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**DEED OF AMENDMENT OF  
THE PRESBYTERIAN CHURCH OF AOTEAROA NEW  
ZEALAND BENEFICIARY FUND TRUST DEED**

PRESBYTERIAN BENEFICIARY FUND TRUSTEE LIMITED

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## PARTIES

The Presbyterian Beneficiary Fund Trustee Limited (Trustee)

## BACKGROUND

- A The Trustee is the trustee and manager of The Presbyterian Church of Aotearoa New Zealand Beneficiary Fund (**Fund**), a superannuation scheme established by The Presbyterian Church of Aotearoa New Zealand primarily for the purpose of supporting its ministers of religion in their retirement. A fund of this kind has been in existence since the early days of the Presbyterian Church in New Zealand. The Fund was previously a registered superannuation scheme under the Superannuation Schemes Act 1989, and has subsequently been registered under the Financial Markets Conduct Act 2013 (**Act**) as required by that Act. The Fund's purposes have been confirmed by the Courts as for the advancement of religion and charitable (*Presbyterian Church of New Zealand Beneficiary Fund v Commissioner of Inland Revenue* [1994] 3 NZLR 363 (HC) and *Hester v Commissioner of Inland Revenue* [2005] 2 NZLR 172 (CA)).
- A The Fund was governed by a consolidated trust deed dated 27 November 2008, and then a consolidated trust deed dated 1 December 2016. Subsequently, the General Assembly determined that the defined benefits payable to Members under Part B and Part C of the trust deed would be wound up effective 30 June 2017 and a new division (**2017 Division**) would be created. Effecting that change, the Fund is now governed by a consolidated trust deed dated 30 June 2017 (**Current Trust Deed**).
- B The Trustee wishes to amend the Current Trust Deed to clarify and better reflect previous policy decisions relating to the wind up of Part B and Part C of the Trust Deed and creation of the 2017 Division, that have previously been approved in accordance with the procedure set out in clauses A16.3 and A16.4 of the Current Trust Deed.
- C Under clause A16 of the Current Trust Deed, the Current Trust Deed may, subject to the Act, be amended by the Trustee at any time but no amendment shall be made to the Regulations (as defined in the Current Trust Deed) except as provided for in that clause. The Trustee is satisfied that the amendment of the Current Trust Deed by this Deed meets the requirements of that clause.
- D The Act provides that an amendment to or a replacement of a governing document has no effect unless made, amongst other things, pursuant to section 139 of the Act with the consent of the Financial Markets Authority (**FMA**). That section further provides that the FMA must not consent to an amendment to, or a replacement of, the governing document under that section unless, amongst other things, the FMA is satisfied that the amendment or replacement does not have a material adverse effect on the scheme participants. The FMA has provided the requisite consent.

**SCHEDULE**

**Beneficiary Fund Consolidated Trust Deed  
including the Regulations**

Registered Charity: CC24301

The Presbyterian Church of Aotearoa New Zealand



**OPERATIVE PROVISIONS**

The Trustee, with effect from the Commencement Date, hereby rescinds each and every one of the existing clauses of the Current Trust Deed and substitutes them for the provisions set out in the Schedule so that the Current Trust Deed is replaced in its entirety by the clauses set out in the Schedule.

**EXECUTION AND DATE**

This deed was executed on *5 April* 2018

**PRESBYTERIAN BENEFICIARY FUND** )  
**TRUSTEE LIMITED** )  
signed by two of the )  
Directors )

*[Signature]* ..... Director  
*[Signature]* ..... Director

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## BACKGROUND

1. This Deed shall constitute "The Presbyterian Church of Aotearoa New Zealand Beneficiary Fund" governing all Sections of the Fund with the Deed comprising:
  - 1.1 Part A containing provisions generally applicable to both Sections;
  - 1.2 Part B containing the Defined Benefit Section Regulations applicable to Existing Members;
  - 1.3 Part C (Division 1) containing the Defined Benefit Section Regulations applicable to New Members;
  - 1.4 Part C (Division 2) containing the Regulations applicable to the 2017 Division;
  - 1.5 Part D containing the Complying Section Regulations; and
  - 1.6 Part E containing the Complying Section Rules.
2. Until the wind up of the defined benefits payable to Members under Part B and Part C (Division 1) is completed:
  - 2.1 Existing Members shall remain as Members of the Defined Benefit Section as governed by Part B; and
  - 2.2 New Members shall remain as Members of the Defined Benefit Section as governed by Part C (Division 1).
3. Following the Transition Date, Existing Members and New Members may choose to continue their membership by placing their entitlement from the winding up of the their defined benefits payable under Part B and Part C (Division 1) into the 2017 Division in accordance with Regulation B19.5.
4. Members as at the Commencement Date of the Complying Section as governed by Parts D and E shall remain as Members of that Section.
5. Ministers who are not already Members of the Fund may not become Members of the Fund until the Transition Date. Following the Transition Date, Ministers shall join either or both the 2017 Division and / or the Complying Section.

## **CHARITABLE PURPOSE**

The activities of the Fund are to be carried out, and the Fund Property is to be applied, for exclusively charitable purposes, namely to advance religion by providing for the protection and life-long support of Ministers by means of a Church-based superannuation scheme established for the dominant purpose of providing benefits for Ministers of religion and their dependants, so that Ministers may devote their time and energies to the service of the Church, so that others may derive spiritual benefit from the exercise of their functions.

## PART A

### PROVISIONS APPLICABLE TO ALL SECTIONS

#### A1. Definitions and interpretation

- A1.1 (a) Headings and marginal notes are for convenience only and shall be deemed not to be part of this Deed and shall not affect the interpretation hereof.
- (b) In this Deed where the context permits words importing the singular shall include the plural and vice-versa and words importing the masculine shall include the feminine in each case unless a contrary intention appears.
- (c) Any reference to a statute (or to any particular part or section of a statute) shall include a reference to any subsequent statutory modification or re-enactment thereof and regulations made thereunder.
- (d) All references to a party to this Deed shall in each case include a reference to the executors, administrators, successors and assigns of such party.

A1.2 In this Deed the following words and expressions shall, unless the context requires otherwise, have the following meanings:

**"2001 Deed"** means the trust deed dated 29 November 2001 that governed the Fund prior to its amendment on 27 November 2008.

**"2017 Division"** means the Section described in Part C (Division 2).

**"2017 Division Balance"** in respect of a Member means the sum of the Member's 2017 Division Member Account and the Member's 2017 Division Supporter Account.

**"2017 Division Member Account"** means the account established for each Member of the 2017 Division under Regulation C8.1.

**"2017 Division Supporter Account"** means the account established for each Member of the 2017 Division under Regulation C8.3.

**"Account"** or **"Accounts"** means, as applicable in the context, each or any of the Complying Section Member Account, the Complying Section Employer Account, the Complying Section Tax Benefit Account, the 2017 Division Member Account, and the 2017 Division Supporter Account.

**"Act"** means the Financial Markets Conduct Act 2013.

**"Actuary"** means a person who is a Fellow of the New Zealand Society of Actuaries, and who has been appointed by the Trustee to provide actuarial services to the Fund.

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

**"AML Exemption Notice"** means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 Ministerial exemption notice granted in respect of the Trustee and / or the Fund as replaced or amended from time to time.

**"Annuitant"** means a Member as described in Regulation B1.1(d) (subject to Regulation B8.4(a)).

**"Assembly"** and **"General Assembly"** means the General Assembly of the Church.

**"Assessment"** means the amounts payable by each Parish or Kindred Entity in terms of Clause A20 as determined by the Trustee.

**"Associated"**, and other expressions indicating the association of persons with each other, have the meanings given by section YA 1 of the Income Tax Act 2007.

**"Auditor"** means a Qualified Auditor appointed as auditor of the Fund under clause A11.5.

**"Australian Complying Fund"** has the same meaning as the term "Australian complying superannuation scheme" in section YA 1 of the Income Tax Act 2007.

**"Balance"** in respect of a Member means the sum of the Member's 2017 Division Member Account, 2017 Division Supporter Account, Complying Section Member Account, Complying Section Employer Account, and Complying Section Tax Benefit Account as established under the Complying Section Regulations and Rules.

**"Basic Stipend"** means the annual basic stipend for Ministers as approved by the General Assembly from time to time.

**"Beneficiary"** means any Member or other person either presently or contingently entitled to any benefit from the Fund, but excluding any guardian who is receiving benefits for the care of children in accordance with Regulation B8.5.

**"Beneficiary Fund"** means the Fund.

**"Benefit Proportion"** in relation to a Member means the proportion of benefit to which the Member shall be entitled as described in Regulation B2.

**"Book of Order"** means the Book of Order of the Church, adopted and prescribed by the General Assembly on 29 September 2006, as it may be amended from time to time, and which, among other things, provides for the governance of the Church, and orders the life and mission of the Church consistently with its standards.

**"Charities Act"** means the Charities Act 2005.

**"Church"** means The Presbyterian Church of Aotearoa New Zealand.

**"Church Body"** means any body of the Church, including a Parish, that is responsible for the support of a Minister.

**"Commencement Date"** means 30 June 2017.

**"Commissioner"** means the Commissioner of Inland Revenue.

**"Committee"** means the Beneficiary Fund Committee appointed by the General Assembly of the Church.

**"Complying Section"** means the Complying Section described in Part D and B.

**"Complying Section Balance"** in respect of a Member means the sum of the Member's Complying Section Member Account, Complying Section Employer Account and Complying Section Tax Benefit Account as established under the Complying Section Regulations and Rules.

**"Complying Section Employer Account"** means the account established for each Member of the Complying Section under Regulation D3.3.

**"Complying Section Member Account"** means the account established for each Member of the Complying Section under Regulation D3.2.

**"Complying Section Tax Benefit Account"** means the account established for each Member of the Complying Section under Regulation D3.4.

**"Complying Section Regulations"** means the regulations contained in Part D.

**"Complying Section Rules"** means rules that are Included as Part E.

**"Complying Superannuation Fund"** has the meaning given in the Act.

**"Contributing Member"** means a Member who contributes to the Fund.

**"Congregation"** has the meaning given to that term in the Book of Order.

**"Continuing Member"** means a Member that is entitled to join, and entitled to place an amount into, the 2017 Division, in accordance with Regulation B19.5 and has elected to do so.

**"Continuing Value"** means the amount placed into the 2017 Division pursuant to Regulation B19.5.

**"Crown Contribution"** means either:

- (a) the contribution made by the Crown under section 226 of the KiwiSaver Act; or
- (b) the amount of tax credit under section MK 1 of the Income Tax Act 2007 that is treated as a Crown Contribution for a Member under section MK 5(2) of that Act.

**"Current Trust Deed"** means the consolidated trust deed dated 1 December 2016 that governed the Fund prior to the Commencement Date.

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

**"Deferred Pensioner"** means a Member as described in Regulation B1.1(c).

**"Defined Benefit Section"** means the Section which provides benefits in defined benefit form and which are described in Part B and Part C (Division 1).

**"Defined Benefit Section Regulations"** mean the regulations contained in Part B and Part C (Division 1) of this Deed.

**"Dependent Child"** means a child who:

- (a) is financially dependent on a Member;
- (b) is not in full time employment; and
- (c) has not reached the age of 20 years, except in the case of Special Needs children who are over the age of 20 years.

**"Disablement"** means physical or mental disablement whether caused by illness or accident as determined by the Committee on the advice of its Medical Panel.

**"Earning Rates Policy"** means the earning rates policy of the Fund under clause A4.16.

**"End Payment Date"** has the meaning set out in Rule E3.2.

**"Equivalent Overseas Retirement Scheme"** has the meaning given in regulation 82(3) of the FMC Regulations.

**"Existing Member"** means a Member of the Defined Benefit Section on 1 January 2009.

**"Financial Markets Legislation"** has the meaning set out in section 6(1) of the Act.

**"Financial Year"** means the period of twelve months from 1 July to 30 June each year, or such other period as may be a financial year for this Fund as determined by the Trustee.

**"FMA"** means the Financial Markets Authority (or any successor organisation).

**"FMC Regulations"** means the Financial Markets Conduct Regulations 2014.

**"Frozen Member"** means a Member as described in Regulation B1.1(b).

**"Fund"** means the "The Presbyterian Church of Aotearoa New Zealand Beneficiary Fund" and where the context admits means the assets of any or all parts, divisions, or Sections thereof.

**"Fund Liabilities"** include liabilities, borrowings, accrued costs, charges, expenses and outgoings (excluding any investment management fees), contingent liabilities,

provisions, liability to taxation (to the extent not provided for in some other manner), reimbursement or indemnity due to the Trustee and unpaid amounts due and payable out of Fund Property to Members or others.

**"Fund Property"** means all property, rights, and income of the Fund.

**"Governing Legislation"** means the KiwiSaver Act and the Act and where the context so requires the Trustee Act 1956 and any other applicable statutes or regulations.

**"Governing Requirements"** means the Governing Legislation and the provisions of this Deed.

**"Issue Price"** means, in respect of a Portfolio, the issue price of a Unit determined under clause A23.1.

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

**"Issuer Obligations"** has the meaning given in section 6(1) of the Act.

**"Kindred Entity"** means, for the purposes of this Deed an organisation:

- (a) in which the Church has official representation through appointment by Church courts; or
- (b) which the Church supports but on which it has no official representation; and
- (c) which has signed a deed of adoption by which it covenants with the Trustee to comply with and observe the provisions of this Deed.

**"Kindred Service"** means employment of a Minister with a Kindred Entity.

**"KiwiSaver Act"** means the KiwiSaver Act 2006.

**"KiwiSaver Scheme"** has the meaning given in section 6(1) of the 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 under section 131 of the Act whose licence covers the Fund and who is independent under section 131(3) of the Act.

**"Managed Investment Product"** has the meaning given in section 8(3) of the Act.

**"Medical Panel"** means a group, which includes at least one registered medical practitioner, that has been appointed by the Committee to provide advice on benefits payable from the Fund.

**"Member"** means any person who is a member of the Fund in accordance with the Regulations.

**"Member Tax Credit"** means the amount of the tax credit under section MK 1 of the Income Tax Act 2007.

**"Minister"** means an ordained minister of the Church.

**"Net Value"** means in respect of a Portfolio, the value of Fund Property referable to that Portfolio less Fund Liabilities referable to that Portfolio as determined by the Trustee, less a fair and reasonable proportion of Fund Liabilities not specifically referable to that Portfolio as determined by the Trustee and less any investment management fees referable to that Portfolio.

**"New Member"** means any Minister who joins the Fund after 1 January 2009 but before 1 December 2016.

**"Parish"** means in relation to a Minister, the Congregation that is responsible for support of the Minister under section 16.9 of the Book of Order.

**"Part A"** means Part A of this Deed.

**"Part B"** means Part B of this Deed.

**"Part C"** means Part C of this Deed, including both Part C (Division 1) and Part C (Division 2).

**"Part C (Division 1)"** means division 1 of Part C of this Deed.

**"Part C (Division 2)"** means division 2 of Part C of this Deed.

**"Part D"** means Part D of this Deed.

**"Part E"** means Part E of this Deed.

**"PCPT"** means the Presbyterian Church Property Trustees.

**"PDS"** is a product disclosure statement and has the meaning given in the Act.

**"Portfolio"** means an investment portfolio under clause A21.1.

**"Portfolio Direction"** means a portfolio direction given by a Member under clause A21.4(c).

**"Presbytery"** when referring to a Member, means the presbytery under whose jurisdiction the Member falls.

**"Qualified Auditor"** has the meaning given in section 461E of the Act.

**"Redemption Price"** means, in respect of a Portfolio, the redemption price of a Unit determined under clause A24.1.



**"Register Entries"** has the meaning given in the Act.

**"Registrar"** or **"Registrar of Financial Service Providers"** has the meaning given to the term "Registrar" in the Act.

**"Regulations"** mean the regulations forming Part B, Part C and Part D and where the context so admits, includes the Complying Section Rules which form Part E.

**"Related Party"** has the meaning given in section 172 of the Act.

**"Related Party Benefit"** has the meaning given in section 172 of the Act.

**"Reserve Account"** means the reserve account established under clause A26.1.

**"Retire"** when referring to a Member means to no longer receive a stipend or stipend related payment or to leave the service of any entity in respect of which the Member is in service in such circumstances as qualify the Member for a retirement benefit.

**"Section"** means either the Defined Benefit Section or the Complying Section.

**"SIPO"** means the statement of investment policy and objectives for the Fund in the form and with the content required by the Act.

**"Special Needs"** means the particular requirements or circumstances of children being the consequence of physical or mental disablement however caused as determined by the Committee on the advice of its Medical Panel.

**"Special Resolution"** has the meaning given in section 6(1) of the Act.

**"Spouse"** means the legal husband or wife of a person.

**"Superannuation Scheme"** has the meaning given to it in the Act.

**"Total Disablement"** means:

- (a) during the first year of benefit payments under Regulation B12.1 or Regulation C3.2 the Member's complete and continuous inability to engage in any work for which the Member is reasonably suited by education, training or experience as determined by the Committee after considering the advice of the Medical Panel; and
- (b) during any subsequent period the Member's complete and continuous inability to engage in any work as determined by the Committee after considering the advice of the Medical Panel.

**"Total Stipend"** means:

- (a) subject to (b) and (c), each Member's Basic Stipend or where applicable such percentage thereof notified to the Trustee by the Church Body (excluding housing and any other non-taxable allowances) plus seniority allowance as received from the Member's Parish; or

- (b) in respect of a Member employed by a Church Body (other than a Parish), the financial support (excluding housing and any other non-taxable allowances), calculated on a gross basis, received from the Church Body of which the Member is in service; or
- (c) in respect of a Member in Kindred Service, the financial support, calculated on a gross basis as notified to the Trustee by the Kindred Entity or as otherwise provided in the applicable deed of adoption, received from the Kindred Entity of which the Member is in service.

"**Transaction Cost**" means such sum (if any) as the Trustee may from time to time determine:

- (a) either generally or in relation to a particular proposed issue of Units, to be a fair fee, in relation to the Units to be issued, to provide for the likely cost of purchasing or developing assets of the relevant Portfolio. The amount of any Transaction Cost payable on the issue of Units in a Portfolio shall be applied by the Trustee in payment of the purchase and development costs and expenses on behalf of that Portfolio. The Trustee shall keep separate accounting and other records in relation to such expenditure; or
- (b) either generally or in relation to a particular proposed redemption of Units, to be a fair fee, in relation to the Units to be redeemed, to provide for the likely cost of selling or disposing of assets of the relevant Portfolio. The amount of any Transaction Cost payable on the redemption of Units in a Portfolio shall be applied by the Trustee in payment of the sale or disposition costs and expenses on behalf of that Portfolio. The Trustee shall keep separate accounting and other records in relation to such expenditure.

"**Transfer Value**" means the amount received or transferred pursuant to Regulations C17.3 and D5.3 as the context requires.

"**Transition Date**" means 30 June 2017.

"**Trustee**" means Presbyterian Beneficiary Fund Trustee Limited, or such other sole corporate trustee or the PCPT as may be appointed under clause A3 of this Deed.

"**Unit**" means, in relation to a Portfolio, an undivided part or share in the beneficial interest in the relevant Portfolio as described in clause A22.

"**Valuation Day**" means a business day for which a Portfolio is valued under clause A23.5 and on which Units in a Portfolio may be issued or redeemed.

A1.3 In this Deed, unless the context requires otherwise:

- (a) To the extent that any provision contravenes or is inconsistent with the Act, FMC Regulations or any term implied in this Deed by the Act or the FMC Regulations, that provision has no effect.
- (b) Where any frameworks or methodologies are specified in notices issued by the FMA under the Act, apply to the Fund and relate to any matter required

by the Act to be provided for adequately in this Deed, the provisions of this Deed dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks and methodologies in respect of the Fund.

## **A2. Sections of the Fund**

A2.1 There shall be a Section called the "Defined Benefit Section" which shall be managed by the Trustee. The Defined Benefit Section shall comprise two parts. The first part is applicable to Existing Members (governed by Part B) and the second part is applicable to New Members (governed by Part C (Division 1)).

A2.2 From 1 January 2009, an additional Section was established known as the Complying Section which is managed by the Trustee. The Complying Section is governed by Part D and Part E.

A2.3 From the Commencement Date, an additional division of Part C was established known as the 2017 Division which shall be managed by the Trustee. The 2017 Division is governed by Part C (Division 2).

A2.4 Subject to the other provisions of the Deed:

(a) The Trustee delegates to the Committee the administration of the Defined Benefit Section on behalf of the Trustee provided that the Trustee complies with the Governing Legislation in relation to this delegation, and the Committee shall have the right to act at its discretion in any matters not specifically provided for in the Regulations, but consistent therewith, provided that this delegation and such acts shall not override or contravene the provisions of the Governing Legislation. In particular, decisions relating to individual Members will be the responsibility of the Committee who will be accountable to both the General Assembly through the Trustee and the PCPT. For the avoidance of doubt, this delegation is not applicable in respect of the 2017 Division or the Complying Section.

(b) The Trustee will be responsible for the financial management of the Fund.

A2.5 The General Assembly shall be the sole judge in any dispute which may arise in connection with the administration of either Section.

## **A3. Trustee**

A3.1 The Trustee is the trustee and the manager of the Fund for the purposes of the Act.

A3.2 The Fund shall have one Trustee who must be a sole corporate trustee or the PCPT.

A3.3 The board of directors of a sole corporate trustee or the board of the PCPT acting as Trustee must include at least one Licensed Independent Trustee.

- A3.4 Any removal or appointment of a trustee shall, subject to this clause A3, be by direction of the General Assembly. The General Assembly shall immediately provide for the appointment of a replacement trustee in the event of the removal of the Trustee.
- A3.5 The Trustee may not be removed by the General Assembly unless:
- (a) all functions and duties of the position have been performed by the Trustee; or
  - (b) another Trustee has been appointed, and accepted the appointment, in its place.
- A3.6 The Trustee shall cease to hold office if the Trustee is substituted by the court under the Act.
- A3.7 If the Fund does not for any reason have:
- (a) if the Trustee is a sole corporate trustee, at least one director of that corporate trustee who is Licensed Independent Trustee; or
  - (b) if the Trustee is PCPT, at least one Board member of PCPT who is a Licenced Independent Trustee,
- then the provisions of the Act shall apply in relation to the temporary appointment of a person to fill the vacancy in the office until a substitute appointment may be made under this Deed.
- A3.8 The Trustee shall keep or cause to be kept proper minutes of all of its resolutions and proceedings and proper books of account and records in connection with the Fund.
- A3.9 The Trustee shall not be bound to act personally but may instruct a solicitor or other agent to transact business required to be done in accordance with this Deed.
- A3.10 Any power, authority or discretion vested in the Trustee under this Deed may be exercised on its behalf by its directors as a board and that board may, subject to A4.9, appoint such delegates or agents as it thinks fit to exercise for or on behalf of the Trustee all or any of the powers authorities and discretion exercisable by the Trustee under this Deed.

#### **A4. General Powers of the Trustee**

- A4.1 The Trustee as manager of the Fund has responsibility for those functions and duties of a manager under the Act unless the Act or the FMC Regulations otherwise provide.
- A4.2 The Trustee is responsible for performing the following functions:
- (a) offering membership of the Fund;
  - (b) accepting Members into the Fund;

- (c) managing the Fund Property and investments; and
- (d) administering the Fund.

A4.3 The Trustee must:

- (a) act honestly in acting as a manager; and
- (b) in exercising any powers or performing any duties as a manager:
  - (i) act in the best interests of the Members; and
  - (ii) treat Members equitably; and
- (c) not make use of information acquired through being the manager in order to:
  - (i) gain an improper advantage for itself or any other person; or
  - (ii) cause detriment to the Members.

A4.4 The Trustee must also carry out the functions of a manager in accordance with this Deed, the SIPO, and all other Issuer Obligations.

A4.5 Subject to clause A4.6, the Trustee must in exercising any powers or performing any duties, exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances.

A4.6 A Licensed Independent Trustee and any other trustee whose profession or business is or includes acting as trustee or investing money on behalf of others must, in exercising any powers, or performing any duties under this Deed, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

A4.7 The Trustee may in its absolute discretion enter into and execute all such contracts, deeds and documents and do all such acts, matters and things as it deems expedient for the purpose of carrying out the trusts, authorities, powers and discretions conferred upon it by this Deed.

A4.8 The Trustee shall have an absolute and uncontrolled discretion in the exercise of the trusts, authorities, powers and discretions hereby vested in it and may refrain from exercising all or any of such trusts, authorities, powers and discretions from time to time or at all provided that the Trustee shall at no time contravene the provisions of the Act in the exercise of such trusts, authorities, powers and discretions.

A4.9 The Trustee may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to perform any act, or exercise any discretion, within the Trustee's power. The authorisation must be written. The Trustee must comply with clauses A4.11 and A4.13 and with the requirements of the Act where it contracts out all or some of its functions as manager of the Fund. The Trustee may include provisions to protect and assist those dealing with any delegate

in the authorisation as the Trustee sees fit. Subject to Clauses A4.11 and A4.13, the delegate may be a Related Party of the Trustee. The Trustee may appoint brokers or dealers appropriate for carrying out transactions in relation to the Fund Property. The authorisation of a delegate may include rights to be indemnified for liabilities or expenses incurred in relation to the performance of the delegate's contracted functions. The Trustee remains liable for the acts or omissions of a delegate.

- A4.10 Subject to clause A10.3, the Trustee or a director of the Trustee is hereby authorised to charge and be paid and to retain for its own benefit all reasonable Trustee's fees, administration fees and other fees charged by that Trustee for business done by it in relation to the Fund in the same manner as the Trustee would have been entitled to do if the Trustee had not been a Trustee of the Fund.
- A4.11 The Fund Property shall be held in one of the following ways:
- (a) by the Trustee; or
  - (b) by a person to whom the Trustee has contracted the holding of the Fund Property and who:
    - (i) is a body corporate that the Trustee believes, on reasonable grounds, to be appropriate to hold, and safeguard the Fund Property; and
    - (ii) is not the same person as, or associated with, the Trustee (other than by virtue of the custodianship).
- A4.12 A person to whom the Trustee has contracted the holding of Fund Property under clause A4.11(b) may, if authorised in writing by the Trustee, in turn contract the holding of the Fund Property to another person.
- A4.13 If the holding of the Fund Property is contracted out to another person (the **nominee**) under clause A4.11(b) or clause A4.12 then the person contracting out that function:
- (a) must take all reasonable steps to:
    - (i) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person were performing it directly; and
    - (ii) monitor the performance of that function; and
  - (b) is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with clause (a).
- A4.14 The Trustee must, in accordance with Governing Legislation, prepare and provide reports to the FMA that contain the information that is required by the FMC Regulations.

- A4.15 If the Trustee has reasonable grounds to believe that the Trustee has contravened, may have contravened or is likely to contravene any of its Issuer Obligations in a material respect then the Trustee must, as soon as practicable:
- (a) report the contravention or possible contravention to the FMA; and
  - (b) advise the FMA of the steps (if any) that the Trustee has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.

#### **Earning Rates Policy**

- A4.16 The Trustee must, from time to time and in accordance with such policy or policies as the Trustee establishes from time to time (**Earning Rates Policy**), set or cause to be set a rate or rates with respect to each Portfolio (which may include, without limitation, an interim monthly and an annual declared rate) that is or are applicable to Complying Section Member Accounts, Complying Section Employer Accounts, Complying Section Tax Benefit Accounts, the 2017 Division Member Accounts, and the 2017 Division Supporter Account. For the avoidance of doubt, the rate or rates determined pursuant to the Earning Rates Policy may be positive or negative. This clause shall have no effect in the event the Trustee elects under clause A22.1 that the Accounts shall be divided into Units or if the Accounts record the assets attributable to a Member.

#### **Statement of investment policy and objectives**

- A4.17 All money belonging to the Fund and available for investment shall be invested in accordance with the SIPO.

#### **Limit Breaks**

- A4.18 The Trustee must report to the FMA any material breaches of any limits under a SIPO to the extent required by Governing Legislation.

### **A5. Benefit Entitlement Errors**

- A5.1 The Trustee must report to the FMA in relation to any material error in the calculation of a benefit entitlement (including a Unit price, if applicable), and in such cases the provisions of section 168 of the Act shall apply.
- A5.2 If, under Governing Legislation, reimbursement and compensation is payable to a Member or former Member, the Trustee must comply with all their obligations under those requirements except that the Trustee may choose not to pay any reimbursement or compensation to a Member or former Member for an amount less than \$20 (or such other amount as the Trustee may agree from time to time).

## **A6. Valuations**

### **Manager may obtain valuations**

- A6.1 The Trustee may instruct a valuer or other expert to value any Fund Property. The costs of those valuations must be paid out of the Fund.

### **Valuation of listed property**

- A6.2 Subject to clauses A6.8, A6.9, A6.10 and to the Governing Legislation, in the case of Fund Property which is listed on any stock exchange the value must be determined by reference to:

- (a) the last listed sale price on the day upon which the valuation is being made;
- (b) if no sale price was listed for that day, then the last bid or buying price on that day; or
- (c) at the option of the Trustee, the amount certified by a firm of stockbrokers or other dealers in the relevant market.

### **Valuation of deposits**

- A6.3 For any deposit and subject to Governing Legislation, the value must be determined by reference to the principal amount of the deposit.

### **Valuation of unlisted schemes**

- A6.4 For interests in a collective investment scheme not listed on a stock exchange and subject to Governing Legislation, the value must be determined by reference to the amount obtained by multiplying the redemption price of each such interest by the total number of interests of that class held in the collective investment scheme.

### **Valuation of policies in life insurance**

- A6.5 For policies of life insurance held by the Fund for investment purposes and subject to Governing Legislation, the value must be determined by reference to the amount obtained by multiplying the surrender price of each interest in the policy by the total number of interests of that class represented by the policy.

### **Valuation of derivatives contracts**

- A6.6 For any interest under a derivatives contract and subject to Governing Legislation, the value must be determined by reference to the net profit or loss (after allowing for deposits, margin calls, costs and other disbursements in respect of the acquisition or disposal of the derivatives contract as estimated by the Trustee) which would have been realised in respect of that derivatives contract by executing a transaction at the official closing quotation of a derivatives market on that day in respect of equivalent contracts.



### **Valuation of put options**

- A6.7 For any put option granted to the Fund and subject to Governing Legislation, the value must be determined by reference to the excess (if any) of the price receivable upon exercise of the put option or upon the sale of the put option (if such sale is permitted by the terms), whichever is the greater, over the sum of all costs and expenses incurred in entering into or holding the put option and the fair value of the property the subject of the put option as determined by a valuer.

### **Valuation of call options**

- A6.8 For any call option granted to the Fund and subject to Governing Legislation, the value must be determined by reference to the excess (if any) of the fair value of the property the subject of the call option, as certified by a valuer, over the sum of all costs and expenses incurred in entering into or holding the call option and the price payable upon exercise of the call option.

### **Valuation of other property**

- A6.9 For bills of exchange, promissory notes, negotiable certificates of deposit, and any other property not otherwise dealt with in this Clause A6 and subject to Governing Legislation, the value must be determined by reference to the cost of acquisition.

### **Trustee may use alternative valuation principles**

- A6.10 Subject to Governing Legislation, where the Trustee considers in its absolute discretion that the application of the principles of valuation set out in this clause A6 should not, or do not, apply to the valuation of any Fund Property, the Fund Property must be valued by reference to any other principles or policies as determined by the Trustee, provided that the valuation method used is applied on a consistent basis over time and is used to determine a fair market value of the Fund Property.

## **A7. Membership**

- A7.1 The Trustee must not make a regulated offer of membership of the Fund unless:
- (a) the Fund is registered under the Act;
  - (b) a PDS has been prepared and registered with the Registrar of Financial Service Providers in respect of the Fund; and
  - (c) Register Entries containing all information required by the Act have been uploaded on the public register in respect of the Fund.

## **A8. Power to borrow**

- A8.1 The Trustee may at any time and from time to time borrow and raise money for short-term overdraft and hedging purposes and to a maximum level in accordance with the SIPO and secure the repayment of money so borrowed and interest thereon by

mortgage or charge over all or any of the assets of the relevant Sections and 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.

## **A9. Meetings**

A9.1 When required by Governing Legislation, the Trustee shall call a meeting of Members in the manner and on the basis set out in the Act and FMC Regulations. A meeting of Members shall be conducted in accordance with Governing Legislation.

## **A10. Related Party Benefits and prohibition on private pecuniary profit**

A10.1 Unless permitted under the Governing Legislation, the Trustee (and any Investment Manager, Administration Manager or other person to whom the Trustee has contracted out some or all of its functions as manager) must not enter into a transaction that provides for a Related Party Benefit to be given.

A10.2 The Trustee (or any person to whom the Trustee has contracted out some or all of its functions as a manager) must not acquire any assets if that acquisition would contravene the Governing Legislation.

A10.3 Without limiting the generality of clauses A10.1 and A10.2, no private pecuniary profit shall be made by any person from the Fund, including, without limitation, by any Trustee, a director of the Trustee, any person Associated with any such person, or by any other person involved in the Fund, and no portion of Fund Property shall be paid or transferred directly or indirectly to a Trustee, a director of the Trustee, any person Associated with any such person, or any other person involved in the Fund, except that:

- (a) payments may be made to the Trustee, a director of the Trustee, a person Associated with any such person, or any other person involved in the Fund, for goods and services provided to the Fund, provided that those goods or services advance the charitable purposes of the Fund and the payment is reasonable and commensurate with payments that would be made between unrelated parties; and
- (b) the Trustee or any person acting on behalf of the Trustee may be reimbursed, on production of receipts, for reasonable travel, accommodation and other expenses properly incurred by the person concerned in the course of performing duties or exercising powers as Trustee.

## **A11. Accounts and audit**

A11.1 The Trustee shall ensure that there are kept at all times accounting records that:

- (a) correctly record the transactions of the Fund;
- (b) will enable the Trustee to ensure that the financial statements of the Fund comply with generally accepted accounting practice and any prescribed requirements; and
- (c) will enable the financial statements of the Fund to be readily and properly audited.

A11.2 In keeping or causing to be kept the accounting records under clause A11.1:

- (a) the Trustee must have appropriate systems of control and oversight;
- (b) the Trustee must keep such accounting records at a suitable location accessible to the Trustee, each director of the Trustee, the Auditor, and the FMA; and
- (c) the provisions of Part 7 of the Act must be complied with.

### **Financial Statements**

A11.3 Subject to Governing Legislation, the Trustee must ensure that within 4 months after the end of each Financial Year, financial statements that comply with generally accepted accounting practice are:

- (a) completed in relation to the Fund and that Financial Year; and
- (b) dated and signed on behalf of the Trustee.

### **Audit**

A11.4 The Trustee shall ensure that, within 4 months after the end of each Financial Year:

- (a) the Fund's financial statements for that Financial Year are audited and reported on by the Auditor in accordance with the requirements of the Act; and
- (b) those financial statements, together with the Auditor's report on those financial statements, are delivered to the Registrar of Financial Service Providers for lodgement.

### **The Auditor**

A11.5 A person or firm selected by the Trustee must be appointed Auditor of the Fund. Such person or firm must be a Qualified Auditor and meet the requirements of Governing Legislation.

## **Annual report**

A11.6 The Trustee must:

- (a) within four (4) months after the end of each Financial Year, prepare an annual report on the affairs of the Fund during that year; and
- (b) within 28 days after the annual report is prepared:
  - (i) send to every Member:
    - A. a copy of the annual report; or
    - B. a notice containing the statements required by the FMC Regulations; and
    - C. lodge the annual report with the Registrar of Financial Service Providers.

A11.7 The annual report shall comply with and include the matters required under the FMC Regulations.

## **A12. Winding up**

A12.1 Upon the winding up of the Fund by the General Assembly, the Trustee shall to the extent required by Governing Legislation:

- (a) Within 10 working days after a winding up resolution or an order by the court that the Fund be wound up is made, give a copy of any order or resolution to the FMA;
- (b) Within four months after the date on which the winding up takes effect, ensure that the financial statements of the Fund as at the date on which the winding up takes effect, are prepared in accordance with generally accepted accounting practice and audited;
- (c) Within 20 working days after the final financial statements have been audited ensure that:
  - (i) a copy of those financial statements are sent to the FMA and to every person who was a Member of the Fund immediately before it was wound up; and
  - (ii) advise the FMA and the Members in writing as to the manner in which the remaining assets of the Fund (if any) are to be distributed; and
- (d) Shall inform the FMA of the date on which the distribution of the assets is completed.

- A12.2 Upon the winding up of a Section, part, or division of the Fund by the General Assembly, the Trustee shall comply with the requirements of the Governing Legislation.
- A12.3 If, upon the winding up of the Fund, or a Section, part, or division of the Fund, there remains, after satisfaction of all the debts and liabilities (including payment in full of all Members' entitlements from the Fund, or Section, part, or division of the Fund, as the case may be), any property of any nature whatsoever, that remaining property shall be distributed by the Trustee as determined by the General Assembly for "charitable purposes" within the meaning of such words as defined in the Income Tax Act 2007.

**A13. Actuarial report**

- A13.1 An actuarial examination of the Defined Benefit Section shall be made at intervals of not longer than three years, and shall be issued by the Actuary. A copy of such reports shall be furnished to the FMA as soon as practicable.

**A14. Members' rights to information**

- A14.1 The Trustee must provide annually to each Member during the relevant year a statement showing the following for that person:
- (a) the amount of each type of contribution received by the Trustee for the year; and
  - (b) the Member's balance in the Fund at the start and at the end of the year.

**A15. Register**

- A15.1 A register of Members and Beneficiaries must be kept by the Trustee in a form and manner required by the Act.
- A15.2 Such register may be in electronic form and compiled by a delegate of the Trustee in a manner approved by the Trustee.
- A15.3 The following details shall be entered on the register:
- (a) the full names and addresses of each Member and Beneficiary;
  - (b) the date on which the Member or Beneficiary became or ceased to be a Member or Beneficiary of the Fund;
  - (c) such other information as the Trustee requires or as is required by the Act.
- A15.4 The Trustee must ensure that the register is audited at intervals of not more than 12 months or as required by and in accordance with the provisions of the Act.

A15.5 The Trustee must advise the Registrar of the place where its registers are kept and of any change in that place. Changes must be advised to the Registrar within 10 working days of the change taking place.

## A16. **Amendment**

A16.1 Subject to the Act, this Deed may be amended by the Trustee at any time but no amendment shall be made to the Regulations except as provided in clause A16.3 and A16.4.

A16.2 No amendment shall be made to this Deed which conflicts with the provisions of The Presbyterian Church Property Act 1885 or the Governing Legislation.

A16.3 Any proposed amendment to the substance of the Regulations shall first be referred by the Trustee to the PCPT, who shall in turn refer the applicable amendments to the Presbyteries for the Presbyteries' opinion.

A16.4 If the majority of Presbyteries are in favour of the proposed amendment, the amendment shall be referred to Members for their consent if required, and no amendment shall take effect without the approval of the General Assembly.

A16.5 No amendment shall be approved by the General Assembly if that amendment would prejudice the charitable taxation status of the Fund.

## A17. **Future taxation changes**

A17.1 Notwithstanding anything contained in the Deed at any time or times the Trustee may vary benefit levels without the written consent of Members or Beneficiaries to take account of changes in taxation that may arise in future (other than as a result of the passing of the Income Tax Amendment Act 1989) PROVIDED THAT no reduction in benefits shall be made until:

- (a) the FMA has been provided with a copy of an opinion of the Actuary confirming that the reductions are no more than are necessary to make the benefits of the Fund secure and the FMA has confirmed in writing to the Trustee that he or she agrees with that opinion; and
- (b) the FMA has confirmed in writing to the Trustee that he or she is satisfied that all the reductions in benefits are equitable as between all Members and Beneficiaries.

## A18. **Liability limitation and indemnity**

A18.1 Members and Beneficiaries have no claim against officials of the General Assembly personally, nor against the Committee, nor the Trustee, nor the PCPT, either individually or collectively, nor is there any personal liability in administering the Fund.

- A18.2 The Trustee and its directors may be indemnified for the liabilities or expenses incurred in relation to the performance of the Trustee's obligations as manager of the Fund provided that such rights must only be available in relation to the proper performance of duties under sections 143(1) and 144 of the Act.
- A18.3 Subject to the Act, except in the case of dishonesty, the wilful commission of an act known to be a breach of trust or the wilful omission of an act when such omission would result in a breach known by the Trustee to be a breach of trust, the Trustee shall be indemnified to the extent of the Fund held by it against all liabilities incurred by it in the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions hereof and shall have a lien on and may use any moneys for the time being in its hands for such indemnity and generally for the payment of all proper legal and other costs of administration or winding up the Fund and otherwise performing its duties under this Deed. The indemnity hereby provided shall extend to any payment made to any person whom the Trustee bona fide believes to be entitled to the same.
- A18.4 Neither the Trustee nor any other party to this Deed may take any action against a Licensed Independent Trustee by reason of the Licensed Independent Trustee having made a report or disclosure to the FMA under the conditions of the Licensed Independent Trustee's licence.
- A18.5 Every Member shall indemnify the Trustee in respect of any tax paid or payable by the Trustee on behalf of or in respect of the Member.

## A19. **Kindred Entities**

- A19.1 The deed of adoption that is required to be entered into by each Kindred Entity must set out the amounts required to be paid (if any) by the Kindred Entity under the Trust Deed and Regulations of the Fund. Such deed shall be in the form annexed to this Deed in Appendix A of this Deed or of like effect.
- A19.2 Any reference in any deed of adoption entered into by an Employer (as that term is defined in the Current Trust Deed) prior to the Commencement Date covenanting to pay an "Assessment" to the Fund for each of its employees who become a Member of the Fund in Kindred Service, shall on and from the Commencement Date be deemed to be a covenant to pay the rate required of a Kindred Entity under Appendix B of this Deed in respect of each applicable Member.

## A20. **Assessments**

- A20.1 Clauses A20.1 to A20.7 of the Current Trust Deed (previously incorporated as clauses A15.1 to A15.7 of the consolidated trust deed dated 27 November 2008) are hereby incorporated into this Deed.

## A21. **Portfolios**

### A21.1 **Establishment of Portfolios**

The Trustee may, from time to time, specify one or more investment portfolios (consisting of specified kinds of assets in specified proportions) each of which corresponds to a particular investment strategy in respect of the Complying Section, the 2017 Division, or both.

### A21.2 **No segregation of Portfolios**

A Portfolio is not a separate fund and the Trustee is not required to hold property of the Fund which is referable to a Portfolio as a separate fund.

### A21.3 **Termination of Portfolios**

The Trustee may, subject to the Governing Legislation generally and clause A21.1, determine that a Portfolio (the **Terminating Portfolio**) shall terminate with effect from a particular date (the **Termination Date**), in which event:

- (a) all Members affected by such determination shall be notified by the Trustee in writing of the determination;
- (b) any Member referred to in clause A21.3(a) shall be given the option to elect in writing, in such form as the Trustee may determine from time to time, to transfer, on the Termination Date, that part of the relevant Accounts invested in the Terminating Portfolio to such other Portfolio or Portfolios as the Trustee may offer to such Member; and
- (c) the whole or the part of the relevant Accounts in respect of which any Member fails to sign and return a valid transfer election under clause A21.3(b) prior to the Termination Date shall, with effect from the Termination Date, cease to be invested in the Terminating Portfolio and shall be invested in such manner as the Trustee may determine and notify to the Member, as appropriate.

### A21.4 **Portfolio Directions**

- (a) The clauses that follow shall only apply if the Trustee establishes separate Portfolios under clause A21.1.
- (b) If the Trustee establishes a separate Portfolio, then the Trustee may set such terms and conditions relating to Portfolio Directions as it thinks fit, including, but not limited to, limiting the number of Portfolios to which a Member may have their contributions paid into.
- (c) If the Trustee establishes separate Portfolios then Members shall direct the Trustee as to which Portfolio or Portfolios contributions paid by or on behalf of that Member shall be invested by completion of an Portfolio Direction.



- (d) The Trustee shall comply with each Portfolio Direction and is prohibited from investing contributions or any other assets other than in accordance with such Portfolio Directions subject to clause A21.4(g).
- (e) The requirement to comply with each Portfolio Direction is a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956 as amended from time to time and the wide power of investment contained in clauses A4.2 and A4.8 shall only apply to the extent that such contrary intention permits.
- (f) All other powers of investment conferred on the Trustee under this Deed shall be read subject to the provisions of this clause A21.4.
- (g) A Portfolio Direction is a direction by a Member to the Trustee as to which Portfolio or Portfolios the Trustee shall invest contributions made by or on behalf of the Member; and
- (h) A Member shall complete an Portfolio Direction in the form and manner prescribed by the Trustee at the time of becoming a Member.
- (i) If a Member does not make a Portfolio Direction the Member's contributions shall be invested in a Portfolio or Portfolios chosen by the Trustee until such time as the Trustee receives a Portfolio Direction for such Member.
- (j) A Member may:
  - (i) amend or vary the Portfolio Direction of that Member for the investment of future contributions made by or on behalf of that Member to another Portfolio or Portfolios that are available for investment or to switch from investing in one Portfolio to investing in another Portfolio or Portfolios that are available for investment, such request to be in writing and in a form approved or prescribed by the Trustee;
  - (ii) request at the Trustee's discretion a switch from investment in one or more Portfolios to investment in another Portfolio or Portfolios such request to be in writing and in a form approved or prescribed from time to time by the Trustee.
- (k) The Trustee may impose reasonable rules and conditions regarding switching including but not limited to the charging of a reasonable fee to reflect the costs or penalties incurred by the Trustee in complying with the Member's request.
- (l) Any investment of the Member's 2017 Division Balance and / or Complying Section Balance or other amounts available for investment in respect of the Member in a Portfolio pursuant to a Portfolio Direction shall be subject to this Deed and any relevant SIPO and any fees or other charges made in respect of the investment of the 2017 Division Balance and Complying Section Balance or other amounts held in respect of the Member and available for investment in any Portfolio pursuant to a Portfolio Direction or

the withdrawal or switching of such investments may (except to the extent they are reflected in the price of Units in respect of such portfolio, if applicable) be debited against the 2017 Division Balance and Complying Section Balance of the Member in such proportions as the Trustee determine to be appropriate.

## **A22. Units**

### **Accounts may be divided into Units**

- A22.1 The Trustee may, in its absolute discretion, divide each Account into Units on the basis of the Portfolios by reference to which the Account is invested. In the event the Trustee:
- (a) divides each Account into Units, clauses A22.2 to A22.6, A23.1 to A23.7, and A24.1 to A24.3 shall apply; and
  - (b) does not divide each Account into Units, clauses A22.2 to A22.6, A23.1 to A23.7, and A24.1 to A24.3 shall not apply.

### **Fractional Units**

- A22.2 The Trustee may create, issue, redeem and cancel fractions of Units, calculated to the fifth decimal place, which will be dealt with for all purposes of this Deed as Units, but in the proportion that the fraction bears to a whole Unit.

### **Classification of Units**

- A22.3 Except in the case of a fraction of a Unit, all Units referable to a Portfolio are of one class and confer identical rights and interests. An Account which is invested by reference to only one Portfolio will accordingly be constituted by Units of one class only, but an Account which is invested by reference to more than one Portfolio will be constituted by Units of different classes.

### **Rights in Units exclusive**

- A22.4 No Member shall have any claim on the Units into which any Account other than an Account established in the name of that Member has been divided.

### **Transfer of Units**

- A22.5 Units are not transferable.

### **No interest in Scheme Property**

- A22.6 A Unit does not confer any interest in particular assets forming part of the relevant Fund Property.

## A23. Unit issue and pricing

### Determination of issue price

A23.1 Subject to the Governing Legislation and on each Valuation Day, the Trustees shall calculate the Issue Price at which a Unit referable to a Portfolio may be created and issued by the Trustee (other than a Unit issued before the first Valuation Day of the relevant Portfolio) in accordance with the following formula:

$$IP = (NV-TC)/U$$

Where:

IP = the Issue Price of the relevant Unit

NV = the Net Value of the relevant Portfolio as at the relevant Valuation Day

U = the aggregate of the number of Units in issue referable to the relevant Portfolio as at the relevant Valuation Day (excluding, for the avoidance of doubt, any relevant Units being created and issued by the Trustee at the Issue Price)

TC = any Transaction Cost

### Issuing of Units

A23.2 Upon amounts being credited to an Account, Units referable to the relevant Portfolio must be created and issued by the Trustee in relation to that Account at the relevant Issue Price at which Units are issued on that day.

A23.3 The number of Units issued and created in respect of each contribution or transfer referable to a Portfolio is the number calculated by dividing the amount of that transfer or contribution to be invested in that Portfolio by the appropriate Issue Price, and shall be issued to the relevant Member.

### Calculation of Net Value

A23.4 Contributions are credited to the relevant account after amounts paid to the Trustee, or consideration transferred, become fund property.

A23.5 The Trustee will calculate the Net Value of each Portfolio at least once a week (or more frequently as the Trustee may consider necessary or desirable), on the basis of the most recent valuation of each item of Fund Property and determination of Fund Liabilities. The net income of any Portfolio shall be capitalised and retained as an asset of the Portfolio. The Trustee will include such amount as it determines to be the net income of the relevant Portfolio in each calculation of the Net Value of the Portfolio.

### First issue of Units

A23.6 Units issued before the first Valuation Day of a Portfolio will be priced at \$1.00 per Unit.

## **Bonus Units**

A23.7 The Trustee may in lieu of making a payment out of a Portfolio issue bonus Units referable to the Portfolio not exceeding in value the amount of the payment which would have otherwise been made from that Portfolio and credit any bonus Units so issued to the relevant Member. All bonus Units shall be issued in accordance with clauses A23.2 to A23.3.

## **A24. Unit redemption**

### **Determination of redemption price**

A24.1 Subject to the Governing Legislation and on each Valuation Day, the Trustee shall calculate the price at which a Unit referable to a Portfolio will be redeemed and cancelled by the Trustee in accordance with the following formula:

$$RP = (NV-TC)/U$$

Where:

RP = the Redemption Price of the relevant Unit

NV = the Net Value of the relevant Portfolio as at the relevant Valuation Day

U = the aggregate of the number of Units in issue referable to the relevant Portfolio on the relevant Valuation Day (including, for the avoidance of doubt, the relevant Units to be redeemed and cancelled by the Trustee at the Redemption Price)

TC = any Transaction Cost

### **Redemption of units**

A24.2 Upon amounts being debited to an Account, Units referable to the relevant Portfolio must be redeemed and cancelled at the Redemption Price at which Units are redeemed on that day.

A24.3 The number of Units redeemed and cancelled in respect of each redemption referable to a Portfolio is the number calculated by dividing the amount of the redemption by the appropriate Redemption Price.

## **A25. Maximum required contribution for certain members**

A25.1 No Member who was a Member of the Fund on or before Commencement Date shall be required to make a monthly personal contribution to the Fund greater than one twelfth of 4% of the Basic Stipend multiplied by the Member's Benefit Proportion, unless that Member has provided consent to such contributions.

**A26. Reserve Account**

A26.1 There shall be established by the Trustee in connection with the Fund a Reserve Account and the Trustee shall credit or debit to such account:

- (a) any amount available for credit to the Fund as a result of the provisions of clause A27.1;
- (b) any benefits hereunder which in accordance with this Deed a Member and persons claiming through or under a Member cease to have the right to receive;
- (c) where the Trustee has so elected, any amounts forfeited to the Fund under regulations C17.2 and D5.2;
- (d) any monies arising under the Fund in respect of a Member which are not required to be paid to the Member's benefit; and
- (e) any other amounts held by the Fund not held in an Account.

A26.2 The Reserve Account may be applied from time to time by the Trustee at its discretion in any one or more of the following ways:

- (a) payment of expenses of the Fund;
- (b) payment of any benefit paid under clause A27.2;
- (c) otherwise, in furtherance of the Fund's charitable purposes,

in such manner as the Trustee may from time to time consider appropriate.

**A27. Unclaimed Benefits**

A27.1 Subject to clause A27.3, if a Member or Beneficiary cannot be located (after all reasonable inquiries have been made by the Trustee) within seven years from the date on which a benefit became payable to or in respect of a Member or Beneficiary, then the benefit should be paid to the Reserve Account.

A27.2 Subject to clause A27.3, in the event of a valid claim for a benefit being made later than seven years after the date on which it becomes due, the Trustee shall pay the whole benefit validly claimed out of the Fund.

A27.3 Clauses A27.1 and A27.2 shall not apply in respect of the Complying Section.

**A28. Charities Act**

A28.1 The Trustee must comply with all requirements and obligations applicable to the Trustee or the Fund under the Charities Act.

**A29. Intention to be legally binding**

It is intended that this deed be legally enforceable as between the Trustee, the Members and the Beneficiaries.

## PART B

### DEFINED BENEFIT SECTION REGULATIONS APPLICABLE TO EXISTING MEMBERS

#### B1. **Membership**

##### B1.1 **Classes of Membership**

There will be four classes of Members of the Defined Benefit Section:

- (a) Contributing Members, who may have either full-time or part-time status;
- (b) Frozen Members, who are Members who have ceased to contribute and who have deferred receipt of a benefit in accordance with Regulation B6.2;
- (c) Deferred Pensioners, who are Members whose application has been accepted by the Committee as set out in Regulation B10; and
- (d) Annuitants, who are Beneficiaries in receipt of an annuity from the Defined Benefit Section (or who would be in receipt of an annuity had it not been fully commuted) and including children for whom benefits are being paid.

From 1 January 2009 membership of this Part B of the Defined Benefit Section has been closed to new Members.

##### B1.2 **Compulsory Membership**

Membership of the Defined Benefit Section shall be compulsory for all ordained Ministers in receipt of all or part of a stipend, unless granted exemption under either Regulation B1.6 or Regulation 1.3 of the 2001 Deed or Regulation 1.6 of the 2001 Deed.

##### B1.3 **Special conditions fixed under Regulation 1.3 of the 2001 Deed shall remain unaffected by the terms of this Deed.**

##### B1.4 **Lay Workers**

Lay workers who were admitted as Members before 1 June 1996 may continue as Members provided an Assessment is paid on their behalf.

##### B1.5 **Other Members**

At the Committee's discretion, a Minister in Kindred Service may be admitted as a Member provided that either:

- (a) the Member pays personal contributions as in Regulation B3 and an Assessment is paid by the Member's Kindred Entity, in which case the

Benefit Proportion will be determined in accordance with Regulation B2.4;  
or

- (b) the Member pays personal contributions as in Regulation B3 and the amount of the Kindred Entity Assessment is paid by the Member in accordance with the AML Exemption Notice, in which case the Benefit Proportion will be determined in accordance with Regulation B2.4; or
- (c) the Member elects to pay full personal contributions only in accordance with the AML Exemption Notice, in which case a Benefit Proportion of 33% shall apply.

At its discretion, the Committee may revoke any such membership at any time where the Committee considers that the service of the Minister is no longer consistent with the objects of the Fund.

#### **B1.6 Exemption from Membership**

The Committee may grant exemption from membership only in special circumstances. Applications for exemption from membership, with reasons stated, shall be made in writing to the Committee, with the recommendation of the appropriate Presbytery.

### **B2. Benefit proportion**

- B2.1 During any period when the terms of call agreed by a Member's Presbytery include payment of the full Basic Stipend, the Member's Benefit Proportion shall be 100%.
- B2.2 During any period when the terms of call agreed by a Member's Presbytery include payment of less than the Basic Stipend, the Member's Benefit Proportion shall be reduced proportionately, subject to Regulation B2.3 and B2.4.
- B2.3 During any period when the terms of call agreed by a Member's Presbytery include payment of less than the Basic Stipend the Committee at its discretion may increase the Benefit Proportion to reflect extra work required by the terms of call.
- B2.4 During any period when a Member is engaged in Kindred Service, the Committee shall at its discretion determine the Benefit Proportion, taking into account the Member's employment conditions.
- B2.5 If at any time the Member has more than one Benefit Proportion relating to different employments, they may be accumulated, but to not more than 100%.

### **B3. Member contributions**

#### **B3.1 Personal Contributions**

Each month every Contributing Member shall pay a personal contribution to the Defined Benefit Section at the rate of one twelfth of 5% of the Basic Stipend, (or such



lesser rate as is recommended by the Trustee and approved by the General Assembly from time to time) multiplied by the Member's Benefit Proportion.

**B3.2 Payment of Contributions**

Contributions shall be deducted from the Member's monthly stipend by the Parish treasurer, or from the Member's wage or salary payments by the Kindred Entity, and remitted to, or paid by direct debit initiated by, the administrator of the Fund in the month the deduction is made.

**B3.3 Interest on Arrears**

Interest, at the same rate as that allowed in the Actuary's most recent valuation of the Defined Benefit Section, shall be charged on personal contributions in arrears. Any outstanding Assessments payable by the Member under Regulations B1.5 or B6.3(b) with interest, and any outstanding contributions with interest, shall be a first charge on benefits payable.

**B4. Service**

**B4.1 Full and Part-Time Service**

Service by a Member in a parish, or other Kindred Service, when the Benefit Proportion is 100% shall be deemed full time service. When the Benefit Proportion is less than 100%, service shall be deemed part-time. A "year of full-time service" by a Member shall be a twelve month period during which the Benefit Proportion of the Member is 100%, or such other period determined by the Committee as equating to a year of full-time service.

**B4.2 Study Leave**

The Committee may approve continuation of service during a period of study leave with a Benefit Proportion at the level applicable at the commencement of the period of leave subject to payment by the Member of his or her personal contributions only. Only two years of service in total shall be approved for a Member during his or her Defined Benefit Section membership under this Regulation B4.2. Applications should be made in writing to the Committee and shall be accompanied by the recommendation of Presbytery.

**B4.2A Restrictions on personal contributions**

Any personal contributions made by the Member during a period of study leave under Regulation B4.2 must be made in accordance with the AML Exemption Notice.

**B4.3 Broken Service**

The Committee may approve continuation of service during a break in service commencing after 1 November 2000 with a Benefit Proportion at the level applicable at the commencement of the break in service subject to payment by the Member of his or her personal contributions only. Only two years of service in total shall be

approved for a Member during his or her Defined Benefit Section membership under this Regulation B4.3. Applications should be made in writing to the Committee and shall be accompanied by the recommendation of Presbytery.

**B4.3A Restrictions on Personal Contributions – Broken Service**

Any personal contributions made by the Member during a break in service under Regulation B4.3 must be made in accordance with the AML Exemption Notice.

**B4.4 Partial employment**

The Committee may approve a Benefit Proportion of 33% of the Benefit Proportion applicable to the Member at the date of commencement of his or her partial employment where no Assessment is paid for a Member but where:

- (a) The Member is engaged in Kindred Service, and
- (b) The Member pays his or her personal contributions.

**B4.5 Parental Leave**

A Contributing Member on parental leave may elect to become a Frozen Member under Regulation B6.2 for the term of such leave where:

- (a) The parental leave has been taken under the terms laid down in the Book of Order;
- (b) As a consequence the Member is deemed not to have left the service of the Church or other employing body; and
- (c) The Member gives notice in writing to the Committee of his or her election to become a Frozen Member.

**B5. Purchase of back service**

**B5.1** A Member, within one year of joining the Defined Benefit Section, may make additional contributions, for the purpose of purchasing additional Defined Benefit Section benefits on terms and conditions determined by the Committee after considering the advice of the Actuary.

**B5.1A Additional Requirements**

Before the Committee accepts a Member's application to purchase additional Defined Benefit Section benefits under Regulation B5.1, the Trustee must carry out (or arrange for another person to carry out) enhanced customer due diligence in accordance with the AML Exemption Notice.

**B6. Withdrawal benefit**

**B6.1 Leaving Service**

A Contributing Member who leaves the service of the Church or other employing body may withdraw from the Defined Benefit Section and receive a lump sum comprising:

- (a) The Member's personal contributions made under Regulation B3, plus interest at a rate determined by the Trustee; plus
- (b) 1% of the amount calculated according to (a) above for each month of full-time equivalent service as a Contributing Member, provided that the maximum additional benefit arising under this sub-paragraph (b) shall be 100% of the amount calculated according to (a) above.

**B6.2 Frozen Membership**

A Contributing Member who leaves the service of the Church or other employing body may, instead of receiving a benefit under Regulation B6.1, elect to become a Frozen Member on the following terms:

- (a) No further personal contributions or Assessments shall be payable while the Member remains a Frozen Member;
- (b) The Member's benefit shall be payable on retirement or earlier death. The retirement benefit shall be calculated as set out in Regulation B9 according to service and the Basic Stipend at the date of leaving service. A death benefit, equivalent to the withdrawal benefit at the date the Member left service plus interest as determined by the Trustee, shall be paid to the Member's estate;
- (c) A Frozen Member returning to the service of the Church or to Kindred Service may resume contributing membership but the period of frozen membership shall not count as service;
- (d) No other benefits shall be payable from the Defined Benefit Section to a Frozen Member, the Member's Spouse, dependants or estate before the Member's annuity becomes payable, but once an annuity has become payable, upon the Member's death the surviving Spouse's pension and Annuitant's funeral benefit shall be payable.

**B6.3 Continue Contributing Membership**

In the case where a Contributing Member leaves the service of the Church or other employing body and continues in Kindred Service, then with the approval of the Committee the Member may continue contributing membership provided that either:

- (a) the Member continues to pay personal contributions as in Regulation B3 and an Assessment is paid by the Member's Kindred Entity, in which case the Benefit Proportion will be determined in accordance with Regulation B2.4; or

- (b) the Member pays personal contributions as in Regulation B3 and the amount of the Kindred Entity Assessment is paid by the Member, in which case the Benefit Proportion will be determined in accordance with Regulation B2.4; or
- (c) the Member elects to continue to pay full personal contributions only , and in which case a Benefit Proportion of 33% shall apply.

B6.4 Any personal contribution made by a Member under Regulation B6.3 must be made in accordance with the AML Exemption Notice.

## **B7. Withdrawal from Ministry under Book of Order Termination provisions**

### **B7.1 Termination of Tenure**

Where a Presbytery terminates the tenure of a Minister under Book of Order Chapter 10 sections 10.28, 10.29 and 10.30 (or their replacements) and the Conditions of Service manual (or its replacement), the Member may remain within the Defined Benefit Section and continue to have a Benefit Proportion at the level applicable at the date of termination provided unchanged personal contributions continue to be paid until the commencement of another position or appointment, or for three months, whichever is the shorter period. Any period during which the provisions of this Regulation apply shall not be regarded as broken service for the purpose of Regulation B4.3.

#### **B7.1A Restrictions on Personal Contributions**

Any personal contributions paid by the Member under Regulation B7.1 must be made in accordance with the AML Exemption Notice.

### **B7.2 Options**

If the Member does not commence another position or appointment within three months then the Member may elect to:

- (a) withdraw from the Defined Benefit Section and receive a benefit of twice his or her personal contributions plus interest; or
- (b) if aged between 50 and 60 and having completed the equivalent of at least 10 years full-time service, retire and receive the retirement benefit calculated as in Regulation B9.2 based on completed service but using the factor for retirement at age 60; or
- (c) continue membership under the terms of Regulations B6.2 or B6.3.

## **B8. Death benefits**

### **B8.1 Contributing Member**

- (a) On the death of a Contributing Member prior to his or her 66th birthday, the surviving Spouse of the Member shall receive an annuity of the greater of:
  - (i) 14.03% of the Basic Stipend at the date of death of the Member, multiplied by the Benefit Proportion which applied to the Member at the date of death, and
  - (ii) 60% of the annuity payable as a retirement benefit under these Regulations assuming the Member served to age 65 with the Benefit Proportion applicable at the date of death and based on the Basic Stipend at the date of death.
- (b) On the death of a Contributing Member prior to his or her 66th birthday the surviving Spouse of a Member shall also receive a lump sum of four times the Basic Stipend at the date of death, multiplied by the Benefit Proportion which applied to the Member at the date of death. If the Member joined the Defined Benefit Section after 1 November 2000 and after his or her 50th birthday, the lump sum shall be reduced by 1.25% for each complete month by which the Member's age at joining exceeded 50 years. This lump sum, or any part thereof, may be surrendered by the surviving Spouse in return for an increased annuity which the Committee shall determine after considering the advice of the Actuary.
- (c) Where a Contributing Member dies after reaching his or her 66th birthday, the benefits payable shall be determined as if the Member had retired on the day before his or her death, being:
  - (i) the lump sum payable under Regulation B9.2(b)(ii);
  - (ii) commutation of 50% of the Member's pension under Regulation B9.4; and
  - (iii) the surviving Spouse's benefit under Regulation B8.3

### **B8.2 Contributing Member Leaving No Dependants**

If a Contributing Member dies leaving no surviving Spouse or Dependent Children, the Member's estate shall receive a benefit as though the Member had left service under Regulation B6.1 on the date of death.

### **B8.3 Surviving Spouse of an Annuitant**

On the death of an Annuitant, the surviving Spouse of the Annuitant who was married to the Annuitant at the date of the Annuitant's retirement from the Defined Benefit Section shall receive an annuity of the greater of:

- (a) 14.03% of the Basic Stipend at the date of death of the Annuitant, and
- (b) 60% of the annuity which the Annuitant would have been receiving at the date of the Annuitant's death had the Member elected no commutation at the date of retirement.

**B8.4 Funeral Benefits**

- (a) For the purposes of this Regulation B8.4, "Annuitant" means Annuitants who were formerly Contributing Members of the Defined Benefit Section.
- (b) A lump sum funeral benefit of 8% of the Basic Stipend shall be paid to an Annuitant's surviving Spouse (whether or not they were married at the Annuitant's retirement date) on the death of the Annuitant. If there is no surviving Spouse, no benefit shall be payable.
- (c) A lump sum funeral benefit of 8% of the Basic Stipend shall be paid to a Contributing Member or an Annuitant on the death of his or her Spouse. If the Contributing Member or Annuitant has died before his or her Spouse, no benefit shall be payable.
- (d) A Benefit Proportion of 100% shall apply to all Members for the benefits payable under this Regulation B8.4.

**B8.5 Child Allowance**

- (a) Where either:
  - (i) A Contributing Member;
  - (ii) An Annuitant; or
  - (iii) The spouse of either a Contributing Member or an Annuitant dies and is survived by at least one Dependent Child, then there shall be paid to or for the benefit of such child or children an annual child allowance of 3.45% of the Basic Stipend for each Dependent Child. The benefit payable under Rule B8.5(a)(iii) shall cease if the Contributing Member or Annuitant withdraws from the Defined Benefit Section or remarries.
- (b) Where both the Contributing Member or Annuitant and his or her Spouse have died and they are survived by at least one Dependent Child, then there shall be paid to or for the benefit of such child or children:
  - (i) the equivalent of the surviving Spouse's pension for as long as at least one child is dependent, plus
  - (ii) an annual allowance of 6.9% of the Basic Stipend for each Dependent Child.
- (c) The benefit under this Regulation B8.5 may be paid to the guardian of such child or children. The receipt of the guardian shall be a complete discharge.

Where there are separate guardians for different children of the deceased Member the benefit shall be apportioned among the guardians at the sole discretion of the Committee, after having considered advice from the appropriate Presbytery.

- (d) A Benefit Proportion of 100% shall apply to all Members for the benefits payable under this Regulation B8.5.

#### **B8.6 Surviving Spouse's Commutation**

- (a) A surviving Spouse may, within one month of becoming entitled to an annuity under Regulations B8.1 or B8.3, apply to the Committee for the payment by way of commutation of up to 50% of the annuity. The Committee shall determine the value of the annuity so commuted after considering the advice of the Actuary, and the surviving Spouse shall accept such payment in full satisfaction of all claims against the Defined Benefit Section in respect of the portion of annuity commuted. Where there are exceptional circumstances, the Committee may approve commutation of more than 50% of the annuity.
- (b) Any surviving Spouse who has received full commutation of the annuity payable under Regulation B8.6(a) will be deemed to remain an Annuitant Member of the Defined Benefit Section unless the Committee determines otherwise.

#### **B8.7 Married Students for the Ministry**

- (a) This Regulation B8.7 shall apply only to a married person who commenced undertaking the Ordination Programme of the School of Ministry before 1 January 2009.
- (b) Following the death of such a person, his or her Spouse and dependants shall be eligible for benefits from the Defined Benefit Section as if the person were a Contributing Member whose Benefit Proportion was 100%.
- (c) Eligibility for benefits under this Regulation B8.7 shall cease 12 months after successful completion of the Ordination Programme, or when the person enters the ordained ministry, whichever is the sooner.

### **B9. Retirement benefits**

#### **B9.1 Eligibility**

- (a) A Contributing or a Frozen Member who retires may elect to receive a retirement benefit at any date after his or her 55th birthday. No further contributions may be made following this election, and service shall be deemed to have ceased.

- (b) A Member in receipt of a Total Disablement benefit under Regulation B12 at any date after his or her 55th birthday may elect to surrender that benefit and thereafter receive a retirement benefit under this Regulation B9.

**B9.2 Normal Retirement**

- (a) If a Member joined the Defined Benefit Section after 1 November 2000, and retires with less than 10 years' service, the retirement benefit shall be a lump sum equal to the withdrawal benefit which would have been paid had the Member resigned at the date of his or her retirement, and no further benefits shall be payable from the Defined Benefit Section for or in respect of the Member.
- (b) In all other cases, on retirement a Member shall be paid:
  - (i) an annuity being:  
 $(8.74\% + 0.6325\% \text{ per year of full-time service}) \times \text{Basic Stipend} \times \text{factor}$   
where the factor shall be 1.02 at age 66 reducing by 2% for each year by which age at retirement is less than 66 years and increasing by 2% for each year by which age at retirement exceeds 66 years, and
  - (ii) a lump sum of 6.58 times the annuity.

**B9.3 Retirement of Members who joined over age 50**

If a Member joined the Defined Benefit Section after 1 November 2000 and after his or her 50th birthday, and retires with 10 or more years' service, the benefits in Regulation B9.2 shall be reduced by 1.25% for each complete month by which the Member's age at entry exceeded exactly 50 years.

**B9.4 Commutation**

- (a) Within one month after his or her retirement, a Member may apply to the Committee for the payment by way of commutation of up to 50% of the annuity payable to the Member.
- (b) The Committee shall determine the value of the annuity so commuted after considering the advice of the Actuary, and the Member shall accept such payment in full satisfaction of all claims against the Defined Benefit Section in respect of the portion of annuity commuted.
- (c) Where there are exceptional circumstances, the Committee may approve commutation of more than 50% of the annuity. Any Member who has received full commutation of an annuity will remain an Annuitant Member of the Defined Benefit Section unless the Committee determines otherwise.



- (d) Commutation of any part of the annuity shall not affect the benefit payable to a surviving Spouse following the death of a Member.
- (e) At any time the Committee may allow commutation of annuities that the Committee determines to be small or trivial.

**B9.5 Minimum value**

If the value of a Member's retirement benefits is determined by the Committee, after considering the advice of the Actuary, to be less than the value of the withdrawal benefit that would have been paid in accordance with Regulation B6.1 had the Member withdrawn from the Fund on his or her retirement date, the Member's retirement benefit shall be enhanced such that it is equal in value to the withdrawal benefit so calculated

**B10. Deferred pensions**

B10.1 If a Member requires a capital sum for the purchase of a home or to build a home and has:

- (a) completed 10 or more years of service; and
- (b) attained the aged of 55; and
- (c) remains in service,

the Member may by notice in writing to the Committee, apply to become a Deferred Pensioner. The notice shall be subject to Regulation B10.9.

B10.2 Subject to Regulation B10.9 the Committee shall determine the value of the annuity that would then be payable to the Member under Regulation B9.2(b)(i) as if he or she had retired. Subject to any conditions the Committee may impose the Committee shall then pay to the Member:

- (a) commutation of 50% of that annuity; and
- (b) in the case of a Member who is not a New Member a lump sum of 6.58 times the annuity; and
- (c) the total credit balance in the Member's Supplementary Benefit Scheme account.

B10.3 A Deferred Pensioner shall not be eligible for the hardship allowance payable under Regulation B11 or the disablement benefit payable under Regulation B12.

B10.4 A Deferred Pensioner's Spouse shall not be eligible for the benefits payable under Regulation B8.1 to widows and widowers.

B10.5 A Deferred Pensioner's Spouse shall remain eligible for the funeral benefits payable under Regulation B8.4(b).

- B10.6 A Deferred Pensioner's Spouse and dependants shall not be eligible for the child allowance payable under Regulation B8.5.
- B10.7 The surviving Spouse of a Deferred Pensioner who dies before retirement shall receive a death benefit calculated according to Regulation B8.3, assuming that the Member had retired on the day before his or her death. If the Member has no surviving Spouse, no death benefit shall be payable.
- B10.8 On a Deferred Pensioner's actual retirement, he or she shall be paid an annuity calculated at 50% of that provided in Regulation B9.2(b)(i) using the Basic Stipend at the date of the Member's retirement but the factor in Regulation B9.2(b)(i) calculated as if the Member had ceased service on the effective date of his or her election to become a Deferred Pensioner.
- B10.9 Applications by Members to become Deferred Pensioners shall be made in writing to the Committee, accompanied by the recommendation of the appropriate Presbytery and by full details of the Member's financial situation and with such evidence as the Committee may require to demonstrate the fully informed consent of the Member and his or her Spouse as to the effect of the election. The Committee may approve any such application upon whatever terms and conditions the Committee may determine.

## **B11. Hardship allowance**

### **B11.1 Hardship Allowance**

- (a) If a Member who is not more than 5 years under the age of eligibility for New Zealand superannuation wishes to retire, having completed at least 10 years of full-time equivalent service, the Committee may decide to pay an additional monthly allowance of up to the amount of the single person's New Zealand superannuation until the Member becomes eligible for New Zealand superannuation. The additional allowance will be payable only if the Committee determines that the Member's retirement would be in the best interests of both the Member and the Church, and that severe hardship would result to the Member and his or her family if the Member retired without the additional allowance.
- (b) Applications for the hardship allowance shall be made in writing to the Committee, accompanied by full details of the Member's financial situation and the recommendation of both the appropriate Presbytery and the Leadership Committee of the Council of Assembly (or its successor).
- (c) Any Member receiving a hardship allowance shall provide such evidence as the Committee shall require from time to time to enable the Committee to determine whether the Member remains eligible to receive the allowance.

## **B12. Disablement benefits**

### **B12.1 Total Disablement**

- (a) If a Contributing Member is assessed by the Committee after considering the advice of the Medical Panel as being totally disabled, the Committee may decide to pay a Total Disablement Benefit if the Member has been disabled for at least eight consecutive weeks. No such benefit shall be payable while the Member is receiving either stipend or sick pay.
- (b) The Total Disablement Benefit shall be a monthly benefit equal to one twelfth of 70% of the Basic Stipend at the date of commencement of the benefit multiplied by the Benefit Proportion which applied to the Member at the date of the Member's disablement. The benefit may not be commuted.
- (c) The benefit shall be reduced at the discretion of the Committee by the net of tax amount of any income payment received by the Member from any other source as a result of his or her disability.
- (d) An application for a disablement benefit shall be made in writing to the Committee, accompanied by appropriate medical evidence and the recommendation of Presbytery. The disabled Member shall provide such evidence as the Committee shall require from time to time to determine whether or not the Member shall continue to remain eligible to receive the benefit.
- (e) While in receipt of the benefit, the Member shall be deemed a Contributing Member under Regulation B1.1(a). The Member shall retain the full rights of a Contributing Member and the payment of personal contributions shall be made by the Defined Benefit Section on the Member's behalf. Any period while a Member is in receipt of a Disablement Benefit (including the initial eight weeks waiting period) shall be deemed continuing service. During this period, the Member's Benefit Proportion shall remain constant at its level at the date of disablement.
- (f) A Total Disablement Benefit shall cease to be payable if the Member:
  - (i) dies;
  - (ii) elects to receive a withdrawal benefit under Regulation B6.1;
  - (iii) elects to receive a retirement benefit under Regulation B9; or
  - (iv) is determined by the Committee after considering the advice of the Medical Panel to have ceased being totally disabled; or
  - (v) reaches his or her 66th birthday in which case the Member shall be deemed to have elected to receive a retirement benefit under Regulation B9.

- (g) A partial benefit may be payable under this Regulation during a period of rehabilitation following total disablement. The benefit shall be of an amount and for such period as the Committee may determine after considering the advice of the Medical Panel, and may include payment of personal contributions in accordance with Regulation B12.1(e).
- (h) If a Member ceases to receive a Total Disablement Benefit but is determined by the Committee after considering the advice of the Medical Panel to have become totally disabled from the same cause within 6 months of the cessation of benefit payments, the benefit payments will resume without another eight week waiting period.

#### **B12.2 Leaving Service or Retirement on Account of Ill Health**

- (a) If a Member leaves the service of the Church or other employing body as a result of ill-health but is not entitled to a benefit under Regulation B12.1, the Committee may determine that:
  - (i) if the Member has passed his or her 55th birthday having completed the equivalent of at least 10 years full-time service, the Member may retire and receive the retirement benefit calculated as in Regulation B9.2 based on completed service but using the factor for retirement at age 60, otherwise
  - (ii) the withdrawal amount payable to the Member under Regulation B6.1 shall be twice the amount determined by Regulation B6.1(a) irrespective of the length of service.
- (b) An application for a benefit under Regulation B12.2 shall be made in writing to the Committee, accompanied by appropriate medical evidence and the recommendation of the appropriate Presbytery.

#### **B12.3 Insured Benefits**

The Committee may after consulting the Trustee insure the cost of all or any of the benefits payable under Regulation B12. If there shall be any discrepancy between the definition of any benefit payable under Regulation B12 and the insured benefits, the insurance policy shall prevail.

### **B13. Benefit adjustments**

- B13.1 All annuities and allowances, other than the hardship allowance, being paid under these Defined Benefit Section Regulations shall be adjusted at the same time as any adjustment is made in the Basic Stipend, by at least 50% of the percentage adjustment in Basic Stipend. Further adjustments may be made to specific benefits from time to time. The actual level of any adjustment shall be determined by the Committee, after considering the advice of the Actuary.

## **B14. Special grants**

B14.1 The Committee, after reference to the relevant Presbytery, may authorise special grants in any of the following cases:

- (a) To a Parish or other employing body towards the payment of supply fees incurred during the illness of their Minister, limited to a maximum of eight Sundays, excluding the first Sunday of the illness.
- (b) Where a Member is, or dependants of a Member are, deserving of special consideration.
- (c) Towards the payment of actual retraining costs where either:
  - (i) Presbytery, in consultation with the Member and with the Leadership Committee of the Council of Assembly or its successor, has determined that certain restricted circumstances apply in which it would be in the best interests of the Member and of the Church for the Member to retrain for a new ministry; or
  - (ii) the Member voluntarily seeks to leave ministry by demitting status and Presbytery, in consultation with the Member and with the Leadership Committee of the Council of Assembly or its successor, has determined that such course would be in the best interests of the Member and the Church.
- (d) Where any Minister or other person not a Member of the Defined Benefit Section but who was eligible for membership under Regulation B1, or a dependant of such person, is deserving of special consideration.

B14.2 An application for a special grant shall be made in writing to the Committee.

B14.3 The amount available for distribution under this Regulation 14 each Financial Year shall be limited to an amount in total equal to three times the Basic Stipend at the start of the Financial Year.

## **B15. Additional contributions**

### **B15.1 Supplementary Benefit Scheme**

- (a) Prior to 1 January 2009, any Contributing Member was able to make additional contributions to a Supplementary Benefit Scheme account for the Member. No new contributions may be made to the Supplementary Benefit Scheme on or after the 1 January 2009. The account shall be credited with interest at a rate determined by the Trustee from time to time.
- (b) If a Member dies the total credit balance in the Member's Supplementary Benefit Scheme account at that date shall be paid to the deceased Member's estate.

- (c) Within one month of retirement a Member with an annuity payable from the Defined Benefit Section may elect to have the whole or any part of the credit balance in the Member's Supplementary Benefit Scheme account applied to the provision of an annuity. The level of such annuity payable shall be determined by the Committee after considering the advice of the Actuary.
- (d) If a Member withdraws from Contributing Membership of the Defined Benefit Section under Regulation B6.1 the total credit in the Member's Supplementary Benefit Scheme account shall be paid to the Member as a lump sum at the date of withdrawal.
- (e) If a Member withdraws from Contributing Membership of the Defined Benefit Section under Regulation B6.2, the total credit in the Member's Supplementary Benefit Scheme account may be maintained in that account at the discretion of the Committee.
- (f) At any time after a Member attains age 55, any part of the total credit in his or her Supplementary Benefit Scheme account shall be paid to the Member as a lump sum at the Member's request, provided that the conditions of the AML Exemption are met where the Member makes a withdrawal request and, at the same time, he or she is making contributions under Regulation B4.2. The Committee may from time to time set limits on the number of payments which can be made to a Member in a period, and on the amounts being withdrawn and to be retained in the account.
- (g) Any withdrawal from a Member's Supplementary Benefit Scheme account shall include interest to the date of withdrawal.

## **B16. Benefit payments**

- B16.1 Other than the payment of lump sums, benefits shall be paid monthly on the 20th of each month, or where the 20th is not a business day, then the first business day thereafter. The first instalment will be for the number of days between the Annuitant's entitlement date and the end of the month. The final instalment will be for the number of days between the first day of the month in which the Annuitant dies and the Annuitant's date of death.

## **B17. Alienation**

- B17.1 No Member shall assign, charge, alienate, or borrow against the security of his or her benefits in the Defined Benefit Section.
- B17.2 If a Member or Beneficiary who joined the Defined Benefit Section prior to 1 April 1990 becomes bankrupt, then the benefits of such Member or Beneficiary shall be forfeited to the Defined Benefit Section. The Committee may then in its absolute discretion pay or apply such benefits or any part thereof to or for the maintenance, support or benefit of the Member or Beneficiary or his or her dependants.

- B17.3 If a Member or Beneficiary who joined the Defined Benefit Section after 1 April 1990 becomes bankrupt, then the benefits of such Member or Beneficiary to the fullest extent permitted by law shall be forfeited to the Fund. The Committee may then in its absolute discretion pay or apply such benefits or any part thereof to or for the maintenance, support or benefit of the Member or Beneficiary or his or her dependants.
- B17.4 If a Member or Beneficiary of the Defined Benefit Section becomes unable to manage his or her own affairs the Committee may administer any benefits on that person's behalf.
- B17.5 A Member or Beneficiary of the Defined Benefit Section who is required to make a matrimonial property settlement with his or her Spouse may:
- (a) either withdraw a lump sum from the Defined Benefit Section for payment to that Spouse, provided that the conditions of the AML Exemption Notice are met where the Member makes a withdrawal or lump sum request and, at the same time, he or she is making contributions under Regulation B4.2 or Regulation B4.3, or
  - (b) assign to that Spouse all or part of any accrued benefits of the Member or Beneficiary in the Defined Benefit Section.

In either case there shall be an adjustment of the Member's or Beneficiary's remaining benefits by the Committee, after considering the advice of the Actuary.

## **B18. Transfers**

- B18.1 Any money transferred from another superannuation scheme to the Defined Benefit Section for a Member shall be applied by the Committee to purchase additional benefits for the Member. Such additional benefits shall be on terms and conditions as determined by the Committee after considering the advice of the Actuary.
- B18.1A Where any transfers are received under Regulation B18.1 from international sources (excluding any transfers from Australian Complying Funds), the Trustee must meet the conditions of the AML Exemption Notice (or ensure some other person acting on their behalf meets those conditions).
- B18.2
- (a) Subject to the Act, if a Member shall cease to be a Member of the Defined Benefit Section and shall become a member of another church superannuation scheme the Committee may at its discretion and at the written request of the Member transfer to such other scheme the accrued benefits of the Member under the Defined Benefit Section as determined by the Committee after considering the advice of the Actuary.
  - (b) If a Member of the Defined Benefit Section shall cease to be such and shall become a member of another registered Superannuation Scheme the

Committee shall at the written request of the Member transfer the Member's withdrawal benefit under the Defined Benefit Section to such other scheme.

- (c) A Member for whom a transfer is made under Regulation B18.2(a) or (b) shall not be entitled to any other benefit under the Defined Benefit Section. The receipt of an officer of the transferee scheme shall be a complete discharge to the Committee of all liability in respect of the Member under the Defined Benefit Section and the Committee shall have no liability to see to the application of the funds.

B18.3 The provisions of this clause shall be read subject to the Act.

## B19. Winding up

B19.1 The Defined Benefit Section may be wound up only by the General Assembly.

B19.2 Upon the winding-up of the Defined Benefit Section, all money and assets of the Defined Benefit Section shall be applied in the following priorities:

- (a) First, to pay to each Member the credit balance in his or her Supplementary Benefit Scheme account;
- (b) Secondly, to meet the costs and expenses of winding-up the Defined Benefit Section;
- (c) Thirdly, for each Member in receipt of a benefit under Regulation B8, B9, B10, B11 or B12 to pay such sum as shall be determined by the Actuary to be the value of the Member's benefits. At the option of the Member and with the consent of the General Assembly the Trustee may purchase an individual annuity for the Member of an amount determined by the Actuary to be equivalent in value to the Member's benefits;
- (d) Fourthly, for each Member not in receipt of a benefit under Regulation B8, B9, B10, B11 or B12 to pay the amount of the benefit the Member would have received in accordance with Regulation B6.1 if the Member had left service on the date of winding up;
- (e) Fifthly, for each Member aged 55 years or more and not in receipt of a benefit under Regulation B8, B9, B10, B11 or B12 to pay such sum as shall be determined by the Actuary to be the value of the Member's accrued benefits, less any amount paid under Regulation 19.2(d) above;
- (f) Sixthly, for every Member aged under 55 years and not in receipt of a benefit under Regulation B8, B9, B11 or B12 to pay such sum as shall be determined by the Actuary to be the value of the Member's accrued benefits, less any amount paid under Regulation 19.2(d) above;
- (g) Seventhly, any balance remaining shall be distributed by the General Assembly for "charitable purposes" within the meaning of such words as defined in the Income Tax Act 2007 and/or if determined by the General



Assembly a portion of the balance remaining may also be retained in the Fund by crediting the Reserve Account.

B19.3 If in following the priorities for payment set out in clause B19.2 there is insufficient money to satisfy all the obligations under any subclause, the amount of each benefit under that subclause shall be abated rateably among all persons entitled to benefits under that subclause.

B19.4 During the period beginning on the date on which the winding up of the Defined Benefit Section takes effect and the date that payments are made under clause B19.2, the Trustee may, at its discretion, advance to a recipient a portion of the monies that the recipient is entitled to under clause B19.2, provided that the Trustee must be of the opinion, following consultation with the Actuary, that:

- (a) there is sufficient money available to satisfy all obligations under sub-clauses B19.2(a) to (f); and
- (b) the monies to be advanced to a recipient do not exceed the expected amount payable to that recipient under clause B19.2.

**B19.5 Continuing in the 2017 Division on winding up of the Defined Benefit Section**

- (a) If a Member (including an Annuitant) is entitled to receive a payment under Regulation B19.2, that Member may elect, by notice in writing to the Trustee, to continue to be a Member of the Fund and thereby joins the 2017 Division.
- (b) Where a Member has made an election under Regulation B19.5(a), the Member shall notify the Trustee of the amount of the Member's entitlement under Regulation B19.2 that the Member wishes to place in the 2017 Division, which may be some or all of the amount of the payment the Member is entitled to receive under Regulation B19.2.
- (c) Except with the consent of the Trustee, any election under Regulation B19.5(a) shall be made on or before such date as may be specified by the Trustee by notice in writing to Members of the Defined Benefit Section.
- (d) The Trustee may, at its absolute discretion, reject any election under Regulation B19.5(a), and in such case the election shall have no effect.
- (e) Where a Member has elected to continue to be a Member of the Fund and join the 2017 Division under Regulation B19.5(a) and the election has not been rejected by the Trustee under Regulation B19.5(d), the Member's 2017 Division Member Account shall be credited with the amount notified by the Member to the Trustee to be placed in the 2017 Division under Regulation B19.5(b).
- (f) The transactions described in Regulation B19.5(e) shall be effected on such date as may be determined by the Trustee and, on and from that date, the Member shall:

- (i) be a Member of the 2017 Division; and
- (ii) not be entitled to the payment of any amounts under Regulation B19.2.

B19.6 For the avoidance of doubt, following the winding up of the Defined Benefit Section, Part B and / or Part C (Division 1) (as applicable) shall no longer apply and any reference to the Defined Benefit Section elsewhere in this Deed will no longer be applicable.

## **B20. Option to join the Complying Section**

B20.1 A Member who joined the Defined Benefit Section before 1 January 2009 may, with the agreement of the Committee, elect to become a Member of the Complying Section, in which case the benefit and contribution provisions of this Part B of the Deed shall be modified as set out in this Regulation B20 PROVIDED THAT:

- (i) the Committee may in its absolute discretion, modify the provisions of Regulation B20 as they apply to any particular Member. Any such modification shall be made in an equitable manner and shall be notified to the Member in writing prior to the Member joining the Complying Section; and
- (ii) the Committee may in its absolute discretion determine that any particular Member or groups of Members may not join the Complying Section.

Notwithstanding the foregoing:

- (iii) a Minister in Kindred Service who is paying the amount of the Assessment himself under Regulation B1.5(b) or Regulation B6.3(b) or for whom personal contributions only are being made under Regulation B1.5(c) or Regulation B6.3(c) shall not be eligible to join the Complying Section; and
- (iv) a Minister who is over the New Zealand superannuation qualification age shall not be eligible to join the Complying Section.

B20.2 The contributions payable by the Contributing Member under Regulation B3.1 shall be reduced by the amount of contributions paid by the Contributing Member under Regulation D2.1.

B20.3 Any benefit payable under Regulation B8.1(b) shall be reduced by the amount of the Complying Section Member Account and Complying Section Employer Account as at the date of death.

If the Complying Section Member Account and Complying Section Employer Account exceeds the amount of the benefit otherwise payable under Regulation B8.1(b), then the benefit payable under Regulation B8.1(a) shall be reduced by an amount determined by the Committee after considering actuarial advice to be equivalent to the excess.

- B20.4 The lump sum payable under Regulation B9.2(b)(ii) shall be reduced by the amount of the Complying Section Member Account and Complying Section Employer Account as at the date of retirement.
- B20.5 If the Complying Section Member Account and Complying Section Employer Account exceeds the amount of the lump sum otherwise payable under Regulation B9.2(b)(ii), then the annuity payable under Regulation B9.2(b)(i) shall be reduced by an amount determined by the Committee after considering actuarial advice to be equivalent to the excess. The reduction to the annuity payable under Regulation B9.2(b)(i) shall take into account any benefit payable to the Surviving Spouse on the death of the Annuitant under Rule B8.3.
- B20.6 For the avoidance of doubt:
- (i) no reduction shall be made to the Total Disablement Benefit payable under Regulation B12;
  - (ii) however, where either a death benefit or a retirement benefit is subsequently payable on the cessation of the Total Disablement Benefit, then the amount of that benefit shall be reduced in accordance with the provisions of Regulation B20.3 or B20.4, as appropriate.
- B20.7 Where, prior to a benefit becoming payable under either Regulation B8.1 or Regulation B9, a withdrawal has been made from either the Complying Section Member Account or the Complying Section Employer Account pursuant to Rule E3, E6, E7, E8, E9, E10, E12 or E14, then when determining the reduction in benefit under Regulation B20.3 or Regulation B20.4, the Committee shall be entitled to make such equitable adjustments to the amount of the reduction as they consider appropriate, after considering actuarial advice.

## **PART C**

### **DIVISION 1**

#### **DEFINED BENEFIT SECTION REGULATIONS APPLICABLE TO NEW MEMBERS**

##### **C1. New members**

##### **C1.1 Defined Benefit Section Regulations**

The Regulations set out in Part B shall apply to New Members but shall be subject to the modifications set out in this Part C (Division 1) to the intent that for New Members the provisions of this Part C (Division 1) shall over-ride the equivalent provisions of Part B.

##### **C1.2 Compulsory Membership**

Membership of this part of the Defined Benefit Section shall be compulsory for all Ministers who become ordained on or after 1 January 2009 but before 1 December 2016 and are in receipt of part or all of a Basic Stipend unless exempted or excluded under Regulation C1.3. If a Member joins this part of the Defined Benefit Section such Member shall also join the Complying Section.

**C1.3** The Committee may grant exemption from membership only in special circumstances. Applications for exemption from membership, with reasons stated, shall be made in writing to the Committee with the recommendation of the appropriate Presbytery. A Minister who is over the New Zealand superannuation qualification age shall be prohibited from joining this part of the Defined Benefit Section.

**C1.4** At its discretion the Committee may decide not to admit a Minister as a Member of the Defined Benefit Section, in which case the Minister shall become a Member of the Complying Section only.

**C1.5** Ministers who were ordained prior to 1 January 2009 but who were exempted from membership of the Fund (under Regulation 1.6 of the 2001 Deed) or who elected to not join the Fund because they were aged over 50 at the date of commencing service (under Regulation 1.3 of the 2001 Deed) may join this Part C (Division 1) of the Defined Benefit Section as New Members provided that they are not over the New Zealand superannuation qualification age when they join.

##### **C2. New Member contributions**

**C2.1** Each month every New Member shall pay a personal contribution to the Beneficiary Fund comprising a contribution to the Complying Section under Regulation D2.1 and

a contribution to the Defined Benefit Section. The contribution to the Defined Benefit Section shall be at the rate of one twelfth of 1% of the Basic Stipend multiplied by the Member's Benefit Proportion.

- C2.2 New Members shall not have the right of election to pay an Assessment on their own behalf as set out in Regulation B1.5(b) or to pay personal contributions only as set out in Regulation B1.5(c).

### **C3. Death and disablement benefits**

- C3.1 For the purposes of Regulation B8.1, the benefit payable to the surviving Spouse of the Member shall be an annuity equal to 50% of the annuity determined under Regulation C4.1 based upon the period of service the Member would have completed to age 65 had the Member not died and with the Benefit Proportion applicable at the date of death and based on the Basic Stipend at the date of death.
- C3.2 For the purposes of Regulation B12.1(b), the Total Disablement Benefit shall be an annuity equal to the annuity determined under Regulation C4.1 based upon the period of service the Member would have completed to age 65 had the Member not been disabled and with the Benefit Proportion applicable at the date of Total Disablement and based on the Basic Stipend at the date of Total Disablement.
- C3.3 For the purposes of Regulation B8.3, the annuity payable to the surviving Spouse shall be 50% of the annuity that the Annuitant would have been receiving at the date of the Annuitant's death had the Member elected no commutation at the date of retirement.

### **C4. Retirement benefit**

- C4.1 For the purposes of Regulation B9.2, the benefit payable on retirement shall be an annuity being:

$(0.5\% \text{ per year of full-time service}) \times \text{Basic Stipend} \times \text{factor}$

where the factor shall be 1.02 at age 66 reducing by 2% for each year by which age at retirement is less than 66 years and increasing by 2% for each year by which age at retirement exceeds 66 years.

- C4.2 Regulation B9.3 shall not apply to a New Member.

### **C5. Withdrawal benefit**

#### **C5.1 Leaving Service**

A New Member who leaves the service of the Church or other employing body may withdraw from this Part C (Division 1) of the Defined Benefit Section and receive a lump sum determined under Regulation B6.1 based upon the contributions paid to the Defined Benefit Section under Regulation C2.1.

- C5.2 Upon the written request of the Member, any amount payable under Regulation C5.1 shall be paid to another Superannuation Scheme.
- C5.3 New Members shall not have the right of election to pay an Assessment on their own behalf as set out in Regulation B6.3(b) or to continue to pay personal contributions only as set out in Regulation B6.3(c).

## DIVISION 2

### REGULATIONS APPLICABLE TO THE 2017 DIVISION

#### C6. Membership

##### C6.1 Membership

Any Minister (including a Minister in Kindred Service) or Continuing Member (including an Annuitant) may at the discretion of the Trustee become a Member of and / or join the 2017 Division.

##### C6.2 Compulsory Membership

Membership of the 2017 Division shall be compulsory for Ministers if so provided in the terms of the Minister's appointment by the Church.

##### C6.3 Transfer from the Complying Section

The Trustee may, in its sole discretion:

- (a) admit as a Member of the 2017 Division, a Member of the Complying Section who has reached their End Payment Date; and
- (b) accept a transfer of that Member's Complying Section Balance into the 2017 Division pursuant to Regulation C17.3.

##### C6.4 Classes of Membership

There will be two classes of Members in the 2017 Division:

- (a) Contributing Members, being Members who are in active ministry and in receipt of a stipend or other financial support.
- (b) Non-Contributing Members, being Members who are not in active ministry and therefore not in receipt of a stipend or other financial support (for example, Annuitants, Nominated Surviving Spouses, retired Members or Members who are in between Parishes or other employment as a Minister).

##### C6.5 Cessation of Membership

Subject to the Governing Requirements a Member shall cease to be a Member of the 2017 Division on the first to occur of:

- (a) the Member's death;

- (b) the payment to the Member of all of the Member's 2017 Division Balance and the payment of contributions in respect of that Member to the 2017 Division ceasing; or
- (c) the Member transferring from the 2017 Division to another Superannuation Scheme or other scheme and ceasing to have an entitlement under the 2017 Division.

#### **C6.6 Revocation of Membership**

At its discretion, the Trustee may revoke any Member's membership of the 2017 Division at any time where the Trustee considers that the service of the Minister is no longer consistent with the objects of the Fund. In such a case an amount equal to the Member's 2017 Division Balance shall be transferred to another Superannuation Scheme or paid to the Member as a lump sum.

### **C7. Contributions**

#### **C7.1 Member Contributions**

Contributing Members of the 2017 Division shall pay personal contributions at the percentage rate of the Member's Total Stipend elected by the Member or as otherwise specified or required in accordance with the various contribution options outlined in Appendix B of this Deed, subject to clause A25.1. Contributions shall be deducted from the Member's Total Stipend by the Member's Parish treasurer, by the Member's Church Body (other than a Parish), or by the Member's Kindred Entity (as applicable), and remitted to, or paid by direct debit initiated by, the Administration Manager no later than one month after the deduction is made.

#### **C7.2 Restrictions on Member Contributions**

All contributions payable by the Member under Regulation C7.1 shall be made in accordance with the AML Exemption Notice.

#### **C7.3 Church Body Contributions**

Contributions shall be made to the 2017 Division in respect of each Contributing Member who is not in Kindred Service by the Member's Church Body.

The contribution shall be at the rate of the Member's Total Stipend or amount elected by the Member or as otherwise specified or required in accordance with the various contribution options outlined in Appendix B of this Deed and shall be payable to the Fund at the same time and in the same manner as a Member's personal contributions payable under Regulation C7.1 are paid to the Fund.

The Church shall procure each Church Body pay the applicable contributions required under this Regulation C7.3.



#### **C7.4 Kindred Entity Contributions**

- (a) Subject to Regulation C7.4(b), contributions shall be made to the 2017 Division in respect of each Contributing Member in Kindred Service by the Member's Kindred Entity. The contribution shall be at the rate of the Member's Total Stipend or amount elected by the Member or as otherwise specified or required in accordance with the various contribution options outlined in Appendix B of this Deed and shall be payable to the Fund at the same time and in the same manner as a Member's personal contributions payable under Regulation C7.1 are paid to the Fund. The Church shall procure each Kindred Entity to pay the applicable contributions required under this Regulation C7.4.
- (b) The Trustee may, at its sole discretion, permit a Member to pay the applicable Kindred Entity contributions from a Member's Total Stipend in accordance with the AML Exemption Notice.

#### **C7.5 Taxation on Employer Contributions**

The rates of contribution referred to in Regulation C7.3 and Regulation C7.4 are gross rates. Any taxation payable in respect of any contribution made under Regulation C7.3 and Regulation C7.4 shall be deducted from the contribution payable under Regulation C7.3 and Regulation C7.4 and the net amount remaining shall be paid to the Fund.

#### **C7.6 Leave of Absence**

The Trustee may approve a Contributing Member to be treated as a Non-Contributing Member in the following circumstances:

- (a) During a period of study leave. Applications must be made in writing to the Trustee and shall be accompanied by the recommendation of the Presbytery.
- (b) Where the Member is on parental leave for the term of such leave where:
  - (i) the parental leave has been taken under the terms laid down in the Book of Order;
  - (ii) as a consequence the Member is deemed not to have left the service of the Church or other employing body; and
  - (iii) the Member gives notice in writing to the Trustee of his or her election.
- (c) During a break in service. Applications must be made in writing to the Trustee and shall be accompanied by the recommendation of the Presbytery.

Any applications under this Regulation C7.6 shall be made in the form and manner prescribed by the Trustee from time to time. The Trustee may, at its sole discretion, accept applications that are not received in the prescribed form and manner.

## **C8. Accounts**

- C8.1 The Trustee shall establish Accounts for each Member as provided below. These Accounts shall be a record in respect of each Member of all relevant contributions and assets held in respect of the Member, and Units held for that Member, referable to that Account. The Accounts at any given date list the value of all assets held with regard to the Member at the relevant time, referable to that Account.
- C8.2 The Trustee shall establish an account for each Member known as a "2017 Division Member Account" to which shall from time to time be credited or debited:
- (a) contributions to the 2017 Division for the Member under Regulation C7.1; and
  - (b) a proportionate share of the expenses of administration of the 2017 Division including any investment management fees (if applicable) as determined by the Trustee; and
  - (c) any Transfer Value received from another superannuation scheme or the Complying Section; and
  - (d) any Continuing Value received in accordance with Regulation B19.5; and
  - (e) if applicable, the amount of any monies to be credited to or debited from, as the case may be, the 2017 Division Member Account at the rate or rates determined by the Trustee in respect of the relevant Portfolio or Portfolios in accordance with the Earning Rates Policy; and
  - (f) if applicable, amounts paid in the acquisition of assets in respect of the Member referable to the 2017 Division Member Account; and
  - (g) if applicable, income and cash returns from assets held in respect of the Member referable to the 2017 Division Member Account and on money in the 2017 Division Member Account not yet invested; and
  - (h) if applicable, money received following the realisation of assets held in respect of the Member referable to the 2017 Division Member Account; and
  - (i) such other amounts as are required either expressly or by implication to be credited or debited in terms of this Deed,

and such account shall be the 2017 Division Member Account of such Member.

- C8.3 The Trustee shall establish an account for each member known as the "2017 Division Supporter Account" to which shall from time to time be credited or debited;

- (a) contributions to the 2017 Division under Regulation C7.3 and the Governing Requirements; and
- (b) a proportionate share of the expenses of administration of the 2017 Division including any investment management fees (if applicable) as determined by the Trustee; and
- (c) if applicable, the amount of any monies to be credited to or debited from, as the case may be, the 2017 Division Supporter Account at the rate or rates determined by the Trustee in respect of the relevant Portfolio or Portfolios in accordance with the Earning Rates Policy; and
- (d) if applicable, amounts paid in the acquisition of assets in respect of the Member referable to the 2017 Division Supporter Account; and
- (e) if applicable, income and cash returns from assets held in respect of the Member referable to the 2017 Division Supporter Account and on money in the 2017 Division Supporter Account not yet invested; and
- (f) if applicable, money received following the realisation of assets held in respect of the Member referable to the 2017 Division Supporter Account; and
- (g) such other amounts as are required either expressly or by implication to be credited or debited in terms of this Deed,

and such account shall be the 2017 Division Supporter Account.

## **C9. Withdrawal on retirement or leaving active ministry**

- C9.1 A Member is entitled to withdraw an amount equal to the balance of the 2017 Division Balance if either:
- (a) the Member has left active ministry with the Church; or
  - (b) the Member has reached the New Zealand superannuation qualification age.
- C9.2 A Member who has reached the New Zealand superannuation qualification age is not required to withdraw and may instead elect to defer receipt of their balance of the 2017 Division.
- C9.3 A Member entitled to withdraw pursuant to Regulation C9.1(b) may elect to receive their 2017 Division Balance in a lump sum or in regular instalments.

## C10. **Withdrawal on death**

C10.1 Subject to Regulation C10.2, if a Member dies, the Trustee must:

- (a) on application by the Member's personal representative, pay to that person an amount that is equal to the value of the Member's 2017 Division Balance at the date on which the application is accepted as part of the Member's estate; or
- (b) if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.

C10.2 Nomination of Surviving Spouse

- (a) A Continuing Member may nominate their Spouse (a **Nominated Surviving Spouse**) to receive the amount referred to in Regulation C10.1(a) on the Continuing Member's death. The nomination will be a one-off opportunity for Continuing Members and, if revoked pursuant to Regulation C10.2(b), the Continuing Member will not have any right to make a further nomination under this Regulation C10.2(a)
- (b) A nomination under Regulation C10.2(a) will only be effective if received in the form and manner prescribed by the Trustee and may be revoked at any time by the Continuing Member.
- (c) If there is a Nominated Surviving Spouse, Regulation C10.1 will not apply and if the Continuing Member dies, the Trustee must pay the Nominated Surviving Spouse an amount that is equal to the value of the Continuing Member's 2017 Division Balance as at the date of the Continuing Member's death.
- (d) A Nominated Surviving Spouse may elect to retain the Continuing Member's 2017 Division Balance in the Fund in which case, the Nominated Surviving Spouse:
  - (i) will not be able to contribute to the 2017 Division; and
  - (ii) may withdraw the Continuing Member's 2017 Division Balance in regular instalments; or
  - (iii) may defer receipt of the Continuing Member's 2017 Division Balance and withdraw the Continuing Member's 2017 Division Balance in a lump sum or in regular instalments at a later date.
- (e) If, during the period of 1 July 2017 to 31 March 2018, a Continuing Member dies without having nominated their Spouse, the Trustee will deem their surviving Spouse to be a Nominated Surviving Spouse under this Regulation C10.2 and Regulations C10.2(c) and C10.2(d) will apply.

- (f) If, during the period 1 April 2018 to 31 December 2018, a Continuing Member dies without having nominated their Spouse:
  - (i) the Trustee has absolute discretion to accept an application by a surviving Spouse to become a Nominated Surviving Spouse under this Regulation C10.2 on such terms and conditions as the Trustee thinks fit; and
  - (ii) Regulations C10.2(c) and C10.2(d) will apply.

## **C11. Withdrawal for purpose of purchase of first home**

C11.1 This clause applies to a Member if the Member has not made a withdrawal under this Regulation C11 before.

C11.2 A Member to whom this Regulation applies may make a withdrawal from the 2017 Division for the purchase of an estate in land located in New Zealand (whether alone or as a joint tenant or tenant in common) if both of the following apply:

- (a) the land is, or is intended to be, the principal place of residence for the Member or for the Member and members of the Member's family; and
- (b) the Member has not, at any time before applying to make a withdrawal under this Regulation (whether before or after becoming a Member of the 2017 Division), held an estate in land (whether alone or as a joint tenant or tenant in common).

C11.3 A Member may not make a withdrawal under this clause of more than an amount equal to the balance of the Member's 2017 Division Member Account at the time of the withdrawal.

C11.4 If a person holds an estate in land in any of the following circumstances, that estate must be disregarded for the purposes of Regulation C11.2(b):

- (a) the person holds the estate in land as a bare trustee.
- (b) the estate in land is a leasehold estate.
- (c) the estate in land is an interest in Maori land (within the meaning of the Te Ture Whenua Maori Act 1993).
- (d) the person holds the estate in land as a trustee who:
  - (i) is a discretionary, contingent, or vested beneficiary under the relevant trust; but
  - (ii) has no reasonable expectation of being entitled to occupy the land as the principal place of residence for the person or the person's family until the death of the person who currently

occupies the land (the occupier) or the death of the occupier's survivor.

C11.5 In this Regulation, "estate" means a fee simple estate, a leasehold estate, or a stratum estate.

C11.6 Any benefits paid under this Regulation C11 shall be met from the Member's 2017 Division Member Account.

## **C12. Withdrawal in cases of significant hardship**

C12.1 If the Trustee is satisfied in its absolute discretion that significant hardship would result to a Member and his or her immediate family if the Member were not permitted to make a withdrawal from the 2017 Division, the Member may, on application to the Trustee in accordance with Regulation C14, make a withdrawal in accordance with this Regulation C12.1.

C12.2 The amount of that significant hardship benefit is subject to the Trustee's approval under Regulation C12.3, and shall not be more than an amount equal to the Member's 2017 Division Balance at the time of the withdrawal.

C12.3 The Trustee:

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

## **C13. Withdrawal in cases of serious illness**

C13.1 In cases where a Member to whom this Regulation applies is suffering from Serious Illness (as defined in the KiwiSaver Scheme Rules), the Member may apply to the Trustee in accordance with Rule C14 to make a serious illness withdrawal of some or all of the Member's 2017 Division Balance in accordance with this Regulation.

C13.2 The Trustee may in its absolute discretion permit such a withdrawal if satisfied that if the Member was a member of a KiwiSaver Scheme, clause 12 of the KiwiSaver Scheme Rules would allow the withdrawal.

## **C14. Application for withdrawal for significant hardship or serious illness**

C14.1 The application for a withdrawal under Rule C12.1 or C13 must be in the form required by the Trustee and may at the Trustee's election include a complete statutory declaration in respect of the Member's assets and liabilities or any other documents, things, or information, that the Trustee requests.

C14.2 The Trustee:

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

**C15. Withdrawal of Continuing Value**

C15.1 Subject to Regulations C15.2 and C15.3, a Continuing Member will, on giving notice to the Trustee, be entitled to make one or more withdrawals from that Continuing Member's 2017 Division Member Account up to an amount equal to in aggregate that Continuing Member's Continuing Value.

C15.2 The entitlement of a Continuing Member to make a withdrawal under Regulation C15.1 is subject to any terms and conditions that the Trustee may from time to time determine.

C15.3 The Trustee may from time to time and in its sole discretion determine that withdrawals or any withdrawal under Regulation C15.1 will not be permitted if it considers the circumstances necessary and appropriate, including, without limitation, if in the opinion of the Trustee the availability of a withdrawal under Regulation C15.1 would be inconsistent with the Fund's charitable purposes or would jeopardise the Fund's registration under the Act.

**C16. General provisions relating to withdrawals**

**Trustee may reasonably require evidence to establish right to receive permitted withdrawal**

C16.1 The Trustee may reasonably require a Member who applies to make a permitted withdrawal to provide evidence of the facts necessary to establish the Member's right to make the withdrawal and / or require that any documents, things, or information produced in an application be verified by oath, statutory declaration, or otherwise.

**Release of funds required under other enactment**

C16.2 The Trustee must comply with the provisions of any enactment that requires them to release funds from the 2017 Division in accordance with that enactment.

C16.3 A requirement to release funds from the 2017 Division under any enactment includes a requirement by order of any Court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

## **Benefits Fully Funded**

- C16.4 The benefits provided to Members of the 2017 Division pursuant to this Deed shall be fully funded as they accrue.
- C16.5 A Member who is entitled to receive a withdrawal pursuant to Part C (Division 2) may elect:
- (a) to receive the withdrawal as a lump sum; or
  - (b) in the case of a withdrawal under Regulation C9:
    - (i) to receive the withdrawal in regular instalment payments; or
    - (ii) to transfer the withdrawal to the Complying Section, a Superannuation Scheme, or other scheme if permitted under the Governing Requirements, in each case subject to and in accordance with the Governing Requirements.

## **C17. Transfers, alienation and assignment**

### **C17.1 General Prohibition**

Subject to Regulation C17.2, unless permitted or required by the Governing Requirements or other law (and then only to the extent so permitted or required), no Member may transfer, alienate, assign, charge, pass to any other person, mortgage, pledge or grant any other interest in his or her, present or future interest in the 2017 Division or any withdrawals payable from the 2017 Division in any way, and the Trustee shall not be entitled to recognise any other person as having an interest of any nature in the Member's present or future interest in the 2017 Division or any withdrawal payable from the 2017 Division, or be obliged to give effect to or see to the performance of any such interest.

### **C17.2 Forfeiture of Entitlements**

Subject to the Governing Requirements the Trustee may from time to time determine (in respect of some or all Members) that if in the opinion of the Trustee a Member becomes of unsound mind, incapable of managing his or her affairs or bankrupt, the Member shall (to a maximum extent permitted by law) forfeit his or her interest in the 2017 Division. The Trustee shall (subject to compliance with the Governing Requirements) apply such forfeited interest for the benefit of the Member or his or her dependants in such manner as the Trustee shall in its discretion think fit. The Trustee shall not be under any obligation to make enquiry as to whether circumstances exist in respect of any Member which may give rise to the operation of this clause. Any amounts forfeited under this clause may be paid and held by the Trustee to the Reserve Account.



**C17.3 Transfers or placement in the 2017 Division from another scheme or another part or division of the Fund**

If any Member is entitled to a benefit or to otherwise transfer or place in the 2017 Division, an amount from any other Superannuation Scheme or another part or division of the Fund (including under Regulation B19.5 or Regulation D4.3(b)) the Trustee shall on such terms and conditions as it shall determine from time to time (such terms to be consistent with the Governing Requirements), accept a transfer, or placement from that other scheme or part or division of the Fund of an amount notified to it by the trustee of that other scheme (or in the case of a transfer, or placement from another part or division of the Fund, the amount the Member requested be transferred or placed to the 2017 Division). For the avoidance of doubt, the Trustee may, in its sole discretion, reject a transfer or placement, in if in the opinion of the Trustee it would be inconsistent with the Fund's charitable purposes or would jeopardise the Fund's registration under the Act.

C17.4 A transfer to the Fund from an international source (excluding any transfers from Australian Complying Funds) must meet the conditions of the AML Exemption Notice.

**C17.5 Transfers to another scheme**

Each Member shall be entitled to transfer any amount they are entitled to receive under the 2017 Division to another scheme as is required under the Governing Requirements.

**C18. Relationship with governing requirements**

If there is any inconsistency between the provisions of this Deed, as they relate to the 2017 Division, and any Governing Requirements the provisions of the relevant Governing Requirements shall prevail and this Deed shall (only insofar as it relates to the 2017 Division) be construed accordingly. If there is any inconsistency between the provisions of Part C (Division 2) and the remainder of this Deed, the provisions of Part C (Division 2) shall prevail.

**C19. Winding up**

C19.1 The 2017 Division may be wound up only by the General Assembly or pursuant to any statutory power contained in the Governing Legislation.

C19.2 In the event any sums are held in the Reserve Account on the winding up of the 2017 Division, the Reserve Account shall be applied to meet the costs and expenses of winding up the 2017 Division.

C19.3 In the event no sums are held in the Reserve Account on the winding up of the 2017 Division or the sums held in the Reserve Account are exhausted under clause C19.2, the costs and expenses of winding up the 2017 Division shall be debited to the Members' 2017 Division Member Accounts on an equitable basis.

- C19.4 Upon the winding-up of the 2017 Division the benefit payable in respect of each Member shall be equal to the Member's 2017 Division Balance. Such benefit shall be paid as a lump sum to the Member.
- C19.5 If there is insufficient money to satisfy all the obligations under C19.4, the amount of each benefit payable to a Member shall be abated rateably among all Members.
- C19.6 For the avoidance of doubt, clause A12.3 shall be complied with in respect of the winding up of the 2017 Division.

## PART D

### COMPLYING SECTION REGULATIONS

#### D1. Membership

##### D1.1 Membership

Any Minister may at the discretion of the Trustee become a member and join the Complying Section. A Minister who is over the New Zealand superannuation qualification age shall be prohibited from joining the Complying Section.

##### D1.2 Cessation of Membership

Subject to the Governing Requirements a Member shall cease to be a Member of the Complying Section on the first to occur of:

- (a) the Member's death;
- (b) payment to the Member of all of the Member's Complying Section Balance;
- (c) the Member transferring from the Complying Section to another complying fund, KiwiSaver Scheme, or other scheme and ceasing to have an entitlement under the Complying Section; or
- (d) the transfer of all the Member's Complying Section Balance to the 2017 Division.

##### D1.3 Revocation of Membership

At its discretion, the Trustee may revoke any Member's membership of the Complying Section at any time where the Trustee considers that the service of the Minister is no longer consistent with the objects of the Fund. In such a case the Member's Complying Section Balance shall be transferred to another complying fund or KiwiSaver Scheme in accordance with Rule E14.

#### D2. Contributions

##### D2.1 Member Contributions

Every Member who is subject to the provisions of Parts D and E shall pay a personal contribution to the Beneficiary Fund comprising a contribution to the Complying Section. The contribution to the Complying Section shall be at the percentage rate of the Member's Total Stipend elected by the Member or as otherwise specified or required in accordance with the contribution options outlined in Appendix B of this Deed, or such other amount required by the Governing Legislation, subject to clause

A25.1. Contributions shall be deducted from the Member's Total Stipend by the Member's Parish treasurer, by the Member's Church Body (other than a Parish), or by the Member's Kindred Entity (as applicable), and remitted to, or paid by direct debit initiated by, the Administration Manager no later than one month after the deduction is made.

**D2.1A Restrictions on Member Contributions**

All contributions payable by the Member under Regulation D2.1 shall be made in accordance with the AML Exemption Notice.

**D2.2 Kindred Entity and Church Body Contributions**

Contributions shall be made to the Complying Section for each Member who is subject to the provisions of Parts D and E. The contributions shall be made in respect of each Member either:

- (a) in the case of Members in Kindred Service, by their Kindred Entities; or
- (b) in the case of all other Ministers who are Members, by the Member's Church Body.

The contribution shall be at the percentage rate of the Member's Total Stipend or amount elected by the Member or as otherwise specified or required in accordance with the various contribution options outlined in Appendix B of this Deed, or such other amount required by the Governing Legislation, and shall be payable to the Fund at the same time and in the same manner as a Member's personal contributions payable under Regulation D2.1 are paid to the Fund.

The Church shall procure each Church Body and/or each Kindred Entity pay the applicable contributions required under this Regulation D2.2.

**D3. Member accounts employer accounts and tax benefit accounts**

D3.1 The Trustee shall establish Accounts for each Member as provided below. These Accounts shall be a record in respect of each Member of all relevant contributions and assets held in respect of the Member, and Units held for that Member, referable to that Account. The Accounts at any given date list the value of all assets held with regard to the Member at the relevant time, referable to that Account.

D3.2 The Trustee shall establish an account for each Member known as a "Complying Section Member Account" to which shall from time to time be credited or debited:

- (a) contributions to the Complying Section by the Member under Regulation D2.1 and the Governing Requirements; and
- (b) a proportionate share of the expenses of administration of the Complying Section including any investment management fees (if applicable) as determined by the Trustee; and

- (c) any Transfer Value received from another Superannuation Scheme relating to the Member's employment with an employer other than a Kindred Entity; and
- (d) if applicable, the amount of any monies to be credited to or debited from, as the case may be, the Complying Section Member Account at the rate or rates determined by the Trustee in respect of the relevant Portfolio or Portfolios in accordance with the Earning Rates Policy; and
- (e) if applicable, amounts paid in the acquisition of assets in respect of the Member referable to the Complying Section Member Account; and
- (f) if applicable, income and cash returns from assets held in respect of the Member referable to the Complying Section Member Account and on money in the Complying Section Member Account not yet invested; and
- (g) if applicable, money received following the realisation of assets held in respect of the Member referable to the Complying Section Member Account; and
- (h) such other amounts as are required either expressly or by implication to be credited or debited in terms of this Deed,

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

D3.3 The Trustee shall establish an account for each Member known as a "Complying Section Employer Account" to which shall from time to time be credited or debited:

- (a) contributions to the Complying Section for the Member under Regulation D2.2 and the Governing Requirements, reduced by the amount of Withholding Tax Savings in respect of the Member; and
- (b) a proportionate share of the expenses of administration of the Complying Section including any investment management fees (if applicable) as determined by the Trustee; and
- (c) if applicable, the amount of any monies to be credited to or debited from, as the case may be, the Complying Section Employer Account at the rate or rates determined by the Trustee in respect of the relevant Portfolio or Portfolios in accordance with the Earning Rates Policy; and
- (d) if applicable, amounts paid in the acquisition of assets in respect of the Member referable to Complying Section Employer Account; and
- (e) if applicable, income and cash returns from assets held in respect of the Member referable to the Complying Section Employer Account and on money in the Complying Section Employer Account not yet invested; and
- (f) if applicable, money received following the realisation of assets held in respect of the Member referable to the Complying Section Employer Account; and

- (g) such other amounts as are required either expressly or by implication to be credited or debited in terms of this Deed,

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

D3.4 The Trustee shall establish an account for each Member known as a "Complying Section Tax Benefit Account" to which shall from time to time be credited or debited:

- (a) Member Tax Credits paid in respect of the Member under the Governing Requirements; and
- (b) Withholding Tax Savings; and
- (c) a proportionate share of the expenses of administration of the Complying Section including any investment management fees (if applicable) as determined by the Trustee; and
- (d) if applicable, the amount of any monies to be credited to or debited from, as the case may be, the Complying Section Tax Benefit Account at the rate or rates determined by the Trustee in respect of the relevant Portfolio or Portfolios in accordance with the Earning Rates Policy; and
- (e) if applicable, amounts paid in the acquisition of assets in respect of the Member referable to Complying Section Tax Benefit Account; and
- (f) if applicable, income and cash returns from assets held in respect of the Member referable to the Complying Section Tax Benefit Account and on money in the Complying Section Tax Benefit Account not yet invested; and
- (g) if applicable, money received following the realisation of assets held in respect of the Member referable to the Complying Section Tax Benefit Account; and
- (h) such other amounts as are required either expressly or by implication to be credited or debited in terms of this Deed,

and such account shall be the Complying Section Tax Benefit Account of such Member.

D3.5 For the purposes of this clause, Withholding Tax Savings shall mean the amount of the employer contributions tax which would have been payable on contributions paid under Regulation D2.2 had the Complying Section not been approved as a Complying Superannuation Fund for the purposes of the Income Tax Act 2007.

## D4. **Benefits**

### D4.1 **Circumstances Where Benefits Available**

A Member may make a withdrawal from the Complying Section if he or she is entitled to a withdrawal pursuant to Rules E3, E6, E7, E8, E9, E10, E12 or E14 of the

Complying Section Rules. The amount of the benefit payable on withdrawal shall be determined under the provisions of the Complying Section Rules in Part E.

#### **D4.2 Benefits Fully Funded**

The benefits provided to Members of the Complying Section pursuant to this Deed shall be fully funded as they accrue.

D4.3 A Member who is entitled to a withdrawal pursuant to the Complying Section Rules in Part E may elect to:

- (a) receive the withdrawal as a lump sum;
- (b) transfer the withdrawal to the 2017 Division; or
- (c) to transfer the withdrawal to a KiwiSaver Scheme, or if permitted by the Governing Requirements, to another Superannuation Scheme, or other scheme if permitted under the Governing Requirements, in each case subject to and in accordance with the Governing Requirements.

D4.4 The amount of any withdrawal is subject to the Complying Section Rules in Part E.

D4.4A The conditions of the AML Exemption Notice must be met where a withdrawal is made under Part E and the Member is also making personal contributions under Regulation B4.2 or Regulation B4.3.

### **D5. Transfers, alienation and assignment**

#### **D5.1 General Prohibition**

Subject to Regulation D5.2, unless permitted or required by the Governing Requirements or other law (and then only to the extent so permitted or required), no Member may transfer, alienate, assign, charge, pass to any other person, mortgage, pledge or grant any other interest in his or her, present or future interest in the Complying Section or any withdrawal payable from the Complying Section in any way, and the Trustee shall not be entitled to recognise any other person as having an interest of any nature in the Member's present or future interest in the Complying Section or any withdrawal payable from the Complying Section, or be obliged to give effect to or see to the performance of any such interest.

#### **D5.2 Forfeiture of Entitlements**

Subject to the Governing Requirements the Trustee may from time to time determine (in respect of some or all Members) that if in the opinion of the Trustee a Member becomes of unsound mind, incapable of managing his or her affairs or bankrupt, the Member shall (to a maximum extent permitted by law) forfeit his or her interest in the Complying Section. The Trustee shall (subject to compliance with the Governing Requirements) apply such forfeited interest for the benefit of the Member or his or her dependants in such manner as the Trustee shall in its discretion think fit. The Trustee shall not be under any obligation to make enquiry as to whether circumstances exist

in respect of any Member which may give rise to the operation of this clause. Any amounts forfeited under this clause may be paid and held by the Trustee in the Reserve Account.

#### **D5.3 Transfers from another Scheme**

If any Member is entitled to a benefit or to otherwise transfer an amount from any other Superannuation Scheme or the Defined Benefit Section the Trustee shall on such terms and conditions as it shall determine from time to time (such terms to be consistent with the Governing Requirements), accept a transfer from that other scheme of an amount notified to it by the trustee of that other scheme. Any amount so received shall be treated as if it were a contribution by the Member pursuant to Regulation D2.1.

D5.3A A transfer to the Fund from an international source (excluding any transfers from Australian Complying Funds) must meet the conditions of the AML Exemption Notice.

#### **D6. Relationship with governing requirements**

If there is any inconsistency between the provisions of this Deed, as they relate to the Complying Section, and any Governing Requirements the provisions of the relevant Governing Requirements shall prevail and this Deed shall (only insofar as it relates to the Complying Section ) be construed accordingly. If there is any inconsistency between the provisions of the Complying Section Regulations and the remainder of this Deed, the provisions of the Complying Section Regulations shall prevail.

#### **D7. Winding up**

D7.1 The Complying Section may be wound up only by the General Assembly or pursuant to any statutory power contained in the Governing Legislation.

D7.2 In the event any sums are held in the Reserve Account on the winding up of the Complying Section, the Reserve Account shall be applied to meet the costs and expenses of winding up the Complying Section.

D7.3 In the event no sums are held in the Reserve Account on the winding up of the Complying Section or the sums held in the Reserve Account are exhausted under clause D7.2, the costs and expenses of winding up the Complying Section shall be debited to the Members' Complying Section Balances on an equitable basis.

D7.4 Upon the winding-up of the Complying Section the benefit payable in respect of each Member shall be equal to the Member's Complying Section Balance. Such benefit shall be paid to another complying fund or KiwiSaver Scheme, or as a lump sum to the Member if the Member has reached the End Payment Date specified in Rule E3, as the Member shall elect.



## PART E

### COMPLYING SECTION RULES

The following rules shall apply to the Complying Section.

#### E1. **Enforceability**

E1.1 These rules are enforceable by the Trustee or any Member of the Complying Section.

#### E2. **Minimum contribution for member**

E2.1 For each pay period a Member must contribute to the Complying Section at least the minimum contribution rate of that Member's gross Salary or Wages (as that term is defined in the KiwiSaver Act) or Total Stipend as is required under Governing Legislation.

#### E3. **Lock-in of funds to end payment date**

E3.1 Subject to other permitted withdrawals, a Member may not make a withdrawal from the Complying Section until the End Payment Date or a date after that date.

E3.2 For the purposes of Rule E3.1, the End Payment Date is the later of:

- (a) the date on which the Member reaches the New Zealand superannuation qualification age; or
- (b) the Five Year Qualification Date (as defined in the KiwiSaver Scheme Rules).

E3.3 A Member is entitled to withdraw an amount not more than the balance of the Member's Complying Section Balance on the later date referred to in Rule E3.2.

E3.4 Nothing in this Rule requires a Member to withdraw from the Complying Section on the date specified in Rule E3.2.

#### E4. **Trustee must pay permitted withdrawal as lump sum**

E4.1 The Trustee must, at the Member's request, pay a permitted withdrawal as a lump sum.

E4.2 Nothing in Rule E4.1 prevents a Member purchasing annuities or a pension from all or part of the Member's Complying Section Balance or Member's interest that is withdrawn by that Member.

**E5. Trustee may reasonably require evidence to establish right to make permitted withdrawal**

E5.1 The Trustee may reasonably require a Member who applies to make a permitted withdrawal to provide evidence of the facts necessary to establish the Member's right to make the withdrawal, and / or require that any documents, things, or information produced in an application be verified by oath, statutory declaration, or otherwise.

**E6. Release of funds required under other enactments**

E6.1 The Trustee must comply with the provisions of any enactment that requires them to release funds from the Complying Section in accordance with that enactment.

E6.2 A requirement to release funds from the Complying Section under any enactment includes a requirement by order of any Court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

**E7. Withdrawal for purpose of purchase of first home**

E7.1 A Member to whom this Rule applies may apply to make a withdrawal from the Complying Section of some or all of the Member's Complying Section Balance for the purchase of an estate in land located in New Zealand in a circumstance specified in clause 8 of the KiwiSaver Scheme Rules.

E7.2 The Trustee in its absolute discretion may permit such a withdrawal if, treating the period during which the Member was a member of the Complying Section and / or one or more KiwiSaver Schemes as membership of a KiwiSaver Scheme, the Trustee is satisfied that clause 8 of the KiwiSaver Scheme Rules would enable the withdrawal.

E7.3 This Rule is subject to the terms of any agreement between the Trustee and any Kindred Entity or Church Body that restricts or prevents the withdrawal of Kindred Entity or Church Body vested contributions that are not compulsory Kindred Entity or Church Body contributions in relation to the Member.

**E8. Withdrawal by member's personal representative**

E8.1 If a Member dies, the Trustee must:

- (a) on application by the Member's personal representative, pay to that person an amount that is equal to the value of the Member's Complying Section Balance at the date on which the application is accepted as part of the Member's estate; or
- (b) if the requirement of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.

**E9. Withdrawal in cases of significant financial hardship**

E9.1 In cases where a Member to whom this Rule applies is suffering or is likely to suffer from Significant Financial Hardship (as defined in the KiwiSaver Scheme Rules), the Member may apply to the Trustee in accordance with Rule E11 to make a significant financial hardship withdrawal of some or all of the Member's Complying Section Balance in accordance with this Rule.

E9.2 The Trustee may in its absolute discretion permit such a withdrawal if satisfied that if the Member was a member of a KiwiSaver Scheme, clause 10 of the KiwiSaver Scheme Rules would allow the withdrawal.

**E10. Withdrawal in cases of serious illness**

E10.1 In cases where a Member to whom this Rule applies is suffering from Serious Illness (as defined in the KiwiSaver Scheme Rules), the Member may apply to the Trustee in accordance with Rule E11 to make a serious illness withdrawal of some or all of the Member's Complying Section Balance in accordance with this Rule.

E10.2 The Trustee may in its absolute discretion permit such a withdrawal if satisfied that if the Member was a member of a KiwiSaver Scheme, clause 12 of the KiwiSaver Scheme Rules would allow the withdrawal.

**E11. Application for withdrawal for significant financial hardship or serious illness**

E11.1 The application for a withdrawal under Rule E9 or E10 must be in the form required by the Trustee and must include a complete statutory declaration in respect of the Member's assets and liabilities.

E11.2 The Trustee:

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

**E12. Withdrawal or transfer to foreign scheme in cases of permanent emigration**

E12.1 A Member may apply to the Trustee to withdraw some or all of the Member's Complying Section Balance, or to transfer the balance in the Member's Complying Section Balance to an Equivalent Overseas Retirement Scheme, in the case of permanent emigration from New Zealand.

E12.2 Subject to the application of subpart MK of the Income Tax Act 2007, the Trustee may in its absolute discretion permit such a withdrawal or transfer if satisfied that, if the Member's membership of the Complying Section was membership of a KiwiSaver Scheme, clause 14 of the KiwiSaver Scheme Rules would enable the withdrawal or transfer.

### **E13. Contributions holiday**

E13.1 A Member may not take a contributions holiday in accordance with subpart 4 of Part 3 of the KiwiSaver Act.

### **E14. Transfer of members**

E14.1 A Member may, at any time during his or her membership of the Complying Section, apply to the Trustee, to have the Member's Complying Section Balance transferred to another complying fund or KiwiSaver Scheme.

E14.2 On application by a Member, the Trustee must, if the other complying fund or KiwiSaver Scheme indicates it will accept that person as a member, transfer the Member's Complying Section Balance to the other complying fund or KiwiSaver Scheme in accordance with subpart 3 of Part 2 of the KiwiSaver Act.

E14.3 A Member may, at any time during his or her membership of the Complying Section, be transferred to another KiwiSaver Scheme in the circumstances provided for in, and in accordance with, the Governing Legislation.

E14.4 The Trustee shall require that a Member's Complying Section Balance be subject to Complying Section rules where it is transferred to another Complying Superannuation Fund in accordance with this Rule.

### **E15. Notification**

E15.1 The Trustee shall notify the Commissioner if a Member's Complying Section Balance must be transferred under Rule E14.

E15.2 The Trustee shall notify the fund provider if a Member's Complying Section Balance is transferred to another Complying Superannuation Fund under Rule 15.1.

E15.3 For the purpose of this Rule:

(a) notification under Rule E15.1 must include the name, address and tax file number of the Member, the name and address of their Kindred Entity or Church Body, and the name and tax file number of the complying fund;

(b) notification under Rule E15.2 must include:

(i) any written evidence provided to the Trustee by the Member under section MK2(2) of the Income Tax Act 2007;

- (ii) the amount of tax credits received by the Trustee in respect to the Member under subpart MK of the Income Tax Act 2007; and
- (iii) any information held by the Trustee that would be relevant to the new fund provider making a claim under section 68C of the Tax Administration Act 1994, including information as to the periods for which claims have already been made.

**E16. Crown Contributions: Tax Credits**

E16.1 Notwithstanding anything in this Deed, the amount of the Member Tax Credit (disregarding any positive or negative returns for the purposes of calculating that amount of Crown Contribution) may not be withdrawn:

- (a) before the Member, the personal representative, or the relevant person under section 65 of the Administration Act 1969 (as the case may be) gives the provider a statutory declaration stating, to the best of their knowledge, the periods for which the Member has their principal place of residence in New Zealand; and
- (b) to the extent to which the Trustee has notice that their claim for a tax credit is wrong, because they have got the time for which the Member meets the requirements of section MK 2 of the Income Tax Act 2007 wrong.

## Appendix A

### DEED OF ADOPTION

This Deed of Adoption made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

BETWEEN [ \_\_\_\_\_ ] (Kindred Entity)

AND **THE PRESBYTERIAN BENEFICIARY FUND TRUSTEE LIMITED** of the second part.

#### WITNESSES

1. The Kindred Entity desires to participate in the Beneficiary Fund of the Presbyterian Church of Aotearoa New Zealand Fund ("the Fund") and by executing this Deed of Adoption agrees to be bound by the provisions of the Trust Deed and Regulations of the Fund so that Ministers in its service may either become Members or continue as Members in the Fund.
2. Except as agreed otherwise in writing with the Trustee, the Kindred Entity covenants to pay the amounts required of it under the Trust Deed and Regulations of the Fund (including the amounts required under clause 1 of Appendix 2 of the Deed) for each of its employees who become a Member of the Fund. The Kindred Entity shall continue to pay such amounts until either:
  - (a) such employee ceases to be in Kindred Service; or
  - (b) the Kindred Entity chooses to withdraw participation from the Fund and gives the Trustee not less than one month's written notice of such choice.



## Appendix B

### CONTRIBUTION OPTIONS

Contributions shall be made to the Fund as outlined below.

- 1) In the case of:
  - i. Members in Kindred Service where the Kindred Entity has entered into a deed of adoption under which the Kindred Entity will contribute to the Fund in accordance with this Deed and this clause 1 of this Appendix B or has otherwise agreed to make such contributions; and
  - ii. all other Ministers that are Members,
 such Members shall elect an option from the table below specifying:
  - (a) in respect of those Members that are Members of the 2017 Division, the rate of personal contributions to be made in accordance with regulation C7.1 and the rate of Church Body or Kindred Entity (as applicable) contributions to be made in accordance with regulations C7.3 or C7.4; and / or
  - (b) in respect of those Members that are Members of the Complying Section, the rate of personal contributions to be made in accordance with regulation D2.1 and the rate of Church Body or Kindred Entity (as applicable) contributions to be made in accordance with regulation D2.2.

	2017 Division		Complying Section	
	Rate* of personal contributions to be made in accordance with regulation C7.1	Rate* of Church Body or Kindred Entity (as applicable) contributions to be made in accordance with regulation C7.3	Rate* of personal contributions to be made in accordance with regulation D2.1	Rate* of Church Body or Kindred Entity (as applicable) contributions to be made in accordance with regulation D2.2
<b>Option 1</b>	5%	5%	Not a Member of the Complying Section	0%



<b>Option 2</b>	2%	2%	2%	3%	3%
<b>Option 3</b>	1%	1%	1%	4%	4%
<b>Option 4</b>	0% or not a Member of the 2017 Division (as applicable)	0%	0%	5%	5%

Subject to clause A25, in the event that a Member to whom this clause 1 of Appendix B applies has not specifically selected to be a Member of a particular Section or division of the Fund and / or has not specified a contribution option in accordance with this clause 1 Appendix B of this Deed, the Member shall be a Member of the 2017 Division and shall be deemed to have elected Option 1 in accordance with this clause 1 of Appendix B of this Deed.

- 2) Subject to clause A25 and Regulation C7.4(b), in the case of Members in Kindred Service where the Kindred Entity has not agreed to contribute to the Fund in accordance with clause 1 of Appendix B, contributions shall be made and the Member shall be a member of one of the Sections as follows:
  - i. in respect of those Members that are Members of the Complying Section or Members that elect to be a member of the Complying Section, the Member shall be deemed to have elected that the rate of personal contributions to be made in accordance with regulation D2.1 shall be 5%\* and the amount of Kindred Entity contributions to be made in accordance with regulation D2.2 shall be the amount of compulsory employer contributions required to be paid by the Kindred Entity to the Complying Section in respect of the Member under the Governing Legislation, to the Complying Section; or
  - ii. in respect of all other Members, the Member shall be a Member of the 2017 Division and be deemed to have elected that the rate of personal contributions to be made in accordance with regulation C7.1 shall be 5%\* and the amount of Kindred Entity contributions to be made in accordance with regulation C7.4 shall be the same as the amount of Kindred Entity contributions that would have been made in accordance with regulation D2.2 as if the Member were a Member of the Complying Section, to the 2017 Division.
- 3) Contributions in respect of a Member may also be made at any other rate\* as agreed between that Member, the Church Body or Kindred Entity (as applicable), and the Trustee.

\*Each of the rates is a percentage rate of the Total Stipend of the Member.

