

The PTE described in Schedule 1 to this Deed

**The Trustee described in Schedule 1 to this Deed
in favour of
The Students of that PTE from time to time
(as beneficiaries of the Static Trust)**

**STUDENT FEE PROTECTION
STATIC TRUST DEED**

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DEED dated

PARTIES

1. **The Private Training Establishment (“the PTE”) described in Schedule 1 to this Deed**
2. **The Trustee described in Schedule 1 to this Deed**

BACKGROUND

- A. This Deed is made with the intent that:
- (i) the PTE has in place satisfactory student fee protection arrangements that meet the requirements of the Act and satisfy the criteria of the Qualifications Authority Policy; and
 - (ii) the benefit and obligations under this Deed shall take effect to the extent provided in this Deed to the PTE and every Student (as defined below).
- B. The PTE has elected to meet the requirements of the Act and satisfy the criteria of the Qualifications Authority Policy by means of a trust created by this Deed.

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 any payment that a Student is obliged to pay to a PTE on account of hostel accommodation, homestay or any other accommodation for that Student which may be provided by the PTE or a third party.

“**Act**” means the Education Act 1989.

“**Alternative Provider**” means a private training establishment or an Institution approved by the Qualifications Authority.

“**Associated Person**” shall have the meaning as defined in the Income Tax Act 1994.

“**Audit Opinion**” means any opinion given from time to time by the Auditor under clause 18.3 of this Deed in the form of, or substantially in the form of, Schedule 5 and 5A.

“**Auditor**” means a person appointed from time to time by the PTE, in consultation with the Trustee who is:

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

“**Auditor Engagement Letter**” means a letter in, or substantially in, the form of Schedule 6.

“Authorised Investments” means the investments made pursuant to clause 5.2 of this Deed.

“Bank Bond Trust” means a trust meeting the requirements of a “bank bond” as detailed in the Qualifications Authority Policy.

“Bank Bond Trust Students” means Students of the PTE who are beneficiaries under a Bank Bond Trust.

“Bank Bond Trustee” means the trustee of a Bank Bond Trust.

“Chartered Accountant” means a member of ICANZ holding a Certificate of Public Practice issued by ICANZ.

“Commencement Date” means the date notified by the PTE to the relevant Student that instruction and/or structured supervision associated with a Course commences.

“Course” means, in relation to the PTE, as the context may require:

- (a) a course of study or training leading to an award; and/or
- (b) a course of study or training leading to an award for which a Student is Enrolled.

“Course Closure Event” means the receipt of written notice by the Trustee from the Qualifications Authority that any of the following events has occurred:

- (a) a receiver has been appointed in respect of any part of the assets of the PTE or the PTE has been placed in statutory management pursuant to the Corporations (Investigation and Management) Act 1989 and in the Qualifications Authority’s opinion, the PTE is no longer capable of delivering the Course in accordance with the Qualifications Authority Policy;
- (b) a liquidator has been appointed in respect of the PTE or an order has been made or an effective resolution has been passed for the dissolution or liquidation of the PTE (or if the PTE is not a company the PTE has been dissolved by any procedure) or the PTE has ceased to be able to satisfy the “solvency test” as defined in section 4 of the Companies Act 1993 (or would cease to satisfy that test, if the PTE were a company);
- (c) the Qualifications Authority takes any one or more of the following actions in respect of the PTE, pursuant to the Act:
 - (i) cancellation of the registration of the PTE; or
 - (ii) withdrawal of the accreditation of the PTE to deliver a Course in respect of which Student Fees are held by the Trustee at that time; or
 - (iii) withdrawal of Course approval; or
- (d) the PTE has failed to refund any Student any amount that the PTE is obligated to pay a Student in accordance with the PTE’s refund policies for voluntary course closure or student withdrawal from a course and the Qualifications Authority has taken any of the actions specified in paragraph (c) above.

“Deed” means this deed of trust (including the background and schedules hereto) as originally executed and as it may from time to time be amended in accordance with its provisions.

“Designated Successor Trustee” means a Qualifying Person nominated in writing by the PTE and in the absence of such nomination the Public Trust as established by the Public Trust Act 2001 or such other person as is identified pursuant to clause 9.3.

“Enrolled” means that the Student has applied for, and been accepted into, the relevant Course offered by the PTE in New Zealand.

“Entitled Student” means a Student who is Enrolled at the PTE at the time a Course Closure Event occurs and whose Course is subject to a Course Closure Event.

“Entitled Student Amount” means the amount which the Trustee determines is payable to or for the benefit of, an Entitled Student which amount shall be calculated in accordance with the guidelines set by the Qualifications Authority from time to time in regard to “Static Trusts”, which guidelines are available on the Qualifications Authority Website under (<http://www.nzqa.govt.nz>) and which amount shall be adjusted in the event that the aggregate Entitled Student Amount exceeds the amount in the No.1 Trust Account (excluding any interest) by reducing each Student’s Entitled Student Amount pro rata so that the aggregate of the reduced Entitled Student Amount is equal to the amount of the No.1 Trust Account (excluding any interest).

“ICANZ” means the Institute of Chartered Accountants of New Zealand.

“Independent” in relation to a Trustee or Auditor, means that either the Trustee or the Auditor:

- (a) if the Trustee or Auditor is a Chartered Accountant, is compliant with the ICANZ Code of Ethics; or
- (b) if the Trustee is a Solicitor, is compliant with the Rules of Professional Conduct for Barristers and Solicitors as prescribed by the Law Society in relation to conflicts of interest; and
- (c) must not be a person that is:
 - (i) the PTE itself;
 - (ii) an Associated Person of the PTE or Trustee as the case may be;
 - (iii) a person who is a director or officer of, or shareholder in, the PTE or Trustee as the case may be or is an immediate family member of a director or officer of, or shareholder in, the PTE or Trustee as the case may be;
 - (iv) a body corporate:
 - (aa) in which the PTE or Trustee as the case may be holds shares; or
 - (bb) that either directly or indirectly controls the PTE or Trustee as the case may be or holds shares in the PTE or Trustee as the case may be; or
 - (cc) that is a subsidiary of the PTE or Trustee as the case may be;
 - (v) providing any accounting services to the PTE or Trustee as the case may be.

“Insolvent” in relation to the PTE means that any of the following has occurred:

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

“**Institution**” shall have the same meaning as defined in section 159 of the Act.

“**International Student**” shall have the same meaning as defined in section 238D of the Act.

“**Law Society**” means the New Zealand Law Society constituted by the Law Practitioners Act 1982 or any legislation in substitution for that Act.

“**Living Expenses**” means for the purposes of student fee protection, any payment made, or to be made, to a Student directly from the PTE for the purposes of general living expenses.

“**Loan Provider**” means any New Zealand Government entity that is from time to time providing loans to Students for Student Fees.

“**Long-Term Debt**” means, of any person, the long-term, unsecured, unsubordinated indebtedness of such person.

“**Moody’s**” means Moody’s Investors Service, and any successor entity.

“**No.1 Trust Account**” means the trust account styled “No.1 Trust Account” and maintained by the Trustee pursuant to clause 5.

“**No.2 Trust Account**” means, if the Trustee and PTE have agreed to a Trustee Fee Reserve Amount, the trust account styled “No.2 Trust Account” and maintained by the Trustee pursuant to clause 5.

“**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 students who the PTE reasonably anticipates will Enrol during the period of three months immediately following the date that any Student Details Report is prepared by the PTE under this Deed.

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

“**PTE Maximum Liability Amount**” means from time to time, the amount calculated in accordance with clause 2.8 or such other manner notified either in writing by the Qualifications Authority to a PTE or by way of the Qualifications Authority Policy.

“**Qualifications Authority**” means the New Zealand Qualifications Authority, a body corporate, established by the Act.

“Qualifications Authority Policy” means the Qualifications Authority student fee protection policy adopted from time to time by the Qualifications Authority, (as permitted by section 253(1)(ca) of the Act) the current version of which will be shown on the Qualifications Authority website (under <http://www.nzqa.govt.nz>).

“Qualifying Person” means an Independent person who is either a Trustee Company as defined by the Trustee Companies Act 1967 or a Solicitor or a Chartered Accountant.

“Quarter” means a three month period ending on the last day of February, May, August and November in each calendar year.

“Quarterly Attestation Certificate” means a certification duly executed by the Trustee in the form set out in Schedule 2 and containing the information required by that form.

“Receiver” has the same meaning as contained in the Receiverships Act 1993.

“Registered Bank” means a registered bank as defined in the Reserve Bank of New Zealand Act 1989 and whose Long-Term Debt is rated by either S&P or Moody’s and is not rated less than A by either S&P or Moody’s.

“S&P” means Standard & Poor’s Corporation and any successor entity.

“Solicitor” means a practitioner holding a current practising certificate as a barrister and solicitor pursuant to the Law Practitioners’ Act 1982 or any legislation in substitution for that Act.

“Standard Trust” means a trust meeting the requirements of a “standard trust” as detailed in the Qualifications Authority Policy.

“Static Trust” means a trust meeting the requirements of a “static trust” as detailed in the Qualifications Authority Policy.

“Student” means:

- (a) a person Enrolled at the PTE from time to time, for whose benefit this Deed is executed and for whom the Trust Fund is held in trust under this Deed; and
- (b) a Bank Bond Trust Student referred to in clause 20 of this Deed,

but excluding any Student who has in place other Student Fee protection arrangements that meet the requirements of the Act and satisfy the criteria of the Qualifications Authority Policy.

“Student Details Report” means a full and complete report prepared by the PTE in English incorporating the information set out in clause 4.9 for every Student and any other additional information relating to a Student which the Trustee may from time to time specify pursuant to clause 4.10.

“Student Fees” means gross Tuition Fees, Accommodation Expenses, Travel and Health Insurance, and Living Expenses paid, or to be paid, by, or on behalf of, a Student to the PTE.

“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, academic records, (including the information required by clause 4.9) records, documents, data tapes and other material in whatever format and medium which is within the possession and/or control of the PTE which relates to Students, Student Fees, the calculation of the PTE Maximum Liability Amount, and includes the Student Details Report.

“Subsidiary” means, in relation to a person:

- (a) a subsidiary, as defined in section 5 of the Companies Act 1993; or
- (b) an “in-substance subsidiary” in accordance with any financial reporting standard approved by the Accounting Standards Review Board;

of that person.

“Successor Trustee” means any trustee appointed pursuant to clause 9.3.

“Travel and Health Insurance” means any applicable travel and health insurance premium that the Student is required to pay the PTE.

“Trust” means the trust constituted by this Deed.

“Trust Account” means the No.1 Trust Account and the No.2 Trust Account maintained and operated by the Trustee in which the Trust Fund will be held and maintained with a Registered Bank.

“Trustee” means the person, being described in Schedule 1, or any other person who is a Qualifying Person for the time being, appointed as trustee under the provisions of this Deed in such capacity.

“Trustee Fee Reserve Amount” means an amount, if any, agreed between the Trustee and PTE pursuant to clause 2.9.

“Trust Fund” means the aggregate amount that is at any time held by the Trustee on trust for the Students and the PTE and subject to this Deed which includes the Trustee Fee Reserve Amount, if any.

“Tuition Fees” means the gross payment (before any commission may be deducted) relating to all costs of a Course paid by a Student and any other monies not being Accommodation Expenses, Travel and Health Insurance or Living Expenses.

1.2 In this Deed:

- (a) as the context permits, the singular includes the plural and vice versa;
- (b) a reference to a **“party”** to this Deed includes the party’s successors and assigns;
- (c) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (d) a reference to a **“business day”** means a week day on which Registered Banks are open for business in the nearest city to where either the PTE or Trustee are resident;
- (e) a reference to a person being **“controlled”** by another means that other person (whether directly or indirectly and whether by ownership of share capital, the

possession of voting power, contract or otherwise) has the power to appoint and/or remove the majority of the members of the governing body of the first person or otherwise controls or has the power to control the affairs and policies of the first person and “control” shall be construed accordingly; and

(f) a reference to a month means a calendar month.

2. GENERAL

- 2.1 **Number of Trustees:** The number of Trustees under this Deed shall at all times be no less than one natural person or one body corporate and no more than two natural persons or one body corporate.
- 2.2 **Qualifying Person:** The PTE must ensure that the Trustee and any person appointed as a substitute or Successor Trustee under this Deed is a Qualifying Person.
- 2.3 **Ability to Comply with Qualifications Authority Policy:** The PTE must, prior to the initial receipt of any Student Fees from a Student, demonstrate to the satisfaction of the Qualifications Authority that it has policies, procedures, records and systems in place which would enable the PTE to comply with its obligations under this Deed, and in particular for the PTE to accurately calculate the PTE Maximum Liability Amount at any time.
- 2.4 **PTE responsible for complying with Qualifications Authority Policy:** The PTE is responsible for complying with the Qualifications Authority Policy and nothing in this Deed makes the Qualifications Authority or the Trustee responsible in any way for the obligations of the PTE under this Deed, or otherwise in respect of any Student Fees.
- 2.5 **Qualifications Authority not responsible:** Nothing in this Deed makes the Qualifications Authority responsible in any way for the obligations of the Trustee under this Deed.
- 2.6 **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.
- 2.7 **Withdrawal of Approval:** If the PTE or Trustee fails to comply with its obligations under this Deed or the Qualifications Authority Policy and such breach is not remedied within the period specified in a written notice from the Qualifications Authority, then the Qualifications Authority may by way of written notice take any of the following actions:
- (a) require the PTE to implement other student fee protection arrangements that comply in all respects with the Qualifications Authority Policy, within such reasonable time period as is stipulated in the notice; and/or
 - (b) require the Trustee to transfer, within such reasonable time period as is stipulated in the notice, any Authorised Investments to the trustee of any new trust approved in writing by the Qualifications Authority and which trust is established to meet the requirements of the Act and satisfy the criteria of the Qualifications Authority Policy; and/or
 - (c) take any further action, or require the PTE or Trustee to take any action or refrain from taking any action which the Qualifications Authority considers necessary or desirable to ensure that the Student Fees are protected in a manner which achieves the purpose of the Qualifications Authority Policy.

2.8 **Calculation of PTE Maximum Liability Amount:** The PTE Maximum Liability Amount shall be the aggregate of the following amounts:

- (a) the aggregate of the amount calculated in respect of each Course as being the maximum amount that would be repayable by the PTE to the Students or Projected Students if a Course Closure Event occurred on the date the calculation is made. For the purposes of calculating the PTE Maximum Liability Amount a Course shall include any Course which commences within three months following the date the PTE calculates the PTE Maximum Liability Amount. The amount will be determined as follows:

$$\frac{a}{b} \times c = x$$

Where:

a is the amount of Student Fees and Projected Student Fees for the relevant Course. For the purposes of calculating Student Fees under a:

If the relevant Course is between day 1 and day 8 at the date the PTE Maximum Liability Amount is calculated, then the PTE may deduct the lesser of \$500 or 10% of the Tuition Fees by the PTE for that Course per Student; or

If the relevant Course is at day 9 or after at the date the PTE Maximum Liability Amount is calculated, then the PTE may deduct the lesser of \$500 or 10% of the Tuition Fees by the PTE for that Course per Student plus 15% of the balance of Tuition Fees for that Course per Student.

b is the number of days of the Course

c is the number of days remaining in the Course;

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

plus

- (b) any Trustee Fee Reserve Amount.

2.9 **Trustee Fee Reserve Amount:** The PTE and Trustee may agree on an amount which will be deposited to the No.2 Trust Account on account of any costs, fees and expenses which may be incurred by the Trustee in connection with the exercise or performance by the Trustee of its obligations, powers, rights or discretions pursuant to this Deed following a Course Closure Event. The Trustee shall promptly provide the Qualifications Authority with a copy of any agreement with the PTE relating to the Trustee Fee Reserve Amount.

3. **DECLARATION OF TRUST**

3.1 **Student Fees:** The Trustee declares that any monies received by the Trustee pursuant to this Deed will be held on trust:

- (a) for all Students; and
(b) for the PTE,

with the rights, powers, discretions and authorities, and upon and subject to the terms and conditions contained in the Deed.

3.2 **Respective Rights:** The respective rights and interests of a Student and the PTE to the Trust Fund shall be determined by the provisions of this Deed.

3.3 **Nature of Interest:** The Students and PTE:

- (a) each have an undivided interest in the Trust Fund in accordance with the rights, powers, and privileges recorded in this Deed;
- (b) do not have any interest in any particular part of the Trust Fund; and
- (c) are not entitled to require the Trustee to transfer to a Student or the PTE any part of the Trust Fund except in accordance with this Deed.

4. **OBLIGATIONS OF PTE AND TRUSTEE**

4.1 **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 or Auditor to correctly calculate the PTE Maximum Liability Amount, the Entitled Student Amount and which will enable the PTE to perform their obligations under this Deed.

4.2 **Provisions of Information:** The PTE agrees that, at the PTE's own cost and expense, the Qualifications Authority shall be entitled to require the PTE:

- (a) to demonstrate to the satisfaction of the Qualifications Authority that the PTE is complying with its obligations under clause 4.1;
- (b) to provide to the Qualifications Authority evidence of the Student Records, policies, procedures, systems and records maintained by the PTE in regard to clause 4.1 and details of the basis of the calculation of the PTE Maximum Liability Amount;
- (c) to provide such information, explanation, documents, certificates, and Student Records as the Qualifications Authority may reasonably consider necessary; and
- (d) to make available for inspection by the Qualifications Authority or its agent at the PTE's office and upon reasonable notice and during usual business hours, all Student Records.

4.3 **Initial Certification and Payment of PTE Maximum Liability Amount:** Prior to either the initial receipt by the PTE of any Student Fees from Students or the date that the Trustee first receives any monies from the PTE under this Deed, whichever occurs earlier;

- (a) the PTE must obtain the written approval of the Qualifications Authority to the PTE Maximum Liability Amount and any request for approval shall describe in detail the basis upon which the PTE Maximum Liability Amount has been calculated. The Qualifications Authority will have a minimum period of 20 business days to consider any approval request under this clause;
- (b) the PTE must certify in writing to the Trustee the maximum amount which the Qualifications Authority has approved as being the PTE Maximum Liability

Amount and will provide the Trustee with evidence of the Qualifications Authority's approval; and

- (c) the PTE must pay to the Trustee an amount equal to or greater than the PTE Maximum Liability Amount approved by the Qualifications Authority under paragraph (a) above.

4.4 **Subsequent Certification of PTE Maximum Liability Amount:** Within 5 business days after the end of each and every successive Quarter following the quarter in which the Qualifications Authority has approved the PTE Maximum Liability Amount under clause 4.3, the PTE will certify to the Trustee in writing the PTE Maximum Liability Amount and such certification shall be in the form of Schedule 4.

4.5 **Adjustment of PTE Maximum Liability Amount - Shortfall:**

- (a) If the PTE Maximum Liability Amount certified by the PTE under clause 4.4 exceeds the amount of the Trust Fund (exclusive of interest) ("Shortfall Amount") the Trustee shall, within one business day of receipt of the PTE Maximum Liability Amount certification under clause 4.4, advise the Qualifications Authority and the PTE in writing, of details of the Shortfall Amount and the basis of such calculation and the PTE will, within one business day after receipt of this notification, pay to the Trustee the Shortfall Amount.
- (b) If the Trustee informs the PTE in writing, or the PTE becomes aware that the PTE Maximum Liability Amount at any time during a quarter is greater than the Trust Fund (exclusive of interest), then the PTE shall within one business day pay to the Trustee an amount to ensure that the Trust Fund is equal to or exceeds the PTE Maximum Liability. The Trustee must inform the Qualifications Authority of any such payment under this clause 4.5(b) and provide details of the calculation of the shortfall within five business days of payment to the Trustee of such shortfall.

4.6 **Adjustment of PTE Maximum Liability Amount – Excess:** Subject to clause 4.7, if the amount of the PTE Maximum Liability Amount certified by the PTE at the end of a quarter is less than the Trust Fund (exclusive of interest) the PTE may request in writing to the Trustee that the Trustee pay the PTE an amount equal to or less than the amount by which the Trust Fund exceeds the PTE Maximum Liability ("Excess Amount"). Upon receiving written notice from the PTE the Trustee shall, notify the Qualifications Authority of the request, and shall no earlier than ten business days following notification to the Qualification Authority of the request pay the PTE the Excess Amount. The Excess Amount shall only be paid from the No.1 Trust Account (but only to the extent that monies are available in the No. 1 Trust Account).

4.7 **Conditions of Trustee's Obligations:** The Trustee's obligation to pay the Excess Amount to the PTE under clause 4.6 shall be subject to the following:

- (a) no Course Closure Event having occurred;
- (b) the Trustee having not received written notice from the Qualifications Authority that no monies should be refunded to the PTE or that the Qualifications Authority intends to audit the PTE's calculation of the PTE Maximum Liability Amount; and
- (c) a maximum of only four payments on account of an Excess Amount can be made to the PTE under clause 4.6 during any rolling 12 month period.

4.8 **Refund Deferred:** If the Trustee receives written notice from the Qualifications Authority under clause 4.7(b) then any proposed payment by the Trustee to the PTE

shall be deferred until the Trustee has received written notice from either the Qualifications Authority advising the PTE Maximum Liability Amount or advising that monies may be paid to the PTE. If there is any discrepancy between the PTE Maximum Liability Amount notified to the Trustee by the PTE and the PTE Maximum Liability Amount notified by the Qualifications Authority, the Trustee shall treat the amount notified by the Qualifications Authority as the correct PTE Maximum Liability Amount and shall notify the PTE of this amount within 1 day of receipt of notification by the Qualifications Authority.

4.9 **Student Details:** The PTE must maintain in English appropriate records of all Student Fees paid or payable to the PTE and must advise the Trustee in any form of electronic format or storage acceptable to the Trustee of:

- (a) the 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 and Travel and Health Insurance;
- (e) the 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 the Entitled Student Amount;
- (h) details for each Student of any third party, advised by that Student, entitled to receive any refund on account of Student Fees; and
- (i) details of any Loan Provider.

4.10 **Additional Student Details:** The Trustee may, by giving 10 business days written notice to PTE (with a copy to be sent to Qualifications Authority), specify additional information relating to any Student which must be included in future Student Detail Reports.

4.11 **Timing of Information to be supplied by PTE:** The PTE must supply the Trustee with a Student Details Report:

- (a) on or before the first date that the Trustee receives any monies from the PTE on account of the PTE Maximum Liability Amount;
- (b) within five business days after the end of each and every Quarter during this Deed; and
- (c) within five business days upon the occurrence of a Course Closure Event.

4.12 **Provision of Student Details Report:** The PTE must supply the Trustee, or the Auditor or the Qualifications Authority with a Student Details Report within five business days of notice from the Trustee, or the Auditor, or the Qualifications Authority.

- 4.13 **Comply with Qualifications Authority Policy:** The PTE must not do, or omit to do, anything that is inconsistent with the Deed, or the Qualifications Authority Policy, or the Act.
- 4.14 **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, including providing to the Trustee information about the PTE and Student Fees, as reasonably requested by the Trustee from time to time.
- 4.15 **Student Records:** If the PTE becomes Insolvent or a Course Closure Event occurs, the PTE irrevocably agrees:
- (a) that the PTE will forthwith deliver to the Trustee and the Qualifications Authority an up to date Student Details Report;
 - (b) that all Student Records, including an up to date Student Details Report, held by the PTE must be made available to the Trustee and the Qualifications Authority or their respective agents at the PTE's cost and expense for inspection and copying, if necessary; and
 - (c) that by entering into the Deed, the PTE acknowledges that Student Records cannot be on-sold, gifted to a third party, or disposed of in any way without prior approval by the Qualifications Authority.
- 4.16 **PTE Authorisation:** The PTE agrees that it shall pay to, or for the benefit of, each Student the Entitled Student Amount and irrevocably authorises the Trustee to apply the Trust Fund (and any interest thereon) in accordance with the provisions and terms of this Deed.
- 4.17 **Comply with Refund Policy:** The PTE's refund policies for voluntary course closure or student withdrawal policies must comply with any Qualifications Authority refund policies for voluntary course closure or student withdrawal.
- 4.18 **Payments to Trustee:** Each payment due to be made under this Deed by the PTE to the Trustee shall be made on the due date by payment in cleared funds immediately available for disbursement.
- 4.19 **Appointment of Auditor:** The PTE will:
- (a) as soon as practicable after execution of this Deed, appoint an Auditor on the terms of the Auditor Engagement Letter; and
 - (b) ensure that any replacement or substitute Auditor is also appointed on the terms of the Auditor Engagement Letter.

5. OBLIGATIONS OF TRUSTEE FOLLOWING RECEIPT OF MONIES

- 5.1 **Invest and Record:** On receipt of any amount from the PTE on account of the PTE Maximum Liability Amount, the Trustee must invest such monies as set out in clause 5.2.
- 5.2 **Authorised Investments:** The Trustee must ensure that at all times the Trust Fund is invested:
- (a) so all monies received by the Trustee from the PTE on account of the PTE Maximum Liability Amount (less the Trustee Fee Reserve Amount) are deposited and maintained, in New Zealand dollars, in the No.1 Trust Account

and the Trustee Fee Reserve Amount, if any, is deposited and at all times maintained, in New Zealand dollars in the No.2 Trust Account;

- (b) 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;
- (c) on deposit with a Registered Bank, and will use its best endeavours to ensure that the deposit is made to an interest bearing account. This clause expresses a 'contrary intention' for the purposes of section 13 of the Trustee Act 1956;
- (d) if the Trustee is a Solicitor, on deposit within a Solicitor's trust account in New Zealand;
- (e) if the Trustee is a Chartered Accountant, in a manner that complies with all relevant rules of law, and ethical rules, including those ethical rules of ICANZ in respect to trust dealings other than any ICANZ ethical obligations regarding interest on trust monies which might have effect contrary to the requirements of this Deed; and
- (f) if the Trustee is a Solicitor, in a manner that complies with all rules of the law and ethical rules relating to the investment of the Trust Fund and to the conduct of the Trustee, including the Solicitors Trust Account Regulations 1998, the Law Society's Solicitors Trust Account Rules 1996 and the Law Society's Rules of Professional Conduct for Barristers and Solicitors.

5.3 **No Other Investments:** The Trustee shall have no power to invest the Trust Fund in any manner other than as prescribed by clause 5.2.

5.4 **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.

5.5 **Tax Liability:** For the purposes of the Income Tax Act 1994, interest earned on the Trust Fund and distributed to the PTE will be considered to be income of the PTE.

5.6 **Records of Trust Account:** The Trustee must keep full records of all deposits to and payments from the Trust Account.

5.7 **Signatory to the Trust Account:** The Trustee will ensure that at all times the signatories to the Trust Account are Independent of the PTE.

5.8 **Provision of Information:** The Qualifications Authority and PTE shall be entitled to require from the Trustee such information, explanation, documents, certificates and accounts as the Qualifications Authority 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.

5.9 **Make Records Available:** If the Trustee is requested to do so, the Trustee must make available, as soon as practicable, but no later than ten business days after receipt of request, any information it holds relating to any Student to:

- (a) the PTE;
- (b) the Auditor;
- (c) the Qualifications Authority, or any person authorised by the Qualifications Authority; and

(d) each Student, but only in respect of Student Fees relating to that Student.

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

6.1 **Calculation of Entitled Student Amount:** Upon the occurrence of a Course Closure Event, the Trustee must calculate the Entitled Student Amounts for the Entitled Students.

6.2 **Consultation with Qualifications Authority:** If a Course Closure Event occurs the Trustee must in consultation with the Qualifications Authority distribute the Entitled Student Amounts to Entitled Students as set out in clauses 6.3 – 6.10.

6.3 **Student Fees Transferred to an Alternative Provider:** If a Course Closure Event occurs and the Trustee has been notified in writing by an Entitled Student or the Qualifications Authority that the Entitled Student is to transfer to an Alternative Provider, the Trustee will:

(a) where the Alternative Provider uses a Standard Trust or a Static Trust transfer an amount agreed by the Entitled Student, up to the Entitled Student Amount, to the trust account maintained for that Standard Trust or Static Trust; or

(b) where the Alternative Provider uses a student fee protection arrangement other than a Standard Trust or Static Trust, transfer an amount agreed by the Entitled Student, up to the Entitled Student Amount, to the Alternative Provider to be applied by the Alternative Provider in payment of any student fees payable by that Entitled Student to the Alternative Provider; or

(c) where the Alternative Provider uses multiple student fee protection arrangements, transfer an amount agreed by the Entitled Student, up to the Entitled Student Amount, to the Alternative Provider to be applied in such manner agreed to by the Qualifications Authority.

6.4 **Student Loan Repayments:** If the Trustee has actual knowledge that an Entitled Student funded Student Fees by way of a Student Loan, then the applicable Entitled Student Amount, less any amount paid to an Alternative Provider pursuant to clause 6.3, must be paid to the Loan Provider by the Trustee to the extent necessary to repay the amount owed to it by the Entitled Student up to a maximum of the Tuition Fees portion of the Entitled Student Amount. For the purposes of this clause “actual knowledge” means knowledge that has been imparted to the Trustee in writing by the Entitled Student, the PTE, the Loan Provider or the Qualifications Authority and in the absence of such actual knowledge the Trustee shall have no obligation to make any enquiry or report any information as to whether the Entitled Student has funded the Student Fees by way of a Student Loan.

6.5 **Pay Students:** If a Course Closure Event occurs, the Trustee:

(a) must to the extent of the amount held in the No.1 Trust Account (excluding any interest) pay to each Entitled Student (or to another party, as notified in writing by the Entitled Student to the Trustee and the PTE) each Entitled Student Amount which has not been paid to a Loan Provider pursuant to clause 6.4, or transferred to an Alternative Provider pursuant to clause 6.3; and

(b) must take all practicable steps to ensure that such payment is made within 15 business days of such Course Closure Event.

6.6 **Manner of Payment to Students:** Payments to Entitled Students must be either made by direct credit to an Entitled Student’s bank account or by cheque that is

payable to the relevant Entitled Student and crossed "Not Transferable". A cheque may be sent to the Entitled Student by post to the last known address of the relevant Entitled Student as shown in the records kept by the PTE and made available to the Trustee pursuant to clause 4.9 or as notified by the Student in writing directly to the Trustee. The Trustee may specify that any payment to an Entitled Student is conditional upon that Entitled Student signing any receipt of payment requested by the Trustee.

- 6.7 **Balances Remaining:** After all Entitled Students have been paid the amounts payable to them under clause 6.5, the Trustee shall distribute to the PTE any monies still held upon trust under this Deed after the expiry of twelve months, or such shortened period agreed to by the Qualifications Authority, from the date the Trustee believes that all Entitled Student Amounts have been paid to, or distributed on behalf of, Entitled Students.
- 6.8 **Information After Distribution:** The Trustee shall provide details to the Qualifications Authority of all payments made to an Alternative Provider pursuant to clause 6.3, a Loan Provider pursuant clause 6.4, to Students pursuant clause 6.5 or the PTE pursuant to clause 6.7.
- 6.9 **Costs for Locating Student:** If, in paying any amount to the Entitled Student, Loan Provider or an Alternative Provider under clause 6.5, 6.4 or clause 6.3, the Trustee has difficulty locating the relevant Entitled Student or establishing the amount of the Student Loan or identifying the Loan Provider, the Trustee shall be entitled to deduct any costs incurred in doing so from the No.2 Trust Account.
- 6.10 **Student Acknowledgment:** If any Entitled Student Amount is transferred to either an Alternative Provider or to a Loan Provider in repayment of a Student Loan to that Entitled Student, then the Trustee shall before the transfer of any monies to that person, notify the relevant Entitled Student of the transfer.

7. TRUSTEE'S REMUNERATION AND RIGHTS

7.1 No 2 Trust Account:

- (a) The Trustee shall have a right to be reimbursed from that part of the Trust Fund represented by the No.2 Trust Account (excluding interest) for reasonable costs, and expenses incurred or payable by the Trustee in connection with the exercise or performance by the Trustee of its obligations, powers, rights or discretion pursuant to this Deed following a Course Closure Event.
- (b) If the Trust is to be wound up under clause 15, any credit balance of the No.2 Trust Account remaining after all Trustee's fees have been paid shall be transferred into the No.1 Trust Account.
- (c) The PTE may, after consultation with the Trustee, deposit additional amounts to the No.2 Trust Account in respect of any reasonable, fees, costs and expenses anticipated to be incurred by the Trustee in connection with the exercise or performance by the Trustee of its obligations, powers, rights or discretion pursuant to this Deed following a Course Closure Event.

- 7.2 **Remuneration of Trustee:** Subject to clause 7.1, 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.

- 7.3 **Waiver of Indemnity:** Subject to clause 7.1, the Trustee will not be entitled to exercise any right of indemnity against, or have recourse to, the Trust Fund for:
- (a) the Trustee's remuneration;
 - (b) any other costs and expenses incurred by the Trustee; or
 - (c) any other liabilities of any kind.
- 7.4 **No rights against Students:** Subject to clause 7.1, the Trustee waives, and excludes, all rights of indemnity from the Trust Fund and/or from any Student.
- 7.5 **Set-off of Trustee's costs:** Subject to clause 6.7, the Trustee shall be entitled to be paid, by way of deduction from the amounts payable to the PTE after a Course Closure Event or pursuant to clause 15.3, any costs, disbursements, expenses and liabilities properly and reasonably incurred by the Trustee and agreed between the PTE and the Trustee.
- 7.6 **Reliance on Documents:**
- (a) Subject to clause 7.6(b):
 - (i) the Trustee shall be entitled to assume the authenticity and validity of any signature on any other instrument or document delivered to the Trustee under this Deed; and
 - (ii) the Trustee shall not be in any way liable to make good out of its own resources any loss incurred by any person in the event of any signature on any document being forged or otherwise failing to bind the person whose signature it purports to be or the person on whose behalf it purports to be executed;
 - (b) The Trustee shall not be entitled to the benefit of paragraph (a) in relation to an instrument or document if it was actually aware that the signature thereon was not genuine and binding.
- 7.7 **Trustee's Reliance on Others:** Whenever any certificate, notice, proposal, direction, instruction or other communication is to be given by the PTE or Qualifications Authority to the Trustee, the Trustee may accept it as sufficient evidence as to the form and content thereof a document reasonably believed to be either signed on behalf of the PTE or Qualifications Authority. The Trustee shall not be responsible for any loss arising from any act, neglect, mistake or discrepancy of the PTE or Qualifications Authority 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 any such information, document, form or list is reproduced by the Trustee in any step taken by it.
- 7.8 **Reliance on Experts:** The Trustee may act upon the written opinion or statement or certificate or advice of or information obtained from any Independent barristers or solicitors, bankers, 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.
- 7.9 **Powers, Authorities and Discretions:** Except as expressly provided in this Deed and in the absence of its own fraud, negligence or wilful default, the Trustee shall not

be in any way responsible for any loss (whether consequential or otherwise), costs, damages or inconvenience that may result from the exercise or non-exercise of any powers, authorities and discretions vested in it.

7.10 **Impossibility or Impracticability:** If for any reason whatsoever it becomes impossible or impracticable to carry out any or all of the provisions of this Deed, the Trustee shall not be under any liability therefore or thereby except to the extent of its own fraud, negligence or wilful default nor shall it incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done in good faith by it or its officers, employees, agents or delegates.

7.11 **Legal and Other Proceedings:** The Trustee shall be indemnified by the PTE for all legal costs and disbursements and all other costs, disbursements, outgoings and expenses incurred by the Trustee in connection with:

- (a) the enforcement or contemplated enforcement of, or preservation of rights under; and
- (b) without limiting the generality of paragraph (a) 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.

8. OTHER OBLIGATIONS OF THE TRUSTEE

8.1 **Provide Quarterly Attestation Certificate:** The Trustee must provide Quarterly Attestation Certificates to the Qualifications Authority in the form of Schedule 2.

8.2 **Dates For Quarterly Attestation Certificate:** The Trustee is required to forward electronically (in a form acceptable to the Qualifications Authority in all respects) to the Qualifications Authority the Quarterly Attestation Certificate within 10 business days following the end of each Quarter.

8.3 **Independence:** The Trustee must be Independent of the PTE.

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

- (a) any of the events specified in paragraphs (a) – (d) of the definition of Course Closure Event; and/or
- (b) a breach by the PTE of any of the provisions of the Deed.

8.5 **Inform the Qualifications Authority of Cancellation:** The Trustee must inform the Qualifications Authority without delay if the Trustee is informed by the PTE that this Deed is no longer required, or has purportedly been cancelled or terminated by the PTE, for whatever reason.

8.6 **Retirement of Trustee:** The Trustee may retire at any time without giving any reason upon giving at least 20 business days notice in writing to the PTE and Qualifications Authority and which notice shall specify the proposed retirement date ("Proposed Retirement Date") provided:

- (a) a substitute trustee has been appointed under clause 8.8; and
- (b) no Course Closure Event has occurred and is continuing.

8.7 **Retirement after Course Closure Event:** Subject to clause 8.6, the Trustee may retire after a Course Closure Event has occurred if the Qualifications Authority has confirmed in writing that the Trustee has performed all of its obligations under this Deed to the satisfaction of the Qualifications Authority.

8.8 **Power to Appoint:** The power of appointing a new trustee under this Deed shall be vested in the PTE. Upon receipt of a notice from the Trustee to retire under clause 8.6, the PTE must appoint a substitute trustee before the Proposed Retirement Date.

8.9 **Release of outgoing Trustee:** Upon retirement of the Trustee the retiring Trustee shall be released from all future obligations hereunder provided the outgoing Trustee will remain liable for any existing or antecedent breach of the provisions of this Deed on the part of the outgoing Trustee or its officers, employees, agents or delegates.

9. REMOVAL OF TRUSTEE

9.1 **Removal of Trustee:** Subject to the appointment of a substitute trustee under clause 8.8, the Trustee may be removed from office as Trustee by the PTE or Qualifications Authority, with the prior written approval of the Qualifications Authority:

- (a) upon written notice from the PTE or the Qualifications Authority, if the Trustee is in breach of trust in respect of this Deed; or
- (b) upon at least thirty days written notice from the PTE. The PTE does not have to furnish any reasons to the Trustee for the Trustee's removal.

9.2 **Conditions of Removal:** No removal under clause 9.1 shall have effect until the Trust Fund has been transferred to the new trustee approved in writing by the Qualifications Authority and the new trustee has assumed all obligations under this Deed.

9.3 **Automatic Removal:** The Trustee shall be automatically removed in the following circumstances:

- (a) if the Trustee is Insolvent;
- (b) if the Trustee is disqualified from being appointed or holding office as a director of a company pursuant to section 151 of the Companies Act 1993;
- (c) if the Trustee, being a Chartered Accountant ceases to be a Chartered Accountant;
- (d) the Trustee, being a Solicitor ceases to be a Solicitor;
- (e) if the Trustee dies, becomes insane, or is convicted of any indictable offence or becomes a committed or special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (f) the Trustee ceases to be Independent,

immediately upon the occurrence of the events specified in (a) to (f) above, the PTE shall notify the Qualifications Authority of the name and address of the Designated Successor Trustee. As soon as the Designated Successor Trustee notifies the PTE and the Qualifications Authority that it will serve as trustee under this Deed, the Designated Successor Trustee shall automatically be appointed Trustee under this Deed. The Designated Successor Trustee shall assume all obligations in relation to the Trust and Trust Fund under this Deed.

- 9.4 **Trustee Removal Expenses:** The Trustee removed pursuant to clauses 9.1 or 9.3 must pay all expenses associated with its removal and replacement out of its own funds and not the Trust Fund except if the Trustee is removed under 9.1(b) or 9.3(e), in which case the PTE will, upon demand, pay such expenses.
- 9.5 **Trusts to be vested in new trustee:** The Trustee shall, immediately following the appointment of a new trustee pursuant to clause 8.8, take all steps required to vest the Trust Fund, or cause the Trust Fund to be vested, in such new trustee or Successor Trustee.
- 9.6 **Release of outgoing Trustee:** Upon removal of the Trustee, and payment of any expenses provided for in clause 9.4, the outgoing Trustee shall be released from all future obligations hereunder provided the outgoing Trustee will remain liable for any existing or antecedent breach of the provisions of this Deed on the part of the outgoing Trustee or its officers, employees, agents or delegates.
- 9.7 **New Trustee to execute Deed:** The PTE must ensure that any person appointed as the new or Successor Trustee under clause 8.8 has executed a deed in such a form as the Qualifications Authority and the PTE may require whereby the new trustee or Successor Trustee shall undertake to the Students and the PTE all the obligations of the outgoing Trustee from the date of appointment and on the same terms as this Deed (or otherwise in accordance with a student fee protection regime that complies in all respects with the Qualification Authority Policy). The new or Successor Trustee shall exercise all the powers and enjoy all the rights and from the date of appointment shall be subject to all duties and obligations of the Trustee as fully as though such new or Successor Trustee had been originally named as a party to this Deed.
- 9.8 **Delivery of Books, documents:** Upon the retirement or removal of the Trustee in accordance with the provisions of clause 8 or this clause 9, the outgoing Trustee shall forthwith deliver to the new or Successor Trustee appointed in respect of the Trust Fund all other books, documents, records and property whatsoever relating to the Trust Fund. Such records may be transferred from the outgoing Trustee in a commonly used electronic format (such format to be reasonably acceptable to the new or Successor Trustee) if requested by the new or Successor Trustee. The costs and expenses of such delivery incurred by the incoming trustee and the outgoing Trustee are to be paid by the outgoing Trustee unless removal occurs under clause 9.1(b) where it is at the cost and expense of the PTE. The outgoing Trustee shall be entitled to take, and retain as its own property, copies of such books, documents and records. The outgoing Trustee shall produce the originals of such books, documents and records in its possession upon the giving of at least 10 days written notice by the new or Successor Trustee.
- 9.9 **Notice to Student:** Upon a new or Successor Trustee being appointed under this Deed, the PTE shall as soon as practicable thereafter, give notice to the Students.

10. TRUSTEE'S COVENANTS

- 10.1 **General:** The provisions contained in this clause 10 shall be for the benefit of the Students and the PTE, jointly and severally.
- 10.2 **To act continuously as Trustee:** The Trustee shall act continuously as trustee until the Trust Fund is terminated as herein provided or the Trustee has been removed from office in the manner herein provided.
- 10.3 **To act honestly, diligently and prudently:** The Trustee shall:
- (a) **Act honestly:** Act honestly and in good faith in the performance of its duties and in the exercise of its discretions hereunder;

- (b) **Prudently:** Exercise such diligence and prudence as a prudent person of business would exercise in performing its express functions and in exercising its discretion hereunder, having regard to the interests of the Students and the PTE, but recognising the limitations on its duties and powers under 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 hereunder; and
- (e) **Separation of Funds:** Keep the Trust Fund separate from all other assets vested in or held by the Trustee.

11. AMENDMENTS TO DEED

- 11.1 In exceptional circumstances, and only with the prior written approval of the Qualifications Authority, 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 breach the rule against perpetuities or affect the beneficial entitlement to any amount held in trust for any beneficiary prior to the date of the alteration or addition.
- 11.2 The Trustee and the PTE shall if at any time directed by the Qualifications Authority, 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 principles and criteria of the Qualifications Authority Policy.

12. TRUSTEE REPRESENTATIONS

- 12.1 The Trustee represents and warrants to the Students and the PTE that as of the date of this Deed:
 - (a) **Power:** It has the power to act as trustee of the Trust Fund and to enter into and perform its obligations under this Deed;
 - (b) **Procedural requirements:** It has taken all necessary action to authorise its entry into, and performance of, this Deed;
 - (c) **Valid obligations:** The obligations expressed to be assumed by it in this Deed are its legal, valid and binding obligations enforceable in accordance with their terms;
 - (d) **Transactions permitted:** The execution and performance by it of this Deed or any document or agreement executed in connection with an Authorised Investment, did not and will not:
 - (i) violate or contravene any law or directive to which it is subject;
 - (ii) violate its constitution or other constituent documents; or

- (iii) conflict with, or result in a breach of any agreement, document, arrangement, obligation or duty to which it is a party, or by which it or any of its assets may be bound;
- (e) **Legal requirements met:** All acts, conditions, consents, and things required by its constitution (if the Trustee is a body corporate) and by the laws of New Zealand or any other jurisdiction to be done, fulfilled, and performed in order to:
 - (i) enable it lawfully to enter into, exercise its rights under, and perform the obligations assumed by it in this Deed;
 - (ii) ensure that the obligations assumed by it in this Deed are legal, valid, and enforceable,have been done, fulfilled, obtained, and performed in compliance with such laws.

13. TRUSTEE'S ACTIVITIES AND POWERS

13.1 The activities of the Trustee in respect of the Trust Fund shall be 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 Accounts;
- (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 Fund to a Student, the PTE, any Loan Provider, any Alternative Provider or any other third party as provided herein;
- (e) transferring Authorised Investments in accordance with clause 2.7; and
- (f) exercising any other powers, functions or duties expressly granted or set forth under this Deed.

13.2 **Trustee's Power:** The Trustee's rights, powers and discretions over and in respect of the Trust Fund shall be limited to those specifically granted to it under this Deed.

13.3 **Prohibitions:** Without limiting the other limitations and restrictions herein, in respect of the Trust Fund and the trust created under this Deed the Trustee shall have no power to:

- (a) voluntarily create, incur or otherwise become liable in respect of any liabilities other than bank fees for the operation of the Trust Account;
- (b) voluntarily create or incur any security interest or any lien or encumbrance over part or all of the Trust Fund;
- (c) give any guarantee or indemnity;
- (d) advance money or make available financial accommodation to, or for the benefit of any person, other than pursuant to a Permitted Activity;

- (e) carry on or enter into any business or transactions not constituting any Permitted Activity or an Authorised Investment;
- (f) invest part or all the Trust Fund in any assets other than an Authorised Investment made in the manner prescribed by this Deed;
- (g) acquire any asset other than an Authorised Investment acquired pursuant to a Permitted Activity;
- (h) enter into any sales contract (contingent or otherwise) in respect of part or all the Trust Fund; or
- (i) pay any amount to any Student or the PTE or to any person other than amounts in the manner and at the time prescribed by this Deed.

14. INDEMNITY FOR ACTS OF TRUSTEE'S DELEGATES

14.1 The Trustee hereby covenants that its officers, employees, agents and delegates shall observe and perform the covenants and obligations of this Deed in the same manner as is required of the Trustee, and the Trustee shall be personally liable for and agrees to indemnify the Trust Fund against any loss that the PTE or Students may incur in connection with, or arising out of, any negligence, default, misconduct or breach of trust or breach of any covenants or agreements by such officers, employees, agents and delegates in the observance or performance of any such covenant or obligation, to the extent that the Trustee would have been liable to indemnify if that breach or default had been the Trustee's own act or omission.

15. WINDING-UP OF TRUST

15.1 Winding-up of Trust

The Trust shall terminate and be wound-up upon the occurrence of any one of the following events:

- (a) the expiration of the period of 79 years from the date of this Deed (being within the perpetuity period permitted to be specified by virtue of section 6 of the Perpetuities Act 1964); or
- (b) the occurrence prior to the expiration of the period referred to in 15.1(a) above (whichever event shall first occur) of both of the following events:
 - (i) the passing of a resolution by the Trustee, provided the Trustee has given the PTE and the Qualifications Authority at least 20 business days prior written notice to wind-up the Trust and the PTE and the Qualifications Authority 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 satisfies the requirements of the Qualifications Authority Policy; and
 - (ii) completion of a deed of termination by the Trustee, the PTE and the Qualifications Authority; or
- (c) the Trustee has received written notice from the Qualifications Authority that the student fee protection requirement fulfilled by this Deed is to be met by another Qualifications Authority approved mechanism superseding this Trust arrangement, and the Trustee, PTE and Qualifications Authority have completed a deed of termination.

15.2 **Notice of Termination**

The Trustee shall, as soon as practicable, give to each Student notice of the intention to terminate this Deed and to distribute the Trust Fund in accordance with this Deed.

15.3 **Distribution of Trust Fund**

The Trustee shall, upon termination of the Trust:

- (a) under clause 15.1(b)(i) and (b)(ii) upon written notice from the PTE transfer any remaining Authorised Investments held on the date the Trust is to be wound up under clause 15, to the trustee of any new trust approved in writing by the Qualifications Authority; or
- (b) otherwise under clause 15.1 distribute the Trust Fund to the PTE provided a Course Closure Event has not occurred.

and for this purpose the Trustee shall have the power to call in and convert to cash the Trust Fund. Any costs and expenses incurred by the Trustee in respect of the winding up shall be paid by the PTE.

15.4 **Records Conclusive Evidence**

The Trustee's records shall in the absence of fraud or manifest error be conclusive evidence of the amount and the person entitled to such amount for the purposes of any distribution of the Trust Fund in accordance with this Deed.

16. **INSPECTION OF DEED AND AUDIT OPINION**

- 16.1 A copy of this Deed together with copies of all supplemental deeds and any Audit Opinions shall, 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.

17. **CONTRACTS (PRIVITY) ACT 1982**

- 17.1 The Trustee and the PTE acknowledge and declare that:

- (a) the contractual rights extended to Qualifications Authority in this Deed constitute promises that confer, and are intended to confer, benefits on the Qualifications Authority;
- (b) the provisions of the Contracts (Privity) Act 1982 apply in relation to the promises of the Trustee and the PTE set out in this Deed;
- (c) the position of the Qualifications Authority has been or will be materially altered by its reliance on the promises of the Trustee and the PTE, as set out in this Deed; and
- (d) the Qualifications Authority is a person entitled to the benefit of the contractual rights extended to it in this Deed pursuant to Section 4 of the Contracts (Privity) Act 1982.

18. **ACCOUNTS AND ANNUAL AUDIT**

- 18.1 **PTE to keep Proper Records:** The PTE shall keep, or cause to be kept, accounting records which provide an accurate record of all Student Fees received and expended

by or on behalf of a Student, the matters in respect of which such receipt and expenditure takes place and of the assets and liabilities of the PTE.

18.2 Trustee, Qualifications Authority, 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, the Qualifications Authority, the Auditor and any Chartered Accountant or agent appointed by the Trustee or Qualifications Authority upon reasonable notice and during usual business hours.

18.3 Annual and Final Audit: The PTE shall ensure that the Auditor has, at the PTE's cost and expense:

- (a) audited the PTE's Student Records and the Trustee's Trust Account for compliance with the terms of this Deed during either the period ("Audit Period"):
 - (i) ending on each anniversary after the last day of the PTE's financial year; or
 - (ii) from the date of the last audit pursuant to 18.3(a)(i) to the date that the Trust is terminated and wound-up under clause 15.1 or, if applicable, the date the Trust Fund is distributed under clause 15.3 whichever date is later;
- (b) issued to the PTE, the Trustee and Qualifications Authority within 90 business days after the end of the Audit Period an Audit Opinion (in the form included as Schedule 5 to this Deed) on the PTE's compliance with the Deed during the Audit Period in respect of its maintenance of the Student Records; and
- (c) issued to the Trustee, the PTE and Qualifications Authority within 90 business days after the end of the Audit Period an Audit Opinion (in the form included as Schedule 5A to this Deed) on the Trustee's compliance with the Deed during the Audit Period in respect of its maintenance of the Trust Account.

18.4 Provision of Information: In carrying out its duties the Auditor shall be entitled to require from the PTE and the Trustee such information, explanation, documents, certificates, Student Records and accounts as 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 Qualifications Authority all information made available to the Auditor by the PTE.

19. GRANT OF SECURITY INTEREST

19.1 Grant of Security Interest: As security for performance by the PTE of its obligations under this Deed, the PTE hereby grants to the Trustee a security interest in all Student Records. In addition to all other rights and remedies available to the Trustee in respect of this security interest, 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. In addition to the powers generally available to a Receiver at law, the Receiver 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 PTE an up to date Student Details Report in accordance with clause 4.15(a);
- (c) perform the PTE's obligations to make the Student Records available for inspection and copying in accordance with clause 4.15(b) of the Deed;
- (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.

20. CERTAIN TRUSTS TO BE TREATED AS SINGLE TRUST

20.1 **When clause applies:** This clause is to apply if the PTE has in place a Bank Bond Trust.

20.2 **Intention:** The intention of the clause is to ensure that if a Course Closure Event occurs Students of the PTE who are beneficiaries under both this Deed and the Bank Bond Trust are treated equally for all purposes, and in particular for the purpose of calculating each Entitled Student Amount.

20.3 **Single Trust:** If a Course Closure Event occurs:

- (a) any reference in this Deed to Student shall include a reference to Bank Bond Trust Students;
- (b) any reference to Trust Fund shall include a reference to the Bank Bond Trust Fund; and
- (c) any reference to Entitled Student Amount shall mean an entitlement calculated jointly by the Trustee and the Bank Bond Trustee on the basis that the Trust Fund and the Bank Bond Trust Fund are one trust fund,

with the intent that the Trustee and the Bank Bond Trustee shall exercise their rights, powers, and discretions jointly as if the Trust Fund and the Bank Bond Trust Fund are one single trust fund and that the Students and the Bank Bond Trust Students are all beneficiaries of that single trust fund with the same rights and entitlements in accordance with the provisions of this Deed and the Bank Bond Trust.

20.4 **Sole Trustee:** Where the PTE has in place a Static Trust and a Bank Bond Trust the PTE must ensure that the Bank Bond Trustee and the Trustee are the sole trustees for both trusts.

IN WITNESS of which this Deed has been executed on the date first shown above.

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

Signature of Director/Authorised Signatory

Signature of Witness

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

Signature of Trustee
This Deed is signed confirming no alteration has occurred to any clause or wording from the student fee protection static trust deed as available on the Qualifications Authority web site <http://www.nzqa.govt.nz>

Name of Witness

Phone number

Occupation of Witness

Email address

Place of work of Witness

Address of Trustee

SCHEDULE 1

DETAILS OF PARTIES

Name of PTE:

Address of PTE:

Name of Trustee:

Address of Trustee:

SCHEDULE 2

FORM OF QUARTERLY ATTESTATION CERTIFICATE

Capitalised terms used in this attestation shall have the meaning as defined in the Student Fee Protection Static Trust Deed between [*name of trustee*] and [*name of PTE*] dated [*date of deed*] (“Deed”).

1. I (the Trustee) have acted at all times in accordance with the provisions of the Deed.
2. Nothing has come to my attention that would indicate that:
 - (a) the information, in particular the Student Details Report being supplied to me by the PTE may be inaccurate in any way, or
 - (b) the PTE is not complying with the Qualifications Authority Policy or the Deed; or
 - (c) the PTE’s calculation of the PTE Maximum Liability Amount is incorrect.
3. I confirm that the Trust Fund (exclusive of interest) is not less than the PTE Maximum Liability Amount advised by the PTE in or attached to the Student Details Report dated [] in respect of the Quarter ending [].
4. I confirm that I have received all PTE Maximum Liability Amount Certifications required to be forwarded to me during the period following the previous Quarterly Attestation Certificate issued for the PTE.
5. The PTE Maximum Liability Amount has, for the Quarter ending [*insert date*], been adjusted pursuant to clause 4.5 or 4.6 of the Deed as follows: [*please provide details*]

Dated:

SIGNED by [**NAME OF TRUSTEE**]:

Signature of [Name Of Trustee]

SCHEDULE 3

STUDENT ACKNOWLEDGMENT

Explanatory Note to Student Acknowledgment

1. The purpose of the Student Acknowledgment form below is to make sure that:
 - (a) you understand what happens to any refunds (if there are any) of your student fees if your course closes (your Entitled Student Amount); and
 - (b) you provide the necessary information about yourself and your student fees.
2. By signing the Student Acknowledgment form below you are agreeing that:
 - (a) You understand that if your course closes (a Course Closure Event), it will be the trustee's duty to make sure the correct amounts of any refunds (if there are any), are distributed out in accordance with the Deed and the New Zealand Qualifications Authority Policy. As such, your refunds may need to be paid to another PTE if you enrol in another course (the Alternative Provider), your student loan provider such as Study Link (the Loan Provider), yourself, or anyone else who should be paid you refund (such as any person who may have paid your fees for you) (the Third Party).
 - (b) You understand that your personal information about yourself will be given to your PTE, The New Zealand Qualifications Authority and your trustee.
3. Please read the Student Acknowledgment carefully before signing.

FORM OF STUDENT ACKNOWLEDGMENT

1. By this document, I [insert full name of student and place of residence] declare that I am enrolling as a Student at [insert name of PTE] ("PTE").
2. I understand that after I sign this document I cannot withdraw this authorisation to the Trustee. I acknowledge and agree that:
 - (a) if a Course Closure Event occurs and I transfer to an Alternative Provider with the approval of the Qualifications Authority, any amount agreed by me, up to the Entitled Student Amount attributable to me will be transferred from the Trust Fund to that Alternative Provider;
 - (b) if a Course Closure Event occurs and I owe money to a Loan Provider in respect of that Course, the Trustee is authorised to repay the Tuition Fees portion of the Entitled Student Amount attributable to me, less any amount transferred to an Alternate Provider, directly to that Loan Provider to the extent required to settle the amount due to the Loan Provider;
 - (c) subject to 2(b) above, if a Course Closure Event occurs and the Trustee refunds any amount directly to me, the Trustee will refund the Entitled Student Amount attributable to me by way of direct credit to my bank account or cheque posted to my last known postal address notified to that Trustee;
 - (d) if another party is entitled to receive any refund of the Entitled Student Amount attributable to me, I will provide the Trustee with the contact details of that party (as required by paragraph 4 below) to which the refund should be sent;

- (e) personal information about me and information about my Student Fees may be supplied by the PTE to the Qualifications Authority, Auditor or the Trustee and by the Trustee or Auditor to the Qualification Authority;
 - (f) after the payments contemplated in (a), (b), (c) and (d) above have been made, the trusts on which the Trustee was holding the Trust Fund will have been discharged;
 - (g) any interest earned on the Trust Fund prior to payment under (a), (b) (c) or (d) above will vest in and be payable to the PTE for its own benefit, and I will have no claim to such interest;
 - (h) I am/am not 18 years of age or older (delete whichever is not applicable, if Student under 18, Parent/Guardian to also sign).
3. Capitalised terms used in this agreement shall have the meaning as defined in the Student Fee Protection Static Trust Deed between the PTE and the Trustee, a copy of which has been made available to me by the PTE and the Trustee (the "Deed").
4. **Details of any third party entitled to receive any refund on account of Student Fees:**
- Name:
- Address:
- Telephone number:

EXECUTION

This agreement is executed as a Deed and is dated the _____ day of _____ 200[]

SIGNED by the Student

SIGNED by the Student’s Parent or Guardian (if the Student is under 18)

Name of Student

Name of Parent or Guardian

.....
Occupation

.....
Address

.....
Passport Number

In the presence of:

In the presence of:

.....
Witness

.....
Witness

.....
Name

.....
Name

.....
Occupation

.....
Occupation

.....
Address

.....
Address

Executed as a Deed by the PTE:

.....
Director/Authorised Signatories

.....
Director/Authorised Signatories

SCHEDULE 4

FORM OF PTE MAXIMUM LIABILITY AMOUNT CERTIFICATION

Capitalised terms used in this attestation shall have the meaning as defined in the Student Fee Protection Static Trust Deed between [name of trustee] and [name of PTE] dated [date of deed].

I, a director of [**Name of PTE**] hereby certify that:

- (a) the PTE has acted at all times in accordance with the provisions of the Deed, Qualifications Authority Policy and the Act;
- (b) the PTE has calculated the PTE Maximum Liability Amount in accordance with the Trust Deed and Qualifications Authority Policy;
- (c) on [date] the PTE Maximum Liability Amount is [\$insert amount];
- (d) the Student Details Report dated () and in respect of the Quarter ending () is accurate and complete in all respects;
- (e) the basis on which the PTE Maximum Liability Amount is calculated is attached/or incorporated in the Student Details Report [*PTE must provide details of how the calculation is made.*]; and
- (f) I have no knowledge of any other information not already disclosed to the Trustee, which may affect the performance of the Trustees' duties under the Deed.

Signed by the PTE:

Director/[*Name of Authorised Signatory*]
duly authorised pursuant to a resolution
of the Board of Directors dated [*insert date*]

Name

In the presence of:

.....
Witness

.....
Name

.....
Occupation

.....
Address

SCHEDULE 5

FORM OF AUDIT OPINION ON THE COMPLIANCE OF THE PTE WITH THE TERMS OF THE DEED

Audit Opinion

To the New Zealand Qualifications Authority, the Trustee and the [PTE] and the Students of the PTE.

We have audited the [PTE] for compliance with the terms of the [PTE] Student Fee Protection Static Trust Deed dated () as amended (“the Trust Deed”).

[PTE]’s Responsibilities

The [PTE] is responsible under the terms of the Trust Deed for compliance with the Trust Deed.

Auditors’ Responsibilities

It is our responsibility to express to you an independent opinion on the compliance by the [PTE] with the Trust Deed.

Basis of Opinion

An audit includes examining, on a test basis, evidence relevant to the Student Records referred to above.

We conducted our audit in accordance with New Zealand Auditing Standards. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to obtain reasonable assurance that the Student Records had been maintained in terms of the Trust Deed.

We are Independent of the PTE and the Trustee.

Unqualified Opinion

We have obtained all the information and explanations we have required.

In our opinion the [PTE] has complied with the terms of the Trust Deed during the [period] ended [date] as far as appears from our examination of those records.

Our audit was completed on [Date] and our unqualified opinion is expressed as at that date.

[Auditor]
[Address (City)]

SCHEDULE 5A

FORM OF AUDIT OPINION ON THE COMPLIANCE OF THE TRUSTEE WITH THE TERMS OF THE DEED

Audit Opinion

To the New Zealand Qualifications Authority, the Trustee, and the [PTE] and the Students of the PTE.

We have audited the Trustee for compliance with the terms of the [PTE] Student Fee Protection Static Trust Deed dated () as amended ("the Trust Deed").

Trustee's Responsibilities

The Trustee is responsible under the terms of the Trust Deed for compliance with the Trust Deed.

Auditors' Responsibilities

It is our responsibility to express to you an independent opinion on the Trustee's compliance with the Trust Deed.

Basis of Opinion

An audit includes examining, on a test basis, evidence relevant to the Trust Account referred to above.

We conducted our audit in accordance with New Zealand Auditing Standards. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to obtain reasonable assurance that the Trust Account had been maintained in terms of the Trust Deed.

We are Independent of the PTE and the Trustee.

Unqualified Opinion

We have obtained all the information and explanations we have required.

In our opinion the Trustee has maintained the Trust Account in compliance with the terms of the Trust Deed during the [period] ended [date] as far as appears from our examination of those records.

Our audit was completed on [Date] and our unqualified opinion is expressed as at that date.

[Auditor]
[Address (City)]

SCHEDULE 6

FORM OF AUDITOR ENGAGEMENT LETTER

[PTE's Letterhead]

[Date]

[Address]

Dear []

Auditor Engagement Letter

1. Introduction

- 1.1 The New Zealand Qualifications Authority (the "**Qualifications Authority**") requires [PTE] to submit annually to the **Qualifications Authority** two audit opinions as to compliance with the requirements of the [PTE] Student Fee Protection Static Trust Deed ("the Deed") by an independent chartered accountant, acting as Auditor, in the forms prescribed by the Qualifications Authority (the "**Audit Opinions**").
- 1.2 The Qualifications Authority's objective in requiring PTEs to submit completed Audit Opinions is to obtain an appropriate level of assurance that both the PTE and the Trustee are compliant with the requirements of the Deed.
- 1.3 The Qualifications Authority will rely on the completed Audit Opinions in determining the compliance of the [PTE] with the student fee protection policy.
- 1.4 The purpose of this letter is to set out the terms on which [PTE] wishes to engage you to provide the services set out in this letter.
- 1.5 Attached to this letter are:
 - (a) A copy of the Deed signed by both the PTE and Trustee;
 - (b) A copy of the latest completed Student Details Report;
 - (c) A copy of the latest completed Quarterly Attestation Certificate (Schedule 2 of the Deed);
 - (d) A copy of the form of the desired Audit Opinion on the compliance of the Trustee with the terms of the Deed (Schedule 5A of the Deed); and
 - (e) A copy of the form of the desired Audit Opinion on the compliance of the PTE with the terms of the Deed (Schedule 5 of the Deed).

2. Terms of Engagement

- 2.1 You will:
 - (a) obtain such knowledge of the historical financial information and business of [PTE] and [insert name of trustee] and of the Deed as may be required to satisfy your engagement under this letter;

- (b) assess the compliance with the Deed to ensure the PTE's and the Trustee's compliance with the Deed; and
 - (c) complete the Forms of Audit Opinions listed in 1.5(d) and 1.5(e) (please note that the prescribed content of the opinion must not be altered in any way, except where the form of opinion provides otherwise).
- 2.2 In return for providing the services, [PTE] will pay you a fee of [insert fee agreed between the PTE and the Auditor].
- 2.3 You will provide [PTE] and [insert name of trustee] with the completed Forms of Audit Opinions by no later than [insert due date agreed between the PTE and the Auditor].
- 2.4 [PTEs] and [insert name of trustee] management and staff will provide you with all assistance you may reasonably require to provide the Audit Opinions, including all relevant information.
- 2.5 [Insert any additional engagement terms agreed between the PTE and the Auditor].
- 2.6 Could you please indicate your acceptance of the terms of engagement set out above by counter-signing this letter and returning a copy to me for my records.

Yours sincerely

[Name]
[Title]
[Name of]PTE

[insert name of auditor] agrees to the above terms and conditions.

Signature:

Date:.....