

# Prepaid Funeral Trust Declaration of Trust 2017.



As at 3 April 2017.

## Important Note

[Parties, prefatory provisions and table of contents have been deleted]

### 1. Creation and terms of a trust

#### *Creation*

- 1.1. The Trustee is to establish a Trust to which, after deduction of the fees and expenses of the Trustee payable in accordance with this document, all Prepaid funds that an Applicant pays to the Trustee to provide for his or her Funeral Arrangements and all income on such Prepaid funds are to be subject.

#### *Terms*

- 1.2. All Prepaid funds received from each Applicant will be vested in and held by the Trustee subject to a Trust for the provision of Funeral Arrangements for that Applicant on the terms set out in this document.

#### *Separate Trusts*

- 1.3. A separate Trust is to be established for each Applicant.

#### *Time of Establishment*

- 1.4. Each Trust is established when the Trustee accepts an Applicant's application to establish a Trust and receives, in cleared funds, the Applicant's first contribution to the Trust.

#### *Terms include written instructions*

- 1.5. The terms of a Trust are to include any written instructions that the Trustee receives as to the Applicant's Funeral Arrangements.

### 2. Name of Trusts

- 2.1. Each Trust established pursuant to this document is to be known as the relevant Applicant's 'Public Trust Prepaid Funeral Trust'.

### 3. Investment of funds

#### *No general power to invest*

- 3.1. The Trustee will not have the general power to invest Prepaid funds that is granted by section 13A(1) of the Trustee Act 1956. The Trustee may invest Prepaid funds in any Fund issued or investment offered by Public Trust, including the Common Fund or a bank deposit issued by a Registered Bank, as approved by the Trustee and the Trustee shall not be under any duty to further diversify the investment of the Prepaid funds which it might otherwise be under. The parties acknowledge that this power to invest shall constitute a contrary intention for the purposes of the Trustee Act 1956.

#### *Income*

- 3.2. After the deduction of any applicable taxes, duties or levies, the income earned on the Applicant's Prepaid funds for any accounting period as fixed by the Trustee shall become part of the Applicant's Available Funds and subject to the Trust established in respect of the Applicant.

#### **4. The Trustee's fees and expenses**

##### *Fees*

- 4.1. The Trustee may charge the following fees in respect of a Trust:
- 4.1.1. such fee payable on the establishment of a Trust as the Trustee may from time to time determine, being a fee payable either by the Applicant or from the Applicant's Prepaid funds; and
  - 4.1.2. such other fees as the Trustee is entitled to charge under the Public Trust Act 2001.

##### *Fees on investment*

- 4.2. The fees payable in respect of a Trust in accordance with clause 4.1 exclude any fees and expenses payable in respect of any investment of Prepaid funds.

##### *Expenses*

- 4.3. In addition to any fees payable under clause 4, the Trustee may reimburse itself out of the Prepaid funds of an Applicant the amount of any expenses that the Trustee incurs in administering the Applicant's Trust.

#### **5. Duration of each Trust**

##### *Term*

- 5.1. Subject to clause 5.2, each trust is to continue for such period as the Trustee considers is necessary to provide for the Applicant's Funeral Arrangements.

##### *Termination*

- 5.2. The Trustee may terminate a Trust by giving the Applicant or, if the Applicant is deceased, the administrator or executor of his or her estate, notice that the Trust is terminated and paying the person to whom notice is given the amount of the Prepaid funds of the Trust at the date of termination.

#### **6. Payment procedure**

##### *Authority and invoice*

- 6.1. The Trustee is to ensure that any person who provides Funeral Arrangements provides evidence of his or her authority to do so and an appropriate invoice to the Trustee. On receiving such evidence and invoice, the Trustee is authorised to apply the Applicant's Available Funds in payment of such invoice.

##### *Sole obligation*

- 6.2. In paying Available Funds to a person providing Funeral Arrangements, the Trustee is under no obligation other than to pay the Available Funds in accordance with the terms of the relevant Trust. Once the Available Funds are exhausted, the Trustee has no further liability in respect of the Funeral Arrangements of an Applicant.

#### **7. Separate accounts**

- 7.1. The Trustee is to keep a separate account of all Prepaid funds paid by an Applicant to the Trustee and of all income accruing to those funds.

## **8. Contributions**

- 8.1. An Applicant may contribute Prepaid funds at such times and on such terms and conditions as the Trustee may from time to time prescribe.

## **9. Surplus funds**

- 9.1. Should the provision of Funeral Arrangements in respect of an Applicant not exhaust the Available Funds, the Trust is to pay the surplus to the executor, administrator or personal representative of the Applicant to be held for the benefit of the Applicant's estate.

## **10. No early withdrawal**

- 10.1. Subject to clause 10.2, the Applicant may not request an early withdrawal of any amount from the Applicant's Available Funds prior to their death.
- 10.2. The Trustee may, in its sole discretion, waive clause 10.1 in exceptional circumstances (such as the permanent emigration of the Applicant or significant financial hardship) and allow an early withdrawal of an amount equal to the value of the Applicant's Available Funds at that time. Any such waiver will be subject to conditions imposed by the Trustee which will include (but is not limited to) completing its procedures for customer due diligence in compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, in respect of the relevant Trust.
- 10.3. The Applicant must provide such information as the Trustee reasonably requires to exercise its discretion under clause 10.2.

## **11. Alterations to the trust deed**

- 11.1. The Trustee may, by a deed supplemental to this document, alter, modify, add to or cancel the provisions of this document (including this clause) in the following cases:
- 11.1.1. if, in the opinion of the Trustee, the alteration is:
- a) made to correct a manifest error or is of a formal or technical nature; or
  - b) is necessary or desirable for the more convenient, economical or advantageous working, management or administration of a Trust; or
  - c) is necessary or desirable in view of legislation or requirements imposed by any lawful authority affecting the operation of a Trust; or
- 11.1.2. if, in the opinion of the Trustee, the alteration is not likely to become materially prejudicial to the general interests of any Applicant.
- 11.2. The Trustee may, by a deed supplemental to this document, alter, modify, add to or cancel the provisions of this document (including this clause) in respect of Prepaid Funeral Trusts established after the date of this document.

## **12. Definitions and interpretation**

### *Definitions*

- 12.1. In this document (including the Background), unless the context otherwise requires: **Applicant** means any person who, during his or her lifetime, has provided for his or her Funeral Arrangements in accordance with the provisions of this document.

**Available Funds** means the capital and accumulated income of the Prepaid funds of an Applicant as are available to the Trustee to meet the Funeral Arrangements of that Applicant.

**Common Fund** means the common fund of Public Trust.

**Fund** means any pooled investment fund, including but not limited to, any unit trust or group investment fund that is invested in cash or short term fixed interest investments.

**Funeral Arrangements** means, in respect of an Applicant, the provision of such professional services of a funeral director as the Trustee thinks reasonable and appropriate having regard to the Available Funds and to any written instructions given to the Trustee by the Applicant or other person authorised to act on an Applicant's behalf and, having regard to the Available Funds, may include:

- a) a funeral, memorial service and such other services and activities as the Trustee considers appropriate; and
- b) the purchase of a plot (either prior to or following the death of the Applicant), and the provision of a suitably inscribed headstone, plaque or other grave work (including the repair of any existing grave work).

**Funeral Director** means the person appointed by an Applicant, or, if the Applicant has not appointed a person, appointed by the Trustee to attend to the Funeral Arrangements of the Applicant.

**Prepaid** describes an arrangement under which funds are paid to the Trustee by an Applicant prior to the death of that Applicant, being funds that are subject to a Trust.

**Registered Bank** has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989.

**Trust** means a trust to meet an Applicant's Funeral Arrangements established in accordance with this document.

#### *Construction of certain references*

12.2. In this document, unless the context otherwise requires, any reference to:

- 12.2.1. a clause is to a clause of this document;
- 12.2.2. a gender includes each other gender;
- 12.2.3. the singular includes the plural and vice versa; and
- 12.2.4. any legislation includes a modification and re-enactment of, legislation enacted in substitution for any regulation, order-in-council and other instrument from time to time issued or made under that legislation.

12.3. Headings are to be ignored in construing this document.

12.4. References to the Applicant in this document are to include the Applicant's lawful personal representatives, assigns and successors.

#### **[Execution provisions followed]**

The Public Trust Prepaid Funeral Trust is currently governed by a Declaration of Trust dated 3 April 2017. Fully executed originals of this Declaration of Trust are held by the Public Trust. This is a reprint of the text of the Declaration of Trust for the Public Trust Prepaid Funeral Trust.