

NEW ZEALAND LOCAL AUTHORITY
PROTECTION PROGRAMME
DISASTER FUND

TRUST DEED

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THIS DEED is made the 12th day of *July* 2019

BETWEEN NEW ZEALAND LOCAL GOVERNMENT ASSOCIATION INCORPORATED, a society incorporated in Wellington pursuant to the Incorporated Societies Act 1908 ("the Settlor")

AND JOHN MCGREGOR CARTER of Ninety Mile Beach, Mayor of Far North District Council, **LANGLEY DAVID CAVERS** of Waihi Beach, Chief Executive of Hauraki District Council, **ANDREW JAMES DALZIEL** of Wellington, General Manager Porirua City Council, **TIMOTHY REGINALD HOWARD DAVIES** of West Melton, Professor University of Canterbury, **CHARLES STEWART HETT** of Wellington, Consultant and **JOSHUA TRACY HICKS** of Gore, Mayor of Gore District Council, (together "the Trustees")

WHEREAS

- A The Settlor established a fund for the reinstatement of lost or damaged generally uninsurable local government infrastructure known as the New Zealand Local Authority Protection Programme Disaster Fund ("Fund"), by Deed of Trust dated 29 June 1993 ("the Establishment Trust Deed"). The Fund is currently governed by a Deed of Trust dated 14 December 2007 ("Existing Trust Deed").
- B Only those Local Authorities that are contributing to the Fund are to be eligible for distributions in the event of loss or damage to their Infrastructure.
- C The Fund is to continue to be accumulated and applied for the purpose by the Trustees in accordance with this Deed.
- D The Existing Trust Deed provides that the Trustees may amend the Trust Deed by unanimous resolution of the Trustees present at any validly convened meeting, provided such amendment is not inconsistent with the charitable scope of the trusts contained in the Existing Trust Deed.

- E The Establishment Trust Deed was amended by Deeds of Variation dated 14 February 1997, 5 June 2003 and 14 December 2007, with the consent of the Settlor as required by the Establishment Trust Deed.
- F At a meeting of the Trustees held on 15 April 2019 the Trustees unanimously resolved to:
- (a) amend and replace the Existing Trust Deed with this Deed, and
 - (b) that this would take effect on the date the consent of the Settlor had been obtained in writing.

COVENANTS

In accordance with the powers of amendment contained in clause 9 of the Existing Trust Deed it is declared that from the date the Settlor gives its written consent to the amendments to the terms of the Existing Trust Deed reflected in this Deed, the provisions of the Existing Trust Deed are hereby substituted in their entirety with the provisions of this Deed, so that the Fund established pursuant to the Existing Trust Deed continues in existence without interruption but from the date of the Settlor's consent will be administered exclusively in accordance with the provisions of this Deed.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Each of the following words and expressions shall, unless the context otherwise requires, have the following meanings, as indicated:

“the Act” means the Charitable Trusts Act 1957;

“Administration Manager” means the person appointed to that office;

“Advisory Trustee” means any advisory trustee appointed pursuant to clause 3.1.8;

“Alternative Trustee” means any alternate trustee appointed pursuant to clause 3.1.3;

“Annual Accounts” means statements of income and expenditure and balance sheets of the Fund prepared or to be prepared in accordance with the provisions of this Trust Deed;

“Annual Contribution” means the payment to the Fund made by each Member in return for Coverage by the Fund for a Fund Year;

“Asset Value” means the cost of reinstatement or replacement of a Member’s Infrastructure as determined pursuant to clause 7.1.1(a);

“Auditor” means the office of auditor or auditors to the Fund for the time being;

“Commencement Date” means 1 July 1993;

“Coverage” means protection for the cost of reinstatement or replacement of the Members’ Infrastructure required as a result of a Damaging Event;

“Damaging Event” includes flooding, earthquake, volcanic eruptions (including the effects of volcanic ash), storm surge, tsunami, wildfire, gas explosion, hail, snow, wind damage, landslide, lahar and any other sudden event or sudden situation causing serious disruption, loss or damage to Infrastructure;

“Deductible” means any first amount of any loss or damage following a Damaging Event that the Trustees determine shall be borne by the Member;

“Distribution” means payment, made to a Member from the Fund, consequent upon their Coverage;

“Extraordinary Contribution” means any contribution to the Fund which a Member is required to make as:

- (i) a condition of their entry to membership of the Fund at any time after the Commencement Date; or
- (ii) any contribution for Coverage for any part or portion of a year;

“Fund” means the New Zealand Local Authority Protection Programme Disaster Fund, established by the Establishment Trust Deed;

“Fund Year” means:

- (i) in respect of any twelve-month period commencing on 1 July and ending no later than 30 June 2019, each year of the Fund commencing on 1 July and ending on 30 June in the following calendar year; and
- (ii) in respect of the four-month period commencing 1 July 2019 and ending on 31 October 2019, the four-month period of the Fund commencing on 1 July 2019 and ending on 31 October 2019; and

- (iii) in respect of the twelve-month period commencing on 1 November 2019 and each twelve-month period commencing on 1 November thereafter, each year of the Fund commencing on 1 November and ending on 31 October in the following calendar year.

“Infrastructure” means any asset accepted as such by the Trustees for the purposes of this Trust Deed and registered with the Trustees for Coverage in relation to a Local Authority and may include reticulation, storage and treatment facilities (water, sewage, stormwater); tunnels other than road tunnels; dams; canals; stopbanks; flood control protection works; drainage works; detention ponds; sea walls; and harbour risks (including buoys, beacons and foreshore lighthouses).

“Investment Manager” means any person to whom the Trustees have contracted the investment of some or all of the assets of the Fund pursuant to clause 4.1.1(b);

“Local Authority” means any New Zealand Local Authority or Territorial Authority or Regional Council as defined in section 5 of the Local Government Act 2002 and includes any Council-Controlled Organisation as defined by section 6 of that Act.

“Member” means any Local Authority admitted as a member of the Fund, the membership of which has not been terminated.

“Participation Deed” means the agreements so called entered into by Local Authorities on admission to membership of the Fund;

“Stated Value” means the Member’s estimate of the reinstatement or replacement value of its Infrastructure.

“the Trustees” means the trustees named in this Trust Deed (until removed from office), any new trustees appointed either pursuant to clause 3.1.2 or clause 3.1.6, any Alternate Trustees appointed

pursuant to clause 3.1.3 and any Advisory Trustees appointed pursuant to clause 3.1.8 collectively.

“written” or “in writing” includes printing, facsimile, or emails or other form of electronic communication, or any other communication by written word.

1.2 Interpretation

1.2.1 Words importing any one gender shall include the other.

1.2.2 Plurals shall include the singular and vice versa.

1.2.3 Reference to persons shall include body corporates.

1.2.4 Reference to any Act of Parliament shall be deemed to include every amendment or re-enactment of it and every Act of Parliament substituted for it, and any regulations made under the Act.

1.2.5 All references in this Trust Deed, or to provisions or clauses of this Trust Deed, shall be deemed to be references to this Trust Deed and to those provisions or clauses as altered from time to time pursuant to the provisions of this Trust Deed.

1.2.6 Except as otherwise defined in this Trust Deed, the terms used in this Trust Deed which have been defined in the Act shall have the same meaning as ascribed to those terms in the Act.

2. CONSTITUTION OF THE FUND

2.1 New Zealand Local Authority Protection Programme Disaster Fund

- 2.1.1 A fund is hereby established by the New Zealand Local Government Association Incorporated, with the charitable purposes set out in clause 2.1.3.
- 2.1.2 The name of the fund shall be the New Zealand Local Authority Protection Programme Disaster Fund.
- 2.1.3 The charitable purposes of the Fund shall be:
- (a) To assist New Zealand local government to carry out its responsibilities under central government's disaster recovery policies and plans; and
 - (b) To provide funds for Members for the purpose of reinstatement of lost or damaged Infrastructure as a result of Damaging Events; and
 - (c) To facilitate effective programmes to enable New Zealand local government to identify and manage risks to their Infrastructure by minimising and reducing the exposure, limiting the risks and diminishing the potential for loss or damage; and
 - (d) To provide Members with the capacity for self-help to recover from consequences of Damaging Events; and
 - (e) To do anything else which the Trustees may think is conducive or incidental to the attainment of the above charitable purposes.
- 2.1.4 There are no non-charitable purposes for the Fund.
- 2.1.5 The Fund shall consist of all property for the time being held by or on behalf of the Trustees, derived from:
- (a) Any gifts or donations;

- (b) Extraordinary Contributions;
- (c) Annual Contributions;
- (d) Income from investments;
- (e) Proceeds of realisation of investments;
- (f) Any policies or contracts of re-insurance;
- (g) Any recoveries;
- (h) Any other source.

2.1.6 The Fund shall be held in trust by the Trustees upon the trusts and for the charitable purposes contained in this Trust Deed and shall be managed, administered and applied by the Trustees, in accordance with the powers contained in this Trust Deed, in order to attain those charitable purposes.

2.1.7 The Trustees are and shall remain responsible for the safe custody of all money, policies, certificates and other documents of title and value in connection with the Fund and for the safe custody, realisation and distribution of all of the assets from the Fund, from time to time vested in them.

3. **TRUSTEES**

3.1 **Appointment and Removal of Trustees**

3.1.1 The number of Trustees shall be not less than four nor more than six. The Trustees shall be one or two appointees of the Settlor; one or two appointees of Civic Financial Services Limited; and one or two appointees of the NZ Society of Local Government Managers Incorporated (together called the "Appointors").

- 3.1.2 The power of appointing new Trustees shall be vested in the Appointors each of which shall have the power to appoint two persons as Trustees and they having been appointed as Trustees to remove and/or replace them, by notice in writing given to the Administration Manager.
- 3.1.3 The Appointors shall be entitled to appoint any person as an Alternative Trustee in place of any Trustee appointed by them, by notice in writing given to the Administration Manager, either for a specified period, or for a specified meeting or any part of a meeting, or for any particular subject matter at any meeting, or generally during the absence of any such Trustee, and from time to time, in the same manner, to remove any Alternate Trustee.
- 3.1.4 An Alternate Trustee appointed pursuant to clause 3.1.3 shall:
- (a) not be remunerated otherwise than out of the remuneration of the Trustee in whose place the Alternate Trustee acts;
 - (b) be deemed to have automatically vacated office when the Trustee in whose place the Alternate Trustee acts vacates office;
 - (c) unless otherwise provided by the terms of appointment of the Alternate Trustee, have the same rights, powers and privileges (including without limitation, the right to receive notice of meetings of Trustees, the power to sign resolutions of Trustees and the power to witness the affixing of the common seal) as the Trustee in whose place the Alternate Trustee is appointed;

(d) discharge all the duties of and be subject to the same provisions in this Trust Deed as the Trustee in whose place the Alternate Trustee acts.

3.1.5 The Administration Manager shall within seven days of it being notified in writing of the appointment, removal or resignation of a Trustee give to every Member and Appointor (other than an Appointor exercising its powers of appointment or removal) written notice of the appointment, removal or resignation of the Trustee.

3.1.6 Notwithstanding the provisions of clause 3.1.2 of this Trust Deed, if any Appointor shall fail at any time to exercise its power of appointment and notify the Administration Manager in writing accordingly, within fourteen days of:

- (a) it being notified in writing of the removal or resignation of their appointee; or
- (b) it becoming aware of the occurrence of another event which creates a vacancy (as provided for in clause 3.1.7); and
- (c) the number of Trustees falls below four –

then the Trustees shall forthwith appoint further or additional Trustees on behalf of any Appointors so failing, so as to ensure there are not less than four nor more than six Trustees and every Trustee then appointed may thereafter only be removed by resolution of the Trustees.

3.1.7 A vacancy in the office of Trustee shall arise if:

- (a) a Trustee is adjudged bankrupt; or
- (b) a Trustee resigns by notice in writing to the Administration Manager;

- (c) a Trustee refuses to act; or
- (d) a Trustee becomes of unsound mind; or becomes subject to a property order under the Protection of Personal and Property Rights Act, 1988; or
- (e) a Trustee is removed by their Appointor in accordance with the provisions of this Trust Deed or by resolution of the Trustees under clause 3.1.6; or
- (f) a Trustee is otherwise removed by operation of law.

3.1.8 The Trustees shall have power to appoint any person at any time as an Advisory Trustee to the Fund, and to prescribe the function of such Advisory Trustee. An Advisory Trustee shall not be counted in the number of Trustees required by clause 3.1.1, or in the quorum required for meetings of the Trustees, nor be entitled to vote thereat.

3.2 Meetings of Trustees

- 3.2.1 The Trustees shall from time to time meet for the despatch of business of the Fund and, subject to the provisions of this Trust Deed and particularly this clause 3.2, shall have the power to adjourn or otherwise regulate their meetings and proceedings and vary the regulation and procedure of such meetings and proceedings as the Trustees think fit.
- 3.2.2 Questions arising at any meeting of the Trustees shall be determined by a majority of the votes of those present and voting.
- 3.2.3 (a) The Trustees shall at their inaugural meeting and again before the end of each Fund Year elect one of their number to be the chairman of Trustees for the ensuing Fund Year. The person so elected shall hold office as chairman of Trustees during the

ensuing Fund Year, and shall be eligible for re-appointment.

- (b) The person so appointed shall chair all meetings of the Trustees at which they are present. If at any meeting the chairman is not present within fifteen minutes of the appointed time for holding the meeting the Trustees present shall then choose one of their number to be the chairman of that meeting.
- (c) A chairman shall not be entitled to a second or casting vote.

3.2.4 Every meeting of the Trustees shall be called by giving not less than seven days' notice in writing to the Trustees provided that a meeting of the Trustees shall be deemed to have been duly called if it is so agreed by all the Trustees entitled to attend and vote thereat.

3.2.5 Upon the written request of three Trustees giving notice of the subject matter of that meeting, the Administration Manager shall summon a special meeting of the Trustees, within seven days of that request.

3.2.6 Every notice of a meeting of the Trustees shall;

- (a) be given in writing by the Administration Manager to each Trustee at their last known address;
- (b) be exclusive of the day on which it is served and of the day of the meeting;
- (c) specify the place, day and hour of the meeting;
- (d) specify, in the case of special business, the general nature of that business.

- 3.2.7 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Trustee shall not invalidate the proceedings at the meeting.
- 3.2.8 (a) No business shall be transacted at any meeting of the Trustees unless a quorum is present at the time when the meeting proceeds to business. The quorum for meetings of the Trustees shall be as fixed by resolution of the Trustees and until so fixed any number of the Trustees more than one-half of the total number of the Trustees entitled to vote thereat shall constitute a quorum. Where one-half in number of the Trustees so entitled to vote is a fraction it shall be rounded-up to the next whole number and such number shall be the quorum for a meeting of the Trustees.
- (b) If within half an hour from the time appointed for a meeting of the Trustees a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Trustees present shall constitute a quorum.
- (c) Every Trustee present shall, notwithstanding their conflict between interest and duty (if any), be counted in a quorum present.
- 3.2.9 A validly called meeting of the Trustees at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Deed vested in or exercisable by the Trustees.
- 3.2.10 Any Trustee who is in any way, whether directly or indirectly;

(a) personally interested in a contract or arrangement or any proposed contract or arrangement with the Trustees or with any Member; or

(b) is an elected member, office or employee of any Member or proposed Member which is interested –

shall declare the nature of the interest and unless the interest is no greater than or any different from –

(c) in the case of an interest to which subclause (a) of this clause applies, that of the other Trustees present; or

(d) on the case of an interest to which subclause (b) of this clause applies, that of the Members generally,

they shall thereafter take no further part in the deliberations in respect of that matter.

3.2.11 The foregoing rule shall not operate to prevent any Trustee taking part in discussions and decisions regarding rules, guidelines, or policies regarding Annual Contributions.

3.2.12 All disclosures of interest by any Trustee, and whether or not they took part in discussion on or voted on the matter before the meeting, shall be recorded in the minutes of the meeting.

3.2.13 (a) The Trustees may meet by means of a Telephone Meeting, the Trustees having been given notice of the meeting as required by the provisions of this Trust Deed.

(b) In this clause:

“Telephone Meeting” means the contemporaneous linking together by telephone of Trustees

comprising a quorum (whether or not any one or more of those persons is outside New Zealand); "Telephone" means and indicates any instant electronic means of communication.

- (c) Before a Telephone Meeting proceeds to business:
 - (i) each of the Trustees taking part must be able to hear each of the other Trustees taking part;
 - (ii) the chairman shall ask each Trustee taking part in turn to respond by way of confirmation that they are in fact linked to and are taking part in the Telephone Meeting;
 - (iii) the chairman shall thereupon announce to the Telephone Meeting the names of those Trustees who have so responded.
- (d) The Trustees so named by the chairman shall be conclusively deemed to be present at the Telephone Meeting and, unless given permission to leave under subclause (e) of this clause, to have been present all the time during the Telephone Meeting.
- (e) No Trustee may leave a Telephone Meeting by disconnecting their telephone unless the chairman has first granted that Trustee permission to leave.
- (f) A minute of the proceedings at a Telephone Meeting shall be conclusive evidence of the proceedings and the regularity of the meeting if certified as a correct minute by the chairman.

3.3 Subcommittees

- 3.3.1 (a) The Trustees may at any time, for any specified purpose, appoint such of their number as they think fit to be members of any one or more subcommittees.
- (b) Each such subcommittee shall have such powers and duties as are delegated to it by the Trustees.
- (c) Each such subcommittee shall have power to co-opt such person or persons whether or not Trustees as the Trustees think fit, provided that:
- (i) in relation to each subcommittee the number of co-opted members shall not exceed the number of Trustees who are members of the subcommittee; and
 - (ii) such co-option shall be subject to the approval of the Trustees at the first meeting of the Trustees following the co-option.
- (d) The Trustees may appoint a chairman of each subcommittee. If no such chairman is appointed or if at any meeting the chairman is not present within 15 minutes after the time appointed for holding the same, the members of the subcommittee present shall then choose a chairman of the meeting.
- (e) Each subcommittee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of all those present and voting. In the case of an equality of votes the chairman shall have a second or casting vote.

3.4 **Validity of Acts of Trustees**

- 3.4.1 All acts done in good faith at any meeting of the Trustees or any subcommittees of the Trustees, or by any person acting

as a Trustee, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Trustee or that such Trustee was disqualified, be as valid as if every such Trustee had been duly appointed, and was qualified to be a Trustee.

3.5 Resolutions in Writing

3.5.1 A resolution in writing, signed by all of the Trustees entitled to vote thereon shall be as valid as if it had been passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the Trustees so entitled. Any such document sent by a Trustee by telegram, cable, facsimile, copier, telex or other electronic means of communication shall be deemed to have been signed by the Trustee.

3.6 Remuneration of Trustees

3.6.1 The Trustees shall not make any private pecuniary profit from the Fund, except that the Trustees shall be entitled to reasonable fees for their services in respect of the management and administration of the Fund. The amount of the fees shall be determined from time to time by the Administration Manager after consultation with the Settlor and the Trustees.

3.7 Indemnity and Limitation of Trustee's Liability

3.7.1 The Trustees shall be indemnified and shall be entitled to reimburse themselves out of the Fund in respect of all costs, charges and expenses which they incur in or about management or administration of the Fund.

3.7.2 No Trustee acting or purporting to act in execution of the trusts created by this Trust Deed shall be liable for any loss not attributable to their own dishonesty or their wilful commission of or omission to do any act known by them to be a breach of trust, and in particular (without limitation) no Trustee shall incur any liability in respect of:

- (a) Any act done or not done in the exercise of or in respect of any discretion vested in them.
- (b) Anything done or suffered by them in good faith in reliance upon any advice or opinion (whether or not obtained by the Trustees) of any professional person, or upon any advice the Trustees may obtain directly or indirectly from any company, firm or person as shall, in the opinion of the Trustees, be qualified to provide advice.
- (c) Any failure or refusal to perform or do any act or thing which by reason or provision of any law of New Zealand they are hindered or prevented from doing or performing.

3.7.3 No Trustee shall be bound to or be liable for any failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by the co-Trustee.

4 POWERS OF TRUSTEES

4.1 General Powers

4.1.1 In addition to the powers conferred by law and elsewhere in this Trust Deed the Trustees shall have the power:

- (a) Subject to clause 5.1.3, from time to time to appoint and remove the Administration Manager and, subject to the specific duties imposed on the Administration Manager by this Trust Deed, define the duties and responsibilities of the Administration Manager, on terms to be agreed in writing between the Trustees and the Administration Manager.
- (b) From time to time to appoint and remove one or more investment managers. The Investment Managers shall have such powers and duties in relation to the investment of the fund as the Trustees shall determine and agree in writing between the Trustees and the Investment Managers.
- (c) To appoint and remove a custodian trustee to hold in safe custody all policies, certificates and other documents of title in connection with the whole or any part of the Fund, on terms to be agreed in writing between the Trustees and the custodian trustee.
- (d) To otherwise retain the services of professional advisors and managers in relation to the management, administration and investment of the Fund, to delegate powers and discretions to professional advisors and managers as the Trustees see fit, and to determine and to pay out of the Fund, any fees payable to those professional advisors and managers.
- (e) To make rules or guidelines, and to adopt procedures, consistent with the provisions of this Trust Deed, including, without limitation, in relation to membership; calculating and fixing Asset Values, Deductibles, Extraordinary Contributions, Annual

Contributions and Distributions; determining from time to time which of a Member's assets can be registered with the Trustees as Infrastructure; and to make rules or guidelines and to adopt procedures as shall be appropriate for the convenient administration of the Fund.

- (f) To borrow money for the purpose of providing Distributions where the assets of the Fund are not immediately realizable, or if realizable are only realizable at a material loss to the Fund, and to secure the repayment of such moneys in any manner and upon any terms the Trustees consider advisable, whether by charge over all or any portion of the Fund or any particular property or otherwise, provided however the Trustees shall first have had and obtained the consent in writing of the Settlor thereto and provided further that in no event shall the amount borrowed exceed the then estimated values of the assets of the Fund, less any existing liabilities of the Fund, contingent or otherwise.
- (g) To seek insurance protection in support of the Fund.
- (h) Generally to do all such acts and things as the Trustees may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of their obligations under this Trust Deed.

4.2 **Investments Authorised**

- 4.2.1 All moneys belonging to the Fund and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

4.3 Exercise of Discretion

4.3.1 The Trustees may exercise or enforce all of the authorities, discretions and powers vested in them from time to time, and at any time and may refrain from exercising all or any such powers.

4.4 Appointment of Auditor

4.4.1 The Trustees shall from time to time appoint an Auditor (being a 'qualified auditor' within the meaning of section 461E of the Financial Markets Conduct Act 2014) of the Fund at a remuneration to be fixed, and payable, by the Administration Manager, out of the Fund.

5 MANAGEMENT AND ADMINISTRATION

5.1 Appointment of Administration Manager

5.1.1 The Trustees shall appoint an Administration Manager which shall, in addition to other duties or responsibilities conferred on the Administration Manager elsewhere in this Trust Deed, and as from time to time agreed by the Administration Manager with the Trustees:

- (a) Receive applications for membership of the Fund;
- (b) Ascertain and audit the infrastructural assets of Members;
- (c) Issue debit notes for and maintain records of all Annual Contributions and Extraordinary Contributions paid to the Fund;
- (d) Use its best endeavours to secure economic insurance support of the Fund;

- (e) Facilitate effective programmes to enable Members to identify and manage risks to their Infrastructure by minimising and reducing the exposure, limiting the risks and diminishing the potential for damage by Damaging Events;
- (f) Receive and process applications for Distributions, within the scope of guidelines laid down by the Trustees;
- (g) Furnish the Trustees with full and complete reports of all losses by and of all payments made out of the Fund;
- (h) Liaise with local government agencies with respect to the application of their appropriate disaster recovery and emergency plans.
- (i) Make recommendations to the Trustees regarding any matters pertaining to the administration and management of the Fund;
- (j) Undertake such services as may be required by the Trustees or as may be reasonably necessary for the management, administration and investment of the Fund, and the operation of the trusts contained in this Trust Deed.

5.1.2 The Administration Manager shall be responsible to the Trustees for the proper management, and administration of the Fund and the trusts contained in this Trust Deed.

5.1.3 The first Administration Manager shall be Civic Financial Services Limited which shall hold office for an initial term of six years from the Commencement Date (unless removed

earlier) on such terms (including terms relating to performance) as may be agreed in writing with the Trustees.

5.2 Records to be Kept

5.2.1 The Administration Manager shall keep or cause to be kept a complete record of:

- (a) The membership of the Fund including the dates on which Members were admitted to membership and when they ceased to be or were suspended as Members of the Fund.
- (b) Proper records of all meetings, resolutions and decisions of the Trustees.
- (c) The affairs, matters and transactions of the Fund.
- (d) All other matters, information and data necessary or expedient for the proper and effective working of the Fund and the operation of this Trust Deed.

5.3 Accounts

5.3.1 The Administration Manager shall ensure that:

- (a) All assets of the Fund are kept separate and apart from any assets or funds of the Administration Manager, with all moneys received by the Administration Manager to be banked in a separate bank account in the name of the Fund;
- (b) Proper books of account are kept in respect of the Fund;
- (c) Annual Accounts are prepared in respect of the Fund, presenting a true and fair view of the Fund's financial affairs at the end of each Fund Year; and

- (d) The Auditor appointed in accordance with the provisions of this Trust Deed examines and reports upon the Annual Accounts.

5.4 Annual Report of the Fund

5.4.1 The Administration Manager shall within six months after the end of each Fund Year:

- (a) Prepare an Annual Report for the Fund for the previous Fund Year.
- (b) Provide each Member with a copy of the Annual Report.

5.4.2 The following matters shall be contained in the Annual Report:

- (a) A statement of numerical changes in the membership of the Fund during the Fund Year;
- (b) The Annual Accounts for the Fund in respect of the previous Fund Year;
- (c) The Auditor's report on the Annual Accounts;
- (d) A statement by the Administration Manager as to whether all the Annual Contributions and Extraordinary Contributions required to be made to the Fund in accordance with the Participation Deeds and this Trust Deed have been made by the Members, and if not the amount or amounts outstanding;
- (e) A summary of any amendments to this Trust Deed that have been made during the Fund Year,

- (f) The names of and any changes since the last Annual Report in the Trustees, the Administration Manager, re-insurers, and changes in any actuaries, auditors and solicitors to the Fund (either by reference to their own names or the names of their firms);
- (g) The name and address of the person to whom all correspondence from the Members to the Trustees should be sent.

5.5 Delegation

5.5.1 Subject to this clause, the Administration Manager may at any time with the consent of the Trustees and from time to time, delegate any of its powers to any person.

5.5.2 A delegation pursuant to this clause may be:

- (a) Subject to such conditions and on such terms for the protection and convenience of persons dealing with the delegate as the person making the delegation thinks fit; and
- (b) Amended or revoked at any time.

5.5.3 If the Trustees or the Administration Manager exercise a power that is for the time being delegated that shall not revoke the delegation.

5.5.4 The Trustees shall not be liable for any act or defaults of any delegate of the Administration Manager.

5.6 Expenses of Administration

5.6.1 The Administration Manager may pay from the Fund such costs, charges and expenses of management, administration and investment of the Fund as are properly payable by the Administration Manager on behalf of the Fund.

5.6.2 The Administration Manager shall be paid from the Fund such fees or charges for its administration of the Fund and the trusts contained in this Trust Deed, as shall from time to time be authorised by the Trustees.

5.7 **Indemnity of Administration Manager**

5.7.1 The Administration Manager shall not be liable for any loss which is not attributable to the Administration Manager's own dishonesty and the Trustees shall indemnify and keep indemnified the Administration Manager from the Fund against all claims demands and liabilities from Members or persons not parties to this Trust Deed, howsoever arising.

5.8 **Execution of Deeds**

5.8.1 If the Trustees are incorporated as a Board the Trustees shall obtain and adopt a common seal of the Board. The common seal of the Board shall be kept in the safe custody of the Administration Manager. The common seal shall only be used by the authority of the Board or of a committee of the Board authorised by the Board in that behalf, and every instrument to which the common seal is affixed shall be signed by a member of the Board and shall be countersigned by a second member of the Board or by some other person appointed by the Board for the purpose.

6 **MEMBERSHIP COVERAGE**

6.1 **Admission of Members**

6.1.1 Only Local Authorities shall be eligible for admission as Members of the Fund.

6.1.2 A Local Authority shall not be admitted to membership without first entering into a Participation Deed with the Fund in the form and on the terms acceptable to the Trustees.

6.1.3 In executing a Participation Deed the Local Authority shall agree to be bound by the terms of this Trust Deed.

6.2 **Withdrawal from Membership**

6.2.1 Any Member may withdraw from membership of the Fund by giving notice in writing to the Trustees of its desire to withdraw from membership no later than two months before the end of any Fund Year, and their membership shall terminate at the end of that Fund Year.

6.2.2 Any notice in writing of a Member's desire to withdraw from membership may itself be withdrawn by the Member:

- (i) no later than two months prior to when termination of its membership would otherwise have taken effect, or
- (ii) at any time within two months of when termination of membership would otherwise have taken effect if such notice is given within 14 days following a Damaging Event for which the Member has Coverage. In this circumstance the Member's Coverage from what would have been the Member's termination date may be limited by the Trustees in whatever way the Trustees think fit.

6.2.3 Members who have not given notice of their desire to withdraw from the Fund in accordance with clause 6.2.1 shall pay their Annual Contributions due for the following Fund Year.

6.3 **Suspension or Termination of Membership**

6.3.1 Membership of the Fund may be terminated or membership rights suspended, by resolution of the Trustees, in the event that a Member:

- (a) Refuses or fails to comply with the reasonable directions of the Trustees given for the purpose of minimizing or reducing the exposure, limiting the risks and diminishing the potential for loss or damage to its Infrastructure; or
- (b) Refuses or fails to allow an audit of the Member's management of the risk to its Infrastructure; or
- (c) Omits to make or unduly delays payment of its Annual Contribution; or
- (d) Commits any breach of the provisions of this Trust Deed or its Participation Deed which in the opinion of the Trustees warrants the termination or suspension of membership.

6.3.2 A former Member may if so desiring re-apply for membership, but if successful shall not thereby gain any benefit credit or entitlement accruing consequent upon their former membership.

6.3.3 The action or decision of the Trustees in any matter relating to membership or suspension or termination of membership shall be final and binding.

6.4 **Coverage**

6.4.1 Coverage of Members shall commence from the later of the date of payment of the initial Annual Contribution (or part thereof if so agreed) and the Extraordinary Contribution (if any, or part thereof if so agreed) as required by the Trustees

or such other date as may be agreed in writing by the Trustees.

- 6.4.2 There shall be no Coverage of Local Authorities that are not Members.
- 6.4.3 Upon termination or suspension of membership all Coverage shall cease from the date of termination or suspension as the case may be, and the Member shall not be eligible for Coverage until re-admission to membership (in the case of termination) or (in the case of suspension) the lifting of the suspension by further resolution of the Trustees, or the satisfaction of any pre-condition imposed for the automatic lifting of the suspension of the Member.
- 6.4.4 On termination of membership all claim, right, title or interest or benefit in the assets of the Fund shall forthwith cease.

7 GENERAL PROVISIONS RELATING TO CONTRIBUTIONS

7.1 Annual Contributions

7.1.1 The Trustees shall before the end of each Fund Year:

- (a) Fix the Asset Value of each Member's Infrastructure, having regard to:
 - (i) whether the Member has agreed with the Trustees for the relevant Infrastructure to be valued on a reinstatement basis, or whether the Member has agreed with the Trustees for the relevant Infrastructure to be valued on a replacement basis;
 - (ii) their Stated Value;

- (iii) any actual valuation made of a Member's Infrastructure, or any parts of it;
 - (iv) any other measure (including valuations) which may enable or assist the Trustees to assess the value of Members' Infrastructure;
 - (v) any appropriate method or principles of valuation whether or not they are the same as those applied in any other valuation of the Members' Infrastructure or parts of it.
- (b) Determine the approximate amount of total Annual Contributions to be sought from Members for the ensuing Fund Year having regard to:
- (i) the combined Asset Values of Members as determined in clause 7.1.1(a) above; and
 - (ii) the risk or exposure of the Members' Infrastructure to Damaging Events; and
 - (iii) possible Deductibles; and
 - (iv) any other factors that seem relevant:

7.1.2 The Trustees shall after determining the approximate amount of the total Annual Contributions to be sought from Members for the ensuing Fund Year fix the Annual Contributions to be paid by individual Members, and in fixing the Annual Contributions to be paid by individual Members the Trustees shall have regard to:

- (a) The risk or exposure of the Member to a Damaging Event in its region compared with the risk or exposure of Members to Damaging Events generally.

- (b) The Asset Value of the Member, as determined by the Trustees pursuant to clause 7.1.1(a);
- (c) The likely availability to the Member of other monies by way of compensation, indemnity, replacement or subsidy for the loss or damage to its Infrastructure, including any payment from central government, from insurance claims, and any rights against persons not party to this Trust Deed;
- (d) The quantum of any Deductible for the Member which the Trustees may fix;
- (e) The state of repair, maintenance and condition generally of the Member's Infrastructure or parts of it;
- (f) The nature of any particular risks affecting the Member's Infrastructure;
- (g) Any refusal or persistent failure by the Member to comply with any reasonable directions given by the Administration Manager for the purpose of identifying and managing risk.

7.1.3 Members shall then be advised of the Annual Contribution payable by them, and the amount of any Deductible.

7.1.4 Notwithstanding anything hereinbefore contained the Trustees may adopt or determine such methods of setting Annual Contributions or Extraordinary Contributions as they in their absolute discretion think fit.

7.2 Method of Payment

7.2.1 Payment of the Annual Contributions shall be effected by the Members in accordance with any provisions of the Participation Deed for payment, or in the absence of any

such provisions as from time to time determined by the Trustees.

7.2.2 Any unpaid Annual Contribution as determined by the Administration Manager shall be recoverable by the Fund as a debt with associated interest and recovery costs.

7.3 **Disputes regarding Quantum of Annual Contributions**

7.3.1 If the Member disputes the quantum of any Annual Contribution it shall give written notice to the Administration Manager within twenty-one days of receipt of advice of the quantum, following which the quantum of the Annual Contribution payable by the Member shall be reviewed by the Trustees, whose decision as to the appropriate quantum to be paid shall be final and binding.

7.3.2 Where the quantum of the Annual Contribution is not determined until after the date on which payment of the Annual Contribution was due, the Member shall have ten days following receipt of advice in writing of the determination of the dispute in which to pay the Annual Contribution.

7.3.3 Except as otherwise provided above the action or decision of the Trustees in fixing the Annual Contributions shall be final and binding.

7.4 **Extraordinary Contributions**

7.4.1 The Trustees may fix Extraordinary Contributions.

7.4.2 Subject to clause 7.1.4 in determining the quantum of any Extraordinary Contribution as a condition of entry to membership the Trustees shall have regard to:

- (a) The current value of the assets, and the amount of any liabilities of the Fund;

(b) Any other factors which seem relevant to the Trustees.

7.4.3 In determining the quantum of any Extraordinary Contribution being fixed for Coverage of a part or portion of a Fund Year the Trustees shall have regard to the Annual Contribution that would have been payable by the Member for Coverage for the full Fund Year and, that part or portion of the Fund Year for which Coverage is being provided.

7.4.4 Any decision of the Trustees regarding the quantum of any Extraordinary Contribution shall be final and binding.

7.4.5 Any Extraordinary Contribution fixed by the Trustees that is not paid may be recovered in the same way as an Annual Contribution including associated interest and recovery costs.

8 DISTRIBUTIONS FROM THE FUND

8.1 A Member may at any time within nine calendar months (time being of the essence) of a Damaging Event apply to the Trustees for a Distribution from the Fund in respect of any loss or damage caused to the Member's Infrastructure by that Damaging Event.

8.2 Upon receiving an application for a Distribution in respect of a Damaging Event, the Trustees shall satisfy themselves that:

(a) the loss or damage is to Infrastructure;

(b) the loss or damage was caused by the Damaging Event.

8.3 Once the Trustees have satisfied themselves as to the matters specified in clause 8.2, they may make a Distribution to the Member in respect of its application, subject to:

- (a) any Asset Value or Stated Value of the Member's Infrastructure;
- (b) the state of repair, maintenance and condition generally of the Infrastructure or of any particular parts of the Infrastructure before and after the Damaging Event for which the Distribution is claimed;
- (c) the Member's Deductible;
- (d) the expected availability when the Annual Contribution was set and the actual availability to the Member of other monies by way of compensation, indemnity, replacement or subsidy for the loss or damage to its Infrastructure, including any payment from central government, from insurance claims, and any rights against persons not party to this Trust Deed;
- (e) the desirability of the Fund maintaining reserves for future Damaging Events;
- (f) the length of time that the Member has been a Member of the Fund;
- (g) any other factors which seem relevant to the Trustees.

8.4 The Trustees at their sole discretion will determine:

- 8.4.1 what (if any) Distribution will be made in any situation where in the Trustees' opinion the damage is a consequence of an act of war or terrorism;
- 8.4.2 for Fund Years commencing on or after 1 July 2019, whether an event that unfolds over more than three days is declared to be more than one Damaging Event for the purposes of deciding whether multiple applications of the Member's Deductible should apply.

8.5 Without being bound to see or being liable for not seeing to the application of any Distributions from the Fund, the Trustees shall take reasonable steps to ensure each Distribution from the Fund is applied by its Members for the reinstatement of their Infrastructure, and for that purpose, the Trustees may require from the Member reasonable evidences of the expenditure and may make progress payments.

8.6 The Trustees may also pay the whole or any part of the Fund to any other charity that is charitable under New Zealand law and has purposes similar or related to those of the Fund.

9 **ALTERATION**

9.1 **Alteration of the Trust Deed**

9.1.1 The Trustees may amend this Trust Deed in any way, subject to this clause 9.

9.1.2 The Trustees may by unanimous resolution of the Trustees present at any validly convened meeting revoke, vary or add to any of the provisions of this Trust Deed provided no such revocation, variation or addition may be made if it would result in the Fund ceasing to qualify for registration as a charitable entity under the Charities Act 2005 or would vary the terms of this proviso or would otherwise be inconsistent with the general charitable scope of the trusts contained in this Trust Deed.

9.1.3 Every amendment shall be conditional upon and come into effect upon the Settlor giving its consent in writing.

9.1.4 Amendments shall not be retrospective in effect.

9.2 **Notice to Members**

9.2.1 The Trustees shall notify Members forthwith in writing of every amendment to this Trust Deed made pursuant to these provisions.

9.2.2 Any accidental failure or omission on the part of the Trustees to give a Member notice as required by this clause, or its non-receipt by a Member, shall not affect the validity of the amendment.

9.3 **Alteration of Participation Deeds**

9.3.1 The Trustees, with the agreement of a Member, may from time to time:

- (a) Amend any of the provisions of the Participation Deed relating to the Member; or
- (b) Cancel any Participation Deed and in substitution, enter into a new Participation Deed with a Member.

10 **WINDING UP OF THE FUND**

10.1 **Procedures**

10.1.1 The Trustees shall wind up the Fund and shall apply the provisions of this Clause in relation to every Member:

- (a) If the Trustees unanimously resolve that the Fund shall be wound up, and advise the Settlor accordingly, and the Settlor consents thereto; or
- (b) Upon the determination of the trusts hereof; or
- (c) Upon any insolvency of the Fund; or
- (d) Upon any order of the Court that the Fund be wound up.

10.1.2 The Trustees shall within fourteen days after they have resolved to wind up the Fund, lodge a copy of that resolution with the Settlor and (the Settlor consenting thereto) with the Registrar of Incorporated Societies.

10.1.3 The Trustees shall for the purpose of winding up the Fund:

- (a) Ensure that final accounts of the Fund are prepared showing the financial position of the Fund as at the date on which the winding up commenced; and
- (b) Ensure that those final accounts are audited; and
- (c) As soon as practicable after the final accounts have been audited send a copy of those accounts to the Settlor and all the Members as at the date the winding up commenced.

10.2 **Allocation of Proceeds**

10.2.1 Members shall have no right or claim against the Fund on winding up except in respect of any application for a Distribution made prior to the commencement of the winding up.

10.2.2 The Trustee shall apply the proceeds of the Fund in accordance with the following priority:

- (a) First, in providing for the payment of the costs of the winding up;
- (b) Secondly, in providing for the payment of all liabilities and debts of the Fund;
- (c) Thirdly, paying any outstanding Distributions which the Trustees have resolved to pay any Member prior

to the commencement of the winding up and remain unpaid at that date;

- (d) Fourthly, in providing for payment of any Distributions for which applications have been made immediately prior to the commencement of the winding up;
- (e) Finally, payment of any balance in the Fund is to be made or transferred to another organisation as decided by the Trustees that is charitable under New Zealand law and has purposes similar or related to those of the Fund, or in default of a decision by the Trustees, as directed by the Court pursuant to section 27 of the Act.

11 MISCELLANEOUS

11.1 Notices

11.1.1 Any notice or document shall be deemed to have been served upon the Trustees if left at the registered office of the Fund or if sent through the post in a registered letter addressed to the Administration Manager at that office. Any notice or document shall be deemed to have been duly given to a Member, if given generally or sent to the Member at the address of the Member last known to the Administration Manager.

11.1.2 Any notice or document delivered by post shall be deemed to have been delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that the envelope or wrapper containing it was properly addressed and posted. A statement signed by the Administration Manager that a notice was so addressed and posted to a

Member and when, shall be conclusive evidence of those facts.

11.2 **Succession**

11.2.1 If the activities of any of the Appointors are assigned to or succeeded by any other undertaking (whether a corporation, association partnership or natural person) then that other undertaking may, with the written approval of the Trustees as from the date of the assignment or succession, take the place of that Appointor for the purposes of the Fund, and assume all rights and obligations of that Appointor under the Trust Deed.

11.2.2 If the Trustees do not give their written approval of such other undertaking taking the place of that Appointor, then the Fund shall either be wound up in accordance with the provisions of this Trust Deed, or the Trustees may appoint another body to take over the role of that Appointor.

11.3 **Waiver and Precedent**

11.3.1 No failure by the Trustees to enforce any breach of any obligation or provision contained or implied in by this Trust, in one, or more instances shall constitute a waiver of the right of the Trustees to enforce any other provision, or any subsequent breach, whether against the same Member or another.

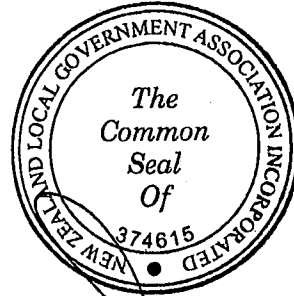
11.3.2 No action on the part of the Trustees or the Administration Manager whether taken in accordance with any specific provisions contained in this Trust Deed or otherwise shall be taken as a precedent for any like or similar action on either part and neither the Trustees nor the Administration Manager may thereafter be compelled to take similar or identical action consequent thereupon.

11.4 Office

11.4.1 The office of the Fund shall be at the offices of Civic Financial Services Limited, 116 Lambton Quay, Wellington, or at such other place as the Trustees may from time to time by resolution determine.

IN WITNESS WHEREOF this Deed has been executed on the day and year first hereinbefore written.

THE COMMON SEAL of the NEW ZEALAND LOCAL GOVERNMENT ASSOCIATION INCORPORATED was hereunto affixed in the presence of:



Signed by JOHN MCGREGOR CARTER in the presence of: IAN BROWN, Chief Executive Civic Financial Services Ltd

Signed by LANGLEY DAVID CAVERS in the presence of: IAN BROWN, Chief Executive Civic Financial Services Ltd

Signed by ANDREW JAMES DALZIEL in the presence of: IAN BROWN, Chief Executive Civic Financial Services Ltd

Signed by TIMOTHY REGINALD HOWARD DAVIES in the presence of: IAN BROWN, Chief Executive Civic Financial Services Ltd

Signed by CHARLES STEWART HETT in the presence of: IAN BROWN, Chief Executive Civic Financial Services Ltd

Signed by JOSHUA TRACY HICKS in the presence of: IAN BROWN, Chief Executive Civic Financial Services Ltd

IAN BROWN, Chief Executive Civic Financial Services Ltd

Handwritten signatures and scribbles on the right side of the page, including a large signature that appears to be 'Alan' and several other illegible signatures.