

Deed of Variation of Trust Incorporating Deed of Trust

Nikau Foundation

Christopher David Astley Milne

Elizabeth Anne Koh

Adrian Brent Orr

Richard Hudson Caughley

Robert Anthony Cross

Jillian Marie Day

Susan Leanne Hornsby-Geluk

Gregory Francis Kelly

Rebecca Morganna Morahan

Adrienne Mary Kate Olsen

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Wendy Maryanne Venter

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Nikau Foundation

("the Foundation")

Deed Variation of Trust Incorporating Deed of Trust

Deed dated the 22nd day of June 2020

Parties

The trustees of the Nikau Foundation at the date of this deed ("the Board"), being:

Christopher David Astley Milne

Elizabeth Anne Koh

Adrian Brent Orr

Richard Hudson Caughley

Robert Anthony Cross

Jillian Marie Day

Susan Leanne Hornsby-Geluk

Gregory Francis Kelly

Rebecca Morganna Morahan

Adrienne Mary Kate Olsen

Panchanatham Narayanan

Rachel Margaret Roberts

Wendy Maryanne Venter

Peter Raymond Verhaart

Background

- A. By deed dated 20 December 1991 made between Sir James Belich as founder and New Zealand Guardian Trust Company Limited as trustee with the original board members being Sir Edward Michael Colson Fowler, Her Excellency Dame Sylvia Rose Cartwright, Jennifer Mary Gill, Athol Wilson Mann, Kevin James O'Connor, Eru Woodbine Pomare, Odette Anne Waanders, George Peter Shirtcliffe, Kenneth Neil Thorsen and Malcolm Francis Dunphy ("Trust Deed") a trust fund was created known as the Wellington Community Foundation Trust.
- B. The Trust Deed was subsequently varied as follows:
- (a) By deed dated 9 December 2005 pursuant to which the deed was substantially amended and the Foundation's name was changed;
 - (b) By deed dated 30 January 2006 changing the name of the Foundation;
 - (c) By deed dated 21 April 2008 amending the charitable objectives of the Foundation and changing the name of the Foundation;

- (d) By deed dated 18 October 2010 changing the eligibility of trustees for re-election; and
 - (e) By deed dated 29 October 2018 increasing the maximum size of the Board.
- C. The Board are the present trustees of the Trust.
- D. Clause 27.1 of the Trust Deed (as varied) states:
- “The Board may by deed at any time or times with the approval of not less than a majority vote of 75% of the Board at a properly convened meeting of the Board for which the quorum shall be 75% of their total number, revoke, add to, or vary all or any of the terms and provisions of, and, without limiting the generality thereof, all or any of the Foundation’s beneficial interests powers and discretions set out or contained in this deed as varied from time to time provided that:*
- (a) *No such amendment shall result in any part of the Trust Fund or the income from it becoming subject to any trusts other than the trusts for the benefit of Authorised Charities and Charitable Purposes; and*
 - (b) *No amendment may be made to clauses 12, 19, 27, 28 or 29 without the consent of the relevant Government Authority first being obtained; and*
 - (c) *Subject to clause 26.1, no such amendment shall result in the removal of NZGT as Sub Trustee of any of the Sub Trusts in existence at the date of this deed or the amendment of any of the provisions relating to such Sub Trusts without the approval of NZGT.*
- E. A properly convened meeting of the Board having been called, the Board has approved by unanimous vote to exercise the power to further vary the Trust Deed.
- F. No approval of any Government Authority is required to the amendments to the Trust Deed.

Operative Provisions

1. The Trust Deed is varied as set out in the Schedule.
2. The variations as set out in the Schedule shall take effect on and from the date of this deed.
3. In all other respects the terms of the Trust Deed shall remain unaltered but for ease of interpretation and administration of the Trust Deed the Schedule to this deed shall be considered as the complete Trust Deed (which Schedule includes and consolidates all variations made pursuant to this deed and in previous deeds of variations).

Execution

Signed by)
Christopher David Astley Milne)
) C D A Milne

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Elizabeth Anne Koh)
) E A Koh

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Adrian Brent Orr)
) A B Orr

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Richard Hudson Caughley)
) R H Caughley

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Robert Anthony Cross)
) R A Cross

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Jillian Marie Day)
) J M Day

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Susan Leanne Hornsby-Geluk)
) S M Hornsby-Geluk

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Gregory Francis Kelly)
) G F Kelly

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Rebecca Morganna Morahan)
) R M Morahan

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Adrienne Mary Kate Olsen)
) A M K Olsen

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Rachel Margaret Roberts)
) Rachel Margaret Roberts

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Peter Raymond Verhaart)
) P R Verhaart

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

Signed by)
Wendy Maryanne Venter)
) W M Venter

Witnessed by:

..... (signature and name)

..... (occupation)

..... (address)

[Schedule]

Deed of Trust

Nikau Foundation

Christopher David Astley Milne

Elizabeth Anne Koh

Adrian Brent Orr

Richard Hudson Caughley

Robert Anthony Cross

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Deed of Trust
Nikau Foundation
("the Foundation")

Deed dated the 22nd day of June 2020

Operative Provisions

PART 1 Foundation

1. Parties

Christopher David Astley Milne
Elizabeth Anne Koh
Adrian Brent Orr
Richard Hudson Caughley
Robert Anthony Cross
Jillian Marie Day
Susan Leanne Hornsby-Geluk
Gregory Francis Kelly
Rebecca Morganna Morahan
Adrienne Mary Kate Olsen
Rachel Margaret Roberts and
Peter Raymond Verhaart
Wendy Maryanne Venter

being the Trustees of the Foundation as at the date of this Deed.

2. Background

- 2.1 Arising from initiatives promoted by **The New Zealand Guardian Trust Company Limited** ("the Original Trustee"), **James Belich**, Knight of the Realm, Mayor of Wellington ("the Founder") and the persons named as Board Members in the original Deed of Trust dated 20 December 1991 ("Original Board Members") being convinced of the need for the establishment of a perpetual public charitable trust, agreed to establish such a Trust and trust fund under the name **The Wellington Community Foundation**.
- 2.2 The fund so created and the income which such fund produces shall be applied for the relief of poverty, for the advancement of education or religion and for other Charitable Purposes from time to time beneficial to the needs and interests of the Region.

- 2.3 The Founder who was involved from the outset in the preliminary arrangements for the establishment of the Foundation accepted that it was appropriate for him in his role as then Mayor and First Citizen of the City of Wellington to participate in the original Deed of Trust as the founder of the Trust thereby established.
- 2.4 The Founder paid to the Original Trustee the sum of \$100.00 (the settled sum) as the seeding donation to establish the Foundation and to be held by the Original Trustee upon the trusts of the original Deed of Trust.
- 2.5 The Original Trustee consented to accept appointment and become trustee of the Foundation upon the terms and with and subject to the powers and provisions outlined in the original Trust Deed.
- 2.6 The structure of the Foundation was:
- (a) The Foundation was to be an umbrella or head trust (Head Trust) the funds of which may be allocated from time to time as defined in the Trust Deed to any Charitable Purpose within the Region.
 - (b) Under the aegis of the Head Trust there are and may be established or taken under management subsidiary trusts for specifically designated purposes (Sub Trusts).
 - (c) Further recognising that economies of scale may make it desirable and convenient for existing trusts to be brought within the aegis of the Head Trust (subject to the prior consent of the existing trustees of any such trust) and thereafter to be one of the Sub Trusts it was desired to empower the Original Trustee in appropriate circumstances to introduce existing trusts as new Sub Trusts under the Head Trust.
- 2.7 The intention was that the Foundation should have via the terms of the Trust Deed sufficient flexibility to enable any persons wishing to support the Foundation or any of the Sub Trusts to make gifts either to the Foundation as the Head Trust or to any nominated Sub Trust or alternatively to request (with the approval of the Original Trustee) the establishment of a new and separate Sub Trust nominating the particular Charitable Purpose or Purposes to which such Sub Trust shall be dedicated.
- 2.8 The Founder contemplated that the Foundation would solicit and accept gifts both by Will and from living persons and in so doing promote and support the needs and aspirations of Authorised Charities within the Region.
- 2.9 On 9 December 2005 the Foundation was reconstituted by way of the Original Trustee retiring and a board of new individual trustees being appointed and the Foundation being renamed the **Wellington Foundation** with variations to the terms of the original Trust Deed as set out in a certain deed dated 9 December 2005.

- 2.10 By resolution of the Board dated 30 January 2006 the Trustees changed the name of the Foundation to **Wellington Region Foundation**.
- 2.11 By deed dated 21 April 2008 the Trustees varied the terms of the Trust Deed to update certain definitions and the purposes of the Foundation, and otherwise as set out in that deed. By resolution of the Trustees of the same date, the name of the Foundation was changed to **Nikau Foundation**.
- 2.12 By deed dated 18 October 2010 the Trustee varied the terms of the Trust Deed to permit re-election of retiring trustees.
- 2.13 By resolution of the Board dated 29 October 2018 the Trustees varied the terms of the Trust Deed to increase the maximum number of Trustees to 14.
- 2.14 By resolution of the Board dated 4 May 2020 the Trustees varied the terms of the Trust Deed as set out in this consolidated trust deed.

3. Definitions and Interpretation

3.1 Definitions

In this Deed unless the context otherwise requires:

Annual plan means a financial, strategic, business plan for the Foundation encompassing all relevant aspects of the Foundation's activities;

Balance Date means 30 September or any other date adopted from time to time by the Trustees as the end of the Foundation's Financial Year;

Board means the board of trustees constituted by this Deed and is made up of the Trustees for the time being of the Foundation;

Chairperson means the Trustee appointed as chairperson of the Foundation pursuant to clause 15.2;

Charitable Purpose has the meaning set out in clause 5(1) of the Charities Act;

Charities Act means the Charities Act 2005;

Charitable Trusts Act means the Charitable Trusts Act 1957;

Community Foundation means a community foundation that is qualified as, and is, a member of Community Foundations of New Zealand Incorporated;

Community Organisation means any trust, society or institution established exclusively for Charitable Purposes within New Zealand and not carried on for private pecuniary profit of any individual and whose income is exempt under

section CW41 and CW42 of the Income Tax Act 2007, or any subsequent enactment of similar effect for the time being in force;

this Deed means this Trust Deed as amended from time to time;

Deputy Chairperson means the Trustee appointed as deputy chairperson of the Foundation pursuant to clause 15.2;

Existing Sub Trusts means all Sub Trusts of the Foundation in existence as at the date of this Deed;

Financial Year means any year or other accounting period ending on a Balance Date;

GT Sub Trust means any Sub Trust of the Foundation in existence prior to 9 December 2005 and of which The New Zealand Guardian Trust Company Limited has continued to be a trustee as at the date of this Deed;

High Court means the High Court of New Zealand;

Income Tax Act means the Income Tax Act 2007;

Life Member means any person nominated by the Board to that position pursuant to clause 10.9;

Legal Capacity means that person:

- (a) Is not the subject of an order made pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (b) Is not the subject of an order pursuant to the Protection of Personal and Property Rights Act 1988; or
- (c) Has not received a written medical certificate from a registered medical practitioner, stating that in their opinion that person lacks the mental capacity to carry out the duties and powers given to them by this Trust Deed, and, if they have received the written medical certificate above, that person has not received a subsequent written medical certificate from a registered medical practitioner stating the person has regained the required mental capacity;

Person includes any individual, corporation, entity, partnership, joint venture, association, trust, organisation, government department or local authority;

Region means the area within the boundaries of the Greater Wellington Regional Council;

Secretary means the person appointed pursuant to clause 15.3;

Sub Fund means the funds of a Sub Trust, a wound up Sub Trust or a donation which are held within the Trust Fund of the Foundation.

Sub Trust means a trust for a specified Charitable Purpose existing, established or accepted pursuant to clause 16 including the GT Sub Trusts and Existing Sub Trusts;

Trustees means the trustees for the time being of the Foundation;

Trustee Act means the Trustee Act 1956 and, where the context permits, and once it comes into force, means the Trusts Act 2019;

Trust Fund means the fund referred to in clause 7.

3.2 **Interpretation:** In this Deed, unless the context otherwise requires:

- (a) references to one gender include the other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed; and
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended or replaced by new legislation and includes substituted provisions that substantially correspond to those referred to.

3.3 **Default duty:** If anything in this Deed is inconsistent with a duty which is defined by an Act of Parliament as a “default duty” of trustees, this Deed overrides that default duty but only to the extent necessary to give full effect to the terms of this Deed.

4. **Name**

4.1 The name of the Foundation is the “Nikau Foundation”. The Board may change the name of the Foundation at any time by resolution of no less than 75% of the Board.

5. **Office**

5.1 The registered office of the Foundation is at Level 4, 44 Victoria Street, Wellington. The Board may change the registered office at any time.

6. Purposes

6.1 The purposes of the Foundation are:

- (a) To provide support, both financial and otherwise, for Community Organisations and for any Charitable Purpose;
- (b) To promote and encourage generosity among the people of New Zealand towards Community Organisations and any Charitable Purpose; and
- (c) To establish and administer separate named funds within the Trust Fund including Sub Trusts in order to fulfil the wishes of individual or corporate donors who wish to support Community Organisations and any Charitable Purpose.

6.2 All of the purposes and activities are to be within New Zealand with a focus (but not as a restriction) on purposes and activities within the Region.

PART 2 Trust Fund

7. Trust Fund

7.1 The Trust Fund comprises the initial gift of \$100.00 and all other capital, income and other property acquired and held by the Board from time to time for the Foundation.

7.2 The Trust Fund is administered by the Board which sets policies and resolves courses of action and the means and direction of implementation in order to achieve the Charitable Purposes.

8. Application of Income and Capital

8.1 Subject to clause 8.2, the Board has absolute discretion to pay or apply (by way of grants or otherwise) the whole or any part of the Foundation's income and capital each financial year to such Community Organisations and towards such Charitable Purposes in such amounts, at such time or times, for such period or periods, and subject to such terms and conditions as the Board from time to time determines.

8.2 Any distribution of income or capital of a Sub Trust shall be paid or applied in accordance with clause 16 of this Deed.

9. Power to pay or appropriate Income before determination

- 9.1 The Board may at any time pay or apply any anticipated income of the Trust Fund (whether or not accounted for in the Foundation's financial statements) for any Charitable Purpose from the capital of the Trust Fund and recoup that capital upon receipt of the anticipated income.

PART 3 Trustees

10. Membership of the Board

- 10.1 The Board consists of at least five (5) and no more than fourteen (14) Trustees at any one time. If the number of Trustees reduces below five (5), the only decision the Board can legally make is the appointment of further Trustees pursuant to this clause 10.
- 10.2 The Board has the power to appoint new Trustees. The Board shall have a trustee appointment policy which will be publicly available and will set out the criteria for appointment of new Trustees and the process to be followed by the Board for new appointments. Trustees must have the special knowledge, experience, qualifications and interests as the Board from time to time sets out in the trustee appointment policy. The Board may change its trustee appointment policy by resolution of no less than 75% of the Board.
- 10.3 Trusteeship may be reviewed by the Board at the meeting prior to the annual general meeting in any year on the basis of the criteria for appointment set out in the Board's trustee appointment policy from time to time and on the basis of each Trustee's commitment and contribution to the Foundation's Charitable Purposes. In addition, at each annual general meeting three (3) Trustees or one-third of the total number of Trustees (whichever is the lesser number) must retire from office. Those to retire will be those who have held office for the longest time since appointment (or reappointment). Where more than the required number of Trustees have been in office for the same length of time, Trustees may either put themselves forward for re-election voluntarily, or a ballot will be held.
- 10.4 Any retiring Trustee is eligible for re-appointment by the Board.
- 10.5 Subject to clauses 10.6 and 10.7, any change in trustees will not require a deed, but will be completed by entry into the Foundation's minute book and updating of all registration records including Charities Services and the Societies and Trusts Online website operated by the Companies Office (or any other applicable registration office).
- 10.6 **Retirement of Trustees:** A Trustee may retire at any time by giving written notice to the Chairperson or Secretary.
- 10.7 **Removal of Trustees:** A Trustee will immediately cease to be a Trustee if:

- (a) That Trustee becomes bankrupt (or any equivalent financial status);
- (b) That Trustee lacks Legal Capacity;
- (c) That Trustee dies;
- (d) That Trustee is absent from three (3) consecutive meetings of the Board within one (1) year without good reason or apology;
- (e) The Board, after consideration of the membership at clause 10.2 determines by a majority of no less than 75% of the Board that it is in the best interests of the Foundation that the Trustee retire; or
- (f) In the opinion of a majority of the Board that Trustee is found to be guilty of serious misconduct of a nature likely to detrimentally affect the reputation of the Foundation.

10.8 The Board has the power to appoint a Trustee (or Trustees) to fill any casual vacancy until a formal appointment is made in accordance with this clause 10.

10.9 **Life Members:**

- (a) The Board may by resolution nominate any person as a "Life Member" of the Foundation in recognition of their past service to the Foundation.
- (b) A Life Member may hold this title for life but at any time:
 - (i) the Life Member may disclaim this title by notice in writing to the Foundation; or
 - (ii) upon the recommendation of the Board, may by Board resolution have the title removed if the Board considers it is no longer in the best interests of the Foundation that the individual continue to hold such title.
- (c) The office of "Life Member" is an honorary position and shall not:
 - (i) have any duties or powers, or fulfil any functions, except such (if any) as the Board may from time to time determine; or
 - (ii) be, or be deemed to be, under any circumstances a Trustee of the Foundation or a member of the Board.

11. Powers

11.1 In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act or the Charities Act or the Charitable Trusts Act or otherwise, and subject to the terms of this Deed, the Board has in relation to the Trust Fund

all the powers of natural persons acting as beneficial owners and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.

- 11.2 The powers which the Board may exercise (without limitation and by way of examples) in order to carry out the Foundation's purposes are as follows:
- (a) to seek, accept and receive koha, donations, subsidies, grants, endowments, gifts, legacies and bequests either in money or in kind or partly in money and partly in kind for all or any of the purposes of the Foundation; and
 - (b) to use as much of the Trust Fund as the Board thinks appropriate in payment of the costs and expenses of the Foundation such costs and expenses being no greater than market rates; and
 - (c) to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of achieving the purposes of the Foundation, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
 - (d) to carry on any business either directly or indirectly and whether via companies, partnerships, trading trusts or other structures; and
 - (e) to invest all or any part of the Trust Fund in any way permitted by law and in such manner and upon such terms as the Board thinks fit including (without limitation) engaging in social investment for a lower, or nil, rate of return; and
 - (f) to borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit; and
 - (g) to give guarantees and indemnities, alone or with third parties; and
 - (h) to do all things as may from time to time appear necessary or desirable to enable the Board to give effect to and to achieve the purposes of the Foundation; and
 - (i) to employ and appoint such staff and professional advisers as the Board thinks appropriate to manage the affairs of the Foundation and the Trust Fund the cost of this to be no greater than at market rates; and
 - (j) to appoint any company or body corporate whether constituted in New Zealand or overseas to be Custodian Trustee of the trusts hereby created and the provisions of sub-section (2), (3) and (4) of section 50 of the Trustee Act 1956 shall apply to any Custodian Trustee so appointed

provided however that in so appointing a Custodian Trustee the Board shall act unanimously; and

- (k) to incorporate itself into a trust board under the Charitable Trusts Act and to maintain such incorporation.

11.3 Notwithstanding anything contained or implied in this Deed, where the Board carries on or engages in any business by or on behalf of or for the benefit of the Foundation no person defined in section CW 42(5)(b) of the Income Tax Act 2007 shall, by virtue of that capacity and within the ambit and scope of section CW 42 and with the exceptions therein contained, in any way whether directly or indirectly determine or materially influence in any way the determination of:

- (a) The nature or the amount of any benefit or advantage (as defined in section CW 42(8)) able to be received, gained, achieved, afforded or derived by that person from that business; or
- (b) The circumstances in which that benefit or advantage of income is or is to be so received, gained, achieved, afforded or derived.

11.4 Nothing in this Deed shall authorise the derivation of income to which section CW 42 of the Income Tax Act 2007 applies and which is excluded from exemption from income tax by the said section CW 42.

PART 4 Administration of the Foundation

12. Financial statements

12.1 The Board shall keep accurate records of all money received and expended disclosing all financial transactions and assets and liabilities and without limitation:

- (a) Within five (5) months after the end of every Financial Year of the Foundation, shall cause the financial statements of the Foundation, prepared for that Financial Year in accordance with generally accepted accounting practice (together with any non-financial information required to be audited or reviewed by law) to be audited or reviewed by an auditor appointed by the Board for that purpose and the Board shall present the audited or reviewed financial statements (and non-financial information) to the annual general meeting of the Board.
- (b) The auditor:
 - (i) Must be a person who is qualified to act as an auditor under the Financial Reporting Act 1993; and

- (ii) Must not be a Trustee, or an employee of the Trustees, nor any relative or partner of any of the Trustees or of any employee of the Trustees; and
 - (iii) Must not be otherwise disqualified from being an auditor under the Financial Reporting Act 1993.
- 12.2 Any casual vacancy in the office of auditor must be filled within one month of the vacancy occurring.
- 12.3 The Board shall hold separate accounting records as memoranda for each Sub-Trust and such records will be dealt with in accordance with the provisions set out at clause 16 of this Deed.

13. Power to delegate and appoint advisory committees

- 13.1 The Board has the power to organise or establish any committee to assist the Board in an advisory capacity and/or to ensure the Foundation has access to the requisite expertise and knowledge of the purposes of the Foundation to make effective and useful grants, distributions and investments for the purposes set out in clause 6. The Board may delegate in writing any of its powers and duties to any such committee or to any person, and the committee or person as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them. The Board may devise procedures, policy manuals, requirements, guidelines for any management or other structures which it considers necessary or desirable from time to time for the attainment of any of the charitable purposes of the Foundation and may review any of same at any time. Any person, committee, delegate or other entity of any description shall be required to perform to all reasonable requirements of the Board at all times and to report to the Board upon request.
- 13.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the terms of this Deed and shall be deemed to totally accept such responsibility.
- 13.3 The Board shall appoint members of any advisory committee on such terms as the Board considers appropriate from time to time and may at any time remove any member of any advisory committee.
- 13.4 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.
- 13.5 It shall not be necessary that any person who is appointed to be a member of any such committee or entity, or to whom any such delegation is made, be a member of the Board.

- 13.6 The Board may take and act upon the opinion of any barrister, solicitor, or other suitably qualified legal adviser practising in New Zealand whether in relation to the interpretation of this Deed of any other document or statute or to the administration of the Foundation or otherwise, without being liable in respect of any act done by them in accordance with such opinion.
- 13.7 Nothing in this clause prohibits the Board from applying to the High Court for directions on the resolution of any matter or otherwise. If the Board does apply to the High Court, all expenses of the application are chargeable to the Foundation.

14. Annual General Meeting

- 14.1 The annual general meeting of the Board shall be held each year at such place, date and time as the Board shall determine.
- 14.2 The annual general meeting shall carry out the following business:
- (a) to receive the minutes of the previous annual general meeting and of any other special general meeting held since the last annual general meeting; and
 - (b) to receive the Foundation's financial statements for the preceding year and an estimate of income and expenditure for the current year including consideration of a draft Annual Plan; and
 - (c) to receive a report from the Chairperson;
 - (d) to consider and decide on the appointment or re-appointment of Trustees; and
 - (e) to consider and decide any other matter which may properly be brought before the meeting.

15. Proceedings of the Board

- 15.1 The Board shall meet at such times and places as it determines and shall generally regulate and set its own protocol but shall meet not less than twice annually.
- 15.2 The Board shall elect a Chairperson and Deputy Chairperson from amongst its members at the first Board meeting following the annual general meeting. The Chairperson shall preside if present at all meetings of the Board. In the absence of the Chairperson from any meeting, the Deputy Chairperson shall preside at that meeting. If neither the Chairperson nor the Deputy Chairperson is present, the Trustees present shall elect one of their number to preside at that meeting.

- 15.3 The Board shall appoint a Secretary for such term, on such conditions, and at such remuneration (if any) as the Board may think fit. The Secretary so appointed may be dismissed by the Board. The Secretary need not be a Trustee.
- 15.4 At any meeting of the Board 50% of the Trustees shall form a quorum, and no business shall be transacted unless a quorum is present. If a quorum is not present within 20 minutes of the scheduled commencement time for the meeting, a subsequent meeting shall be called within seven days.
- 15.5 All questions before the Board shall be decided by a majority of votes. If the voting is tied, the motion shall be lost. The Chairperson shall have a vote but will not have an additional casting vote.
- 15.6 The Secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at all reasonable times.
- 15.7 The Trustees shall be given five (5) days' notice by the Secretary of the Foundation prior to any meeting of the Board.
- 15.8 **Notices:**
- (a) Any notice required to be given to any Trustee may be given by one of the following means:
 - (i) By personal delivery; or
 - (ii) By posting by ordinary mail; or
 - (iii) By email or other widely accepted electronic means.
 - (b) A notice is deemed to have been given:
 - (i) In the case of personal delivery, when received by the Trustee;
 - (ii) In the case of posting, by ordinary mail, on the fifth day following the date of posting to the postal address last given by the Trustee to the Secretary;
 - (iii) In the case of email or other widely accepted electronic means, when acknowledged by the Trustee orally or by return email or response or otherwise in writing, except that return emails or responses generated automatically shall not constitute an acknowledgement.
 - (c) It shall be the responsibility of each Trustee to notify the Secretary of his or her postal address and other contact details, and of any change to that address or details.

- 15.9 Any meeting of the Board may be held by telephone, video conference, or any other similar form of communication.
- 15.10 A resolution in writing signed by, or confirmed in writing by, all of the Trustees is as valid as if it had been passed at a meeting of the Board. Such written confirmation may be by letter (whether hand-delivered or posted) or by email or other electronic signing system.

PART 5 Sub Trusts and Related Administration

16. Sub Trusts and Related Administration

16.1 Existing Sub Trusts:

- (a) The Board shall administer the Existing Sub Trusts in accordance with the terms of each Existing Sub Trust and this Deed.

16.2 GT Sub Trusts:

- (a) The Board may at any time accept trusteeship of any of the GT Sub Trusts;
- (b) The Board may at any time accept responsibility for administration of any of the GT Sub Trusts;
- (c) The Board may also wind up any GT Sub Trust as per clause 16.6 below; and
- (d) For any GT Sub Trusts which remain with The New Zealand Guardian Trust Company Limited as trustee, The New Zealand Guardian Trust Company Limited will hold the funds of that GT Sub Trust in accordance with the terms of each GT Sub Trust and the terms of this Deed.

16.3 Other existing trusts:

- (a) The Board may at any time accept trusteeship of any existing trust;
- (b) If at any time the Board is approached to take on the trusteeship of an existing trust, then the following shall apply:
- (i) Such trust must be for a Charitable Purpose;

- (ii) The acceptance must be authorised by deed;
- (iii) The existing trust will become a Sub Trust;
- (iv) The Board may appoint an advisory committee to advise the Board on any matter relating to the trust. Such advisory committee, including function, form and appointment (including appointment of persons whom are not Board members) shall be at the sole discretion of the Board; and
- (v) The Board shall administer the trust in accordance with the terms of that trust, Sub Trust and this Deed.

16.4 **New Sub Trusts:**

- (a) The Board may by deed establish a new Sub Trust within the Foundation of which the following will apply:
 - (i) The Sub Trust must be for a Charitable Purpose, but can specify a particular Charitable Purpose; and
 - (ii) The Foundation will be the trustee of any new Sub Trust; and
 - (iii) The Board may appoint an advisory committee to advise the Board on any matter relating to the Sub Trust. Such advisory committee, including function, form and appointment (including appointment of persons whom are not Board members) shall be at the sole discretion of the Board; and
 - (iv) The Board shall administer the Sub Trust in accordance with the terms of that Sub Trust and this Deed.

16.5 **Administration** of Sub Trusts:

- (a) The administration will fall within the administration of the Foundation;
- (b) The Board shall determine whether it is appropriate to administer the trust as a Sub Fund or as a Sub Trust;
- (c) The Foundation may incorporate any Sub Trust's funds within its own Trust Fund as a Sub Fund, but if it does so, must keep accurate and up to date records of the capital and income; and
- (d) Subject to the terms of the Sub Trust, the distribution of income and capital of the Sub Trust will be in line with the policies and procedures of the Foundation.

16.6 Winding up of Sub Trusts:

- (a) If, at a specially convened meeting, the Board unanimously resolves in writing to wind up a Sub Trust then the following shall apply:
- (i) In the case of the GT Sub Trusts in clause 16.2(d) above, the trustee of the trust must be involved to wind up the trust on the recommendation of the Board;
 - (ii) The Board will prescribe how surplus funds are to be dealt with upon winding up;
 - (iii) Any accrued income which has not been paid, applied or allocated shall be distributed in accordance with the Foundation's distribution policy and in accordance with its purposes including becoming a Sub Fund;
 - (iv) In the event that there is no distribution of the accrued available income within a reasonable period of time (but not exceeding 18 months) from the date that the Foundation resolves to wind up the Sub Trust then the High Court may be applied to for determination on the distribution of the accrued available income;
 - (v) The Foundation is entitled to resolve to retain funds for expenses and costs associated with the wind up; and
 - (vi) The limitations of liability set out in clause 21 shall extend to the Foundation (and to each of the Trustees) in relation to the Sub Trust, and the Foundation (and each of the Trustees) will be entitled to be indemnified from the Sub Trust fund for any liability arising or loss incurred as a result of the actions set out in this clause 16.6 unless such liability or loss is incurred as the result of the Foundation's (or the Trustee's) own dishonesty, wilful misconduct or gross negligence.

PART 6 General

17. Income, Benefit or Advantage to be applied to Charitable Purposes

17.1 Any income, benefit or advantage shall be applied to the Charitable Purposes of the Foundation.

17.2 Nothing expressed or implied in this Deed shall ever permit the activities of the Board or any business carried on by or on behalf of or for the benefit of the Board (whether directly or indirectly) to be carried on for the private pecuniary profit of any person at any time.

17.3 Influence:

- (a) No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Foundation where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
 - (i) professional services to the Foundation rendered in the course of business charged at no greater rate than market rates; or
 - (ii) interest on money lent at no greater rate than market rates.
- (b) No Trustee receiving any remuneration from the Foundation shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

18. Information

- 18.1 The Trustees have no duty to provide information in relation to the Foundation to any person except as specified in this Deed or as required under any statute.

19. Alteration of Trust Deed

- 19.1 This Deed may be altered, added to, rescinded or otherwise amended by a resolution passed by a 75% majority of the Board, provided that no such amendment shall detract from the exclusively charitable nature of the Foundation and its purposes or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

20. Disposition of Surplus Assets

- 20.1 On the winding up of the Foundation or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisations within New Zealand as the Board decides or, if the Board is unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act.

21. Trustees Liability and Indemnity

- 21.1 For the purpose of this clause 21 only, each member of any committee established under clause 13.1 shall have the benefit of the indemnities provided in this clause, whether or not they have been appointed as a trustee of the Foundation.
- 21.2 None of the Trustees will be liable for:

- (a) A loss incurred by the Foundation other than as a result of that Trustee's own dishonesty or wilful misconduct;
- (b) The acts or omissions of anyone employed by including in contract or in consultancy to the Board;
- (c) Claims against the Board that cannot be satisfied because:
 - (i) all or part of the Trust Fund has been distributed, unless the distribution was a deliberate breach of trust by the then Board;
 - (ii) any other circumstance not the fault of that Trustee.

21.3 No Trustee is obliged to take proceedings against a co-Trustee, or any former Trustee.

21.4 Each of the Trustees will be indemnified out of the trust fund:

- (a) if the Trustees incur any liability as the result of any act or omission by any of them as a Trustee, unless
- (b) the liability is incurred as the result of that Trustee's own dishonesty, wilful misconduct or gross negligence.

and the Board shall be entitled to pay trustee indemnity insurance premiums and maintain indemnity insurance policies for the Trustees.

21.5 The Trustees shall invest the Trust Fund in accordance with any statement of investment policies and objectives (or "SIPO") adopted by the Board from time to time.

21.6 Subject to clause 21.5, the Trustees have no obligation to diversify the investments of the Trust Fund; they are not under any duty to formulate an investment strategy, or to invest prudently; and sections 13B, 13C and 13E of the Trustee Act 1956 (and any similar provision contained in the Trusts Act 2019 and in any amendment or substitution for that Act, and any duties at common law concerning investment) are not binding on the Trustees. The Trustees may bind or commit trustees to a future exercise or non-exercise of a discretion. For the purposes of section 5(4) of the Trusts Act 2019 this clause is a modification of the application of the provisions of the Trusts Act 2019.

22. Charging by Trustees

22.1 Subject to the provisions of clauses 17 and 23.1, any Trustee who is engaged in a profession or business shall be entitled to be paid at reasonable market rates for services provided by that trustee or that trustee's firm on the same basis as if that Trustee were not a trustee.

23. Declarations of Interest

- 23.1 No Trustee shall vote on any matter in which that Trustee has any personal or pecuniary interest or in which any company or entity or associated person or persons with or in which the Trustee has a personal or financial interest, has any pecuniary interest.
- 23.2 Any Trustee shall declare any such interest as soon as the Trustee concerned becomes aware of the existence of the interest, the declaration to include all relevant detail needed to result in a full and fair disclosure. All Trustees shall act in the utmost good faith in all such matters to ensure transparency and fairness.
- 23.3 Subject to compliance with the above disclosure requirements any Trustee shall be entitled in any personal capacity (or otherwise) to have an interest in any entity or business having any dealings with the Board.

24. Execution of Documents

- 24.1 Documents shall be executed by the Foundation pursuant to a resolution of the Board by any two of the Trustees signing on behalf of the Foundation.
- 24.2 Any document to be executed by the Foundation may be signed in accordance with this Deed by a digital signature where that process complies with the Part 4 of the Contract and Commercial Law Act 2017.

25. Wind up of the Foundation

- 25.1 If, at a specially convened meeting, no less than 75% of the Board resolves in writing to wind up the Foundation, then the following shall apply:
- (a) Such wind up shall be by deed, including specifications as to the distribution or transfer of the Trust Fund and any accrued income not already granted for a Charitable Purpose;
 - (b) The distribution of the Trust Fund will be for a Charitable Purpose and may be for the benefit of any other charity which is in line with the Charitable Purposes;
 - (c) The Board shall be entitled to set aside a retention of funds for expenses to wind up the Foundation, including administrative expenses, accounting and auditing costs, any fees for applicable court orders as required by law, the payment of legal fees for transfer of capital and ancillary costs associated with the administration of the Foundation not yet realised at the date of wind up;
 - (d) Clauses 20 and 21 shall apply to any wind up of the Foundation.