## **CHARITABLE TRUST DEED EXAMPLE (FOR A REGIONAL SPORTS TRUST)**

## **Disclaimer**: This sample document is provided as a good practice starting point. Before its application in any specific setting you should seek specialist legal advice to ensure it is appropriate to your needs.

### Preface

1. This sample Charitable Trust Deed is suitable for a regional sports trust or other trusts set up for community purposes or sporting activities with a charitable purpose. This example is not appropriate for a national sport organisation (NSO) setting up a foundation or for ownership of a facility as many of the rules will need to be amended. Separate advice should be sought for these types of trusts as it is important that the NSO retains a degree of control over the trust, including appointment of trustees, the powers and authority of the trustees and other control mechanisms.

2. A charitable trust is a type of legal entity, distinct from an incorporated society, company, partnership, property trust or other type of entity. It does not confer charity status on the trust and is not the same as being registered under the Charities Act 2005. Registration as a charitable trust does not mean the trust can rely on having the tax exemptions of a charity.

3. Registration under the Charities Act 2005 can be obtained by charitable trusts, incorporated societies and companies. Being a registered charity provides benefits including tax exemption, donee status (donors do not have to pay tax on donations), access to funding from organisations which only fund register charities, and public accountability (your details made publicly available to help promote public confidence in the charitable sector).

4. To be registered under the Charitable Trusts Act 1957, a trust must exist principally or exclusively for:

1. A charitable purpose according to the law of New Zealand; or
2. Any purpose that is religious or educational whether or not such purpose is charitable according to New Zealand law.

A charitable purpose may be the object of a trust or the purpose for which the trust is formed. The following purposes may be the basis of registration as a charitable trust:

1. The promotion of education;
2. The promotion of religion;
3. The relief of poverty; or
4. Other purposes of benefit to the community.

5. Charitable trusts can become incorporated as a board under the Charitable Trusts Act 1957; however, it is not compulsory. The advantage of incorporating as a board is that the trust, not the trustees, can enter into all obligations, and the trust, not the trustees personally, will be sued if some default occurs. The trustees will continue to act to the high standards that the law requires whether or not they decide to incorporate as a board.

6. The registration process of Charities Services (part of the Department of Internal Affairs and the successor to the Charities Commission) also meets most of the requirements for tax exemption. Therefore it is no longer necessary for charities to provide Inland Revenue with their founding documents as trusts that are registered with Charities Services will prima facie be treated by Inland Revenue as qualifying for income tax exemption.

7. There are a number of other legislative references in this trust deed that may change over time. It is important that legal advice is sought at the time a charitable trust is being set up to ensure that the applicable legislation is complied with and the provisions of this sample trust deed are applicable and relevant.

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### TRUST DEED dated 20XX

### PARTIES

1. [ ] (the Settlor)

2. [ ] (the Trustees)

### BACKGROUND

A. The Settlor has determined to establish a trust for charitable purposes to be known as [name of Trust] for the purpose of pursuing the objects listed in this Trust Deed.

B. The Trustees have agreed to act as the Trustees of the Trust.

C. The Settlor has paid to the Trustees the sum of $[X ] to constitute the initial funds of the Trust.

D. The Trustees wish to declare the trusts on which they hold the initial funds and all other funds or property vested in or controlled by the Trustees for the benefit of the Trust (all being referred to in this Deed as the Trust Fund).

E. The Trustees wish to apply for incorporation as a Board under Part II of the Charitable Trusts Act 1957.

### THIS DEED RECORDS

#### 1. TRUST FUND

The Trustees declare that they hold all money and other property settled upon trust for those charitable purposes referred to in clause 4 of this Deed together with all other money and property which may be added to it by way of capital or income (‘Trust Fund’).

#### 2. NAME OF THE TRUST

The Trust shall be known as ‘[name of Trust]’ or such other name as the Trustees may, by amendment to this Deed, determine from time to time.

*Commentary: No trust may be incorporated as a charitable trust board under a name which is identical or almost identical to the name of another board, company or body corporate. The Registrar of Incorporated Societies must also be satisfied that the name chosen will not be contrary to public interest.*

#### 3. OFFICE OF THE TRUST

The registered office of the Trust shall be situated at such place as determined by the Trustees from time to time.

#### 4. CHARITABLE OBJECTS OF THE TRUST

4.1 The charitable objects of the Trust (‘the Objects’) are:

a. To promote, encourage, assist, develop and support by any means whatsoever all sport, recreation, leisure and cultural activities which are in the interests and the wellbeing of the people of [insert District] (‘District’);

b. To provide support to community sport and recreational groups and organisations in the District (‘District’) by the provision of advice, training, guidance and funding to assist in the improvement of, and access to, governance, management and administration of the said groups and organisations in the District.

c. To promote, develop, maintain, organise, conduct and control any recreation sports facilities in the District to fulfil the objects of the Trust.

d. To educate the people in the District by raising the awareness of the benefits of a healthy lifestyle by the promotion and coordination of physically active and healthy lifestyle programmes and activities in the District;

e. To provide guidance and support to schools and educational institutions by assisting in the coordination of, and upskilling of teachers, trainers and coaches in the delivery of, sport and physical recreation programmes and activities in the District;

f. To undertake such other activities and provide such other assistance, whether by way of financial assistance/support or otherwise as the Trustees see fit, of a charitable nature for the benefit of those in the District.

4.2 **District:** for the purposes of this Deed, District means the geographical area defined by the boundary of the [insert] District Council, or such other geographical area as determined by the Trustees.

4.3 **No Limitation:** The objects of the Trust shall not, except where the context expressly requires it, be in any way limited or restricted by reference to, or inference from, the terms of any other clause of this Deed.

4.4 **Objects Independent:** The Trustees shall be empowered to carry out any one or more of the objects of the Trust independently of any other object of the Trust.

4.5 **Carried out within New Zealand:** All the objects of the Trust are to be carried out exclusively within New Zealand except where a Trust beneficiary is provided with funds in New Zealand for study outside of New Zealand.

Commentary: It is essential that the trust deed clearly evidences the charitable purposes of the trust. It may be necessary to amend Object 1(a) so that it is more specific about how the charitable purposes of the trust will be achieved. Without a clear charitable purpose or purposes the trust will not obtain charitable status in terms of either registration or tax purposes. Running a sporting or recreation club is not itself a charitable purpose but it is a charitable purpose to establish facilities for recreation and other leisure time activities if those facilities are provided in the interests of social welfare and for the public benefit. It is necessary to prove that the objects of a charitable trust are of a public nature benefiting a class of the public rather than a group of private individuals. It is also necessary to show that the benefit is available to a sufficient, defined section of the public. We recommend you get legal advice to ensure the objects comply with the applicable legislation and are appropriate for the organisation.

Trusts do not have members like incorporated societies but instead have beneficiaries. These beneficiaries must be the section of the public which will benefit from the trust.

#### 5. POWERS OF TRUSTEES

5.1 **General**: The Trustees shall act on the Trust’s behalf. In addition to all other powers conferred by law, the Trustees shall have the same powers as a natural person acting as a beneficial owner of the Trust Fund. Such powers shall not be limited or restricted by any principle of construction or rule of law or statutory power or provision, except to the extent set out in this Deed. The Trustees shall exercise their powers either alone or jointly with another person or persons.

5.2 **Promotion of Objects:** The Trustees shall promote the objects of the Trust described in clause 4 of this Deed. The Trustees shall act on behalf of and in the interests of the Trust.

5.3 **Advertise and Inform:** The Trustees shall have the power to make known and further the objects of the Trust by advertising the manner in which the Trust Fund, or any part of it, has been, is being or will be applied, through established media and by advertising in any medium. The Trustees may also disseminate information of any nature relating to the Trust by written publication or otherwise.

5.4 **Collect Funds:** The Trustees shall have the power to collect funds and raise money by all lawful means (including by gaming machines) and receive, accept, encourage and enlist financial and other contributions, subscriptions, sponsorships, donations, legacies, endowments or bequests from any source. The Trustees may also conduct fund raising campaigns in order to further the exclusively charitable objects of the Trust.

5.5 **Receive Grants and Subsidies:** The Trustees shall have the power to receive from the New Zealand Government, or any council, board, territorial authority, or body under the jurisdiction of such governmental authority or from any national or international organisation, any grant, subsidy or payment of any kind in order to further the objects of the Trust.

5.6 **Specified Trust:** The Trustees shall have the power to carry out any specified trust attaching or relating to any contribution, subscription, sponsorship, donation, legacy, endowment, bequest, grant, subsidy or payment received, to the extent such specified trust conforms with the objects of the Trust.

5.7 **Apply Funds:** The Trustees shall have the power to apply any money forming part of the Trust Fund to the promotion and advancement and development of the objects of the Trust.

5.8 **Invest Funds:** The Trustees shall have the power to invest any money forming part of the Trust Fund in any of the ways authorised by law for the investment of trust funds including (if the Trustees think fit) on mortgage of land either by the Trustees alone or together with any person or persons as a contributory mortgagee.

5.9 **Acquire Property:** The Trustees shall have the power to acquire any real or personal property or interest in such property (whether in New Zealand or elsewhere) whether by purchase, lease, hire, exchange or otherwise and on such terms and conditions as the Trustees think fit.

5.10 **Sell and Reinvest:** The Trustees shall have the power to sell, join in, call in or convert all or any part of any real or personal property forming part of the Trust Fund in such manner and subject to such terms and conditions as the Trustees think fit. The Trustees may also reinvest the proceeds of such sale, calling in or conversion in such manner as they think fit.

5.11 **Postpone Sale:** The Trustees shall have the power to postpone the sale of any real or personal property forming part of the Trust Fund for so long as the Trustees think fit, even if such property is wasting, speculative or declining in nature.

5.12 **Lease:** The Trustees shall have the power to let, lease or bail to any person or persons any freehold or leasehold property or any plant or chattels or interest in any such property forming part of the Trust Fund, either from year to year or for any term or period, and for such rental, and subject to such covenants and conditions, as the Trustees think fit. The Trustees may also accept surrenders of lease and tenancies and generally manage any lease or bailment as the Trustees think fit.

5.13 **Pay Debts:** The Trustees shall have the power to apply any income or capital of the Trust Fund in, for, or towards payment of any fees, costs, disbursements, debts or other liabilities or any part of such liabilities, owing by or in respect of the Trust Fund or incurred in connection with the trusts of this Deed. Such power shall apply whether or not the liabilities are charged upon the Trust Fund or on any part of it, and whether or not the Trustees are contractually or otherwise legally liable for the payment of the fees, costs, disbursements, debts or other liabilities.

5.14 **Acquire or Carry on Business:** The Trustees shall have the power to establish, acquire, carry on, or join in carrying on, or franchise any business or venture of any nature or any interest in such business or venture, from any person, or to commence, enter into, or to form any entity whether incorporated or not to enter into, or carry on or be engaged or concerned in any business or venture. This power applies whether or not such business or venture was carrying on at the time of execution of this Deed and may be applied for such period or periods, and in such manner as the Trustees think fit, either alone or in partnership or otherwise with any other person or persons. This power includes the power to do or join in doing all things which the Trustees consider necessary, expedient or desirable in connection with such business or venture including without limitation:

a. Employing or contracting such managers, employees, contractors, agents and others as the Trustees think fit, on terms and conditions as they think fit;

b. Using and employing the whole, or any part of the capital or income of both, of the Trust Fund;

c. Advancing to or employing any additional capital or income of the Trust Fund which the Trustees consider advisable to effectively carry on the business;

d. Managing or joining in the management;

e. Withdrawing money from such business or venture.

5.15 **Establish Reserve Fund:** The Trustees shall have the power to establish and subscribe to any depreciation or reserve fund for any purpose the Trustees deem advisable and to determine in their discretion whether that fund is income or capital.

5.16 **Join in Partition:** The Trustees shall have the power to consent to and join in the partition of any assets in which the Trust Fund is interested and to take a transfer of a divided or undivided share or interest in any such assets.

5.17 **Maintain Property:** The Trustees shall have the power generally to maintain, manage, repair, improve or develop any real or personal property, or any interest, which forms part of the Trust Fund in such manner as the Trustees think fit.

5.18 **Companies:** The Trustees shall have the power in respect of any company or companies in which the Trustees hold or are entitled to or propose to hold shares or debentures:

a. To pay calls on shares;

b. To act as an officer or officers, employee or employees of the company, either alone or in conjunction with others;

c. To appoint any person to act as a director of any company and if necessary to transfer to such person a sufficient number of shares to be held by them in trust for the Trustees to qualify such person as a director;

d. To provide, out of the Trust Fund, capital or further capital for the company whether by advances or loans (with or without security) by deposit on current account or otherwise, by guarantees (with or without security) or by taking shares or further shares or in such other manner and on such terms as the Trustees think fit;

e. In any liquidation, reconstruction, or amalgamation of the company to:

i. Concur on such terms as the Trustees think fit or on the terms of any surrender of rights attaching to all or any shares;

ii. Exercise in such manner as the Trustees think fit any powers which the rules of the company vest in the Trustees as directors or members of the company;

iii Accept fully paid or partly paid up shares or debentures or other interests in or securities of any company as the consideration (or partial consideration);

iv. Generally act in relation to the company in such manner as the Trustees think fit.

5.19 **Borrow:** The Trustees shall have the power to borrow or raise any monies on mortgage or overdraft or otherwise, with or without security, from any person or persons at such rate of interest and on such terms and conditions as the Trustees think fit. The Trustees shall also have the power to sign any mortgage, deed, charge, arrangement or other document in connection with such borrowing.

5.20 **Guarantee:** The Trustees shall have the power to enter, or join in entering into, any guarantee by the Trustees alone or together with any person or persons, the giving of which the Trustees consider is in the direct interests of the Trust Fund or the promotion of the exclusively charitable objects of the Trust. The Trustees also have the power to authorise any company in which the Trustees hold shares to enter into such a guarantee or to enter into any other arrangement which the Trustees consider is in the interests of the Trust Fund or the promotion of the exclusively charitable objects of the Trust Fund.

5.21 **Give Security:** The Trustees shall have the power to give security, whether alone or together with any other person or persons, the giving of which the Trustees shall consider to be in the direct interests of the Trust Fund or of the promotion of the objects or the exclusively charitable objects of the Trust. The Trustees also have the power to authorise any company in which the Trustees hold shares to give such security.

5.22 **Settle Accounts:** The Trustees shall have the power to agree and settle accounts with all persons liable to account to the Trustees and to compromise questions relating to the Trust Fund and to grant receipts, discharges and releases from such accounts provided all discharges and releases are in accordance with the Objects of the Trust.

5.23 **Appoint Agents:** The Trustees shall have the power to instruct and pay any person to transact all or any business or do any act required to be transacted or done in the execution of the trusts of this Deed including the receipt and payment of money. The Trustees shall not be responsible for any default of any such person appointed in good faith or for any loss occasioned by such person’s instruction.

5.24 **Delegate:** The Trustees shall have the power to delegate any of its powers to any Trustee or Trustees, or person or persons (including a committee or an employee), provided that such delegation shall be recorded in writing by the Trustees.

5.25 **Make Policies, Rules, etc:** The Trustees shall have the power to make policies, rules, guidelines and other determinations in governing the Trust.

5.26 **Bank Accounts:** The Trustees shall have the power to open or maintain such current or other accounts at such banks or other institutions and in such manner as the Trustees from time to time determine.

5.27 **Amalgamate or Merge:** The Trustees shall have the power to amalgamate or merge the Trust with any other exclusively charitable trust or organisation and to transfer all or part of the Trust Fund to such amalgamated or merged trust.

5.28 **Insure:** The Trustees shall have the power to insure against loss or damage by any cause of any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if they were acting for themselves, for such amounts and on such terms as the Trustees may from time to time think fit.

5.29 **Contributions:** The Trustees shall have the power to make payment and contribute to any charitable or other trust having substantially similar charitable objects as the objects of this Trust.

5.30 **Statutory Authorisation:** The Trustees shall have the power to do all or any of the things which they are authorised to by the Trustee Act 1956.

5.31 **General:** The Trustees shall have the power to do all such other things as in the opinion of the Trustees are incidental or conducive to the attainment of the objects of the Trust.

5.32 **Exercise Powers Independently:** None of the powers conferred on the Trustees by clause 5 or otherwise shall be deemed subsidiary or ancillary to any other power and the Trustees shall be entitled to exercise all or any of them independently of each other.

5.33 **Charitable Purpose:** the powers conferred on the Trustees by clause 5 must only be used to further the charitable purpose of the Trust.

Commentary: The powers of the trustees must be comprehensive. If the powers are not sufficiently comprehensive then an action taken by the trustees may be challenged as ‘ultra vires’ (outside its powers). Having said that, it is also important that you consider the powers carefully to ensure that the trustees are not given excessive powers, depending upon your particular circumstances and requirements. Departure from those charitable objects may render a trustee personally liable for the consequences. It is important, however, that the trustees have sufficiently broad and comprehensive powers to manage the Trust Fund and pursue the charitable objects of the trust. Additional objects will be necessary if the regional sports trust is an end user trust involved in receiving proceeds from gambling.

#### 6. PUBLIC DONATIONS

6.1 Any donations or gifts of money within the meaning of the Income Tax Act 2007 made to the Trustees for the objects of the Trust shall be placed in a fund established and maintained by the Trustees exclusively for those objects carried out within New Zealand.

#### 7. ADMINISTRATION OF THE TRUST

7.1 The Trust shall be governed by a Board of Trustees comprising the Trustees for the time being of the Trust.

7.2 No person shall be appointed or remain in office as a Trustee who is a paid employee of the Trust or a paid employee of any council, trust or other organisation which provides funds to the Trust.

Commentary: There is no legal requirement for a trust to have an Annual General Meeting. However the trustees may wish to hold one of its meetings in an open manner and account to its beneficiaries annually.

8. **COMPOSITION OF THE BOARD OF TRUSTEES**8.1 **Board of Trustees:** The Board of Trustees shall comprise no fewer than five (5) and no greater than seven (7) trustees.

8.2 **Appointment of Trustees**:

a. With the exception of the Inaugural Trustees under this Deed (clause 8.3), the Trustees shall be appointed by an Electoral College. Subject to clauses 8.2b and 8.2c, the Electoral College shall comprise:

i. A person appointed by [insert stakeholder];

ii. The Chairperson or other Trustee of the Trust, as determined by the Trustees, from time to time;

iii. Two other persons, appointed by the persons referred to in (i) to (iii) above, who have experience and skills in the recruitment and appointment of Trustees, Directors or other governance positions.

b. Each of the organisations listed in clause 8.2a.i and 8.2a.ii shall be invited in writing by the Chairperson of the Trust to notify the Chairperson of its appointee on the Electoral College. The request by the Chairperson shall specify a date by which the organisation’s appointed representative must be notified. No person who is, or has in the previous six years been, a Trustee of the Trust may be appointed as the representative of any such organisation;

c. If either of the organisations listed in clause 8.2a.i and 8.2a.ii fail to notify the Chairperson or its representative for the Electoral College by the specified date, or such other agreed date, the remaining members of the Electoral College shall appoint such number of persons, with the experience and skills described in clause 8.2a.iv, as are necessary to ensure there are five persons comprising the Electoral College in respect of any appointment of any Trustee made under clause 8.2d of this Deed;

d. The functions of the Electoral College are to:

i. Liaise with the Chairperson regarding any vacancies in any Trustee’s office which arise, whether by the expiry of office, resignation or otherwise;

ii. Develop criteria to enable it to make any appointments which detail the skills, knowledge, capabilities and any other attributes it considers are required in considering appointments to any vacant Trustee’s position;

iii. In consultation with the Chairperson, advertise widely in the public domain, invite and otherwise call for or accept applications for any vacant Trustee’s position;

iv. Determine the persons to be appointed to fill any vacant Trustee’s position either prior to or as soon as possible after such vacancy arises;

v. Monitor the performance of the Trustees.

e. Upon the Electoral College determining the person to be appointed to fill a vacancy in the office of a Trustee, it shall notify the Chairperson of such appointment. The appointment shall be minuted at the next meeting of the Trustees. The Chairperson shall also record such appointment in a memorandum which shall be executed by the Chairperson either in the presence of that meeting or at any time after that meeting and witnessed by two or more witnesses, in accordance with section 4 of the Charitable Trusts Act 1957.

8.3 **Inaugural Trustees:** Each of the settling Trustees of the Trust shall be deemed to be the Trustees of the Trust from the date this Deed is executed.

8.4 **Term of Office**:

a. Subject to clause 8.4c, the term of office of every Trustee shall be three years, unless they resign or are removed in accordance with this Deed. Trustees may be reappointed by the Electoral College for a further one term of office;

b. The terms of office of the Trustees shall be rotated so that at least one of the Trustees’ term of office expires each year;

c. The inaugural Trustees shall determine by agreement or, failing such agreement, by lot, which Trustees shall cease to hold office prior to the term of office which they would otherwise have been entitled to, in order that the rotation of Trustees in clause 8.4b be effected.

8.5 **Chairperson:** The Trustees shall annually determine from amongst their number who shall be the Chairperson of the Board of Trustees. The Chairperson shall hold office for a period of one (1) year from their appointment, or such other period as determined by the Trustees.

8.6 **Eligibility to be a Trustee:** The following persons shall not be eligible for appointment, or to remain in office, as a Trustee:

a. **Bankrupt:** a person who has been adjudged bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;

b. **Conviction:** a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed on them;

c. **Imprisonment:** a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed on them;

d. **Disqualified Director:** a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 382 or section 383 or section 385 of the Companies Act 1993;

e. **Property Order:** a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; and if any of the above events occur to an existing Trustee, they shall be deemed to have vacated their office upon such event.

8.7 **Vacancies of Trustees:** Where a Trustee ceases to hold office under this Deed, the remaining Trustees may fill that vacancy with any eligible person.

8.8 **Resignation:** Any Trustee may resign from the Trust by giving no less than 30 days’ written notice to the remaining Trustees and such notice shall take effect from the date specified in the notice or, if there is no date specified, upon the expiry of 30 days from the date the letter was sent.

8.9 **Removal from Office:** The Trustees shall remove any one or more of their number if any of the circumstances in clause 8.6 occur or if they resolve to do so by unanimous vote of the Trustees other than the Trustee being removed.

8.10 **Ceasing to Hold Office:** In addition to the power to remove Trustees (under clause 8.9), the vacation of office on certain events occurring (clause 8.6) and the right of a Trustee to resign from office (under clause 8.8), the following circumstances shall also result in a vacancy in a Trustee’s term of office:

a. **Failure to Attend:** A Trustee who fails to attend two consecutive meetings of the Board of Trustees without prior written notice and reasonable explanation (as determined by the other Trustees) shall be deemed to have vacated their office;

b. **Death:** Upon the death of a Trustee their position shall be deemed to be vacant.

8.11 **Recording:** Upon every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees shall record such fact in the minute book of the Trust.

Commentary: The trustees are in control of and manage the Trust Fund. While they have powers of delegation they are always legally liable for the Trust Fund and its administration. It is essential therefore that careful consideration is given to who the trustees will be, who has the power of appointment of trustees, and how trustees are appointed and removed. The above is one example of how trustees might be selected, appointed and removed. There are different possible mechanisms for the changes of trustees of a charitable trust, for example by the Settlor, an Electoral College or by a Board Appointments Panel. Each and every case should be considered individually. Historically regional sports trusts have comprised local authority representatives. This is not essential and indeed it is preferable that appointees are not representatives of any body as the trustees must act in the interests of the trust and not any organisation which they represent.

In terms of trustee numbers, beyond nine can mean the trust becomes unwieldy.

#### 9. MEETINGS OF THE TRUSTEES

9.1 **Time and Place for Meetings:** The Trustees shall meet at such places and times, and in such manner, as they determine. The Chairperson shall chair Trustee meetings, or in his/her absence any other Trustee as determined by the Trustees.

9.2 **Facsimile/Email Resolutions:** A resolution in writing, signed or assented to by facsimile, or other form of visible or other electronic communication by the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.

9.3 **Meetings by Tele-Conference, etc:** A meeting of the Trustees may be held where one or more of the Trustees is not physically present at the meeting, provided that:

a. All persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;

b. Notice of the meeting is given to all the Trustees in accordance with the procedures agreed from time to time by the Trustees and such notice specifies that Trustees are not required to be present in person at the meeting;

c. If a failure in communications prevents clause 9.3a from being satisfied and such failure results in the quorum not being met, the meeting shall be suspended until condition (a) is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned.

9.4 Any meeting held where one or more of the Trustees is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Trustee is present at such place. If no Trustee is present at such place the meeting shall be deemed to be held at the place where the Chairperson of the meeting is located.

#### 10. ADMINISTRATION

10.1 **Quorum:** A quorum of four (4) Trustees is required for all meetings of the Trustees.

10.2 **Voting:** Each Trustee present at a meeting shall be entitled to one (1) vote.

10.3 **Majority Decisions:** Except as otherwise provided in this Deed, all resolutions passed at a meeting of the Trustees shall be by a majority of Trustees present at the meeting and any such resolution shall be binding on all Trustees. The Chairperson shall have a deliberative (or original) vote as well as a casting vote in the event of a tie or equality of votes.

10.4 **Conflicts of Interest:** If any Trustee has or may have a conflict of interest (as determined by the Trustees), the Trustee shall declare their interest in the Minute Book and may participate in the deliberations affecting the matter but they shall not vote on such matter and shall leave the meeting for any such vote, unless stated otherwise in this Deed.

10.5 **Minutes:** A minute book shall be provided and kept by the Trustees. Minutes of the proceedings of all meetings of the Trustees shall be prepared and entered in the minute book, and if confirmed at a subsequent meeting of the Trustees, shall be signed by the Chairperson as a true and correct record.

10.6 **Bank Accounts:** The Trustees shall keep an account or accounts at such bank or banks or financial institutions as they shall from time to time determine. Cheques and other debits from the account or accounts shall be signed by such person or persons as the Trustees shall from time to time authorise in writing.

10.7 **Accounts and Audit:** The Trustees shall keep full and correct records and accounts of all of their receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of the Trust. As soon as practicable after the end of each financial year (being the year or any other accounting period ending on 30 June or any other date adopted from time to time by the Trustees as the end of the Trust’s financial year) (‘Financial Year’), the Trustees shall ensure that financial statements are prepared including a statement of position, a statement of financial performance and notes to those statements giving a true and fair view of the financial position of the Trust for that Financial Year. Such financial statements may be audited by a chartered accountant appointed for that purpose by the Trustees, as the Trustees determine.

10.8 **Execution of Documents**:

a. Subject to clause 10.8b, all documents required to be executed by the Trustees shall be deemed to be validly executed and binding if those documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two Trustees or any other person appointed by the Trustees for that purpose.

b. The Trustees shall have a common seal which shall be held by a Trustee or other person nominated by the Trustees, and shall be affixed by the authority of the Trustees previously given to any document requiring execution by the Trust. Every such affixing shall be performed in the presence of, and accompanied by the signatures of either:

i. any two Trustees; or

ii. the Chairperson and a staff member determined by the Trustees.

10.9 **Tax Returns:** The Trustees shall ensure that all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations and other information required by the Inland Revenue Department are prepared and filed so as to allow the Trust to retain its agreed status for taxation purposes.

10.10 **Notices:** Any notice to be given to the Trustees under this Deed shall be in writing signed by the person or persons giving the notice and served at the registered office of the Trust. Any such notice or document shall be deemed to be duly given:

a.  **By hand:** if delivered by hand, when so delivered;

b. **By facsimile**: if delivered by facsimile, when receipt is confirmed;

c. **By email:** if delivered by email, when receipt is confirmed;

d. **By post:** if delivered by post, on the third working day after posting.

#### 11. STAFF

11.1 **Appointment:** The Trustees may employ such staff as they consider appropriate to work for the Trust on such terms as they consider appropriate.

11.2 **Attendance at Trustees’ Meetings:** Staff employed under clause 11.1 may be required to attend meetings of the Trustees but shall not be entitled to vote.

*Commentary: This clause could be amended so that the trustees appoint a chief executive who may employ such staff as he or she considers appropriate.*

#### 12. TRUSTEES’ LIABILITY

12.1 **Liability for Loss:** No Trustee shall be liable for any loss to the Trust Fund arising:

a. **Investment:** by reason of any improper or imprudent investment made by any Trustee in good faith;

b. **Agent:** from the negligence or fraud or delay of any agent instructed by any Trustee in good faith;

c. **Mistake:** by reason of any mistake or omission made by any Trustee in good faith;

d. **Delay:** by reason of any delay caused by any Trustee;

e. **Deposit of Funds:** by reason of all or part of the Trust Fund being lawfully deposited in the hands of any banker or solicitor;

f. **Security:** by reason of the insufficiency or deficiency of any security upon which all or part of the Trust Fund may be invested;

g. **General:** by any other act of any Trustee;

unless attributable to that Trustee’s own dishonesty or to the wilful commission or omission of any act known by that Trustee to be in breach of trust.

12.2 **Trustee Act 1956:** Subject to clause 12.1, the care, diligence and skill to be exercised by the Trustees shall not be that required by sections 13B or 13C of the Trustee Act 1956 but shall at all times be the care, diligence and skill required that a prudent person of business would exercise in managing the affairs of others, even though the Trustees may from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others.

12.3 **Proceedings:** No Trustee shall be bound to take, or be liable for their failure to take, any proceedings against another Trustee or Trustees for any breach or alleged breach of trust committed by such other Trustee or Trustees.

12.4 **Receipt of Monies:** Subject to clauses 12.1 and 12.2, a Trustee shall be chargeable only for such monies as shall actually have been received by that Trustee. For the purpose of this subclause, a Trustee shall be deemed to have received monies even if not actually paid to that Trustee if those monies have been credited in any account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee’s behalf.

#### 13. RESTRICTIONS ON BENEFIT FROM THE TRUST

13.1 **No Determination of Income:** If any business is carried on by or for the benefit of the Trust, no person with some control over that business shall be able to divert any amount derived from that business to their own benefit or advantage, or otherwise cause the income of that business to cease to be exempt income pursuant to section CW 42 of the Income Tax Act 2007.

#### 14. TRUSTEES’ REMUNERATION AND EXPENSES

14.1 **Professional Remuneration:** Subject to clause 12.4, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any of their employees or partners in connection with the trusts of this Deed, including acts which a Trustee not being in any profession, business or trade could have done personally.

14.2 **General Remuneration:** Subject to clause 14.4, each Trustee other than a Trustee remunerated under clause 14.1 (to the extent that such remuneration covers the services to which that clause applies) may be entitled to such remuneration for their services as a Trustee, as determined by the Trustees, as may be reasonable having regard to their duties and responsibilities as Trustees.

14.3 **Expenses:** Subject to clause 14.4, each Trustee shall be entitled to be indemnified against, and reimbursed for, all travelling, accommodation and other expenses properly incurred by them in attending to and returning from meetings or in connection with the trusts of this Deed as determined by the Trustees.

14.4 **Proviso:** No Trustee receiving any remuneration referred to in clauses 14.1 to 14.3 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 circumstance in which it is to be paid. Such remuneration must be determined by the remaining Trustees on the basis of the current market rate for that type of work.

#### 15. RESETTLEMENT OF THE TRUST

15.1 The Trustees have the power to declare by way of resettlement such trusts (together with any conditions, limitations, and provisions to be carried out at the discretion of the Trustees or any person or persons) for the advancement or benefit of any charitable objects or the objects and in respect of the whole or any part or parts of the income or capital of the Trust Fund that have not been irrevocably paid or applied under the provision of this Deed in favour of any charitable object in New Zealand as the Trustees in their discretion think fit.

#### 16. INDEMNITY

Each Trustee shall be indemnified out of the Trust Fund for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this Deed, unless such loss or liability is attributable to such Trustee’s dishonesty or to the wilful commission or omission by such Trustee of an act known by such Trustee to be a breach of trust.

*Commentary: Being a trustee involves significant responsibility, and is not without personal risk and peril. Trustees should be satisfied that the terms of the deed include that the trustees will not face claims as long as they act honestly and not in breach of the trust, and there is protection against being personally liable if claims are made against them in their capacity as trustees.*

#### 17. NO PRIVATE PECUNIARY PROFIT

Nothing expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, to be carried on for the private pecuniary profit of any individual.

#### 18. INCORPORATION

The Trustees shall ensure the Trust remains registered as an incorporated Trust under and in compliance with the Charitable Trusts Act 1957 (refer previous comments about Charities Act 2005).

#### 19. ALTERATIONS TO THIS DEED

The Trustees may, from time to time, by resolution carried by a two-thirds majority of the Trustees alter, revoke or amend any or all of the terms of this Deed, provided that no such alteration, revocation or amendment shall be made which detracts from the objects of the Trust, or which may affect the charitable nature of the Trust.

#### 20. LIQUIDATION/DISSOLUTION

20.1 **Resolution:** The Trust may be wound up or dissolved upon a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose. There shall be no less than thirty (30) days’ notice given of such meeting to the Trustees.

20.2 **Surplus Property:** On the winding-up of the Trust or its dissolution by the Registrar of the High Court under the Charitable Trusts Act 1957, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation within New Zealand as the Trustees decide, or, if the Trustees are unable to make such decision, shall be disposed of in accordance with the directions of the High Court under section 27 of the Charitable Trusts Act.

Commentary: On winding up, an entity incorporated under the Charitable Trusts Act 1957 can distribute its assets under either its trust instrument or rules, and those documents must be examined carefully to ensure that the distribution is made only for an appropriate charitable purpose and only after following all the required steps.

#### 21. GOVERNING LAW

The Trust shall be governed by and construed in accordance with the laws of New Zealand.