
Burnett Foundation Aotearoa Trust Deed

As approved by the Trust Board by Special Resolution
on 25 November 2023

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EXECUTION

Date:

PARTIES

Burnett Foundation Aotearoa (the Board)

Jim Stuart-Black MNZM

Samuel Humphrey

James Boulton

Patricia Mitchell

Edward Coughlan

Jordon Robertson

Ian Kaihe-Wetting

BACKGROUND / TAKENGA MAI

- A By deed of trust dated 18 March 1985 (the Original Trust Deed) James Martin Holland of Auckland, Barrister and Solicitor, (the Settlor) established a charitable trust to be known as the AIDS Support Network Trust (the Trust).
- B On 28 March 1985, the trustees of the Trust at that time were incorporated as a charitable trust board under the Charitable Trusts Act 1957 under the name of the AIDS Support Network Trust. From that date the trustees of the Trust have been duly constituted as the Board.
- C The name of the Trust was changed to "New Zealand AIDS Foundation / Te Tūāpapa Mate Āraikore o Aotearoa", on 11 September 1985; and again on 21 May 2022, to "Burnett Foundation Aotearoa".
- D The Board amended the Original Trust Deed in 1988, 1993, 2007, 2013, 2020, 2022 and most recently on 25 November 2023.
- E The Board is the duly appointed trustee of the Trust as at the date of this deed.
- F The Board has resolved to adopt this deed as the new trust deed of the Trust with effect from the date of this deed.
- G The Board confirms that the adoption of this deed as the trust deed of the Trust shall not affect the validity of anything made or done by the trustees of the Trust from time to time before the date of this deed (as amended from time to time).

- H The Board affirms its commitment to:
- H.1 The Ottawa Charter for Health Promotion;
 - H.2 The Greater Involvement of People Living With HIV/AIDS Principle (**GIPA Principle**), as established by UNAIDS (the Joint United Nations Programme on HIV/AIDS) at the 1994 Paris AIDS Summit, and as described in the Paris Declaration as may be interpreted, developed or refined from time to time by UNAIDS;
 - H.3 Equity in the wider health response to the HIV epidemic; including through the governance of, and programme and service delivery by, Burnett Foundation Aotearoa;
 - H.4 The need to engage proactively with the quieter voices in our core communities in a manner that is relevant to them, and to hear and value those voices; and
 - H.5 Respecting the bicultural heritage of Aotearoa New Zealand and Te Tiriti o Waitangi.

1 **INTERPRETATION / WHAKAMĀRAMATANGA**

1.1 **Defined terms**

In the interpretation of this deed, unless inconsistent with the subject or context, the following terms shall have the following meanings respectively:

AIDS means Acquired Immune Deficiency Syndrome and occurs as a result of a compromised immune system due to HIV infection;

Balance Date means 30 June or any other date which the Board adopts by resolution as the date up to which accounts are to be made in each year;

Board or Trust Board means the Board of trustees of the Trust from time to time incorporated on 28 March 1985 under the Charitable Trusts Act 1957;

Chairperson means the chairperson of the Board, or if applicable, both co-chairpersons appointed to that role;

HIV means Human Immunodeficiency Virus; HIV is a virus which targets cells in the immune system and uses and kills the immune cells causing a deficiency in the immune system;

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

Original Trust Deed means the deed of trust dated 18 March 1985 by which the Trust was established;

Property means the real and personal property from time to time belonging to or vested in or under the control or management of the Board or which shall in due course of law be vested in it;

Related Person for the purposes of cl 17.2 and in relation to any business to which section CW 42 of the Income Tax Act 2007 applies, means a person specified in paragraphs (i) to (iv) of subsection (5)(b) of that section, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on; or
- (b) a shareholder or director of the company by which the business is carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) a person associated with a settlor, trustee, shareholder or director already mentioned in this definition.

Resolution means:

- (a) Except where this deed provides otherwise, in respect of a resolution of the Board, a resolution is validly made when it is passed by a simple majority of the Board members present and voting at a duly convened meeting of the Board;
- (b) An **ordinary resolution** is a resolution passed by a simple majority of all members of the Board;
- (c) A **special resolution** is a resolution passed by at least 75 percent of all members of the Board; and
- (d) A written resolution signed by all members of the Board shall be as effective for all purposes as an ordinary or special resolution of the Board. Such a resolution may comprise several duplicated documents, each signed by one or more of the members of the Board.

Special Trust Adviser means an adviser to the Board as contemplated by clause 74 of the Trusts Act 2019.

Trust Fund means the sum of \$10 paid by the Settlor on settlement of the Trust and includes any money, investments or other property paid or given to or acquired or agreed to be acquired by the Board after the date of settlement, with the intention that it be held by the Board subject to the trusts and other provisions set out in this deed.

Trusts Act means the Trusts Act 2019 (published at www.legislation.govt.nz).

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

- (a) a reference to "core communities" is a reference to gay, lesbian and bisexual people, members of other sexual minorities, gender-diverse, takatāpui and intersex people and their whānau; and people living with or affected by HIV.
- (b) a reference to "STIs" is a reference to sexually transmitted infections, which includes viral hepatitis and other blood-borne viruses;
- (c) a reference to "sexual health" means a state of physical, emotional, mental and social well-being in relation to sexuality and not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence;
- (d) where reference is given to notice being provided to the Chairperson, if there are two co-chairpersons, that reference shall require notice to be provided to both co-chairpersons;
- (e) where reference is given to a decision or action of the Chairperson, where there are two co-chairpersons, that notice or action shall be made jointly by both co-chairpersons;
- (f) a reference to a person includes a corporation sole and also a body of persons, whether incorporated or not incorporated;
- (g) a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- (h) the schedules form part of this deed; and

- (i) headings appear as a matter of convenience and shall not affect the construction of this deed.

2 VARIATION OF TRUST DEED / TIKA TURE WHAKAREREKĒTANGA

- 2.1 This deed is adopted as the trust deed of the Trust with effect from the date of this deed.
- 2.2 The Board confirms that the adoption of this deed shall not affect the validity of anything made or done by the trustees of the Trust from time to time before the date of this deed nor shall this deed alter or prejudice the charitable nature of the Trust, nor the purposes of the Trust, as set out in the Original Trust Deed (as amended from time to time).

3 CONFIRMATION OF THE TRUST / WHAKAPONO WHAKATŪTURUTANGA

3.1 Declaration of trust

The Board declares that it holds the Trust Fund upon the trusts, for the purposes and with the powers set out in this deed.

3.2 Name of trusts

The trusts declared and acknowledged by this deed are to be known under the name of "Burnett Foundation Aotearoa" unless and until the Board determines, by special resolution, some other name for the Trust.

4 TRUST DEED PARAMOUNT / TIKA TURI WHAKAPONO TINO TEITEI RAWA

- 4.1 In the event of there being any conflict between the provisions of this deed and any governance protocols adopted by the Board from time to time, the provisions of this deed shall be paramount.

5 OBJECTS / WHAINGA

5.1 Objects restricted to charitable purposes

The objects of the Trust shall be as stated in clause 5.2 of this deed, provided always, however, that the objects shall be limited and restricted at all times so that they shall be within the definition of charitable purposes as defined by section 5 of the Charities Act 2005.

5.2 Objects of the Trust

The objects of the Trust are to carry on charitable activities for the benefit of the community and to advance education by undertaking, assisting with, funding otherwise in relation to the following:

- (a) Preventing the transmission of HIV in Aotearoa New Zealand, including by:
 - (i) Conducting and facilitating testing for HIV;
 - (ii) Designing and delivering programmes and health services aimed at preventing the transmission of HIV;
 - (iii) Undertaking, participating in or commissioning scientific research regarding HIV and HIV transmission; and
 - (iv) Providing education to health professionals, service providers, businesses, core communities and the general public about HIV and HIV transmission.

- (b) Preventing the transmission of STIs among core communities in Aotearoa New Zealand, including by:
 - (i) Conducting and facilitating testing for STIs;
 - (ii) Designing and delivering programmes and health services aimed at preventing the transmission of STIs;
 - (iii) Undertaking, participating in or commissioning scientific research regarding STIs and STI transmission; and
 - (iv) Providing education to health professionals, service providers, businesses, core communities and the general public about STIs and STI transmission.

- (c) Promoting and supporting the sexual health of core communities in Aotearoa New Zealand, including by:
 - (i) Facilitating the provision of effective treatments for HIV and other STIs;
 - (ii) Providing and facilitating counselling and other psychological services;
 - (iii) Providing and facilitating other social services aimed at improving physical or mental health or wellbeing;
 - (iv) Working to eliminate stigma and discrimination against those living with HIV and other STIs, including by way of designing and delivering programmes;

- (v) Advocating on behalf of members of core communities, including to support the rights of core communities to freedom from discrimination on the grounds of HIV status, sexual orientation and gender identity; and
 - (vi) Undertaking, participating in or commissioning scientific research regarding the physical and mental health and wellbeing of members of core communities.
- (d) Collaborating with and assisting other people and entities in pursuit of the above objects, including:
- (i) Whānau, hapū, iwi, runanga and/or other Māori organisations exercising mana whenua in areas where the Trust is physically based;
 - (ii) Other organisations sharing the same or overlapping charitable objects; and
 - (iii) Academics and public health professionals.

6 INCOME TRUSTS / WHAKAPONO PŪTEA

6.1 Power to pay, apply or appropriate income

The Board may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the income arising from the Trust Fund in an Income Year as it thinks fit for or towards one or more of the purposes of the Trust. If the Board provides for more than one purpose, it need not treat each purpose equally.

6.2 Provisions relating to payments, applications and appropriations of income

- (a) The Board, by written resolution, may appropriate any investments for one or more of the purposes of the Trust in anticipation of a payment or application under cl 6.1.
- (b) In any Income Year, the Board may appropriate all or part of the income derived or to be derived from the Trust Fund during that Income Year even though, at the time of appropriation, it has not received the income being appropriated.
- (c) If the Board appropriates any income for any purpose of the Trust, the recipient of that income shall take an absolute and indefeasible interest in that income as from the date on which it is appropriated.

6.3 **Power to retain income**

The Board need not distribute all of the income arising from the Trust Fund in an Income Year, but may retain or decide to retain all or part of that income to establish or augment any reserve fund, which may be used at any later time for any purpose for which income arising from the Trust Fund may be used.

7 **CAPITAL TRUSTS / WHAKAPONO MONI HUA**

At any time the Board may, or may decide to pay, apply or appropriate as much of the capital of the Trust Fund as it thinks fit for or towards one or more of the purposes of the Trust. If the Board so provides for more than one purpose, it need not treat each purpose equally. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income.

8 **SPECIAL AND BARE TRUSTS / WHAKAPONO MOTUHAKE HAHAKE**

8.1 **Special trusts**

When property is accepted by the Board upon special trusts to be declared by the donor, all the powers and provisions of this deed and any variation of or addition to the terms of this deed shall be deemed to be incorporated in the deed declaring such special trusts except in so far as the same shall be expressly excluded or modified or be inconsistent with such special trusts.

8.2 **Bare or passive trusteeship**

Where property is accepted by the Board as a bare or passive trustee, it shall from time to time apply such property according to the lawful directions of the trustees or managers to whom the management and administration thereof may have been confided.

9 **APPOINTMENT, RETIREMENT AND REMOVAL OF BOARD MEMBERS / NGĀ KAITIAKI TŪRANGA WHAKATĀNGA**

9.1 **Number of members of the Board**

There shall from time to time be no fewer than three, nor more than seven Board members.

9.2 **Quorum**

The Board may from time to time fix the number of Board members who shall constitute a quorum provided that the quorum shall never be less than three and if at any time there shall be fewer than three Board members present in Aotearoa New Zealand and capable of acting, the two Board members who are or the one Board member who is so present and capable

shall have no power to act except for the purpose of appointing one or more Board members.

9.3 Appointment

The Board may, by ordinary resolution, appoint any person to be a Board member.

9.4 Term of office

A Board member appointed in accordance with rule 9.3 shall hold office for a term of two years from the date of their appointment (unless the Board member is earlier removed from office in accordance with the provisions of rule 9.5). A Board member so ceasing to hold office may be reappointed for a further term of two years, and may, at the expiration of that term, be reappointed for a third term of two years, but must stand down for a period of two years after that third term has expired. After this standing-down period a Board member may be reappointed and may again hold office for up to three two-year terms.

9.5 Removal

The Board may, by special resolution, remove any Board member and shall give written notice of removal to that Board member. The Board member subject of the proposed removal shall be entitled to vote on the resolution.

9.6 Retirement

A Board member may retire upon three months' clear written notice to the Chairperson of or secretary to the Board. Such notice period may be shortened if the Board consents.

9.7 Considerations

When making a decision about whether to appoint a new Board member under cl 9.3, the Board may take advice from independent consultants or other professional advisers as required, and must take into account the following non-exhaustive considerations:

- (a) the skills, expertise and experience of the applicant;
- (b) the skills, expertise and experience that are most needed on the Board at the particular point in time in order to deliver on the Board's current strategic priorities;
- (c) the applicant's demonstrated commitment to the objects of Burnett Foundation Aotearoa;
- (d) the value in the membership of the Board reflecting the diversity of members of our core communities;

- (e) the Board's commitments reflected in paragraph H of this deed; and
- (f) the desirability of at least one of the Board members being a person living with HIV.

9.8 **Termination of office**

A Board member shall cease to hold office if they:

- (a) retire from office by giving written notice to the Chairperson or secretary to the Board in accordance with cl 9.6;
- (b) complete their term of office and are not eligible for reappointment;
- (c) refuse to carry out their duties as a Board member;
- (d) are absent without leave from three consecutive ordinary meetings of the Board;
- (e) become physically or mentally incapacitated to the extent that in the opinion of the other Board members, expressed in a special resolution, they are unable to perform the duties of a Board member properly;
- (f) are removed for any reason in accordance with cl 9.5, including contravention of any Code of Ethics that the Board may approve from time to time; or
- (g) cease to qualify as an officer of a charitable entity under section 16 of the Charities Act 2005.

10 **TRUSTEE DUTIES / HE MAHI TARAHITĪ**

10.1 The mandatory duties as set out in subpart 1 of part 3 of the Trusts Act shall apply to the Board in the performance of their duties, specifically, the duty to:

- (a) know the terms of the Trust: section 23;
- (b) act in accordance with the terms of the Trust: section 24;
- (c) act honestly and in good faith: section 25;
- (d) act to further the Objects: section 26; and
- (e) exercise Board member powers for a proper purpose: section 27.

- 10.2 Some of the default duties as set out in subpart 1 of part 3 of the Trusts Act shall apply to the Board in the performance of their duties, specifically, the duty:
- (a) to exercise reasonable care and skill in the circumstances: section 29;
 - (b) to invest prudently: section 30;
 - (c) not to exercise powers for the Board members' own benefit: section 31;
 - (d) to give active and regular consideration to the exercise of Board member powers: section 32;
 - (e) not to bind future discretions: section 33;
 - (f) to avoid a conflict of interest: section 34; and
 - (g) not to profit from trusteeship of the Trust: section 36.
- 10.3 The remaining default duties as set out in subpart 1 of part 3 of the Trusts Act are excluded from applying to the Board in the performance of their duties, specifically, the duty:
- (a) not to take a reward for acting as Board member: section 37; and
 - (b) to act unanimously: section 38.

11 KEEPING RECORDS / HE PUPURI MAUHANGA

- 11.1 Retention: The Board shall ensure that adequate arrangements are in place for the continuous retention of documents and records relating to the Trust such as:
- (a) this Deed, amendments to this Deed and deeds effecting Board member changes;
 - (b) minutes of Board meetings;
 - (c) correspondence and records on implementation of the Charitable Purposes; and
 - (d) records of title, accounting, payroll and investment records, contracts in writing and other records created in the course of conduct of the activities of the Trust.
- 11.2 Form of Records: The documents and records retained by, or on behalf of, the Board may be in hard copy or electronic format.

11.3 Each Board member:

- (a) shall retain a copy of this Deed and any Deed of Variance or Restatement; and
- (b) in the event of ceasing to be a Board member, hand over to a continuing Board member all documents and records relating to the Trust.

12 MEMBERSHIP / NGĀ MEMA

12.1 The Board may, by special resolution, establish a system of membership of the Trust, or amend or disestablish such a system, as it sees fit from time to time, provided always that no member of the Trust shall have the right, at any time:

- (a) to control or direct the Board in the exercise of its any of its powers under this deed or the general law; or
- (b) to receive any capital or income from the Trust Fund simply by virtue of their status as a member of the Trust.

12.2 Where a system of membership has been established under cl 12.1, the Board may consult with members on any issue which affects the interests of members and which the Board considers, in the exercise of its discretion, would benefit from such consultation.

12.3 Where the Board carries out consultation under cl 11, it must act in good faith and take into account the views expressed by members, but shall not be obliged to give effect to those views.

13 EMPLOYEES OF THE TRUST / WHAKAPONO NGĀ KAIMAHI

13.1 Subject to clause 14.1, employees of the Trust may receive assistance from the Trust, where the provision of that assistance falls within the purposes of the Trust.

13.2 An employee shall be entitled to receive such services on the same terms as any other person might receive assistance from the Trust, as if they had not been an employee of the Trust.

14 INTERESTED BOARD MEMBERS / NGĀ KAITIAKI ARO MAI

14.1 Disclosure of interests

- (a) A Board member will be interested in a decision or transaction to which the Trust is a party if the Board member:

- (i) is a party to, or will derive a material financial benefit from that decision or transaction;
 - (ii) has a material financial interest in another party to the decision or transaction;
 - (iii) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the decision or transaction, not being a party that is wholly owned by the Trust;
 - (iv) is the parent, child, partner or spouse of another party to, or person who will or may derive a material financial benefit from, the decision or transaction; or
 - (v) is otherwise directly or indirectly interested in the decision or transaction.
- (b) As soon as a Board member becomes aware of the fact that they are interested in a decision or transaction or proposed decision or transaction with the Trust, they must disclose to their co-Board members at a meeting of the Board:
- (i) the nature and monetary value of that interest (if the monetary value of the trustee's interest is able to be quantified); or
 - (ii) if the monetary value of the Board member's interest cannot be quantified, the nature and extent of that interest; and
 - (iii) a disclosure of interest by a Board member must be recorded in the minute book of the Trust.

14.2 **Interested Board member may not vote**

A Board member who is interested in a decision or transaction (as defined in cl 14.1(a)) entered into, or to be entered into, by the Trust may not vote on a matter relating to the transaction, but may:

- (a) attend a meeting of the Board at which a matter relating to the transaction arises, and be included among the Board members present at the meeting for the purpose of a quorum;
- (b) sign a document relating to the transaction on behalf of the Trust; and
- (c) do anything else as a Board member in relation to the transaction, as if they were not interested in the transaction.

14.3 **Dealing with interested Board members**

Subject to cl 14.1 and cl 14.2, each Board member may act as a Board member and still contract or otherwise deal with the Board in their personal capacity or in any other capacity as if they had not been appointed as a Board member. This right to continue to act as a Board member shall apply even though a Board member's interest or duty in a particular matter may conflict with their duty to the Trust.

15 **APPOINTMENT OF PATRONS / TŪRANGA WHAKARURUHAU**

15.1 **Appointment**

The Board may from time to time invite one or more persons who wish to support or take an interest in the purposes of the Trust to become a Patron or Patrons (or Vice-Patron or Vice-Patrons) of the Trust on such terms as may be determined by the Board from time to time.

15.2 **Removal**

The Board may, by special resolution, remove any Patron or Vice-Patron and shall give written notice of removal to that Patron or Vice-Patron.

16 **RESTRICTIONS ON PRIVATE PECUNIARY PROFIT AND ON BENEFITS IN BUSINESS ACTIVITY / RĀHUI TAPU PAINGA MAHI**

16.1 **No private pecuniary profit of any individual and exceptions**

No private pecuniary profit shall be made by any person involved in this Trust, except that:

- (a) any Board member shall be entitled to be reimbursed out of the assets of the Trust for all expenses which they properly incur in connection with the affairs of the Trust;
- (b) the Trust may pay reasonable and proper remuneration to any employee of the Trust or person (whether a Board member or not) in return for services actually rendered to the Trust;
- (c) any Board member is to be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Board member or by any firm or entity of which that Board member is a member, employee or associate in connection with the affairs of the Trust; and
- (d) any Board member may retain any remuneration properly payable to that Board member by any company or undertaking with which the Trust may be in any way concerned or involved for which that Board member has acted in any capacity whatever, notwithstanding that that

Board member's connection with that company or undertaking is in any way attributable to that Board member's connection with the Trust.

The Board, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by clauses 14 and 16.2 of this deed are strictly observed.

16.2 **Prohibition of benefit or advantage in business activity**

In the carrying on of any business under this deed, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in their capacity as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

- (a) the nature or amount of that benefit, advantage or income; or
- (b) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

A person who is in the course of, and as part of the carrying on of their business of a professional public practice, shall not, by reason only of them rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause.

17 **POWERS OF THE BOARD / NGĀ KAUPAPA O TE RŪNANGA WHAKAHAERE**

17.1 **General power**

It is intended that, in the exercise of their discretion, the Board shall have the fullest possible powers in relation to the Trust Fund, and that it may do anything it thinks necessary, expedient or desirable even though it is something which it would not normally have power to do in the absence of an express power or an order of the Court. However:

- (a) this general power does not authorise the Board to do anything which may prejudice the charitable nature of the purposes of the Trust; and
- (b) all the Board's powers, authorities and discretions shall be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Board, whether the gift is a special trust or is generally for the purposes of the Trust Fund.

17.2 **Specific powers**

Without prejudice to the generality of cl 17.1, or to any of the Board's express or implied powers, the Board shall have the powers specified in **Schedule 1** and may exercise them either alone or with any other person(s).

18 **LIABILITY OF BOARD MEMBERS / NGĀ KAITIAKI TAUNAHA**

18.1 The Board members are not liable to account to the Trust in its own right for:

- (a) the consequence of any act or omission or for any loss; and
- (b) any loss or cost caused by a special trust adviser or an attorney, delegate, manager, agent or employee engaged by the Board members, despite any rule of law or equity to the contrary.

18.2 The exclusion from liability set out in clause 18.1 does not apply where the consequence or loss is attributable to a Board member's dishonesty, wilful misconduct or gross negligence.

18.3 If there is more than one Board member, no Board member is bound to take any proceeding against a co-Board member for any alleged breach of trust by the co-Board member.

19 **INDEMNITY / INIHUATIA**

19.1 The Board members are fully indemnified by and out of the Trust Fund for any loss or liability incurred in the course of the activities of the Trust. The indemnity includes in particular any liability to satisfy all costs and expenses arising out of conduct of the activities of the Trust.

19.2 The indemnity conferred by clause 19.1 may extend to any loss or liability arising after a person has ceased to be a Board member.

19.3 The indemnity conferred by clause 19.1 does not extend to a loss or liability that is attributable to a Board member's dishonesty, wilful misconduct or gross negligence.

20 **INSURANCE / INIHUA**

The Board may, subject to any restrictions on the giving of indemnities under any enactment, effect insurance for a Board member or employee of the Trust. The Board may determine the amounts and the terms and conditions of any such insurance.

21 **FINANCIAL MATTERS / PŪTEA**

21.1 **Audit**

The Board shall cause true accounts to be kept in such manner as it thinks fit of all their receipts, credits, payments and liabilities and all other matters necessary for showing the true state and condition of the Trust and such accounts shall be audited at least once a year by a Chartered Accountant appointed by the Board and not themselves being a Board member.

21.2 **Bank Accounts**

The Board shall keep an account or accounts at such bank or banks as it shall from time to time determine and cheques shall be drawn, signed and endorsed by such person or persons as the Board shall from time to time direct.

21.3 **Common seal**

The Board shall have custody of the common seal and from time to time, by resolution, may adopt any seal it thinks fit. The common seal shall always be deposited with the secretary or, failing a secretary, with the Chairperson of the Board for the time being and which shall be affixed by the authority of the Board previously given by resolution to any document requiring execution by the Board. Where there are two co-chairpersons, the common seal may be held by either person. Every such affixing shall be performed in the presence of and accompanied by the signatures of two Board members and shall be sufficient evidence of the authority to fix such seal and no person dealing with the Board shall be bound or concerned to see or inquire as to the authority under which any document is sealed and in whose presence.

22 **WINDING UP / WHAKAMUTUNGA**

22.1 **The Trust Fund**

If, at any time, the objects of the Trust fail or if for any reason the purposes become wholly frustrated or incapable of being carried out, then the Trust Fund shall be disposed of to some other charitable organisation or body within Aotearoa New Zealand having as its object or one of its objects the objects set forth in clause 5 of this deed or objects of a like character provided however that those objects are charitable as defined by section 5(1) of the Charities Act 2005. Such disposal shall be made by special resolution of the Board. Failing such disposal, the Trust Fund shall be disposed of as the High Court on application of any Board member shall direct.

22.2 **Archives and records**

The archives and associated records of the Trust shall on winding up be transferred to the Lesbian and Gay Archives of New Zealand, or failing that, some other permanent and responsible institution as determined by the Board.

23 **RULES / RITENGA**

The rules which govern the proceedings of the Board are set out in **Schedule 2** to this deed.

24 **ALTERATIONS TO THIS DEED / WHAKAREREKĒTANGA TURE**

24.1 **Alteration by special resolution**

This deed may be altered by a special resolution of the Board.

24.2 **Requirements for alteration**

Before resolving to make any alteration to this deed, the Board must be satisfied that the proposed alteration:

- (a) does not prejudice the charitable nature of the Trust or the ability of the Trust to meet the requirements for any exemption available to charities under the New Zealand revenue laws; and
- (b) is not inconsistent with the general scope of the Original Trust Deed, a copy of which shall be retained by the Board and consulted whenever any amendment to this deed is proposed.

SCHEDULE 1: BOARD'S SPECIFIC POWERS / NGĀ KAUPAPA O TE RŪNANGA WHAKAHAERE

In addition to any powers expressed or implied in this deed, the Board shall have the following powers:

- (a) **TO BUY**, sell, exchange, partition, invest, or otherwise acquire or dispose of or deal with real or personal property or any part thereof or any interest therein as fully as if it was the absolute owner;
- (b) **TO RAISE MONEY** on the security of any property or without security or otherwise on such terms or conditions as shall appear desirable to the Board;
- (c) **TO INVEST** money in any investment of which it approves or in the purchase or improvement of any real or personal property and to vary and transpose any such investments from time to time;
- (d) **TO PAY ALL EXPENSES** and outgoings as may be incurred in relation to the Trust from time to time reposed in it;
- (e) **TO DEMISE OR LET** any of the property for such terms at such rent and with or without taking a premium or fine subject to such provisions as shall appear desirable to the Board;
- (f) **TO ACCEPT SURRENDERS** of leases upon such terms and subject to such conditions as shall appear desirable to the Board;
- (g) **TO APPOINT AND REMOVE AND SUSPEND** and pay such officers, clerks, servants or persons as it may from time to time deem necessary and to determine their duties and powers and fix their salaries and remuneration and (if considered necessary), to require security of such amount as it may think fit for the proper and efficient discharge of such duties;
- (h) **TO APPOINT AND REMOVE** and pay such advisers (including Special Trust Advisers), professionals or the like as it may from time to time deem necessary and to determine the scope of the work to be performed and to agree the remuneration for such work as it may think fit for the proper and efficient discharge of such duties, provided always that such remuneration shall be at no more than market rates;
- (i) **TO IMPROVE, REPAIR AND MAINTAIN AND INSURE** against loss or damage by fire or other happening, any of the property and to discharge out of income or capital all outgoings properly payable in

respect of the property without prejudice to the right of the Board to make it a condition of letting any person into the possession of any property (whether as tenant at will or otherwise) that such person shall pay and discharge all or any part of such outgoings;

- (j) **TO REGISTER** in accordance with the provisions of the Charities Act 2005 as a charitable entity. If and while so registered, to do all things necessary to comply with the requirements of that Act; and
- (k) **TO DO SUCH OTHER** lawful acts and things as are incidental to or conducive to the attainment of the objects of this Trust.

SCHEDULE 2: RULES GOVERNING THE MEETINGS OF THE BOARD / NGĀ HUI O TE RUNANGA WHAKAHAERE

1.1 General

- (a) The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit but in any event at least twice in each income year. However, the Board members shall ensure where practically possible that at least one meeting is held every three months.
- (b) It shall not be necessary for Board members to act unanimously unless specifically provided for in the trust deed but all the Board's powers and all discretions vested in it may be exercised by resolution.

1.2 Calling of meetings

Any two Board members may and the secretary on the requisition of any two Board members or of the Chairperson shall at any time summon a meeting of the Board. It will not be necessary to give notice of a meeting of the Board to any Board member for the time being absent from Aotearoa New Zealand.

1.3 Notice of meetings

- (a) Written notice of every ordinary or special meeting, shall be either hand-delivered, posted or sent by facsimile or email to each Board member, as appropriate, at least 14 days before the date of the meeting.
- (b) The secretary or some other person acting under the direction of the Board or, in the case of a special meeting, acting under the direction of those Board members or the Chairperson calling the meeting, shall give the notice of the meeting.
- (c) No notice shall be required for adjourned meetings except to those Board members who were not present when the meeting was adjourned.
- (d) Every notice of a meeting shall state the place, day and time of the meeting, and in the case of a notice of a special meeting, shall also state the subject-matter of the meeting.
- (e) The requirement for notice of a meeting may be waived if all of those Board members as the case may be who are for the time being in Aotearoa New Zealand give their written consent to such a waiver.

1.4 Minute book

Minutes of the proceedings of all meetings of the Board shall be recorded in a book to be kept for the purpose by the secretary and shall be signed by the Chairperson of the meeting or of the meeting at which the minutes are read and confirmed and every such minute purporting to be so signed shall be prima facie evidence of the facts therein stated.

1.5 Appointment and term of Chairperson and Deputy Chairperson

The Board shall elect or confirm the election of a Chairperson and a deputy chairperson at the first meeting of the Board after the adoption of the trust deed and, unless upon such appointment the Board by resolution fixes a shorter period of office, the Chairperson and deputy chairperson for the time being shall hold office for a period of one year from the date of appointment and may be reappointed for further periods each of not more than one year. In the event that two co-chairpersons are appointed, no deputy chairperson will need to be appointed.

1.6 Honoraria

Subject to clauses 14 and 16 of the trust deed, the Board may pay such honorarium to the Chairperson and deputy chairperson as the Board thinks fit and as the Board may determine from time to time.

1.7 Voting rights of Chairperson and Deputy Chairperson

The Chairperson and deputy chairperson shall each have a deliberative but not a casting vote.

1.8 Appointment of a Secretary

The Board shall from time to time appoint one of its number or some other person as secretary of the Trust for such term as the Board may from time to time determine.

1.9 Voting rights of the Secretary

If the secretary shall not be a Board member then the secretary shall have no vote at any meetings of the Board.

1.10 Resignation

The secretary for the time being may resign from that office on one month's written notice to the Chairperson.

Date

EXECUTION

Signed by **Jim Stuart-Black MNZM**

Signed by **Samuel Humphrey**

in the presence of:

in the presence of:

Name:

Name:

Occupation:

Occupation:

Address:

Address:

Signed by **James Boulton**

Signed by **Patricia Mitchell**

in the presence of:

in the presence of:

Name:

Name:

Occupation:

Occupation:

Address:

Address:

Signed by **Edward Coughlan**

in the presence of:

Name:

Occupation:

Address:

Signed by **Jordon Robertson**

in the presence of:

Name:

Occupation:

Address:

Signed by **Ian Kaihe-Wetting**

in the presence of:

Name:

Occupation:

Address: