

**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**

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**STUDENT FEE PROTECTION STATIC PLUS  
SECURITY ARRANGEMENT TRUST DEED  
FOR:**

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- **STATIC TRUST PROTECTION DURING THE REFUND PERIOD**
  - **STATIC TRUST PROTECTION AT ALL TIMES FOR ACCOMMODATION AND LIVING EXPENSES**
  - **EITHER BANK BOND, COMPANY OR PARENT BODY GUARANTEE, OR INSURANCE PROTECTION (*EXCEPT FOR ACCOMMODATION AND LIVING EXPENSES*) DURING THE 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 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) a Static Trust for the Refund Period, and
  - (b) for the Post Refund Period, a Mechanism that is -
    - (i) a Bank Bond, Company or Parent Body Guarantee, or Insurance which meets the requirements for the particular Mechanism which are set out in the SFP Rules; and
    - (ii) a Static Trust for Accommodation and Living Expenses.
- 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 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.
- 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.
- Bank Bond** means a bond issued by a Registered Bank meeting the requirements of a “bank bond” as set out under Mechanism 3 of Appendix B of the SFP Rules.

**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.

**Company or Parent Body Guarantee** means a guarantee meeting the requirements of a “company or parent body guarantee” set out under Mechanism 2 of Appendix B of the SFP Rules.

**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 relevant 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 believes that the PTE is 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 the 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*).

**Insurance** means a Student-based insurance policy meeting the requirements of “student-based insurance policies” set out under Mechanism 5 of Appendix B of the SFP Rules.

**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.

**Mechanism Documentation** means the documentation (*other than this Deed*) that implements a Mechanism that is a Bank Bond, a Company or Parent Body Guarantee, or Insurance.

**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.

**Pooled Funds** means payments made by the PTE to the Trustee under paragraphs 2.2(f)(ii) or 4.2 of Schedule 2 and amounts transferred by the Trustee under paragraph 9.1 of Schedule 2, in each case in relation to the Security Arrangement Calculation.

**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.

**Projected Student Fees** means the maximum amount of student fees which the PTE reasonably anticipates will be payable to the PTE by Projected Students if such students Enrol at the PTE.

**Projected Students** means the maximum number of Domestic Students and International Students who the PTE reasonably anticipates will Enrol during the period of three months immediately following the date that the PTE Maximum Liability Amounts are calculated.

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

**PTE** means the private training establishment described in Schedule 1.

**PTE Maximum Liability Amount** means the amount of the maximum liability described in clause 1.14 (*for the Refund Period and for Accommodation and Living Expenses*) of Appendix B of the SFP Rules in respect of the Static Trust Calculation, and clause 2.2 (*for a Company and Parent Body Guarantee*), clause 3.2 (*for a Bank Bond*) or clause 5.3 (*for Insurance*) of Appendix B of the SFP Rules in respect of the Security Arrangement Calculation, and calculated as described in Schedule 2 of this Deed.

**Quarter** or **Quarterly** means the three-month period ending on the last day of February, May, August and November in each calendar year.

**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 in 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 Enrolled in a course 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*).

**Security Arrangement** means a Bank Bond, or a Company or Parent Body Guarantee, or Insurance.

**Security Arrangement Calculation** has the meaning given to that term in paragraph 1.3 of Schedule 2.

**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.

**Static Trust** means a trust meeting the requirements of a "static trust" set out under Mechanism 1 of Appendix B of the SFP Rules.

**Static Trust Calculation** has the meaning given to that term in paragraph 1.3 of Schedule 2.

**Student** means any Domestic Student or International Student to whom this Deed applies.

**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 4.3 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, and includes the Pooled Funds.

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

**Trustee Called Up Amount** means any amount that is called up in accordance with clause 7.10.

**Trustee Reserved Amount** means any amount in the Trust Fund as a result of an increase to the PTE Maximum Liability Amount under paragraph 10 of Schedule 2 (*in relation to the Static Trust Calculation*).

**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 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 Trusts Act 2019:** The parties agree that the trust constituted by this Deed is a specified commercial trust, as defined in section 9 of the Trusts Act 2019.

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

**3.1 Deposit to protect Student Fees to be held on trust:** 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 Students of the PTE; and
- (b) for the PTE.

**3.2 Respective rights:** The respective rights and interests of a Student, the PTE, and the Trustee 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 Domestic Students, International Students and (*for the purposes of the PTE Maximum Liability Amount*) Projected Students of the PTE, but shall not apply to any Domestic Students, International Students, and (*for the purposes of the PTE Maximum Liability Amount*) Projected 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.

**3.4 Nature of interest:** In respect of that part of the Student Fees that are protected under a Security Arrangement, and in respect of the Trust Fund, the Students and PTE:

- (a) have no interest in the Mechanism Documentation;
- (b) each have an undivided interest in the Trust Fund to the extent monies are received by the Trustee, or from the issuer of that Mechanism Documentation (**Called Up Monies**) in accordance with the rights, powers and privileges recorded in this Deed;
- (c) do not have any interest in any particular part of the Trust Fund (*including Called Up Monies*); and
- (d) are not entitled to require the Trustee to transfer to a Student or the PTE any part of the Trust Fund (*including Called Up Monies*) or make demand on the Trust Fund (*including Called Up Monies*), except in accordance with this Deed.

**3.5 Protection Mechanisms one Trust:** The Static Trust and the Security Arrangement in place under this Deed (*together the "Protection Mechanisms"*) are to be treated as one Trust, such that should there be a shortfall in one of the Protection Mechanisms to pay refunds of Student Fees in a Course Closure Event, the other Protection Mechanism is to be used to meet that shortfall to the extent possible.

### **4. OBLIGATIONS OF PTE**

**4.1 Maximum payment obligations:** The PTE must comply with its obligations set out in Schedule 2.

**4.2 Student acknowledgement:** The PTE must ensure that all Students receive and provide to 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.

**4.3 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 4.6.

**4.4 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, the Auditor and the PTE to perform their individual obligations under this Deed.

**4.5 Provision of Student Details Report and other requested information:** The PTE must supply:

- (a) a Student Details Report to the Trustee:
  - (i) on or before the first date that the Trustee receives any monies from the PTE under this Deed; and
  - (ii) within five business days after the end of each and every Quarter during the term of this Deed; and
- (b) a Student Details Report, and any requested information referred to in paragraphs (g) – (j) of clause 4.3, to the Trustee, or the Auditor, or NZQA, within five business days of notice from the Trustee, or the Auditor, or NZQA.

**4.6 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 Detail Reports. This may include verification requirements for any information provided to the Trustee.

**4.7 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.

**4.8 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 4.3 requested by the Trustee; and
  - (ii) that all Student Records held by the PTE, including all of the information referred to in clause 4.3, 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.



**4.9 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.

**4.10 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.

**4.11 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.

**4.12 Provision of other information:** The PTE must supply the following additional information to the Trustee:

- (a) the executed Bank Bond immediately after it is executed, or a copy of the executed Mechanism Documentation for any other Security Arrangement;
- (b) for each Course, confirmation of all Students who are still attending the Course, immediately following the end of the Refund Period of the Course;
- (c) in relation to Conditions Dependent Courses, updates on changes to Course progress immediately following a change occurring; and
- (d) 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 Holding monies in Trust, holding the executed Mechanism Documentation, and compliance with Schedule 2:** The Trustee must:

- (a) hold in Trust the monies the Trustee receives from the PTE under this Deed;
- (b) hold secure the executed Bank Bond, or a copy of the executed Mechanism Documentation for any other Security Arrangement;
- (c) hold in Trust any monies the Trustee receives from calling up payment obligations under the Security Arrangement; and
- (d) comply with its obligations set out in Schedule 2.

**5.2 Invest and record:** On receipt of any monies under clause 5.1, the Trustee must invest the amount as set out in clause 5.3.

**5.3 Authorised Investments:** The Trustee 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; and

- (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:** The Trustee 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 the PTE. Payments to the PTE shall be less any withholding tax that the Trustee is required to deduct and pay to Inland Revenue. The Trustee may deduct from the net amount of interest due to the PTE any amount permitted by this Deed.
- 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 must ensure that the signatories to the Trust Account at all times 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 a request from that party, 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.
- 5.11 Provide Quarterly attestation certificate:** If the PTE has in place a Bank Bond or Insurance, the Trustee must forward electronically to NZQA within 10 business days following the end of each Quarter, the Quarterly attestation certificate for that Quarter, as required under clause 1.2 of Appendix A of the SFP Rules, in the format specified on the NZQA website (*at <http://www.nzqa.govt.nz>*).
- 6. APPLICATION OF TRUST FUND BY TRUSTEE WHERE A PTE FAILS TO PAY REFUNDS TO AN ENTITLED STUDENT**
- 6.1 Payment of Refunds to Students as directed by NZQA:** If a PTE does not meet its refund obligations to a Student under the Act and the SFP Rules within the required timeframes, NZQA may direct the Trustee to pay the relevant refund from the Trust Fund so that the PTE's refund obligations to the Student are met. The Trustee shall then make a payment from the Trust Fund of such amount and to such person (*being the Student and/or Loan Provider*) as NZQA notifies to the Trustee.
- 6.2 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 amount, the person entitled to that amount and the account details for such person, that are notified by NZQA to the Trustee for the purposes of clause 6.1 are correct;
  - (b) all Student details notified to the Trustee in accordance with clause 4.3 are correct; and
  - (c) 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 – 7.13:** Clauses 7.2 – 7.13 apply where a Course Closure Event occurs and either the PTE does not meet its refund obligations to a Student under the Act and SFP Rules

within the required timeframes, or the PTE requests the Trustee to make the payments in respect of those refund obligations under this Deed.

**7.2 Refunds and consultation:** The Trustee must, in consultation with NZQA -

- (a) determine the relevant refunds for each Student who has paid Student Fees for a Course affected by a Course Closure Event;
- (b) make distributions from the Trust Fund (*for the Refund Period and for their accommodation and Living Expenses*) to (*or on behalf of*) those Students as set out in clauses 7.3 – 7.11; and
- (c) if the amount in the Trust Fund is insufficient, and for Course Closure Events affecting Students in the Post Refund Period, call up the amount required under the Mechanism Documentation (*or if the amount required exceeds the monetary payment limit of the Mechanism Documentation, call up an amount equal to that monetary payment limit*) and make distributions to (*or on behalf of*) those Students as set out in clauses 7.3 – 7.11.

**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 Alternative Provider is transferred to the trustee of the Alternative Provider in accordance with the Act and SFP 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. Where there are insufficient funds in the Trust Account and available to call up under the Security Arrangements to provide those Students their full refund entitlements, the Trustee will make pro rata payments in respect of those Students.

**7.7 Affected Students not covered under clause 7.6:** If, after the payments made in accordance with the timeframes applying under clause 7.6, there are funds remaining in the Trust Fund and it is subsequently discovered that there are other Students of the PTE who had paid Student Fees for a Course affected by the Course Closure Event and were entitled to a refund but who had not received their appropriate refund, the Trustee shall pay such amounts of those remaining monies to those Students as directed by NZQA. If necessary, the Trustee will call up the amount required under the Mechanism Documentation (*to the extent there remain monies available to be so called up*).

**7.8 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 have been paid the amounts payable to them under this clause 7;
- (b) any Unclaimed Money in respect of any of those Students has been set aside to be dealt with in accordance with the Unclaimed Money Act 1971; and
- (c) the Trustee has been paid its costs and expenses in relation to the Course Closure Event under clause 9 –

but subject to any obligation under the Mechanism Documentation to return monies to the issuer of that Mechanism Documentation, 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*).

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

**7.10. Trustee Called Up Amount:** Where for any reason the Trustee is not paid, will not be paid, or where it reasonably considers that it is unlikely to be paid for carrying out its role under this Deed in the manner provided for in the other provisions of this Deed, either in a Course Closure Event, or under the clause 15.1 indemnity in a Course Closure Event, the Trustee may add to the amount called up under clause 7.2 or 7.7 (*and call it up under the Mechanism Documentation*) a further amount necessary for the Trustee to carry out that role, or be indemnified. This clause 7.10 only applies to the Trustee's role in respect of the Students Fees protected by, or called up under, the Security Arrangement and is subject to clause 7.12.

**7.11. Use of monies for Trustee costs:** In respect of the Trustee Reserved Amount and the Trustee Called Up Amount:

- (a) neither any Student nor the PTE will have any right or interest in or claim to the Trustee Reserved Amount or the Trustee Called Up Amount;
- (b) the Trustee shall have a right to be reimbursed:
  - (i) from the Trustee Reserved Amount for any monies payable to the Trustee in accordance with the provisions of this Deed in relation to the Trustee's role in respect of the Students Fees protected by, or which are refunded from, the Static Trust under this Deed; and
  - (ii) from the Trustee Called Up Amount for any monies payable to the Trustee in accordance with the provisions of this Deed in relation to the Trustee's role in respect of the Students Fees protected by, or called up under, the Security Arrangement;
- (c) if any of the Trustee Reserved Amount or the Trustee Called Up Amount is to be held in the Trust Fund, the Trustee has recourse to the Trustee Reserved Amount or the Trustee Called Up Amount only for the purposes of clause 7.10 or paragraph 10 of Schedule 2, as applicable;
- (d) all provisions of this Deed dealing with the Trust Fund are to be read subject to this clause 7.11 in relation to the Trustee Reserved Amount and the Trustee Called Up Amount; and
- (e) after recovering from the Trustee Reserved Amount or the Trustee Called Up Amount as applicable its fees, costs, disbursements and expenses and any other amount for the purposes of clause 7.10 or paragraph 10 of Schedule 2, the Trustee will first use any remaining available funds to meet any shortfall in the amount available to refund Students under clauses 7.2 - 7.7 and then the Trustee will pay any remainder of the Trustee Called Up Amount still held by the Trustee to the issuer of the Mechanism Documentation and any remaining balance to the PTE.

**7.12 Where clause 7.10 applies:** The Trustee may only call up funds under clause 7.10 -

- (a) where the amount called up is no more than the amount by which the funds available under the relevant Mechanism Documentation have been increased pursuant to paragraph 10 of Schedule 2; or
- (b) if the funds available under the relevant Mechanism Documentation have not been increased pursuant to paragraph 10 of Schedule 2 or such increase is insufficient, to the extent that there are sufficient funds remaining to be called up under the Mechanism Documentation after the Trustee has called up all funds required under clauses 7.2 and 7.7.

**7.13 Application of clauses 7.10 – 7.12:** Clauses 7.10 – 7.12 apply notwithstanding any other provisions of this Deed.

## **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:** Payment 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 PTE was received;
  - (ii) where the Student Fees were paid to the PTE by an agent the bank account that paid the Student Fees to the agent;
- (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:** In addition to the funds deposited in the Trust Account for the purposes of clause 7.10 or paragraph 10 of Schedule 2, 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 Fund 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 covered by the Trust Fund at the time the notice is given, 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 Domestic Students or International 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) subject to clause 11.11, ensure the issuer of the Mechanism Documentation issued in relation to this Deed (*see which Mechanism is selected in Schedule 1*) is notified of the replacement trustee; and

(c) 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 executes a new deed approved by NZQA, with that new deed applying from the date of that trustee's appointment.

**11.11 Mechanism Documentation not transferable:** Where the Mechanism Documentation is not transferable to the replacement trustee, the PTE must ensure replacement Mechanism Documentation is procured. The replacement trustee must forward a copy of the replacement Mechanism Documentation to NZQA within five days of issue.

**11.12 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 the 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 the 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) the issuer of the Mechanism Documentation failing to pay any amount in respect of the Mechanism Documentation following a demand made under it by the Trustee; or
- (d) any failure to comply with this Deed where it is impossible for the Trustee to comply; or
- (e) 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 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 in the Trust Fund 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*)).

**17.3 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.

**17.4 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.

**17.5 Transfer to different arrangement:** If the PTE and the Trustee wish to alter the Mechanism by which the Student Fees of all Students are protected, then:

- (a) the Trustee must give notice to NZQA requesting NZQA approval to the proposed alternative Mechanism and that notice must include a copy of the new trust deed which the PTE and the Trustee will enter into;
- (b) once NZQA approval is received, the PTE and the Trustee may enter into the new trust deed;
- (c) promptly following entry into the new trust deed, the Trustee will transfer the Trust Fund in its entirety to the trust account and authorised investments under the new trust deed, provided that if the new trust deed only requires the holding of an amount that is less than the amount of the Trust Fund and NZQA has approved that lesser amount, unless the PTE asks for more than that lesser amount to be transferred, only that lesser amount will be transferred to the trust account and authorised investments under the new trust deed and the balance (*less any amounts due to the Trustee*) will be paid by the Trustee to the PTE; and
- (d) the Trust will automatically terminate at the time all amounts have been transferred or paid out in accordance with this clause 17.5 and the Trust must then be wound up. To avoid doubt, clause 17.3 applies to any winding up costs and expenses incurred by the Trustee.

## **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 of that Student protected by this Deed.

**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) the calculation of the PTE Maximum Liability Amounts and all amounts paid to the Trustee by the PTE or received by the PTE from the Trustee under this Deed;
- (b) all Student Fees received and expended by or on behalf of a Student;
- (c) the matters in respect of which such receipt and expenditure takes place; and
- (d) 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 4.8(a)(i);
- (c) perform the PTE's obligations to make the Student Records available for inspection and copying in accordance with clause 4.8(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:.....

\_\_\_\_\_  
**Signature of Trustee**

DATE:.....

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Place of work of Witness

\_\_\_\_\_  
Address of Trustee

\_\_\_\_\_  
This Deed is signed confirming no alteration has occurred to any clause or wording from the **STATIC PLUS SECURITY ARRANGEMENT TRUST DEED** available on the NZQA website <http://www.nzqa.govt.nz>

# SCHEDULE 1

## Details of Parties and Relevant Mechanism

### PTE

Name of PTE:

Street and PO Address:

Email address:

Phone number

### Trustee

Name:

Street and PO Address:

Email address:

Phone number:

**Relevant Mechanism being used (circle the applicable Mechanism)**

Bank Bond

Company or Parent Body Guarantee

Student-based Insurance Policies

# Schedule 2

## PTE and Trustee Static Trust and Post-Refund Period Security Arrangement Obligations

### 1. Calculation of PTE Maximum Liability Amount

- 1.1 The definition of PTE Maximum Liability Amount is found in section 1 (*Interpretation*) of this Deed.
- 1.2 A PTE Maximum Liability Amount calculation must be made by the PTE:
- (a) at least weekly during a Quarter;
  - (b) within one business day of an unexpected or unplanned significant level of new Enrolments occurring.
- 1.3 Each calculation must be for all Courses, including any Course which is to commence within three months following the date the calculation is made, and for which this Deed will provide student fee protection. Two PTE Maximum Liability Amount calculations may be required. One calculation is required in respect of the Student Fees to be protected by the Static Trust (**Static Trust Calculation**). A second calculation is required if the Security Arrangement being used has a monetary payment limit. The second calculation is in respect of the Student Fees to be protected by the Security Arrangement (**Security Arrangement Calculation**).
- 1.4 When a calculation is made, it must be in respect of (*as determined by the PTE*):
- (a) the one day within the next three months where the PTE Maximum Liability Amount for all Courses in the aggregate, as calculated in accordance with paragraph 1.5, is the highest in comparison to all other days in that three month period; or
  - (b) the first day of a three month period, provided that the PTE Maximum Liability Amount as calculated in accordance with paragraph 1.5 is on the basis that all Projected Students during that three month period Enrolled and paid their Projected Student Fees on that first day.
- 1.5 The method of calculating the PTE Maximum Liability Amount for each Course is as follows:
- $(a/b)c = x$  (*a divided by b then multiplied by c equals x*)
- where:
- a is the amount of Student Fees and Projected Student Fees for Students to whom this Deed applies (*see clause 3.3 of the Deed*). For the purposes of this element of the calculation:
    - (a) where making the Static Trust Calculation:
      - (i) If the date in respect of which the PTE Maximum Liability Amount is being calculated is within the Refund Period for a Course, then all the fees paid or payable by the Student or Projected Student in respect of that course must be included in the calculation; or
      - (ii) If, at the date in respect of which the PTE Maximum Liability Amount is being calculated, the Refund Period for a Course has elapsed, then only the Accommodation Expenses and the Living Expenses paid or payable by the Student or Projected Student in respect of that Course are to be included in the calculation:
    - (b) where making the Security Arrangement Calculation:
      - (i) if the date in respect of which the PTE Maximum Liability Amount is being calculated is within the Refund Period for a Course, then all the fees paid or payable by the Student or Projected Student in respect of that Course must be excluded from the calculation; or
      - (ii) if the date in respect of which the PTE Maximum Liability Amount is being calculated is after the Refund Period for a Course then the Accommodation Expenses and the Living Expenses paid or payable by the Student or Projected Student in respect of



that Course are to be excluded in the calculation, along with the relevant amount provided for payment to a PTE in Criteria 7-9 of Appendix D of the SFP Rules per Student except for conditions dependent courses, where any deduction must only be for drawdowns permitted by rule 13.7(c) of the SFP Rules.

*b* is the number of days of the Course.

*c* is the number of days remaining in the Course after the date in respect of which the PTE Maximum Liability Amount is being calculated.

*x* is the maximum amount the PTE would be liable to refund all Students or Projected Students of the Course.

**1.6** The PTE is not required to provide to the Trustee a copy of the calculation made by the PTE at a time required under paragraph 1.2 above unless the Trustee requests it.

## **2. Initial certification and payment of PTE Maximum Liability Amounts**

**2.1** On the earlier of the following two dates a PTE must carry out the steps set out in paragraph 2.2 below:

- (a) the date of initial receipt by the PTE of any Student Fees from Students;
- (b) the date that the Trustee first receives any monies from the PTE under this Deed.

**2.2** The steps the PTE must take are:

- (a) request and obtain the written approval of NZQA to the PTE Maximum Liability Amount in respect of both the Static Trust Calculation and the Security Arrangement Calculation, or to an acceptable alternative bridging arrangement prior to the date that a Student, to whom this Trust Deed will apply, pays any Student Fees for a Course provided by the PTE;
- (b) in the request describe in detail the basis upon which the PTE Maximum Liability Amounts have been calculated;
- (c) agree with NZQA on a date for the first calculation of the PTE Maximum Liability Amounts;
- (d) certify in writing to its Trustee the maximum amount which NZQA has approved as the PTE Maximum Liability Amount in respect of both the Static Trust Calculation and the Security Arrangement Calculation, and provide the Trustee with evidence of NZQA's approval;
- (e) pay to the Trustee an amount equal to or greater than the PTE Maximum Liability Amount approved by NZQA in respect of the Static Trust Calculation; and
- (f) procure the issue of a Security Arrangement in favour of the Trustee, and -
  - (i) the Mechanism Documentation for the Security Arrangement must be delivered to the Trustee immediately upon issue and a copy sent to the NZQA; and
  - (ii) where the Security Arrangement is less than the PTE Maximum Liability Amount approved by NZQA under (a) of this paragraph 2.2 in respect of the Security Arrangement Calculation, the PTE must pay to the Trustee an amount equal to or greater than the balance of the PTE Maximum Liability Amount.

**2.3** Where the PTE has paid the Trustee an amount for the purposes of either paragraph 2.2(e) or paragraph 2.2(f)(ii), the Trustee must notify NZQA of the amount paid within one business day of the payment by the PTE.

**2.4** NZQA will, within 5 business days of receipt of a PTE request under paragraph 2.2(a), make a decision on the PTE's request.

## **3. Subsequent quarterly certification of PTE Maximum Liability Amounts**

**3.1** Within 5 business days after the end of each and every successive Quarter following the Quarter in which NZQA has approved the PTE Maximum Liability Amounts under paragraph 2.2(a):

- (a) if the Security Arrangement is for a Bank Bond or Insurance, the PTE will provide to the Trustee the Quarterly Attestation Certificate for that Quarter in the form specified on the NZQA website ([at http://www.nzqa.govt.nz](http://www.nzqa.govt.nz));

- (b) the PTE must ensure the PTE Maximum Liability Amounts set out in the Quarterly Attestation Certificate are calculated in accordance with paragraph 1 above as at the end of that Quarter just ended; and
- (c) the PTE shall also forward to the Trustee the Student Details Report, as specified in clause 4.5.

#### **4. Shortfall Amount**

- 4.1** A Shortfall Amount is the amount by which the relevant PTE Maximum Liability Amount exceeds the Trust Fund (*exclusive of interest and the Pooled Funds*) in the case of the Static Trust Calculation, or exceeds the aggregate amount of the Security Arrangement and the Pooled Funds (*exclusive of interest*) in the case of the Security Arrangement Calculation.
- 4.2** If, at any time, the PTE becomes aware from any calculation made under paragraph 1 or from where clause 3.5 has been applied and not all Courses are closed, that a Shortfall Amount exists:
  - (a) the PTE will immediately notify the Trustee and will, within one business day of determining a Shortfall Amount exists, make a payment to the Trustee which is equal to or exceeds the Shortfall Amount;
  - (b) any payment by the PTE under paragraph (a) in respect of a shortfall in the Security Arrangement Calculation is to be held by the Trustee as part of the Pooled Funds;
  - (c) where the Shortfall Amount is in relation to the Security Arrangement Calculation, the PTE may procure the issue of replacement Mechanism Documentation in respect of the Security Arrangement for an amount which, when aggregated with the Pooled Funds (*exclusive of interest and the amount of any payment to which paragraph (b) applies*), is equal to or greater than the PTE Maximum Liability Amount in relation to the Security Arrangement Calculation; and
  - (d) where replacement Mechanism Documentation is received, unless paragraphs 6.1(a) or (c) apply, the Trustee may return to the PTE any Excess Amount held in the Pooled Funds, but not more than the amount of the payment to which paragraph (b) applies.
- 4.3** The Trustee shall, within one business day of notification of a Shortfall Amount, advise NZQA in writing of the Shortfall Amount, and confirm to NZQA when the Shortfall Amount has been covered.

#### **5. Excess Amount**

- 5.1** An Excess Amount is the amount by which the Trust Fund (*exclusive of interest and the Pooled Funds*) in the case of the Static Trust Calculation, and the aggregate amount of the Security Arrangement and the Pooled Funds (*exclusive of interest*) in the case of the Security Arrangement calculation, exceeds the relevant PTE Maximum Liability Amount.
- 5.2** The PTE may request payment of an amount up to the Excess Amount, and the Trustee may pay to the PTE that amount or a lesser amount, but only after the steps specified in paragraph 5.3 have been taken. The payment by the Trustee may only be made from the Pooled Funds held by the Trustee in the case of the Security Arrangement Calculation.
- 5.3** The steps to be taken are:
  - (a) the Trustee provides details of the PTE payment request to NZQA;
  - (b) within ten business days following notification of those details NZQA will either indicate to the Trustee that it has no objection to the payment, or give written notice under paragraph 6.1(b), but if NZQA does neither within ten business days the Trustee may assume NZQA has no objection;
  - (c) the Trustee satisfies itself that none of the situations in paragraph 6.1 apply.

#### **6. Situations where the Trustee must not pay an amount up to the Excess Amount**

- 6.1** The situations where the Trustee must not pay an amount up to the Excess Amount are:
  - (a) the Trustee has received written notice from NZQA that a Course Closure Event has occurred;
  - (b) the Trustee has received written notice from NZQA either that monies should not be refunded to the PTE or that NZQA intends to audit the PTE's calculation of the PTE Maximum Liability Amount;

- (c) the payment would result in a Shortfall Amount as described in paragraphs 4.1 and 4.2:
- (d) a total of four or more Excess Amount payments have been paid to the PTE under paragraph 5.2 during the preceding 12 months.

## **7. Refund of Excess Amount deferred**

- 7.1** If the Trustee receives written notice from NZQA under paragraph 6.1(b), payment of any Excess Amount shall be deferred until the Trustee has received written notice from NZQA confirming the PTE Maximum Liability Amount and confirming that the Excess Amount may be paid to the PTE.

## **8. Discrepancy in PTE Maximum Liability Amounts**

- 8.1** For the purposes of the calculation of any Shortfall Amount or Excess Amount under paragraphs 4 or 5 above, if there is any discrepancy between the PTE Maximum Liability Amounts notified to the Trustee by the PTE and the PTE Maximum Liability Amounts notified to the Trustee by NZQA, the Trustee must treat the amounts notified by NZQA as the correct PTE Maximum Liability Amounts in place of the PTE Maximum Liability Amounts notified by the PTE and must notify the PTE of the amounts. The payment obligations in paragraphs 4 and 5 shall then apply to the PTE Maximum Liability Amounts notified by NZQA.

## **9. Deduction of PTE amounts due in relation to Shortfall Amounts**

- 9.1** Where the Trustee is aware that:

- (a) the PTE Maximum Liability Amounts exceed the amount of the Trust Fund (*exclusive of interest and the Pooled Funds*) in the case of the Static Trust Calculation, or the aggregate amount of the Security Arrangement and the Pooled Funds (*exclusive of interest*) in the case of the Security Arrangement Calculation;
- (b) the PTE has not complied with paragraph 4 to rectify the situation; and
- (c) there is any amount due to the PTE under this Deed -

then the Trustee may deduct:

- (d) in the case of the Static Trust Calculation, an amount that does not exceed such difference between the PTE Maximum Liability Amount and the amount of the Trust Fund (*exclusive of interest*) from the amount due to the PTE under this Deed (*after any other deductions permitted by this Deed*) and pay it into the Trust Account to form part of the Trust Fund available for the protection of Student Fees so as to meet or partly meet the PTE's obligation under paragraph 4.
- (e) in the case of the Security Arrangement Calculation, an amount that does not exceed such difference between the PTE Maximum Liability Amount and the aggregate amount of the Security Arrangement and the Pooled Funds (*exclusive of interest*) from the amount due to the PTE under this Deed (*after any other deductions permitted by this Deed*) and transfer it into the Trust Account to form part of the Trust Fund available for the protection of Student Fees so as to meet or partly meet the PTE's obligation under paragraph 4.

- 9.2** Any such deduction paid into the Trust Account shall be taken into account in recalculating shortfalls under paragraph 4.

## **10. Increase to PTE Maximum Liability Amount for Trustee costs**

- 10.1** If requested by the Trustee, the PTE Maximum Liability Amount determined under this Schedule 2 for either or both the Static Trust Calculation and the Security Arrangement Calculation shall be increased by such amounts as the Trustee reasonably considers could be required under clauses 9.1 or 9.3(b) and required for indemnity under clause 15.1 if there was a Course Closure Event.