**CHARITABLE TRUST**

**TRUST DEED TEMPLATE**

**INTRODUCTORY NOTES**

This is a template Trust Deed for a charitable trust. It can be adapted for a regional sports trust, a trust which operates a sport and recreation facility or a trust which promotes amateur sport as the means by which a charitable purpose is pursued.

A charitable trust is a legal structure, distinct from an incorporated society, company, partnership or other type of legal structure. It is a way to hold and protect assets for charitable purposes, where such assets are managed in accordance with a trust deed.

[*Charitable Trusts Act 1957*](https://www.legislation.govt.nz/act/public/1957/0018/latest/DLM308796.html)

The trustees can incorporate as a charitable trust board under the Charitable Trusts Act however it is not compulsory. The trust must exist principally or exclusively for a ‘charitable purpose’ being the relief of poverty, the advancement of education or religion or any other matter beneficial to the community. It is charitable under section 61 of the Act if facilities for recreation or other leisure-time occupation are provided in the interests of social welfare and there is a public benefit.

The advantage of incorporating as a board is that the trust, not the trustees, enters into obligations, and the trust, not the trustees personally, will be liable if a default of those obligations occurs. Trustees must act to the high standards that the law requires of trustees whether or not the trust is incorporated as a board.

An application to incorporate a charitable trust board is made to the Registrar of Incorporated Societies who administer charitable trust boards ([Charitable Trusts Register](https://ct-register.companiesoffice.govt.nz/)).

[*Charities Act 2005*](https://www.legislation.govt.nz/act/public/2005/0039/latest/DLM344368.html)

Registration under the Charities Act for a charitable trust is voluntary, but it provides benefits including income tax exemption, donee status (donors do not have to pay tax on donations), access to funding from organisations which only fund registered charities, and public accountability (your details made publicly available to help promote public confidence in the charitable sector).

A trust must be established and maintained exclusively for ‘charitable purposes’ and not be carried on for the private pecuniary profit of any individual. Again, a charitable purpose is the relief of poverty, the advancement of education or religion or any other matter beneficial to the community (section 5, Charities Act). The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose is pursued (section 5(2A), Charities Act).

An application for charitable status is made to [Charities Services](https://www.charities.govt.nz/) .

[*Trusts Act 2019*](https://www.legislation.govt.nz/act/public/2019/0038/latest/DLM7382815.html)

The Trusts Act is an updated record of the law relating to trusts and trustees. The trustees of a charitable trust are subject to the mandatory and default duties under the Trusts Act.

This template trust deed is only a starting point. A charitable trust should seek expert advice to ensure its trust deed is suitable for its own requirements.

**HOW TO USE THIS DOCUMENT**

**GUIDANCE**

Words in purple are GUIDANCE to assist you with drafting your trust deed. Remove these before you finalise your trust deed.

**TRUST SPECIFIC**

Words in green means you need to insert your TRUST SPECIFIC wording.

**OPTIONAL**

Words in blue are OPTIONAL.

The template contains options for a new charitable trust that is yet to (or will not) incorporate as a charitable trust board or register as a charitable entity, and for an existing charitable trust that is varying its trust deed.

Update the table of contents and check the cross references of clauses and clause numbering are correct before you finalise your trust deed.

Charitable Trust Deed - [Charitable Trust name]

[Guidance: A new trust deed must be certified by a trustee with the following statement placed on the cover page of the document.]

I hereby certify that this is a correct copy of the trust deed of the [Charitable Trust name] in accordance with section 10(2)(a) of the Charitable Trusts Act 1957.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Guidance: A variation of an existing trust deed must be certified by a trustee with the following statement placed on the cover page of the document.]

I hereby certify that this is a correct copy of the trust deed of the [Charitable Trust name] in accordance with section 23(1)(a) of the Charitable Trusts Act 1957.

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Contents

1. Definitions and interpretation 1

2. Creation of the Trust 4

3. Variation of the Trust 4

4. Trust details 5

5. Purposes 5

6. Number of Trustees 7

7. Appointment and removal of Trustees 8

8. Special Trust Adviser 12

9. Payments to Trustees 12

10. No private pecuniary profit 14

11. Liability of Trustees 14

12. Mandatory Duties of the Board and Trustees 14

13. Default Duties of the Board and Trustees 14

14. Conflicts of interest 17

15. The Board’s powers 17

16. Meetings of the Board 18

17. Delegation 20

18. Property 21

19. Accounts 22

20. Tax returns and annual returns 22

21. Staff 22

22. Supporters 22

23. Common seal 23

24. Execution of documents 23

25. Amendments 24

26. Winding up 24

27. Matters not provided for 25

28. Counterpart copies 25

29. Governing law and jurisdiction 25

**Charitable Trust Deed - [Charitable Trust name]**

[Guidance: Include this Parties section if this is a new trust deed.]

Parties

1. **[name of settlor]** (**Settlor**)

2. **[initial trustees]** (**Trustees**)

Background

[Guidance: Include paragraphs A and B if this is a new charitable trust and new trust deed.]

1. The Settlor has decided to create a charitable trust to be known as [Charitable Trust name] (**Trust**).
2. The Trustees have agreed to act as the first Trustees of the Trust.

[Guidance: Include paragraphs C to I (as applicable) if you are amending the terms of an existing charitable trust deed.]

1. By deed dated [date] (**Original Trust Deed**), [insert settlor] (the **Settlor**) created the [Charitable Trust name] (**Trust**).
2. The Settlor settled the sum of $[insert settlement sum] in respect of the Trust on the then named trustees.
3. The Board was incorporated under the Charitable Trusts Act on [date]. [Guidance: Include as applicable.]
4. The Trust was registered as a charitable entity under the Charities Act 2005 on [date]. [Guidance: Include as applicable.]
5. The Trustees are the current Trustees of the Trust.
6. The Trustees wish to amend the Original Trust Deed. Under clause [number] of the Original Trust Deed the Trustees are required to [insert process that must be followed to amend the Trust as per your current trust deed].
7. This deed replaces the Original Trust Deed with effect from the date of this deed.

This deed records

# Definitions and interpretation

### **Definitions:** In this deed unless the context otherwise requires:

1. **Annual Meeting** has the meaning given to it in clause 16.1.

**Appointer** has the meaning set out in clause 7.1. [Guidance: Delete this definition if the Board holds the power to appoint and remove trustees.]

**Balance Date** means [insert balance date] or any other date adopted by the Trustees as the end of the Trust's Financial Year.

**Board** means the Trustees of the Trust incorporated as a Board pursuant to the Charitable Trusts Act (or, prior to incorporation of the Board, the Trustees collectively). [Guidance: Delete the words in brackets if the Board is already incorporated.]

**Chair** means the Trustee appointed as Chair in accordance with clause 16.2.

1. **Charitable Trusts Act** means the Charitable Trusts Act 1957.
2. **Charities Act** means the Charities Act 2005.

**Concessionary Provisions** means sections CW 41 (Charities: non-business income), CW 42 (Charities: business income), CX 25 (Benefits provided by charitable organisations), DB 41 (Charitable or other public benefit gifts by company), DV 12 (Māori authorities: donations) and LD 1 (Tax credits for charitable or other public benefit gifts) of the Tax Act; section 73(1) of the Estate and Gift Duties Act 1968; and the provisions of the Goods and Services Tax Act 1985 relating to non-profit bodies, as defined in section 2(1) of that Act, any amendment to those provisions and any other legislative or regulatory provision providing relief to charitable entities.

**deed** means this deed as amended in accordance with clause 25.

**Default Duties** means the duties that must be performed by the Trustees as set out in sections 29 to 38 of the Trusts Act except to the extent those duties have been modified or excluded by this deed.

**Designated Gift**means a gift which is given to be held on trust for a specific purpose that comes within the Purposes and, unless the context otherwise requires, includes any income derived from it. [Guidance: Optional, include this definition if the concept of a “Designated Gift” is used, refer to the ‘Finances’ section of this template.]

1. **Financial Year** means any 12-month period ending on the Balance Date.
2. **Full Legal Capacity** means a person:

#### who is over 18 years of age or older;

#### who is not adjudicated bankrupt or has been discharged from bankruptcy;

#### who is not subject to an order under the Protection of Personal and Property Rights Act 1988 protecting the property or personal care and welfare of that person;

#### whose enduring power of attorney over their property or personal care and welfare has not come into effect due to the issue of a medical certificate pursuant to sections 97(5) or 99D of the Protection of Personal and Property Rights Act 1988.

### A Trustee will be **Interested** in a **Matter** if the Trustee:

#### may derive a financial benefit from the Matter;

#### is the parent, child, spouse, civil union partner or de facto partner of a person who may derive a financial benefit from the Matter; or

#### may have a financial interest in a person to whom the Matter relates;

#### is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the Matter relates (unless the person is wholly owned or wholly controlled by the Board); or

#### is otherwise directly or indirectly interested in the Matter in a manner which may be seen as a possible influence on their deliberations and voting as Trustee, including, without limitation, being employed by any organisation offering or purchasing services to or from the Trust.

**Mandatory Duties** means the duties that must be performed by the Trustees as set out in sections 23 to 27 of the Trusts Act.

**Matter**means an arrangement, agreement, or contract made or entered, or proposed to be entered, by the Board, or the exercise of powers or the carrying out of activities under this deed.

1. **Purposes** means the charitable purposes of the Trust as set out in clause 5.1.
2. **Qualified Auditor**has the meaning given to that term by the Charities Act.

**Region** means the geographical area defined by [insert how the area is defined e.g. by regional/district councils], or such other geographical area as determined by the Trustees. [Guidance: Optional, include this definition if the concept of a “Region” is used, refer to the ‘Purposes’ section of this template.]

**Registered Charitable Entity** means the trustees of a charitable trust registered under the Charities Act.

**Special Trust Adviser** means a person appointed to advise the Trustees on any matter relating to the Trust pursuant to clause 8 but who is not a Trustee and does not have the powers or duties of a Trustee. [Guidance: Optional, include this definition if the concept of a “Special Trust Advisor” is used, refer to clause 8. Special trust advisers can be a practical appointment to allow trustees to receive advice from someone who may have expert knowledge in a particular area without risking an improper delegation of trustee duties. This means that trustees can avoid liability when acting on the advice of a special trust advisers (unless doing so involves a trustee’s dishonesty, wilful misconduct or gross negligence). A special trust adviser is not a trustee.]

**Supporter** means a person who is a supporter of the Trust as set out in clause 22. [Guidance: Optional, include this definition if the concept of a “Supporter” is used, refer to clause 22. People may be members of a charitable trust (often called “Supporters” or “Friends”) so they can show their support to the trust by paying a fee and receiving email communications or invitations to events. Members don’t have any rights in a trust structure (as compared to an incorporated society which is controlled by its members). If you are an incorporated society that is considering changing your structure to be a charitable trust, you should seek legal advice – the notion of members under a charitable trust is quite different. This template uses the term “Supporters”, you can adjust this name to suit your trust.]

**Tax Act** means the Income Tax Act 2007.

**Terms of the Trust** means the terms on which the Trustees hold the Trust Assets as set out in this deed and otherwise implied at law.

**Trust** means the charitable trust [established][varied] by this deed. [Guidance: Amend depending on whether this is a new charitable trust or a variation of an existing charitable trust.]

**Trust Assets** means any real or personal property owned or held by the Board on the trusts of this deed including the initial settlement referred to in clause 2.1 and any further property added to that property. [Guidance: Remove the blue wording if this is an amendment to an existing trust.]

**Trustees** means the trustee or trustees of the Trust for the time being.

1. **Trusts Act** means the Trusts Act 2019.

### **Interpretation:** In this deed unless the context otherwise requires:

#### A reference to a person includes any other entity or association recognised by law and vice versa.

#### Words referring to the singular include the plural and vice versa.

#### Clause headings are for reference only.

#### References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions.

#### Any obligation not to do anything is deemed to include any obligation not to suffer, permit or cause that thing to be done.

# Creation of the Trust

### [Guidance: Include this clause 2 (Creation of the Trust) if this is a new trust deed. Delete clause 3 (Variation of the Trust).]

### **Initial settlement:** The Settlor settles the sum of $[insert settlement sum e.g. $10.00] on the Trustees as an initial settlement to create the Trust.

### **Trustees agree to act as Trustees:** The Trustees agree to act as trustees of the Trust on the terms set out in this deed.

### **Declaration of trust by the Trustees:** The Trustees declare that they will hold all Trust Assets on the Terms of the Trust.

### **Commencement and termination:** The Trust will commence on the date of this deed and will continue until terminated under clause 26.

# Variation of the Trust

### [Guidance: Include this clause 3 (Variation of the Trust) if this trust deed is an amendment to an existing charitable trust. Delete clause 2 (Creation of the Trust).]

### **Confirmation of the Trust:** This deed is adopted as the trust deed of the Trust with effect from the date of this deed. The Trustees confirm that the adoption of this deed does not affect the validity of anything made or done by the Trustees of the Trust before the date of this deed nor does 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). [Guidance: Include the wording in blue as appropriate.]

### **Confirmation and declaration of trust by the Board:** The Board confirms, acknowledges and declares that it holds all Trust Assets on the Terms of the Trust.

# Trust details

### **Name:** The name of the Trust is “[Charitable Trust Name]” or such other name as the Board decides. [Guidance: 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, section 15, Charitable Trusts Act. The Registrar of Incorporated Societies must also be satisfied that the name chosen will not be contrary to public interest. The name does not need to include the words ‘trust board’, ‘trust’, ‘board’ or ‘incorporated’. You may wish to include these words to be clear to people about the status of the trust.]

### **Office:** The office of the Trust and the Board is at [insert place of office] or such other place as the Board decides.

### **Incorporation under the Charitable Trusts Act:** The Trustees must immediately apply for incorporation under Part 2 of the Charitable Trusts Act as a Board under the name “[Charitable Trust Name]”. [Guidance: Include if this is a new trust deed and you are intending to incorporate under the Charitable Trusts Act.]

### **Registration under the Charities Act:** The Trustees must immediately apply for registration of the Trust as a charitable entity under the Charities Act under the name “[Charitable Trust Name]”. [Guidance: Include if this is a new trust deed and you are intending to be a registered charitable entity and delete clause 4.5.]

### **Charities Act:** The Trust is registered as a charitable entity under the Charities Act. While the Trust is registered the Trustees will comply with the requirements of the Charities Act. [Guidance: Include this if the Trust is a registered charitable entity and delete clause 4.4.]

# Purposes

### **Purposes:** The purposes of the Trust will be: [Guidance: The trust deed must clearly evidence the charitable purposes of the trust to obtain charitable status for registration and tax purposes. Charitable purposes are the relief of poverty, the advancement of education or religion and any other matter beneficial to the community. It is necessary to state and be able to demonstrate that the benefit is for the public or a wide section of the public. The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose is pursued, section 5(2A), Charities Act. For example providing sports sessions to primary schools or opportunities for people with disabilities to participate in amateur sport.It is charitable under section 61 of the Act if facilities for recreation or other leisure-time occupation are provided in the interests of social welfare and there is a public benefit. “In the interests of social welfare” means the facilities are provided with the purpose of improving the lives of the people who use them, and either: (i) those people have a need for the facilities due to their ‘youth, age, infirmity, disablement, poverty, race, occupation or social or economic circumstances’; or (ii) the facilities are available to the public. See [Charities Services](https://www.charities.govt.nz/ready-to-register/need-to-know-to-register/charitable-purpose/sport-and-recreation/) for further guidance as to when a sport and recreation trust may be considered charitable.It is recommended that you obtain legal advice to ensure the purposes comply with all legal requirements relevant to your trust. Examples are included below for each of the following: (i) a regional sports trust; (ii) an organisation which provides and maintains a sport/recreation facility and (iii) an organisation that promotes amateur sport as the means by which a charitable purpose is pursued.] *-----------*

### *Example purposes for a regional sports trust, amend as applicable to your trust:*

#### to undertake a regional leadership role in relation to promoting active and on-going participation in sport, play, active recreation and active transport for the physical health and mental wellbeing of the people in the Region;

#### to advance education regarding the benefits of sport, play, active recreation and active transport for the physical health and mental wellbeing of the people in the Region by the promotion and coordination of physically active and healthy lifestyle programmes and activities in the Region;

#### 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, play, active recreation and active transport programmes and activities in the Region;

#### to provide support to community sport and recreational groups and organisations in the Region by the provision of advice, training, guidance and funding to assist in the improvement of, and access to, governance, management and administration of the sport and recreation groups and organisations in the Region;

#### to promote the provision of community facilities and activities for sport and recreation;

###  *-----------*

### *Example purposes for a public sport/recreation facility, amend as applicable to your trust:*

#### to manage and operate community [insert sport/recreation (if applicable)] facilities at [insert description of facility or region] for the benefit of the Region and its communities and towards the promotion and support of participation in [insert sport/recreation (as applicable)] including:

##### planning in relation to the matters described above; and

##### seeking out and obtaining funding and other resources in support of the matters described above;

#### to administer community [insert sport/recreation (if applicable)] facilities in the Region on a prudent commercial basis, with a view to ensuring that such community facilities are operated as successful financially sustainable community assets;

#### 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 Region.

###  *-----------*

 *Example purposes for organisations that promote amateur sport as the means by which a charitable purpose is pursued, amend these as applicable to your trust:*

#### to promote public health and wellbeing by organising and providing opportunities to participate in amateur [insert sport] in [insert region or New Zealand/Aotearoa];

#### to advance education through amateur [insert sport] by:

##### educating the public as to the health and wellbeing benefits of [insert sport] for themselves and the community in general; and

##### organising and providing training programmes and other activities for the purpose of educating, training and assisting coaches and referees in [insert sport];

#### to advance education by:

##### organising and providing sports sessions to primary schools in [insert region]; and

##### organising and providing training programmes and opportunities to teachers and community volunteers who assist with the delivery of sports in primary schools;

#### to advance education by providing [insert e.g. learn to swim and water safety education programs to young people].

### **Purposes take precedence:** In interpreting the terms of this deed:

#### the Purposes in clause 5.1 will take precedence;

#### all other purposes will be pursued to further the Purposes; and

#### the Board may carry out any one or more of the Purposes independently of any of the other Purposes. [Guidance: The promotion of professional, elite or high performance sport is not considered charitable and there are many examples of this position being confirmed in case law. However, a trust can still be registered as a charity, even if some of its purposes are not charitable, provided the non-charitable purposes are ancillary to its charitable purposes. A purpose will be considered ancillary if it is a small part of what the organisation does, and it is closely connected to its charitable purposes. [Charities Services](https://www.charities.govt.nz/news-and-events/blog/sports-and-charity-rules-of-the-game/) notes that “a charity can also have an “ancillary” purpose to benefit elite sports people if this is a small part of their overall activities – this is a case by case assessment – but usually would have to be less than 10% of their expenditure or activities.”]

### **Limits to the Purposes:** The Purposes of this Trust may not extend to any matter or thing which is not:

#### charitable within the meaning of the Tax Act or the Charities Act; or

#### carried out within New Zealand.

# Number of Trustees

### **Number of trustees:** The number of Trustees must be not less than [insert minimum number of trustees] nor more than [insert maximum number of trustees]. [Guidance: Recommend a minimum of three trustees.]

### **When the number of trustees falls below minimum:** If at any time there are less than [minimum number of trustees] Trustees:

### [Guidance: Include (a) to (d) if there is a person/entity named as the Appointer.]

#### the Board must give notice to the Appointer that the number of Trustees is less than [minimum number of trustees].

#### the Appointer must increase the number of Trustees to [minimum number of trustees] as soon as is reasonably practicable;

#### the Board may not undertake any action or make any decision until the number of Trustees is increased to [minimum number of trustees], unless it relates to an essential administrative matter; and

#### if the Appointer has not appointed sufficient Trustees to ensure that the Trust has at least [minimum number of trustees] Trustees within one month of receiving a notice pursuant to clause 6.2(a), the Board may appoint the number of Trustees required to ensure that the Trust has at least [minimum number of trustees].

#### [Guidance: Include (e) and (f) if the Board holds the power of appointment and removal.]

#### the Board must increase the number of Trustees to [minimum number of trustees] as soon as is reasonably practicable;

#### the Board may not undertake any action or make any decision until the number of Trustees is increased to [minimum number of trustees], unless it relates to an essential administrative matter.

# Appointment and removal of Trustees

[Guidance: The trustees control and manage the Trust Assets. While they have powers of delegation, they are always legally liable for the Trust Assets and its administration. It is essential 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. There are different possible mechanisms to change the trustees. This template provides three options as to who holds the power to appoint and remove trustees: 1) a named person/organisation; 2) the Board; and 3) a Board Appointments Panel. Adapt the clause to suit the needs of your trust.
Historically some regional sports trusts have included local authority representatives. Consider whether this is the best way to obtain local authority input, but be aware that the trustees must act in the interests of the trust to discharge their trustee duties. They cannot prefer the interests of any other organisation which they represent or which appoints them.]

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### *Option 1: A named person/organisation*

### **Power to appoint trustees:** Subject to clauses 6.2(d), 7.4, 7.7, and 7.7(b), [insert person(s) with powers of appointment and removal] (**Appointer**) holds the power to appoint and remove Trustees. If the Appointer is more than one person, the power to appoint and remove Trustees must be exercised by those persons unanimously. [Guidance: If a party holds the power of appointment over the majority of trustees of this Trust that party might be considered to “control” this Trust. This has consequences as to what the controlling party must include in its financial statements such as preparing financial statements (including the charitable trust financial information) which may impact the financial reporting tier the controlling party must report under. See [Charities Services Guidance](https://www.charities.govt.nz/reporting-standards/financial-reporting-and-control-relationships/).]

### **Appointment by written notice to Board:** The Appointer may appoint a new Trustee by giving written notice of the appointment to the Board, provided that the maximum number of Trustees specified in clause 6.1 is not exceeded.

### **When appointment takes effect:** A Trustee’s appointment will be effective immediately after the Board receives the Appointer’s written notice of the appointment or, if a later date is specified in the notice, from the date specified in the notice.

### **Transfer of the Appointer’s powers:** The Appointer may, by deed or by will, appoint another person to replace them as Appointer and:

#### if that appointment is made by will, the appointment will come into effect on the death of the will-maker; and

#### if that appointment is made by deed, the appointment will come into effect on the date or future event specified in the deed.

### **Notice of transfer to be given to the Board:** If the Appointer signs a deed or will appointing a replacement appointer pursuant to clause 7.4 the Appointer must give a copy of that deed or will to the Board.

### **Transfer can be revoked:** The Appointer may revoke any appointment made pursuant to clause 7.4 at any time before it takes effect.

### **Board to be Appointer if Appointer loses Full Legal Capacity:**

#### If the Appointer is more than one person, and one of those persons dies or loses Full Legal Capacity, the powers of the Appointer may be exercised by the surviving persons with Full Legal Capacity.

#### Subject to clause 7.7(a), if at any time the Appointer does not have Full Legal Capacity and has not been replaced under clause 7.4, the Board will be the Appointer.

### *-----------*

### *Option 2: The Board*

### **Power to appoint trustees:** The Board holds the power to appoint and remove Trustees.

### **When appointment takes effect:** A Trustee’s appointment will be effective immediately on the date the Board confirms the appointment or a later date as specified by the Board.

### *-----------*

### *Option 3: A Board Appointments Panel*

### **Board appointments panel:**

#### The Board will establish a Board Appointment Panel consisting of [number] persons:

##### the Chair or their nominee;

##### [number] other Trustees, as nominated by the Board;

##### [number] person(s) nominated by [insert third party organisation e.g. Sport New Zealand/the [regional] branch of the Institute of Directors/the national organisation associated with the sport/recreation etc.]. [Guidance: Adapt the composition of the board appointment panel to suit the needs of your trust.]

#### The Board Appointments Panel will establish its own process for the selection and appointment of Trustees as it thinks fit, provided that it will ensure that vacancies for the positions of Trustees are publicly advertised.

#### The Board Appointments Panel will determine the Trustees to be appointed to the Board within [number] days after the Annual Meeting.

### **When appointment takes effect:** A Trustee’s appointment will be effective immediately after the Board receives the Board Appointments Panel’s written notice of the appointment or, if a later date is specified in the notice, from the date specified in the notice.

### *-----------*

### **Trustee appointment criteria:** The [Appointer ***OR*** Board ***OR*** Board Appointments Panel] must appoint and remove Trustees in accordance with the following criteria: [Guidance: This clause is optional, but recommended to ensure you have a broad range of skills and experience on the Board. The criteria can be adapted to suit the needs of your trust. Amend to include the correct reference to the person/body that appoints Trustees.]

#### the skillset and expertise of the proposed candidate for appointment with regard to the following key attributes:

##### appropriate knowledge and experience in governance and leadership;

##### an understanding of the legal, regulatory, fiduciary and ethical obligations of trustees;

##### an interest, understanding and awareness of [insert activity that the charitable trust is involved in];

##### high ethical standards and integrity in all personal and business dealings;

##### objectivity to exercise independent judgement;

#### a desire for conflicts of interest on the Board to be minimised;

#### a consideration of the gender and cultural diversity in the composition of the Board, succession and the overall skills and experience required on the Board to meet the needs of the Trust.

### **Suspension of a Trustee:** If a Trustee is or may be the subject of an allegation or notice relating to a matter described under clause 7.14(f), (g) or (h) or any other circumstances arise in relation to a Trustee which are or may be of concern to the Board, the remaining Trustees may, by a resolution of the other Trustees, suspend the Trustee from the Board and set conditions it requires pending the final determination of the allegation, notice or circumstances. Before imposing any suspension, the Trustee must be given notice of the suspension. [Guidance: This clause is optional but allows for flexibility.]

### **Removal of a Trustee:** A Trustee will cease to hold office if the Trustee:

#### fails to attend 3 consecutive Board meetings without being granted leave of absence by the Board;

#### resigns as Trustee by giving written notice to the Chair;

#### dies while holding office as a Trustee;

#### loses Full Legal Capacity;

#### is removed by the Appointer; [Guidance: Include if there is a person/entity named as the Appointer.]

#### is convicted of a Category 3 or 4 offence under the Criminal Procedure Act 2011; [Guidance: These offences are serious offences that are punishable by imprisonment for 2 years or more.]

#### becomes disqualified to be an officer of a charity in accordance with the Charities Act; [Guidance: Include if the Trust is or will be a registered charitable entity subject to the Charities Act.]

#### becomes disqualified to be a trustee in accordance with the Trusts Act; or

#### is removed as a Trustee by a [unanimous] resolution of the other Trustees. Before passing such a resolution, the Board must be reasonably satisfied that it has sufficient reason to do so, for example where there is:

(i) behaviour that the Board decides by ordinary resolution is disruptive, disrespectful, or detrimental to the effective operation of the Board; or

(ii) repeated failure by the Trustee to attend or contribute to Board meetings or to make a proper contribution to the Board.

The Trustee concerned must be given 14 days’ notice of the proposed removal, the reason for the proposed removal, and an opportunity to reply at the meeting considering their removal, before any decision on their proposed removal is made.

### **Return of property:** Upon ceasing to be a Trustee, the person must promptly return all Trust documents and property.

### **Rotation:** [Guidance: This clause is optional, but a rotation provision is useful to minimise the risk of too many Trustees having terms that end at the same time and to support continuity of governance and stability of your trust by retaining some experienced people on the Board. If you are starting a new charitable trust with, e.g. 7 Trustees where the term of office is 3 years, you can say that 2 Trustees have terms of 1 year, 2 Trustees have terms of 2 years and 3 Trustees have terms of 3 years (or other mix of years as you wish). Where your trust already exists you can start a rotation process in the same manner as above, but with assistance of a transition clause that specifies and amends the terms of office for the current Trustees so that their terms expire on a staggered basis.Consider whether initial terms of 1 or 2 years served by Trustees when establishing a rotation cycle might be excluded in calculating the total terms served. If so, amend the ‘Maximum Term’ clause to include this.]

### **Maximum Term:** Trustees may not serve more than [number] terms of office of [number] years, but any period served as a Trustee prior to commencement of rotation under clause 7.16 or for a term of [insert number of years which is less than a full term] years or less will be disregarded in the calculation. [Guidance: This clause is optional but recommended to ensure there is an appropriate turnover of trustees. Amend as required.]

### **Record of Trustees:** The Board must keep a record of:

#### all appointments, retirements, and removals of Trustees;

#### postal, phone and email contact details for each Trustee (and each Trustee must provide these details to the Board for this purpose, and update those details as they change);

#### who holds the power to appoint Trustees, and who may hold that power in future pursuant to clause 7.4; [Guidance: Include the wording in blue if the Appointer holds the power and clause 7.4 is included.]

#### other documents relating to the Trust as set out in sections 45 to 47 of the Trusts Act.

# Special Trust Adviser

### **Appoint Special Trust Adviser:** The [insert the person who holds power of appointment and removal of trustees. or you can give the Board the power] will also have the power to appoint any person at any time or times as a Special Trust Adviser. [Guidance: This is an optional clause because the person who holds the power to appoint or remove trustees can appoint a special trust adviser under the Trusts Act, but you may wish to specify if the Board holds this power.]

### **Special Trust Adviser’s role:** A Special Trust Adviser:

#### may advise the Board on any matter relating to the Trust; but

#### is not a Trustee or a member of the Board and does not have the powers or duties of a Trustee; and

#### may not vote on any resolution of the Trustees or participate in the management or administration of the Trust Assets.

### **No liability for Board following advice from Special Trust Adviser:** If there is a Special Trust Adviser:

#### the Board may consult the Special Trust Adviser on any matter relating to the Trust but is not required to follow the Special Trust Adviser’s advice;

#### the Board will not be liable in a proceeding for any act or omission the Board makes as a result of following the Special Trust Adviser’s advice unless the act or omission arises from the Board’s (or any Trustee’s) dishonesty, wilful misconduct, or gross negligence; and

#### no Trustee will be liable in a proceeding for any act or omission the Trustee makes as a result of following the Special Trust Adviser’s advice unless the act or omission arises from the Trustee’s dishonesty, wilful misconduct, or gross negligence.

# Payments to Trustees

### [Guidance: This template contains two options: 1) Trustees cannot be remunerated but may be reimbursed for expenses; 2) Trustees may be remunerated and reimbursed for expenses.As a general rule trustees are not entitled to be paid for their work for the trust. The reason behind this is that the interest and duty of the trustee must not be put in conflict. However, the remuneration of trustees can be specifically provided for in the terms of the trust. Having an independent expert propose the level of remuneration, as set out in this template, goes some way to managing the conflict of interest that arises. Ensure that the Default Duties in sections 31 and 37 of the Trusts Act are modified in clause 13.1 (Default Duties of Board and Trustee).]

### *Option 1: Trustees cannot be remunerated but may be reimbursed for expenses.*

### **No remuneration for Trustees:** Trustees cannot be paid any remuneration for their service as a Trustee.

### **Reimbursement of Trustee expenses:** Notwithstanding any other Terms of the Trust:

#### any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee on behalf of the Trust when authorised or ratified by the Board; and

#### no Trustee or any person associated with a Trustee may participate in or materially influence any decision made by the Board in respect of any payment to or on behalf of that Trustee or associated person of any income, benefit, or advantage whatsoever.

### *Option 2: Trustees may be reimbursed for expenses and may be remunerated.*

### **Payments to Trustees:** Notwithstanding any other Terms of the Trust:

#### any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee on behalf of the Trust when authorised or ratified by the Board; and

#### each Trustee may receive reasonable annual remuneration from the Trust provided that:

##### the amount of the annual remuneration has been determined by an independent board remuneration expert acceptable to the Trust’s auditor as an independent expert;

##### that expert confirms in writing that the annual remuneration payments the expert has proposed are reasonable and relative to that which would be paid in an arm’s length transaction (no more than the open market value) for the work undertaken by the Trustees;

##### the independent board remuneration expert may propose different annual remuneration payments for different Trustees, depending on the roles they undertake for the Trust;

##### the annual remuneration proposed by the independent board remuneration expert must be approved unanimously by the Board provided that the Board may approve annual remuneration payments lower than those proposed by the independent Board remuneration expert but cannot approve higher annual payments; and

##### any approved annual remuneration payments can be paid only in relation to the Financial Year for which they were approved.

#### Except as set out in clause 9.3(b)(iv) no Trustee or any person associated with a Trustee may participate in or materially influence any decision made by the Board in respect of any payment to or on behalf of that Trustee or associated person of any income, benefit, or advantage whatsoever.

### **Payments to Trustees for professional goods and services:** Any Trustee may be paid for any goods or services they provide to the Trust in their professional capacity provided that the supply of those goods or services to the Trust must be approved by the Board (excluding the Trustee proposing to provide those goods or services) and the payment must be no more than the fair market value of those goods or services.

# No private pecuniary profit

### The activities of the Trust cannot be carried on for the private pecuniary profit of any individual.

# Liability of Trustees

### **Limited personal liability for Trustees:** No Trustee will be personally liable for any loss incurred by the Trust unless the loss is due to a breach of trust arising from that Trustee's dishonesty, wilful misconduct, or gross negligence.

### **Indemnity for Trustees:** Each Trustee is entitled to a full and complete indemnity from the Trust Assets for any personal liability which they may incur in relation to their acts or omissions as a Trustee, provided that the liability is not attributable to that Trustee's dishonesty, wilful misconduct, or gross negligence.

### **Insurance for Trustees:** The Board may effect insurance for any liability the Trustees may incur when acting on behalf of the Trust and meet all costs associated with such insurance.

### **No obligation to issue proceedings against a co-Trustee:** No Trustee will be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust by that co-Trustee.

### **Former Trustees:** Clauses 11.1 and 11.2 will also apply for the benefit of any former Trustee in relation to any loss, expense or liability incurred by that former Trustee in relation to their acts or omissions when acting as a Trustee.

# Mandatory Duties of the Board and Trustees

### The Trustees must: [Guidance: These are the Mandatory Duties set out in the Trusts Act and cannot be modified or excluded.]

#### know the Terms of the Trust;

#### act in accordance with the Terms of the Trust;

#### act honestly and in good faith;

#### hold and deal with the Trust Assets, and otherwise act, for the benefit of the Purposes, in accordance with the Terms of the Trust;

#### exercise their powers for a proper purpose.

# Default Duties of the Board and Trustees

### **Default Duties:** Each Trustee and the Board must: [Guidance: The Default Duties set out in the Trusts Act can be modified or excluded. Carefully consider how each Default Duty applies in the context of your trust and its activities and whether it needs to be modified or excluded. If you have reason for concern about any of the Default Duties whether as expressed in the Trusts Act or as modified in the clauses below, you can exclude or modify them further. If any Default Duty is excluded, then remove it from this clause 13.1 and include it in clause 13.2.]

#### exercise the care and skill that is reasonable in the circumstances, and, in the case of each Trustee, having regard, in particular, to:

##### any special knowledge or experience that the Trustee has or that the Trustee holds out as having; and

##### if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession; [Guidance: Refer to section 29, Trusts Act, general duty of care. This duty has been modified. Section 29 excludes a trustee from exercising care and skill when exercising a discretion to distribute the trust property, but a common view is that a trustee should still be held to that the same duty of care standard when they are distributing the trust property and so this has not been included in this sub-clause (a).]

#### when exercising any power to invest trust property, exercise the care and skill that a prudent person of business would exercise in managing the affairs of others and, in the case of each Trustee, having regard, in particular:

##### to any special knowledge or experience that the Trustee has or that the Trustee holds out as having; and

##### if the person acts as a Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession,

 provided that the Board may acquire or retain any investment which furthers the Purposes either directly or indirectly, even though such investment may not be a prudent investment, is devaluing or has high associated expenditure; [Guidance: Refer to section 30, Trusts Act, duty to invest prudently. This duty has been modified so that the Board can acquire or retain any investment which furthers the Purposes either directly or indirectly, even though such investment may not be a prudent investment, is devaluing or has high associated expenditure.]

#### not exercise a power directly or indirectly for a Trustee’s own benefit; [Guidance: Refer section 31, Trusts Act, duty not to exercise power for own benefit. To avoid any inconsistency or doubt if trustees can receive remuneration, this duty needs to be modified by including the words “(subject to clause 9)”. The duty might need to be modified further in the case of a facility where a trustee is a member of or participant in an entity or group that obtains a right to use facilities owned or operated by the Trust, so that it would not be considered a direct or indirect benefit for that trustee.]

#### actively and regularly consider whether the Board should be exercising one or more of the Board’s powers; [Guidance: Refer section 32, Trusts Act, duty to consider exercise of power. This duty has been retained so that trustees actively and regularly consider whether the Board should be exercising one or more of the Board’s powers. If your Board does not have a good system in place to ensure that you regularly do this then you may be better to modify this duty or exclude it altogether. It could be modified by replacing the words “actively and regularly” with the word “annually”, but it will still be an obligation that needs to be discharged. If you exclude it, list it in clause 13.2.]

#### not bind or commit the Board to a future exercise or non-exercise of a discretion; [Guidance: Refer section 33, Trusts Act, duty not to bind or commit trustees to future exercise of discretion. The Default Duty has been retained here.]

#### avoid a conflict between the interests of a Trustee and the interests of the Trust and its Purposes, provided that where a conflict does arise it is managed in accordance with clause 14; [Guidance: Refer section 34, Trusts Act, duty to avoid conflict of interest. Trustees should avoid conflicts of interests, but it is acknowledged that in sport and recreation environments conflicts of interest may arise. The duty has been modified so that there is still a duty to avoid a conflict but where a conflict does arise, it is managed in accordance with the conflicts of interest provision contained in the trust deed.]

#### act impartially when considering potential beneficiaries of the Trust; [Guidance: Refer section 35, Trusts Act, duty of impartiality. The Default Duty requires that a trustee must act impartially in relation to the beneficiaries and must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others. This doesn’t require a trustee to treat all beneficiaries equally (but all beneficiaries must be treated in accordance with the terms of the trust). The duty has been modified in this template so the trustees must act impartially when considering potential beneficiaries of the Trust.]

#### not make a profit from the Trust; [Guidance: Refer section 36, Trusts Act, duty not to profit. The Default Duty has been retained here.]

#### not take any reward for acting as a Trustee. [Guidance: Refer section 37, Trusts Act, duty to act for no reward. If trustees can receive remuneration and/or be reimbursed for expenses under this deed, then this duty needs to be modified by including the words “(except as authorised by clause 9)”.]

### **Default Duties specifically excluded:** Except to the extent specified in this deed, the following Default Duties in the Trusts Act are specifically excluded:

#### The duty that the Trustees must act unanimously under section 38 of the Trusts Act. [Guidance: Refer section 38, duty to act unanimously. This duty has been excluded because the default position under this template is that trustees can act by majority vote, refer to clause 16.9 (Voting). This template does require unanimous approval of the remuneration for Trustees under clause 9.3(b)(iv) and a unanimous written resolution of Trustees to wind up the Trust.]

#### [Guidance: Include any additional Default Duties that you have excluded.]

### **Amendments to Default Duties in the Trusts Act:** The Trustees acknowledge that the duties set out in clause 13.1 are Default Duties and that the duties referred to in clause 13.1 [list what Default Duties have been modified from their original wording under the Trusts Act e.g. 13.1(a)] have been amended from the default duties in the Trusts Act.

### **Default Duties to be amended if Trusts Act is amended:** If the Trusts Act is amended, repealed, or replaced, the modifications to, or exclusions of, the Trustees' default duties set out in this clause 13 will continue to apply to the fullest extent permitted by the law, with all necessary modifications.

# Conflicts of interest

### **Disclosure:** As soon as a Trustee becomes aware of the fact that they are or may be in any capacity whatsoever Interested in a Matter, they must disclose to their co-Trustees at a meeting of the Trustees all relevant details of the Interest, including:

#### the nature and monetary value of that Interest (if the monetary value of the Trustee’s Interest can be quantified); or

#### if the monetary value of the Trustee’s Interest cannot be quantified, the nature and extent of that Interest.

### All Trustees must act in good faith in all such matters.

### **Ruling:** After considering the views of the other Trustees, the Chair may rule that the affected Trustee is not Interested in relation to a disclosure, where no conflict in fact exists.

### **Minutes:** A disclosure by a Trustee, and the Chair’s ruling in respect of that disclosure, must be recorded in the minutes of the Trust.

### **Consequences of being Interested:** An Interested Trustee:

#### may not vote in or take part in any deliberations concerning any Matter in which they are Interested;

#### may attend any meeting of the Board at which any Matter in which they are Interested arises (but may be excluded from that part of the meeting relating to that Matter, if the Board so determines) and may participate in the meeting and vote, in relation to all other items of business at that meeting that do not relate to that Matter;

#### is counted towards the quorum required for a meeting of the Board; and

#### may (if the Matter in which they are Interested in has been approved by the Board) sign any other document relating to that Matter on behalf of the Trust and do anything else as a Trustee in relation to that, as if that Trustee were not interested in that Matter, unless the Board determines otherwise.

# The Board’s powers

### **Board to have wide powers:** In pursuit of the Purposes the Board will have all the powers set out in this deed and, except where limited by this deed, will also have:

#### all other powers conferred by law;

#### the widest possible powers and discretions required to achieve the Purposes; and

#### all the rights, powers, and privileges of a natural person of Full Legal Capacity.

### **Powers in relation to capital and income:** The Board will have power to:

#### pay, apply, or contribute any income derived from the Trust Assets, in whole or in part, towards the Purposes;

#### accumulate the whole or any part of the income derived from the Trust Assets to add to the capital of the Trust (subject to clause 15.3);

#### pay or apply the capital of the Trust and any income derived from the Trust Assets towards any costs and liabilities incurred by the Trust;

#### apportion receipts and outgoings between income and capital as set out in section 61 of the Trusts Act; and

#### pay, apply, or contribute all or part of the capital of the Trust Assets towards the Purposes.

### **Surplus Income:** Any income not distributed by the Board by the last day for filing the Trust’s tax return or the date on which the Trust’s tax return is filed (whichever is earlier) (**Surplus Income**) must be added to the capital of the Trust unless the Board resolves to set aside some or all of that Surplus Income to create a reserve fund for the purposes of paying future expenses normally payable from income, provided that all Surplus Income not allocated to a reserve fund must be added to the capital of the Trust.

### **Interpreting Board powers:** None of the powers in clause 15 is subsidiary or ancillary to any other power and the Board may exercise all or any of those powers independently of any other or others of them. In the event of any ambiguity clause 15 will be construed to widen and not restrict the powers of the Board except that no provision may be construed to detract from the charitable nature of the Trust.

# Meetings of the Board

### **Annual Meetings:** Within 6 months of each Balance Date the Board must hold a meeting (**Annual Meeting**) to:

#### receive the minutes of the previous Annual Meeting;

#### review the Board’s activities during the preceding year;

#### receive, consider, and adopt the Trust’s [audited] income and expenditure account and balance sheet;

#### consider any resolution, notice of which must have been given in writing to the Board at least 14 days before the meeting;

#### appoint the Chair under clause 16.2;

#### consider any general business.

### **Chair:**

#### The Board must appoint a Chair from their number at each Annual Meeting. A Chair will hold office from the end of that Annual Meeting until the end of the next Annual Meeting.

#### The Chair will automatically cease to hold office on ceasing to be a Trustee. A Trustee may resign as the Chair without resigning as a Trustee.

#### All meetings of the Board will be chaired by the Chair. If the Chair is not present, the Trustees at the meeting will elect an acting chairperson from their number to chair that meeting.

### **Calling a meeting:** A meeting of the Board may be called at any time by:

#### the Chair; or

#### any two Trustees;

 giving notice to the Board calling a meeting.

### **Notice for meetings:** If a meeting is called or due, the Board must give a notice of the meeting:

#### to all Trustees by ordinary mail, email or other method agreed, at the postal, email, or other correspondence address that the Trustee has notified to the Board; and

#### specifying the date, time, and place of the meeting and the matters to be considered at the meeting.

### **Notice time frame:** Any notice given by the Board pursuant to clause 16.4 must be sent to all Trustees so that it is received in the ordinary course of the post or email transmission or by other method agreed not less than 14 days prior to the meeting, provided that this time frame can be reduced by the Chair if reasonably required.

### **Effect of notice failures:** If any resolutions are made at a meeting of the Board that is held without complying with clause 16.5, those resolutions may be declared to be of no effect but such a declaration:

#### can only be made by a Trustee that was not present at the meeting; and

#### must be made within 14 days of the minutes of that meeting being provided to all Trustees.

### **Methods for holding meetings:** A meeting may be held by:

#### the Trustees who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

#### audio communication, or audio and visual communication by which the Trustees participating and constituting a quorum can simultaneously hear each other throughout the meeting; or

#### instant messaging, email communication or by other method agreed by which the Trustees participating and constituting a quorum can simultaneously send and receive all such communications; or

#### a combination of any of the methods above.

### **Quorum:**

#### A quorum for meetings of the Board (excluding meetings pursuant to clause 26) will be [insert number of trustees for quorum e.g. a majority of] Trustees.

#### If a quorum is not present within 15 minutes of the time fixed for commencement of any Board meeting, the meeting may proceed without a quorum, but no resolution may be passed at the meeting.

### **Voting:** The rules for voting at any meeting of the Board are:

#### a vote will pass if approved by [insert majority required for voting e.g. a majority] of those Trustees entitled to and voting on the matter, except [in relation to matters of remuneration as set out in clause 9 and] for meetings held pursuant to clause 26; [Guidance: Include the wording in blue if there is a requirement for the vote to be unanimous in respect of remuneration payments to Trustees.]

#### every Trustee present is entitled to one vote;

#### the Chair is not entitled to a second or casting vote;

#### voting will be by show of hands or oral indication unless a ballot is directed by the Chair or required by any two of the Trustees present at the meeting.

### **Minutes:** Minutes of Board meetings must be:

#### recorded by a person appointed by the Board; and

#### approved at the immediately following Board meeting.

### Minutes approved in accordance with this clause will be prima facie evidence of the matters recorded in those minutes.

### **Validity of proceedings:** Any Board meeting and any resolution of the Board will be valid as if the persons acting as Trustees were properly appointed and/or eligible to hold office, and had compiled with any applicable rule and/or regulation adopted by the Board, even if it is later discovered that there was a defect in the appointment or eligibility or an accidental failure to comply with any applicable rule and/or regulation.

### **Board may regulate other proceedings:** Subject to this deed, the proceedings of the Board will otherwise be regulated by the Board, as the Board thinks fit, and for this purpose the Board may develop and adopt any rules and/or regulations relating to its proceedings.

### **Written resolution in lieu of meeting:** A resolution in writing signed by all Trustees will be valid as if it had been passed at a meeting of the Board duly called and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees.

# Delegation

### **Delegation by Board:** The Board will have, to the extent permitted by law, full power to delegate to:

#### any Trustee;

#### any officers or employees of the Board; or

#### any attorney, agent or other person nominated or appointed by the Board; or

#### any committee,

 all or any of the powers, authorities, and discretions exercisable by the Board under this deed, but without in any way releasing the Board from its obligations under this deed.

### **Restrictions on delegation:**

#### The Board may, in delegating its powers, provide restrictions or rules by or within which such delegated powers are to be exercised.

#### Any committee or person to whom the Board has delegated powers is bound by the terms or conditions of the delegation set by the Board, and by the terms of this deed, including the Purposes.

### **Actions under delegation:**

#### Subject to clause 17.2(a), any person or committee to whom or which any powers of the Board have been delegated may conduct their affairs as that person or that committee may decide.

#### Any person or committee acting under delegated power shall be presumed to be acting within the terms of the delegation, in the absence of proof to the contrary.

### **Board approval:** All committee decisions will be approved by the Board before they become effective or are implemented unless the Board otherwise directs.

### **Revocation of delegation:**

#### The Board may revoke, wholly or partly, any delegation of its powers at any time, and no such delegation will prevent the exercise of any function or power, or the performance of any duty, by the Board.

#### Until such delegation is revoked, it will continue in force according to its tenor, even if there is a change in the composition of the Board or of any committee.

# Property

### **Holding assets:** The Trust Assets will be held by and in the joint names of the Trustees until the Board is incorporated as a Board under the Charitable Trusts Act, in which case it will be held by and in the name of the Board. [Guidance: Include the previous sentence if the Board is yet to incorporate under the Charitable Trusts Act.] ***OR*** The Trust Assets will be held by and in the name of the Board. [Guidance: Include the previous sentence if the Board is already incorporated under the Charitable Trusts Act.]

### **Operation of bank accounts:** The Board will determine the authorisations for, and operation of, the Trust’s bank accounts.

### **Separate specific trusts:** [Guidance: Optional to include.]

#### If the Board accepts a Designated Gift, the Board must keep that Designated Gift, including any income derived from it, separate from the general assets of the Trust Assets, and hold the Designated Gift on trust, to be administered separately under the terms of the gift by which it was given. Investments of funds forming all or part of the Trust Assets may be pooled to achieve economies of scale, provided that Designated Gifts must be separately accounted for.

#### Each Designated Gift will bear its own administration expenses plus a fair proportion (determined by the Trustees) of the administration expenses applicable to the general purposes of the Trust.

#### If the Board can no longer comply with the terms under which a Designated Gift was given (**Specific Terms**), the Board will use reasonable efforts to contact the person who gave the Designated Gift (**Donor**). If the Donor is still living and able to give approval, the Board must seek approval from the Donor to amend the Specific Terms. If the Board is unable to contact the Donor, the Board may amend the specific terms in accordance with clauses 18.3(d) and 25.

#### When considering a necessary amendment to the Specific Terms, the Board will as far as practicable preserve the integrity of the original purpose and intent of the Donor by departing from those Specific Terms only to the extent considered necessary or desirable given the changed circumstances, subject always to clause 5.

# Accounts

### **Accounts to be kept:** The Board must keep complete and accurate accounts recording all the receipts, credits, payments, liabilities, and other matters necessary for showing the true condition of the Trust’s financial affairs.

### **Accounts to be prepared:** Reports and financial records of the Trust must be prepared in accordance with generally accepted accounting practice.

### **Auditor or reviewer:** If the Trustees are required by law, or at any time resolve, to appoint an auditor or a reviewer, then the Trustees will, as soon as reasonably practicable after the end of the applicable Financial Year of the Trust, cause the accounts of the Trust to be audited or reviewed, as appropriate, by a Qualified Auditor or reviewer appointed by the Trustees for that purpose. The Trustees will ensure that the Qualified Auditor or reviewer so appointed has access to the documentation of the Trust, and to such information and explanations as the Qualified Auditor or reviewer thinks fit for the proper performance of their duties.

### **Accounts to be available to Trustees:** The Trust’s accounts must be kept at the office of the Trust and must be available for review at all reasonable times by any of the Trustees.

# Tax returns and annual returns

### The Board will prepare and file with any relevant person (including the Department of Internal Affairs and the Department of Inland Revenue) all necessary accounts, documents, and other information for the qualification and registration of the Trust as a Registered Charitable Entity under/or to preserve the availability of any concession to the Trust under the Concessionary Provisions.

# Staff

### **Appointment:** The Board may appoint such staff to work for the Trust on such terms as it considers appropriate. [Guidance: Optional to include.]

### **Attendance at Board meetings:** Staff employed under clause 21.1 may be required to attend meetings of the Board but are not entitled to vote. [Guidance: It is best practice that staff are not part of the Board to ensure the separation of governance and management.]

# Supporters

### [Guidance: This clause is optional to include. People may be members of a charitable trust (often called “Supporters” or “Friends”) so they can show their support to the trust by paying a fee and receiving email communications or invitations to events. It does not entitle them to any rights in relation to the governance or management of the Trust (as compared to an incorporated society which is controlled by its members). Most charitable trusts do not provide for any members at all because the trustees are required to operate the trust in accordance with the trust deed and their trustee duties. A membership-based organisation is more likely to be structured as an incorporated society. If you are an incorporated society that is considering changing your structure to a charitable trust, you should seek legal advice – the notion of members under a charitable trust is quite different. This template uses the term “Supporters”, you can adjust this name to suit your trust.]

### **Board may create categories of Supporters:** The Board may allow individuals and organisations who want to support the Trust to become Supporters of the Trust on the terms set out in this clause 22.

### **Rules and fees:** The Board may:

#### establish different categories of Supporters;

#### fix and charge fees (including joining fees and subscriptions) for Supporters;

#### hold Supporters' meetings, in any manner and frequency considered appropriate by the Board;

#### subject to clause 22.4, determine the rules relating to Supporters and confer rights on Supporters.

### **Payments to Supporters:** Any Supporter may be paid for all usual professional, business or trade for services rendered, time expended, and all acts done by that Supporter or by any firm or entity of which that Supporter is a member, employee, or associate in connection with the affairs of the Trust but:

#### the work or activity must be approved by the Board in advance; and

#### any income paid or benefit provided to the Supporter must be reasonable and relative to that which would be paid in an arm's length transaction.

### **Supporters have no voting rights:** Supporters have no rights to vote at any meeting of the Trust or the Board or to control the Trustees or the Board in the exercise of their powers.

# Common seal

### If, and while, required by the Charitable Trusts Act, the Trust will have a common seal, which is kept in the custody and control of a person appointed by the Board. The common seal may only be used in accordance with a resolution of the Board. [Guidance: Refer section 13, Charitable Trusts Act. A common seal is still required.]

# Execution of documents

### When the Board is incorporated under the Charitable Trusts Act a contract or other enforceable obligation may be entered into by the Board:

#### by deed, in writing under its common seal, attested by at least two Trustees;

#### by agreement, in writing signed by any person acting under the Board’s authority, express or implied. [Guidance: Refer section 19, Charitable Trusts Act.]

# Amendments

### **Approval required for amendment:** This deed may only be amended or added to by a resolution of at least [insert percentage e.g. 75%] of the Trustees entitled to and voting on the resolution. [Guidance: Given the importance of this vote, a majority of at least 75% is recommended. You must provide the Registrar of Incorporated Societies (who administers charitable trusts) with details of any changes to the trust deed within a month of the change being approved. If you are a registered charitable entity you must also notify Charities Services of the changes to your trust deed, once your trust deed has been approved by the Registrar of Incorporated Societies.]

### **Limitation on amendments:** Notwithstanding any other provision in this deed, no amendment or addition may be made to this deed which would have the effect of:

#### causing the Trust to cease to be a Registered Charitable Entity;

#### causing the Trust to lose any benefits available to it under the Concessionary Provisions; or

#### amending the Purposes to include any objective which is not a charitable objective.

### **Amendments required:** Notwithstanding anything set out in clause 25.2, the Board will amend this deed to the extent required to ensure that the Trust can be a Registered Charitable Entity and qualify for benefits under the Concessionary Provisions.

# Winding up

### **Wind up with unanimous resolution:** The Trustees may wind up the Trust by:

#### a unanimous written resolution; or

#### a vote approved by [insert percentage e.g. 75%] of the Trustees entitled to and voting on a resolution at a meeting of the Board called for that purpose and which all Trustees attend. [Guidance: Given the importance of this vote, a majority of at least 75% is recommended.]

### **Distribution of surplus Trust Assets:** In the event of the Trust being wound up and after all liabilities of the Trust have been discharged, the Board will transfer all remaining Trust Assets to another organisation or organisations in New Zealand which are exclusively charitable, and which have purposes similar to the Purposes. The receipt of the treasurer or secretary or other proper officer of such organisations will be a sufficient discharge to the Board and the Board will not be bound to further see to the application of those funds and assets.

### **Application to High Court for directions:** If the Board is unable to decide how to distribute the Trust Assets the Trust Assets must be disposed of in accordance with the directions of the High Court under section 27 of the Charitable Trusts Act.

# Matters not provided for

### If any matter arises in relation to the Trust that is not provided for in this deed, the matter shall be dealt with as required by the Board.

# Counterpart copies

### This deed may be executed by each signatory in separate counterpart copies, whether originals, photocopies, or electronic copies. Each signatory must sign at least one copy for the separately signed documents to form one legally binding deed.

# Governing law and jurisdiction

### The Trust is governed by and construed according to the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this Trust.

[Guidance: The signatures of the Settlor and any initial Trustees are only required if this is a new trust deed. Amend and add signature blocks to cater to the number of initial Trustees as applicable.]

Signed by

|  |  |
| --- | --- |
| Signed by **[name of settlor]** as Settlor in the presence of: |   [name of settlor] |
|   Signature of witness  Name of witness  Occupation  Address |  |

|  |  |
| --- | --- |
| Signed by **[initial trustees]** as Trustees in the presence of: |   [initial trustees] |
|   Signature of witness  Name of witness  Occupation  Address |  |