

POPPY CHARITABLE TRUST

THIS TRUST DEED made the _____ day of _____

PARTIES

1 _____ (“the settlor”)

And

2 _____

hereinafter together called “the initial trustees”

BACKGROUND

- A** The settlor wishes to establish a charitable trust in New Zealand for the purposes described in clause 2 of this deed.
- B** The settlor has, concurrently with the execution of this deed, transferred to and vested in the trustees the sum of _____ dollars (\$ _____) the receipt of which is acknowledged by the trustees to be held upon and subject to the trusts set forth in this deed.
- C** It is anticipated that further money, property or other assets may from time to time be added to the trust.

THIS DEED WITNESSES that the settlor does hereby irrevocably declare, and the trustees declare and acknowledge, as follows:

1 Declaration of Trust

- 1.1** The settlor directs, and the trustees acknowledge, that the trustees hold the sum of _____ dollars (\$ _____) the receipt of which is acknowledged by the trustees and all further money, property or other assets that may be from time to time added to the trust (“the trust fund”) on the trusts and with the powers expressed or implied in this deed and that the trust be known as the [Name] Poppy Trust (“the Trust”).
- 1.2** The trustees shall seek incorporation under the provisions of the Charitable Trusts Act 1957.
- 1.3** It is declared that in the construction of this deed the plural number includes the singular and vice versa and the section headings appear as a matter of convenience but not as an aid to interpretation.

2. Objects of the Trust

- 2.1** The principal objects of the Trust are to receive moneys, donations, gifts from any source provided in connection with the poppy designated by the National Council of the Royal New Zealand Returned And Services’ Association Inc. or its successor (“RNZRSA”) as the RSA Poppy, and add it to the trust fund.
- 2.2** The trust fund shall be applied by the trustees exclusively for charitable purposes within New Zealand as set out below:
 - a) for the welfare of returned and service people and their dependents whether members of a Returned And Services’ Association or not;

- b) in the event the RNZRSA determines that funds raised in connection with the RSA Poppy can be used for the needs or welfare of returned and services personnel, their dependents, the relief of poverty, the advancement of education or religion, or such other charitable purposes within New Zealand as are recognised by the laws of New Zealand, then for such purposes; and it is declared that the provisions and effect of this clause shall not be altered, negated or otherwise modified on a basis which would result in the Trust ceasing to be for charitable purposes within New Zealand.

2.3 Application

Any income, benefit or advantage received or earned by the Trust shall be applied to the charitable purposes of the trust.

3 Appointment and Removal of Trustees

3.1 The administration of the Trust shall be under the control of the initial trustees, or such other persons as shall be appointed to act as trustees.

3.2 The power to appoint and remove trustees shall be held:

- a) first by the Board of the [name of the RSA and incorporation number] ("RSA") and no trustee so appointed *and while acting as a trustee* shall be considered in the employ of or otherwise have any obligation to the RSA other than to perform the trusts, duties and obligations set out in or arising from this Deed; and
- b) secondly in the event a receiver, liquidator, administrator, statutory manager is appointed in respect of the RSA, the RSA is liquidated or otherwise ceases to have a validly constituted Board, then by the RNZRSA and no trustee so appointed *and while acting as a trustee* shall be considered in the employ of or otherwise have any obligation to the RNZRSA other than to perform the trusts, duties and obligations set out in or arising from this Deed.

3.3 The maximum number of trustees shall be five and the minimum shall be three of which at any given time two shall be independent of the RSA, with the intention that one will have a legal and the other an accounting qualification. In the event that the RSA is unable to appoint two independent trustees with the said qualifications, RNZRSA shall have the power to appoint two such independent trustees who shall hold office until such time as the RSA can appoint two independent trustees with the appropriate qualifications. At that time the RSA shall notify RNZRSA and the trustees of the nominees, who shall replace the trustees appointed by RNZRSA at the earliest practical opportunity.

3.4 The trustees shall have a term of office of two years at which time they shall retire provided that a trustee who has so retired shall be deemed to have continued in office until either reappointed or replaced. A retiring trustee can be reappointed. There shall be no limitation on the number of terms a trustee can serve or any prohibition on a trustee serving consecutive terms.

3.5 Any trustee shall be entitled to resign by giving three months' notice in writing.

3.6 A trustee shall cease to be a trustee upon:

- a) expiry of the notice of resignation;
- b) death;
- c) notification to the RSA of long term incapacity
- d) notification to the RSA of mental illness;
- e) conviction of an indictable offence or an offence involving dishonesty;
- f) bankruptcy, voluntary administration or determination of insolvency;
- g) upon notification jointly from the RSA and the RNZRSA that the trustee has not managed the affairs of the Trust in an appropriate manner or is otherwise in breach of trust;
- h) failure to attend properly called meetings of trustees on three consecutive occasions;

provided that if the number of trustees shall be reduced below three then those having the power of appointment shall within a period of three months of such notice, appoint a replacement trustee so that notwithstanding any temporary vacancy there shall always be a minimum of three trustees. If the number of trustees after the departing trustee's departure shall not be less than three, then there shall be no obligation to appoint a replacement trustee.

4 Proceedings of trustees

- 4.1 The trustees shall elect a chairperson and shall hold meetings at such times and in such places as they shall decide and the chairperson shall have the right to call a meeting at any time by providing 10 working days written notice to the trustees and providing further that the trustees shall meet at least _____ in each year.
- 4.2 The trustees shall appoint a secretary for the Trust and who shall maintain records of all resolutions and proceedings.
- 4.3 The quorum for any meeting of trustees shall be three persons.
- 4.4 All questions before the trustees shall be decided by consensus. However, where a consensus decision cannot be reached on a question, it shall, unless otherwise specified in this deed, be put as a motion to be decided by a majority of votes. If the voting is tied, the motion shall be lost. For the avoidance of doubt, it is confirmed that the chairperson shall not have a casting vote.
- 4.5 A resolution signed by all of the trustees shall be binding and effectual as if passed at a meeting of trustees. A meeting conducted by teleconference shall be valid providing that prior written notice of the business to be transacted at such meeting shall have been provided to all trustees. Notices and resolutions may include written record sent by facsimile transmission or email.
- 4.6 The trustees shall be entitled and empowered to employ and to discharge such managers, servants, solicitors, accountants, investment advisers, agents or other persons as the trustees deem expedient for the purposes of carrying out any of the objects of the Trust, and to pay such fees or other remuneration as the trustees think fit.
- 4.7 Any payment made to any trustee, or to any person associated with any trustee, shall not be any more than such amount as is reasonable and relative to that which would be paid in an arm's length transaction for work carried out in connection with the Trust and no trustee or person associated with any trustee shall participate in, or materially influence, any decision made on behalf of the Trust in respect of the payment to or on behalf of that trustee, or associated person, of any income benefit or advantage whatsoever.
- 4.8 No trustee shall be liable for any loss suffered by the trust fund or by any beneficiary arising from any action or omission as trustees which is not attributable to the dishonesty or wilful commission or omission of any act known to be a breach of trust.
- 4.9 Except in the case of a deliberate breach of trust, the trustees shall be indemnified out of the trust fund against all liabilities which they may incur in the exercise or attempted exercise of the trusts, powers, authorities and discretions vested in them and shall have a lien on and may use moneys forming part of the trust fund in pursuance of this indemnity.
- 4.10 This indemnity shall extend to any payments made to any person whom the trustees bona fide believe to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.
- 4.11 No trustee shall be liable for anything done or omitted to be done except in the case of fraud or other wilful misconduct on that trustee's part.

5. Reports

- 5.1 The trustees shall keep true and fair accounts of all money received and expended.
- 5.2 The trustees shall, as soon as practicable after the end of every financial year of the Trust cause the accounts of the trust for that financial year to be audited or reviewed

by an accountant appointed for that purpose and the audited or reviewed accounts shall be made available to the public upon request.

5.3 The trustees shall present to the RSA and RNZRSA a detailed annual report on the activities, investments, grants and distributions of the Trust and which shall include the annual accounts and audit or accountant's report as the case may be.

5.4 In the event the RSA and/or the RNZRSA are not satisfied with the annual report, either or both as the case may be can request additional information from the trustees and the trustees shall immediately provide that information.

6 Powers

6.1 General and specific powers

In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the trustees may exercise in order to carry out the charitable purposes of the Trust are as follows:

- (a) to use the trust fund or any part thereof as the trustees think necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, agents, officers and staff as appears necessary or expedient; and
- (b) to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the trustees think necessary or expedient for the purpose of attaining the objects of the Trust and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- (c) to carry on any business; and
- (d) to invest surplus funds in any way permitted by law for the investment of trust funds and upon such terms as the trustees think fit provided that any trustee who is in a profession, employment or business which is or includes acting as a trustee or investing money on behalf of others, then in exercising any power of investment, that trustee or trustees (as the case may be) shall not be required to exercise the skill, care or due diligence that a prudent person engaged in such a profession, employment or business would exercise but rather shall exercise the skill, care or due diligence that a prudent person of business would in managing the affairs of others; and
- (e) to borrow or raise money from time to time, with or without security, and upon such terms as to priority and otherwise as the trustees think fit; and
- (f) resettle any part of the income or capital or specified fund on trust on such terms as they consider appropriate for any purpose consistent with the charitable purposes of the Trust; and
- (g) vary the Trust by providing such additional or supplementary powers as may be considered necessary or desirable for the proper administration thereof, providing, however, that no alteration or variation shall be made to the objects of the Trust or be inconsistent with the charitable nature and purpose of the Trust; and
- (h) to do all things as may from time to time be necessary or desirable to enable the trustees to give effect to and to attain the charitable purposes of the Trust provided that no power or reservation, expressed or implied, in this deed shall authorise the trustees to do or suffer any act which does not further the charitable purposes of the Trust and the declaration of charitable purposes in this deed shall, at all times, be paramount so as to exclude any act or omission which is or may be deemed to be not in accordance with such purposes.

6.2 Distributions for charitable purposes

The trustees shall have the overall responsibility for the exercise of discretions to pay or apply the trust fund for charitable purposes.

6.3 The trustees shall, at least once in each financial year, establish policies for the allocation of income towards charitable purposes and shall take such steps as the

trustees consider expedient to advertise or invite selected individuals and/or organisations to submit formal applications for grants,

- 6.4** The trustees may carry forward unexpended income in any year to a future year or years. The trustees may also set aside, from income, a reserve to continue any established pattern of grants and to meet fluctuations of income in future years and other contingencies. These powers are in addition to any other power or discretion the trustees may have to carry forward income or establish reserves.
- 6.5** The trustees may accumulate an amount not exceeding _____% of the income in any accounting period for a period not exceeding _____ years from the date of this deed. This accumulated income will be added to the capital of the Trust and is to be held on the same trusts to, as far as possible, maintain the real value of the Trust and to provide for growth of income available for charitable purposes. This power is in addition to any other power the trustees may have to accumulate income.
- 6.6** The trustees shall, at least once in each year, conduct a meeting to approve grants to or for charitable purposes and it is declared that any decisions relating to the application of funds shall be unanimous and that the trustees shall not be bound to advise any applicant or organisation seeking a grant of any reason for approval or declining any grant or otherwise any reasons relating to the exercise of any discretions.
- 6.7** The trustees may, at their discretion, as they think fit, apply such terms and conditions or specify any purpose for any grant or any promise or pledge of any future grant from the Trust.
- 6.8** Notwithstanding the foregoing provisions, the trustees may, by written resolution, at any time, approve, promise, pledge, or pay grants to charities or towards charitable purposes out of the income received by or accrued to the Trust, providing, however, that all such grants promises or pledges shall be confirmed by the trustees at the meeting pursuant to clause 6.6.
- 6.9** A receipt issued by a person authorised by the recipient of any grant, forwarded to the trustees, shall be sufficient discharge to the trustees, who shall not be bound to ensure that funds have been applied by the recipient for or towards the purposes of any such grant.

7 Conflict of interest

- 7.1** An 'interest' under this clause 7 means alleviation of an obligation or a grant or distribution howsoever made from the capital or income of the Trust that will or is likely to benefit a trustee or any person or body, whether corporate or unincorporated, associated with the trustee in any pecuniary way.
- 7.2** In the event a trustee has or may have an interest in a decision of the trustees, the trustee so affected shall notify the other trustees of the possible interest in writing at least 5 working days prior to the decision being made. The trustee so affected shall not be present when the trustees are considering the decision and shall not be entitled to vote on the decision. If the number of remaining trustees so voting is less than three the trustees' decision shall be reported to the RSA and the RNZRSA.
- 7.3** If the trustees are officers of the RSA and the decision is one in which the RSA has an interest, the trustees' decision shall be delegated to three persons appointed by RNZRSA.
- 7.4** In the event a decision of the trustees is made without following the process in this clause 7, the decision shall be void and any loss suffered by the Trust shall be repayable by the trustees upon demand made by the trustees.

8 Liquidation (dissolution or winding up) of trust

If, for any reason whatsoever, the Trust created by this deed shall be liquidated, wound up, or shall otherwise shall cease and determine, the trust fund, or any part thereof remaining, shall, after payment of costs of liquidation, winding up and dissolution and payment of any debts of the trust, be given or transferred to trustees

for carrying out charitable purposes within New Zealand consistent with those set out in this deed. In default of this provision, then as may be determined by a Judge of the High Court of New Zealand on application by any trustee or trustees of the Trust.

IN WITNESS this deed is duly executed.

SIGNED by)
Name of settlor)
as settlor)

In the presence of)
Name, address and)
occupation of witness)

SIGNED by)
Name of trustees)
as trustees)

In the presence of)
Name, address and)
occupation of witness)

SIGNED by)
Name of trustees)
as trustees)

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