

The PTE described in Schedule 1 to this Deed
The Trustee described in Schedule 1 to this Deed
in favour of
The PTE and the Students of that PTE from time to time

**STUDENT FEE PROTECTION
STANDARD TRUST DEED
FOR REFUND PERIOD AND POST-REFUND PERIOD**

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DEED DATE

The date of this Deed is the date of the second party signing this Deed on the Execution page.

BETWEEN THE FOLLOWING PARTIES

1. **The Registered Private Training Establishment (“the PTE”) described in Schedule 1 to this Deed,**
AND
2. **The Trustee described in Schedule 1 to this Deed**
IN FAVOUR OF
The PTE and the Students of the PTE from time to time

BACKGROUND

- A. This Deed is made to protect the Student Fees of every Student (*see interpretation below*).
- B. The PTE in entering this Deed has elected to meet the requirements of the Act and the SFP Rules by means of a Mechanism that is a Standard Trust for the Refund Period and the Post Refund Period.
- C. NZQA has approved the terms of this Deed as an acceptable arrangement for a PTE to protect Student Fees for the Refund Period and Post Refund Period.

This Deed Witnesses

1. INTERPRETATION

- 1.1 Definitions:** In this Deed, unless the context otherwise requires, the following definitions set out below shall apply:

Accommodation Expenses means, for the purposes of student fee protection, any payment that a Student is obliged to pay, or pays, to a PTE on account of hostel accommodation, homestay or any other accommodation for that Student which may be provided through the PTE or a third party.

Act means the Education and Training Act 2020.

Alternative Provider has the same meaning set out in the SFP Rules.

Approved Independent Trustee has the same meaning as set out in the SFP Rules.

Audit Opinion means any opinion given from time to time by the Auditor in accordance with the SFP Rules in the form specified on the NZQA website (*at <http://www.nzqa.govt.nz>*).

Auditor means a person who is:

- (a) independent of both the PTE and the Trustee; and
- (b) a Chartered Accountant.

Auditor Engagement Letter means a letter in, or substantially in, the form specified on the NZQA website (*at <http://www.nzqa.govt.nz>*).

Authorised Investments means the investments made pursuant to clause 5.3.

Chartered Accountant means a person within the meaning of that term as it is defined in section 2 of the New Zealand Institute of Chartered Accountants Act 1996 and who holds a current Certificate of Public Practice (*as also defined in section 2 of that Act*); and includes:

- (a) a firm of chartered accountants holding current Certificates of Public Practice; and
- (b) any other kind of accountant who is an Approved Independent Trustee.

Course means a programme or a training scheme as those terms are defined in section 10(1) of the Act.

Course Closure Event has the same meaning as in the SFP Rules.

Course Commencement Date means the date the course is scheduled to commence or, where the PTE has allowed the Student to start on a different date, that different date.

Deed means this deed of trust (*including the background and its schedules*) as originally executed and as it may from time to time be amended under clause 13, including any deemed modifications under clause 2.1.

Domestic Student has the same meaning as in section 10(1) of the Act.

Enrolled (and Enrol, Enrolling and Enrolment) have the same meaning as in the SFP Rules.

Insolvency in relation to the definition of Course Closure Event in the SFP Rules where NZQA is of the opinion that the PTE no longer capable of delivering the course or courses involved, and for the purposes of clause 11.3(a), means that any of the following has occurred in relation to a PTE or Trustee:

- (a) a receiver, liquidator, provisional liquidator or similar officer or official is appointed in respect of any part of the assets;
- (b) an order is made or an effective resolution is passed for the dissolution or liquidation or voluntary administration (*or if not a company, is declared bankrupt or dissolved by any procedure*);
- (c) is placed in statutory management or is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989; or
- (d) it ceases to be able to satisfy the “solvency test” as defined in section 4(a) of the Companies Act 1993 (*or would cease to satisfy that test, if a company*).

International Student has the same meaning as in section 10(1) of the Act.

Law Society means the New Zealand Law Society continued under section 63 of the Lawyers and Conveyancers Act 2006.

Lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006.

Living Expenses means, for the purposes of student fee protection, any payment that a student is obliged to pay, or pays, to a PTE for the purposes of the Student’s general living expenses.

Loan Provider means any New Zealand Government entity (*such as Studylink*) that is from time to time providing loans to Students for Student Fees.

Mechanism has the same meaning as in the SFP Rules.

NZQA means the New Zealand Qualifications Authority continued by section 430 of the Act.

Other Financial Commitments are those referred to in paragraph (c) of the definition of “Student Fees” in the SFP Rules.

Payment Schedule means the payment schedule set out in the Student Acknowledgement Form.

Post Refund Period is the period of time from the end of the Refund Period to the end date of the Course in which the Student is Enrolled.

Pro Rata Refund has the same meaning as in the SFP Rules.

PTE means the private training establishment described in Schedule 1.

Refund Period means, in relation to:

- (a) International Students Enrolled in a course of 3 months' duration or more, the refund period referred to in section 529(1)(a) of the Act and as set by *Gazette* notice under section 530 of the Act;
- (b) International Students Enrolled for a course of less than 3 months' duration, the refund period specified by NZQA under section 529(1)(c) of the Act;
- (c) Domestic Students on courses of 3 months or more, the refund period defined in section 357(2) of the Act.
- (d) Domestic Students Enrolled in a course of less than 3 months' duration, the refund period specified by NZQA under section 357(3) of the Act

Registered Bank means a bank that is currently registered with the Reserve Bank of New Zealand under the Reserve Bank of New Zealand Act 1989 (*other than registered banks marked "(B)" on the public register of registered banks kept under section 69 of that Act*).

SFP Rules means the Student Fee Protection Rules 2021, published on the NZQA website, as modified or replaced from time to time.

Standard Trust means a trust meeting the requirements of a "standard trust" set out under Mechanism 1 of Appendix B of the SFP Rules.

Student means any Domestic or International Student to whom this Deed applies (*see clause 3.3*).

Student Acknowledgement Form means the form (*which may be in any format or medium*), specified by the Trustee and approved by NZQA in relation to Student Fees (*available on the NZQA website at <http://www.nzqa.govt.nz>*).

Student Details Report means a full and complete report prepared by the PTE in English incorporating the information set out in paragraphs (a) – (f) and (k) of clause 4.4 for every Student.

Student Fees has the meaning as in the SFP Rules.

Student Loan means any loan advanced to the Student by a Loan Provider to enable that Student to pay Student Fees.

Student Records means all information in any format or medium that is within the possession or control of the PTE relating to the Student and the fees of the Student, and (*without limitation*) includes any information required to be kept under the Act, the SFP Rules or this Deed in relation to a Student or the fees of the Student.

Travel and Health Insurance means, for the purposes of student fee protection, any applicable travel and health insurance premium that the Student pays to the PTE.

Trust means the trust constituted by this Deed.

Trust Account means one or more trust accounts maintained by the Trustee pursuant to clause 5 of this Deed.

Trust Fund means the aggregate amount that is at any time held by the Trustee in the Trust Account, together with the amount invested by the Trustee in any other Authorised Investment.

Trustee means the person described as the trustee in Schedule 1.

Tuition Fees has the same meaning as in the SFP Rules.

Unclaimed Money means any money payable to a Student under this Deed, but which was unable to be paid to that Student because that Student could not be located.

1.2 In this Deed:

- (a) as the context permits, the singular includes the plural and vice versa:

- (b) a reference to a clause of or schedule is a reference to a clause of or schedule to this Deed unless otherwise specified:
- (c) a reference to a “**party**” to this Deed includes the party’s successors and assigns:
- (d) a reference to legislation or to a provision of legislation includes a modification, replacement or re-enactment of it, a legislative provision substituted for it and a legislative instrument issued under it:
- (e) a reference to a “**business day**” means a day, other than a Saturday or a Sunday, on which Registered Banks are open for business in both of the cities nearest to where each of the PTE and the Trustee have their principal place of business:
- (f) a reference to a month means a calendar month.

2. GENERAL

- 2.1 Deed subject to contrary requirements in Act or SFP Rules:** Where provisions of this Deed conflict with requirements of the Act or SFP Rules, the requirements of the Act or Rules take precedence and this Deed is deemed to be modified to the minimum extent necessary to remove the conflict.
- 2.2 PTE responsible for complying with Act and SFP Rules:** The PTE is responsible for complying with the Act and SFP Rules, and nothing in this Deed makes NZQA or the Trustee responsible in any way for the obligations of the PTE under this Deed, or otherwise in respect of any Student Fees.
- 2.3 NZQA not responsible for Trustee obligations:** Nothing in this Deed makes NZQA responsible in any way for the obligations of the Trustee under this Deed.
- 2.4 Governing law:** This Deed is governed by New Zealand law, even if some of the Students to whom it relates may from time to time be citizens of, or resident in, another country.
- 2.5 Payment of Student Fees:** The PTE acknowledges and agrees that payment of Student Fees directly to the Trustee by or on behalf of a Student shall, to the extent of the amount paid, discharge the relevant Student from his or her obligations to pay the PTE such Student Fees.
- 2.6 Trusts Act 2019:** The parties agree that the trust constituted by this Deed is a specified commercial trust, as defined in the Trusts Act 2019.

3. DECLARATION OF TRUST AND STUDENTS TO WHOM THIS DEED APPLIES

- 3.1 Student Fees:** Except where this Deed provides otherwise, the Trustee declares that any monies received by the Trustee pursuant to this Deed will be held on trust in accordance with the Act, the SFP Rules, and the provisions of this Deed:
 - (a) for the Students for whose benefit the Student Fees have been paid; and
 - (b) for the PTE.
- 3.2 Respective rights:** The respective rights and interests of a Student and the PTE to the Trust Fund shall be determined by the Act, the SFP Rules, and the provisions of this Deed.
- 3.3 Students to whom this Deed applies:** The provisions of this Deed are to be interpreted to apply to all Students of the PTE except for Students:
 - (a) whose Student Fees are wholly protected by another Mechanism or, where those Student Fees are protected in part by another Mechanism, to the extent those Student Fees are so protected by that other Mechanism:
 - (b) Enrolled in a programme or training scheme that is exempt under section 356(5) of the Act from the requirements specified in section 356(1) of the Act, by Rules made under section 452(1)(u) of the Act:

- (c) in respect of whom other provisions of the Act or SFP Rules exclude from the coverage of this Deed.

4. OBLIGATIONS OF PTE

- 4.1 Students to make payments direct to the Trust:** The PTE must give each Student written notice stating that Student Fees are to be paid directly into the Trust Account. Where, despite that notice, the PTE is paid Student Fees the PTE must deposit the full amount of those fees into the Trust Account by the close of the following business day following the PTE's receipt of the fees.
- 4.2 Payment by agent:** PTEs must ensure that agents that are not using their own Approved Independent Trustee to protect Student Fees or an alternative arrangement in accordance with section 356(2) of the Act, and which are paid Student Fees despite the notice in clause 4.1, deposit those fees with the Trustee of the PTE with which the Student is Enrolling by the close of the business day following receipt by the agent.
- 4.3 Student acknowledgement:** The PTE must ensure that all Students receive and provide the PTE a properly completed Student Acknowledgement Form which is either signed by the Student or assented to by the Student in any other manner approved by NZQA.
- 4.4 Student details:** The PTE must maintain in English appropriate records of all Student Fees paid or payable to the PTE and must notify the Trustee in an electronic format or storage method acceptable to the Trustee of:
- (a) the full name of each Student;
 - (b) the passport number and place of permanent residence for each Student who is an International Student;
 - (c) the date of birth of each Student;
 - (d) the Student Fees for each Student split into the categories of Tuition Fees, Accommodation Expenses, Living Expenses, Travel and Health Insurance, and Other Financial Commitments;
 - (e) the name and Course Commencement Date of the Course for each Student;
 - (f) the expected completion date of the Course for each Student;
 - (g) the details of each individual Student account with the PTE and any other information and details which will enable the calculation of any refund or payment under this Deed;
 - (h) details for each Student of any third party, advised by that Student, entitled to receive any refund on account of Student Fees;
 - (i) details of any Loan Provider and the Student Loan amount;
 - (j) the completed Student Acknowledgement Form; and
 - (k) any additional information required under clause 4.8.
- 4.5 Timing of information to be supplied by PTE:** The PTE must supply the Trustee with a Student's details, including all information referred to in paragraphs (a) – (f) of clause 4.4, and any information referred to in paragraphs (g) – (j) of clause 4.4 that the Trustee has requested, at or before the time payment of the Student Fees of that Student is made to the Trust Account or otherwise without delay (*and in no case later than five business days after the date the information was available to the PTE*).
- 4.6 Maintenance of systems and records:** The PTE must ensure that at all times while this Deed is in existence, it maintains in English accurate and up to date Student Records and adequate policies, procedures, systems and records which will enable the Trustee, Auditor and PTE to perform their individual obligations under this Deed.

- 4.7 Provision of Student Details Report and other requested information:** Without limiting clause 4.5, the PTE must supply the Trustee, or the Auditor or NZQA with a Student Details Report, and any requested information referred to in paragraphs (g) – (j) of clause 4.4, within five business days of notice from the Trustee, or the Auditor, or NZQA.
- 4.8 Additional Student details:** The Trustee may, by giving five business days written notice to the PTE (*with a copy to be sent to NZQA*), specify additional information relating to any Student or to all or a class of Students, which must be included in future Student Details Reports. This may include verification requirements for any information provided to the Trustee.
- 4.9 Further assurance by PTE:** The PTE agrees to do all such things as are reasonably necessary to give full effect to the intentions of this Deed and enabling the Trustee to comply with its obligations under this Deed, including providing to the Trustee information about the PTE and Student Fees, as reasonably requested by the Trustee from time to time.
- 4.10 Student Records required where a Course Closure Event occurs:** The PTE agrees:
- (a) if a Course Closure Event occurs:
 - (i) that the PTE will forthwith deliver to the Trustee and NZQA an up to date Student Details Report, together with any information referred to in paragraphs (g) – (j) of clause 4.4 if that further information is requested by the Trustee; and
 - (ii) that all Student Records, including all of the information referred to in clause 4.4, must be made available to the Trustee and NZQA or their respective agents at the PTE's cost and expense for inspection and copying, if necessary; and
 - (b) that Student Records are personal information of the Students and are subject to the protections conferred by the Privacy Act 2020, and the PTE understands that it must obtain consent from Students to provide personal information of the Students to the Trustee and NZQA.
- 4.11 PTE authorisation:** The PTE authorises the Trustee to apply the Trust Fund (*and any interest thereon*) in accordance with the provisions and terms of this Deed. The PTE's rights and interest in the Trust Fund are subject to, and after all, deductions which the Trustee may make under this Deed, including without limitation in respect of the rights of indemnity of the Trustee.
- 4.12 Appointment of Auditor:** The PTE must:
- (a) as soon as practicable after execution of this Deed, and after consultation with the Trustee (*where consultation is requested by the Trustee*), appoint an Auditor on the terms of the Auditor Engagement Letter; and
 - (b) ensure that if the appointed Auditor is no longer acting as the PTE's appointed Auditor, immediately appoint a replacement or substitute Auditor on the terms of the Auditor Engagement Letter.
- 4.13 Failure of attendance:** The PTE shall ensure that the terms and conditions agreed between the PTE and the Student:
- (a) fully disclose when failure to attend constitutes withdrawal from a Course, and the effects of that withdrawal; and
 - (b) comply with the requirements of the Act and the SFP Rules relating to withdrawals.
- 4.14 Provision of other information:** The PTE must supply the following additional information to the Trustee:
- (a) for each Course, confirmation of all Students who are still attending the Course, immediately following the end of the Refund Period of the Course;
 - (b) in relation to Conditions Dependent Courses, updates on changes to Course progress immediately following a change occurring; and

- (c) any information as soon as reasonably practicable following the Trustee's reasonable requests in order to meet its obligations under any law, including, without limitation, under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and where such information relates to a Student, the PTE will procure that information from the Student.

5. OBLIGATIONS OF TRUSTEE FOLLOWING RECEIPT OF MONIES

- 5.1 Student Fees paid into Trust:** The Trustee must hold in Trust the amount of Student Fees the Trustee receives from the Student, the PTE or an agent of the Student.
- 5.2 Invest and record:** On receipt of any Student Fees from the Student, the PTE or an agent of the Student, the Trustee must:
 - (a) invest those Student Fees as set out in clause 5.3; and
 - (b) accurately record the amount of Student Fees received in respect of each Student.
- 5.3 Authorised investments:** Trustees must ensure that at all times all monies held in Trust are maintained in New Zealand dollars in Trust accounts held with a Registered Bank:
 - (a) in the name of the Trustee and in a manner that makes clear the funds are held by the Trustee on trust in accordance with this Deed;
 - (b) in interest bearing accounts where these are available; and
 - (c) if the Trustee is a Chartered Accountant, also in a manner that complies with the legal, professional and ethical obligations of Chartered Accountants; or
 - (d) if the Trustee is a Lawyer, also in a manner that complies with the legal, professional and ethical obligations of Lawyers.
- 5.4 No other investments:** Trustees must not invest any funds of the Trust Fund otherwise than as required by clause 5.3.
- 5.5 Interest to form part of the assets of the PTE:** Interest earned on the Trust Fund is to be beneficially vested in the PTE and distributed to the PTE periodically as agreed between the Trustee and PTE. Payments to the PTE shall be less any withholding tax that the Trustee is required to deduct and pay to Inland Revenue.
- 5.6 Tax liability:** For the purposes of the Income Tax Act 2007, interest earned on the Trust Fund and distributed to the PTE will be considered the income of the PTE.
- 5.7 Records of Trust Account:** The Trustee must keep full records of all deposits to and payments from the Trust Account.
- 5.8 Signatory to the Trust Account:** The Trustee will ensure that at all times the signatories to the Trust Account are independent of the PTE.
- 5.9 Provision of information:** NZQA and the PTE are entitled to require from the Trustee any information or explanations as NZQA or the PTE may reasonably consider necessary to satisfy itself that the Trustee is complying with its obligations under this Deed or that the Trustee's records relating to deposits to, and payments from, the Trust Account are accurate and correct.
- 5.10 Make records available:** If the Trustee is requested to do so by any of the following parties, the Trustee must make available, as soon as practicable, but no later than five business days after receipt of request, any information it holds under this Deed and relating to any Student to:
 - (a) the PTE;
 - (b) the Auditor;
 - (c) NZQA, or any person authorised by NZQA;
 - (d) each Student, but only in respect of Student Fees relating to that Student.

6. PAYMENT OF STUDENT FEES FROM TRUST FUND BY TRUSTEE SO LONG AS NO COURSE CLOSURE EVENT OCCURS

6.1 Payment of Tuition Fees to PTE at end of Refund Period: Where-

- (a) the Student has not withdrawn from the Course, and no Course Closure Event has occurred in respect of any Course for which Student Fees are held by the Trustee; and
- (b) the Trustee has received a completed Student Acknowledgement Form duly signed by the PTE and the Student, -

the Trustee must pay, once the relevant Refund Period has been completed, the Tuition Fees and Other Financial Commitments for the Course (*but only to the extent that the Tuition Fees and Other Financial Commitments are available to the Trustee in the Trust Account and after any deductions permitted by this Deed*) to the PTE in accordance with the Payment Schedule, subject to the requirements of any applicable criterion set out in Appendix D of the SFP Rules.

6.2 Payments of Accommodation Fees and Living Expenses: Where -

- (a) the Student has not withdrawn from the Course, and no Course Closure Event has occurred in respect of any Course for which Student Fees are held by the Trustee; and
- (b) the Trustee has received a completed Student Acknowledgement Form duly signed by the PTE and the Student, -

the Trustee must pay the Accommodation Fees and Living Expenses (*if any, and only to the extent that the Accommodation Fees and Living Expenses are available to the Trustee in the Trust Account*) in accordance with the Payment Schedule, subject to the requirements of any applicable criterion set out in Appendix D of the SFP Rules.

6.3 Failure to sign Student Acknowledgement Form: Where a Student has not signed a Student Acknowledgement Form and either appears to have withdrawn from the Course after the Refund Period or completes the Course, the Trustee shall keep all Student Fees in Trust until at least the Course end date, and then -

- (a) pay to the PTE all Tuition Fees and Other Financial Commitments for that Student subject to any deductions permitted by this Deed, and subject to any prior notifications from NZQA to the Trustee (*prior to payment to the PTE*) that the Student may be entitled to a refund (*with the Trustee and NZQA determining the amount of the refund*); and
- (b) pay to the Student any monies held for that Student on trust in respect of Accommodation Expenses, Living Expenses or Travel and Health Insurance.

6.4 Withdrawal by Student within Refund Period: If the Trustee is satisfied that a Student has withdrawn from a Course within the Refund Period the Trustee shall, within five business days, carry out the following (*in order*):

6.4.1 In respect of a Domestic Student:

- (a) where clause 8.1 applies, but subject to paragraph (c) of this sub-clause 6.4.1, pay from the relevant refund due to the Student under the Act and SFP Rules the amount provided for in clause 8.1 for the purposes of repayments to any Loan Provider:
- (b) where paragraph (a) of this sub-clause 6.4.1 does not apply, but the Trustee has confirmation that the Student is transferring to a new education provider, pay the appropriate monetary amount to the new education provider from the relevant refund due to the Student under the Act and SFP Rules:
- (c) where the cost of the Course in which the Student was Enrolled was paid in part both by a Loan Provider and by the Student (*or by another party on behalf of the Student*), and the Trustee has actual knowledge (*in terms of clause 8.1*) that payment has been made in part, after working out the relevant proportions of Tuition Fees paid by each of them,, pay from the refund due to the Student under the Act and SFP Rules on a pro rata basis the relevant proportion to the Loan Provider for

the purposes of clause 8.1 and the remaining balance to the Student in accordance with clause 8.3:

- (d) pay to the Student in accordance with clause 8.3 any remaining refund amount required under the Act and SFP Rules to be paid to the Student or any higher amount the PTE allows to be paid,

provided that where any amount is to be paid to a new education provider and that new education provider is a registered private training establishment which will protect all or part of that refund under a Standard Trust, the Trustee will pay that amount to the trustee of that registered private training establishment.

6.4.2 In respect of an International Student, pay to the Student the refund amount required under the Act and SFP Rules to be paid to the Student in accordance with clause 8.3 and any higher amount allowed by the PTE.:

6.4.3 Where there is any amount remaining after the payments under sub-clauses 6.4.1 or 6.4.2, pay that remaining amount to the PTE (*but after any deductions permitted by this Deed*).

6.5 Withdrawal by Student after the Refund Period: If the Trustee is satisfied that a Student has signed, or assented to, a Student Acknowledgement Form in respect of a Course, and has withdrawn from the Course after the Refund Period, the Trustee shall make payments in accordance with the Payment Schedule.

6.6 PTE Refund policy more beneficial: Where the PTE's refund policy is more beneficial than the amount of Student refunds provided for in the Act and the SFP Rules, for the amount that is more beneficial the Trustee shall use the order of payment in clause 6.4.

6.7 Payment of insurance premium: The Trustee must pay an International Student's insurance premium for travel and health insurance in accordance with the Payment Schedule (*noting that the payment of the insurance premium is a requirement of entering New Zealand rather than a payment required in respect of the programme or training scheme the Student is Enrolling in, or has Enrolled in*).

6.8 Student Fees paid but not to the Trustee: The following is a permitted deduction for the purposes of clause 6.1, where the Trustee is aware that there is any Student of a PTE that had paid Student Fees to the PTE or agent of the PTE, but those Student Fees (*or any part of them*) were not paid to the Trustee:

- (a) the Trustee may set aside (*and must set aside when directed by NZQA*) from payments to the PTE the amount of those Student Fees (*after any other deductions permitted by this Deed*); and
- (b) the Trustee must deposit the relevant fee amount(s) set aside under paragraph (a) in an individual trust account set up by the Trustee for the affected Student(s), provided that:
 - (i) if the amount set aside is less than the total amount of those Student Fees, the amount held on trust for the affected Student(s) will be only that amount which was set aside; and
 - (ii) if those Student Fees relate to more than one Student and the amount set aside is insufficient to fully satisfy the total amount of those Student Fees, the amount set aside will be allocated to those Students on a pro rata basis; and

once deposited in a trust account and allocated to such a Student, such amounts allocated are deemed to be held on account of the Student Fees of that Student in accordance with this Deed.

6.9 Balance remaining: If any balance of Student Fees in respect of a Course remains after the last of the payments required by clauses 6.1 – 6.8, and Unclaimed Money has been set aside to be dealt with in accordance with the Unclaimed Money Act 1971, the Trustee shall establish

the party or parties entitled to the balance and pay the balance accordingly (*and if to the PTE, then after any deductions permitted by this Deed*).

6.10 Assumptions: For the purposes of this clause 6, the Trustee will be entitled to assume (*without any independent enquiry, unless the Trustee has received notice to the contrary from NZQA or from a Student*) that:

- (a) the Course Commencement Date is the date notified to the Trustee in writing by the PTE under clause 4.4;
- (b) the amount of Student Fees received in relation to a Student under this Deed is correct where the amount of Student Fees received matches the amount advised by the PTE under clause 4.4;
- (c) all information on a Student Acknowledgment Form signed by the Student is correct;
- (d) the Course end date is the date notified to the Trustee in writing by the PTE; and
- (e) Course attendance records provided by the PTE are accurate.

7. APPLICATION OF TRUST FUND BY TRUSTEE IF COURSE CLOSURE EVENT OCCURS

7.1 Application of clauses 7.2 – 7.10: Clauses 7.2 – 7.10 apply where a Course Closure Event occurs.

7.2 Consultation with NZQA: The Trustee must hold the then balance of the Trust Account in trust for Students in respect of whom it is holding Student Fees in their individual trusts and in consultation with NZQA distribute the Student Fees to Students as set out in clauses 7.3 – 7.9.

7.3 Student Fees transferred to an Alternative Provider: Where the Trustee has been notified in writing (*or by such other means as is acceptable to the Trustee*) by a Student or NZQA that the Student is to transfer to an Alternative Provider, the Trustee will, subject to clause 7.4:

- (a) where the Alternative Provider is a private training establishment, ensure that any amount agreed by the Student to be transferred for the purposes of Enrolment in the new Alternative Provider is transferred to the trustee of the Alternative Provider in accordance with the Act and Rules or, where the amount is already protected by a Mechanism (*other than a Standard Trust*), transferred to the Alternative Provider; or
- (b) where the Alternative Provider is not a private training establishment, transfer an amount agreed by the Student to the Alternative Provider.

7.4 Student Loan repayments: Where clause 8.1 applies, the Trustee shall pay the amount of Student Fees required to repay the Student Loan to the Loan Provider.

7.5 Pay Students: The Trustee will pay to the Student the amount of any refund required by the Act and the SFP Rules which has not been paid to a Loan Provider pursuant to clause 7.4, or transferred to an Alternative Provider (*or its trustee*) pursuant to clause 7.3.

7.6 Payments and timeframes for payments: The Trustee must make payments the Act and SFP Rules require in respect of all Students who have paid Student Fees for, and were Enrolled in, the Course affected by the Course Closure Event within the timeframes specified in the SFP Rules. All payments of refund entitlements in respect of those Students are made only to the extent that there are sufficient monies in the Trust Account.

7.7 Student Fees paid but not to the Trustee: If, in relation to a Course Closure Event, -

- (a) NZQA notifies the Trustee, or the Trustee becomes aware, that there are any Students of the PTE that had paid Student Fees to the PTE or an agent of the PTE, but those Student Fees (*or any part of them*) were not paid to the Trustee and were not protected by any other Mechanism; and
- (b) after payments are made in accordance with the timeframes applying under clause 7.6, there are still monies held upon Trust after all Students have been paid the amounts payable to them under this Deed (*but after any deductions permitted by this Deed*) -

the Trustee shall pay such amounts of those remaining monies to those Students in respect of the refunds they are entitled to, as directed by NZQA.

7.8 Payments to PTE: The Trustee shall calculate the payment due to the PTE as per Appendix C of the SFP Rules, and, subject to clause 7.7, pay any monies due to the PTE.

7.9 Balances remaining: In respect of Students who paid Student Fees for, and were Enrolled in, a Course and who were affected by the Course Closure Event, balances remaining after -

- (a) all Students who have been located have been paid the amounts payable to them under this clause 7;
- (b) any Unclaimed Money in respect of any of those Students who were not able to be located has been set aside to be dealt with in accordance with the Unclaimed Money Act 1971;
- (c) the Trustee has been paid its costs and expenses in relation to the Course Closure Event under clause 9 -

must be distributed by the Trustee to the PTE after the expiry of twelve months, or such shortened period agreed to by NZQA (*but after any deductions permitted by this Deed*).

7.10 Information after distribution: The Trustee must provide details to NZQA of all payments and deductions made from the Trust Fund under this clause 7.

8. GENERAL PROVISIONS ON PAYMENTS

8.1 Student Loan repayments: If the Trustee has actual knowledge that a Student paid Student Fees from a Student Loan, then the appropriate portion of the refund of the Tuition Fees that a Student is entitled to must be paid to the Loan Provider by the Trustee to the extent necessary to repay the amount owed to it by the Student. For the purposes of this clause “actual knowledge” means knowledge that has been imparted to the Trustee in writing (*or by such other form of communication that the Trustee has advised may be used for such purpose*) by the Student, the PTE, the Loan Provider or NZQA prior to payments being made. In the absence of such actual knowledge the Trustee:

- (a) shall have no obligation to make any enquiry or report any information as to whether the Student has funded the Student Fees by way of a Student Loan; and
- (b) may assume that there is no Loan Provider.

8.2 Currency: All payments required by this Deed shall be made in New Zealand dollars.

8.3 Manner of payment to Students: Payments of Student refunds must be made in compliance with the Trustee’s policy relating to verification of payee details as notified to the PTE, and in compliance with its programme under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, in one or more of the following ways:

- (a) where notified by the Student to the Trustee in writing, to another registered private training establishment (*or its trustee in relation to student fee protection*) to which the Student is transferring;
- (b) by direct credit to a bank account or credit card in the Student’s name with a New Zealand registered bank, or to an overseas bank account in the Student’s name;
- (c) by direct credit to the originating bank account, being:
 - (i) the bank account or credit card from which the transfer to the Trustee was received;
 - (ii) where the Student Fees were paid to the Trustee by an agent or the PTE, the bank account that paid the Student Fees to the agent’s or PTE’s bank account, and, if the agent paid the Student Fees to the PTE, to the bank account that paid the Student Fees to the agent; or
- (d) in exceptional circumstances, in a manner acceptable to the Trustee, in its sole discretion—and the Trustee may require that Student (*or that other person*) to sign a receipt of payment.

8.4 Records conclusive evidence: The Trustee's records shall be, in the absence of fraud or manifest error, conclusive evidence of the amount and the person entitled to such amount for the purposes of any distribution of the Student Fees held on trust in accordance with this Deed.

9. TRUSTEE'S REMUNERATION AND RIGHTS

9.1 Remuneration of Trustee: The PTE shall pay to the Trustee by way of remuneration for its services under this Deed such fee as the Trustee and PTE may agree from time to time. The PTE shall also be responsible for any other costs, disbursements and expenses properly and reasonably incurred by the Trustee. The Trustee shall be entitled to be paid these amounts by way of deduction from the amounts payable to the PTE from the Trust Account.

9.2 Lien or charge: The Trustee shall have a lien or charge on the amounts payable to the PTE from the Trust Fund in respect of the indemnity under clause 15.1 and may retain and pay out of the amounts payable to the PTE all amounts necessary to give effect to the indemnity.

9.3 Trustee recourse to Trust Fund: The Trustee will be entitled to recourse to the Trust Fund exercised only in the following circumstances:

- (a) if, in paying any amounts to a Student, Loan Provider or an Alternative Provider under clauses 7.3 – 7.7, the Trustee has difficulty locating the relevant Student or establishing the amount of the Student Loan or identifying the Loan Provider, the Trustee is entitled to deduct, from the Trust Account in respect of that Student or from the Student refund amount, any costs incurred in doing so; and
- (b) the Trustee shall be entitled to be paid, by way of deduction from the amounts payable to the PTE, as provided for in this Deed, together with any other costs, disbursements, expenses, and liabilities properly and reasonably incurred by the Trustee or that are otherwise agreed between the PTE and the Trustee.

9.4 Reliance on documents: The Trustee shall -

- (a) be entitled to assume the authenticity and validity of:
 - (i) any signature (*including facsimile signatures*) on any instrument or document delivered to the Trustee; and
 - (ii) any electronic signatures or other form of acknowledgment in relation to information provided to the Trustee; and
- (b) not be in any way liable to make good any loss incurred by any person in the event of any signature (*including any electronic or facsimile signatures*) or other form of acknowledgement, on any document being fraudulent or otherwise failing to bind the person whose signature or acknowledgement it purports to be or the person on whose behalf it purports to be executed or acknowledged, -

except where the Trustee was actually aware that the signature or other form of acknowledgment was not genuine and binding.

9.5 Trustee's reliance on others: The Trustee may accept as authentic and valid any certificate, notice, proposal, direction, instruction or other communication that the Trustee reasonably believes has been given to it by or on behalf of the PTE or NZQA. The Trustee shall not be responsible for any loss arising from any act, neglect, mistake or discrepancy of the PTE or NZQA in preparing any such document or in compiling, verifying or calculating any matter or information contained in any such document, provided that the Trustee is not actually aware that such document is not genuine and correct, whether or not an error in the document or in any such matter or information contained in any such document is reproduced by the Trustee in any step taken by it.

9.6 Reliance on experts: The Trustee may act upon the written opinion or statement or certificate or advice of or information obtained from any Independent legal advisers, bankers, Chartered Accountants, brokers, valuers, and other persons believed by it in good faith to be an expert or properly informed in relation to the matters upon which they are consulted, and the Trustee

shall not be liable for anything done or suffered by the Trust Fund in good faith in reliance upon such opinion, statement, certificate, advice or information.

10. TRUSTEE TO INFORM NZQA OF CERTAIN EVENTS

10.1 Inform NZQA: The Trustee must inform NZQA without delay if at any time the Trustee becomes aware that any of the following events have occurred or there is a serious and imminent risk of one or more of them occurring:

- (a) any Course Closure Event that NZQA is not involved in;
- (b) a breach by the PTE of any of the provisions of this Deed;
- (c) any matter referred to in clause 11.3 arising.

10.2 Inform NZQA of cancellation or termination: The Trustee must inform NZQA without delay if the Trustee is informed by the PTE that this Deed is no longer required, or if this Deed has purportedly been cancelled or terminated by the PTE for any reason.

11. REPLACEMENT OF TRUSTEE

11.1 Replacing a Trustee: A replacement trustee must be appointed under this Deed where:

- (a) the Trustee retires under clause 11.6, in which case the PTE must obtain NZQA's approval of the replacement trustee and appoint the replacement trustee before the proposed retirement date; or
- (b) the Trustee is removed under clause 11.2 and NZQA has approved the replacement trustee; or
- (c) the Trustee dies; or
- (d) the Trustee is automatically removed under clause 11.3.

11.2 Removal of Trustee: The Trustee may be removed from office as trustee in the following circumstances, with effect from a date after the Trust Fund has been transferred to the replacement trustee and the replacement trustee has assumed all obligations under this Deed:

- (a) by the PTE (*with the prior written approval of NZQA*) upon written notice from the PTE or NZQA to the Trustee, if the Trustee is in breach of trust in respect of this Deed or has repeatedly refused or failed to act as trustee in respect of this Deed; or
- (b) by the PTE upon at least 20 business days written notice to the Trustee and NZQA from the PTE (*the PTE is not required to furnish any reasons to the Trustee for the Trustee's removal*); or
- (c) by NZQA under section 356(4) of the Act.

11.3 Automatic removal: The Trustee is automatically removed immediately upon the occurrence of any of the following events:

- (a) any of the grounds for removal in sections 104 or 105 of the Trusts Act 2019 (*whether before or after that Act has come into force*) apply;
- (b) the Trustee, being a Chartered Accountant ceases to be a Chartered Accountant;
- (c) the Trustee, being a Lawyer ceases to be a Lawyer;
- (d) the Trustee ceases to be independent;
- (e) the Trustee, being an individual, becomes a committed or special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
- (f) the Trustee is incapable of performing the obligations of a Trustee under this Deed for any other reason.

- 11.4 Obligation after automatic removal:** Where the Trustee is automatically removed under clause 11.3, the PTE must:
- (a) take immediate steps to find and appoint a replacement trustee; and
 - (b) ensure NZQA approves the replacement trustee prior to appointment.
- 11.5 Trustee removal expenses:** A Trustee removed pursuant to clauses 11.2 or 11.3 must pay all expenses associated with its removal and replacement out of its own funds and not the Trust Fund, except where the Trustee is removed under clauses 11.2(b) or 11.3(e) in which case the PTE must pay all of the Trustee's expenses associated with its removal and replacement and the successor Trustee may deduct such expenses from the amounts payable to the PTE from the Trust Account.
- 11.6 Retirement where replacement trustee appointed:** The Trustee may retire on a specified date where a replacement trustee has been appointed as from that date.
- 11.7 Retirement of Trustee by notice:** The Trustee may retire at any time without giving any reason upon providing at least 20 business days' notice in writing to the PTE and NZQA, with the notice specifying the proposed retirement date, and where the Trustee gives such notice:
- (a) the Trustee must complete its role as Trustee (*even though this might be extended to after the end of notice period*) until the end of the Refund Period for-
 - (i) all existing Students for whom it holds funds on trust, and
 - (ii) all newly Enrolling Students up to the tenth business day of the notice period, - provided that no Course Closure Event has occurred and is continuing; and
 - (b) the PTE must not Enrol any new Students from the tenth business day of the notice period unless and until the PTE has appointed a replacement Trustee.
- 11.8 Trusts and information to be vested in replacement trustee:** A Trustee being replaced or retired must, immediately following the appointment of a replacement trustee, take all steps required to:
- (a) vest the Trust Fund, or cause the Trust Fund to be vested, in the replacement trustee; and
 - (b) provide all relevant documents and information both in hard copy and in a readily readable electronic format.
- 11.9 Release of removed trustee:** Upon payment of any expenses provided for in clause 11.5:
- (a) the removed Trustee will remain liable for any existing or antecedent breach of the provisions of the Act, the SFP Rules, or this Deed on the part of the removed Trustee or its officers, employees, agents or delegates, provided that the Trustee's right of indemnity will continue to apply in respect of the Trust Fund held by the replacement trustee; and
 - (b) the removed Trustee shall be released from all future obligations under this Deed.
- 11.10 Deed to bind replacement trustee:** The PTE must ensure that any person appointed as a replacement trustee is fully bound by this Deed or executes a new deed containing the terms of this Deed, or a new deed approved by NZQA, with such new deed applying from the date of that trustee's appointment.
- 11.11 Notice to Student:** As soon as practicable after a replacement trustee has been appointed, the PTE must give notice of the replacement to the Students.

12. TRUSTEE'S COVENANTS

- 12.1 General:** The provisions contained in this clause 12 are for the benefit of the Students and the PTE, jointly and severally.
- 12.2 To act continuously as Trustee:** The Trustee shall act continuously as Trustee until the Trust Fund is terminated under this Deed or the Trustee retires or is removed under clause 11.

12.3 To act honestly, diligently and prudently: The Trustee must:

- (a) **Act honestly:** Act honestly and in good faith;
- (b) **Diligence and prudence:** Exercise sound diligence and prudence, while having regard to the interests of the Students and the PTE, and to the provisions of this Deed;
- (c) **Do all things necessary to perform obligations:** Do everything and take all such actions which are necessary (*including, without limitation, obtaining all such authorisations and approvals as are appropriate*) to ensure that it is able to exercise all its powers and remedies and perform all its obligations under this Deed, and all other deeds, agreements and other arrangements entered into by the Trustee pursuant to this Deed;
- (d) **Full performance:** Fully perform all of its obligations under this Deed;
- (e) **Separation:** Keep the Trust Account separate from all other assets vested in or held by the Trustee;
- (f) **Mandatory duties:** Comply with any mandatory duties that apply to this Deed under the Trusts Act 2019 (*whether before or after that Act has come into force*); and
- (g) **Default duties:** Comply with any default duties that apply to this Deed under the Trusts Act 2019, but only to the extent that such default duties are not inconsistent with the provisions of this Deed. To avoid doubt and without limitation:
 - (i) the default duty to act for no reward in section 37 shall not apply (*but that shall not mean that the Trustee's right to be reimbursed referred to in that section no longer applies*);
 - (ii) the default duties to not profit in section 36 and not to exercise power for own benefit in section 31 shall be subject to the ability to charge provided for in this Deed;
 - (iii) the default duty to invest prudently in section 30 shall be subject to the provisions concerning investment in this Deed;
 - (iv) the default duty to avoid conflict of interest in section 34 shall not prohibit a Trustee from acting for a student in another capacity that benefits the student; and
 - (v) the provisions in sections 45 to 55 providing for documents that must be kept by trustees and giving information to beneficiaries do not apply.

13. AMENDMENTS TO DEED

13.1 Technical corrections: The Trustee may, with the prior written approval of NZQA, and giving 10 business days advance notice to the PTE, make an alteration or addition to the provisions of this Deed (*by means of a supplemental or modifying deed executed by the Trustee and notified to the PTE*):

- (a) in order to correct any manifest error; or
- (b) where the alteration or addition does not prejudice the interests of any Student or the PTE.

13.2 General amendments: In exceptional circumstances, and only with the prior written approval of NZQA, the Trustee or the PTE, with the agreement of the other party, may make an alteration or addition to the provisions of this Deed (*by means of a supplemental or modifying deed executed by the Trustee and the PTE*); provided that the Trustee and PTE shall not make any such alteration or addition if it would:

- (a) extend the duration of the Trust beyond a term of 125 years, breach the Act, or breach the SFP Rules; or
- (b) affect the beneficial entitlement to any amount held in trust for any beneficiary prior to the date of the alteration or addition.

13.3 Amendments directed by NZQA: The Trustee and the PTE must, if at any time directed by NZQA and at the PTE's cost and expense, make an alteration or addition to the provisions of this Deed (*by means of supplemental or modifying deed executed by the Trustee and PTE*) for the purpose of achieving the requirements of the Act or the SFP Rules.

14. TRUSTEE'S ACTIVITIES AND POWERS

14.1 Permitted activities: The activities of the Trustee in respect of both Student Fees and any other funds for the protection of Student Fees held in Trust under this Deed are limited to the following activities (*collectively, the "Permitted Activities"*):

- (a) entering into any agreement with any Registered Bank, which are necessary to open and maintain the Trust Account;
- (b) acquiring, holding, and managing Authorised Investments;
- (c) reinvesting in Authorised Investments any proceeds of Authorised Investments not used to make payments authorised under this Deed;
- (d) paying (*or causing to be paid*) amounts payable from the Trust Account to a Student, the PTE, any Loan Provider, any Alternative Provider or any other third party as provided for under this Deed;
- (e) deducting amounts due to the Trustee under this Deed from the amounts payable to the PTE under this Deed;
- (f) transferring Authorised Investments following:
 - (i) withdrawal of its approval by NZQA under the Act or automatic removal under clause 11.3; or
 - (ii) prior to removal under clause 11.2 or retirement under clauses 11.6 or 11.7; and
- (g) exercising any other powers, functions or duties under the terms of this Deed.

14.2 Trustee's power: The Trustee's rights, powers and discretions over and in respect of Student Fees and any other funds for the protection of Student Fees held in the Trust Fund are limited to those in the Act, the SFP Rules and this Deed.

14.3 Delegates: The Trustee:

- (a) may delegate, in accordance with sections 70 – 72 of the Trusts Act 2019 (*whether before or after that Act has come into force*) the Trustee's powers and functions under this Deed to another trustee who is either an Approved Independent Trustee or is operating under alternative arrangements acceptable to NZQA for the purposes of section 356(2)(a) of the Act; and
- (b) for the avoidance of doubt, the Trustee may use other individuals to carry out any of the Trustee's powers, duties, authorities or discretions, where the Trustee retains full responsibility for their acts or omissions (*this is not considered to be delegation of the kind to which sections 70 – 72 of the Trusts Act 2019 may apply*).

15. TRUSTEE INDEMNITY AND LIABILITY

15.1 Indemnity: The Trustee and every person acting on behalf of the Trustee shall be indemnified by the PTE (*including out of the PTE's interest in the Trust Fund*):

- (a) against all liabilities and expenses suffered or incurred by them in the good faith exercise or attempted exercise of the trusts and powers vested in the Trustee and in respect of any matter or thing done or not done in any way relating to a Trust Account (*other than a claim arising out of dishonesty or wilful misconduct*); and

- (b) without limiting the generality of paragraph (a) above, for all legal costs and disbursements and all other costs, disbursements, outgoings and expenses incurred by the Trustee in connection with -
 - (i) the enforcement or contemplated enforcement of, or preservation of rights under; and
 - (ii) without limiting the generality of sub-paragraph (i) above, the initiation, defence, and settlement of any action, suit, proceeding or dispute in respect of -
 this Deed or otherwise under or in respect of the Trust.

15.2 Exclusions from liability: The Trustee shall not be liable for:

- (a) any losses, including any loss suffered by a Trust Account and any Authorised Investment, except losses arising from the Trustee's own dishonesty or wilful misconduct; or
- (b) any act or attempted act or any omission done or not done in good faith in the proper exercise of or pursuant to any trust, power or discretion vested in the Trustee by this Deed; or
- (c) any failure to comply with this Deed where it is impossible for the Trustee to comply; or
- (d) any payment made in good faith to any person appearing to the Trustee to be entitled to payment in accordance with this Deed and the Trustee shall not be bound to see to the application or the destination of such payment.

15.3 Limit on liability: The liability of the Trustee and every person acting on behalf of the Trustee in respect of a Trust Account and any Authorised Investment in respect of that Trust Account under this Deed or at law, shall at all times be limited to the amounts payable to the PTE from that Trust Account except to the extent that the losses or liabilities arise from the Trustee's or that person's own dishonesty or wilful misconduct.

15.4 Liability for acts of delegates: The Trustee shall be responsible for the acts or omissions of its officers, employees, agents and delegates as if they were the acts or omissions of the Trustee.

16 PTE LIABILITY

16.1 PTE liable for loss following breach: The PTE shall be liable for any loss suffered by the Trustee or a Student as a result of the breach by the PTE of any obligations under this Deed.

16.2 Trustee may obtain an injunction: The PTE acknowledges that damages may not be an adequate remedy for any breach of this Deed and that the Trustee may seek injunctive relief to restrain any conduct or threatened conduct which is or will be a breach of this Deed or specific performance to compel the PTE to perform its obligations under this Deed, as a remedy for any breach or threatened breach, in addition to any other remedies available to the Trustee.

17. WINDING-UP OF TRUST

17.1 Winding-up of Trust: The Trust will terminate and must be wound-up upon the occurrence of any one of the following events:

- (a) the expiration of the period of 125 years from the date of this Deed; or
- (b) the passing of a resolution of termination by the Trustee, provided the Trustee has given the PTE and NZQA at least 20 business days prior written notice to wind-up the Trust and provided the PTE and NZQA are satisfied that the Trustee no longer holds any monies on trust under this Deed or that the Trust Fund will be transferred to another trustee of a student fee protection trust that meets the requirements of the Act and the SFP Rules; or
- (c) the Trustee has received written notice from NZQA that the student fee protection requirements fulfilled by this Deed are to be met by another Mechanism superseding this Trust arrangement; or

- (d) a Course Closure Event has occurred in circumstances where:
 - (i) that Course Closure Event results in the PTE no longer providing courses; and
 - (ii) NZQA has confirmed in writing that the Trustee has performed all of its obligations under this Deed to the satisfaction of the NZQA; or
- (e) if required by law to be wound up, including, without limitation, if the Trustee was required to terminate the Trust under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

17.2 Notice of termination: If there are remaining Student Fees held on trust at the time of an event set out in clause 17.1, the Trustee must, as soon as practicable, give to each Student notice of any intention to terminate this Deed and to distribute the Student Fees in the Trust Account in accordance with this Deed.

17.3 Distribution of remaining monies in Trust Fund: The Trustee shall, upon termination of the Trust:

- (a) upon written notice from the Trustee under clause 17.1(b) transfer to the trustee of any new trust approved in writing by NZQA any remaining Authorised Investments that are held on the date the Trust is wound up; or
- (b) otherwise under clause 17.1, if there are remaining monies held on trust at the time of an event set out in clause 17.1, distribute the remaining Trust Fund to the PTE (*but after deductions permitted by this Deed*) and only where satisfied the PTE is entitled to it (*for example there are no entitled Students who could not be contacted or any Unclaimed Money that is or should be set aside to be dealt with under the Unclaimed Money Act 1971*).

17.4 PTE to meet costs: Any costs and expenses incurred by the Trustee in respect of the winding up shall be paid by the PTE. The Trustee shall be entitled to be paid these amounts by way of deduction from the amounts payable to the PTE from the Trust Account.

17.5 Notice to Students: As soon as practicable after a replacement trustee has been appointed, the PTE must give notice of the replacement to the Students.

17.6 Termination of individual Trust Account: The Trustee may terminate the Trust Account in relation to the individual trust of a Student if required to do so under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. In such a case, if there are remaining Student Fees held on Trust in respect of that Student, the Trustee shall distribute such Student Fees held on Trust in accordance with entitlements under the Act and the SFP Rules, and (*where relevant*) for the purposes of compliance with the Unclaimed Money Act 1971.

18. INSPECTION OF DEED AND AUDIT OPINION

18.1 A copy of this Deed together with copies of all supplemental deeds and any Audit Opinions must, at all times during usual business hours, be made available by the Trustee and the PTE for inspection by any Student who shall each be entitled to receive from the Trustee or the PTE, upon request, a copy of this Deed and any Audit Opinion and every supplemental deed.

19. CONTRACT AND COMMERCIAL LAW ACT 2017

19.1 The Trustee and the PTE acknowledge and declare that section 12 of the Contract and Commercial Law Act 2017 applies to entitle NZQA and the Students of the PTE to the benefits in this Deed that are conferred on them. To avoid doubt a Student only has the benefits conferred on that Student in respect of the Student Fees paid to the Trustee in respect of that Student.

19.2 The consent of the Student shall not be required in relation to any amendment to this Deed permitted by clause 13.

20. ACCOUNTS AND ANNUAL AUDIT

20.1 PTE to keep proper records: The PTE must keep, or cause to be kept, accounting records which provide an accurate record of:

- (a) all Student Fees received and expended by or on behalf of a Student;
- (b) the matters in respect of which such receipt and expenditure takes place; and
- (c) the assets and liabilities of the PTE.

20.2 Trustee, NZQA, Auditor may inspect books: The PTE shall ensure that the accounting records and Student Records of the PTE shall:

- (a) be kept in English at the office of the PTE or such other office in New Zealand, notified to the Trustee; and
- (b) be open to the inspection of the Trustee, NZQA, the Auditor and any Chartered Accountant or agent appointed by the Trustee or NZQA upon reasonable notice and during usual business hours.

20.3 Provision of information: In carrying out its duties the Auditor shall be entitled to require from the PTE and the Trustee any information and explanations the Auditor may reasonably consider necessary, and the PTE and the Trustee shall, at the PTE's own cost and expense, promptly provide the same to the Auditor. The PTE agrees that the Student Records shall be open to inspection of the Auditor upon reasonable notice and during usual business hours. The Auditor is authorised to make available to the Trustee and NZQA all information made available to the Auditor by the PTE.

21. PROTECTION OF STUDENT RECORDS

21.1 Grant of security interest in Student Records: As security for performance by the PTE of its obligations under this Deed, the PTE grants to the Trustee a security interest in the records of all Students that are or have been Enrolled at the PTE and whose records are considered to be relevant to the PTE's obligations under this Deed, but this does not include a power to sell the records.

21.2 Appointment of receiver for Student Records: In addition to all other rights and remedies available to the Trustee in respect of the security interest in clause 21.1, whether in equity, at law, under the Personal Property Securities Act 1999 ("PPSA"), or otherwise howsoever, the Trustee shall be entitled, upon the occurrence of a Course Closure Event, to appoint any person or persons (*in which case, each jointly and severally*) as a receiver in respect of the Student Records.

21.3 Receiver's powers: In addition to the powers generally available to a receiver at law, the receiver appointed under clause 21.2 shall have the power to and shall:

- (a) exercise any and all rights of the PTE in respect of the Student Records and/or the information contained therein;
- (b) perform the PTE's obligations to deliver to the Trustee and NZQA an up to date Student Details Report and any other requested information in accordance with clause 4.10(a)(i);
- (c) perform the PTE's obligations to make the Student Records available for inspection and copying in accordance with clause 4.10(a)(ii), and its obligations in respect of the Student Records pursuant to sections 361, 458, and 634 of the Act;
- (d) exercise any and all rights of the PTE to access any premises on which any Student Records may be held; and
- (e) exercise any other rights, powers, authority or remedies of or available to the PTE which may be necessary or incidental to the exercise of the powers in (a) to (d) inclusive above.

22. GENERAL

- 22.1 Assignment:** The PTE must not assign any of its rights under this Deed without the prior written consent of the Trustee. That consent may be given or withheld at the Trustee's absolute discretion.
- 22.2 Costs:** Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing this Deed and any document relating to this Deed.
- 22.3 Further acts:** The parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Deed.
- 22.4 No agency:** No party is an agent, representative, or partner of any party by virtue of this Deed. No party has any power or authority to act for or to assume the obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this Deed or by express agreement between the parties.

Execution Page

IN WITNESS of which this Deed has been executed on the date the second party signs this Deed

**EXECUTED AS A DEED BY THE PTE NAMED
IN SCHEDULE 1** by persons who warrant that
they are authorised to do so, in the presence of:

Signature of Director/Authorised Signatory

DATE:.....

Signature of Director/Authorised Signatory

DATE:.....

Signature of Witness

DATE:.....

Name of Witness

Occupation of Witness

Place of work of Witness

**EXECUTED BY THE TRUSTEE NAMED IN
SCHEDULE 1** by persons who warrant that they
are authorised to do so, in the presence of:

Signature of Witness

DATE:.....

Name of Witness

Occupation of Witness

Place of work of Witness

Signature of Trustee

DATE:.....

Address of Trustee

**This Deed is signed confirming no alteration has occurred to any clause or wording from the STUDENT FEE
PROTECTION STANDARD TRUST DEED FOR REFUND PERIOD AND POST-REFUND PERIOD available on the
NZQA web site <http://www.nzqa.govt.nz>**

SCHEDULE 1
DETAILS OF PARTIES

PTE

Name of PTE:

Street and PO Address:

Email address:

Phone number

Trustee

Name:

Street and PO Address:

Email address:

Phone number: