



NEW ZEALAND MUTUAL  
LIABILITY RISKPOOL

## Trust Deed and Scheme Rules





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# SCHEME RULES

## 1. DEFINITIONS

In these Rules:

**'Board'** means the Board of Directors formed pursuant to clause 5 of the Deed of Trust;

**'Coverage'** is defined in Rule 8;

**'Claim'** means any claim made under the Protection Wording;

**'Deed of Trust'** means the deed dated the 1st day of July 1997 establishing the Scheme (as amended from time to time);

**'Fund'** means each separate annual fund established pursuant to clause 4 of the Deed of Trust; **'Fund Year'** has a corresponding meaning; the first Fund Year is from 4.00 pm on 30 June 1997 to 4.00 pm on 30 June 1998; subsequent Fund Years are from 4.00 pm on 30 June in a calendar year to 4.00 pm on 30 June in the next calendar year, unless otherwise determined by the Board;

**'Fund Manager'** means the Fund Manager appointed pursuant to clause 10 of the Deed of Trust;

**'Member'** means any person or body (whether incorporated or not) admitted as a member of the Scheme pursuant to clause 11.1 of the Deed of Trust and these Rules;

**'Membership'** has a corresponding meaning;

**'Protection Wording'** means, in relation to any particular Member and Fund Year, the combined liability protection wording issued to that Member by the Scheme setting out the risks covered by the Scheme and the terms, conditions

and limits in respect of those risks: this term equates to the term *'Guidelines'* in clause 8.1 of the Deed of Trust;

**'Scheme'** means the scheme more formally known as the New Zealand Mutual Liability Riskpool;

**'Scheme Manager'** means the Scheme Manager appointed pursuant to clause 9 of the Deed of Trust.

## 2. PURPOSE AND STATUS OF RULES

**2.1** The purpose of these Rules is to set out the administrative mechanisms by which the Scheme is administered so as to put the purpose and intent of the Deed of Trust into effect.

**2.2** In the case of conflict between the provisions of the three principal constituent documents of the Scheme, which are the Deed of Trust, these Rules and the Protection Wording, the Deed of Trust shall prevail over the Scheme's Rules which shall prevail over the Protection Wording.

## 3. OFFER OF MEMBERSHIP AND NOTICES

**3.1** An offer of Membership may be made to any organisation or person approved for admission by the Board.

**3.2** Membership of the Scheme is by Fund, so one Member may hold one or more Memberships.

**3.3** An offer to become a Member of a Fund must include:

- A copy of the Protection Wording unless this has already been provided;

- A copy of the Deed of Trust unless this has already been provided;
- An up-to-date copy of these Rules unless this has already been provided; and
- An indication of the initial contribution payable for the new Fund Year as determined by the Board.

## 4. ACCEPTANCE OF MEMBERSHIP OFFER

A body becomes a Member of a Fund by:

- Notifying the Scheme Manager in writing that it has accepted the offer of Membership; and
- Paying the initial contribution for that Fund Year as determined by the Board within 20 days of the start of the Fund Year (or for such longer period as determined by the Board) failing which, unless otherwise determined by the Board, the offer of Membership lapses.

## 5. MEMBERSHIP OBLIGATIONS

**5.1** By its acceptance of an offer of Membership a Member agrees that:

- The Deed of Trust and these Rules as amended from time to time constitute a contract between the Scheme and the Member subject to Rule 5.3;
- The Member will be bound by the Deed of Trust and these Rules as amended from time to time and perform the obligations of a Member under the same accordingly;

- c) The Member will make available to the Scheme Manager or Fund Manager all information and data which the Scheme Manager or Fund Manager reasonably requires in order to determine the claims and risk management experience of the Member for the purpose of assessing contributions;
  - d) The Scheme Manager shall be permitted (but not obligated) to carry out a risk management audit or otherwise inspect the Member's property and operations at any time; and
  - e) The Scheme Manager may examine and audit the Member's books and records at any time (but only so far as they relate to the Membership of the Scheme or risks covered by the Scheme).
- 5.2** For the avoidance of doubt, the contract the subject of Rule 5.1 (a) is a contract between a Member and the Scheme only and the contract does not create, as between a Member and any other Member or Members, any joint rights or obligations or any mutual rights or obligations.
- 5.3** To the extent, if any, to which a provision of these Rules or the Deed of Trust provides or implies:
- a) Anything in any way contrary to Rule 5.2; or
  - b) That the Scheme is constituted a joint or mutual agent for its Members or any of them –
- that provision is, to that extent, inoperative and does not form part of the legal relationship between a Member and the Scheme.

## 6. END OF MEMBERSHIP

- 6.1** Membership ends when and only when the Fund is closed.
- 6.2** The Board shall determine when a Fund and its accounts will be closed and final results for the Fund determined and declared.
- 6.3** Except in the event of the Scheme being wound up, no Member has any entitlement to be paid any amount on account of surplus for a Fund unless:
- a) The accounts for the Fund have been closed and final results determined and declared; and
  - b) The Board has determined that a distribution or return should be paid to Members in respect of that Fund.
- 6.4** In the event that a Member is entitled to a distribution of a Fund's surplus, any amount due will be set-off against:
- a) Any contribution or other monies due but unpaid by the Member to the Scheme; and
  - b) Any unrecovered loss or expense incurred by the Scheme by, through or in connection with the Member.

## 7. MEMBERS' CONTRIBUTIONS

- 7.1** Members' contributions are determined by the Board.
- 7.2** In the event that a Member fails to comply with the Deed of Trust, these Rules or a direction from the Board and in so doing, in the opinion of the Board, exposes the Scheme to an increased, additional or readily avoidable risk or financial loss (including loss of interest) or additional expense the Board may:

- a) Require the Member to top up its initial contribution to the relevant Fund to cover that increased, additional or readily avoidable risk; or
- b) Require the Member to pay an additional contribution for the relevant Fund to cover that loss or expense; or
- c) Exclude or limit that increased, additional or readily avoidable risk from the Member's Coverage.

## 8. COVERAGE (PAYMENT OF CLAIMS)

Subject always to the Deed of Trust and these Rules, the Scheme will indemnify each Member for damages or compensation in accordance with the Protection Wording. This is the definition of 'Coverage'. Coverage is only available once any other insurance has been fully utilised.

## 9. RECOURSE TO SCHEME ASSETS ONLY

For the payment of any Claim or the performance of any obligation of the Scheme, recourse may be had solely to the relevant Fund and no claim may be made or endorsed by a Member against:

- a) Any Trustee of the Scheme;
- b) Except in the case of negligence or other breach of duty, any employee or agent of the Scheme;
- c) Any other Fund; or
- d) Any person described in clauses 13.1.1 to 13.1.4 of the Deed of Trust.

#### 10. REIMBURSABLE DEDUCTIBLE OR EXCESS

If the Scheme pays a deductible or excess amount referred to in a Protection Wording the Member shall reimburse the Scheme within 14 days of written notice from the Scheme.

#### 11. NOTICE OF CLAIMS

Notice in writing must be given as soon as possible to the Scheme Manager by the Member:

- a) Of any occurrence, circumstance, claim, statement of claim, summons or proceedings or of any impending prosecution, inquest or inquiry, or knowledge of any occurrence or circumstances which may subsequently give rise to a Claim, irrespective of its quantum; and
- b) Of any change materially affecting or varying any of the facts or circumstances existing at the commencement of Membership that shall come to the knowledge of the Member. A Member's knowledge shall be deemed to include the knowledge of any person whose knowledge would at law be that of the Member.

#### 12. ADMISSIONS NOT TO BE MADE

The Member shall not make any admission, offer, promise or give any indemnity in respect of a Claim or potential Claim or Claim circumstance or potential Claim circumstance without the written consent of the Board.

#### 13. INFORMATION TO BE PROVIDED

The Member must provide to the Scheme Manager and any loss adjuster, solicitor or other agent appointed by the Scheme Manager with respect to a Claim or potential Claim all information requested by such party in the manner and format requested.

#### 14. GRANT OR REFUSAL OF INDEMNITY

- 14.1** Subject to clause 8.2 of the Deed of Trust, the Board shall advise the Member as soon as practicable after receipt of a Claim as to whether the Scheme grants or refuses indemnity.
- 14.2** Without limiting the discretions of the Board under the Deed of Trust, the Scheme may choose not to indemnify the Member against any Claim or Claim circumstance and may withdraw any indemnity previously granted where the Member has:
  - a) Breached or failed to comply with a condition or obligation in the Protection Wording or under the Deed of Trust or these Rules or committed any other act or made any other omission which entitles the Board to reduce or cancel a Member's Coverage under Rule 21; and
  - b) The Scheme is prejudiced by that breach, failure, act or omission.

#### 15. SUBROGATION

The Member agrees that in the event of payment of any Claim by the Scheme, the Scheme will be subrogated to all the rights of the Member against any person or other legal entity deemed responsible for the Claim, and in such event, the Member shall render to the Scheme Manager, loss adjuster, solicitor or other agent appointed by the Scheme Manager all assistance other than pecuniary, as is reasonably necessary to effect recovery.

#### 16. SETTLEMENT OF CLAIMS

- 16.1** If the Scheme Manager so desires, it may take over the conduct in the name of the Member the defence or settlement of any claim against the Member.
- 16.2** On notifying a Claim or Claim circumstance, the Member shall promptly take at its own expense all reasonable steps to prevent other loss, personal injury or property damage arising out of the same or similar conditions, but such expense shall not be recoverable from the Scheme.
- 16.3** The Member shall use its best endeavours to preserve any damaged or defective property which might prove necessary or useful by way of evidence in connection with any Claim and except where some other course is required by Rule 16.2, but only so far as may reasonably be practical, the Member must not make any alteration or repair to any premises, machinery, fittings, appliances or plant without the consent of the Scheme until the Scheme has had an opportunity of inspection.

**16.4** The Scheme has full discretion to conduct any proceedings in connection with any Claim.

**16.5** The Scheme is entitled to prosecute in the name of the Member, at its own expense and for its own benefit, any claim for indemnity or damages or otherwise.

**16.6** Notwithstanding Rules 16.1, 16.4 and 16.5, a Member shall not be required to contest any legal proceedings unless a solicitor (to be mutually agreed upon by the Member and the Scheme) advises that such proceeding should be contested, with the reasonable probability of success or partial success.

#### 17. MEMBERS' LITIGATION RESPONSIBILITIES

In connection with any litigation or claim settlement negotiations conducted by the Scheme in the name of a Member, or any action taken by the Scheme in exercise of its rights of subrogation:

- a) if a personal appearance by an elected member, officer or agent of the Member is necessary at any conference, in any Court or elsewhere, the expense of such an appearance shall be borne or paid by the Member;
- b) The Member shall fully co-operate by supplying any information and assistance requested by the Scheme Manager and any loss adjuster, solicitor or other agent appointed by the Scheme Manager or the Scheme with respect to the litigation claim;

- c) The Member may, upon notice in writing, prevent a settlement proposed by the Scheme of litigation or a claim brought or made against the Member, but if it does so and the claim is ultimately settled (or judgement is ultimately given) for a higher amount, then notwithstanding Rule 8, the Member must pay as estimated by the Board all amounts (including interest and legal costs) which exceed the amounts that the Scheme would have had to pay if the claim had been settled as proposed by the Scheme.

#### 18. AUTOMATIC REINSTATEMENT

Upon notification to the Scheme of a Claim, cover under the Protection Wording shall be reinstated for such amount as may be ultimately paid by the Scheme in respect of such Claim up to the limit, if any, imposed by the Protection Wording.

#### 19. CONTRIBUTION FROM OTHER INSURERS

When a loss paid is recoverable under an insurance policy, then the Scheme reserves its rights to seek full recovery from the insurer.

#### 20. NOTICE TO SHOW CAUSE WHY ALL OR SOME COVERAGE SHOULD NOT BE CANCELLED

In the event that a Member (in this Rule referred to as the 'Defaulting Member'):

- a) Fails to comply with the reasonable directions of the Scheme as to the conduct of its operations so as to minimise risks;
- b) Fails to make available to the Scheme Manager or Fund Manager all information and data which either of them reasonably require in order to determine the claim and risk management experience of the Member for the purpose of assessing contributions;
- c) Fails to permit the Scheme Manager to carry out a risk management audit or otherwise inspect the Member's property and operations;
- d) Fails to permit the Scheme Manager to examine and audit the Member's books and records (but only so far as they relate to its Membership(s) of the Scheme or risks covered by the Scheme);
- e) Fails to pay contributions due to the Scheme within the time prescribed by these Rules or by the Board;
- f) Commits any other breach of these Rules which is not remedied within the time specified in a notice to the Defaulting Member - then in that regard the Board may by notice in writing to the Defaulting Member require that it show to the Scheme good cause within 14 days why all or some of its Coverage should not be cancelled.

## 21. REDUCTION OR CANCELLATION OF COVERAGE

- 21.1** The Board may, by special resolution, cancel or reduce Coverage for a Member by giving that Member notice in writing to that effect where the Member:
- Fails to comply with the duty of utmost good faith;
  - Fails to comply with the duty of disclosure;
  - Has made any fraudulent claim to the Scheme or under any contract of insurance; or
  - Fails to show sufficient cause to the contrary in response to a notice issued pursuant to Rule 20.
- 21.2** A notice of reduction or cancellation of Coverage takes effect at whichever occurs first between
- The time when a policy of insurance between the Member and an insurer, being a policy of insurance that is intended by the Member to replace all or a good proportion of the cancelled Coverage is entered into; and
  - At 4.00 pm on the 30th day after the day on which notice was given to the Member (or such later time as specified in the notice).
- 21.3** Cancellation or reduction of Coverage does not vary or waive the obligations of a Member to comply with the Deed of Trust and the provisions of these Rules.

## 22. REASONABLE CARE BY MEMBERS

Members shall:

- Exercise reasonable care that only competent employees are employed;
- Take reasonable measures to maintain all premises, fittings and plant in a safe and sound condition;
- Take all reasonable precautions to prevent loss or damage to property and personal injury;
- Take all reasonable precautions to prevent the manufacture, sale or supply of defective products;
- Take all reasonable precautions to prevent the release, issue, tender or supply of defective or erroneous advice or information;
- Comply and ensure that its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed on or by any local authority and
- At their own expense take all reasonable action to trace, recall or modify any item, document, information, advice or product manufactured, constructed, erected, installed, altered, repaired, serviced, treated, sold, supplied, distributed, prepared, provided, issued or tendered by the Member (including any container thereof other than a vehicle) containing any defect, error or deficiency of which the Member has knowledge or has reason to suspect.

## 23. SCHEME DOES NOT WARRANT RISK LEVELS

Each Member acknowledges that neither the Scheme's rights to make inspections nor the making thereof nor any report thereon constitutes an agreement or the assumption of an obligation, on behalf of or for the benefit of the Member or others, to determine or warrant that such property or operations are safe or represent any particular level of risk to liability.

**NEW ZEALAND LOCAL GOVERNMENT INSURANCE CORPORATION LIMITED**  
("LGIC")

**AND**

**LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE LIMITED**  
("Trustee Company")

This document is an amalgamation of the DEED OF TRUST dated 1 July 1997 and the provisions of  
the DEED OF VARIATION OF DEED OF TRUST dated 22 June 2007

## **THIS DEED OF TRUST made the 1st day of July 1997**

### **PARTIES**

**NEW ZEALAND LOCAL GOVERNMENT INSURANCE CORPORATION LIMITED** at Wellington ("LGIC")

**LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE LIMITED** ("Trustee Company")

### **BACKGROUND**

- A. LGIC is a Local Authority Trading Enterprise as that term is defined in the Local Government Act 1974.
- B. Trustee Company is a company incorporated under the Companies Act 1993 and is a wholly owned subsidiary of LGIC.
- C. LGIC, in consultation with Jardine, has agreed to establish a Trust pursuant to this deed to provide the Fund and the Scheme (to be known as the New Zealand Mutual Liability Riskpool) for the benefit of the Members of the Scheme and to manage all Claims for Civil Liabilities against the Members of the Scheme which may arise in connection with the exercise by the Members of any of their powers, duties or functions.
- D. The purpose for establishing this Trust in consultation with Members is to benefit residents and ratepayers of New Zealand and in particular that purpose is to be achieved by enabling Members to be recompensed from the Fund in respect of liabilities thus reducing the need for insurance cover and reducing Members' annual expenses. In addition the Scheme Manager will work with Members to ensure that proper systems are developed to promote the efficient and safe fulfilment of each Member's functions thus providing a benefit to the community as a whole.
- E. LGIC has agreed to hold all the shares in Trustee Company on trust for the Members of the Scheme pursuant to this deed.
- F. Trustee Company has agreed to act as Trustee of the Scheme and to hold and apply the Fund in accordance with this deed and the other Scheme Documents so as to provide the benefits intended to be obtained by Members of the Scheme as envisaged by this deed and the other Scheme Documents.

## THIS DEED WITNESSES:

### 1. INTERPRETATION:

1.1 In this deed unless the context clearly requires otherwise:

**“Act”** means the Companies Act 1993.

**“Additional Contribution”** means any additional or further contribution to an Annual Fund by a Member, after the initial Contribution to that Annual Fund, called for or demanded by the Board pursuant to this deed and the Scheme Rules.

**“Annual Fund”** means the separate fund established, pursuant to the Scheme Documents, for each Fund Year of the Scheme.

**“Board”** means the directors of Trustee Company who number not less than the quorum required pursuant to the Constitution acting together as a board of directors.

**“Call”** means each call or demand for an Additional Contribution.

**“Civil Liability”** means any civil liability resulting from an obligation, function, power or duty of a Member arising under law and includes any public liability and any liability for negligence of the Member.

**“Claim”** means any claim by a Member in respect of that Member’s Civil Liability during the term of the Scheme in respect of the Risks.

**“Constitution”** means the constitution of Trustee Company as may be varied, or substituted from time to time.

**“Contribution”** includes each Member’s initial contribution to each Annual Fund as determined by the Board, pursuant to clause 11 and each Additional Contribution.

**“Deed of Participation”** means the deed of participation required to be entered into by each Member pursuant to clause 16.

**“Fund”** means all assets and property of the Scheme and includes each separate Annual Fund.

**“Fund Manager”** means the manager of the Fund pursuant to clause 10.

**“Fund Year”** means the year commencing 4.00pm on 30th June in each year and terminating 4.00pm on 30th June in the next following year, or as otherwise determined by the Board.

**“Guidelines for Exercise of Discretion”** or **“Guidelines”** means the guidelines from time to time set out by the Board as detailed in clause 8.1.

**“Indemnity Cover”** means insurance cover purchased by the Board on behalf of Members to meet the Claims of the Members in the amount and in respect of the Risks determined from time to time by the Board being amounts payable in excess of the pooled cover.

**“Jardine”** means Jardine Risk Consultants Limited.

**“Local Authority”** means a local authority pursuant to the Local Government Act 1974.

**“Member”** means any person or body (whether incorporated or not) admitted as a Member to the Scheme pursuant to the Scheme Documents.

**“Pooled Cover”** means cover provided from the Fund to manage and, if the Claims are accepted by the Board, settle or pay the Claims against the Members in respect of the Risks.

**“Risks”** means those risks of Civil Liability of each Member and which fall within the Guidelines for Exercise of Discretion for the relevant Fund Year.

**“Scheme”** means the scheme, to be known as the New Zealand Mutual Liability Riskpool, constituted by this deed and the other Scheme Documents.

**“Scheme Documents”** means this deed, the Scheme Rules, and the Constitution of Trustee Company and for each Member, its Deed of Participation and the Guidelines.

**“Scheme Manager”** means the manager of the Scheme appointed from time to time pursuant to clause 9.

**“Scheme Manager’s Quantum”** shall mean \$30,000 inclusive of self retained limit or such other amount as shall from time to time be fixed by the Board.

**“Scheme Rules”** means the rules of the Scheme as promulgated by the Board from time to time.

**“Scheme Solicitor”** means the solicitor appointed from time to time by the Board.

**“Self Retained Limit”** means the deductible or excess to be borne by each Member in respect of its Risks and Claims against it as provided in the Guidelines.

**“Shares”** means the shares in Trustee Company.

**“Underlying Claim”** means any claim for civil liability (covered for the time being under the Guidelines) made against a Member which may give rise to a Liability; but also includes a claim which may give rise to a Liability to a Member under any other category of risk to that Member which the Guidelines of the Scheme may properly have been extended to cover pursuant to the terms of this deed.

- 1.2 In this deed, unless the context clearly otherwise requires:
- 1.2.1 Words importing the singular shall include the plural and vice versa;
- 1.2.2 References to any legislation shall include references to all amendments to that legislation and to any legislation passed in substitution for it (in whole or in part);
- 1.2.3 References to "director" or "directors" shall be to a director, or directors, of Trustee Company, acting in their capacity as such; and;
- 1.2.4 References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality.

## 2. CONSTITUTION OF THE SCHEME

- 2.1 A scheme is hereby established by LGIC and Jardines for the benefit of Members of the Scheme with the objects set out in clause 3. The name of the Scheme shall be the New Zealand Mutual Liability Riskpool.
- 2.2 The parties agree that Trustee Company shall act as the Trustee of the Scheme established under this deed and shall be responsible to ensure that the purposes of the Scheme as provided by this deed and the other Scheme Documents are carried into effect.

- 2.3 The Fund of the Scheme shall include all assets and property for the time being held by or on behalf of Trustee Company, derived from:
- 2.3.1 Contributions;
- 2.3.2 Additional Contributions;
- 2.3.3 Any gifts, donations or grants
- 2.3.4 Revenue from investments;
- 2.3.5 Proceeds of realisation of investments;
- 2.3.6 Any policies or contracts of re-insurance or indemnity;
- 2.3.7 Any recoveries;
- 2.3.8 Any other source.
- 2.4 The Fund shall be held in trust for the benefit of the Members of the Scheme by Trustee Company upon the trusts and for the objects contained in this deed and shall be managed, administered and applied by Trustee Company in accordance with the powers contained in this deed, in order to attain those objects.
- 2.5 LGIC hereby declares that it holds the Shares on trust for the benefit of the Members in accordance with the terms of this deed and the other Scheme Documents for the objects and purposes of the Scheme.
- 2.6 Trustee Company is 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 assets and property from the Fund, from time to time vested in Trustee Company.

## 3. PURPOSES AND OBJECTS

- 3.1 LGIC and Trustee Company declare that their purposes in entering into this deed and the objects of the Scheme are:
- 3.1.1 To establish and maintain an Annual Fund for each Fund Year during the term of the Scheme for the benefit of the Members to meet the costs of establishing and running the Scheme and, subject to the terms of this deed and the other Scheme Documents and the Guidelines, to pay the Civil Liabilities of the Members arising from the Risks covered by the Scheme and specified in the Scheme Documents with the intention that Members' needs for insurance cover and insurance expenses are reduced for the benefit of residents and ratepayers;
- 3.1.2 To provide Pooled Cover in respect of Risks as may be determined from time to time by the Board;
- 3.1.3 To manage and settle or pay Claims made against Members;
- 3.1.4 To develop programmes for the management of the risk of loss arising out of Civil Liability of the Members;
- 3.1.5 To reduce the amount and frequency of losses to the Members arising out of Civil Liability;
- 3.1.6 To purchase such Indemnity Cover or re-insurance in respect of such Risks as may be determined from time to time by the Board;

- 3.1.7 To undertake such other functions in relation to the management of Civil Liability as the Board may from time to time require having regard to the interests of the Members, including making grants from the Fund to a Member or any other person or body approved by the Board;
- 3.1.8 To investigate and if deemed appropriate by the Board, establish other Funds to cater for the insurance needs of Local Authorities and other local government organisations;
- 3.1.9 To work with Members to ensure that proper systems are developed to promote the efficient and safe fulfilment of each Member's functions to provide to the Community as a whole;
- 3.1.10 To do all other things as may be necessary or desirable to further the above objects in the interests of the Members of the Scheme.
- 3.2 The parties agree that they will co-operate to the fullest extent with each other in the implementation of the purposes stated in clause 3.1 and act in accordance with the provisions and spirit and intent of this deed.
- 3.3 LGIC shall be entitled to be paid an administration fee to be determined from time to time by the Board for the performance of its functions and duties under this deed as Fund Manager and for the provision of any other services to Trustee Company.
- 4. THE FUND**
- 4.1 Trustee Company shall establish and maintain a Fund in the amount recommended by the Board and shall at the commencement of each Fund Year during the term of the Scheme on the advice of the Board invite the Members of the Scheme to contribute to the Fund at such levels as are determined pursuant to clause 6.6 to meet:
- 4.1.1 such Underlying Claims as may be made against any one or more of the Members during that Fund Year in respect of Risks to the extent of the Pooled Cover.
- 4.1.2 the premium payable to an appropriate indemnity insurer or insurers to provide Indemnity Cover for the Members during that Fund Year.
- 4.1.3 the operating expenses of the Scheme for that year.
- 4.1.4 the grants or allocations to be made pursuant to clauses 3.1.7 or 3.1.8 (if any).
- 4.1.5 any other amount determined by the Board to be required for the continuation of the Scheme.
- 4.2 Each Underlying Claim made upon any of the Members during a Fund Year in respect of Risks may at the discretion of the Board be met:
- 4.2.1 to the extent that the Underlying Claim does not exceed the amount of the Pooled Cover of the Annual Fund for that Fund Year from that Annual Fund;
- 4.2.2 to the extent that the Underlying Claim exceeds the amount of the Pooled Cover but does not exceed the amount of the Indemnity Cover for that Fund Year;
- (i) to the amount of the Pooled Cover, from the relevant Annual Fund for that Fund Year;
- (ii) thereafter from Indemnity Cover for that Fund Year to the extent of that Cover;
- 4.2.3 To the extent that the Underlying Claim exceeds the amount of the Pooled Cover and the Indemnity Cover for that Fund Year;
- (i) to the amount of the Pooled Cover, from the relevant Annual Fund for that Fund Year;
- (ii) to the amount of the Indemnity Cover for that Fund Year, to the extent of that cover;
- (iii) the balance by the Fund from surpluses from previous Fund Years and from Additional Contributions from Members;
- (iv) to the limit of any guarantee provided by LGIC, by LGIC.
- 4.3 The Members shall be invited to Contribute to the Fund in the proportions to be determined annually by the Board. The Contributions by Members for each Fund Year shall be held and accounted for as a separate Annual Fund for that Fund Year.

- 4.4 Trustee Company shall administer the Fund with the intent that upon the settlement of all Claims made in respect of occurrences or events arising during the relevant Fund Year;
- 4.4.1 any surplus or anticipated surplus remaining in the Fund attributable to that Fund Year shall be allocated at the absolute direction of the Board towards liabilities of the Fund for any later Fund Year; and
- 4.4.2 any deficiency in the Fund shall be met by Additional Contributions by each Member in the proportion in which Contributions were made to the Annual Fund for that Fund Year.

## 5. BOARD OF TRUSTEE COMPANY

- 5.1 LGIC shall, following consultation with the Board, appoint persons (not exceeding a maximum of six at any one time) as directors for a term not exceeding three years and one month, and may following consultation with the Board at any time remove, with or without a replacement, any director.
- 5.2 Unless otherwise expressly provided in this deed or the Constitution, questions arising at any meeting of the Board shall be decided by a simple majority of the votes of those directors present and voting.
- 5.3 The quorum necessary for the transaction of business at meetings of the Board shall be the majority of the Directors. A director is to be counted for quorum purposes whether entitled to vote or not.
- 5.4 Subject to the provisions of this deed and any applicable law, LGIC shall determine, from time to

time, what (if any) directors fees, other valuable consideration or other benefit shall be paid or given by Trustee Company out of the Fund to any director in respect of that person's performance of duties as a member of the Board.

- 5.5 No director may hold office for more than twelve years, whether continuously or in aggregate over several periods.

## 6. DUTIES OF THE BOARD

- 6.1 The Board shall be responsible to LGIC as shareholder (as trustee for the Members). Notwithstanding anything to the contrary in the Constitution, the duties of the Board shall include:

- 6.1.1 Implementing and achieving the purposes and objects of the Scheme;
- 6.1.2 Considering all Claims made against the Fund and determining whether or not the Board's discretion should be exercised to meet the Claim for the Member from the Pooled Cover;
- 6.1.3 Ensuring the Scheme is and remains financially viable and solvent within the "solvency tests" laid down by the Act and generally at law;
- 6.1.4 Conduct its business in accordance with this deed and other Scheme Documents, and otherwise in such manner as is resolved by the Board from time to time;
- 6.1.5 Promulgating and amending the Scheme Rules and the Guidelines from time to time.

- 6.2 The Board shall regard the purposes and objects of this deed and the Scheme as being of paramount importance in decisions made and policies adopted by it in relation to the Scheme and shall adopt and use such management and other techniques as will ensure that those main objectives are achieved.

- 6.3 The Trustee Company being a wholly-owned subsidiary of LGIC (as trustee for the Members), any director may act in a manner which he or she believes is in the best interests of LGIC (as trustee for the Members) and the Members, notwithstanding that it may not be in the best interests of the Trustee Company.

- 6.4 A director who is an officer, employee, nominee or representative of a Member shall only be disqualified from voting on any matter that affects that Member if it affects the Member directly and in a materially different way from which it affects other Members or there are personal reasons why that director has a conflict of interest.

- 6.5 The Board shall from time to time appoint the Scheme Solicitor for such tenure and upon such terms as it shall in its sole discretion decide, but such appointment shall be formally reviewed by the Board at least every three years.

- 6.6 The Board shall be responsible for the financial management of the Scheme to the extent that it shall:
- 6.6.1 annually prepare the financial statements and, where considered necessary, report to the Members on any items arising from those statements;

- 6.6.2 annually determine the Guidelines for the Risks to be provided for from the Fund for any Fund Year;
- 6.6.3 annually determine the amount of Pooled Cover to be provided for the Members from the Fund for any Fund Year;
- 6.6.4 annually determine the amount and nature of Indemnity Cover to be purchased for the Members from the Fund for any Fund Year and to determine the indemnity insurer or insurers for this purpose;
- 6.6.5 be responsible for the assessment of the Members to determine the proportion in which they are to contribute to the Fund in each year. Each Member shall be required to and shall provide to the Board and to the Scheme Manager such information as the Board or the Scheme Manager may require in relation to the history of Civil Liability Claims made against the Member, the Member's operating procedures or such other matters as may be directed in order to permit the Board to carry out its obligations under this clause.
- 6.7 The Board may from time to time establish, or disestablish, a Claims Committee. Any such Claims Committee shall have such membership, duties, functions and powers, and be subject to such procedures, as the Board may from time to time stipulate. Where a Claims Committee is disestablished, its duties, functions and powers shall revert to the Board (but without prejudice to the validity or effectiveness of any act or omission of the Claims Committee prior to its disestablishment), and any reference in this deed to the Claims Committee shall be read accordingly.
- 6.8 The Board at its discretion may establish such other committees, to be constituted by such persons, as the Board may determine. The Board may delegate such of its powers, duties and functions as it may determine to any committee or person.
- 6.9 The Board at all times remains responsible for powers and duties delegated to any committee or person and must monitor, by means of reasonable methods properly used, the exercise of those powers and duties by the delegate.
- 6.10 The Board shall consider regularly the reports of the Scheme Manager and the Claims Committee in relation to Claims and:
- 6.10.1 shall, on the recommendation of the Claims Committee and Scheme Manager, determine whether to accept or reject any Claim;
- 6.10.2 from time to time shall issue instructions to the Claims Committee and Scheme Manager regarding the processing of Claims; and
- 6.10.3 shall, on written request from a Member, reconsider any Claim that has been rejected.
- 6.11 [Intentionally Omitted]
- 6.12 Where it becomes apparent to the Board that the Annual Fund for any Fund Year will be insufficient to meet Claims payable from that Annual Fund, the Board may at any time require the payment by the Members of an Additional Contribution in the same proportions as the Contributions paid by each of the Members to that Annual Fund in order to ensure that all Claims upon that Annual Fund are able to be met.
- 6.13 In addition to the provisions of this clause the Board may at any time resolve to apply by way of transfer or loan any actual or anticipated surplus then remaining in any Annual Fund to any later Annual Fund or to such purposes as may be considered appropriate having regard to the purposes of the Scheme and this deed.
- 6.14 The Board, in accordance with the provisions of this deed, may make payments and grants from the Fund for the benefit of the Members and to further the objectives of the Scheme as the Board deems fit.
- 6.15 The Board shall within 12 months from the commencement of the Scheme hold an annual meeting of Members to be convened no earlier than 30 days after the mailing to Members of notice of such meeting. In each subsequent year in which the Scheme continues the Board shall in the same manner hold an annual meeting.
- 6.16 Any meeting of the Members shall be called and conducted as closely as is practicable in accordance with the Constitution and the Act as if it were a meeting of the shareholders of Trustee Company and as if the Members were shareholders of Trustee Company, and each meeting shall otherwise regulate its own proceedings, however at any such meeting:
- 6.16.1 a Member shall have one vote;
- 6.16.2 a Member may vote only in respect of matters arising in, from or relating to a Fund Year during which the Member was or is a Member of the Scheme; and
- 6.16.3 matters arising in, from or relating to different Fund Years shall be considered and voted on separately.

This is an amalgamation of the Deed of Trust dated 1 July 1997 and the Deed of Variation of Deed of Trust dated 22 June 2007. If necessary reference should be made to the provisions of the original documents which take precedence.

7. [INTENTIONALLY OMITTED]

8. GUIDELINES AND CLAIMS

8.1 The Board upon the recommendation of the Scheme Manager shall set at the commencement of each Fund Year Guidelines for the exercise of its discretion as to whether or not Claims by Members should be met out of the Pooled Cover.

8.2 The Board shall have absolute and unfettered discretion as to whether or not any Claim should be met out of the Pooled Cover and shall be influenced by but not bound by the Guidelines.

8.3 The Claims Committee may authorise the Scheme Manager to meet Claims out of the Pooled Cover where:

8.3.1 Those Claims do not exceed the Scheme Manager's Quantum and;

8.3.2 The Claim falls within the Guidelines and;

8.3.3 The Underlying Claim against the Member is one for which the Member is reasonably liable and would in all probability be held liable at law for the amount of the Claim.

8.4 Where the quantum of any Underlying Claim exceeds the Scheme Manager's Quantum the Claims Committee shall authorise the Scheme Manager in conjunction with the Scheme Solicitor to administer and deal with that Underlying Claim but any settlement of a claim shall be authorised by the Claims Committee.

9. ENGAGEMENT OF SCHEME MANAGER

9.1 The Board shall appoint a person to be the Scheme Manager upon such conditions as to tenure and remuneration or otherwise as shall be determined by the Board in its sole discretion and agreed upon by the Scheme Manager and the first Scheme Manager shall be Jardine for a period of 5 years from commencement of the Scheme.

9.2 The Scheme Manager's duties shall be determined by the Board from time to time and may include:

9.2.1 from time to time undertake an assessment of the Members or any of them and their activities to assist the Fund Manager in the determination of the proportion in which the Members are to contribute to the Fund in any year and upon the conclusion of any such investigation direct the Members or any of them as to the procedures to be adopted by them to prevent losses or to minimise Civil Liability.

9.2.2 under the supervision and direction of the Claims Committee and the Board the management of Claims made against each Member including:

- (a) the investigation and assessment of those Claims;
- (b) the preparation of regular reports to the Board on the progress of Claims and the preparation of recommendations as to the acceptance, rejection, settlement, litigation or other handling of the Claims;

(c) the issue of instructions to the Scheme Solicitor for advice in respect of Claims and for assistance in the defence of Claims.

9.2.3 the provision of loss prevention and risk minimisation guidelines to members.

9.3 The Scheme Manager shall be available at all times to any member of the Board or any member of the Claim Committee or any other committee of the Board or any of the Members of the Scheme to answer any questions on the conduct of the Scheme's activities.

10. FUND MANAGER

10.1 LGIC shall be the Fund Manager upon such conditions as to remuneration or otherwise as shall be agreed by the Board and LGIC. In the event that LGIC becomes insolvent or ceases to trade then the Board shall appoint a new Fund Manager.

10.2 The Fund Manager's duties shall be determined by the Board from time to time and shall include:

10.2.1 the keeping of the accounts of the Annual Fund for each Fund Year;

10.2.2 the provision of administrative and secretarial services to Trustee Company and the Board including setting agendas and submitting reports;

10.2.3 the preparation of advice and recommendations on the investment of any moneys of the Fund not immediately required and implementation of decisions of the Board;

10.2.4	the preparation of regular reports to the Board in such form as the Board shall from time to time direct in respect of each Annual Fund as to: (i) Claims outstanding; (ii) The Scheme Manager's assessment of liability in respect of each outstanding Claim; (iii) The ability of the Fund to meet the assessment of liability; (iv) The assessment of further Additional Contributions required, if any; (v) The investment of the moneys of the Fund not immediately required; (vi) The allocation of surplus moneys in the Fund, if any;	10.4	The Fund Manager shall negotiate Indemnity Cover as requested by the Board and satisfying any specific requirements of LGIC while LGIC's Deed of Guarantee is operative or while there are outstanding amounts due to LGIC under any Deed of Guarantee.	11.2.7	any other matters the Board considers relevant, having regard to the purposes and objects of the Scheme.
10.2.5	the preparation of the annual operating budget;	11.	<b>CONTRIBUTIONS TO SCHEME</b>	11.3	If during a Fund Year it becomes apparent to the Board that as a result of unexpected or exceptional circumstances the Fund for that Fund Year will be insufficient to meet Claims payable from the Fund, the Board may determine an Additional Contribution payable by each Member for the Fund Year (which will be in the same proportion to the Additional Contributions of all other Members as the initial Contribution paid by the Member for that Fund Year bears to the initial Contributions of all Members for that Fund Year).
10.2.6	the calculation of Contributions in conjunction with actuarial advice and advice from the Scheme Manager;	11.1	Each Member, as a condition of membership of the Scheme for that Fund Year, shall pay the initial Contribution determined by the Board for that Member for that Fund Year.	11.4	All Contributions (including any Additional Contribution under sub-clause 11.3) must be paid within twenty days of the date of the contribution notice given to the Member by the Board, the Scheme Manager or the Fund Manager (or such longer period as stated in the notice or determined by the Board).
10.2.7	the recommendation of the level of Pooled Cover to be provided in any Fund Year;	11.2	The Contributions determined for any Member in respect of any Fund Year, shall be determined having regard to the advice from the Claims Committee, the Fund Manager and the Scheme Manager and such matters as the Board considers relevant to the Scheme Member's level of risk and may include, without limitation:	11.5	Without affecting any other Rule, if the amount of any Contribution (including any Additional Contribution under sub-clause 11.3) is not paid by the due date:
10.2.8	the recommendation of the level of Indemnity Cover to be provided in any Fund Year.	11.2.1	the Member's revenue base;	11.5.1	interest may, if the Board so determines, accrue calculated daily, on daily balances (and compounding semi-annually) at the Bank of New Zealand Indicator Rate from the due date to the date of actual payment;
10.3	The Fund Manager shall be available at all times to any member of the Board or any member of the Claims Committee or any other committee of the Board or any Member of the Scheme to answer questions on the management of the Fund.	11.2.2	the geographical location of the Member's territory;	11.5.2	an unpaid Contribution (and interest) constitutes a debt payable by the relevant Member to the Scheme and Trustee Company may bring proceedings for the recovery of that debt in its name on behalf of the Scheme.
		11.2.3	the population of the Member's territory;		
		11.2.4	the Member's Civil Liability claims history (both during and prior to its membership of the Scheme);		
		11.2.5	any matter relating to the nature of the Member's territory or its operations which create increased or reduced risks of Civil Liability;		
		11.2.6	any matters relevant to the Scheme Member's risk management practices that are known to the Board;		

This is an amalgamation of the Deed of Trust dated 1 July 1997 and the Deed of Variation of Deed of Trust dated 22 June 2007. If necessary reference should be made to the provisions of the original documents which take precedence.

## 12. BANK ACCOUNT, INVESTMENT AND BORROWING POWERS

- 12.1 Trustee Company shall open a bank account for the Fund with a registered Bank determined by the Board.
- 12.2 The name of the bank account and the persons authorised as signatories to operate the bank account shall be determined by the Board.
- 12.3 The parties agree that the Trustee Company may invest moneys received in respect of the Fund and not immediately required to meet the liabilities of the Fund;
- 12.3.1 with any registered Bank;
- 12.3.2 in any security or investment authorised by the Trustee Act; or
- 12.3.3 in any security or investment authorised by the Local Government Act 1974 or prescribed pursuant to and for the purposes of that Act; or
- 12.3.4 with the Trustee of any other Trust Fund established for the benefit of Local Authorities or other local government organisations.
- 12.5 The parties agree that for any of the purposes of this deed Trustee Company may borrow moneys and for that purpose secure the repayment of its borrowings by granting security over the assets of the Scheme and the Fund.
- 12.6 All Contributions and other moneys received by Trustee Company shall be deposited to the credit of the Fund and shall be applied at its discretion as follows:
- 12.6.1 in payment of any establishment costs for the Scheme;

- 12.6.2 in payment of all administrative and operating costs associated with the Scheme;
- 12.6.3 in payment of fees due to the Scheme Manager and the Fund Manager;
- 12.6.4 in payment of all Claims accepted by the Board;
- 12.6.5 by way of any grant or allocation approved under this deed; and
- 12.6.6 generally in furtherance of the Scheme's objectives including a transfer, payment or loan in accordance with the Scheme Documents.

- 12.7 The parties agree that Trustee Company and the Board shall keep or cause to be kept all such accounting records for the Scheme and the Fund as fully and correctly explain the transactions and financial position of the Scheme and the Fund.

## 13. RECOURSE TO SCHEME ASSETS ONLY

- 13.1 For the payment of any Claim against the Scheme or the performance of any obligation of the Scheme under this deed, resort may be had solely to the Fund and other assets and property of the Scheme and no claim may be made or endorsed by a Member against:
- 13.1.1 any Member of the Board;
- 13.1.2 the Scheme Manager or the Fund Manager in any capacity other than as Scheme Manager or Fund Manager of the Scheme;
- 13.1.3 except to the extent of LGIC's indemnity to Trustee Company, LGIC; or
- 13.1.4 any other Member.

## 14. ORDER OF PRIORITY OF SCHEME DOCUMENTS

- 14.1 The Scheme Documents shall be construed in the following order of priority:
- 14.1.1 this deed, which shall be paramount; then
- 14.1.2 the Scheme Rules; then
- 14.1.3 the Constitution; and then
- 14.1.4 the Deed of Participation and the Guidelines for each Member.

## 15. SURPLUS ON LIQUIDATION OF SCHEME

- 15.1 Upon the winding up of the Scheme (including the liquidation of Trustee Company) the assets, if any, remaining after payment of the debts and liabilities of the Scheme and the costs of winding up ("the surplus assets") shall be distributed among the then Members of the Scheme in proportion to their Contributions to the Scheme over the Fund Year in which the winding up commenced and the previous four Fund Years, provided however that Members whose Contributions are not fully paid up at the commencement of the winding up shall receive only a proportionate share of their entitlement being the amount which is in proportion to the amount of their Contributions paid up. In calculating a Member's Contributions for the purposes of this clause the amount of the Contribution shall be reduced by the amount of any Claim or Claims paid or payable pursuant to the Scheme.

16. DEED OF PARTICIPATION

EXECUTED AS A DEED

16.1 Each Member, as a condition of membership of the Scheme, shall be required to execute under seal and deliver to Trustee Company a Deed of Participation in the form annexed as Schedule 1, as may be varied or substituted by the Board from time to time, whereby the Member covenants and agrees, for the benefit of Trustee Company and LGIC, to be bound and to observe and perform all the terms of this deed and the other Scheme Documents as if the Member was a party to this Deed and the other Scheme Documents.

EXECUTED by **NEW ZEALAND** )  
**LOCAL GOVERNMENT** )  
**INSURANCE CORPORATION** )  
**LIMITED** by two of its directors: )

16.2 Members shall provide the Scheme Manager with all information as is necessary to give effect to the Scheme and in particular will:

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Director (Signature)

16.2.1 Disclose all material facts to the Scheme Manager as if the Member was an insured and the Scheme Manager was an agent for an insurer and;

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Name (Please Print)

16.2.2 Conduct itself in its dealings with the Scheme in the same manner as if it was an insured under a policy of insurance with the Scheme and in particular act in good faith towards the Scheme.

EXECUTED by **LOCAL** )  
**GOVERNMENT MUTUAL** )  
**FUNDS TRUSTEE COMPANY** )  
**LIMITED** by two of its directors: )

16.2.3 Immediately advise the Scheme Manager of any Underlying Claim and co-operate with the Scheme Manager and Scheme Solicitor in dealing with Underlying Claims.

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Director (Signature)

17. VARIATIONS

17.1 LGIC and Trustee Company may make any variation or addition to this deed if it is consented to in writing by not less than 90% in number of Members, and any such variation or addition shall be binding on all Members.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Name (Please Print)

SCHEDULE 1

**DEED OF PARTICIPATION**

\_\_\_\_\_  
(Name of Member)

HEREBY DECLARES covenants and agrees for the benefit of Local Government Mutual Funds Trustee Company Limited and New Zealand Local Government Insurance Corporation Limited to be bound by and observe and perform all of the terms of the Deed of Trust establishing the New Zealand Mutual Liability Riskpool and the Scheme Documents referred to in that Deed of Trust as if it was a party to those documents (as amended from time to time).

SIGNED BY \_\_\_\_\_ )

\_\_\_\_\_ )

as the duly authorised agent of \_\_\_\_\_ )  
the Member in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
(Signature of duly authorised Agent)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Name of Witness)

\_\_\_\_\_  
(Address of Witness)

\_\_\_\_\_  
(Date)

[www.riskpool.org.nz](http://www.riskpool.org.nz)

