENT CONTRIBUTIONS

PIE tax compliance

- 9.1 The Trustee may elect that the Scheme be and remain a PIE, or cease to be a PIE, at its complete discretion. While the Scheme is a PIE, the Trustee shall also have the powers and discretions (having regard to Members' best interests generally and to the requirements of the Income Tax Act) 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 Scheme;
 - (b) the assessable income (for tax purposes) of the Scheme for an attribution period and to allocate such income to Members for that attribution period;
 - (c) the deductions incurred in deriving the assessable income allocated to Members for an attribution period;
 - (d) the net income or the net loss or other loss used for Members for each attribution period;
 - (e) the attributed PIE income or attributed PIE loss for Members for each attribution period;



- (f) 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;
- (g) the Scheme'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 Scheme 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 Scheme'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 Member otherwise would be entitled if it is required to be paid to the Commissioner 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 Members generally and the requirements of the PIE Legislation;
- (k) the amounts of any rebates of tax available to the Scheme 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 Member (and to make available to the Member 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 Scheme;
- (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 Scheme (whether current or deferred) that is attributed under the Income Tax Act to a Member or determined by the Trustee to be attributable to a Member;
- (p) to carry out any other tax calculations, allocations or attributions required by the Income Tax Act;
- (q) to adjust a Member's interest⁴⁹ in the Scheme 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

⁴⁹ Section 170 of the Act.



by law, at any time (including immediately prior to paying any benefit) having regard to the effect of:

- (i) the Member's prescribed investor rate; and
- (ii) the income (and the losses and associated tax credits) allocated to the Member under the PIE Legislation, as adjusted for any expenses which the Trustee considers appropriate to charge to the particular Member,

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

- (r) to allocate tax rebates received by the Scheme, or anticipated to be received by the Scheme, to Members;
- (s) to take all steps the Trustee considers necessary or desirable to ensure the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Income Tax Act;
- (t) to require that before a Member is accepted into the Scheme he or she provides his or her tax file number, prescribed investor rate and any other information required by the PIE Legislation, and that at any time a Member must confirm such details on request from the Trustee;
- (u) to disclose any information, including issuing any statements and providing any information to Members, required by the PIE Legislation in respect of Members' tax positions in relation to the Scheme, and provide any information (including personal information) to the Commissioner or any other person where the Trustee considers it reasonably necessary or desirable to do so in order to administer the Scheme's tax obligations;
- (v) to value tax losses of the Scheme 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 Scheme'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 Scheme to or from being a PIE or to administer the Scheme as a PIE.

Withholding tax from benefits

- 9.2 Without limiting clause 6.7, 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.



Government Contributions

- 9.3 For the purposes of obtaining and administering Government Contributions 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 Government Contributions in accordance with section 68C of the Tax Administration Act 1994;
 - (b) to credit any Government Contribution paid to the Scheme in respect of a Member to that Member's Member Complying Account;
 - (c) to require a Member wishing to withdraw from the Scheme any amount arising from a Government Contribution to provide a statutory declaration stating the periods for which the Member has resided mainly in New Zealand; and
 - (d) to calculate and pay to the Commissioner any amount required to be paid to the Commissioner in respect of a Member under subpart MK of the Income Tax Act and to make any consequential adjustment, on such basis as the Trustee determines in its complete discretion, to the Member's Locked-in Balance to reflect the amount of that payment.

Changes in tax legislation

- 9.4 Without limiting clause 1.1(g), 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 9 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 the Members on such basis as it considers appropriate, 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 Trust Deed to terms defined in the Income Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

10 MISCELLANEOUS PROVISIONS

Law of New Zealand applies

- 10.1 The Trust Deed shall in all respects be governed by and interpreted according to the laws of New Zealand.

Copies of Trust Deed

- 10.2 Copies of the Trust Deed shall be made available by the Company for inspection by a Member during any reasonable time.

**Disputes**

- 10.3 If any difference or dispute concerning the provisions of the Trust Deed shall arise between the Company, another Participating Company, the Trustee, any Member or the Personal Representative of any such person or between any of such persons the same shall be decided by the Trustee after considering any representations made by any interested party and the Trustee shall in so deciding be relieved from all judicial formalities and may abstain from following the strict rules of law. Any decision so made shall be according to an equitable rather than a strictly legal interpretation of the difference or dispute provided that if the Trustee is a party to the dispute another party to the dispute may require that it shall be submitted to arbitration in New Zealand before a single arbitrator or, if the parties cannot agree on one, three arbitrators appointed in terms of the Arbitration Act 1996.

Notice – Trustee

- 10.4 Any notice which under the Scheme is required to be given to the Trustee may be given by sending it by post addressed to the Trustee at the registered office of the Company, in which case it shall be deemed to have been given not later than the time at which the letter would have been delivered in the ordinary course of post.

Notice – Members

- 10.5 Where in any case under the Scheme any notice shall be required to be given to Members then notwithstanding any individual notification which the Trustee may decide to give it shall be sufficient if the notice is suitably exhibited on a notice board at the main place or places of business of each Participating Company or in the case of a particular group of Members at the Participating Company by which the Members are employed.

11 RELATED PARTY TRANSACTIONS

- 11.1 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 Act⁵⁰.
- 11.2 The Trustee must not acquire any new in-house asset contrary to the Act, and shall sell down any in-house assets held by the Scheme to the extent required by the Act⁵¹.
- 11.3 Neither the Trustee nor any Related Party shall be liable to account to the Scheme or any Member for any profit, loss, fees, brokerage or commissions arising from any transaction entered into in accordance with clause 11.1.
- 11.4 A failure to comply with clause 11.1 does not affect the validity of a transaction (subject to any Court order to the contrary)⁵².

⁵⁰ Sections 172 to 175 and 177.

⁵¹ Section 176 and clause 39 of Schedule 4.

⁵² Section 173(6) of the Act.



12 AUDITOR

- 12.1 The Trustee shall appoint in writing (and may on notice remove) as Auditor of the Scheme a person qualified in terms of the Act⁵³ and entitled by law to act as such, to provide services and reports in accordance with the requirements of the Act and the Regulations⁵⁴.
- 12.2 The remuneration of the Auditor shall be determined by the Trustee on an arm's length basis and shall be paid in accordance with clause 2.6.
- 12.3 The Auditor may at any time be removed by the Trustee and may retire upon the expiration of not less than ninety (90) days' notice to the Trustee.
- 12.4 Any vacancy in the office of Auditor occurring under clause 12.3 shall be filled by the Trustee appointing as Auditor of the Scheme a person qualified for appointment in terms of clause 12.1.

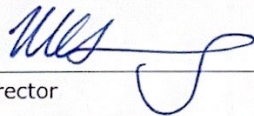
13 COUNTERPARTS

- 13.1 The parties acknowledge that this Trust Deed:
 - (a) may be executed in any number of counterparts (which may be assembled by any means of communication) all of which, taken together, shall constitute one and the same instrument; and
 - (b) shall be binding on the parties upon each having executed an identical copy of the Trust Deed.
- 13.2 Without limiting clause 13.1 this Trust Deed may be executed, exchanged and delivered electronically.

EXECUTED AND DELIVERED AS A DEED

Beca Corporate Holdings Limited by:

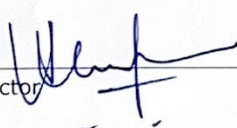
BGS Trustee Limited by:



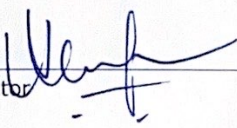
Director



Director



Director



Director

⁵³ Section 461E.

⁵⁴ Section 218 of the Act and regulations 108 and 109 of the Regulations.



SCHEDULE 1 – LOCK-IN RULES

1 LOCK-IN FACILITY

While the Scheme is a Complying Superannuation Fund, the Company may at any time direct the Trustee to create and maintain a facility whereby (subject to such notice requirements and other conditions and restrictions as the Trustee and the Company may agree from time to time):

- (a) a Participating Company and a Member can agree that all (or an agreed portion) of the contributions paid to the Scheme for that Member's benefit will be subject to this Schedule 1; and/or
- (b) a Participating Company can direct the Trustee that all (or a prescribed portion) of the contributions paid to the Scheme for the benefit of an employee of that Participating Company who has yet to join the Scheme will be subject to this Schedule 1;

and a Member to whom this paragraph 1 applies shall be deemed to have agreed that the contributions made to the Member's Employer Complying Account comprise (to the relevant extent) any compulsory employer contribution payable in respect of that Member under the KiwiSaver Act.

2 LOCKED-IN ACCOUNTS

Member Complying Account

2.1 The Trustee shall establish and maintain an account in respect of each Member to whom paragraph 1 of this Schedule 1 applies, known as the "Member Complying Account" of the Member, which shall from time to time be credited or debited (as appropriate) with:

- (a) the Member's contributions under paragraph 3.1 of this Schedule and Government Contributions paid to the Scheme for the Member's benefit;
- (b) amounts transferred from another scheme for the Member's benefit under clause 3.10 of the Trust Deed that are allocated to the Member Complying Account;
- (c) amounts transferred to another scheme in accordance with paragraphs 6 to 8 of this Schedule;
- (d) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph;
- (e) those of the fees, taxes, charges, costs, liabilities and expenses of the Scheme attributable to the Member which the Trustee determines to allocate to the Member Complying Account;



- (f) amounts withdrawn from the Member Complying Account pursuant to this Schedule 1; and
- (g) any other amounts required to be debited or credited to the Member Complying Account under or pursuant to the Trust Deed.

Withdrawals from the Member's Member Complying Account may only be made in accordance with the rules set out in this Schedule.

Employer Complying Account

2.2 The Trustee shall establish and maintain an account in respect of each Member to whom paragraph 1 of this Schedule applies, known as the "Employer Complying Account" of the Member, which shall from time to time be credited or debited (as appropriate) with:

- (a) Participating Company contributions for the Member's benefit under paragraph 3.2 of this Schedule;
- (b) amounts transferred from another scheme for the Member's benefit under clause 3.10 of the Trust Deed that are allocated to the Employer Complying Account;
- (c) amounts transferred to another scheme in accordance with paragraphs 6 to 8 of this Schedule;
- (d) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph;
- (e) those of the fees, taxes, charges, costs, liabilities and expenses of the Scheme attributable to the Member which the Trustee determines to allocate to the Employer Complying Account;
- (f) amounts withdrawn from the Employer Complying Account pursuant to this Schedule 1; and
- (g) any other amounts required to be debited or credited to the Employer Complying Account under or pursuant to the Trust Deed.

Withdrawal from the Member's Employer Complying Account shall (and may only) be made in accordance with the rules set out in this Schedule.

3 CONTRIBUTION RATES

3.1 Subject to clause 7.7(d) of the Trust Deed, each Member to whom this Schedule 1 applies shall contribute to the Scheme under this Schedule until the earlier of:

- (a) attaining NZSA or, where the Member has elected under clause 7.7(a) to continue contributing until his or her Locked-in Payment Date, reaching that date (if later); or



- (b) ceasing to be in Service;

an after-tax amount (calculated and expressed as a percentage of Salary) which must be not less than the minimum amount or rate required to be contributed to a Member Complying Account under the Complying Fund Rules as amended from time to time.

- 3.2 Subject to clause 7.8(c) of the Trust Deed, each Participating Company shall contribute to the Scheme under this Schedule in respect of a Member to whom this Schedule applies until the earlier of:

- (a) the Member attaining NZSA or, where the Member has elected under clause 7.7(a) to continue contributing until the Member's Locked-in Payment Date, reaching that date (if later); or
- (b) the Member ceasing to be in Service;

an amount (calculated and expressed as a percentage of Salary) which must be not less than the minimum amount or rate required to be contributed to an Employer Complying Account under the Complying Fund Rules as amended from time to time.

- 3.3 If a Member has elected before his Locked-in Payment Date to continue contributing to the Scheme after that date and is contributing accordingly, paragraphs 3.1 and 3.2 shall continue applying as if the Member has yet to reach his Locked-in Payment Date.
- 3.4 If a Member's Scheme membership commenced on or after 1 June 2022 and the Member had already reached NZSA before joining the Scheme, paragraphs 3.1 and 3.2 shall continue applying as if the Member has yet to reach his Locked-in Payment Date.

4 **LOCK-IN REQUIREMENT**

Subject to paragraph 5 of this Schedule, a Member may not make a withdrawal from the Member's Locked-in Balance until NZSA or (if the Member is a Grandparented Member) the later of:

- (a) the date when the Member reaches NZSA; and
- (b) the date when the Member has been a member of a Complying Superannuation Fund and/or a KiwiSaver Scheme for 5 years;

or a date after that date.

5 **RELEASE OF LOCKED-IN BALANCE**

Release of Locked-in Balance on Locked-in Payment Date

- (a) A Member is entitled to withdraw all or some of the Member's Locked-in Balance on the Locked-in Payment Date. Any such withdrawal is payable



as a lump sum.

- (b) Nothing in paragraph 5(a) requires a Member to withdraw the Member's Locked-in Balance on the Locked-in Payment Date.

Release of Locked-in Balance under legislation

- (c) The Trustee must comply with the provisions of any statute requiring it to release funds from a Member's Locked-in Balance in accordance with that statute.
- (d) The requirement under paragraph 5(c) includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

Release of Locked-in Balance on death

- (e) If a Member to whom this Schedule 1 applies dies, the Trustee must, on application by the Member's Personal Representative, pay to that person an amount that is equal to the Member's Locked-in Balance at the date on which the application is accepted as part of the Member's estate.

Release of Locked-in Balance for purpose of purchase of first home

- (f) A Member may apply to the Trustee to withdraw all or some of the Member's Locked-in Balance if the Member intends to purchase an estate in land in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules or in accordance with regulations 30 and 31 of the KiwiSaver Regulations 2006.
- (g) The Trustee in its absolute discretion may permit such withdrawal if, treating the period during which the Member was a member of the Scheme and/or one or more KiwiSaver Schemes as membership of a KiwiSaver Scheme, the Trustee is satisfied, based on whatever supporting evidence it may reasonably require, that clause 8 of the KiwiSaver Scheme Rules (or regulations 30 and 31 of the KiwiSaver Regulations 2006) would enable the withdrawal.

Release of Locked-in Balance in cases of a Significant Financial Hardship

- (h) In cases of Significant Financial Hardship a Member may apply to the Trustee to withdraw some or all of the permitted portion of the Member's Locked-in Balance.
- (i) The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, clause 10 of the KiwiSaver Scheme Rules would allow the withdrawal.

Release of Locked-in Balance in cases of Serious Illness or life-shortening congenital condition

- (j) In cases of Serious Illness or a life-shortening congenital condition a Member may apply to the Trustee to withdraw all or some of the Member's Locked-in Balance.



- (k) The Trustee shall permit such withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that if the Member was a member of a KiwiSaver Scheme, clause 12 or clause 12B of the KiwiSaver Scheme Rules would allow the withdrawal.

Release of Locked-in Balance in cases of permanent emigration

- (l) A Member may apply to withdraw some or all of the Member's Locked-in Balance, or to transfer the balance in the Member's Locked-in Balance to an Equivalent Overseas Scheme, in the case of permanent emigration from New Zealand.
- (m) Subject to the application of subpart MK of the Income Tax Act, the Trustee may in its absolute discretion permit such withdrawal or transfer if satisfied (based on whatever supporting evidence it may reasonably require) that, if the Member's membership of the Scheme was membership of a KiwiSaver Scheme, clause 14 of the KiwiSaver Scheme Rules would enable the withdrawal or transfer (disregarding for this purpose the effect of clause 14B of the KiwiSaver Scheme Rules).

6 VOLUNTARY TRANSFER

Without limiting paragraph 8.1 of this Schedule 1, while the Complying Fund Rules require such transfers (with the intent that this paragraph 6 will not otherwise apply), the Trustee shall transfer all or part of a Member's Locked-in Balance to another Complying Superannuation Fund or to a KiwiSaver Scheme if the Member requests the transfer.

7 INVOLUNTARY TRANSFER

- (a) Without limiting paragraph 8.1 of this Schedule 1, all of a Member's Locked-in Balance shall be transferred to a KiwiSaver Scheme if the Member does not request a transfer under paragraph 6 of this Schedule and the Member:
- (i) ceases to be in Service for any reason other than death, without being permitted to withdraw the Member's Locked-in Balance under paragraph 5 of this Schedule or to defer receiving their Locked-in Balance under paragraph 9 of this Schedule; or
 - (ii) ceases to be eligible to be a Member by reason of the wind-up of the Scheme or of the relevant portion of the Scheme, under (as applicable) clause 4.3 or clause 5 of the Trust Deed without being permitted to withdraw the Member's Locked-in Balance under paragraph 5 of this Schedule.
- (b) The Trustee shall transfer a Member's Locked-in Balance to a KiwiSaver Scheme if:
- (i) the Financial Markets Authority revokes the Scheme's approval as a Complying Superannuation Fund; and



- (ii) the Member's Locked-in Balance is not transferred to another Complying Superannuation Fund where it remains subject to Complying Fund Rules.
- (c) If the Trustee is required, or decides, under this paragraph 7 to transfer any amount to a KiwiSaver Scheme, then:
 - (i) the Trustee shall notify the Commissioner accordingly; and
 - (ii) that notice must include the relevant Member's name, address and Tax File Number, the relevant Participating Company's name and address and the Scheme's name and Tax File Number, with the intent that when the Commissioner receives that notice the transferred amount will be dealt with in accordance with section 57(1)(d) of the KiwiSaver Act.

8 TRANSFERS – GENERAL

8.1 The Trustee may only transfer part or all of a Member's Locked-in Balance to another Retirement Scheme if that scheme is a KiwiSaver Scheme or a Complying Superannuation Fund and:

- (a) in the case of a transfer to a KiwiSaver Scheme, the requirements of the KiwiSaver Act are met; and
- (b) in the case of a transfer to a Complying Superannuation Fund, the manager of that fund has notified the Trustee that the amount transferred will remain subject to Complying Fund Rules;

provided that consent to the transfer shall first be obtained from the manager of the Complying Superannuation Fund or KiwiSaver Scheme.

8.2 Clause 3.11 of the Trust Deed shall be read subject to paragraph 8.1 of this Schedule.

8.3 If any amount is transferred out of the Scheme under paragraph 6 or paragraph 7 of this Schedule, then:

- (a) the receipt of the manager of the KiwiSaver Scheme, or of the other Complying Superannuation Fund, shall be a complete discharge to the Trustee of all liability in respect of the transferred amount;
- (b) the Trustee shall be under no liability to see to the application of the amount it has transferred; and
- (c) unless the Member retains another account in the Scheme, the Member shall cease to be a Member and shall not be entitled to any further benefit from the Scheme.



9 DEFERRED LOCKED-IN BENEFIT

- (a) Paragraph 7(a)(i) of this Schedule 1 shall not apply to a Member's Locked-in Balance if the Member:
- (i) is aged 55 or more and is ceasing Service due to retirement or illness; or
 - (ii) is ceasing Service due to being made redundant; or
 - (iii) meets such other eligibility criteria for electing a Deferred Locked-in Benefit as the Trustee may determine from time to time (on an exceptions basis) at its discretion;

and elects a Deferred Locked-in Benefit, PROVIDED THAT the Member may not elect a Deferred Locked-in Benefit unless the Member also elects a Deferred Standard Benefit under paragraph 4 of Schedule 2 and the aggregate amount initially retained:

- (iv) in the Scheme under this paragraph 9 and paragraph 4 of Schedule 2; plus
 - (v) in the Beca Group Superannuation Plan (if applicable) under a corresponding provision in the deed governing that scheme;
- is at least \$100,000 (or such other amount as the Trustee may from time to time determine at its discretion).
- (b) The Trustee may at its discretion amalgamate into one account the Member Complying Account and the Employer Complying Account of a Member to whom this paragraph 9 applies.
- (c) Notwithstanding any other provision of the Trust Deed, a Member to whom this paragraph 9 applies may not make any further contributions to the Scheme.
- (d) Subject to this paragraph 9, the provisions of paragraphs 5 to 8 of this Schedule shall continue applying to the Locked-in Balance during the period of deferral.
- (e) A Member to whom this paragraph 9 applies shall not be permitted to retain their Locked-in Balance in the Scheme for a period any longer than the last day of the month following the earlier of:
- (i) the 5th anniversary of the date when the Member ceased Service; or
 - (ii) the date on which the aggregate amount retained in the Scheme for the Member under this paragraph 9 and paragraph 4 of Schedule 2 falls below \$5,000 (or such other amount as the Trustee may from time to time determine at its discretion);



at or about which time all of the Member's Locked-in Balance shall be transferred to a KiwiSaver Scheme if the Member does not request a transfer under paragraph 6 of this Schedule (or, if permitted, elect to withdraw their Locked-in Balance under paragraph 5 of this Schedule).

- (f) Any expenses, fees, charges and costs associated with administering a Deferred Locked-in Benefit shall be debited from the relevant Member's Locked-in Balance at times and in a manner determined by the Trustee.
- (g) The Trustee may at its discretion discontinue the Deferred Locked-in Benefits facility at any time (and may in that case trigger the application with respect to all Deferred Locked-in Benefits of paragraphs 6 to 8 of this Schedule 1).

10 **INCONSISTENCY WITH COMPLYING FUND RULES**

In the event of an inconsistency at any time between a provision in this Schedule 1 (or any other provision of this Trust Deed applying in respect of a Locked-in Balance) and the Complying Fund Rules, the Complying Fund Rules shall prevail to the extent of the inconsistency.



SCHEDULE 2: RULES FOR STANDARD CONTRIBUTIONS

The provisions of this Schedule 2 shall apply (to the relevant extent) in respect of every Member.

1 STANDARD ACCOUNTS

Member Savings Account

- 1.1 The Trustee shall establish and maintain in respect of a Member who wishes to make member contributions which are additional to those (if any) that are credited to a Member Complying Account an account known as the "Member Savings Account" of the Member, which shall be credited or debited (as appropriate) with:
- (a) contributions to the Scheme which are additional to those (if any) that are credited to a Member Complying Account, and may be such rates or amounts (deducted from Salary and calculated and expressed as a percentage of Salary not exceeding 10%) as the Member and the Trustee agree;
 - (b) amounts transferred from another scheme for the Member's benefit under clause 3.10 of the Trust Deed that are allocated to the Member Savings Account;
 - (c) amounts transferred to another scheme under clause 3.11 of the Trust Deed;
 - (d) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 1.1;
 - (e) those of the fees, taxes, charges, costs, liabilities and expenses of the Scheme attributable to the Member (including premiums payable to an insurer for the provision of insured benefits under paragraph 2.1(b) of Schedule 2) which the Trustee determines to allocate to the Member Savings Account; and
 - (f) any other amounts required to be debited or credited to the Member Savings Account under or pursuant to the Trust Deed.

Employer Savings Account

- 1.2 If a Participating Company wishes to make contributions to the Scheme (other than for the purpose of paying premiums pursuant to paragraph 2.1(b) of this Schedule 2) in respect of a Member which are additional to those (if any) that are credited to an Employer Complying Account, and are not tradable for any increase to that Member's Salary, then the Trustee shall establish and maintain in respect of that Member an account known as the "Employer Savings Account", which shall be credited or debited (as appropriate) with:



- (a) contributions to the Scheme by the Participating Company under this paragraph 1.2 which are additional to those credited to an Employer Complying Account and a Special Employer Account, and may be:
 - (i) such rates or amounts (calculated and expressed as percentages of Salary); and
 - (ii) subject to such vesting period, expressed in years and completed months (by reference to either Service or Scheme membership);
 as the Participating Company directs the Trustee;
- (b) amounts transferred from another scheme for the Member's benefit under clause 3.10 of the Trust Deed that are allocated to the Employer Savings Account;
- (c) amounts transferred to another scheme under clause 3.11 of the Trust Deed;
- (d) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 1.2;
- (e) those of the fees, taxes, charges, costs, liabilities and expenses of the Scheme attributable to the Member (including premiums payable to an insurer for the provision of insured benefits under paragraph 2.1(b) of Schedule 2) which the Trustee determines to allocate to the Employer Savings Account; and
- (f) any other amounts required to be debited or credited to the Employer Savings Account under or pursuant to the Trust Deed.

Special Employer Account

- 1.3 If a Member has entered into an agreement with a Participating Company whereby the Member's Salary is reduced in consideration of the Participating Company agreeing to make contributions to the Scheme which are additional to those, if any, that are credited to an Employer Complying Account and any Employer Savings Account, then the Trustee shall establish and maintain in respect of that Member a "Special Employer Account" which shall be credited or debited (as appropriate) with:
- (a) contributions to the Scheme by the Participating Company (calculated and expressed as percentages of Salary) pursuant to the agreement between it and the Member;
 - (b) amounts transferred from another scheme for the Member's benefit under clause 3.10 of the Trust Deed that are allocated to the Special Employer Account;
 - (c) amounts transferred to another scheme under clause 3.11 of the Trust Deed;



- (d) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 1.3;
- (e) those of the fees, taxes, charges, costs, liabilities and expenses of the Scheme attributable to the Member (including premiums payable to an insurer for the provision of insured benefits under paragraph 2.1(b) of Schedule 2) which the Trustee determines to allocate to the Special Employer Account; and
- (f) any other amounts required to be debited or credited to the Special Employer Account under or pursuant to the Trust Deed.

Reserve Account

1.4 If contributions to the Scheme by a Participating Company under paragraph 1.2 of this Schedule 2 are made subject to a vesting period pursuant to paragraph 1.2(a)(ii), then the Trustee shall establish and maintain a Reserve Account to which shall be credited or debited (as appropriate):

- (a) any amount comprised in an Employer Savings Account that is forfeited pursuant to paragraph 2.2(b) of this Schedule 2 when a Member ceases to be in Service;
- (b) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 1.4;
- (c) those of the fees, taxes, charges, costs, liabilities and expenses of the Scheme (including premiums payable to an insurer for the provision of insured benefits under paragraph 2.1(b) of this Schedule 2) which the Trustee determines to allocate to the Reserve Account; and
- (d) any other amounts required to be debited or credited to the Reserve Account under or pursuant to the Trust Deed,

and from which amounts shall, if the Company so directs the Trustee from time to time, be applied in meeting some or all of the Participating Companies' obligations to contribute to Employer Savings Accounts pursuant to paragraph 1.2 of this Schedule 2 or in augmenting any of the benefits provided in accordance with the Trust Deed for any Member who is in Service.

2 BENEFITS ON CEASING TO BE IN SERVICE OR ATTAINING NZSA

2.1 On dying or suffering Total and Permanent Disablement, a Member who is in Service shall be entitled to receive a lump sum benefit under this Schedule 2 equal to:

- (a) the total balances in the Member's Member Savings Account and Employer Savings Account; plus



(b) subject to the insurer granting cover, and to clause 7.8(c) of the Trust Deed, an additional amount payable under any insurance policy which the Trustee may choose to arrange with an insurer to provide an additional benefit on the Member's death or total and permanent disablement, such that:

- (i) the benefit payable from the Scheme under paragraph (a); plus
- (ii) the Member's Locked-in Balance; plus
- (iii) the benefit payable in respect of the Member from any Existing Plan (excluding benefits arising from voluntary and salary sacrifice contributions made to that Existing Plan); plus
- (iv) in respect of a Member to whom Schedule 3 applies, the benefit payable under paragraph 3.1(a) of Schedule 3,

together comprise not less than twice the Member's Base Salary (PROVIDED THAT if the Member has made a withdrawal under paragraph 6 of Schedule 1, or pursuant to the trust deed for the Beca Group Superannuation Plan at or after his or her Normal Retirement Date (as defined in the trust deed for that Plan), then the Trustee may adjust the level of insurance cover for the Member under this paragraph 2.1(b) in such manner as it sees fit, and the Member's death or Total and Permanent Disablement entitlements may be adjusted accordingly); plus

(c) the balance in the Member's Special Employer Account.

For the purposes of sub-paragraph 2.1(b) of this Schedule 2 "Base Salary", in the case of a Member who joins the Scheme on or after 1 September 2009 and to whom this Schedule 2 applies, shall be subject to a maximum of \$200,000 or such higher amount as the Company from time to time may approve.

2.2 If a Member ceases to be in Service without qualifying for a benefit under paragraph 2.1 of this Schedule, or attains NZSA, then the Member shall be paid a lump sum benefit under this Schedule 2 equal to (as applicable):

- (a) the balances in the Member's Member Savings Account and Special Employer Account; and
- (b) the vested portion of the balance in the Member's Employer Savings Account (PROVIDED THAT the full balance in the Employer Savings Account shall be payable if the Trustee is reasonably satisfied that the Member has left Service due to injury or ill-health).

2.3 A Member who has attained NZSA may elect to defer payment of a benefit under paragraph 2.2 of this Schedule until he or she ceases to be in Service (but may in that case later apply to the Trustee at any time before ceasing to be in Service to withdraw all or some of the benefit).



- 2.4 If a Member's Scheme membership commenced on or after 1 June 2022 and the Member had already reached NZSA before joining the Scheme, the Member shall be deemed to have made an election under paragraph 2.3.

3 **IN-SERVICE TRANSFER OR WITHDRAWAL**

- 3.1 Notwithstanding any other provision of this Trust Deed:

- (a) if the Trustee is required pursuant to paragraph 6 of Schedule 1 to transfer all of a Member's Locked-in Balance to another Complying Superannuation Fund or to a KiwiSaver Scheme then, if the Member has also requested a transfer under this provision, the Trustee shall transfer to that fund or scheme (or, if the transfer is legally permitted, to another Retirement Scheme):
- (i) the balances in the Member's Member Savings Account and any Special Employer Account; and
 - (ii) the vested portion of the balance in the Member's Employer Savings Account; and
 - (iii) if applicable, the total balances in the Member's BA Member Account, BA Employer Account and BA Special Account;

and following any such transfer the Member shall cease to be a Member and shall not be entitled to any further benefit from the Scheme; and

- (b) if the Trustee has agreed pursuant to paragraph 5(g) of Schedule 1 to a Member's request to withdraw all or some of the Member's Locked-in Balance in order to purchase an estate in land in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules (or in regulation 31 of the KiwiSaver Regulations 2006) then if the Member has so requested, the Trustee shall also permit at the same time the withdrawal (for that purpose) of some or all of:
- (i) the balances in the Member's Member Savings Account and Special Employer Account; and
 - (ii) the vested portion of the balance in the Member's Employer Savings Account; and
 - (iii) if applicable, the total balances in the Member's BA Member Account, BA Employer Account and BA Special Account;

provided that immediately following any such withdrawal the Member's remaining Total Credit must be at least \$1,000 (or such other minimum amount as may be prescribed from time to time in clause 8(4)(a) of the KiwiSaver Scheme Rules).



4 DEFERRED STANDARD BENEFIT

- (a) The Trustee may at its discretion allow a Member who when leaving Service:
- (i) is aged 55 or more and is ceasing Service due to retirement or illness; or
 - (ii) is ceasing Service due to being made redundant; or
 - (iii) meets such eligibility criteria for electing a Deferred Standard Benefit as the Trustee may determine from time to time (on an exceptions basis) at its discretion;

to elect a Deferred Standard Benefit, PROVIDED THAT the Member may not elect a Deferred Standard Benefit unless the aggregate amount initially retained:

- (iv) in the Scheme under this paragraph 4 and (if applicable) paragraph 9 of Schedule 1; plus
- (v) in the Beca Group Superannuation Plan (if applicable) under a corresponding provision in the deed governing that scheme;

is at least \$100,000 (or such other amount as the Trustee may from time to time determine at its discretion).

- (b) If this paragraph 4 applies to a Member then:
- (i) it shall apply to the total balances in the Member Savings Account, Employer Savings Account, any Special Employer Account and any accounts maintained for the Member under Schedule 3 (together the *Deferred Standard Balance*); and
 - (ii) the Trustee may at its discretion amalgamate into one account any two or more of those accounts.
- (c) Notwithstanding any other provision of the Trust Deed, a Member to whom this paragraph 4 applies may not make any further contributions to the Scheme.
- (d) A Member to whom this paragraph 4 applies may make withdrawals from their Deferred Standard Balance, subject to such reasonable conditions and restrictions as the Trustee may impose from time to time in relation to:
- (i) the number of withdrawals that may be made over a specified period;
 - (ii) the minimum amount that may be withdrawn; and



- (iii) other similar matters (which may include suspending withdrawals if and for as long as the Trustee in good faith forms the opinion that it is not practicable, or would be materially prejudicial to the interests of any Members, for withdrawals to be paid from Deferred Standard Balances).
- (e) A Member to whom this paragraph 4 applies shall not be permitted to retain their Deferred Standard Balance in the Scheme for a period any longer than until the last day of the month following the earlier of:
 - (i) the 5th anniversary of the date when the Member ceased Service; or
 - (ii) the date on which the aggregate amount retained in the Scheme for the Member under this paragraph 4 and paragraph 9 of Schedule 1 falls below \$5,000 (or such other amount as the Trustee may from time to time determine at its discretion);at or about which time all of those balances shall be paid to the Member (who shall then cease to be a Member).
- (f) Without limiting paragraph 9(e), a Member shall cease to be a Member when their Deferred Standard Balance reaches nil.
- (g) Any expenses, fees, charges and costs associated with administering a Deferred Standard Benefit shall be debited from the Member's Deferred Standard Balance at times and in a manner determined by the Trustee.
- (h) The Trustee may at its discretion discontinue the Deferred Standard Benefits facility at any time (and may in that case require all Deferred Standard Balances to be paid to the relevant Members).



SCHEDULE 3: RULES FOR FORMER MEMBERS OF THE BECA AMEC SUPERANNUATION PLAN

The provisions of this Schedule 3 shall apply solely to BASP Beneficiaries, and in respect of the amounts transferred to the Scheme from the Beca AMEC Superannuation Plan under section 9BAA of the Superannuation Schemes Act 1989.

1 DEFINITIONS

BA Multiple

1.1 A Member's BA Multiple shall be:

- (a) if the Member joined the Beca AMEC Superannuation Plan on or after 1 September 2004, the multiple applying under the following table:

Age at joining Beca AMEC Superannuation Plan (years)	Multiple	Age at joining Beca AMEC Superannuation Plan (years)	Multiple
40 or less	4.0	51	1.8
41	3.8	52	1.6
42	3.6	53	1.4
43	3.4	54	1.2
44	3.2	55	1.0
45	3.0	56	0.8
46	2.8	57	0.6
47	2.6	58	0.4
48	2.4	59	0.2
49	2.2	60 or more	Nil
50	2.0		

- (b) if the Member joined the Beca AMEC Superannuation Plan prior to 1 June 2005 and the Member's date of death or disablement is prior to the Member's 60th birthday, four;
- (c) if the Member joined the Beca AMEC Superannuation Plan prior to 1 June 2005 and the Member's date of death or disablement is on or after the Member's 60th birthday, the greater of two and the multiple determined in accordance with the table in paragraph 1.1(a).

Normal Retirement Date

1.2 A Member's Normal Retirement Date means:

- (a) if the Member joined the Beca AMEC Superannuation Plan on or after 1 January 1996, the date when the Member attains NZSA;
- (b) if the Member joined the Beca AMEC Superannuation Plan prior to 1 January 1996, the date when the Member attains NZSA or such earlier



date, not being prior to the Member's 60th birthday, as that Member may elect.

2 **BA ACCOUNTS**

BA Member Account

2.1 The Trustee shall establish and maintain in respect of a Member to whom this Schedule applies an account known as the "BA Member Account" of the Member, which shall be credited or debited (as appropriate) with:

- (a) the balance of the Member's member account transferred from the Beca AMEC Superannuation Plan under clause 3.10 of the Trust Deed;
- (b) amounts transferred to another scheme under clause 3.11 of the Trust Deed;
- (c) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 2.1;
- (d) any taxes payable from the Scheme which the Trustee determines to allocate to the BA Member Account; and
- (e) any other amounts required to be debited or credited to the BA Member Account under or pursuant to the Trust Deed.

BA Employer Account

2.2 The Trustee shall establish and maintain in respect of a Member to whom this Schedule applies an account known as the "BA Employer Account" of the Member, which shall be credited or debited (as appropriate) with:

- (a) the balance of the Member's employer account transferred from the Beca AMEC Superannuation Plan under clause 3.10 of the Trust Deed;
- (b) amounts transferred to another scheme under clause 3.11 of the Trust Deed;
- (c) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 2.2;
- (d) any taxes payable from the Scheme which the Trustee determines to allocate to the BA Employer Account; and
- (e) any other amounts required to be debited or credited to the BA Employer Account under or pursuant to the Trust Deed.

**BA Special Account**

- 2.3 The Trustee shall (if applicable) establish and maintain in respect of a BASP Beneficiary to whom this Schedule applies an account known as the "BA Special Account" which shall be credited or debited (as appropriate) with:
- (a) the balance of the BASP Beneficiary's special account transferred from the Beca AMEC Superannuation Plan (if any) under clause 3.10 of the Trust Deed;
 - (b) amounts transferred to another scheme under clause 3.11 of the Trust Deed;
 - (c) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 2.3;
 - (d) any taxes payable from the Scheme which the Trustee determines to allocate to the BA Special Account; and
 - (e) any other amounts required to be debited or credited to the BA Special Account under or pursuant to the Trust Deed.

BA Special Employer Account

- 2.4 The Trustee shall (if applicable) establish and maintain in respect of a Member to whom this Schedule applies an account known as the "BA Special Employer Account" of the Member which shall be credited or debited (as appropriate) with:
- (a) the balance of the Member's special employer account transferred from the Beca AMEC Superannuation Plan (if any) under clause 3.10 of the Trust Deed;
 - (b) amounts transferred to another scheme under clause 3.11 of the Trust Deed;
 - (c) earnings at a rate or rates (whether positive, negative or zero) determined by the Trustee from time to time in terms of clause 3.29(b) of the Trust Deed for the purposes of this paragraph 2.4;
 - (d) any fees, taxes, charges, costs, liabilities and expenses of the Scheme attributable to the Member which the Trustee determines to allocate to the BA Special Employer Account; and
 - (e) any other amounts required to be debited or credited to the BA Special Employer Account under or pursuant to the Trust Deed.



3 **BENEFITS ON CEASING TO BE IN SERVICE**

- 3.1 On dying or suffering Total and Permanent Disablement, a Member to whom this Schedule 3 applies shall be entitled to receive a lump sum benefit under this Schedule 3 equal to:
- (a) the total balances in the Member's BA Member Account, BA Employer Account and BA Special Account; plus
 - (b) subject to the insurer granting cover, an additional amount payable under any insurance policy which the Trustee may choose to arrange with an insurer to provide an additional benefit on the Member's death or total and permanent disablement, such that:
 - (i) the benefit payable from the Scheme under paragraph 3.1(a) of this Schedule; plus
 - (ii) the benefit payable from the Scheme under Schedule 1; plus
 - (iii) the benefit payable from the Scheme under paragraphs 2.1(a) and (b) of Schedule 2,together comprise not less than the Member's BA Multiple times the Member's Plan Salary where the Member's "Plan Salary" is the lesser of the Member's Base Salary and \$85,000 or such higher amount as the Company may from time to time approve; plus
 - (c) the balance in the Member's BA Special Employer Account.
- 3.2 If a Member to whom this Schedule 3 applies ceases to be in Service without qualifying for a benefit under paragraph 3.1 of this Schedule then the Member shall be paid a benefit under this Schedule 3 equal to (as applicable):
- (a) a lump sum of the balances in the Member's BA Member Account, BA Employer Account and BA Special Employer Account; and
 - (b) the balance in the Member's BA Special Account payable on the terms and conditions applicable to BA Special Accounts as determined by the Trustee from time to time.
- 3.3 A Member who has attained NZSA but remains in Service may elect to defer receipt of a benefit under paragraph 3.2 of this Schedule until he or she ceases to be in Service.
- 3.4 Notwithstanding the provisions of paragraphs 3.1 and 3.2 of this Schedule, the benefit calculated in relation to the Member's BA Member Account and BA



Employer Account shall not be less than the total of the Member's contributions to the Beca AMEC Superannuation Plan.

4 EXISTING SPECIAL ACCOUNTS IN PAYMENT

A Member to whom this Schedule applies and who was a deferred member of the Beca AMEC Superannuation Plan shall receive payments from his or her BA Special Account on the terms and conditions applicable to BA Special Accounts as determined by the Trustee from time to time.

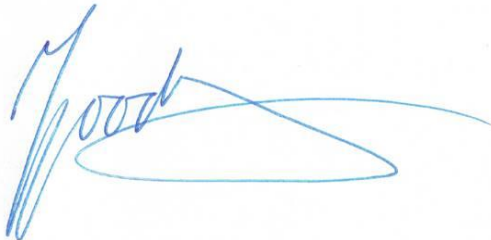
BECA SUPER SCHEME**Solicitor's Certificate – Replacement Trust Deed**

As solicitors to BGS Trustee Limited as trustee of the Beca Super Scheme (*Scheme*), we hereby certify that the Trust Deed of the Scheme dated 29 May 2020 (*Trust Deed*), when amended as proposed by the draft replacement Trust Deed attached to this certificate:

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

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

Yours faithfully
Chapman Tripp



Mike Woodbury
Partner

Date: 19 May 2022

23 May, 2022

Our Ref: AS/1669

The Trustee
Beca Super Scheme
c/o Chapman Tripp
PO Box 993
WELLINGTON 6140

Attention: Mike Woodbury

**FINANCIAL MARKETS CONDUCT ACT 2013
TRUST DEED AMENDMENT CONSENT APPLICATION**

Thank you for your email dated 19 May 2022 and attachments regarding the proposed Deed of Amendment for the Beca Super Scheme and the Solicitor's sign off. I also acknowledge the prior correspondence regarding the proposed amendment.

Your email requests the Financial Markets Authority exercise its power under section 139(1) of the Financial Markets Conduct Act 2013 and consent to the proposed draft Deed of Amendment to the trust deed of the Beca Super Scheme which is a restricted workplace savings scheme.

The Financial Markets Authority is satisfied that the execution copy of the deed of amendment attached to the Solicitors compliance certificate does not have a material adverse effect on the scheme participants and hereby grants its consent.

The Financial Markets Authority also consents pursuant to section 131(1)(c) of the Financial Markets Conduct Act 2013 to the extension of the eligibility rules to allow an employee who has reached New Zealand Superannuation age to be invited to become a member of the Scheme.

I enclose an invoice for the time taken to consider the application. Please pay promptly.

Yours faithfully



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