

# Opus Downer Retirement Scheme

## Trust Deed

Opus Downer Retirement Trustee  
Limited (*Trustee*)

Downer New Zealand Limited and  
Opus International Consultants  
Limited (*Principal Employers*)



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## OPUS DOWNER RETIREMENT SCHEME – TRUST DEED

Date: 21 October 2016

### PARTIES

**Opus Downer Retirement Trustee Limited** (*Trustee*)

**Downer New Zealand Limited** and **Opus International Consultants Limited**  
(*Principal Employers*)

### BACKGROUND

- A The Works Superannuation Scheme (*Scheme*) is a superannuation scheme registered under the Superannuation Schemes Act 1989 (*Superannuation Act*).
- B The Scheme was established by a trust deed dated 30 November 1989 and is currently governed by a trust deed dated 7 April 1997 as amended by deeds of amendment on 28 September 2000, 24 May 2004, 17 February 2010 and 7 March 2014 (*Existing Deed*).
- C The Trustee wishes to amend the Existing Deed by substituting this Trust Deed for the Existing Deed in order to comply with the requirements of the Financial Markets Conduct Act 2013 (*Act*) and the Financial Markets Conduct Regulations 2014 and make other minor amendments for the more efficient operation of the Scheme (as well as changing the name of the Scheme to the Opus Downer Retirement Scheme).
- D The Principal Employers consent to the proposed amendments (as evidenced by their execution of this Deed).
- E The Trustee is satisfied that no member consents are required under section 9 of the Superannuation Act to the amendments proposed in this Deed.
- F Prior to executing this Deed, the Trustee obtained a certificate from its solicitor as required by section 12(1)(b) of the Superannuation Act.

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

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

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

### 1 CONTINUATION OF SCHEME

- (a) The Scheme is continued as an employer-related restricted workplace savings scheme for the purposes of the Act, effective on and from the Effective Date, on the basis set out in this Deed.



- (b) The Scheme shall be known as the Opus Downer Retirement Scheme. The Trustee may change the name of the Scheme by resolution at any time.
- (c) The Trustee is responsible for managing the Scheme and (in particular) for performing the functions set out in the Act<sup>1</sup>, and must ensure that the Scheme and the Trustee meet (and continue to meet) all initial and ongoing registration requirements applying to the Scheme and the Trustee under the Act.<sup>2</sup>
- (d) The purposes of the Scheme are to provide:
  - (i) retirement benefits directly to Members; and
  - (ii) benefits to Members on ceasing employment with an Employer (whether immediately on ceasing that employment or subsequently).
- (e) Notwithstanding any other provision of this Deed, in the event of any inconsistency between this Deed and the Act or the Regulations the Act and Regulations will prevail.
- (f) The Scheme shall be administered in accordance with the provisions of this Deed, which shall be binding on each Employer, the Trustee, and all Members and beneficiaries (and any person claiming under this Deed) as if each of them were a party to this Deed.

## 2 DEFINITIONS AND INTERPRETATION

- (a) In this Deed (unless precluded by the context) the following words and expressions shall have the following meanings:

*Act* means the Financial Markets Conduct Act 2013.

*Auditor* means the person (being a chartered accountant within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996) appointed by the Trustee as the auditor of the Scheme, or the firm of persons so appointed.

*Balanced Fund* means the Investment Fund of that name maintained by the Trustee pursuant to Clause 14(b).

*Custodian* means any person appointed in accordance with Clause 14(g) to hold Scheme property and includes, to the extent the context permits, any sub custodian appointed by the Custodian to hold any part of the assets of the Scheme;

*Deed* means this trust deed as amended from time to time.

*Deferred Benefit* means a benefit provided, or to be provided, under Clause 9.

*Director* means a director of the Trustee.

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

<sup>2</sup> Sections 127, 130, 131 and 133.



*Downer* means Downer New Zealand Limited and includes any company carrying on business in succession to, or in substitution for, Downer New Zealand Limited.

*Effective Date* means the date that the Trustee elects under clause 19(1)(a) of Schedule 4 to the Act to be the date that the Scheme is treated as a registered scheme under the Act;

*Employee* means a person in the full-time permanent or part-time permanent employment of an Employer and includes a director of an Employer who is in the full-time or part-time permanent employment of that Employer.

*Employer* means Downer, Opus or Century Drilling & Energy Services (NZ) Limited as the case may be (each of which has agreed to be bound by and to observe and perform all of the agreements and covenants which bind Employers under this Deed) and includes:

- (i) any company carrying on business in succession to, or in substitution for, any Employer; and
- (ii) such other company or body approved by the Principal Employers as has agreed in writing with the Principal Employers and the Trustee to be bound by the provisions of this Deed on agreed conditions.

*Equivalent Overseas Scheme* means an equivalent overseas retirement scheme as defined in the Regulations.<sup>3</sup>

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

*Regulations* means the Financial Markets Conduct Regulations 2014.

*Fund* means the assets for the time being held by the Trustee for the purposes of the Scheme.

*Investment Direction* means an investment direction given by a Member to the Trustee under Clause 15(a).

*Investment Fund* means any mixed or pooled form of investment made available by the Trustee for the investment of balances held in Member's Accounts.

*Leave of Absence* means leave of absence from Service as determined by the Trustee at its sole and absolute discretion on the advice of the Employer.

*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.<sup>4</sup>

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

<sup>4</sup> Section 131(3).



*Maximum Member Contribution Rate* means in relation to a Member the greater of 15% of Salary and the rate (expressed as a Salary percentage) at which the Member was contributing to the Scheme as at 30 June 2013.

*Member* means an Employee who is a member of the Scheme and includes any person whose Service has ceased, until he or she has received in full the benefit to which he or she is entitled under this Deed.

*Member's Accounts* means in respect of each Member the Member's No.1 Account and the Member's No.2 Account, or the Retained Benefit Account, of that Member.

*Member's No.1 Account* means an account maintained under Clause 4(a)(i).

*Member's No.2 Account* means an account maintained under Clause 4(a)(i).

*Nominated Beneficiary* means a person nominated by a Member pursuant to Clause 5(b).

*Opus* means Opus International Consultants Limited and includes any company carrying on business in succession to, or in substitution for, Opus International Consultants Limited.

*Permanent Incapacity* means permanent physical or mental incapacity suffered by any Member who is in Service that is of such extent that (having regard to his or her previous employment and other characteristics) the Member is unlikely to have significant earning capacity in the future.

*Principal Employers* means Downer and Opus.

*Register* means the register of Members maintained for the Scheme pursuant to the Act.<sup>5</sup>

*Regulations* means the Financial Markets Conduct Regulations 2014.

*Related Party* has the meaning given to it by the Act.<sup>6</sup>

*Related Party Benefit* has the meaning given to it by the Act.<sup>7</sup>

*Reserve Fund* means the Reserve Fund maintained under Clause 4(b).

*Retained Benefit Account* means an account established under Clause 9(b).

*Retirement Scheme* means a retirement scheme as defined in the Act.

*Review Date* means 30 June each year.

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<sup>5</sup> Section 215.

<sup>6</sup> Section 172(2).

<sup>7</sup> Section 172(1).



*Salary* means the remuneration paid by an Employer to a Member by way of salary or wages but excluding any remuneration by way of bonus, overtime, penal payments or any other allowances, except such allowances as may be specified by the Employer for inclusion in *Salary* for Scheme purposes.

*Service* means continuous part-time or full-time permanent employment with an Employer and a Member's Service shall not be deemed to have been broken either by any interruptions which, in the opinion of the Trustee on the advice of the Employer, are of a temporary nature or because of Leave of Absence.

*SIPO* has the meaning given to it by the Regulations.<sup>8</sup>

*Trustee* means Opus Downer Retirement Trustee Limited or such other person as is appointed from time to time as the trustee of the Scheme.

- (b) In the construction of this Deed, unless the context requires otherwise:
- (i) any reference to a statute or regulations shall include any amendments to or consolidation of that statute or those regulations;
  - (ii) words describing the singular include the plural and vice versa and words relating to one gender shall include the other genders;
  - (iii) headings are for guidance only and shall not affect the interpretation of this Deed;
  - (iv) references to clauses are references to the clauses of this Deed;
  - (v) references to money are references to New Zealand currency;
  - (vi) where the Principal Employers or the Trustee grant agreement or consent to any matter arising from or under this Deed, they may impose any conditions whatsoever on such agreement or consent that do not affect the registration of the Scheme under the Act; and
  - (vii) footnotes used in this Deed do not form part of the Deed, are a guide only and (where they refer to legislative provisions) are not intended to incorporate those provisions in the Deed or affect the interpretation of the Deed.
- (c) This Deed shall be interpreted and administered in accordance with New Zealand law.
- (d) Terms implied into this Deed by the Act will apply for so long as they are implied into this Deed under the Act (despite anything to the contrary in this Deed) and any provision in this Deed that is contrary to any such implied term will be void to the extent that it is contrary.
- (e) Where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Scheme and relate to any matter which is required by the Act to be provided for adequately in this Deed, the provisions of this Deed which

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<sup>8</sup> Regulation 5.



deal with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of the Scheme.

- (f) Any reference to:
- (i) an action taken or thing done (*Action*) under, in accordance with or pursuant to a provision of this Deed at or in respect of a date before the Effective Date (*Relevant Date*) shall constitute a reference to an equivalent Action taken under, in accordance with or pursuant to a materially corresponding provision in the deed governing the Scheme as at the Relevant Date; or
  - (ii) the operation or effect of a provision of this Trust Deed at or in respect of a date before the Effective Date shall constitute a reference to the operation or effect of a materially corresponding provision in the deed governing the Scheme as at the Relevant Date.

### 3 CONTRIBUTIONS

- (a) Subject to Clause 9(c), Members are not required to contribute any amount to the Scheme but may elect to do so.
- (b) Each Member who elects to contribute to the Scheme shall contribute a minimum amount equal to 1% of his or her Salary, until such time as the Member elects to cease contributing. A Member may elect to contribute an amount higher than 1% of his or her Salary provided this higher amount is an integral multiple of 0.5% of Salary (not exceeding the Maximum Member Contribution Rate). Contributions shall be made by way of deduction from Salary as it becomes due and payable, and shall be remitted to the Trustee by the Employer within the month following the month in which each deduction is made.
- (c) A Member shall have the right:
  - (i) as at any Review Date; or
  - (ii) with the consent of his or her Employer at any time, but not more than twice in the financial year of his or her Employer,
 to alter the percentage of his or her Salary which he or she contributes to the Scheme under Clause 3(b) above provided he or she gives the Trustee 30 days' prior written notice of this alteration.
- (d) Each Employer shall contribute in respect of each Member in its employment an amount equal to 3% of the Member's Salary from time to time plus an amount equal to the Member's contribution, PROVIDED THAT the maximum contribution by the Employer in respect of any Member shall be equal to 7.5% (or such additional percentage as the Employer in its absolute discretion may determine) of the Member's Salary from time to time. Such contributions by the Employer shall be made when the Salary of the Member becomes due and payable.
- (e) Notwithstanding the provisions of Clause 3(d) the Employer of the Member may with the consent of the Trustee elect to alter the Employer's contributions to such a rate





(being an integral multiple of 0.5% of Salary) as the Employer shall from time to time see fit.

- (f) Subject to legislation, a Member who is in Service and was previously a member of another Retirement Scheme may with the Trustee's consent transfer to the Scheme the amount of any benefit available from the previous scheme PROVIDED THAT the Trustee shall determine having regard to any conditions applicable to such transfer the proportions of such benefit which shall be deemed to be contributions by the Member or by an employer and such shall be credited to such Member's No.1 and No.2 Accounts respectively.
- (g) Contributions made pursuant to this Clause 3, the property for the time being representing the same and the income thereof shall constitute the assets of the Scheme and shall be held by the Trustee UPON TRUST (in accordance with the terms of the Deed and the Act<sup>9</sup>) to apply the same for the purposes of paying the benefits provided by this Deed.
- (h) The Trustee must:
  - (i) keep and reconcile records about Scheme property;
  - (ii) have those records audited; and
  - (iii) give reports in relation to Scheme property;
 in accordance with the requirements of the Act<sup>10</sup> and the Regulations<sup>11</sup> and procure that any Custodian does the same.
- (i) If a Member is granted Leave of Absence by his or her Employer he or she shall remain a Member of the Scheme. The Member shall not be required to make contributions during the period of Leave of Absence but any contributions made voluntarily by the Member shall be accepted (provided that those contributions must not exceed, as to either amount or frequency, the contributions that the Member was paying under Clause 3(b) immediately before commencing Leave of Absence). The Employer shall not make any contributions on behalf of the Member during the period of the Leave of Absence.
- (j) If a Member ceases or fails to make the contributions required under Clause 3(b), whether with or without obtaining the prior consent of the Employer, then the Employer contribution shall be limited to 3% of the Member's Salary from time to time. The cessation of contributions by a Member shall not result in loss of accrual of Service for the purposes of Clause 6(b).

#### 4 ACCOUNTS

- (a) The Trustee shall maintain in respect of the Fund:
  - (i) A Member's No.1 Account in the name of each Member to which shall be credited contributions made by the Member under Clause 3(b) and such part

<sup>9</sup> Sections 156 and 157.

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

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



of any contributions made under Clause 3(f) as is deemed to have been made by the Member together with returns specified at the rate declared by the Trustee and transferred from the Reserve Fund. The credit in each Member's No.1 Account shall be applied in accordance with the terms and conditions of this Deed.

- (ii) A Member's No.2 Account in the name of each Member to which shall be credited contributions made in respect of the Member by his or her Employer in terms of Clause 3(d) and such part of any contributions made under Clause 3(f) as is deemed to have been made by an Employer together with returns specified at the rate declared by the Trustee and transferred from the Reserve Fund. The credit in each Member's No.2 Account shall be applied in accordance with the terms and conditions of this Deed.
- (b) The Trustee shall maintain a Reserve Fund to which shall be credited:
- (i) Any income, capital gains, upward revaluations of property, or receipts in respect of the assets and investments of each Investment Fund which are not directed to be credited to the balances of Member's Accounts and to which there shall be debited capital losses and downward revaluations of property.
  - (ii) Any death benefits for which beneficiaries cannot be located by the Trustee within a period of six (6) years from the date of death of the Member.
  - (iii) All benefits forfeited in terms of Clause 11(b) or Clause 11(c) and not applied for the benefit of dependants.
  - (iv) Other money not required for the payment of benefits from the Scheme.
- (c) The Reserve Fund or such part as the Trustee may decide may be applied by the Trustee from time to time for the following purposes:
- (i) Crediting returns to the Member's Accounts on an equitable basis and in accordance with Clause 4(d);
  - (ii) Subject to Clause 9(g), meeting any of the expenses of the Scheme;
  - (iii) Meeting all or part of any Employer's contributions to the Scheme provided the written consent of the Principal Employers is first obtained;
  - (iv) Increasing the retirement benefits of all Members, excluding Members with Retained Benefit Accounts, on an equitable basis;
  - (v) Providing benefits other than retirement benefits for all Members of the Scheme, excluding Members with Retained Benefit Accounts, on an equitable basis.
- (d) After determining the net market value of the assets of the Scheme using a methodology determined by it from time to time, the Trustee shall determine from time to time, but no less frequently than as at monthly intervals, the rates of return applying to each Investment Fund (whether positive, negative or zero) using a methodology determined by the Trustee from time to time and taking into account (without limitation):
- (i) the nature of the investments and the investment performance of each Investment Fund and the extent to which gains are realised or unrealised;



- (ii) taxation liabilities and provisions;
  - (iii) the liquidity of investments; and
  - (iv) such other matters as the Trustee may consider relevant;
- and after deducting any amounts that the Trustee considers appropriate;
- (v) to hold in the Reserve Fund; and
  - (vi) to provide for expenses, fees, charges or costs associated with the operation and administration of the Scheme and the investments of that Investment Fund;

and the Trustee shall also as soon as practicable after each Review Date determine a return for each Investment Fund with respect to the relevant year (for crediting or debiting, as the case may be, to the Member's Accounts) using a methodology determined by the Trustee from time to time and taking into account not only the preceding factors but also the Scheme's audited accounts for that year.

- (e) In the case of a Member's retirement or death or leaving service, a return in respect of the investments of the relevant Investment Fund or Funds (as determined by the Trustee using a methodology determined by the Trustee from time to time) shall be credited or debited to the Member's Accounts for the period between:
  - (i) the last Review Date as at which returns were credited or debited to the Member's Accounts in accordance with Clause 4(d); and
  - (ii) the date of the Member's retirement or death or leaving service.
- (f) In the case of a Member who gives the Trustee an Investment Direction in accordance with the provisions of Clause 15 which relates to the whole of the Member's Accounts, a return in respect of the investments of the Investment Fund from which the Member is switching (as determined by the Trustee using a methodology determined by the Trustee from time to time) may be credited or debited to the Member's Accounts for the period between:
  - (i) the last Review Date at which returns were credited or debited to the Member's Accounts in accordance with Clause 4(d); and
  - (ii) the date as at which the Member's Investment Direction is implemented by the Trustee under Clause 15(f).
- (g) The Trustee shall to the extent required by the Act<sup>12</sup> and the Regulations:<sup>13</sup>
  - (i) correct any material error or non-compliance in a return determination made pursuant to any of Clauses 4(d) to 4(f); and
  - (ii) 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 returns adjustments have been made) is less than such minimum

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<sup>12</sup> Section 168.

<sup>13</sup> Regulations 97 to 99.



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.

- (h) The Trustee shall report to the FMA any material error in a return determination made pursuant to any of Clauses 4(d) to 4(f) or any material non-compliance with an FMA notice relating to pricing methodology, to the extent required by law.<sup>14</sup>
- (i) The Trustee shall, as soon as is reasonably practicable, take all reasonable steps (in consultation with FMA) to notify disadvantaged current or former Members of any such error, and of any action that has been taken to compensate or reimburse those persons, to the extent required by the Act.<sup>15</sup>

## 5 RETIREMENT BENEFITS

- (a) In the event of a Member retiring from the Service of his Employer:
  - (i) on or after attaining age 60; or
  - (ii) with the consent of his or her Employer after attaining age 50; or
  - (iii) at any time as a result of ill-health or Permanent Incapacity,
 the Trustee shall, subject to Clauses 5(b) and 9, pay as a lump sum the total credit standing to his or her Member's No.1 and No.2 Accounts.
- (b) Subject to a life insurance company agreeing to provide the annuity (and also agreeing to the conditions prescribed in whichever of Clauses 5(c) to (e) applies) a retiring Member may elect (instead of receiving a lump sum in accordance with Clause 5(a)) to apply some or all of the total credit standing to his or her Member's No.1 and No.2 Accounts towards the purchase of an annuity on the life of the Member from a life insurance company, with only the balance (if any) of his or her total credit paid as a lump sum.
- (c) Unless the retiring Member directs otherwise, any annuity purchased pursuant to this Clause shall be payable by monthly instalments, the first falling due on the first day of the month following that in which the Member retires and a subsequent instalment falling due on the first day of each succeeding month during his or her lifetime PROVIDED THAT in the event of the death of the retired Member before 120 monthly instalments have been paid, the Nominated Beneficiary or Nominated Beneficiaries of that Member, as the case may be, appointed under Clause 6(b) (and if more than one then in the proportions nominated by the Member under Clause 6(b)) shall be entitled to receive a lump sum equal to the excess of 120 monthly instalments over the total of the instalments of annuity paid to the retired Member during the lifetime of that Member. If there shall be no Nominated Beneficiary in respect of that Member, or if Clause 6(a)(ii) applies, then such benefit shall be paid to the legal personal representative of that Member.
- (d) The retiring Member may before any annuity is purchased elect to receive a reduced annuity in lieu of and being not less than one-half of the annuity otherwise payable to the Member under this Clause 5 in consideration of the provision of an annuity to

<sup>14</sup> Section 168 of the Act and regulations 97 to 99 of the Regulations.

<sup>15</sup> Section 168 of the Act and regulations 97 to 99 of the Regulations.



his or her spouse or other nominated beneficiary commencing on the death of the retired Member PROVIDED THAT in the event of the death of the retired Member and such nominated beneficiary before 120 monthly instalments have been paid the legal personal representative of the last of them to die shall be entitled to receive a lump sum equal to the excess of 120 monthly instalments over the instalments of annuity paid during their lifetimes.

- (e) Where an annuity is to be purchased pursuant to this Clause 5 a Member may elect by notice in writing to receive a reduced annuity in order to provide an immediate annuity payable to any person nominated by the Member and notified in writing. The amount of any such reduced annuity payable to the Member shall not be less than one half of the annuity that would be payable to the Member if no such election was made.
- (f) If a Member retires from Service in terms of Clause 5(a) then in lieu of receiving the lump sum benefit specified under that clause and subject to the consent of the manager of the accepting scheme the Member may elect to have the lump sum benefit transferred to another Retirement Scheme or an Equivalent Overseas Scheme to his or her credit and for his or her benefit.

## **6 BENEFIT ON DEATH IN SERVICE**

- (a) In the event of the death of a Member whilst in the Service of an Employer, the Trustee shall pay as a lump sum a benefit equal to the total credit standing to the Member's No.1 and No.2 Accounts to the Member's Nominated Beneficiary or Nominated Beneficiaries, as the case may be, and in the proportions nominated by that Member under Clause 6(b), provided that if:
  - (i) there is no Nominated Beneficiary in respect of the Member; or
  - (ii) following his or her most recent choice of a Nominated Beneficiary the Member has made a will for which probate is granted (and the will does not prescribe that such choice of Nominated Beneficiary is to remain in effect);
 then the Trustee shall pay such benefit to the legal personal representatives of that Member.
- (b) A Member may nominate a Nominated Beneficiary, or Nominated Beneficiaries, being a person or persons whom that Member wishes to benefit from the Scheme on the death of that Member, in such proportions as the Member may nominate, and may amend any earlier nomination, by completing a form approved for that purpose from time to time by the Trustee and lodging that form with the Trustee.

## **7 BENEFIT ON LEAVING SERVICE**

- (a) In the event of a Member leaving the Service of his or her Employer in order to commence Service with another Employer within the Scheme he or she shall continue to be a Member of the Scheme.
- (b) In the event of a Member leaving or ceasing to be in the Service of any Employer otherwise than in the circumstances provided for in Clauses 5, 6 and 7(a), or in the event of a Member ceasing participation in this Scheme upon becoming a member of



another Retirement Scheme established by an Employer, he or she shall be entitled to a lump sum benefit equal to:

- (i) the credit standing to his or her Member's No.1 Account, and
- (ii) 10% of his or her Member's No.2 Account for each complete year of Service, with a maximum of 100% of his or her Member's No.2 Account after 10 years' Service, less any amounts paid to the Member under clause 8(b). The Trustee may however in its absolute discretion pay such proportion, with a maximum of 100%, as it shall determine of his or her Member's No.2 Account irrespective of the number of years of Service.

If the Trustee is satisfied that it is practicable and in the best interests of the Member for it to do so, it may allow the Member to elect to apply the part of the lump sum benefit arising from the Member's No.2 Account in the purchase of an annuity in the manner and subject to the same options and restrictions as provided in Clauses 5(c), (d) and (e) and payable upon leaving Service.

- (c) The balance remaining in any Member's No.2 Account after payment under Clause 7(b) shall be credited to the Reserve Fund.
- (d) If a Member ceases to be in Service in terms of Clause 7(b) then in lieu of receiving the lump sum benefit specified under that clause and subject to the consent of the manager of the accepting scheme the Member may elect to have the lump sum benefit transferred to another Retirement Scheme or an Equivalent Overseas Scheme to his or her credit and for his or her benefit.
- (e) Except in respect of benefits payable under Clause 8, no Member shall be entitled to any other benefit payable under this Deed until he or she retires or otherwise ceases to be employed by any Employer, whichever is the earlier.

## **8 FINANCIAL HARDSHIP**

- (a) Subject to Clauses 8(c) to 8(g) a Member who is in Service shall be entitled once in any 12 month period but no more than 3 times in total while in Service to withdraw up to 35% of the credit standing to his or her Member's No.1 Account (including any earnings that have accrued but not yet been credited to the Member's No.1 Account for the year to date) at the time of each withdrawal, on the grounds of financial hardship.
- (b) Subject to Clauses 8(c) to 8(g) a Member who is in Service shall be entitled once in any 12 month period but no more than 3 times in total while in Service to withdraw up to 15% of the credit standing to his or her Member's No. 2 Account (including any earnings that have accrued but not yet been credited to the Member's No.2 Account for the year to date) at the time of each withdrawal, on the grounds of financial hardship.
- (c) Any benefit payable under Clauses 8(a) and 8(b) is subject to the Member providing information to the satisfaction of the Trustee (whose decision in this regard shall be final and binding) as to the Member's financial circumstances.



- (d) The Trustee in its discretion may from time to time determine rules concerning the payment of withdrawals for financial hardship, including but not limited to requiring the Member to pay a reasonable fee.
- (e) The Trustee may, in its discretion, temporarily or permanently suspend the payment of a withdrawal or any withdrawals under Clause 8(a) or Clause 8(b) and shall not be bound to give any reason for so doing.
- (f) Each withdrawal under Clause 8(a) and/or Clause 8(b) shall count as 1 withdrawal.
- (g) In no circumstances shall a Member be eligible to make a withdrawal under either Clause 8(a) or Clause 8(b) where the Trustee considers that the payment of such a benefit may be prejudicial to the tax status or treatment of the Scheme, or to any Member of the Scheme or to any contribution made by or in respect of a Member of the Scheme under any law (including, without limitation, tax status or treatment) and the Scheme's registration under the Act.

## **9 DEFERRED BENEFITS**

- (a) A Member shall be entitled to receive a Deferred Benefit if he or she:
  - (i) ceases to be in Service for any reason; and
  - (ii) at the date of ceasing to be in Service, meets such eligibility criteria for receiving a Deferred Benefit as the Trustee may determine from time to time; and
  - (iii) elects to receive a Deferred Benefit.
- (b) Where a Member becomes entitled to a Deferred Benefit under Clause 9(a) the Trustee shall establish and maintain a Retained Benefit Account in the Member's name, to which shall be transferred the total credit in the Member's No.1 Account and the total credit in the Member's No.2 Account (or, in the case of a Member to whom Clause 7(b) applies, the portion of that Account payable under Clause 7(b)) and to which the Trustee shall then apply returns at declared rates.
- (c) A Member to whom this Clause 9 applies may not make any further contributions to the Scheme.
- (d) A Member shall be entitled to make withdrawals from his or her Retained Benefit Account subject to such 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;
  - (iii) the minimum amount that must be left in the Retained Benefit Account; and
  - (iv) other similar matters.
- (e) The maximum amount that a Member shall be entitled to withdraw from his or her Retained Benefit Account shall be the total credit in that Retained Benefit Account from time to time and the Retained Benefit Account shall be closed once its balance reaches nil.





- (f) A Member who elects a Deferred Benefit under Clause 9(a) shall not be entitled to receive any further benefit under the Deed, other than his or her Retained Benefit Account balance.
- (g) Any expenses, fees, charges and costs associated with administering a Member's Retained Benefit Account shall be debited from that Account at times and in a manner determined by the Trustee.
- (h) If a Member dies while a balance remains in his or her Retained Benefit Account, then that balance shall be payable in accordance with Clause 6 as if the Member had died while still in Service.

#### 10 **RELATIONSHIP PROPERTY WITHDRAWAL**

A Member may apply to the Trustee in writing to withdraw the whole or any part of the credit standing to his or her Member's No.1 and No.2 Accounts and the Trustee may, in its sole discretion, permit the withdrawal if satisfied (based on whatever supporting evidence it may reasonably require) that the withdrawal is required in order for the Member to settle a division of relationship property under the Property (Relationships) Act 1976 upon:

- (a) the marriage of two spouses ending (as defined in section 2A(2) of that Act);
- (b) the civil union of civil union partners ending (as defined in section 2AB(2) of that Act); or
- (c) the de facto relationship of de facto partners ending (as defined in section 2D(4) of that Act).

Even where the requirements of paragraph (a), (b) or (c) are met, the Trustee retains an absolute discretion as to whether or not (and to what extent) to allow the withdrawal.

#### 11 **ALIENATION, BANKRUPTCY OR INCAPACITY**

- (a) No Member may charge, borrow against the security of or (except as required by law) assign, alienate or transfer to any other person his or her benefits under the Scheme.
- (b) If a Member who joined the Scheme before 1 April 1990 becomes bankrupt, all benefits to which that Member is entitled in the Scheme shall be forfeited to the Scheme PROVIDED THAT the Trustee may in its absolute discretion apply in respect of such Member an amount not exceeding the amount of the benefit which has been forfeited for the maintenance, support or otherwise for the benefit of the Member or such other person or persons as the Trustee may in its discretion determine.
- (c) If a Member who joined the Scheme on or after 1 April 1990 becomes bankrupt that portion of any benefit to which the Member is entitled which is not attributable to contributions made by the Member, and which has not vested in the Member, shall revert to the Scheme to the maximum extent (if any) permitted by law.
- (d) If (and to the extent that) a reversion is permitted and is in effect pursuant to clause 11(c) and a Member would, but for that reversion, have become entitled to a benefit





from the Scheme during a period of bankruptcy the Trustee shall determine the amount of the benefit due in respect of the Member and shall apply that benefit as follows:

- (i) that part of the benefit (if any) which has not reverted to the Trustee under Clause 11(c) shall be applied in accordance with any order of adjudication in respect of the Member; and
  - (ii) that part of the benefit (if any) which has reverted to the Trustee under Clause 11(c) may at the absolute discretion of the Trustee be applied for the maintenance, support or otherwise for the benefit of the Member or such other person or persons as the Trustee may in its discretion determine.
- (e) If a Member any part of whose benefits have reverted under Clause 11(c) is discharged from bankruptcy before becoming entitled to a benefit from the Scheme, the Trustee shall determine the benefits that would have applied to the Member in respect of the period before and during bankruptcy and shall notify the Member in writing of those benefits and the provisions of Clause 11(d)(ii) shall apply to any portion of the benefits which reverted to the Trustee.
- (f) In the event of a Member becoming physically, mentally or otherwise incapable of managing his or her own affairs the Trustee shall pay the Member's benefits in accordance with the decision of any committee duly appointed to manage the affairs of the Member or in the event of no such committee being appointed the Trustee shall apply the benefits for the maintenance support or otherwise for the benefit of the Member or such other person or persons as the Trustee may in its discretion determine.

## 12 TRUSTEE

- (a) The Scheme shall have a sole corporate trustee (appointed by the Principal Employers, who shall be equal shareholders in the Trustee) which is permitted under the Act and any other applicable legislation to be the trustee of the Scheme and has complied with all applicable registration requirements. The Trustee must have a constitution which prescribes that for as long as it is the Trustee:
- (i) it shall have 7 Directors, at least 1 of whom is a Licensed Independent Trustee;
  - (ii) Downer shall appoint 3 Directors (*Downer Directors*), Opus shall appoint 3 Directors (*Opus Directors*) and the Principal Employers, acting jointly, shall appoint the Licensed Independent Trustee;
  - (iii) the Directors so appointed shall select the Chairman of Directors (who shall not have a casting vote);
  - (iv) 4 Directors (comprising 2 Downer Directors and 2 Opus Directors) shall form a quorum;
  - (v) no meeting of the Directors shall consider any exercise of any discretion under this Deed where other than an equal number of Downer Directors and Opus Directors are present, unless the Directors who are in a minority agree otherwise; and



- (vi) Downer or Opus (as the case may be) may remove any Director appointed by it, and the Principal Employers (acting jointly) may (subject, to the requirements of the Act<sup>16</sup>) remove the Licensed Independent Trustee, on any grounds and without being required to give a reason.
- (b) The Principal Employers, acting jointly, shall have the power by deed to remove the Trustee from office and appoint in its place another corporate body as trustee of the Scheme. The Trustee so appointed must be permitted under the Act and any other applicable legislation to be the trustee of the Scheme (and must have complied with all applicable registration requirements). The Trustee must also be removed if required under the Act.<sup>17</sup>
- (c) In acting as the Trustee of the Scheme, the Trustee must comply at all times with the requirements of the Act.<sup>18</sup>
- (d) The Trustee shall keep records of Members in such form and in such manner as is required by the Act.
- (e) The Trustee may open and operate such bank accounts as it thinks fit.
- (f) The Trustee shall have power to delegate all or any of the powers or authorities vested in it to committees consisting of such one or more of the Directors or to any other person or persons or body or bodies corporate (and the Trustee may pay suitable remuneration, as determined by the Trustee in its absolute discretion, to such person or agent) and may revoke the same at any time.
- (g) The Trustee may seek advice from, or delegate any of the powers or discretions conferred on it by the Deed to, any person, company or firm which in the opinion of the Trustee is qualified to give such advice and exercise the powers and discretions so delegated and the Trustee may pay suitable remuneration, as determined by the Trustee in its absolute discretion, to such person or agent. Such delegations shall be on such terms and subject to such limitations as the Trustee imposes and shall be subject to the power of the Trustee to revoke such delegation.
- (h) Where the Trustee delegates the performance of any of its functions the Trustee:
  - (i) must comply with the requirements of the Act<sup>19</sup> if contracting out any of its functions as the manager of the Scheme; and
  - (ii) remains liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority.
- (i) The Trustee may from time to time appoint one or more persons as investment managers of the Scheme, on such terms as may be agreed between the Trustee and each investment manager, and may delegate to each investment manager such of

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<sup>16</sup> Section 185(1)(c) and (3)

<sup>17</sup> Section 185.

<sup>18</sup> Sections 142 to 151.

<sup>19</sup> Section 146.



the Trustee's powers and duties regarding the investment of the Scheme's assets as is agreed between the Trustee and the investment manager.

- (j) The Trustee may from time to time appoint one or more persons as administration managers of the Scheme, on such terms as may be agreed between the Trustee and each administration manager, and may delegate to each administration manager such of the Trustee's powers and duties regarding the administration of the Scheme as are agreed between the Trustee and the investment manager.
- (k) No provision of this Deed has the effect of exempting the Trustee or any Director from, or indemnifying the Trustee or any Director against, any liability to the extent that doing so would be void under the Act<sup>20</sup> or any other statute.
- (l) The Trustee shall not incur any personal liability for anything done or omitted to be done as a Trustee under this Deed in relation to the proper performance of its duties under the Act.<sup>21</sup>
- (m) The payment by the Trustee of any benefit to a person to whom such benefit is determined to be payable as set forth in this Deed shall be a complete discharge to the Trustee for any liability the Trustee has in respect of the benefit so paid. The Trustee shall be under no liability to see to the application of the benefit so paid.
- (n) The Licensed Independent Trustee shall be paid out of the Fund such fees as are approved by the Principal Employers from time to time. The Trustee and the Directors shall not otherwise receive from the Scheme any commission or other remuneration in respect of the performance of their obligations, but (without limiting either of Clauses 4(c)(ii) or 4(d)(vi)) the Trustee and each Downer Director and Opus Director (with the approval of the Employer which appointed him or her):
  - (i) may arrange to have paid from the Fund; or
  - (ii) shall be reimbursed from the Fund for;
- (o) any costs or expenses which the Trustee or that Director may bona fide pay or incur in the administration of the Scheme.
- (p) In addition to any other powers granted under this Deed, the Act or by law, but subject to the Act, the Trustee may do anything the Trustee considers necessary or expedient to enable it to discharge the Trustee's duties under this Deed.

### 13 ACCOUNTS AND AUDIT

- (a) The Trustee shall keep account of the money received and disbursed for the purposes of the Scheme and a statement of account shall be made up annually as at 30 June. The accounts shall be audited by the Auditor. Copies of the annual accounts and balance sheet and of the Auditor's Report shall be furnished to the Principal Employers and a further copy shall be provided to each Member upon request.

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<sup>20</sup> Section 136.

<sup>21</sup> Sections 143(1) and 144.



- (b) The Trustee shall comply with all applicable legislation in relation to the appointment, removal or retirement of the Auditor (including all provisions implied into this Deed by the Act or the Regulations).
- (c) Without limiting any other provision of this Deed, the Trustee must keep or ensure there are kept and reconciled records that:
  - (i) Identify the assets in the Fund;
  - (ii) show when the assets in the Fund were received; and
  - (iii) if assets in the Fund have been disposed of, show when those assets were disposed of and to whom;
 and have those records audited (and give reports about the assets of the Scheme) in accordance with the requirements of the Act<sup>22</sup> and the Regulations<sup>23</sup>.
- (d) Each Member shall be given annual confirmation information in accordance with the Act<sup>24</sup> and the Regulations<sup>25</sup>.
- (e) The Trustee shall cause financial statements to be prepared, audited and lodged with the Registrar of Financial Service Providers in respect of the Scheme in accordance with the Act.
- (f) The Trustee shall ensure that a Register is maintained with respect to the Scheme which is kept in the manner, contains the information, is audited and is available for inspection as required by the Act and the Regulations<sup>26</sup>. The Register may be kept electronically.

#### 14 INVESTMENT

- (a) All moneys of the Fund and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 and the Act as to the investment of trust funds and notwithstanding anything to the contrary in the Trustee Act 1956 or the Act, the Trustee and any investment manager of the Scheme shall, in exercising the power of investment, exercise the care, diligence and skill required of that person by the Act.<sup>27</sup>
- (b) The Trustee may divide the Scheme into such number of separate Investment Funds as the Trustee shall from time to time separately establish and identify.

<sup>22</sup> Sections 158 and 159.

<sup>23</sup> Regulations 86 to 88.

<sup>24</sup> Section 100.

<sup>25</sup> Regulations 69 to 71.

<sup>26</sup> Sections 215 to 223 of the Act and regulations 109 and 110 of the Regulations.

<sup>27</sup> Section 144.



- (c) The Trustee must ensure that there is a SIPO for the Scheme which complies with the Act<sup>28</sup> (and may be amended or replaced by the Trustee from time to time subject to the requirements of the Act) and:
  - (i) all moneys available for investment in an Investment Fund shall be invested in accordance with the SIPO for the Scheme as it relates to that Investment Fund;
  - (ii) the Trustee must comply at all times, in relation to the SIPO, with the requirements of the Act<sup>29</sup> and the Regulations<sup>30</sup>; and
  - (iii) the SIPO or any alteration to it (as applicable) are lodged with the Registrar of Financial Service Providers as required by the Act.<sup>31</sup>
- (d) If the Trustee is given an Investment Direction by a Member under Clause 15(a) the Trustee shall, subject to the exercise of any of the discretions given to the Trustee in Clauses 15(a)(i) and 15(a)(ii), comply with that Investment Direction and shall be prohibited from investing the Member's Accounts and contributions made by or on behalf of the Member pursuant to Clause 3 of this Deed other than in accordance with such Investment Direction.
- (e) A Member's Investment Direction shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956 and a binding direction for the purposes of section 13G of the Trustee Act 1956.
- (f) Without prejudice to the powers conferred upon the Trustee by general law or by Clause 12 and this Clause 14 the Trustee shall impose on any investment manager appointed under Clause 12(i) a binding obligation that it will, in exercising its powers of investment, exercise the care, diligence and skill required by the Act<sup>32</sup>.
- (g) The Trustee may hand over investments and money belonging to the Scheme to any Custodian, who must meet the external custodianship requirements set out in the Act<sup>33</sup>, to be held and dealt with by that Custodian, but always subject to and in accordance with the directions of the Trustee as given from time to time, and may delegate to that Custodian such powers, discretions and authorities in relation to the collection of investments and payment of monies as it thinks fit, and may revoke the same at any time. If authorised in writing by the Trustee, a Custodian appointed under this Clause 14(g) may itself appoint one or more sub-custodians in which any of the assets of the Scheme are to be vested. Any sub-custodian appointed under this Clause 14(g) must meet the requirements for such a person under the Act.<sup>34</sup>

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<sup>28</sup> Section 164

<sup>29</sup> Sections 166 and 167.

<sup>30</sup> Regulations 94 to 96.

<sup>31</sup> Section 166.

<sup>32</sup> Section 144.

<sup>33</sup> Section 156(4).

<sup>34</sup> Section 156.



- (h) The Trustee shall comply at all times with the Act<sup>35</sup> and shall be jointly and severally liable with each Custodian for the due and faithful performance and observance by the Custodian of all the duties and obligations imposed on it.
- (i) The Trustee may indemnify an administration manager, investment manager or Custodian appointed under this Deed, to the fullest extent permitted by the Act, for liabilities or expenses incurred in relation to the performance of the manager's or the Custodian's contracted functions.
- (j) The Trustee will, following the constitution of an Investment Fund or Investment Funds, hold the total amount invested in that Investment Fund and any other assets then becoming part of that Investment Fund upon trust for the Members who have invested in such Investment Fund, subject to any liability of that Investment Fund in accordance with the terms and conditions of this Deed.
- (k) The Trustee will at all times treat each Investment Fund as a separate and distinct trust fund with its separate assets and liabilities governed by the terms and conditions of this Deed. All assets acquired on behalf of an Investment Fund shall be held by or on behalf of the Trustee as the exclusive property of that Investment Fund, and all liabilities incurred by or on behalf of the Trustee in relation to an Investment Fund shall be the exclusive liability of such Investment Fund.
- (l) No Member investing in any one Investment Fund shall by virtue of being a Member investing in such Investment Fund have any claim on any other Investment Fund.
- (m) The Trustee may operate an Investment Fund or Investment Funds on a unitised basis prescribed by the Trustee from time to time.
- (n) The Trustee shall have an absolute discretion as to which Investment Fund or Investment Funds are made available for the purposes of a Member's Investment Direction, and may from time to time exclude or close an Investment Fund from those made available for the purposes of a Member's Investment Direction.
- (o) The Trustee may resolve to terminate an Investment Fund at any time in accordance with the following provisions:
  - (i) a resolution by the Trustee terminating investment in that Investment Fund shall specify the date from which the termination will take place (*Termination Date*);
  - (ii) after the passing of the resolution each Member whose Investment Direction instructs the Trustee to invest in the relevant Investment Fund shall promptly be given notice in writing of the termination of their ability to invest in that Investment Fund;
  - (iii) no further contributions under Clause 3 by or on behalf of the Member shall be accepted by the Trustee for investment in the relevant Investment Fund after the Termination Date; and

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<sup>35</sup> Section 156(5).



- (iv) each Member whose Investment Direction directed the investment of any portion of their Member's Accounts or of the contributions made by or on behalf of that Member pursuant to Clause 3 of this Deed into the terminated Investment Fund shall to the relevant extent complete a new Investment Direction or (if the Trustee determines in its absolute discretion) be invested in the Balanced Fund.

## 15 INVESTMENT DIRECTION

- (a) A Member may give the Trustee an Investment Direction, subject to such conditions as the Trustee may wish to impose. The Trustee shall have the discretion from time to time to refuse:
  - (i) to receive any or all Investment Directions;
  - (ii) to implement any or all Investment Directions given, or may delay the implementation of any or all such Investment Directions.
- (b) A Member who gives an Investment Direction shall do so in the form and in the manner prescribed by the Trustee from time to time.
- (c) If a Member does not give an Investment Direction, the total credit of the Member's Accounts and all contributions made by or on behalf of the Member under Clause 3 shall be invested in the Balanced Fund and shall continue to be invested in the Balanced Fund until such time, if ever, as the Member gives an Investment Direction.
- (d) An Investment Direction given by a Member under this Clause shall be a direction to the Trustee to invest the total credit of the Member's Accounts and all contributions under Clause 3 of this Deed in accordance with the Member's Investment Direction and subject to Clause 14(o) the Trustee shall be prohibited from investing the total credit of the Member's Accounts and all contributions under Clause 3 of this Deed other than in accordance with the Member's Investment Direction.
- (e) A Member may amend or vary an Investment Direction given to the Trustee once in any 12 month period and such request shall be in a form approved or prescribed by the Trustees.
- (f) Any Investment Direction given by a Member to the Trustee under this Clause 15 shall subject to any exercise by the Trustee of the discretions given in Clause 15(a)(i) and 15(a)(ii) be implemented by the Trustee as soon as possible after the next determination of the rate of return of the relevant Investment Fund.
- (g) The Trustee may impose reasonable rules and conditions to reflect the costs or penalties incurred by the Trustee in complying with the Member's Investment Direction, including but not limited to the charging of a reasonable fee.
- (h) No Investment Direction given by a Member in terms of this Clause 15 shall exempt the Trustee from its responsibilities under the Act.<sup>36</sup>

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<sup>36</sup> Section 144.





## 16 **BORROWING**

If the Directors unanimously agree to do so then the Trustee may from time to time borrow and raise money for any of the purposes of the Scheme on such terms and conditions as it thinks fit and secure the repayment of moneys so borrowed and interest thereon by mortgage or charge over all or any of the assets of the Scheme. No lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

## 17 **GENERAL**

- (a) Nothing contained in this Deed shall in any way restrict the rights of an Employer to terminate the employment of a Member at any time and without assigning any cause for such determination.
- (b) A copy of this Deed shall be kept by each Employer and a copy shall be available for inspection by Members at any reasonable time.
- (c) No Member shall have any claim against any Employer or its property or funds in respect of any moneys payable pursuant to the provisions of this Deed.
- (d) The accounts and reports of the Scheme shall be expressed in New Zealand currency and nothing in this Deed shall require the Trustee to make any payments other than in New Zealand and in New Zealand currency.
- (e) Every Employer and Member under this Deed shall furnish to the Trustee such information as it shall require in order to fulfil its duties under this Deed.
- (f) Each Member shall be given annual confirmation information in accordance with the Act and the Regulations.
- (g) The benefit payable upon a Member ceasing to be a Member of the Scheme for whatever reason shall not be less than the Member's own contributions to the Scheme plus any contributions made under Clause 3(f).
- (h) Where any register entry relating to the Scheme contains a statement to the effect that a document or other information is available from the Trustee on request, the Trustee must (after receiving such a request) provide the document or other information requested as soon as practicable but in any event within 5 working days.<sup>37</sup>

## 18 **AMENDMENT**

The Trustee (with the written consent of the Principal Employers) may from time to time by instrument in writing repeal, alter or add to any of the provisions of this Deed subject to the restrictions in the Act<sup>38</sup> and any other applicable legislation.

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<sup>37</sup> Regulation 53.

<sup>38</sup> Section 139.





## 19 WINDING UP

- (a) The Trustee, by resolution in writing, may wind up the Scheme and shall wind up the Scheme if it is required to be wound up under the Act.<sup>39</sup> The Trustee shall, after passing such a resolution, provide a copy of that resolution to the FMA as required by the Act. The provisions of the Act relating to the winding up of registered schemes and to the way in which a scheme's assets are to be distributed in the event of a wind-up<sup>40</sup> shall apply with effect from the date of that resolution.
- (b) If the Trustee resolves that the Scheme shall be wound up then the Trustee shall after deducting the costs and expenses of winding up distribute any moneys remaining thereafter to the Members in proportion to the total credits in each Member's Accounts as at the date of winding up of the Scheme, PROVIDED THAT if the moneys available for distribution under this Clause 19 exceed the aggregate balances in the Member's Accounts then Members with Retained Benefit Accounts shall not share in that excess (which shall be distributed solely to Members still in Service, in proportion to the total credits in those Members' No.1 and No.2 Accounts).
- (c) If any of the Employers shall cease to operate or be wound up or shall cease to be an Employer or shall so resolve then that portion of the Scheme determined by the Trustee as being applicable to Members then employed by such Employer shall be dealt with in accordance with Clause 19(a) above as if such provisions referred to such Members only. Where a partial wind-up of the Scheme pursuant to this sub-clause in respect of Downer or Opus has been completed, all references herein to consents required or able to be given by or acts required or able to be done or performed by the company in respect of whose employees the partial wind up has taken place shall with effect from the completion of the partial wind-up be able to be given done or performed by whichever of Downer or Opus remains as an Employer under the Scheme following such partial wind-up and this Deed shall from then on be construed accordingly.
- (d) No part of the assets of the Scheme may revert to any Employer on the total or partial winding up of the Fund without the prior consent of the FMA.

## 20 RELATED PARTY TRANSACTIONS

- (a) The Trustee and any Related Party of the Trustee must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the Act.<sup>41</sup>
- (b) The Trustee must not acquire any new in-house asset contrary to the Act, and shall sell down any in-house assets held by the Scheme to the extent required by the Act.<sup>42</sup>

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<sup>39</sup> Sections 195 and 211.

<sup>40</sup> Sections 212 and 213.

<sup>41</sup> Sections 172 to 175.

<sup>42</sup> Section 176 and clause 39 of Schedule 4.



- (c) 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 20(a).
- (d) A failure to comply with Clause 20(a) does not affect the validity of a transaction (subject to any Court order to the contrary).<sup>43</sup>

## 21 AUDITOR

- (a) The Trustee shall appoint as Auditor of the Scheme a person qualified in terms of the Act<sup>44</sup> and entitled by law to act as such, to provide services in accordance with the requirements of the Act and the Regulations.<sup>45</sup>
- (b) The remuneration of the Auditor shall be fixed by the Trustee on an arm's length basis and shall be paid as an expense of the Scheme unless paid by the Employers.
- (c) The Auditor may retire upon the expiration of not less than ninety (90) days' notice to the Trustee.
- (d) Any vacancy in the office of Auditor occurring under Clause 21(c) shall be filled by the Trustee appointing as Auditor of the Scheme a person qualified for appointment in terms of Clause 21(a).

## 22 MEETINGS

When required by the Act, the Trustee must call a meeting of Members in the manner and on the basis set out in the Act and the Regulations.<sup>46</sup> A meeting of Members shall be conducted in accordance with the requirements of the Act and the Regulations.<sup>47</sup>

## 23 DELIVERY

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

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

<sup>43</sup> Section 173(6).

<sup>44</sup> Section 461E.

<sup>45</sup> Section 218 of the Act and regulations 108 and 109 of the Regulations.


<sup>46</sup> Sections 161 to 163 of the Act and regulation 83 of the Regulations.

<sup>47</sup> Sections 162 and 163 of the Act and regulations 83 and 91 (and Schedule 11) of the Regulations.



**EXECUTED AND DELIVERED AS A DEED**

**Opus Downer Retirement Trustee  
Limited by:**

  
\_\_\_\_\_  
Director


  
\_\_\_\_\_  
Director

**Opus International Consultants  
Limited by:**

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director

**Downer New Zealand Limited by:**

  
\_\_\_\_\_  
Director *h w Jarrold.*

  
\_\_\_\_\_  
Director *Curby.*

