

Auckland City Mission (Te Tāpui Atawhai)

Amended Trust Deed adopted by the Trust Board on the
date herein recorded



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TRUST DEED OF THE AUCKLAND CITY MISSION (TE TĀPUI ATAWHAI)

Date:

PARTIES

Elana Curtis, Lyndon Drake, Linley Wood, Evan Davies, Graeme Birkhead, Gavin Rennie, Joanna Maree Pidgeon (the Trustees)

BACKGROUND

- A On 29 April 1920 (the founding resolution) the Standing Committee of the Synod of the Auckland Diocese of the Church resolved that a Church of England City Mission should be established in the city of Auckland.
- B On 23 June 1971 Synod passed a statute that confirmed the purposes of the mission as being "responsible for the general social work of the Diocese".
- C On 28 April 1972 the Auckland City Mission was registered as a charitable trust under the Charitable Trusts Act 1957 under the name of Auckland City Mission and the then trustees of the Trust were incorporated as a trust board.
- D On 5 September 2009, the Diocese of Auckland passed the Auckland City Mission Statute 2009 (the *2009 Statute*) to repeal the Auckland City Mission Statute 1971. The provisions of the 2009 Statute were incorporated in the then restated trust deed. Subsequently, on or about the date of the adoption of this updated deed of the Trust, the Diocese of Auckland passed the Auckland City Mission Statute 2023 (the *Statute*) to repeal the 2009 Statute.
- E The Mission was established by the Church as an expression of the redeeming love of God for all people and is supported by the wider community in its work with the most marginalized in society.
- F The Trustees are the duly appointed trustees of the Trust, comprising the Trust Board, as at the date of this deed.
- G The Trustees have adopted various amendments to the trust deed over the years and have resolved to adopt this amended and restated trust deed as the new trust deed of the Trust with effect from the date of this deed in 2023.
- H The Trustees confirm that the adoption of this deed as the trust deed of the Trust shall not affect the validity of anything made or done by the Trustees of the Trust from time to time before the date of this deed, nor shall this deed alter or prejudice the charitable nature of the Trust, nor the purposes of the Trust as set out in the Founding Resolution (as amended from time to time).



NOW THIS DEED RECORDS:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this deed, unless the context requires otherwise:

Archdeacon means the Archdeacon responsible for the Church of St Matthew's-in-the-City;

Auckland City Missioner (Manutaki) means the person appointed to that office from time to time in accordance with clause 6 of this deed;

Auckland Diocese or the Diocese means the Diocese of Auckland established in accordance with Title B Canon III of the Canons from time to time;

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

Bishop means the Bishop for the time being of the Auckland Diocese;

Board means the Board of Trustees of the Trust from time to time incorporated on 28 February 1972 under the Charitable Trusts Act 1957;

Canons means the Code of Canons of the Church as from time to time in force;

Chancellor means the Chancellor of the Auckland Diocese appointed in accordance with Title D Canon IV of the Canons from time to time;

the Church means the Anglican Church in Aotearoa, New Zealand and Polynesia;

Designated Gift means a gift which is subject to a trust for a specific purpose that comes within the purposes of the Trust Fund as further described in clause 5.4;

Diocesan Council means the Standing Committee of the Synod of the Auckland Diocese duly established by the Diocesan Council Statute 2019 of the Auckland Diocese;

Diocesan Trustees has the meaning given to it in clause 9.2;

Founding Resolution means the resolution that established the Auckland City Mission (Te Tāpui Atawhai) dated 29 April 1920;

General Trustees has the meaning given to it in clause 9.2;

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



lacks capacity and *lacks the capacity* means in relation to a person that the person is not competent to manage the person's own affairs for any reason including where (but not limited to) the person:

- (a) is under the age of 18 years;
- (b) is a mentally disordered person under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (c) is subject to an order appointing a manager under section 31 of the PPPR Act;
- (d) has a trustee corporation managing the person's property under section 32 or 33 of the PPPR Act; or
- (e) is a person who is not wholly competent to manage their own affairs in relation to their property and has been certified as mentally incapable under Part 9 of the PPPR Act,

and *loses capacity* and *losing capacity* will be construed accordingly;

Mission Statement means the Auckland City Mission (Te Tāpui Atawhai) strategic mission as adopted by the Board of the Auckland City Mission (Te Tāpui Atawhai) from time to time;

Ordinary resolution means a resolution passed by the Trustees in accordance with rule 8.2 in Part 2 of the *Second Schedule*;

Patron means a person appointed as such under clause 8;

PPPR Act means the Protection of Personal and Property Rights Act 1988;

Related Person for the purposes of clause 11.4 and in relation to any business to which section CW 42(1) of the Income Tax Act 2007 applies, means a person specified in subparagraphs (i) to (iv) of subsection (5)(b) of that section, the persons currently specified being:

- (i) a settlor or trustee of the trust by which the business is carried on; or
- (ii) a shareholder or director of the company by which the business is carried on; or
- (iii) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (iv) a person associated with a settlor, trustee, shareholder or director referred to in any of subparagraphs (i) to (iii);



Social Work for the purposes of clause 4(a) means the social work of the Auckland City Mission in the Auckland Diocese and includes, without limitation, the provision of aid and assistance, including financial and material support, education, treatment and advice to people who are marginalised by adversity including poverty, ill health, isolation, trauma and prejudice;

Special resolution means a resolution passed by the Trustees in accordance with rule 10.3 of the *Third Schedule*;

Statute has the meaning given in paragraph C of the Background to this deed;

Synod means the Synod of the Auckland Diocese;

Teleconference Meeting for the purposes of rule 11 in Part 2 of the *Second*

the Trustees means the trustees of the Trust as named in this deed, and as appointed from time to time;

Treasury Policy means the policy of the Auckland City Mission (Te Tāpui Atawhai) and its related entities that guides investment policy from time to time or any equivalent or substituted document applicable to the group of entities or specifically to Auckland City Mission (Te Tāpui Atawhai) itself, including any Statement of Investment Policy and Objectives;

Trust means the charitable trust known as the Auckland City Mission (Te Tāpui Atawhai) created by the Founding Resolution and further described in the Background to this deed;

Trust Deed or *this deed* means this deed now adopted as the trust deed of the Trust as amended from time to time in accordance with this deed;

Trust Fund means any and all money, investments or other property held by, paid or given to or acquired or agreed to be acquired by, the Board, on the terms of the Trust from time to time, including as amended by this deed, with the intention that such fund be held by the Board on and subject to the trusts and other provisions now set out in this deed; and

Trusts Act means the Trusts Act 2019.

1.2 **Construction**

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

- (a) a reference to "Trustees" is a reference to the trustee or trustees for the time being of the Trust Fund, whether original, additional or substituted;
- (b) a reference to the "Board" or "Trust Board" is a reference to the Board for the time being of the Trust Fund, whether original as incorporated on 28 February 1972 under the Charitable Trusts Act 1957, or as it may be constituted or reconstituted from time to time;



- (c) a reference to "persons" includes a company and also includes an unincorporated body of persons;
- (d) a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- (e) the Schedules form part of this deed;
- (f) headings appear as a matter of convenience and shall not affect the construction of this deed; and
- (g) if there is a conflict between the rules in the *Second Schedule* and the other provisions of this deed the other provisions of this deed shall prevail.

2 TRUST DEED

- 2.1 The Trustees declare that they hold the Trust Fund upon the trusts, for the purposes and with the powers set out in this deed which is adopted as the Trust Deed of the Trust with effect from the date of this deed.
- 2.2 This deed replaces all previous trusts deeds and similar constitutional documents, and incorporates the relevant provisions of the Statute, to which it is subject.
- 2.3 The Trustees confirm that the adoption of this deed shall not affect the validity of anything made or done by the Trustees of the Trust from time to time before the date of this deed nor shall this deed alter or prejudice the charitable nature of the Trust, nor the purposes of the Trust, as set out in the Founding Resolution (as amended from time to time).

3 NAME OF THE TRUST

The trusts declared and acknowledged by this deed are to continue to be known under the name of the "Auckland City Mission (Te Tāpui Atawhai)" unless and until the Trustees determine, by special resolution, some other name for the Trust, provided such new name has the prior written approval of Synod.

4 PURPOSES

The purposes of the Trust are to carry out:

- (a) the Social Work of the Auckland Diocese; and
- (b) any other similar purposes (whether relating to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community) which are charitable according to the laws of New Zealand and are within the scope of the Statute,

provided always that the purposes of the Trust as described in this clause 4 may properly be regarded as charitable purposes according to the law of New Zealand.



5 TRUST FUNDS

5.1 Receipt of Funds

The Board may receive funds, solicited and unsolicited, or any real or personal property for the purposes of the Trust or for any specific purpose that comes within the purposes of the Trust.

5.2 Income Trusts

(a) ***Power to pay, apply or appropriate income***

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

(b) ***Provisions relating to payments, applications and appropriations of income***

(i) The Board may appropriate any investments for one or more of the purposes of the Trust in anticipation of a payment or application under clause 5.2.

(ii) In any Income Year, the Board may appropriate all or part of the income derived or to be derived from the Trust Fund during that Income Year even though, at the time of appropriation, they have not received the income being appropriated.

(iii) If the Board appropriates any income for any purpose of the Trust the recipient of that income shall take an absolute and indefeasible interest in that income as from the date on which it is appropriated.

(c) ***Power to retain income***

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

5.3 Capital Trusts

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

5.4 Separate specific trusts

(a) If the Board accepts a Designated Gift it must keep that Designated Gift and any income derived from it separate from the general assets of the Trust Fund, and administer it as a separate specific trust in terms of the trust under which it was given.

(b) The Board shall not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other separate specific trust.



Similarly, the Board shall not use the general assets of the Trust Fund for such purposes.

- (c) Each separate specific trust shall bear its own administration expenses plus a fair proportion (determined by the Board) of the administration expenses applicable to the general purposes of the Trust.

5.5 **Receipts for payments**

The receipt of the secretary, treasurer or other person or persons appearing to the Board to be authorised to give receipts on behalf of the recipient of any payment made under the terms of this deed, shall be a complete discharge to the Board for that payment.

6 **AUCKLAND CITY MISSIONER (MANUTAKI)**

6.1 **Appointment**

- (a) The Board may, by special resolution and with the prior written approval of the Bishop, appoint any person to the office of Auckland City Missioner (Manutaki).
- (b) Any such approval by the Bishop shall include, as appropriate, any licence or similar authority of the Bishop to carry out and perform the duties, ministry, obligations and responsibilities of the office of Auckland City Missioner (Manutaki).
- (c) The Auckland City Missioner (Manutaki) shall be the Chief Executive Officer of the Auckland City Mission (Te Tāpui Atawhai) and shall have general charge of the Auckland City Mission (Te Tāpui Atawhai) and the conduct of its Social Work in the Diocese subject to the directions of the Trust Board and the terms and conditions of his or her appointment.
- (d) The Auckland City Missioner (Manutaki) shall not be eligible for appointment as a Trustee unless, prior to his or her appointment, the Board unanimously agrees that the Auckland City Missioner (Manutaki) shall be eligible for appointment.
- (e) If the Auckland City Missioner (Manutaki) is not a Trustee, he or she shall be invited to attend, and shall have speaking rights at, all meetings of the Board unless the Board resolves it is appropriate for particular matters to be discussed by the Board in the absence of the Auckland City Missioner (Manutaki).

6.2 **Cessation of Office**

The Auckland City Missioner (Manutaki) shall hold office until he or she resigns by notice in writing to the Trust, dies or is removed from office in accordance with the provisions of clause 6.3.

6.3 **Removal**

The Board may, by special resolution, remove the Auckland City Missioner (Manutaki) from office at any time if in the opinion of the Board, the continuation of the Auckland City Missioner (Manutaki) in office is not in the best interests of the Trust.



7 MEMBERSHIP

7.1 Board may establish a membership

The Board may, by ordinary resolution:

- (a) invite persons, firms and corporations who wish to support or take an interest in the purposes of the Trust to become members of the Trust;
- (b) establish different classes of membership;
- (c) fix and charge membership fees (including joining fees and subscriptions) for members or each class of members, as the case may be;
- (d) call annual members' meetings;
- (e) subject to clause 7.2, confer membership rights on members; and
- (f) issue membership certificates or other evidence of membership.

7.2 Limitations on personal benefit arising from membership rights

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

8 PATRONS

8.1 Appointment

The Board may, by ordinary resolution, appoint any person or persons to be a Patron or Patrons of the Trust.

8.2 Cessation of Office

A Patron shall hold office until he or she resigns by notice in writing to the Trust, dies or is removed from office in accordance with the provisions of clause 8.3.

8.3 Removal

A Patron may at any time be removed as a Patron of the Trust by a special resolution of the Board.



9 APPOINTMENT AND REMOVAL OF TRUSTEES

9.1 Number of Trustees

- (a) There shall from time to time be no fewer than 7, nor more than 12 Trustees.

9.2 The Trustees

The Trustees of the Trust shall comprise:

- (a) up to one Trustee appointed by the Bishop of Auckland; and
- (b) up to four Trustees appointed by the Diocesan Council (the *Diocesan Trustees*); and
- (c) up to seven persons appointed by the Trustees (the *General Trustees*),

provided that neither the Archdeacon nor the Chancellor shall be eligible to be Trustees.

9.3 The Bishop of Auckland's Appointee

(a) **Appointment**

The Bishop of Auckland may from time to time by notice in writing to the Board, appoint a person to be a Trustee provided such person is not ineligible under clause 9.7. For the avoidance of doubt, the Bishop may appoint him or herself.

(b) **Cessation of office**

The Trustee appointed by the Bishop of Auckland shall continue to be a Trustee until he or she resigns, is removed by the Bishop of Auckland or the Bishop of Auckland who appointed him or her ceases to be the Bishop of Auckland. If the Bishop of Auckland is the appointed Trustee and ceases to be the Bishop of Auckland then he or she will cease to be a Trustee at the same time.

(c) **Removal**

The Bishop of Auckland may at any time, by notice in writing to the Board and to his or her appointed Trustee, remove that Trustee.

(d) **Resignation**

The Trustee appointed by the Bishop of Auckland may resign at any time by written notice to the Bishop of Auckland and the Board.

9.4 The Diocesan Trustees

(a) **Appointment**

The Diocesan Council may from time to time by notice in writing to the Board, appoint a person to be a Diocesan Trustee provided such person is not ineligible under clause 9.7.

(b) **Term of office**

- (i) A Diocesan Trustee shall hold office for the term specified on his or her appointment (such term to be no longer than three years), but if no term is specified then for a term of three years from the date of appointment (unless



a Diocesan Trustee is earlier removed from office in accordance with the provisions of clause 9.4(c)).

- (ii) On ceasing to hold office on completion of his or her term, a Diocesan Trustee shall be eligible for re-appointment for a further term or terms in accordance with clause 9.4(b)(i).

(c) **Removal**

The Diocesan Council may at any time, by notice in writing to the Board and to the Diocesan Trustee, remove any Diocesan Trustee.

(d) **Resignation**

A Diocesan Trustee may resign at any time by written notice to the Diocesan Council and to the Board.

9.5 **General Trustees**

(a) **Appointment**

- (i) The Board may, by ordinary resolution, appoint a person to be a General Trustee provided such person is not ineligible under clause 9.7.

- (ii) The Board shall appoint as General Trustees persons who have the requisite skills and experience and commitment to the Auckland City Mission (Te Tāpui Atawhai)'s purposes and in making any such appointments may, but shall not be obliged to, take advice from independent consultants or other professional advisors.

(b) **Term of office**

- (i) A General Trustee shall hold office for a term of three years from the date of appointment (unless a General Trustee is earlier removed from office in accordance with the provisions of clause 9.5(c)).

- (ii) On ceasing to hold office on completion of his or her term, a General Trustee shall be eligible for re-appointment for a further term or terms in accordance with clause 9.5(b)(i).

(c) **Removal**

The Board may, by special resolution, remove any General Trustee and shall give written notice of removal to that General Trustee.

(d) **Resignation**

A General Trustee may resign at any time by written notice to the Board.

9.6 **Calls for expressions of interest in the office of General Trustee**

In the event of any vacancy in respect of the office of General Trustee, the Board may make a call for expressions of interest in the role of General Trustee and may publicise any vacancy in the role of General Trustee in any manner it deems fit and the Auckland City Missioner (Manutaki) may propose a new or additional General Trustee, although the Board shall not be bound to appoint any General Trustee so proposed.



9.7 **Ineligibility to be a Trustee**

The following persons will be ineligible to be appointed as Trustees:

- (a) a person that is under the age of 18 years;
- (b) an undischarged bankrupt;
- (c) a person who lacks the capacity to perform the functions of a trustee; and
- (d) a body corporate that is subject to an Insolvency Event.

9.8 **Termination of office**

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

- (a) resigns from office by giving written notice to the Board;
- (b) completes his or her term of office and is not reappointed;
- (c) refuses to act;
- (d) is appointed as a Trustee by the Bishop of Auckland and is removed under clause 9.3(c);
- (e) is a Diocesan Trustee and is removed by the Diocesan Council under clause 9.4(c);
- (f) is a General Trustee and is removed by the Trustees under clause 9.5(c);
- (g) is a member of the Board dismissed under clause 9.13;
- (h) is employed by the Auckland City Mission (Te Tāpui Atawhai);
- (i) is absent without leave from three consecutive ordinary meetings of the Board;
- (j) loses capacity to the extent that in the opinion of the other Trustees he or she is unable to perform the duties of a Trustee properly;
- (k) becomes bankrupt or makes any composition or arrangement with his or her creditors;
- (l) is convicted of an indictable offence; or
- (m) ceases to be qualified under section 16 of the Charities Act 2005 to be an officer of a charitable entity.

9.9 **Record of changes of Trustees**

Upon every appointment, retirement, re-appointment or termination of office of any Trustee the Board will ensure that an entry is made in the minute book of the Trust



to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Board are satisfied.

9.10 Board performance evaluation

The Board shall review its performance annually and may appoint external consultants to do so.

9.11 Board may delegate

The Board may delegate functions to the Auckland City Missioner (Manutaki) and to management as they consider appropriate, in accordance with a delegated authority policy and consistent with the Trusts Act.

9.12 Rules governing proceedings of the Board

The Board may from time to time make, and will then be bound by and comply fully with, rules regulating the procedures of the Trustees' meeting and other matters relating to the administration of the Trust and Board as the Board thinks fit (*Rules*), provided that no such rule may be inconsistent with, or relate directly to any matter dealt with in the main body of this deed. The Rules as at the date of this deed are set out in the Third Schedule, which may subsequently be varied by ordinary resolution provided that the proposed variation complies with the foregoing requirements, at least 14 days' written notice of any proposed resolution for the variation of the Rules is given to each Trustee, and the variation does not prejudice the charitable nature of the Trust.

9.13 Power to dismiss deadlocked Board

- (a) In the event the Board is or becomes deadlocked (as that term is defined in clause 9.13(b)), the Chancellor and the Archdeacon may, with the approval of the Diocesan Council, jointly, by notice in writing to the Board, dissolve the Board.
- (b) For the purposes of clause 9.13(a) the Board shall be "deadlocked" if at any time it is, in the reasonable opinion of both the Chancellor and the Archdeacon, unable to carry on and perform the purposes of the Trust or carry on and perform its duties under this deed to the effect that the management and administration of the Trust or the carrying out of the objects or purposes of the Trust are frustrated, inhibited or restricted to the detriment of the Trust or the purposes of the Trust.
- (c) Immediately, on the exercise by the Chancellor and the Archdeacon of their power to dissolve the Board under clause 9.13(a), the Chancellor, the Archdeacon and the Bishop shall be deemed to be appointed as interim Trustees of the Trust with all the powers, rights, obligations and duties of the Trustees under this Deed.
- (d) For so long as the interim Trustees are appointed under clause 9.13(c) the minimum number of Trustees and the quorum of Trustees shall be three trustees.
- (e) Within three calendar months of the date of dissolution of the Board the interim Trustees shall:
 - (i) appoint new General Trustees in accordance with clause 9.5; and



- (ii) ask the Diocesan Council to appoint new Diocesan Trustees in accordance with clause 9.4.
- (f) For the avoidance of doubt, on the appointment of new trustees under paragraph (e), the Chancellor and the Archdeacon will be deemed to have resigned as interim trustees, the Bishop shall continue in office as a trustee and shall be a member of the newly constituted Board under clause 9.13(e).

10 TRUSTEES' POWERS AND DUTIES

10.1 General powers

The Trustees have the following general powers:

- (a) all the powers necessary to manage the Trust property including, in relation to the Trust property, all the powers of an absolute owner of the property; and
- (b) all the powers necessary to carry out the Trust, including powers incidental to those in clause 10.1(a).

However:

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

10.2 Specific powers

Without prejudice to the generality of clause 10.1, or to any of the Trustees' express or implied powers, the Board shall have the powers specified in the *First Schedule* and may exercise them either alone or with any other person(s). The powers in the First Schedule are not an exhaustive source or description of the specific powers of the Trustees.

10.3 Trustees' duties

The Trustees have the duties set out in the First Schedule and will perform those duties having regard to the context of the Trust, the charitable purposes and the terms of this deed.

11 GENERAL PROVISIONS

11.1 Variations to deed

- (a) Subject to clause 11.1(c), the Board may vary this deed (apart from the Rules in the *Second Schedule*, which may be varied in accordance with clause 9.11), by special resolution.



- (b) At least 14 days' written notice of any proposed resolution for the variation of this deed shall be given to each Trustee.
- (c) A resolution for the variation of any part of this deed shall be effective only:
 - (i) if the variation does not prejudice the charitable nature of the Trust. Before resolving to make any alteration to this deed the Board must be satisfied that the proposed alteration does not prejudice the charitable nature of the Trust nor any requirements for any exemption available to charities under the New Zealand revenue laws; and
 - (ii) if the variation is first authorised by a Statute of Synod where the variation is inconsistent with the Statute.
- (d) The Trustees shall send to the Diocesan Council a copy of this deed or any variations to this deed promptly after such documents are executed.

11.2 **Disclosure of interests**

- (a) A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:
 - (i) is a party to, or will derive a material financial benefit from that transaction;
 - (ii) has a material financial interest in another party to the transaction;
 - (iii) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
 - (iv) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
 - (v) is otherwise directly or indirectly interested in the transaction,(for the purposes of this clause 11.2, called an "*Interested Trustee*").
- (b) As soon as a Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, the Interested Trustee must disclose his or her interest to the other Trustees at a meeting of the Board and may not exercise a vote in relation to that transaction or proposed transaction. The other Trustees at the meeting may require the Interested Trustee to leave the meeting while the transaction or proposed transaction is discussed. However, a meeting will not be deemed inquorate whilst discussions are taking place (whether or not the Interested Trustee leaves the meeting) or for the purposes of a Trustees' resolution on the matter in which the Interested Trustee is interested (regardless of the fact that the Interested Trustee may not vote on such matter).
- (c) The Interested Trustee must disclose with regard to his or her interest:



- (i) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
 - (ii) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.
- (d) A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.

11.3 **Dealing with "Interested" Trustees**

Subject to clause 11.2, each Trustee may act as a Trustee and still contract or otherwise deal with the Board in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. This right to continue to act as a Trustee shall apply even though a Trustee's interest or duty in a particular matter may conflict with his or her duty to the purposes of the Trust.

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

- (a) In the carrying on of any business under this deed no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:
- (i) the nature or amount of that benefit, advantage or income; or
 - (ii) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.
- (b) A person who, in the course of, and as part of the carrying on of his or her business of a professional public practice, shall not, by reason only of him or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause 11.4.

11.5 **Liability of Trustees**

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

11.6 **Indemnity**

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust, provided that the proceedings do not arise out of the gross negligence, fraud or wilful breach of trust of that Trustee, officer or employee. If some of the assets of the Trust are held on separate specific trusts then such a Trustee, officer or employee may be indemnified out of those assets to the extent that the Board in their discretion think just and equitable.



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

- (a) No private pecuniary profit shall be made by any person involved in this Trust, except that:
- (i) any Trustee or committee member appointed by the Board shall be entitled to be reimbursed out of the assets of the Trust for all expenses which he or she properly incurs in connection with the affairs of the Trust;
 - (ii) if the Diocesan Council so decides, but not within the term of office of any persons who are Trustees as at the date of adoption of this revised deed and not for any of those persons who are Trustees as at the date of this revised deed, the Trust may pay such reasonable and proper remuneration as set by the Diocesan Council to a Trustee in return for services rendered as a Trustee;
 - (iii) the Trust may pay reasonable and proper remuneration to any officer or staff member of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
 - (iv) any Trustee is to be paid all usual professional, business or trade charges for services rendered, time expended (including attendance at meetings) and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
 - (v) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.
 - (vi) The Board, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by clause 11.4 of this deed are strictly observed.

12 **WINDING UP**

12.1 The Trustees may, by special resolution, wind up the Trust if:

- (a) in their opinion, it becomes impossible, impracticable or inexpedient to carry out the purposes of the Trust set out in clause 4;
- (b) Synod has approved the winding up and the subsequent repeal of the Statute; and
- (c) Synod has approved the transfer by the Board of all surplus assets to some other Anglican institution or trust with a similar charitable purpose or similar charitable purposes to the Trust.



- (d) If, in the Synod's opinion, it is impossible, impracticable or inexpedient to give or transfer all surplus assets to some other Anglican institution or trust with a similar purpose or purposes to the Trust, or if there is no such Anglican institution or trust, then the Synod shall approve that the Board give or transfer all surplus assets after the payment of costs, debts and liabilities, to the Diocese of Auckland for its charitable purposes in New Zealand.

13 **GOVERNING LAW**

This agreement shall be governed by and construed in accordance with New Zealand law.



FIRST SCHEDULE: TRUSTEE DUTIES

- 1 **Duty to know the terms of Trust**
A Trustee must know the terms of the Trust.
- 2 **Duty to act in accordance with the terms of Trust**
A Trustee must act in accordance with the terms of the Trust.
- 3 **Duty to act honestly and in good faith**
A Trustee must act honestly and in good faith.
- 4 **Duty to act to further the permitted purpose of the Trust**
A Trustee must hold or deal with the Trust Fund and otherwise act to further the charitable purposes in accordance with the terms of the Trust.
- 5 **Duty to exercise powers for a proper purpose**
A Trustee must exercise the Trustee's powers for a proper purpose.
- 6 **Modification of duty of care**
In administering the Trust (other than when exercising a discretion to distribute Trust property under clause 5.2 or 5.3), a Trustee must exercise the care and skill that is reasonable in the circumstances. However, a Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 6 is to be regarded as a modification of section 29 of the Trusts Act.
- 7 **Modification of duty to invest prudently**
In the exercise of the power of investment of Trust property, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others save to the extent that clauses 3.4 and 3.5 of the Second Schedule apply in which case the objectives of those clauses and the principles to be applied pursuant to those clauses shall constitute a modification of the duty. A Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 7 is to be regarded as a modification of section 30 of the Trusts Act.
- 8 **Modification of self interest duties**
The following duties:
 - (a) the duty in section 31 of the Trusts Act not to exercise a power directly or indirectly for the Trustee's own benefit;
 - (b) the duty in section 34 of the Trusts Act to avoid conflicts of interest;
 - (c) the duty in section 36 that a Trustee must not make a profit from the trusteeship of the Trust; and



- (d) the duty in section 37 that a Trustee must not take any reward for acting as a Trustee,

are modified pursuant to sections 5(4) and 5(5) of the Trusts Act. Each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee and receive reimbursement, remuneration, fees or other profit to the extent provided in clauses 11.2, 11.3, 11.4 and 11.7 of this deed provided the Trustee acts honestly and in good faith, in furtherance of the charitable purposes and otherwise discharges the duties set out in clauses 1 to 5 of this Schedule.

9 **Modification of duty to consider exercise of power**

Subject to clause 6.1(a) of this deed, a Trustee must actively and regularly consider whether the Trustee should exercise one or more of the Trustee's powers having regard to the nature of the power, the context of the Trust, the charitable purposes, the nature of the investments of the Trust and any other matters the Trustee considers relevant. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 9 is to be regarded as a modification of section 32 of the Trusts Act.

10 **Exclusion of duty not to bind or commit Trustees to future exercise of discretion**

The duty that a Trustee must not bind or commit the Trustees to a future exercise or non-exercise of a discretion is excluded. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 10 is to be regarded as an exclusion of section 33 of the Trusts Act.

11 **Modification of duty of impartiality**

In the exercise of a discretion to pay, apply or appropriate income or capital under clause 5.2 or 5.3, a Trustee may favour one or more charitable purposes over another notwithstanding that the exercise of the discretion may be directly or indirectly to the detriment of other charitable purposes. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 11 is to be regarded as a modification of section 35 of the Trusts Act.

12 **Duty to keep core Trust documents**

Each Trustee must keep, so far as is reasonable, the core trust documents relating to the Trust, as that term is defined in the Trusts Act and maintain a recordkeeping policy. For the avoidance of doubt, storing all such documents in an online document management system to which all Trustees have access will satisfy this duty.



SECOND SCHEDULE: TRUSTEES' SPECIFIC POWERS

The Trustees have power:

1 To raise funds

To raise money for the Trust by any and all lawful means as the Trustees may in their absolute discretion decide from time to time, including the conduct of fundraising campaigns, for the following purposes:

- 1.1 the charitable purposes of the Trust; and
- 1.2 the general funds of the Trust including funds for administration and other costs and expenses of the Trust.

2 To receive or refuse gifts

2.1 To receive solicited and unsolicited gifts of any real or personal property for the following purposes:

- (a) the charitable purposes of the Trust;
- (b) the general funds of the Trust including funds for administration and other costs and expenses of the Trust.

2.2 To refuse to accept any gift (including a Designated Gift) if they determine that it is in the best interests of the Trust to do so.

2.3 To accept a Designated Gift provided the Trustees:

- (a) keep that Designated Gift and any income derived from it separate from the general funds of the Trust;
- (b) administer it as a separate specific trust in terms of the trust under which it was given;
- (c) do not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other separate specific trust; and
- (d) ensure that each separate specific trust bears its own administration costs and expenses plus a fair proportion (as determined by the Trustees) of the administration costs and expenses applicable to the general purposes of the Trust.

3 To invest

3.1 To invest the Trust Fund, and the income from it, in any form of property with no parameters other than those contained in the Treasury Policy.

3.2 To transact and deal with any such investment in any manner as the Trustees may from time to time in their absolute discretion determine with no parameters other than those contained in the Treasury Policy, including, but without limitation:



- (e) to hold, retain, realise, sell, exchange and vary an investment;
- (f) to deposit all or part of the Trust Fund with any bank, trust company or other financial or investment institution in any jurisdiction in the world on any terms including on call or in an interest or non-interest bearing account and in any currency;
- (g) to open and maintain any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), to overdraw any such account with or without giving security and authorise any one or more of the Trustees and any delegate(s) named in writing by all the Trustees to operate any such bank accounts;
- (h) to retain any investment notwithstanding it may be or is of a wasting, speculative or reversionary nature, may not produce income or might be decreasing or not increasing in value; and
- (i) to enter into any financial arrangement including any swap, hedging, derivative or other speculative or similar arrangement.

3.3 To formulate an overall investment strategy, and exercise their powers of investment and make investment decisions from time to time pursuant to that strategy, having regard to any matters the Trustees consider appropriate in their absolute discretion including, but without limitation, the following matters:

- (a) the Treasury Policy;
- (b) the context and objectives of the Trust;
- (c) the desirability or otherwise of diversifying Trust investments without any obligation to diversify between types and nature of investments;
- (d) the nature of existing Trust investments and other Trust property;
- (e) any need to maintain the real value of the capital or income of the Trust;
- (f) the risk of capital loss or depreciation;
- (g) the potential for capital appreciation;
- (h) the likely income return;
- (i) the length of the term of the proposed investment;
- (j) the probable duration of the Trust;
- (k) the marketability of the proposed investment during, and on the expiry of, the term of the proposed investment;
- (l) the aggregate value of the Trust property;



- (m) the effect of the proposed investment in relation to the tax liability of the Trust; and
- (n) the likelihood of inflation affecting the value of the proposed investment or other Trust property.

3.4 Provided it is consistent with the Treasury Policy, in exercising their powers under clause 3 to clause 3.3 of this Schedule, the Trustees may apply a responsible investment approach as follows:

- (a) a values based approach to selecting investments may be utilised giving preference to investments that are perceived to have positive social, sustainable, environmental, ethical or other similar effects; and
- (b) investments may be rejected that the Trustees consider to have directly or indirectly harmful social, sustainable, environmental, ethical or other similar effects either by reference to industry or measured by ethical standards or environmental, social and governance ratings or performance may be rejected.

3.5 Provided it is consistent with the Treasury Policy, in exercising their powers under clause 3 to clause 3.3 of this Schedule, provided any such investment is consistent with the charitable purposes of the Trust, the Trustees may make investments with the intention of generating a measurable and beneficial social and/or environmental impact alongside a financial return where the following criteria are present:

- (a) the investments require intentionality to the effect that an investment must be intended to have a clearly identified and positive social, sustainable or environmental impact;
- (b) the investments are expected to generate a financial return on capital, or at a minimum, a return of capital although targeted returns may be concessionary or otherwise lower than other investments;
- (c) the investee commits to measure and report on the performance and progress of the investments against the desired social, sustainable or environmental impacts, on such terms and as required by the Trustees from time to time.

3.6 To appoint any person as an investment manager to invest and manage all or any investments forming part of the Trust Fund in accordance with the overall investment strategy and any investment decisions made by the Trustees from time to time on such terms as the Trustees may from time to time in their absolute discretion determine, including regular review of the investment manager's performance, under clause 10.5 of this Schedule.

4 **To determine treatment of returns (income and capital) and apportionment**

4.1 For the purposes of distribution, and of preparing and completing financial statements for the Trust, to determine whether a return on an investment is to be treated as income or capital.



- 4.2 To determine which expenses should be paid out of income and capital respectively and to apportion any receipt or outgoing relating to any period of time between the income and capital accounts, or charge any outgoing or credit any receipt exclusively to or from income or capital, transfer funds between capital and income accounts to recover or reimburse an outgoing previously charged to the account that is to receive the funds or recover or deduct any receipt previously credited to the account from which the funds are to be recovered, and deduct from income an amount to meet the cost of depreciation, and add the amount to capital.
- 4.3 To set up and maintain any depreciation or replacement funds for any purpose and determine the amount of income to be credited from time to time to any of those funds and whether those funds are income or capital.
- 4.4 A determination or apportionment under this clause 4 will be final and binding on all persons interested in the Trust Fund.

5 **To borrow and give security**

- 5.1 To borrow any money at such rate of interest and on such other terms and conditions as the Trustees may from time to time in their absolute discretion determine, including giving security for repayment over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the borrowing.
- 5.2 To give any guarantee or indemnity on such terms and conditions as the Trustees may from time to time in their absolute discretion determine, including giving security for the guarantee or indemnity over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the guarantee or indemnity.

6 **To lend**

- 6.1 To make any loans or advances (with or without security and with or without payment of interest) to any person, in such manner and on such terms and conditions as the Trustees may from time to time in their absolute discretion determine.
- 6.2 To do any of the following in relation to any debts owing to the Trustees on such terms and conditions as the Trustees may from time to time in their absolute discretion determine:
 - (a) waive any debts due to the Trust Fund, either absolutely or in part;
 - (b) accept any property before the time at which it is transferable or payable;
 - (c) pay or allow any debt or claim on any evidence which they may think sufficient;
 - (d) accept any composition or any security for any debt or any property due to or claimed by the Trustees;
 - (e) allow any time for payment of any debt; and



- (f) compromise, compound, abandon, or otherwise settle any debt, account, claim or otherwise relating to the Trust Fund including in any circumstance that may result in a loss to the Trust Fund.

7 To hold and deal with real and personal property

To do any of the following in relation to any real or personal property on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:

- (a) purchase as an asset of the Trust Fund any real or personal property or interest in property;
- (b) sell any real or personal property forming part of the Trust Fund, including, without limitation, allowing all or part of the purchase price to remain on loan, with or without security and with or without payment of interest, or to be payable by instalments;
- (c) postpone the sale of any real or personal property forming part of the Trust Fund for any period including in relation to any property that may be decreasing or not increasing in value or not producing any income;
- (d) let or licence any real and personal property, waive any breaches and accept surrenders of and terminate any leases, licences and tenancies;
- (e) subdivide and/or develop any real property forming part of the Trust Fund;
- (f) maintain, manage and improve any property, or any interest in any property;
- (g) grant, acquire, dispose of and exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any sale, lease, exchange or other disposition; and
- (h) enter into any type of contract whatever to protect, maintain or enhance the value of any real or personal property acquired or held by the Trustees or which they have the right to acquire or hold.

8 To insure

To insure any insurable Trust property to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against any risk including but without limitation, destruction or damage by fire, earthquake and fire following earthquake and pay the premiums out of income or capital, in each case on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine.

9 To carry on business

- 9.1 To carry on any business, whether through a company, in partnership, limited partnership, joint venture or otherwise and generally to act in relation to that



business in any manner the Trustees may from time to time in their absolute discretion determine, including, but without limitation:

- (a) to promote, form or concur in forming a company or companies for any purpose, including the purpose of acquiring any business or the assets of any business;
- (b) to use any part of the Trust Fund as capital in the business through shares, notes, stock or debentures or other forms of equity or proprietorship, advances, loans, deposits or otherwise (with or without security and with or without payment of interest);
- (c) to employ in any business such managers, agents, employees and other persons (including any Trustee subject to clause 11.7 of this deed);
- (d) in respect of any company in which the Trust Fund has any interest, act as a director of the company and subject to clause 11.7, receive and retain director's fees or other remuneration for acting as a director without having to account to the Trust Fund, unless the Trustees otherwise require;
- (e) to concur in the winding up, reconstruction or amalgamation of any company; and
- (f) to concur in the dissolution of any partnership, limited partnership or joint venture.

9.2 To determine in their absolute discretion whether any business losses in any year are to be borne by the capital of the Trust Fund or recouped out of later profits and in each year, and to distribute the net annual profits from any business as income without making good any earlier business losses.

9.3 In the sale of any business to a company, to accept payment for all or part of the purchase price in ordinary, deferred or preference shares (whether fully paid or partly contributory) or debentures or debenture stock of such company.

9.4 Notwithstanding that the Trust Fund owns a majority interest in any company, the Trustees may leave the conduct of the business of the company wholly to the officers of the company (including the payment of dividends or any distributions or other payments) and will not be bound to participate in, or interfere in, the management or conduct of any such company, or obtain additional information regarding the affairs of the company over and above the information that would ordinarily be available to a shareholder in the ordinary course of business, provided the Trustees have no notice of any misconduct on the part of the officers of the company.

10 **To appoint persons to exercise or perform certain powers or functions**

10.1 On such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:



- (a) to appoint a person to exercise or perform, on behalf of the Trustees, specified powers or functions in relation to the Trust;
- (b) to appoint a person to make specified decisions in relation to all or part of the Trust property;
- (c) to appoint an eligible person to hold or deal with all or part of the Trust property as nominee or custodian and vest all or part of the Trust property in that person.

10.2 For the purposes of clause 1.1(c) of this Schedule, an eligible person means:

- (a) a person who carries on a business that consists of or includes acting as a nominee or custodian; or
- (b) a body corporate in which the Trustees have a controlling interest or the capacity to determine the outcome of decisions about the body corporate's financial and operating policies; or
- (c) an incorporated law firm.

10.3 However, the Trustees may not appoint a person under clause 10.1 of this Schedule to exercise or perform any of the following powers or functions:

- (a) a function that is, or is related to, the determination of whether, when, or in what way any Trust property should be distributed, used, possessed, or otherwise applied to any charitable purpose;
- (b) the powers to determine whether a return on investment is to be treated as income or capital, which expenses should be paid out of income and capital and apportionments of receipts and outgoings under clause 4 of this Schedule;
- (c) a power to appoint or remove a Trustee;
- (d) a power to resettle the Trust, or to amend, revoke, or replace all or any terms of the Trust;
- (e) a right to apply to the court; and
- (f) the Trustees' powers under clause 10.1 of this Schedule and any other power conferred by statute or the terms of the Trust that are exercisable only by the Trustees personally.

10.4 The terms of appointment of any person appointed under clause 10.1 of this Schedule will include that the person appointed does not take on the duties of the Trustees, but must act in accordance with the terms of the appointment and with any directions of the Trustees and is liable to the Trustees for any failure to comply with those terms or directions.



- 10.5 Having made an appointment under clause 10.1 of this Schedule, the Trustees must keep the arrangements, and how those arrangements are being put into effect, under review and if the circumstances make it appropriate to do so, consider whether they should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the appointment.
- 10.6 The Trustees will not be liable for any act or default of any person appointed under clause 10.1 of this Schedule, unless the Trustees failed in any duty under clause 10.3 and the First Schedule in appointing the person or failed to fulfil the obligations in clause 10.5 of this Schedule.
- 10.7 The act of an appointee appointed under clause 10.1 is not invalid by reason only of any defect in the appointment.

11 **To appoint special trust advisers**

- 11.1 To appoint, on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine, a special trust adviser to advise the Trustees on any matter relating to the Trust and any special trust adviser so appointed may be removed by the Trustees at any time.
- 11.2 The Trustees may consult a special trust advisor on any matter relating to the Trust but are not required to follow the special trust adviser's advice.
- 11.3 The Trustees will not be liable for any act or omission as a result of following the special trust adviser's advice unless the act or omission involves the Trustees' dishonesty, wilful misconduct or gross negligence.
- 11.4 If a special trust adviser disagrees with, or objects to, a proposed action by a Trustee, such disagreement or objection will not affect a person dealing with the Trustee in the matter.
- 11.5 A special trust adviser is not a Trustee and does not have the powers or duties of a Trustee.
- 11.6 A special trust adviser may be paid for the special trust adviser's services (provided remuneration is payable to a Trustee). The remuneration paid will be fixed by the Trustees from time to time.

12 **To enter into and vary contracts**

On such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:

- (a) to enter into any type of contract, commitment, arrangement or understanding to assume or reallocate risk, rewards, rights or obligations; and
- (b) to vary, assign, novate, waive, terminate or otherwise deal with any contract, commitment, arrangement or understanding to which the Trustees are party.



- 13 **To take legal, financial or other professional advice**
To take legal, financial or other professional advice in New Zealand or elsewhere on any matter relating to the Trust, the Trust Fund or to the Trustees' duties and powers, and in all matters to act in accordance with that advice.
- 14 **To change the Balance Date**
To change the Balance Date to any other date unanimously approved by the Trustees provided all regulatory approvals to do so have been obtained.
- 15 **To enter into alternative dispute resolution**
- 15.1 To agree that any dispute that may give rise to legal proceedings, or any legal proceeding relating to the Trust, the Trust Fund or to the Trustees' duties and powers, and brought by or against a Trustee, between a Trustee and a third party or between two or more Trustees, may be referred to an alternative dispute resolution process designed to facilitate the resolution of the matter.
- 15.2 Any agreement to enter into an alternative dispute resolution process under this clause 15 will be on such terms and conditions as the Trustees may from time to time in their absolute discretion agree with any other party to the dispute.
- 15.3 The Trustees will be under no obligation to agree to any alternative dispute resolution process notwithstanding the power to do so under this clause 15.
- 15.4 To take all steps necessary or desirable in the Trustees' absolute discretion to reach agreement on any matter referred to an alternative dispute resolution process including, without limitation:
- (a) payment from the Trust Fund of all or any costs and expenses in relation to the alternative dispute process;
 - (b) entering into an enforceable settlement agreement on such terms and conditions as the Trustees in their absolute discretion agree; and
 - (c) giving binding undertakings in relation to the matter.



THIRD SCHEDULE: RULES GOVERNING THE PROCEEDINGS OF THE TRUSTEES

1 Validity of Proceedings

- 1.1 Where, for any reason, a Trustee is not properly appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which he or she was present as a Trustee or committee member) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).
- 1.2 If at any time the Trustees number less than the minimum number of Trustees required by the Trust Deed, anything done by the continuing Trustees in accordance with the provisions of the Trust Deed pending the appointment of a new Trustee or Trustees shall be as valid as if the requirement for a minimum number of Trustees had been met during that period.

2 Meetings

- 2.1 The Board shall meet as often as it considers desirable for the efficient and proper conduct of the affairs of the Trust, but in any event at least twice in each Income Year.
- 2.2 A special meeting may be called at any time by any two or more Trustees.
- 2.3 A meeting of Trustees may be held either:
 - (i) by the Trustees meeting in person; or
 - (ii) by the contemporaneously linking together of the Trustees by telephone or other means of audio or audio and visual communication by which all participating Trustees can simultaneously hear or hear and see each other provided each participant acknowledges their presence at the beginning of the meeting to all the others taking part and is able to hear or hear and see each of the other participants taking part for the duration of the meeting.
- 2.4 Provided the requirements of Rule 2.4 are met, a participant will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless and until they leave the meeting with the chairperson's consent.

3 Quorum

The quorum for all meetings shall be a simple majority of Trustees appointed.

4 Notice of meetings

- 4.1 A meeting of Trustees may be called by:
 - (i) the chairperson at any time by written notice to each Trustee at least 5 business days before the date of the meeting;
 - (ii) the secretary or other officer at the direction of the chairperson by written notice to each Trustee at least 5 business days before the date of the meeting; or



(iii) a majority of Trustees acting together by written notice to every other Trustee at least 5 business days before the date of the meeting.

4.2 Every notice of a meeting will state the place, day and time of the meeting and the business to be transacted at the meeting.

4.3 The requirement for notice of a meeting may be waived by consent of all Trustees.

5 **Interested Trustees**

Save as otherwise expressly provided in this deed, a Trustee who is interested (as that term is defined in clause 11.2 of this deed) in a transaction entered into, or to be entered into, by the Trust may not vote on a matter relating to the transaction but may sign a document relating to the transaction on behalf of the Trust.

However such a Trustee may, subject to the consent of the other Trustees present at the meeting, attend or continue attendance at a meeting of Trustees at which a matter relating to the transaction is discussed in accordance with the provisions of clause 11.2(b) of this deed relating to such attendance.

6 **Chairperson**

6.1 The chairperson appointed by the Board shall be appointed for a term of one year and shall accordingly resign from office at the annual general meeting of the Trust held closest to the first anniversary of his or her appointment. A chairperson who resigns shall be eligible for re-appointment for a further term or terms.

6.2 Where the chairperson resigns under rule 6.1, the Board shall have the power to appoint or re-appoint a chairperson.

6.3 The chairperson shall take the chair at all the meetings of the Board but shall not have a casting vote. If the chairperson cannot be present, or is not present within 10 minutes of the time appointed for any meeting, the Trustees present shall elect one of their number to be chairperson of the meeting.

7 **Adjournment**

If a quorum is not present within 30 minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. The chairperson may adjourn any meeting on the adoption of a resolution for its adjournment.

8 **Committees**

8.1 The Board may appoint sub-committees, ad hoc committees or executive committees as they may from time to time think expedient for carrying out the purposes of the Trust. Any such committee may co-opt any other person, whether a Trustee or not, to be a member of that committee. Subject to these rules and to any directions that the Board might give, each committee may regulate its own procedure.

8.2 Each committee will report to the Board at each meeting of the Board (or as the Board may otherwise direct) on their activities and any other relevant matter as the Board may direct.



- 2.1 Having made an appointment under this clause, the Board must keep the affairs of the committee under review and if the circumstances make it appropriate to do so, consider whether they should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the committee.

9 **Appointment of officers and others**

The Board may appoint such officers or employees that the affairs of the Trust may require on such terms and conditions as it thinks fit. The Board may also remove and replace any persons so appointed.

10 **Resolutions**

- 10.1 Except where these rules or the Trust Deed provide otherwise, a resolution is validly made when it is passed by the majority required under Rule 10.2 or 10.3 (as the case may be) of the Trustees present and voting at a duly convened and conducted meeting of the Board or of a committee (as the case may be) at which a quorum is present, each Trustee having one vote.

- 10.2 An ordinary resolution is a resolution passed by a simple majority of those Trustees of the Trust present and entitled to vote.

- 10.3 A special resolution is a resolution passed by at least 75 percent of those Trustees of the Trust present and entitled to vote.

- 10.4 The Trustees may vary or cancel any resolution at a meeting.

- 10.5 A written resolution recorded in writing or electronic form signed or assented to by all the Trustees or by all the members of a committee in one or more counterparts (as the case may be) shall be as effective for all purposes as an ordinary or special resolution of the Board or of that committee (as the case may be). Such a resolution may comprise several duplicated documents or emails or similar electronic communication.

- 10.6 Where a written resolution has been recorded in accordance with Rule 8.5 above then, until the contrary is proved, the written resolution will be deemed to have been properly passed.

11 **Minutes**

- 11.1 The Board shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Board.

- 11.2 Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting, having been approved by ordinary resolution, shall be evidence of those proceedings.

- 11.3 Where minutes of the proceedings at a meeting of the Board have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.



- 12 **Annual General Meeting of Trustees**
Within four months of the end of each Income Year (or such other period as the Board may determine) the Board shall hold the annual general meeting of the Trust at which the Board shall present a report dealing with the affairs of the Trust, supported by a statement of the Trust's income and expenditure during the previous Income Year and a statement of its assets and liabilities at the end of that Income Year. The annual general meeting may be combined with an ordinary meeting of the Board if the Board so determines.
- 13 **Annual Report to Diocesan Council**
The Board shall provide a copy of its annual report to the Diocesan Council.
- 14 **Annual Report to Synod**
The Board must present to the Synod at each annual session of the Synod a report on the activities of the Auckland City Mission (Te Tāpui Atawhai) for the preceding year together with the audited financial statements.
- 15 **Audit**
The Board must ensure that the financial statements of the Trust for each Income Year are audited by a chartered accountant in public practice in time to be available for the annual general meeting under rule 12 of this Schedule. The person appointed as auditor must not be a Trustee.
- 16 **Control of funds**
All money received by or on behalf of the Trust shall be paid immediately to the credit of the Trust in an account or accounts with a Bank or Banks selected from time to time by the Board. All cheques and other negotiable instruments, withdrawal slips and receipts for money shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) on behalf of the Trust by at least two of the persons authorised from time to time under clause 20 of the *First Schedule* to operate the Trust's bank account(s) or otherwise in such manner as the Board may decide from time to time.



EXECUTION

Signed by **Elana Curtis**

in the presence of:

Name:

Occupation:

Address:

Signed by **Lyndon Drake**

in the presence of:

Name:

Occupation:

Address:

Signed by **Linley Wood**

in the presence of:

Name:

Occupation:

Address:

Signed by **Evan Davies**

in the presence of:

Name:

Occupation:

Address:

Signed by **Graeme Birkhead**

in the presence of:

Name:

Occupation:

Address:

Signed by **Gavin Rennie**

in the presence of:

Name:

Occupation:

Address:



Signed by **Joanna Maree Pidgeon**

in the presence of:

Name:

Occupation:

Address: