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# New Zealand AIDS Foundation (Te Tūāpapa Mate Āraikore o Aotearoa) Deed of Trust

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Trust Deed adopted by the Trust Board on

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*Date:*

## **PARTIES**

Hoani Jeremy Lambert, Paul Bohmer, Gordon Chapple, Cameron Law, Grant Robertson, Mark Bridgman, Mark Henrickson (the Trustees)

## **BACKGROUND / TAKENGA MAI**

- A By deed of trust dated 18 March 1985 (the original trust deed) James Martin Holland of Auckland, Barrister and Solicitor, 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 were incorporated as a charitable trust board under the Charitable Trusts Act 1957 under the name of AIDS Support Network Trust. The Trustees of the Trust were then duly constituted as a trust board (the Board).
- C The name of the Trust was changed to the present name of the Trust, "New Zealand AIDS Foundation", on 11 September 1985.
- D The Trustees are the duly appointed Trustees of the Trust, comprising the Trust Board, as at the date of this deed.
- E The Trustees have resolved to adopt this deed as the new trust deed of the Trust with effect from the date of this deed.
- F The Trustees confirm 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, 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).

## **1 INTERPRETATION / WHAKAMĀRAMATANGA**

### **1.2 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* means the Board of Trustees of the Trust from time to time incorporated on 28 March 1985 under the Charitable Trusts Act 1957;

*Ethical Code* means the code of ethics for the Trust and its members as adopted by the Board from time to time;

*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;

*Mission Statement* means the statement of purpose as adopted by the Board from time to time;

*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 *clause* 14.2 and in relation to any business to which section CW 35 of the Income Tax Act 2004 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 Trustees 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 of the Trustees of the Trust;

- (c) A special resolution is a resolution passed by at least 75 percent of all of the Trustees of the Trust;
- (d) A written resolution signed by all of the Trustees of the Trust 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 Trustees of the Trust;

*Trustees* means the Trustees of the Trust as named in *rule 1.1(b) of Part 1 of the Second Schedule* to this deed, and as may be appointed from time to time, whose predecessors were incorporated as a Board on 28 March 1985 under the Charitable Trusts Act 1957;

*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.

## 1.2 **Construction**

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

- (a) a reference to "Trustees" is a reference to the Trustees for the time being of the Trust Fund, whether original, additional or substituted;
- (b) a reference to the "Board" or "Trust Board" is a reference to the Board for the time being of the Trust Fund, whether original as incorporated on 28 March 1985 under the Charitable Trusts Act 1957, or as it may be constituted or reconstituted from time to time;
- (c) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (d) a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- (e) the schedules form part of this deed;
- (f) headings appear as a matter of convenience and shall not affect the construction of this deed;
- (g) if there is a conflict between the rules in the *Second Schedule* and the other provisions of this deed the other provisions of this deed shall prevail.

## 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 Trustees confirm 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 Trustees declare that they hold 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 continue to be known under the name of the "New Zealand AIDS Foundation (Te Tūāpapa Mate Āraikore o Aotearoa)" unless and until the Trustees determine, 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 the Mission Statement or 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 OB 1 of the Income Tax Act 2004.

### 5.2 Objects of the Trust

The objects of the Trust are to undertake or to assist by any means whatsoever others to undertake:

- (a) the screening or testing of persons for HIV, the diagnosis of HIV and AIDS in persons, the tracing of possible lines of communication of HIV; and

- (b) the provision of medical and psychological treatment, counselling, emotional and religious support and the relief of poverty of persons affected by HIV; and
- (c) the education of all persons as to the nature, causes, prevention, treatment and cure of HIV but with particular regard to persons or groups of persons most affected by or most at risk of being affected by HIV; and
- (d) for the purposes of *clauses* (a) to (c) above, research into the nature, causes, prevention, treatment and cure of HIV disease.

## 6 **PRINCIPLES / MĀTĀPONO**

The Board is committed wherever possible, in attaining the purposes of the Trust, to:

- (a) respect the bicultural heritage of New Zealand/Aotearoa;
- (b) respect the diversity of cultures in New Zealand/Aotearoa;
- (c) accept sexual diversity;
- (d) understand the special health needs of those living with or most at risk of contracting HIV, including takatāpui tane, gay men and other men who have sex with men;
- (e) work with sensitivity specific to the special health needs of those living with or most at risk of contracting HIV, including takatāpui tane, gay men and other men who have sex with men;
- (f) work to reduce discrimination against those living with HIV;
- (g) ensure the greater involvement of people living with HIV in organisational decision-making and service delivery;
- (h) work cooperatively with:
  - (i) whānau, hapū iwi, runanga and/or similar organisations exercising mana whenua in areas where the Trust is physically based;
  - (ii) other Māori organisations;
  - (iii) support organisations for people living with HIV; and

- (iv) community organisations within groups most at risk of contracting HIV;
- (i) act with professionalism and integrity;
- (j) ensure the application of evidence-based scientific methods and analysis.

In carrying out the objects of the Trust, the Board shall have regard to the principles of the Trust set out in this *clause* 6 provided always that the principles of the Trust do not conflict with the objects of the Trust. Where any conflict arises, the objects of the Trust will prevail.

## 7 **INCOME TRUSTS / WHAKAPONO PŪTEA**

### 7.1 **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.

### 7.2 **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 *clause* 7.1.
- (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.

### 7.3 **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.

## 8 **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.

## 9 **SPECIAL AND BARE TRUSTS / WHAKAPONO MOTUHAKE HAHAKE**

### 9.1 **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.

### 9.2 **Bare or Passive Trustees**

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.

## 10 **MEMBERSHIP / NGA MEMA**

### 10.1 **Membership confirmed**

In October 1988 the Board established a membership for the Trust. This clause confirms the status of the membership and limits personal benefits that may arise from such membership.

### 10.2 **Purpose of membership**

The primary purpose of the membership of the Trust is to enhance and promote the work of the Trust. In order to achieve this it is expected that the members of the Trust will be persons committed to the objects and principles of the Trust as set out in *clauses* 5 and 6 of this deed (which principles may be amended from time to time).

### 10.3 **Composition of membership**

The following persons shall be entitled to be members of the Trust:

- (a) employees of the Trust;
- (b) volunteers of the Trust;
- (c) Trustees of the Trust;
- (d) Patrons and Vice-Patrons of the Trust;

- (e) any person who is a life member of the Trust;
- (f) any person who wishes to pay a membership fee and is committed to the objects of the Trust, as set out in this deed; and
- (g) any group or organisation that wishes to pay a membership fee and that as a group or organisation is committed to the objects of the Trust as set out in this deed.

#### 10.4 **Limitations on personal benefit arising from membership rights**

- (a) No member, or person associated with a member of the Trust, may determine or materially influence any decision of the Board relating to:
  - (i) the payment of any income of the Trust Fund to, or on behalf of, that member or associated person; or
  - (ii) the conferring of any benefit or advantage on, or on behalf of, that member or associated person.
- (b) Any such income paid must be reasonable and relative to that which would be paid in an arm's length transaction (being open market value).
- (c) Membership shall not confer on any member the right to receive any income or capital of the Trust Fund or to control the Board in the exercise of its powers.

### 11 **EMPLOYEES OF THE TRUST / WHAKAPONO NGA KAIMAHI**

- (a) Subject to *clause* 10.4, employees of the Trust may receive assistance from the Trust, where the provision of that assistance falls within the purposes of the Trust.
- (b) The employee shall be entitled to receive such services on the same terms as any other person might receive assistance from the Trust, as if he or she had not been an employee of the Trust.
- (c) Employees shall not be entitled to vote in respect of the election of any Board member or on any matters affecting the terms of their employment.

### 12 **INTERESTED TRUSTEES / NGA KAITIAKI ARO MAI**

#### 12.1 **Disclosure of interests**

- (a) A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:

- (i) is a party to, or will derive a material financial benefit from that transaction;
  - (ii) has a material financial interest in another party to the 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 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 transaction; or
  - (v) is otherwise directly or indirectly interested in the transaction.
- (b) As soon as a Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, he or she must disclose to his or her co-Trustees 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 Trustee's interest cannot be quantified, the nature and extent of that interest.
- (c) A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.

#### 12.2 **Dealing with interested Trustees**

Subject to *clause* 12.1 and to *rule* 1.5 in *Part 2* of the *Second Schedule*, each Trustee may act as a Trustee and still contract or otherwise deal with the Board in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. This right to continue to act as a Trustee shall apply even though a Trustee's interest or duty in a particular matter may conflict with his or her duty to the Trust.

### 13 **APPOINTMENT OF PATRONS / TŪRANGA WHAKARURUHAU**

(a) ***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.

(b) **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. Any Patron or Vice-Patron removed shall not be entitled to be given any reason for their removal.

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

14.1 **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 Trustee or committee member appointed by the Board shall be entitled to be reimbursed out of the assets of the Trust for all expenses which he or she properly incurs in connection with the affairs of the Trust;
- (b) the Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
- (c) any Trustee is to be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
- (d) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee'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* 10.4 and 14.2 of this deed are strictly observed.

14.2 **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 his or her 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 his or her business of a professional public practice, shall not, by reason only of him or her 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* 14.2.

## 15 **POWERS OF THE BOARD / NGA KAUPAPA O TE RUNANGA WHAKAHAERE**

### 15.1 **General power**

It is intended that, in the exercise of their discretion, the Trustees shall have the fullest possible powers in relation to the Trust Fund, and that they may do anything they think necessary, expedient or desirable even though it is something which they 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 Trustees to do anything which may prejudice the charitable nature of the purposes of the Trust; and
- (b) all the Trustees' powers, authorities and discretions shall be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Trustees, whether the gift is a special trust or is generally for the purposes of the Trust Fund.

### 15.2 **Specific powers**

Without prejudice to the generality of *clause* 15.1, or to any of the Trustees' express or implied powers, the Board shall have the powers specified in the *First Schedule* and may exercise them either alone or with any other person(s).

## 16 **LIABILITY OF TRUSTEES / NGAI KAITIAKI TAUNAHA**

A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

## 17 **INDEMNITY / INIHUATIA**

A Trustee shall be entitled to exoneration and indemnity out of the assets of the Trust for any liability which that Trustee incurs in relation to the Trust and which is not attributable to that Trustee's dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust.

**18 INSURANCE / INIHUA**

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

**19 CONSULTATION / WHAKAWHITI WHAKAARO**

The Board may consult with the members of the Trust on any issue that, in the opinion of the Board, affects the interests of the members. The Board shall have regard to the views of the members expressed during such consultation provided however, that it shall not be obliged to consult or to have regard to the views of the members and failing to consult or have regard to the views of the members shall not invalidate any decision of the Board.

**20 WINDING UP / WHAKAMUTUNGA****20.1 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 New Zealand having as its object or one of its objects the objects set forth in *clause* 5.2 of this deed or objects of a like character relating to any other life-threatening disease, provided, however, that at the time of such disposal the said charitable organisation must meet the requirements of *clause* 5.1 of this deed. 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 Trustee shall direct.

**20.2 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.

**21 RULES / RITENGA**

The rules, which subject to the provisions of this deed, govern the appointment, retirement and proceedings of the Trustees are set out in the *Second Schedule* to this deed.

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

- (a) This deed (apart from the *Second Schedule*, which contains its own alteration provisions) may be altered, only after consultation with the

members of the Trust as provided for in this clause, by a special resolution of the Board.

- (b) Before passing any such resolution to amend this deed, the Board shall consult with the members of the Trust. For the purpose of consultation:
  - (i) the proposed resolution for the alteration of this deed shall be considered by the members of the Trust at an Annual General Meeting or Special General Meeting of the Trust called for this purpose;
  - (ii) the Secretary of the Trust shall give each member of the Trust written notice of any proposed resolution for the alteration of this deed at least 14 days before the date of the Annual General Meeting or Special General Meeting at which it is to be considered by the members;
  - (iii) the members shall be entitled to vote on any proposed resolution for the alteration of this deed and a ballot shall be carried out for this purpose.
- (c) A meeting of the Board shall be convened as soon as reasonably possible after the Annual General Meeting or Special General Meeting at which the members have considered the proposed resolution for the alteration of this deed.
- (d) The Secretary of the Trust shall give each Trustee written notice of any proposed resolution for the alteration of this deed and the results of any member ballot in respect of that resolution at least 14 days before the date of the meeting of the Board at which it is to be considered.
- (e) The Board shall have regard to, but is not bound to follow, the views of the members of the Trust. The Board shall, however, use all reasonable endeavours to ensure that any changes made to this deed are consistent with the views of the members of the Trust.
- (f) Before resolving to make any alteration to this deed, the Board must be satisfied that the proposed alteration does not prejudice the charitable nature of the Trust, and in particular the efficacy of *clauses* 5.1, 5.2, 10.4, 12, 14, 20 and this *clause* 22 in meeting the requirements for any exemption available to charities under the New Zealand revenue laws.

**FIRST SCHEDULE: BOARD'S SPECIFIC POWERS / NGA KAUPAPA O TE RUNANGA 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 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 repaid 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 advisors, 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.
- (k) TO ADOPT from time to time standing orders to govern the operation of any meetings of the Board and of the membership of the Trust.
- (l) TO DO SUCH OTHER lawful acts and things as are incidental to or conducive to the attainment of the objects of this Trust.

**SECOND SCHEDULE: RULES GOVERNING THE TRUSTEES AND THE MEMBERSHIP OF THE TRUST / NGA RITENGA O KAITIAKI NGA MEMA WHAKAPONO**

**PART 1 THE TRUSTEES / NGA KAITIAKI**

**1 APPOINTMENT, RETIREMENT AND REMOVAL OF TRUSTEES / NGA KAITIAKI TŪRANGA WHAKATĀNGA**

**1.1 Number of Trustees**

- (a) There shall from time to time be no fewer than three, nor more than seven Trustees.
- (b) For the avoidance of doubt the duly appointed Trustees of the Trust at the date of this deed are:
- (i) HOANI JEREMY LAMBERT of Wellington
  - (ii) PAUL BOHMER of Auckland
  - (iii) GORDON CHAPPLE of Wellington
  - (iv) CAMERON LAW of Auckland
  - (v) GRANT ROBERTSON of Wellington
  - (vi) MARK BRIDGMAN of Auckland and
  - (vii) MARK HENRICKSON of Auckland
- (c) The Trustees shall be deemed to be General Trustees of the Trust until an election is held in accordance with *rule* 1.4(a), at which point four of the Trustees must resign as General Trustees and may then stand for election by the members of the Trust.

**1.2 The Trustees of the Trust**

The Trustees of the Trust shall be those listed in *clause* 1.1(b) of these rules until an election is held in accordance with *rule* 1.4(a) of these rules, from which time the Trustees of the Trust shall comprise:

- (a) four Trustees elected by the members of the Trust (the *Elected Trustees*);
- (b) up to three Trustees appointed by the Board (the *General Trustees*).

### 1.3 **Quorum**

The Board may from time to time fix the number of Trustees 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 Trustees present in New Zealand and capable of acting, the two Trustees who are or the one Trustee who is so present and capable shall have no power to act except for the purpose of appointing one or more Trustees.

### 1.4 **Elected Trustees**

#### (a) ***Election***

The members of the Trust may, by ballot, at each Annual General Meeting of the Trust, or at any Special General Meeting of the Trust called for this purpose elect any person to be an Elected Trustee. The first such Annual General Meeting for the election of Trustees will be the first Annual General Meeting of the Trust held after the adoption of this deed.

#### (b) ***Term of office***

An Elected Trustee shall hold office for the term of two years from the date of his or her election (unless the Elected Trustee is earlier removed from office in accordance with the provisions of *rule 1.4(c)*). An Elected Trustee ceasing to hold office may be re-elected for a further term or terms.

#### (c) ***Removal***

An Elected Trustee may be removed by a resolution of two-thirds of the members of the Trust at a duly convened Special General Meeting of the Trust called for that purpose. The Elected Trustee subject of the proposed removal, if also a member of the Trust, shall be entitled to vote on the resolution but shall not be entitled to be given any reason for the proposing or passing of the resolution.

### 1.5 **General Trustees**

#### (a) ***Appointment***

The Board may by ordinary resolution appoint any person to be a General Trustee.

#### (b) ***Term of Office***

A General Trustee appointed in accordance with *rule 1.5(a)* shall hold office for a term of two years from the date of his or her appointment (unless the General Trustee is earlier removed from office in accordance with the provisions of *rule 1.5(c)*). A Trustee 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 General Trustee may be reappointed and may again hold office for up to three two-year terms.

(c) **Removal**

The Board, may by special resolution, remove any General Trustee and shall give written notice of removal to that General Trustee. The Trustee subject of the proposed removal shall be entitled to vote on the resolution but shall not be entitled to be given any reason for the proposing or passing of the resolution.

1.6 **Retirement**

A Trustee (whether he or she is an Elected Trustee or a General Trustee) 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.

1.7 **Board may fill casual vacancy on the Board**

Where at any time, there is, for any reason, a vacancy in the number of Elected Trustees, the Board may appoint a further General Trustee who will act in place of the Elected Trustee until a new Elected Trustee is elected.

1.8 **Considerations**

(a) For the purposes of *rule* 1.5, the Board in appointing any new or additional Trustee:

- (i) shall appoint persons who have the requisite skills, expertise, experience and commitment to the Trust's purposes;
- (ii) may, but shall not be obliged to, take advice from independent consultants or other professional advisors as to the relevant skills and expertise required;
- (iii) may, from time to time, determine and specify the relevant skills, experience and expertise that is required of any new or additional Trustee;
- (iv) shall have regard to the desirability of at least one of the Trustees being a person living with HIV.

1.9 **Termination of Office**

A Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to the Board or the Secretary of the Trust in accordance with *rule* 1.6;
- (b) completes his or her term of office and is not eligible for reappointment;
- (c) refuses to carry out his or her duty as a Trustee;

- (d) is absent without leave from 3 consecutive ordinary meetings of the Board;
- (e) becomes physically or mentally incapacitated to the extent that in the opinion of the other Trustees, expressed in a special resolution, he or she is unable to perform the duties of a Trustee properly;
- (f) is an Elected Trustee and is removed for any reason in accordance with *rule* 1.4(c);
- (g) is a General Trustee and is removed for any reason in accordance with *rule* 1.5(c);
- (h) acts in contravention of the Ethical Code, and is removed by special resolution of the other Trustees;
- (i) ceases to qualify as an officer of a charitable entity under section 16 of the Charities Act 2005.

## **PART 2 ADMINISTRATIVE PROVISIONS / TIKANGA WHAKAHAERE**

### **1 MEETINGS OF THE BOARD / NGA HUI O TE RUNANGA WHAKAHAERE**

#### **1.1 General**

The Board may meet together 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. It shall not be necessary for the Trustees 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 Trustees may and the Secretary on the requisition of any two Trustees 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 Trustee for the time being absent from New Zealand.

#### **1.3 Notice of meetings**

- (a) Except for the purposes of *clause* 22 of the Trust Deed (which contains its own rules), written notice of every ordinary or special meeting, shall be either hand-delivered, posted or sent by facsimile or email to each Trustee and each member of the Trust, if appropriate, at least 14 days before the date of the meeting. 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 Trustees, members or the Chairperson calling the

meeting, shall give the notice of the meeting. No notice shall be required for adjourned meetings except to those Trustees or members who were not present when the meeting was adjourned.

- (b) 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.
- (c) The requirement for notice of a meeting may be waived if all of those Trustees or members as the case may be who are for the time being in 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 **Interested Trustee may not vote**

A Trustee who is interested in a transaction (as defined in *clause* 12.1(a) of the Trust Deed) 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 Trustees 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 Trustee in relation to the transaction, as if he or she were not interested in the transaction.

## 2 **CHAIRPERSON (AND DEPUTY CHAIRPERSON) OF TRUSTEES / NGA KAITIAKI TUMUAKI**

### 2.1 **Appointment and Term**

- (a) 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.

- (b) Subject to *clauses* 10.4 and 14 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.

## 2.2 **Voting Rights**

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

## 3 **SECRETARY / KAITUHI**

### 3.1 **Appointment and Term**

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.

### 3.2 **Voting Rights**

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

### 3.3 **Resignation**

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

## 4 **FINANCIAL / PŪTEA**

### 4.1 **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 its trust and such accounts shall be audited at least once a year by a Chartered Accountant appointed in that behalf by the Board and not himself or herself being a Trustee.

### 4.2 **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.

### 4.3 **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. Every such affixing shall be performed in the presence of and accompanied by the signatures of two Trustees 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.

### **PART 3 RULES GOVERNING THE MEMBERSHIP OF THE TRUST / NGA RITENGA WHAKAHAERE O NGA MEMA**

#### **1 RIGHTS OF MEMBERS / NGA MEMA MANA TUKU IHO**

Members, including employees and volunteers of the Trust (but not including any group or organisation that is a member of the Trust), have:

- (a) subject to *rule 2.3(c)*, speaking and voting rights at any Annual General Meeting or Special General Meeting of the Trust;
- (b) the right to be consulted in respect of any proposed alteration to the Trust Deed under *clause 22(b)* of the Trust Deed;
- (c) the right for any twenty members of the Trust to call a Special General Meeting of the Trust under *rule 3(a)* of these rules.

For the avoidance of doubt, groups or organisations that are members of the Trust, do not have any right to vote at any Annual General Meeting or Special General Meeting of the Trust, nor does any group or organisation that is a member of the Trust have the right to be consulted under *clause 22(b)* of the Trust Deed or to call a Special General Meeting of the Trust under *rule 3(a)* of these rules. Groups or organisations that are members of the Trust may, however, attend any Annual General Meeting or Special General Meeting of the Trust and have the right to nominate a representative who may speak at any such meeting.

##### **1.1 Payment of membership fees**

- (a) Trustees, Patrons, Vice-Patrons, employees and contracted volunteers of the Trust will be members of the Trust without payment of any subscription, for the duration of their acting in this capacity.
- (b) Life members of the Trust will be members of the Trust without payment of any subscription.
- (c) The Board, at its discretion, may waive the payment of membership fees for members who are HIV positive.
- (d) All other members of the Trust will be required to pay a membership fee.

- (e) The membership fee for members will be determined by the Annual General Meeting from time to time.

## 1.2 **Rules of membership**

The Board shall from time to time adopt such rules as may be necessary for the regulation of the membership.

## 2 **ANNUAL GENERAL MEETING / TE HUI A-TAU**

### 2.1 **Functions and Powers of the Annual General Meeting**

The Annual General Meeting of the Trust is to be a meeting of the members of the Trust.

- (a) The Board at an Annual General Meeting has the power to receive, amend and adopt and reject reports submitted to it.
- Bb) The members at an Annual General Meeting may consider and recommend to the Board policies which the members of the Trust wish to have implemented.

For the avoidance of doubt, the members of the Trust at an Annual General meeting have no power to:

- (c) amend the Trust Deed of the Trust;
- (d) instruct the Board in respect of the Board's discretionary powers or in respect of the management of staff and resources in the interests of the Trust;
- (e) admit persons as members;
- (f) terminate membership;
- (g) determine any matter concerning the professional management of the Trust's programmes.

### 2.2 **Date of Annual General Meeting**

The Annual General Meeting will be held no later than 30 November each year.

### 2.3 **Notice of Annual General Meeting**

- (c) Members will be given:
  - (i) two months' notice of the meeting; and

- (ii) one month's notice of the agenda and remits (if any) to be considered at the meeting.
- (d) For the purposes of *rules* 2.3(a)(i) and (ii), any notice, agenda and/or documents shall be provided only to those members of the Trust who have paid their membership fees (if applicable) and who are listed on the official membership list of the Trust one week prior to the date that such notice is due in accordance with *rules* 2.3(a)(i) and (ii) (as the case may be).
- (e) Only those members of the Trust who have paid their membership fees (if applicable) and who are listed on the official membership list of the Trust one calendar month before any Annual General Meeting shall be entitled to vote at that Annual General Meeting.

#### 2.4 **Quorum of Annual General Meeting**

The quorum for the Annual General Meeting will not be less than 15 members, inclusive of counts of proxies of absent members.

#### 2.5 **Membership Status**

- (c) The Secretary will:
  - (i) confirm the membership status of every person attending; and
  - (ii) confirm whether that person is entitled to vote in accordance with *rule* 2.3(c); and
  - (iii) report to the meeting on the total number of members of the organisation and the total number attending, along with the presence of observers (if any).
- (d) Subject to *clause* 11 of the Trust Deed, employees of the Trust and Board Members, as members of the Trust, are entitled to attend Annual and Special General Meetings with speaking and voting rights.
- (e) Each member is entitled to speak and to exercise one vote at the Annual General Meeting.
- (f) Where observers may be present at any meeting of the Trust, the Chairperson shall put a motion to the members of the Trust seeking approval of that motion that observers have the right to speak but not to vote.
- (g) Any member who is unable to attend the Annual General Meeting may appoint, in writing, another member to act as his/her proxy in any vote determined at the meeting.

## 2.6 **Voting Procedures**

Voting may be:

- a) by voice; or
- b) by show of hands; or
- c) by post; or
- d) by secret ballot.

If a secret ballot is sought it must be held.

## 2.7 **Resolutions of Annual General Meeting**

- (c) The Annual General Meeting will exercise its powers by resolution.
- (d) The business of the Annual General Meeting, including any matter involving Trust policy must be specified in advance in the notice of the meeting.
- (e) In the determination of policies, resolutions will be preferably reached by consensus, but if a consensus cannot be reached on a policy matter a 60 percent vote in favour will be necessary to pass a resolution.
- (f) Procedural questions will be determined by a simple majority put to a vote.
- (g) The Chairperson has the power to rule on whether a proposal is procedural or whether it involves policy.

## 3 **SPECIAL GENERAL MEETINGS / TE HUI MOTUHAKE**

- (c) A Special General Meeting may be called upon by resolution of the Board, and shall be called by the Board upon the written application of twenty members of the Trust. The resolution application must specify the reasons for the Special General Meeting.
- (d) Where an Annual General Meeting of the Trust is to be held within 2 calendar months of any request by members for a Special General Meeting the Board may at its discretion resolve that the matters be dealt with at the Annual General Meeting.
- (e) Members must be given one month's written notice of:
  - (i) the Special General Meeting; and
  - (ii) the business of the Special General Meeting.

- (f) The Board, at its discretion, may order a postal referendum instead of calling a Special General Meeting if the matter raised for the business of the Special General Meeting can be determined by a postal referendum.

#### **PART 4 VARIATION OF RULES / NGA RITENGA WHAKAREREKĒTANGA**

##### **1 Variation of Rules**

These rules (other than those rules that require a higher threshold in which case the threshold specified in the rule shall apply) may be varied by ordinary resolution of the Board.

##### **1.1 Restraints on alteration**

A resolution for the variation of any of these rules shall be effective only if:

- (a) each Trustee was given at least 14 days' written notice of the proposed resolution;
- (b) the variation does not conflict with the provisions of the Trust Deed; and
- (c) the variation does not prejudice the charitable nature of the purposes of the Trust.

#### **Date**

#### **EXECUTION**

Signed by **Hoani Jeremy Lambert**

Signed by **Paul Bohmer**

\_\_\_\_\_

\_\_\_\_\_

in the presence of:

in the presence of:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Occupation:

Occupation:

Address:

Address:

Signed by **Gordon Chapple**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

Signed by **Cameron Law**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

Signed by **Grant Robertson**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

Signed by **Mark Bridgman**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

Signed by **Mark Henrickson**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:

Occupation:

Address: