I hereby certify that this is a true and correct copy of the trust deed of the Hawke's Bay Biodiversity Trust.
Charles Dougherty
9 November 2017
Charles Dougherty

TRUST DEED

HAWKE'S BAY BIODIVERSITY TRUST

CERTIFIED ORIGINAL SIGHTED
DOCUMENT IS A TRUE COPY OF
THE ORIGINAL
Signed .....
Date 13/11/2017
Rina Douglas
Barrister & Solicitor
of the High Court
of New Zealand

Date .....
Signed .....
THE ORIGINAL
DOCUMENT IS A TRUE COPY OF
THE DOCUMENT SIGNED

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TRUST TERMS

DATE

This deed is dated the 7th day of November 2017 2017

PARTIES

The parties executing this deed, as the Initial Trustees, are: **DAVID PETER LINDSAY ALLAN**, Retired, of Clive; **CHARLES HINES DAUGHERTY**, Emeritus Professor of Ecology, of Havelock North; **MICHAEL MERLET HALLIDAY**, Retired Farmer, of Hastings; **CONNIE DIAN NORGATE**, Conservation Operations Manager, of Puketapu; **JAMES ALEXANDER PALMER**, Public Servant, of Hastings; and **DESMA KEMP RATIMA**, Environmental Consultant, of Hastings.

BACKGROUND

A. The parties to this deed wish to establish the Trust as a charitable trust for exclusively Charitable Purposes in New Zealand, and in particular the biodiversity-related purposes described in clause 3 of this deed, that is governed in accordance with the terms set out in this deed.

B. The context for the establishment of the Trust is the development and proposed implementation of the Hawke's Bay Biodiversity Strategy 2015-2050. The role of the Trust will be to enable the Strategy to be implemented, in particular by working to secure funds, and to build an endowment fund, to support biodiversity-related activity in the Hawke's Bay Region.

C. It is intended that the Trust will have a strong relationship with, and will complement and support the role of, the Biodiversity Guardians of Hawke's Bay in relation to the implementation of the Strategy and the education and engagement of the people of Hawke's Bay in relation to biodiversity-related activity in the Region.

D. The Trust will be governed by its Trust Board (comprising the Initial Trustees through to the Transition Date, and then Trustees who will take office under the terms of this deed on and from the Transition Date), and the Trust Board will be incorporated under the Charitable Trusts Act 1957.

E. It is also intended that the Trust will be eligible for certain Tax Concessions benefitting charitable entities, and for this purpose registered as a charitable entity under the Charities Act 2005.

F. In order to establish the Trust, the Initial Trustees hold an amount of $100.00, which constitutes the initial Trust Fund and is to be deposited in an account for the Trust.

G. It is intended that the Trust Board will receive and acquire further funds and other property from time to time for the purposes, and on the terms, of the Trust, as set out in this Deed.

TRUST TERMS

1. INTERPRETATION PROVISIONS

1.1 **General:** Clauses 1.2 to 1.11 apply to the interpretation of this deed unless the context requires otherwise.

1.2 **Definitions:**

"**AGM**" means an annual general meeting of the Trust Board held in accordance with clause 10.1.1;

"**Annual Report**" means a report regarding the activities of the Trust for a Financial Year and, as the context requires, the most recent annual report, as referred to in clause 14.2;

"**Balance Date**" means 30 June or any other date adopted from time to time by the Trust Board as the end of the Trust's Financial Year;

"**Biodiversity Strategy**" or "**Strategy**" means the document known as the Hawke's Bay Biodiversity Strategy 2015-2050, as amended from time to time, and includes any successor or replacement document (however described) that is approved by the Guardians;

"**Chair**" means the Trustee holding that office for the time being in accordance with clause 8.1;

"**Charitable Purpose**" means a purpose that is charitable in accordance with the law of New Zealand, and in particular falls within the "charitable purpose" definition in section 5 of the Charities Act 2005;

"**Deputy Chair**" means the Trustee (if any) holding that office for the time being in accordance with clause 8.1;

"**Financial Statements**" means the financial statements of the Trust for a Financial Year, prepared in accordance with clause 14.1.1;

"**Financial Year**" means any 12 month or other accounting period ending on a Balance Date;

"**Trust**" means the trust established and maintained in relation to the Trust Fund on the terms set out in this deed;

"**Guardians**" means the society incorporated, or as at the date of this deed proposed to be incorporated, under the Incorporated Societies Act 1908 and named, or to be named, the Biodiversity Guardians of Hawke's Bay Incorporated, or its successor, acting through its managing committee or equivalent body (however described) unless specified otherwise;

"**Hawke's Bay**", "**Hawke's Bay Region**", or "**Region**" means the region for which the Regional Council is responsible, including in particular, as at the date of execution of this deed, the districts of the Wairoa, Napier, Hastings and Central Hawke's Bay Territorial Authorities;

"**Initial Trustee**" means any individual executing this deed as one of the first Trustees, who will be an Initial Trustee until the earlier of the time when he or she first ceases to hold office as a Trustee and the Transition Date;

"**Interested**" has the meaning given to that term in clause 13.5;

"**Officer**" means a person for the time being holding a position (as Chair, Deputy Chair or otherwise) to which that person has been appointed in accordance with clause 8;

"**Regional Council**" means the Hawke's Bay Regional Council, as referred to in Part 1 of Schedule 2 of the Local Government Act 2002, or its successor in relation the Hawke's Bay Region;

"**Resettle**" means to settle all or any part of the Trust Fund on the terms of another trust, by way of transfer, declaration or otherwise, and the terms "resettlement" and "resettled" are to be read accordingly;

"**Territorial Authorities**" means the territorial authorities referred to in Part 2 of Schedule 2 of the Local Government Act 2002, or their successor(s), that are responsible for districts included, wholly or partly, in the Hawke's Bay Region;

"**Tax Concession**" means any tax concession under New Zealand law directly or indirectly benefiting charitable entities, including (without limitation) exemption of a charitable entity's income from income tax and any tax concessions in respect of contributions to a charitable entity;

"**Transition Date**" means 1 July 2018, or such other date as may be agreed by the Trust Board and the Guardians;

"**Trust Board**" means:

(a) the Trustees, or a sufficient number of the Trustees in accordance with the terms of this deed, acting as a board, whether or not the Trustees are incorporated as a board under the Charitable Trusts Act 1957; and

(b) if the context requires, the Trustees constituting the Trust Board for the time being;

"**Trust Fund**" means:

(a) the amount held by the Initial Trustees to establish the Trust; and

(b) all other funds and other property, including capital and income, paid to or held under the control of or vested in or acquired by the Trust Board on the terms of the Trust, from any source, on or after the date of this deed, whether by way of gift, bequest, devise, purchase, exchange or otherwise;

"**Trustee**" means any individual acting as a trustee of the Trust, whether as an Initial Trustee or as an additional or replacement Trustee;

1.3 **Deed and Clauses:** a reference to "this deed" is a reference to this deed executed by the Initial Trustees setting out the initial terms of the Trust and also includes, as the context requires, any subsequent variation to the terms of the Trust in accordance with this deed, and a reference to any clause is a reference to a clause of this deed;

1.4 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of the deed;

1.5 **Inclusive Expressions:** the terms "includes" and "including" (or any similar expression) are deemed to be followed by the words "without limitation";

1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

1.7 **Particular References:** a reference to anything of a particular nature either before or after a general statement does not limit the general statement;

1.8 **Persons:** a reference to a "person" includes an individual (that is, a natural person), a partnership, a firm, a company, a body corporate, a corporation, an association, an organisation, a trust (that is, the trustee or trustees of the trust), a state or government or any agency thereof, a municipal, local or regional authority, and any other form of entity or organisation, whether incorporated or not (in each case whether or not having separate legal personality);

1.9 **Plural and Singular:** singular words include the plural and vice versa;

1.10 **Property:** a reference to "property" includes real or personal property of any kind, any right or interest in any such property, any chose in action, and any other right, interest or thing capable of being held on trust;

1.11 **Legislation:** a reference to any legislation or to any provision of any legislation includes:

1.11.1 **Legislative Amendments:** that legislation or provision as from time to time amended or re-enacted and any corresponding replacement legislation or provision; and

1.11.2 **Subordinate Legislation:** any statutory instrument, regulation, rule or order issued under that legislation or provision (as from time to time amended or re-enacted) or issued under any corresponding replacement legislation or provision.

2. NAME OF THE TRUST

2.1 **Initial Name:** The name of the Trust is **THE HAWKE'S BAY BIODIVERSITY TRUST**.

2.2 **Change of Name:** The Trust Board may, by deed, change the name of the Trust to any other name as determined by the Trust Board from time to time, provided that the new name must not be offensive or liable to mislead any member of the public and any name change will not be effective unless and until it is approved in writing by the Guardians.

2.3 **Records and Notice:** The Trust Board must ensure that any change of name is recorded in the Trust's records and, if appropriate or required by law, notified to any relevant authority (for example, under the Charitable Trusts Act 1957, under the Charities Act 2005 if the Trust is registered under that Act, and under any relevant tax legislation).

3. TRUST FUND DEDICATED TO CHARITABLE PURPOSES

3.1 **Exclusively Charitable Purposes:** The Initial Trustees declare that the Trust is established and to be maintained, and the Trust Fund (including both capital and income) is to be held and administered by the Trust Board, on trust for exclusively Charitable Purposes in New Zealand, and in particular for the Trust's purpose and functions set out in clauses 3.2 and 3.3, which are to be pursued for the benefit of the public and not for private profit.

3.2 **Purpose of the Trust:** The Trust's purpose is to promote and advance the restoration, and the maintenance and enhancement, of biodiversity in the Hawke's Bay Region by enabling the achievement of the goals of the Hawke's Bay Biodiversity Strategy, in particular by leading or cooperating in the achievement of each of the following tasks:

3.2.1 Raising and administering funds to support biodiversity-related activity in the Hawke's Bay Region.

3.2.2 Supporting the growth of the Hawke's Bay conservation community and helping people understand the benefits that biodiversity brings to the health and economic well-being of the people of the Region.

3.3 **Functions of the Trust:** In furtherance of the Trust's purpose and the tasks set out in clause 3.2, the specific functions that are intended to be fulfilled by the Trust Board are as follows:

3.3.1 Promoting and supporting the establishment and development of the Guardians, and working in partnership with the Guardians in relation to advancing and achieving the Trust's purpose and the tasks set out in clause 3.2 and in relation to fulfilling the other functions set out in this clause 3.3.

3.3.2 Promoting and operating on the principle of partnership, by helping to create and coordinate partnerships to achieve the Trust's purpose and the tasks set out in clause 3.2 and to fulfil the other functions set out in this clause 3.3.

3.3.3 Promoting, establishing, maintaining and growing a long-term endowment fund, the earnings from which will:

(a) help ensure the ongoing maintenance and growth of the endowment fund; and

(b) be used by the Trust Board to support the achievement of the goals of the Hawke's Bay Biodiversity Strategy, by providing funding to support biodiversity-related activity in the Region.

The initial working goal (by 2028) will be to establish an endowment fund with capital of at least $10 million prior to the distribution of any funds from the earnings of the endowment fund. The longer term goal will be to establish an endowment fund with capital of at least $50 million.

3.3.4 As funds become available (for example, from the Guardians or from contributions to the Trust specifically for this purpose), promoting, establishing, maintaining and growing a Community Small Grants for Biodiversity Fund or similar fund (however described), to be used by the Trust Board to support both biodiversity enhancement and growth of the Hawke's Bay conservation community.

3.3.5 Where appropriate, serving as a "Biodiversity Bank", whose purpose is to hold funds on behalf of management agencies, NGOs, and philanthropic organisations to support major biodiversity and conservation projects and initiatives carried out in, and/or for the benefit of, the Hawke's Bay Region that advance the Trust's Charitable Purposes. The Trust may, but need not, be a financial contributor to such projects and initiatives, but the Trust Board will hold funds on a "good faith" basis for the benefit of such projects and initiatives, to create secure financial arrangements for such projects and their contributors and to grow active partnerships among agencies, organisations, and philanthropists for the benefit of the Region.

3.3.6 Any other function that the Trust Board considers to be necessary or expedient to achieve or advance the Trust's purpose and the tasks set out in clause 3.2.

3.4 **The Trust's Funding Role:** In pursuing the Trust's purpose and the tasks set out in clause 3.2, and in particular in carrying out the funding-related functions set out in clause 3.3:

3.4.1 The Trust Board must endeavour at all times to ensure that Trust funding to enable the achievement of the goals of the Hawke's Bay Biodiversity Strategy is additional and/or complementary to, not a replacement for, "business as usual" funding that falls within the statutory or other normal responsibility of agencies and management organisations (including central government, local government and other agencies) that are directly or indirectly involved with biodiversity and conservation work carried out in, and/or for the benefit of, the Hawke's Bay Region.

3.4.2 The Trust Board may, however, use Trust funding to enhance or help to more fully realise the biodiversity benefits that arise from the "business as usual" work undertaken and/or funded by such agencies and management organisations.

4. PARTS OF TRUST FUND MAY BE HELD ON SPECIFIC TRUST

4.1 **Specific Trusts:** For the purpose of pursuing the Trust's purpose and fulfilling the functions set out in clauses 3.2 and 3.3, the Trust Board may receive, acquire, hold, invest and distribute and apply any part of the Trust Fund, including income from any particular source or of any particular nature, on trust for any specific Charitable Purpose or Charitable Purposes or subject to specific terms that are consistent with the general terms of the Trust set out in this deed (referred to as a **Specific Trust**), and in relation to any such Specific Trust:

4.1.1 the Trust Board must separately identify, administer and distribute/apply, that part of the Trust Fund in accordance with both the general terms of the Trust and the terms of the Specific Trust; and

4.1.2 in the first instance, costs relating to the administration of the Specific Trust, including a fair proportion of the general administration costs of the Trust, will be borne by that part of the Trust Fund held on Specific Trust, provided that the Trust Board may apply any other part of the Trust Fund (but excluding any part of the Trust Fund held on another Specific Trust) to meet all or part of the costs relating to the administration of the Specific Trust.

4.2 **Endowment and Other Funds:** For the avoidance of doubt, the Specific Trust provisions under this clause 4.1 will apply to the endowment fund referred to in clause 3.3.2, and may apply to any other fund established and maintained by the Trust Board as contemplated under clause 3.3, as determined by the Trust Board.

5. GEOGRAPHICAL FOCUS OF THE TRUST

5.1 **Hawke's Bay Region:** The Trust's purpose and the functions set out in clauses 3.2 and 3.3 are to be pursued for the benefit of the Hawke's Bay Region, in particular by supporting projects and initiatives, and the growth of the conservation community, across the Region. The Trust Board will work to restore biodiversity across the entire Region and to demonstrate progress in all parts of the Region.

5.2 **Impact on Activities:** For the avoidance of doubt, the Trust Board undertaking any activity or using any part of the Trust Fund outside the Hawke's Bay Region, or outside New Zealand, or in a manner that may benefit any area outside the Region, or outside New Zealand, may constitute an activity or use of the Trust Fund for the Trust's Charitable Purposes in New Zealand, for the benefit of the Hawke's Bay Region, so long as the relevant activity or use of the Trust Fund is reasonably considered by the Trust Board to be, and is pursued by the Trust Board as, an appropriate means by which to advance the Trust's purpose and its functions for the benefit of the Hawke's Bay Region.

6. RELATIONSHIP WITH GUARDIANS AND TANGATA WHENUA

6.1 **Guardians:** It is intended that the Trust will have a close relationship with the Guardians, and that the Trust Board will work in partnership with the Guardians, in relation to advancing and achieving the Trust's purpose and the functions set out in clauses 3.2 and 3.3, and the Trust Board must use all reasonable endeavours to ensure that this intention is met. In addition, the Guardians will be:

6.1.1 represented on the Trust Board, as set out in clause 7.4;

6.1.2 entitled to provide advice and/or recommendations to the Trust Board on any matter relating to the Trust and the pursuit of its purpose and functions, which must be taken into account by the Trust Board as set out in clause 9.3; and

6.1.3 entitled to exercise any other rights and powers that are reserved to the Guardians in respect of the Trust as set out in this deed.

6.2 **Tangata Whenua:** It is acknowledged that tangata whenua of the Hawke's Bay Region are an integral part of the protection and sustainable use of biodiversity in the Region and that the restoration of biodiversity to the Region should both engage and benefit tangata whenua, and in pursuing the Trust's Charitable Purposes, the Trust Board will endeavour to actively engage with tangata whenua and ensure that the perspectives of tangata whenua are considered in its decisions.

7. ROLE AND COMPOSITION OF THE TRUST BOARD

7.1 **Role of the Trust Board and Trustees:** In accordance with the terms set out in this deed, the role of the Trust Board, and each Trustee, is to act in the best interests of the Trust in terms of advancing its Charitable Purposes. The Trust Board will have overall control of, and responsibility for, the Trust Fund and the administration of the Trust, and the affairs of the Trust will be managed by, or under the direction or supervision of, the Trust Board.

7.2 **Role of the Initial Trustees:** Without derogating from clause 7.1, the role of the Initial Trustees includes doing all things practicable and expedient to establish the Trust, incorporate under the Charitable Trusts Act 1957, ensure that the Trust obtains any registration or approval required to become eligible for the benefit of any Tax Concession (in accordance with clause 11), and manage the transition to a new Trust Board on the Transition Date.

7.3 **Composition of the Trust Board:** The Trust Board will comprise:

7.3.1 from the date of this deed to the Transition Date, the Initial Trustees (provided that if, for any reason, the number of Initial Trustees falls below five prior to the Transition Date, the remaining Initial Trustees may appoint, by consensus or otherwise by simple

majority, an additional Trustee or Trustees to hold office through to the Transition Date); and

7.3.2 on and from the Transition Date, Trustees holding office in accordance with clause 7.4.

7.4 **Post-Transition Trust Board:** On and from the Transition Date, the Trust Board will comprise no fewer than five and no more than nine Trustees at all times. The Trustees will be the following individuals (who must confirm in writing their acceptance of office as Trustees):

7.4.1 the Chair of the Guardians or his or her appointee (who must be on the Guardians' managing committee or equivalent body), provided that the Chair will hold office as Trustee unless and until any appointment is confirmed and will hold office as Trustee in the event that his or her appointee ceases to hold office as a Trustee during his or her tenure as Chair of the Guardians, and provided also that if the Chair of the Guardians is not able or willing to act as Trustee or to exercise his or her power of appointment under this clause the Guardians will have the right to exercise the power of appointment;

7.4.2 an individual who is a member of the Guardians and has been elected by the membership of the Guardians at an annual or special general meeting of the Guardians' members, for which purpose the Guardians will determine the applicable nomination and election process;

7.4.3 the Chief Executive of the Regional Council, or his or her appointee, provided that the Chief Executive will hold office as Trustee unless and until any such appointment is confirmed, and will hold office as Trustee if his or her appointee ceases to hold office during his or her tenure as Chief Executive, and provided also that if the Chief Executive is not able or willing to act as Trustee or to exercise his or her power of appointment under this clause the Regional Council will have the right to exercise the power of appointment; and

7.4.4 a minimum of two and a maximum of six individuals appointed by the Trust Board, provided that in relation to the exercise of this power of appointment the Trust Board must use all reasonable endeavours to ensure that, taking into account the skills, expertise, experience and connections of the existing Trustees, the Trust Board includes at all times:

(a) a Trustee or Trustees able to fairly represent the perspectives of:

(i) Territorial Authorities in the Region;

(ii) tangata whenua of the Region;

(iii) landowners in the Region; and

(iv) ecological or other relevant science; and

(b) Trustees who have a mix of skills, expertise, experience and/or connections relevant to advancing the Trust's purpose and its functions.

7.5 **Term of Office:** The following provisions apply in relation to an individual's term of office as a Trustee:

7.5.1 An individual who is an Initial Trustee will hold office from the date of this deed (or his or her appointment under clause 7.3.1, if applicable) until the earlier of the time he or she ceases to hold office under clause 7.7 and the Transition Date, provided that any such individual may also hold office as a Trustee under clause 7.4.

7.5.2 Any Chair of the Guardians or appointee holding office under clause 7.4.1 will hold office as a Trustee from the time he or she becomes Chair of the Guardians or is appointed under that clause, as applicable, until the earlier of the time he or she

ceases to hold office under clause 7.7 and the time he or she is replaced by a new Chair of the Guardians or an appointee under clause 7.4.1.

7.5.3 An individual elected as a Trustee by the membership of the Guardians under clause 7.4.2 will hold office until the earlier of the time he or she ceases to hold office under clause 7.7.5 and the expiry of three years from the date of the general meeting at which he or she is elected under clause 7.4.2.

7.5.4 Any Chief Executive of the Regional Council or appointee holding office under clause 7.4.3 will hold office as a Trustee from the time he or she becomes the Chief Executive or is appointed under that clause, as applicable, until the earlier of the time he or she ceases to hold office under clause 7.7 and the time he or she is replaced by a new Chief Executive or an appointee under clause 7.4.3.

7.5.5 An individual appointed as a Trustee under clause 7.4.4will hold office until the earlier of the time he or she ceases to hold office under clause 7.7 and the expiry of three years from the date of his or her appointment under clause 7.4.4.

7.6 **Maximum Term:** An individual who holds, or has held office as a Trustee may be elected or appointed as a Trustee under any provision of clause 7.4 for a further term or terms, provided that:

7.6.1 an individual must not hold office for more than six consecutive years (ignoring any period of less than 6 months during which the individual is not a Trustee), unless, at the expiry of the six consecutive years, the individual qualifies for office as a Trustee on account of his or her position as Chair of the Guardians or Chief Executive of the Regional Council; and

7.6.2 an individual who has held office for six consecutive years or more (ignoring any period of less than 6 months during which the individual is not a Trustee) may subsequently be elected or appointed as a Trustee only if he or she has not been a Trustee for a period of 12 months or more.

7.7 **Cessation of Office:** An individual holding office as a Trustee (including an Initial Trustee) will cease to hold such office, notwithstanding that any applicable term of nomination, election or appointment has not yet expired, immediately upon:

7.7.1 the expiry of 28 days after the individual has given the Trust Board written notice of his or her resignation (or the expiry of any shorter period approved by the Trust Board);

7.7.2 the individual's removal from office as Trustee in accordance with clause 7.8;

7.7.3 the individual becoming disqualified from holding office as a Trustee under clause 7.9;

7.7.4 the individual becoming disqualified from continuing to hold office as a Trustee under clause 7.6; or

7.7.5 the individual's death.

7.8 **Removal from Office:** An individual (including an Initial Trustee) may be removed from office as a Trustee as follows:

7.8.1 in the case of an appointee holding office under clause 7.4.1, by the Chair of the Guardians or by the Guardians;

7.8.2 in the case of an individual elected by the membership of the Guardians, by the membership of the Guardians at an annual or special meeting of the membership at which the individual's appointment is revoked and a new Trustee is appointed;

7.8.3 in the case of an appointee holding office under clause 7.4.3, by the Chief Executive of the Regional Council or by the Regional Council; and

7.8.4 in the case of an individual who is an Initial Trustee or an appointee under clause 7.4.4, by the Trust Board, by way of a resolution passed at a meeting by a number of Trustees that equals or exceeds 75% of the total number of trustees, in circumstances where:

(a) the individual fails to attend any three or more consecutive meetings of the Trust Board without leave of absence from the Trust Board; or

(b) the Trust Board reasonably considers that, due to illness or injury of the Trustee, or the conduct of the Trustee in connection with the Trust or any other matter, or for any other reason, the individual's removal from office is in the best interests of the Trust, provided that the Trust Board must give the individual a reasonable opportunity to be heard by the Trust Board prior to making any decision regarding removal (unless it is impossible or impracticable to do so in the particular circumstances);

and in those same circumstances the Trust Board may, by way of a resolution passed at a meeting by the same majority, decide to recommend to the Chair of the Guardians, the Guardians or the Chief Executive of the Regional Council, as the case may be, that they remove their nominee or appointee under clause 7.4.1 to 7.4.4.

7.9 **Disqualification from Office:** An individual (including an Initial Trustee) is not eligible to hold office as a Trustee, or to continue to hold office as a Trustee, if he or she:

7.9.1 is an undischarged bankrupt, or a discharged bankrupt who is prohibited by court order from engaging in all forms or any form of business activity;

7.9.2 has been convicted of any crime involving dishonesty within the meaning of section 2(1) of the Crimes Act 1961 and sentenced for that crime within the last seven years, or has been convicted of (and not pardoned for) any offence punishable by a term of imprisonment of two or more years or any offence for which he or she is or has been sentenced to imprisonment;

7.9.3 is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993;

7.9.4 is subject to a property order made under the Protection of Personal and Property Rights Act 1988 or whose property is managed by a trustee corporation under section 32 of that Act, or is mentally incapable in relation to property or personal care and welfare, as defined in respect of a donor of an enduring power of attorney under section 94 of that Act; or

7.9.5 is disqualified from acting as an officer of a charitable entity under section 16 of the Charities Act 2005, if the Trust is registered, or required under clause 11 to be registered, under that Act.

7.10 **Vacancy on Trust Board:** The Trust Board may continue to act notwithstanding any vacancy on the Trust Board, but if the number of Trustees is reduced below the minimum number set out in this deed, the continuing Trustee or Trustees may only act to increase the number of Trustees to at least the minimum number (including notifying and working with the Guardians and the Chief Executive of the Regional Council for that purpose) and for no other purpose.

7.11 **Records and Notice:** The Trust Board must ensure that Trustee details, including the nomination, election, appointment, removal, and cessation of office of Trustees, are included in the Trust's records and, if required, notify Trustee changes to any relevant authority (for example, under the Charities Act 2005, if the Trust is registered under that Act).

8. CHAIR, DEPUTY CHAIR AND OTHER POSITIONS

8.1 **Chair and Deputy Chair:** The Trust Board:

8.1.1 must appoint one of the Trustees to act as the Chair of the Trust, and may remove a Trustee from that position at any time; and

8.1.2 may appoint one of the Trustees as Deputy Chair of the Trust, and may remove a Trustee from that position at any time;

and an individual appointed to hold office as Chair or Deputy Chair will hold that position until the earlier of his or her resignation from the position, or his or her removal from the position by the Trust Board, or the end of his or her term of office as a Trustee.

8.2 **Other Positions:** The Trust Board may appoint from time to time either one of the Trustees or some other person to hold any other position (for example, secretary or treasurer), as determined by the Trust Board, and may remove any Trustee or other person appointed to hold any such position at any time. Any appointee who is not a Trustee must not be disqualified, and will cease to hold any such position if they become disqualified, from holding office as a Trustee under clause 7.9.

9. POWERS OF THE TRUST BOARD

9.1 **Powers of Trust Board:** In order to carry out its role, and in particular to advance and achieve the Trust's purpose and functions as set out in clauses 3.2 and 3.3:

9.1.1 the Trust Board has, in addition to all other powers conferred by law but subject to the restrictions contained in this deed (and any other applicable law), the same powers as if it was the absolute owner of, and beneficially entitled to, the Trust Fund, including (without limitation):

(a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers, and privileges; and

9.1.2 the Trust Board's powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

9.2 **Exercise of Powers:** The Trust Board, and each Trustee, must exercise their powers and discretions (including the power to invest any part of the Trust Fund):

9.2.1 to advance and achieve the Trust's purpose and functions as set out in clauses 3.2 and 3.3; and

9.2.2 in a prudent manner, exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

9.3 **Input from Guardians and Others:** In exercising their powers and discretions, the Trust Board and each Trustee must have regard to any advice and/or recommendations from the Guardians on any matter, and may obtain and have regard to any advice and/or recommendations on any matter from any other suitably qualified person.

9.4 **Examples of Powers:** For the avoidance of doubt, the Trust Board has the power:

9.4.1 to use the Trust Fund as the Trust Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment or engagement of advisors, agents, officers and staff;

9.4.2 to purchase, take on, lease, exchange, hire or otherwise acquire any real or personal property and any rights or privileges, and to sell, exchange, let, bail, lease or in any other manner dispose of such property, rights or privileges, as the Trust Board thinks necessary or expedient in order to advance the Trust's purpose and its functions;

9.4.3 to raise, apply for and accept or acquire, by way of gift, donation or otherwise, funds and other property for the Trust from various sources, including central government, local government, charitable and philanthropic organisations, and other persons, and to hold and administer such funds and other property, in order to advance the Trust's purpose and its functions;

9.4.4 to grow the Trust Fund, and in particular the endowment fund referred to in clause 3.3.2, by the investment of funds in any such way permitted by law for the investment of trust funds and upon such terms as the Trust Board thinks fit;

9.4.5 to make funding available, by way of grant, loan, gift or otherwise, for projects and initiatives that advance the Trust's purpose and its functions;

9.4.6 to carry on business in order to advance the Trust's purpose and its functions; and

9.4.7 to borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Trust Board thinks fit.

9.5 **Delegation of Powers:** To the full extent permitted by law, the Trust Board may delegate any of its powers or discretions, in writing and subject to such terms and/or directions as the Trust Board thinks fit, to any committee (which may include, but must not be controlled by, an individual or individuals who are not Trustees) or to any officer, employee, manager, agent, attorney or other person or body appointed by the Trust Board, provided that:

9.5.1 any committee or person to whom the Trust Board has delegated any power or discretion will be bound by, and must be exercised in accordance with, the terms of this deed and any terms set and/or directions given by the Trust Board;

9.5.2 the Trust Board may wholly or partly revoke or modify any such delegation at any time, and no such delegation will prevent the exercise of any power or discretion by the Trust Board; and

9.5.3 no such delegation will release the Trust Board and the Trustees from their responsibilities in relation to the Trust.

10. MEETINGS AND DECISIONS OF THE TRUST BOARD

10.1 **Trust Board Meetings:** Unless provided otherwise in this deed, the following provisions apply in relation to meetings of the Trust Board:

10.1.1 The Trust Board must meet not less than four times in each Financial Year, including an annual general meeting which must be held within four months after the end of a Financial Year to receive and approve the Annual Report for that year and to deal with any other business as determined by the Trust Board, and may otherwise meet from time to time as the Trust Board considers necessary or expedient for the conduct of the affairs of the Trust.

10.1.2 Meetings of the Trust Board may be held by the Trustees assembling together in one place and/or by means of audio, audio and visual, or any other form of communication suitable for conducting meetings by which all Trustees can attend, participate and simultaneously hear each other throughout the meeting.

10.1.3 The Trust Board, or the Chair, Deputy Chair, or any two Trustees, may convene a meeting by giving, or arranging for any Officer or employee of the Trust to give, written notice of the meeting in accordance with clause 10.1.4.

10.1.4 Unless the Trust Board determines otherwise, any meeting of the Trust Board is to be convened by giving each Trustee (other than a Trustee who has waived the right) not less than seven days' written notice of the meeting and such notice must:

(a) specify the date and time of the meeting;

(b) specify the place of the meeting at which the Trustees are to assemble and/or the manner in which each Trustee may participate in the meeting (if the meeting is to be held, wholly or partly, by means of audio, audio and visual, or any other form of communication suitable for conducting meetings); and

(c) provide an agenda or otherwise give an indication of the matters to be discussed at the meeting, in sufficient detail to enable the Trustees to appreciate the general import of those matters, unless this is already known to the Trustees or is impossible or impracticable in the particular circumstances or in relation to a particular matter;

provided that any omission or irregularity in relation to giving such notice is waived by a Trustee if the Trustee attends the meeting without protest as to the irregularity or agrees to waive the omission or irregularity (before, after or during the meeting).

10.1.5 Subject to the provisions set out in clause 13:

(a) a quorum at a meeting of the Trust Board will be established only if the number of Trustees in attendance exceeds 50% of the total number of Trustees for the time being, and the Trustees holding office under clauses 7.4.3 and 7.4.4 do not have 50% or more of the votes, and no business will be transacted at a meeting at any time unless a quorum is present at that time; and

(b) each Trustee in attendance at a meeting will have one vote, provided that if the number of trustees in favour of any resolution at a meeting equals 50% of the total number of Trustees for the time being the Chair will have a second, casting vote on the resolution.

10.1.6 Subject to the provisions set out in clause 13, and any other provision of this deed (for example, requiring a resolution to be passed by a specified number or majority of Trustees), any resolution to be passed at a meeting of the Trust Board must be approved by a number of votes that exceeds 50% of the total number of Trustees for the time being. A resolution passed in accordance with this clause will be binding on all Trustees.

10.1.7 The Chair, or in the absence of the Chair the Deputy Chair, must chair any meeting of the Trust Board. If no Trustee holds office as Chair or Deputy Chair, or if neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for commencement of the meeting, the Trust Board at that meeting may appoint one of the attending Trustees to chair the meeting. Subject to the terms of this deed and any rules/regulations adopted by the Trust Board prior to any meeting, the Trustee chairing the meeting will control the conduct of that meeting.

10.1.8 Unless the Trust Board determines otherwise, any Officer who is not a Trustee will be notified of, and entitled to attend and participate (but not vote) at, meetings of the Trust Board, as if the Officer were a Trustee.

10.2 **Trust Board Resolutions:** Subject to the provisions set out in clause 13 and any other provision of this deed (for example, requiring a resolution to be passed by a specified number or majority of Trustees), the following provisions apply in relation to Trust Board resolutions:

10.2.1 Any resolution at a meeting of the Trust Board must be passed in accordance with clause 10.1.6.

10.2.2 A written resolution signed or approved in writing by all of the Trustees for the time being will be as valid and effectual as if it had been passed unanimously at a meeting of the Trust Board duly convened and held. Any such resolution may consist of several documents in like form each signed or approved in writing by one or more of the Trustees. An electronic scanned copy of any such signed resolution shall be as valid and effectual as the original signed document with effect from its transmission.

10.2.3 The Trust Board may from time to time rescind or vary any resolution of the Trust Board by way of a resolution passed by the same majority as was necessary to pass the resolution that is to be rescinded or varied.

10.3 **Other Matters Relating to Proceedings:** Subject to the terms of this deed, the proceedings of the Trust Board, including the manner in which meetings of the Trust Board are to be convened and conducted (including holding meetings by means of audio, audio and visual, or any other form of communication suitable for conducting meetings), will be regulated by the Trust Board, and the Trust Board may develop and adopt from time to time rules and/or regulations in relation to its proceedings, as the Trust Board thinks fit.

10.4 **Validity of Proceedings:** Any meeting of the Trust Board and any resolution of the Trust Board will be as valid and effective as if:

10.4.1 the individuals acting as Trustees had been duly appointed;

10.4.2 the individuals acting as Trustees were eligible to hold office as Trustees; and

10.4.3 the Trust Board, and the individuals acting as Trustees, had complied with any applicable rule and/or regulation adopted by the Trust Board relating to such matters;

even if it is later discovered that:

10.4.4 there was some defect in the appointment of any individual acting as Trustee;

10.4.5 any individual acting as Trustee was for any reason ineligible to hold office as Trustee; or

10.4.6 there was accidental failure to comply with any applicable rule and/or regulation adopted by the Trust Board.

10.5 **Records of Meetings/Resolutions:** The Trust Board must ensure that a record of all meetings and resolutions of the Trust Board is included in a minute book, or equivalent records, kept and maintained by the Trust Board. Once any minutes are confirmed by the Trust Board, the Chair (or, if confirmed at a meeting of the Trust Board, the Trustee chairing the meeting) must sign the minutes as a true and correct record. The signed minutes will be *prima facie* evidence of the facts stated in those minutes.

11. MAINTAINING TRUST ELIGIBILITY FOR TAX CONCESSIONS

11.1 **General Requirement:** The Trust Board must do all things practicable and expedient to ensure that the Trust is, and remains, eligible for the benefit of any Tax Concession, unless in relation to any such concession the Trust Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in terms of advancing its Charitable Purposes.

11.2 **Specific Requirements:** Without limiting clause 11.1, things to be done by the Trust Board under that clause may include:

11.2.1 **Registration under the Charities Act:** registering under the Charities Act 2005, and maintaining such registration; and

11.2.2 **Compliance under Charities and Tax Legislation:** complying with all relevant obligations under:

(a) **Charities Act:** the Charities Act 2005; and

(b) **Revenue Legislation:** the Income Tax Act 2007, the Tax Administration Act 1994 or any other relevant tax legislation.

12. RESTRICTIONS RELATING TO PRIVATE BENEFITS

12.1 **General Restriction:** Nothing expressed or implied in this deed will permit the activities of the Trust, or any business carried on by, or for, or for the benefit of the Trust, to be carried on for the private profit of any person so as to affect:

12.1.1 the continued operation of the Trust and dedication of the Trust Fund for exclusively Charitable Purposes, pursued for the benefit of the public and not for private profit; and/or

12.1.2 the Trust's eligibility for the benefit of any Tax Concession for which it would otherwise be eligible, unless in relation to any such concession the Trust Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in terms of advancing its Charitable Purposes.

12.2 **Permitted Expenditure:** For the avoidance of doubt, the proscription of private profit under clause 12.1 does not preclude the Trust Board, acting in furtherance of the Trust's purpose and its functions as set out in clauses 3.2 and 3.3, using the Trust Fund:

12.2.1 to pay for services provided, and to reimburse expenses properly incurred, by any Trustee, in accordance with clause 17; and

12.2.2 to pay or otherwise provide consideration for the supply of any goods and/or services to the Trust Board by any other person, provided that the payment or consideration does not exceed fair market value (that is, an arm's length rate) for the supply.

12.3 **Business Income Restriction:** For the purpose of ensuring that any income derived by the Trust Board from any business carried on by, or for, or for the benefit of the Trust (if any) is exempt from income tax (as at the date of this deed, under section CW 42 of the Income Tax Act 2007), no person holding any of the following positions is permitted to have, by virtue of that position, the ability, either directly or indirectly, to determine or materially influence the determination of either the nature or extent of any relevant benefit or advantage from the business or the circumstances in which any such benefit or advantage from the business is or is to be given or received:

12.3.1 Any settlor or trustee of the trust by which the business is carried on.

12.3.2 Any shareholder or director of the company by which the business is carried on.

12.3.3 Any settlor or trustee of a trust that is a shareholder of the company by which the business is carried on.

12.3.4 Any person associated with any person referred to in clauses 12.3.1 to 12.3.3 (as determined under the Income Tax Act 2007, for the purpose of section CW 42 of that Act).

For the avoidance of doubt, for the purposes of this clause 12.3 a relevant benefit or advantage does not include any benefit or advantage to a person for any Charitable Purpose of the Trust or any other benefit or advantage that may be disregarded under section CW 42(1)(c), or under any other provision of section CW 42, in the Income Tax Act 2007.

13. MANAGING TRUSTEE/OFFICER CONFLICTS OF INTEREST

13.1 **Entry into Transactions:** Subject to the provisions of this clause 13, the Trust Board may enter into a transaction in respect of which a Trustee or Officer is Interested, if the Trust Board considers that the transaction is in the best interests of the Trust in terms of advancing its Charitable Purposes.

13.2 **Disclosure and Records:** If a Trustee or Officer is Interested in any transaction entered into, or to be entered into, by the Trust Board (other than Trustee reimbursement/remuneration, indemnification and insurance, to which separate provisions apply under clause 17):

13.2.1 the Trustee or Officer, immediately upon becoming aware that he or she is Interested in the transaction, must disclose to the Trust Board:

(a) the fact of his or her interest in the transaction; and

(b) the nature of his or her interest and either the monetary value of the interest, if the monetary value of the interest is able to be quantified, or, if the monetary value of the interest is not able to be quantified, the extent of the interest; and

13.2.2 the Trust Board must ensure that a record of the interest of the Trustee or Officer in relation to the transaction is included in the Trust records kept and maintained by the Trust Board.

13.3 **Involvement in Transaction:** Any Trustee or Officer who is Interested in any transaction entered into, or to be entered into, by the Trust Board to which clause 13.2 applies:

13.3.1 must not be involved in deliberations, and in the case of a Trustee will not be counted for the purpose of establishing a quorum and will not be entitled to vote on any Trust Board resolution, in respect of any matter relating to the transaction;

13.3.2 subject to clause 13.3.1, may attend any meeting of the Trust Board that is not limited to dealing with matters relating to the transaction and be included among the attendees at that meeting for the purpose of establishing a quorum to commence the meeting and to deal with other matters at the meeting;

13.3.3 may sign a written resolution of the Trust Board dealing with any matter relating to the transaction, provided that the majority of Trustees signing any such resolution must not be Interested in the transaction; and

13.3.4 in accordance with the Trust Board's decisions in relation to the transaction, may sign any contract or other document, or do anything else as Trustee or Officer of the Trust, in relation to the transaction.

13.4 **Independent Trustee(s) or Advice:** If, as a consequence of any Trustee or Trustees being Interested in a transaction to which clause 13.2 applies, the Trust Board would be unable to establish a quorum and/or decide on a resolution in respect of the transaction, for the Trust Board to act in relation to the transaction either the composition of the Trust Board must change (by way of the nomination or appointment and/or the removal or resignation of one or more Trustees) or, by unanimous resolution of all Trustees for the time being including any Interested Trustee (being either a resolution at a meeting or a written resolution), the Trust Board may either:

13.4.1 authorise the independent Trustee or Trustees on the Trust Board, acting unanimously (by way of a resolution at a meeting or a written resolution), to determine the Trust Board's position on the transaction; or

13.4.2 appoint or engage (as an advisory trustee, a special trust advisor or otherwise), and determine to proceed in relation to the transaction in accordance with the advice and/or recommendations of, a suitably qualified independent person.

13.5 **Meaning of "Interested":** For the purpose of this clause 13, a Trustee or Officer will be interested in a transaction if the Trustee or Officer:

13.5.1 is a party to, or will or may derive a material financial benefit from, the transaction; or

13.5.2 has a material financial interest in another party to the transaction; or

13.5.3 is a director, officer, or trustee of another party to the transaction, or person who will or may derive a material financial benefit from, the transaction (unless the party or person is wholly owned or wholly controlled by the Trust Board); or

13.5.4 is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction; or

13.5.5 otherwise has, directly or indirectly, any material personal interest in the transaction.

14. FINANCIAL STATEMENTS AND ANNUAL REPORT

14.1 **Financial Statements:** Without limiting any financial and/or non-financial reporting requirements that may apply in relation to the Trust under clause 11 (or any other applicable law), the Trust Board must ensure that:

14.1.1 as soon as practicable after the end of each Financial Year (starting with the 2017/2018 year), financial statements for the Trust are prepared for presentation and approval at the Trust Board's AGM as part of the Trust's Annual Report, which statements must give a true and fair view of the financial position of the Trust for the relevant Financial Year and must include:

(a) a statement of financial position;

(b) a statement of financial performance; and

(c) notes to those statements;

14.1.2 the Financial Statements for each Financial Year are independently audited or reviewed by a chartered accountant or other appropriately qualified person appointed for that purpose by the Trust Board; and

14.1.3 the Financial Statements, and any audit or review of such statements, must be included in the Trust's records and, if required by law, filed with any relevant authority (for example, under the Charities Act 2005, if the Trust is registered under that Act).

14.2 **Annual Report:** As soon as practicable after the end of each Financial Year (starting with the 2017/2018 year):

14.2.1 the Trust Board must ensure an Annual Report, including a report or reports on the Trust's activities during the relevant Financial Year and a copy of the Financial Statements (audited or reviewed, if applicable) for that Financial Year, is prepared for presentation and approval at the Trust Board's AGM; and

14.2.2 once the Annual Report for a Financial Year is finalised and approved at the Trust Board's AGM, the Trust Board must provide a copy for information to the Guardians and to the Regional Council, and may provide a copy of, or make the Annual Report available to, any other person and/or the general public.

15. GENERAL ADMINISTRATIVE MATTERS

15.1 **Record Keeping:** The Trust Board must ensure that full and accurate records are kept and maintained in respect of the Trust, in written form or in a form or in a manner that allows such records to be easily accessible and convertible into written form, including:

15.1.1 financial books, accounts, papers and other financial records of the Trust, including full and accurate records and accounts of all receipts, credits, payments, assets, liabilities, transactions and other matters necessary for giving a true and fair view of the financial position of the Trust and the Financial Statements (audited or reviewed, if applicable) for each Financial Year;

15.1.2 a minute book or similar records, which must include a full and accurate record of the nomination, election, appointment, removal and cessation of office of Trustees and Officers, disclosures of interest, Trust Board meetings and resolutions, delegations, and any other matters appropriately included in a minute book relating to the Trust; and

15.1.3 any other records that it may be necessary or appropriate to keep and maintain in respect of the Trust, including this deed, any rules and/or regulations adopted by the Trust Board, written communications with the Trustees, the Guardians and other persons, and any other documents and information relating to the Trust and its activities,

and such records will be open to inspection by any of the Trustees upon request.

15.2 **Financial Matters:** The Trust Board must ensure that:

15.2.1 the Trust has an account or accounts, at a bank or banks, for its funds, as determined by the Trust Board from time to time, and in relation to any such account cheques, withdrawals and authorities must be signed or endorsed, as the case may be, by one or more persons, any such person being either a Trustee or another person acting on, and in accordance with, the written authority of the Trust Board; and

15.2.2 there are at all times procedures in place in relation to the Trust Board's receipt, administration and expenditure of the Trust's funds.

15.3 **Method of Contracting:** Unless the law requires otherwise, and subject to clause 15.4:

15.3.1 a deed to be executed by the Trust Board may be signed on behalf of the Trust Board by any two or more Trustees;

15.3.2 any contract or other obligation required by law to be in writing, and any other written contract or obligation to be entered into by the Trust Board, may be signed on behalf of the Trust Board by a Trustee or another person acting under the express or implied authority of the Trust Board; and

15.3.3 any other contract or obligation may be entered into on behalf of the Trust Board in writing or orally by a Trustee or another person acting under the express or implied authority of the Trust Board.

15.4 **Common Seal:** If the Trust Board is incorporated under the Charitable Trusts Act 1957, the Trust Board will have a common seal and the common seal:

15.4.1 must be held by one of the Trustees, or an Officer, as determined by the Trust Board;

15.4.2 must be affixed to any document required to be executed by the Trust Board under common seal, and may be affixed to any other document to be executed by the Trust Board as the Trust Board thinks fit; and

15.4.3 if the common seal is to be affixed to any document, it must be affixed pursuant to prior authority given by the Trust Board and it must be affixed in the presence of, and accompanied by the signatures of, two or more Trustees.

15.5 **Provision and Receipt of Notices:** In relation to any notice required to be given by a person (**Sender**) to any other person (**Recipient**) under this deed, including notice of any written approval, resolution or other matter:

15.5.1 such notice may be:

(a) delivered to the Recipient directly or to an address given by the Recipient to the Sender for such purpose;

(b) posted to an address given by the Recipient to the Sender for such purpose; or

(c) sent by electronic means in accordance with any request made by the Recipient from time to time for notices to be sent by such means; and

15.5.2 a notice given by a Sender to a Recipient in accordance with clause 15.5.1 is deemed to be given:

(a) in the case of delivery, when the notice is handed to the Recipient or delivered to the address of the Recipient;

(b) in the case of posting, two days after it is posted; or

(c) in the case of electronic means, at the time of transmission.

15.6 **Other Administrative Matters:** Subject to the terms of this deed, the administration of the Trust's activities and the Trust Fund will be regulated by the Trust Board, and the Trust Board may develop and adopt from time to time rules and/or regulations in relation to the administrative matters set out in this clause 15 and any other administrative matters, as the Trust Board thinks fit.

16. RESOLUTION OF DISPUTES

16.1 **Alternative Dispute Resolution:** In the event of any dispute arising out of or in relation to this deed between the Trust Board and any Trustee or other party referred in this deed (such as the Guardians or the Regional Council), the Trust Board may determine, of its own accord or at the request of the Trustee or other party, that the dispute will be dealt with under the alternative dispute resolution provisions set out in this clause 16, not Court proceedings.

16.2 **Mediation:** If the Trust Board determines that a dispute arising out of or in relation to this deed is to be dealt with under the alternative dispute resolution provisions set out in this clause 16:

16.2.1 In the first instance, the dispute will be referred to mediation (that is, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties).

16.2.2 For this purpose, the Trust Board will notify the Trustee or other party in writing, identifying the dispute which is being suggested for mediation, and the Trustee or other party may decline to proceed with mediation, agree to proceed with mediation, or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances.

16.2.3 The parties will agree on a suitable person to act as mediator or, will request the Arbitrators' and Mediators' Institute of New Zealand Inc. (or its successor) to appoint a mediator, and the mediation will be conducted in accordance with the Mediation Protocol (or equivalent rules/regulations) of the Arbitrators' and Mediators' Institute of New Zealand Inc. (or its successor).

16.2.4 Mediation shall be terminated upon the earlier of:

(a) the signing of a settlement agreement by the parties; or

(b) notice to the parties from the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or

(c) notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or

(d) the expiry of 60 days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

16.3 **Arbitration:** If mediation is terminated as provided in clause 16.2.4(b) to 16.2.4(d), or if the Trust Board and the Trustee or other party agree at any time:

16.3.1 The dispute will be referred to, and finally resolved by, arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol (or equivalent rules/regulations) of the Arbitrators' and Mediators' Institute of New Zealand Inc. (or its successor).

16.3.2 The arbitration will be conducted by one arbitrator agreed by the parties or, if they fail to agree within twenty one days of the termination of the mediation or their agreement to refer the dispute to arbitration, an arbitrator appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. (or its successor).

16.1 **Court Proceedings:** For the avoidance of doubt, this clause 16 does not preclude the Trust Board from making any application to the Court for orders or directions (under the Charitable Trusts Act 1957, the Trustee Act 1956 or otherwise) in respect of any matter arising out of or in relation to this deed.

17. TRUSTEE REIMBURSEMENT/REMUNERATION AND OTHER TRUSTEE MATTERS

17.1 **Trustee Reimbursement:** A Trustee is entitled to be indemnified and reimbursed out of the Trust Fund for all expenses properly incurred by the Trustee in connection with the Trust, including travel and other expenses.

17.2 **Trustee Remuneration:** Subject to clause 17.3, the Trust Board:

17.2.1 may approve use of the Trust Fund to remunerate a Trustee (but not an Initial Trustee) for his or her role as a Trustee and/or Officer, provided that the Trust Board must be satisfied, on reasonable grounds, that the provision of any such remuneration to any Trustee is necessary or appropriate, having regard to the Charitable Purposes and financial position of the Trust, the Trustee's duties and responsibilities, and the nature and extent of the services provided by the Trustee; and

17.2.2 in the case of any Trustee, including any Initial Trustee, engaged in any profession, business or trade, may approve use of the Trust Fund to pay all usual professional, business and trade charges for services requested by the Trust Board that are provided by that Trustee or by that Trustee's employee, partner or firm, including acts which the Trustee, not being in the profession, business or trade, could have done personally.

17.3 **Remuneration Restrictions:** In relation to any remuneration to be paid under clause 17.2.1 or 17.2.2:

17.3.1 the amount of the remuneration must not exceed fair market value (that is, an arm's length rate) for the services provided; and

17.3.2 if the remuneration is a relevant benefit or advantage in respect of which clause 12.3 applies, in accordance with that clause neither the Trustee receiving the remuneration

nor any person associated with the Trustee may determine or materially influence, directly or indirectly, the nature or amount of that remuneration or the circumstances in which it is to be provided.

17.4 **Trustee Standard of Care:** Despite the fact that the Trust Board may from time to time include Trustees whose profession, employment or business is, or includes, acting as a trustee or investing money on behalf of others:

17.4.1 the care, diligence and skill to be exercised by all Trustees at all times is the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others; and

17.4.2 the Trustees will not be subject to the duty to exercise special skill as set out in section 13C of the Trustee Act 1956 (or any similar, higher standard of care under any other legislation).

17.5 **Limitation of Trustee Liability:** Notwithstanding clause 17.4:

17.5.1 A Trustee (including any former Trustee) will be chargeable only for any money which that Trustee has received (for which purpose, a Trustee is deemed to have received money, even if not actually paid to the Trustee, if that money has been credited in account, reinvested, accumulated, capitalised, or otherwise dealt with on the Trustee's behalf).

17.5.2 A Trustee (including any former Trustee) will not be liable for any loss to the Trust Fund arising from any act or omission of the Trustee, the Trust Board or any of the Trustees, except to the extent that the loss is attributable to:

(a) dishonesty on the part of the Trustee; or

(b) wilful misconduct on the part of the Trustee, including any wilful act or omission of the Trustee known by the Trustee to be a breach of trust or a breach of any other obligation of the Trustee in connection with the Trust; or

(c) gross negligence on the part of the Trustee.

17.5.3 No Trustee (including any former Trustee) will be liable for any loss to the Trust Fund attributable to any negligence, dishonesty, misconduct or delay on the part of any agent, contractor or employee engaged by the Trust Board in connection with the activities of the Trust.

17.6 **Proceedings Against Trustees:** Neither the Trust Board nor any Trustee will be bound to take, or liable for failure to take, any proceedings against any Trustee (including any former Trustee) for any breach or alleged breach of trust committed by the latter Trustee.

17.7 **Indemnification of Trustees:** A Trustee (including any former Trustee) is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called **Liabilities**) suffered or incurred by the Trustee in connection with their role as Trustee, except to the extent that the Liabilities suffered or incurred by that Trustee are attributable to:

17.7.1 dishonesty on the part of the Trustee; or

17.7.2 wilful misconduct on the part of the Trustee, including any wilful act or omission of the Trustee known by the Trustee to be a breach of trust or a breach of any other obligation of the Trustee in connection with the Trust; or

17.7.3 gross negligence on the part of the Trustee.

17.8 **Insurance:** If the Trust Board thinks fit, it may obtain insurance for the benefit of the Trustees in relation to any Liabilities covered by the indemnification provided under clause 17.6 and use the Trust Fund to meet the cost of such insurance.

18. RESETTLEMENT OF TRUST FUND

18.1 **Resettlement Permitted:** The Trust Board may, by deed, Resettle all or any part of the Trust Fund, including the endowment fund referred to in clause 3.3.2 and any other part of the Trust Fund held on Specific Trust as referred to in clause 4.1, on trust for exclusively Charitable Purposes in New Zealand, on terms determined by the Trust Board, provided that for any such resettlement to be valid and effective it must be approved in accordance with clause 18.2 and must comply with the restrictions set out in clause 18.3.

18.2 **Approval of Resettlement:** Any resettlement under clause 18.1:

18.2.1 must be approved by the Trust Board by way of a resolution at a meeting of the Trust Board passed by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being or a unanimous written resolution; and

18.2.2 if the resettlement relates to all of the Trust Fund or any part of the Trust Fund representing 50% or more of total value of the Trust Fund for the time being, must be approved by the Guardians, by way of written notice to the Trust Board.

18.3 **Resettlement Restrictions:** Any resettlement under clause 18.1:

18.3.1 must not permit any resettled part of the Trust Fund, or any income to be derived from any resettled part of the Trust Fund, to be distributed or applied other than for exclusively Charitable Purposes within New Zealand, for public benefit and not for private profit, and in particular any resettlement must only be made for one or more of the Charitable Purposes of the Trust at the time of resettlement, pursued in, and/or for the benefit of, the Hawke's Bay Region; and

18.3.2 must not affect the Trust's eligibility for the benefit of any Tax Concession for which it would otherwise be eligible, unless in relation to any such concession the Trust Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in terms of advancing its Charitable Purposes.

19. WINDING UP AND DISPOSITION OF SURPLUS ASSETS

19.1 **Approval of Winding Up:** The Trust, including the endowment fund referred to in clause 3.3.2 and any other part of the Trust Fund held on Specific Trust as referred to in clause 4.1, may be wound up by the Trust Board, and any surplus assets distributed in accordance with clause 19.2, if a proposal to wind up the Trust is:

19.1.1 notified to all Trustees not less than 28 days prior to a meeting of the Trust Board at which the proposal is to be considered;

19.1.2 approved at such meeting by way of a resolution passed by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, which resolution may also determine the proposed distribution of any surplus assets in accordance with clause 19.2.2; and

19.1.3 approved by the Guardians, by way of written notice to the Trust Board.

19.2 **Winding Up Process:** In relation to winding up the Trust:

19.2.1 the Trust Board must first ensure that all debts and liabilities of the Trust, including the costs of winding up the Trust, have been or will be satisfied out of the Trust Fund or have been or will be assumed by another person; and

19.2.2 subject to specific terms on which any part of the Trust Fund is held (including any Specific Trust under clause 4.1), the remainder of the Trust Fund must be distributed or applied to advance any one or more Charitable Purposes within New Zealand, for the benefit of the public and not for private profit, and in particular, unless it is impossible or impracticable to do so, must be distributed or applied for one or more of the Charitable Purposes of the Trust at the time of winding up, pursued in, and/or for the benefit of, the Hawke's Bay Region; and

19.2.3 such distribution or application of the remainder of the Trust Fund will be made:

(a) in accordance with the resolution of the Trust Board under clause 19.1.2, or a subsequent resolution of the Trust Board; or

(b) otherwise at the direction of a Judge of the High Court of New Zealand.

19.3 **Notice Requirements:** The Trust Board must ensure that notice of the winding up of the Trust is filed with any relevant authority (for example, to dissolve the Trust Board under the Charitable Trusts Act 1957, to deregister the Trust under the Charities Act 2005 (if applicable), and for the purpose of any relevant tax legislation).

19.4 **Application for Liquidation:** For the avoidance of doubt, this clause 19 does not preclude the Trust Board from making any application to be put into liquidation under section 25 of the Charitable Trusts Act 1957, if the Trust Board considers such an application to be appropriate.

20. REVIEW AND ALTERATION OF TRUST TERMS

20.1 **Review of Terms:** The Trust Board must review the terms of the Trust from time to time, to ensure that the Trust's purpose and its functions are appropriately described and that the governance, administration and other terms of the Trust remain fit for purpose.

20.2 **Alteration of Terms:** The Trust Board may, by deed (which may be in the form of a supplemental deed, or a revised deed setting out all of the terms of the Trust, as altered), alter the terms of the Trust (including, for the avoidance of doubt, the Trust's purpose and its functions as set out in clauses 3.2 and 3.3 of this deed and the terms of the endowment fund referred to in clause 3.3.2), by adding, amending, deleting and/or replacing any term, provided that for any alteration to the terms of the Trust to be valid and effective it must be approved in accordance with clause 20.3 and must comply with the restrictions under clause 20.4.

20.3 **Approval of Alteration:** Any alteration under clause 20.2:

20.3.1 must be approved by the Trust Board, by way of a resolution at a meeting of the Trust Board passed by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being or a unanimous written resolution; and

20.3.2 if the alteration would affect the Trust's purpose, functions or geographical focus, or any right or power reserved to the Guardians or any other term of the Trust relating to the Guardians, must be approved by the Guardians, by way of written notice to the Trust Board.

20.4 **Alteration Restrictions:** Any alteration under clause 20.2 must not:

20.4.1 affect the fundamental nature of the Trust as a charitable trust that is focused on Charitable Purposes relating to biodiversity and environmental health pursued in, and/or for the benefit of, the Hawke's Bay Region; and/or

20.4.2 permit the Trust to operate other than for exclusively Charitable Purposes in New Zealand, for the benefit of the public and not for private profit; and/or

20.4.3 affect the Trust's eligibility for the benefit of any Tax Concession for which it would otherwise be eligible, unless in relation to any such concession the Trust Board has

determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in terms of advancing its Charitable Purposes.

20.5 **Records and Filing:** The Trust Board must ensure that any alteration to the terms of the Trust is included in the Trust's records and, if required by law, filed with any relevant authority (for example, under the Charitable Trusts Act 1957, and under the Charities Act 2005 if the Trust is registered under that Act).

21. GOVERNING LAW AND JURISDICTION

21.1 **Governing Law:** The Trust and this deed is governed by New Zealand law.

21.2 **Jurisdiction:** In connection with the Trust, the Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

22. EXECUTION AND DELIVERY OF DEED

This deed may be executed and delivered by the Initial Trustees in any number of counterparts signed by one or more of the parties and all executed counterparts taken together will be deemed to constitute one document.

EXECUTED AND DELIVERED AS A DEED

SIGNED by **DAVID PETER LINDSAY ALLAN** as one of the Initial Trustees in the presence of:

David Peter Lindsay Allan

Witness:

Signature of witness

Rina Douglas

Full name of witness

Rina Kathleen Douglas

Occupation of witness

Solicitor

Address of witness

82a merlot drive, Napier

SIGNED by **CHARLES HINES DAUGHERTY** as one of the Initial Trustees in the presence of:

Charles Hines Daugherty

Witness:

Signature of witness

Rina Douglas

Full name of witness

Rina Kathleen Douglas

Occupation of witness

Solicitor

Address of witness

82a merlot drive, Napier

SIGNED by **MICHAEL MERLET HALLIDAY** as one of the Initial Trustees in the presence of:

Michael Merlet Halliday

Witness:

Signature of witness

Rina Douglas

Full name of witness

Solicitor

Occupation of witness

82a Merlot Drive, Greenmeadows, Napier

Address of witness

Diane Norgate

SIGNED by **CONNIE DIAN NORGATE** as one of the Initial Trustees in the presence of:

Connie Dian Norgate

Diane Norgate

Witness:

Signature of witness

Rina Kathleen Douglas

Full name of witness

Solicitor

Occupation of witness

82a Merlot Drive, Greenmeadows, Napier

Address of witness

SIGNED by **JAMES ALEXANDER PALMER** as one of the Initial Trustees in the presence of:

James Alexander Palmer

Witness:

Signature of witness

Rina Kathleen Douglas

Full name of witness

solicitor

Occupation of witness

82a Merlot Drive, Greenmeadows, Napier

Address of witness

determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in terms of advancing its Charitable Purposes.

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EXECUTED AND DELIVERED AS A DEED

SIGNED by **DAVID PETER LINDSAY ALLAN** as one of the Initial Trustees in the presence of:

David Peter Lindsay Allan

Witness:

Signature of witness

Full name of witness

Rina Kathleen Douglas

Occupation of witness

Solicitor

Address of witness

Greenmeadows

82a Merlot Drive, Napier

SIGNED by **CHARLES HINES DAUGHERTY** as one of the Initial Trustees in the presence of:

Charles Hines Daugherty

Witness:

Signature of witness

Full name of witness

Rina Kathleen Douglas

Occupation of witness

Solicitor

Address of witness

Greenmeadows

82a Merlot Drive, Napier

SIGNED by **DESMA KEMP RATIMA** as one of the Initial Trustees in the presence of:

Desma Kemp Ratima

Witness:

Signature of witness

Rina Kathleen Douglas

Full name of witness

Solicitor

Occupation of witness

82a merlot Drive, Napier

Address of witness