

**DIABETES NEW ZEALAND
AOTEAROA
DEED OF CHARITABLE TRUST**

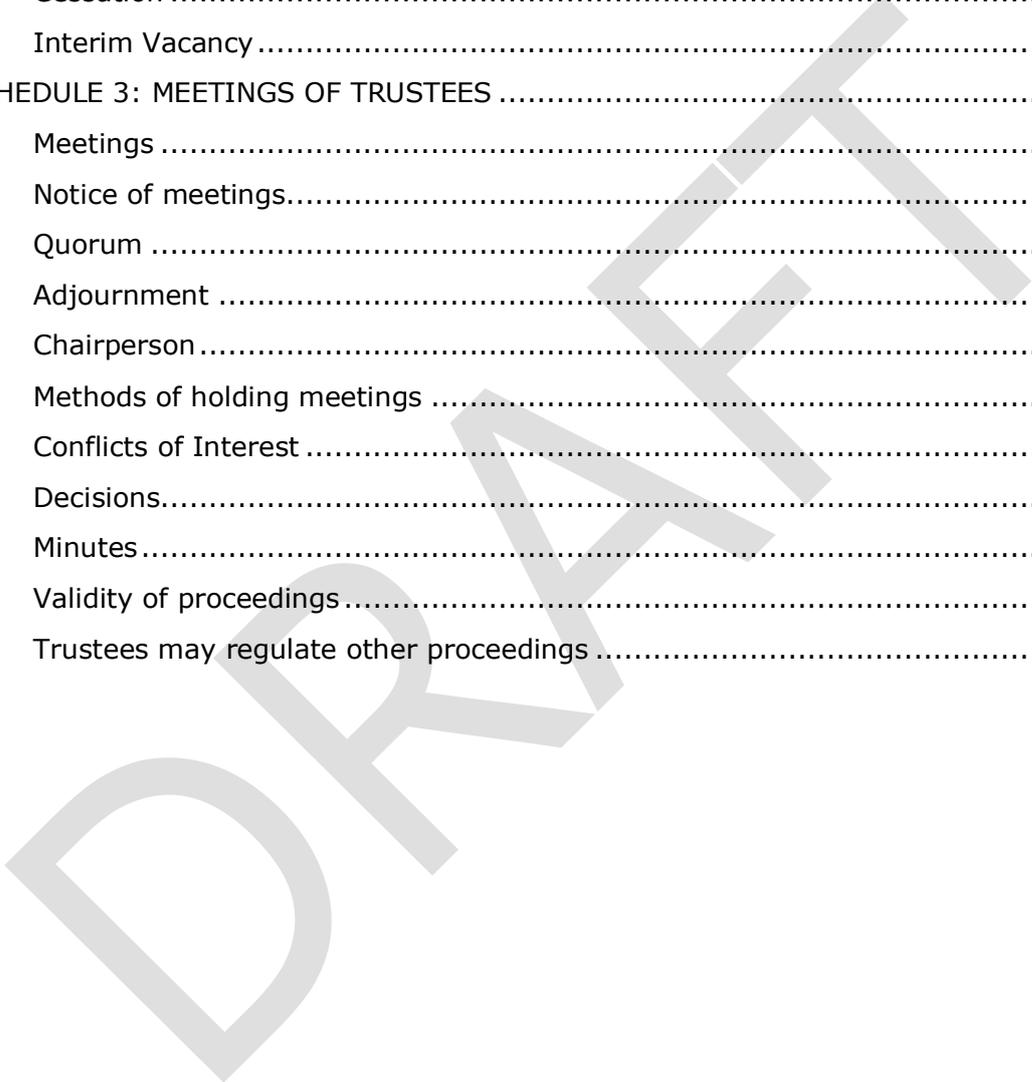
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DIABETES NEW ZEALAND AOTEAROA – DEED OF CHARITABLE TRUST

Date: 2018

PARTIES:

Diabetes New Zealand Incorporated, a society duly incorporated under the Incorporated Societies Act 1908 #217174, and a charity duly registered under the Charities Act 2005 #CC11432 (“**the Settlor**”); and

[insert full name of trustee1] of [place], [occupation], [insert full name of trustee2] of [place], [occupation], [insert full name of trustee3] of [place], [occupation], [insert full name of trustee4] of [place], [occupation], [insert full name of trustee5] of [place], [occupation], [insert full name of trustee6] of [place], [occupation], [insert full name of trustee7] of [place], [occupation], and [insert full name of trustee8] of [place], [occupation] (“**the Initial Trustees**”)

BACKGROUND

- A The Settlor was originally incorporated in 1969 for charitable purposes related to representing and supporting people affected by diabetes. The mission of the Settlor is that every person in New Zealand affected by, or at risk of, diabetes has access to the information and support needed to manage their health and well-being.
- B At the Annual General Meeting of the Settlor held on [insert date], the members of the Settlor resolved that the best way to further the charitable purposes of the Settlor, both now and into the future, would be to restructure as a charitable trust.
- C To this end, the Settlor wishes to establish a charitable trust, to be known as *Diabetes New Zealand Aotearoa*, to give effect to the charitable purposes set out in this deed.
- D On signing this deed, the Settlor has paid \$10 to the Trustees to be held by them as trustees, upon the trusts and with the powers set out in this deed.

NOW THIS DEED RECORDS:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this deed, unless the context requires otherwise:

Advisory Council means the advisory council of Diabetes New Zealand Aotearoa under clause 21 (*Advisory Council*);

Advisory Council Appointment Policy means the policy determined by the Board from time to time for the identification and assessment of suitable candidates and for the appointment of members of the Advisory Council as envisaged by clause 21 (*Advisory Council*);

Associated, and other expressions indicating the association of persons with each other, have the meanings given by section YA 1 of the Tax Act;

Audit and Risk Committee means the audit and risk committee of the Board appointed under clause 14(a) (*Power to delegate*);

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

Board means the board of Trustees incorporated under the Charitable Trusts Act in accordance with clause 3.1 (*Incorporation under the Charitable Trusts Act*), and comprises the persons who are, from time to time, the Trustees of the Trust;

Branch has the meaning given by clause 18 (*Branches*);

Chair of the Advisory Council has the meaning given by clause 21.3 (*Chair of the Advisory Council*);

Chairperson has the meaning given by rule 5 of schedule 3 (*Chairperson*);

Charitable Trusts Act means the Charitable Trusts Act 1957;

Charities Act means the Charities Act 2005;

Chief Executive means the staff member employed under clause 15 (*Chief Executive*);

Community Diabetes Coordinator has the meaning given by clause 20.2 (*Regions*);

Designated Gift means a gift which is subject to a trust for a specific purpose that comes within the charitable purposes of the Trust Fund;

Diabetes New Zealand or *Diabetes New Zealand Aotearoa* means the charitable trust created by this deed;

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

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

- (a) may derive a financial benefit from the Matter;
- (b) is the parent, child, or spouse of a person who may derive a financial benefit from the Matter; or
- (c) may have a financial interest in a person to whom the Matter relates;
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the Matter relates; or
- (e) is otherwise directly or indirectly interested in the Matter in a manner which may be seen as a possible influence on their deliberations and voting as Trustee, including, without limitation, being employed by any organisation offering or purchasing services to or from the Trust,

and *Interest* has a corresponding meaning;

Interests Register means the register of Trustees' Interests maintained under rule 7.3 of schedule 3 (*Conflicts of Interest*);

Intellectual Property means all rights and/or goodwill in any copyright works, business names, names, trademarks (or signs), logos, designs, patents, or service marks, or other forms of intellectual property developed and/or used by Diabetes New Zealand Aotearoa or relating to any event promoted or administered by Diabetes New Zealand Aotearoa;

Interim Vacancy has the meaning given by rule 6 of schedule 2 (*Interim Vacancy*);

Life Member means a person upon whom the status of life membership of the Trust has been conferred in accordance with clause 17.4 (*Life Membership*) or clause 17.3 (*Initial Membership*), and *Life Membership* has a corresponding meaning;

Local Advisory Committee has the meaning given by clause 19 (*Local Advisory Committees*);

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

Member has the same meaning as *Supporter*;

National Office means the Chief Executive and the national office employees of Diabetes New Zealand Aotearoa;

NZ Society for the Study of Diabetes Incorporated means the society of that name that is duly incorporated under the Incorporated Societies Act 1908 #218235;

Patron means a person appointed as a patron for the time being of the Trust under clause 23 (*Patron*);

Purposes means the purposes of Diabetes New Zealand Aotearoa as set out in clause 5 (*Purposes*);

Qualified Auditor has the meaning given to that term by section 42D of the Charities Act;

Region means a geographical area within New Zealand with boundaries as determined from time to time by the Board under clause 20 (*Regions*);

Registrar has the meaning given to that term by section 6 of the Charitable Trusts Act;

Related Person for the purposes of clause 6.4 (*Income, benefit or advantage*), and in relation to any business to which section CW 42 of the Tax Act applies, means a person specified in paragraphs (i) to (iv) of subsection 5(b) of that section, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on; or
- (b) a shareholder or director of the company by which the business is carried on;
or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) a person Associated with a settlor, trustee, shareholder or director already mentioned in this definition;

Supporter has the meaning given by clause 17.1 (*Trustees may establish a Membership*);

Tax Act means the Income Tax Act 2007;

Teleconference Meeting means a meeting whereby the participants are contemporaneously linked by telephone, video link, or other means of instant audio, audio and visual, or electronic communication and whereby all participants can simultaneously hear each other throughout the meeting;

Trust means the charitable trust created by this deed;

Trust Deed means this deed;

Trust Fund means:

- (a) the sum of \$10 referred to in Background D of this deed; and
- (b) any money, investments, or other property which may be paid or given to, or acquired or agreed to be acquired by, the Trustees from any source whatever after this deed has been signed with the intention that it be held by the Trustees subject to the trusts and other provisions set out in this deed; and
- (c) unless inconsistent with the context, includes the income received from such money, investments or other property; and

Trustees means the trustees for the time being of the Trust Fund, whether Initial, additional, or substituted.

1.2 Construction

- (a) In the construction of this deed, unless the context otherwise requires:
 - (i) *charitable purpose* has the meaning given to that term in the Charities Act;
 - (ii) *clauses and schedules*: a reference to a clause or a schedule is to a clause or schedule of this deed, unless otherwise stated. The schedules to this deed form part of this deed;
 - (iii) *contents page and headings*: the contents page and the headings appear as a matter of convenience only and do not affect the construction of this deed;
 - (iv) *defined terms*: words or phrases appearing in this deed with capitalised initial letters are defined terms and have the meanings given to them by this deed. If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (v) *documents*: a reference to any document, including this deed, includes a reference to that document as amended or replaced from time to time;
 - (vi) *examples*: words such as *including* and *for example* are used to assist understanding and are not, and should not be interpreted to be, words of limitation, unless otherwise explicitly stated;
 - (vii) *person*: references to *persons* include natural persons, firms, corporations sole, bodies corporate, corporations, unincorporated associations, and authorities, and *firm* includes partnership. A reference to a *person* includes the legal personal representatives, successors and permitted assigns of that person;
 - (viii) *rules*: in the interpretation of each schedule, a reference to a rule is to a rule of that schedule;
 - (ix) *singular, plural and gender*: the singular includes the plural and *vice versa*, and words denoting any gender include all genders;
 - (x) *spouses*: a reference to a *spouse* includes a civil union partner or a de facto partner; and
 - (xi) *statutes and regulations*: a reference to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

- (b) If there is a conflict between the rules contained in the schedules and the other provisions of this deed, the provisions of this deed shall prevail.

2 CREATION OF THE TRUST

2.1 Settlement

The Settlor settles the sum of \$10 on the Trustees as an initial settlement on the Trust.

2.2 Declaration of trust

The Trustees acknowledge and declare that they hold the Trust Fund upon the trusts, for the charitable purposes, and otherwise in accordance with the powers and duties contained or implied in this deed.

2.3 Name of trust

The trusts created by this deed shall be known as *Diabetes New Zealand Aotearoa*, or by such other name as the Trustees may determine by resolution from time to time.

2.4 Registered office

The registered office of the Trust shall be at level 7, 15-17 Murphy Street, Thorndon, Wellington 6011, New Zealand, or such other place as the Trustees may determine by resolution from time to time.

3 REGISTRATION

3.1 Incorporation under the Charitable Trusts Act

The Trustees will apply for incorporation as a board under the Charitable Trusts Act, under the name *Diabetes New Zealand Aotearoa*, or such other name as approved by the Registrar of Incorporated Societies.

3.2 Registration under the Charities Act

The Trustees will apply for registration as a charitable entity under the Charities Act. If and while so registered the Trustees will comply with the requirements of the Charities Act.

4 PRINCIPLES

All persons connected with the Trust shall endeavour, in all their dealings with each other, to:

- (a) show the utmost respect for the other's role and the commitment of all people involved at every level of Diabetes New Zealand Aotearoa including employees;
- (b) be proactive and collaborative in promoting good governance and management, and developing activities and resources that facilitate good management and ease of operations at every level of Diabetes New Zealand Aotearoa;
- (c) look wherever possible to co-operate and enhance their relationships;
- (d) maintain effective and timely communication and, where appropriate, provide reasonable opportunity for input, especially by Branches and Local Advisory

Committees in areas of Diabetes New Zealand Aotearoa or regional operations that affect them so that, where reasonably possible, decisions of the Board affecting Branches and Regions and arrived at through appropriate consultation, collaboration and involvement; and

- (e) be open and transparent with one another and endeavour to work through any differences always to achieve the Purposes and the best result for people affected by diabetes.

5 PURPOSES

5.1 Charitable purposes

The activities of the Trust are to be carried out, and the Trust Fund is to be applied, for exclusively charitable purposes, including, without limitation, to:

- (a) support and assist people affected by diabetes to better manage diabetes and to promote this as a complementary activity to clinical care;
- (b) ensure that people affected by diabetes have the understanding to best manage diabetes;
- (c) raise the awareness of diabetes and its complications and to increase the early diagnosis of all types of diabetes;
- (d) reduce the incidence and impact of diabetes by working as part of a holistic public health approach towards prevention of diabetes and all its complications;
- (e) be recognised by all stakeholders and act as the advocacy body for all people affected by, or at risk of being affected by, diabetes;
- (f) promote and support research for a cure for all types of diabetes; and
- (g) further such other related purposes, which are charitable according to the law of New Zealand, as the Trustees in their discretion think fit.

5.2 Means of achieving purposes

The Board may, in order to achieve or advance the Purposes of the Trust, but without limiting any of their powers under this deed or generally:

- (a) raise funds as needed to advance the Trust's charitable purposes, including by means of donations, subscriptions, fees, levies, grants, bequests, entry or user charges, sponsorship, government funding, community funding or otherwise;
- (b) act as the national organisation for people affected by diabetes in New Zealand;
- (c) determine the methods and structures to deliver national, regional and local benefits and to obtain national, regional and local coverage;
- (d) produce, develop, create, licence and otherwise exploit, use and protect Intellectual Property;
- (e) establish, acquire or have interests in incorporated entities, trusts or other entities and utilise the assets of Diabetes New Zealand Aotearoa in, through, or with them;

- (f) be a member of or affiliate to and/or be associated in any way with any person which has objects which are similar in whole or in part to the Purposes in New Zealand and/or internationally;
- (g) produce, publish and distribute any communications, newsletters or publications; and
- (h) undertake such other activities as the Trustees determine from time to time will achieve or advance the charitable purposes of the Trust.

5.3 Charitable requirement

All Purposes are charitable within the meaning of the law of New Zealand from time to time, and any purposes which do not qualify as charitable are secondary and are only undertaken to pursue those that are charitable. The Board shall not do anything that prejudices in any way the charitable nature of the Purposes.

5.4 Limitation to New Zealand

The Board shall ensure that the Trust Fund is applied wholly or mainly to charitable purposes within New Zealand.

5.5 Political restriction

The Board may not engage in partisan political activity. For example, the Board may not participate in, or intervene in (including by way of publishing or distributing any statements), any political campaign on behalf of or in opposition to any candidate for public office.

6 APPLICATION OF TRUST FUNDS

6.1 Charitable purpose

The Trust Fund shall be applied solely in furtherance of the charitable purposes of the Trust.

6.2 Application or accumulation

Subject to this deed, the Board may, in any Financial Year:

- (a) use or apply, or decide not to use or apply, all or any of the income of the Trust Fund;
- (b) use or apply any capital of the Trust Fund, without first using or applying the whole or any portion of the income of the Trust Fund for that year; and
- (c) set aside reserves or accumulations for future use or application,

and shall do so in such proportions as the Board thinks fit, provided that all such decisions shall be made towards the fulfilment of all or any of the charitable purposes of the Trust.

6.3 No private pecuniary profit

No private pecuniary profit shall be made by any person from the Trust, and no portion of the Trust Fund shall be paid or transferred directly or indirectly to any Trustee, or to any person Associated with a Trustee, except that:

- (a) any Trustee or other officer of the Trust may receive full reimbursement for all reasonable expenses properly incurred by that officer in connection with the affairs of the Trust;
- (b) the Board may pay reasonable remuneration to any individual (whether an officer of the Trust or not) in return for services actually rendered to the Trust; and
- (c) any officer of the Trust may be paid reasonable professional, business or trade charges for services rendered, time expended and all acts done by that officer (or by any firm or entity of which that officer is a member, employee or Associated) in connection with the affairs of the Trust.

This clause 6.3 is subject to clause 6.5 (*Restrictions imposed on payments*).

6.4 Income, benefit or advantage

No Related Person shall derive any amount, benefit or advantage from the Trust where they are, in any way, whether directly or indirectly, able to determine, or materially influence the determination of, the nature or extent of that amount, benefit or advantage, or the circumstances in which that amount, benefit, or advantage is, or is to be, given or received, except where:

- (a) that amount, benefit or advantage is derived from professional services to the Trust, rendered in the course of business charged at no greater than current market rates; or
- (b) otherwise permitted by section CW 42 of the Income Tax Act.

6.5 Restrictions imposed on payments

In determining all reimbursements, remuneration and charges payable in terms of this deed, the restrictions imposed by this clause 6 must be strictly observed. In particular, any payments made must be for goods or services that advance the charitable purposes of the Trust and must be reasonable and commensurate with payments that would be made between unrelated parties.

6.6 Receipts for payments made

The receipt of the secretary, treasurer, or other person 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.

7 INVESTMENT AND BORROWING

- (a) **Power to invest:** subject to clause 11.2 (*Investment duty*), the Board may from time to time invest all or any part of the Trust Fund in investments that are permitted by the law of New Zealand for the investment of trust funds.
- (b) Subject to this clause 7, the Board may from time to time, by resolution, decide the policy concerning the investment of money by the Trust, including what type of investment will be permitted.
- (c) When exercising any power of investment in relation to the Trust Fund, the Board shall have regard to any policy or statement adopted by the Board in accordance with clause 7(b).

- (d) The Board may engage the services of accredited professional investment advisers, as required, to assist with the investment of money of the Trust in accordance with any policy or statement adopted by the Board in accordance with clause 7(b).
- (e) **Power to borrow:** the Board may at any time and from time to time borrow and raise money for any of the purposes of the Trust and secure the repayment of money so borrowed and interest thereon by mortgage or charge over all of any of the assets of the Trust Fund, and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

8 RECEIPT OF GIFTS

8.1 Receipt of gifts

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

8.2 Separate specific trusts

- (a) If the Board accepts a Designated Gift, the Board 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 under the 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 Trustees) of the administration expenses applicable to the general purposes of the Trust.

9 APPOINTMENT, REMOVAL, AND RETIREMENT OF TRUSTEES

Provisions dealing with the appointment, removal, and retirement of Trustees are set out in schedule 2 (*Appointment, removal, and retirement of Trustees*).

10 MEETINGS OF TRUSTEES

Provisions dealing with meetings of Trustees are set out in schedule 3 (*Meetings of Trustees*).

11 DUTIES OF THE TRUSTEES

- 11.1 For the avoidance of doubt, the Trustees are subject to all the duties imposed on trustees by law, including, without limitation:
 - (a) a duty to act honestly and in good faith;
 - (b) a duty to act in the best interests of the charitable purposes of the Trust, as set out in clause 5.1 (*Charitable purposes*);
 - (c) a duty to know and act in accordance with the terms of the Trust Deed;
 - (d) a duty to exercise powers for a proper purpose;

- (e) a duty to act with reasonable care, diligence and skill;
- (f) a duty to disclose conflicts of interest in accordance with rule 7 of schedule 3 (*Conflicts of Interest*);
- (g) a duty to exercise governance, and to perform their responsibilities in a prudent manner;
- (h) a duty to devote adequate and sufficient time, attention and resources to carry out the obligations under the Trust Deed to ensure that the Trust achieves its objectives; and
- (i) such other duties as may be set out in policies approved by the Trustees from time to time.

11.2 **Investment duty:** subject to the provisions of this deed, when exercising any power of investment in relation to the Trust Fund, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard in particular -

- (a) to any special knowledge or experience that the Trustee has or holds themselves out as having; and
- (b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

11.3 In addition to the duties set out in clauses 11.1 and 11.2, Trustees must demonstrate high ethical standards and integrity in their personal and professional dealings, and be willing to act on, and remain collectively accountable for, all Board decisions.

12 ROLE AND RESPONSIBILITIES OF THE BOARD AND TRUSTEES

12.1 The Board is responsible for providing good governance to Diabetes New Zealand Aotearoa, including by:

- (a) establishing a strategic plan for Diabetes New Zealand Aotearoa;
- (b) monitoring and reviewing the performance of Diabetes New Zealand Aotearoa against the strategic plan;
- (c) preparing financial budgets for Diabetes New Zealand Aotearoa activities;
- (d) receiving, reviewing and approving and annual business plan and financial budget;
- (d) monitoring the performance of Diabetes New Zealand Aotearoa against the annual business plan and financial budget;
- (e) approving annual financial statements;
- (f) addressing the ongoing viability and sustainability of Diabetes New Zealand Aotearoa;
- (g) monitoring regulatory compliance for Diabetes New Zealand Aotearoa;
- (h) establishing, reviewing, and monitoring policies for the good governance and guidance of Diabetes New Zealand Aotearoa;

- (i) fostering interaction and communication across the Diabetes New Zealand Aotearoa family and others involved with Diabetes New Zealand Aotearoa;
- (j) appointing, monitoring and reviewing the Chief Executive and setting performance and compensation policy for Diabetes New Zealand Aotearoa employees;
- (k) recognising and supporting the role of the Advisory Council;
- (l) adopting and communicating a continual best practice performance culture and supporting programmes across Diabetes New Zealand Aotearoa nationally;
- (m) having full insight and understanding of all significant transactions across Diabetes New Zealand Aotearoa;
- (n) being accountable for its performance to the Supporters; and
- (o) undertaking any other matters covered by policies set by the Board.

12.2 The Board must, at periods of not more than 3 years, review all Board policies.

12.3 In addition to meeting the duties of Trustees set out in clause 11 (*Duties of Trustees*), Trustees are expected to:

- (a) devote sufficient time, attention and resources to carrying out their obligations to ensure that Diabetes New Zealand Aotearoa achieves its Purposes;
- (b) represent Diabetes New Zealand Aotearoa positively and actively seek opportunities that further the aspirations and Purposes of Diabetes New Zealand Aotearoa; and
- (c) attend all Trustee meetings prepared to fully participate in the business of the Board. If unable to attend, a Trustee shall notify the Chairperson as soon as possible.

13 POWERS AND DISCRETIONS OF THE TRUSTEES

13.1 In addition to all the powers and discretions vested in the Trustees by law, but subject always to this deed and in particular clause 5 (*Purposes*):

- (a) the Trustees may always exercise the fullest possible powers and discretions as if the Trustees were the beneficial owner of the Trust Fund; and
- (b) all the powers and discretions of the Trustees may always be exercised by the Trustees in their absolute discretion and on such terms as the Trustees think fit.

13.2 In addition to clause 13.1, and to the powers set out in clauses 7 (*Investment and borrowing*) and 14 (*Power to delegate*), the Trustees have the powers set out in schedule 1 (*Powers*).

13.3 Exercise by the Trustees of their powers and authorities is subject to any restriction, obligation or trust applying to all or any part of the Trust Fund, including, without limitation, those set out in clauses 6 (*Application of Trust Funds*) and 8.2 (*Separate specific trusts*).

14 POWER TO DELEGATE

(a) The Board may, from time to time, by resolution, appoint any committee, and may delegate in writing any of its powers and duties to any such committee, or to any

person, whether or not a Trustee. Without limiting the generality of the foregoing, the Board shall establish an Advisory Council, an Audit and Risk Committee, such Local Advisory Committees, and any other committees it considers appropriate, in each case to carry out specific duties entrusted to it.

- (b) The Board may, in delegating its powers, provide restrictions or rules by or within which such delegated powers are to be exercised, which restrictions or rules may, for the avoidance of doubt, be contained within policies, guidelines or protocols.
- (c) Any committee or person to whom the Board has delegated powers shall be bound by the terms or conditions of the delegation set by the Board, and by the terms of this deed, including in particular the charitable purposes of the Trust.
- (d) Subject to clause 11(c), any person or committee to whom or which any powers of the Board have been delegated may conduct their affairs as that person or that committee may decide.
- (e) Any person or committee acting under delegated power shall be presumed to be acting within the terms of the delegation, in the absence of proof to the contrary.
- (f) All committee decisions shall be approved by the Board before they become effective or are implemented, unless the Board otherwise directs.
- (g) The Board may revoke, wholly or partly, any delegation of its powers at any time, and no such delegation shall prevent the exercise of any function or power, or the performance of any duty, by the Board.
- (h) Until such delegation is revoked, it shall continue in force according to its tenor, even if there is a change in the composition of the Board or of any committee.

15 CHIEF EXECUTIVE

- (a) Without limiting the generality of clause 14 (*Power to delegate*), the Board may employ a Chief Executive of the Trust, for such term and on such conditions as the Board may determine.
- (b) Subject to this deed and any applicable law, the Board may delegate to the Chief Executive such of its functions and powers as the Board considers appropriate and as may be agreed between the Board and the Chief Executive.
- (c) The Chief Executive may attend meetings of Trustees as requested by the Board but shall have no voting rights.
- (d) The Chief Executive shall attend Advisory Council meetings but shall have no voting rights. If the Chief Executive is unable to attend an Advisory Council meeting, the Chief Executive must endeavour to have a senior Diabetes New Zealand Aotearoa employee attend the meeting in the Chief Executive's absence.

16 ADVICE OF COUNSEL

If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister of the High Court of New Zealand of at least 7 years' standing. They may act upon the barrister's opinion without being liable to any person who may claim to be beneficially interested in respect of anything done in accordance with that opinion. This right to obtain and act upon a barrister's

opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

17 MEMBERSHIP

17.1 Trustees may establish a Membership

- (a) The Trustees may establish a Membership of persons, known as Supporters, who are interested in the charitable purposes of the Trust.
- (b) The Trustees may establish different categories of Membership, including such categories as donors, users of services, social media followers, as the Trustees consider appropriate in furtherance of the charitable purposes of the Trust.

17.2 Eligibility for Membership

- (a) Membership is open to everyone.
- (b) Subject to clause 17.3 (*Initial Membership*), to become a Supporter of the Trust, an applicant must:
 - (i) complete an application for Membership form, or otherwise supply such information as may be required by the Board; and
 - (ii) be accepted into Membership by the Board.
- (c) The Board has absolute discretion as to whether or not to admit the applicant to Membership.
- (d) The Board shall maintain a database of Supporters and other persons referred to the Trust and shall, subject to the Privacy Act 1993, provide contact details to Local Advisory Committees as appropriate to enable the Local Advisory Committee to communicate with persons in the local area who are interested in the work of the Trust.

17.3 Initial Membership

At the date of commencement of the Trust:

- (a) all persons who were members of the Settlor will automatically become Supporters of the Trust; and
- (b) all persons who were life members or branch life members of the Settlor will automatically become Life Members of the Trust.

17.4 Life Membership

Criteria for Life Membership: the Board may confer Life Membership on any person in recognition and appreciation of outstanding service by that person for the benefit of Diabetes New Zealand Aotearoa. A nomination for Life Membership must be made by a Supporter, the Board, or the Advisory Council approved by ordinary resolution at an Advisory Council meeting. If so approved, Life Membership shall be conferred if the nomination is approved by the Board.

17.5 Benefits of Membership

Supporters and Life Members of the Trust are entitled to:

- (i) receive all general Trust communications;
- (ii) nominate persons to be Advisory Council Members;

- (iii) such other benefits as may be determined from time to time by the Trustees, whether generally or with respect to any particular category of Membership.

17.6 Obligations of Membership

All Members of the Trust are expected to act in a manner that is consistent with the Purposes and not act in a manner that brings discredit to Diabetes New Zealand Aotearoa.

17.7 Membership generally

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

17.8 Ceasing to be a Member

- (a) **Resignation:** a person may cease to be a Member of the Trust by giving written notice of their resignation to the Board.
- (b) **Expulsion:** if, at any time, a Member has, in the reasonable opinion of the Board, breached any clause of this Trust Deed, acted in a manner inconsistent with the Purposes of the Trust, acted in a manner that brings discredit to Diabetes New Zealand Aotearoa, or otherwise brought the Trust into disrepute, the Board may discuss the issue with the party concerned to seek an agreed resolution. If the issue is not resolved to the reasonable satisfaction of the Board, then the Board may give notice to the Member with a request that the Member take actions as required by the Board to cease or remedy the situation. If the situation is not remedied following such a request, the Member may be expelled from the Trust, provided that at the meeting of Trustees, and before the resolution for expulsion is put, the Member shall have the opportunity to address the meeting. The expulsion may take effect immediately or after such period as the Trustees resolve. The Member in respect of which the resolution is passed shall cease to be a Member of the Trust in accordance with the terms of the resolution.

18 BRANCHES

- 18.1 The Purposes and operations of Diabetes New Zealand Aotearoa are assisted and implemented locally through the establishment and operation of Branches.
- 18.2 The number, composition and name of Branches shall be as determined from time to time by the Board, provided that each Branch shall be known as "Diabetes New Zealand Aotearoa – (name of territory (if applicable) / nature of common interest (if applicable)) Branch" (for example, Diabetes New Zealand Aotearoa – Wellington

Branch, Diabetes New Zealand Aotearoa – Wellington Youth Branch, or Diabetes New Zealand Aotearoa – Virtual Branch), or such other name as approved by the Board.

18.3 There is no limit to the number of Branches.

18.4 Unless otherwise agreed between the Board and a Branch, all funds raised locally by a Branch will be applied by the Board to that Branch for the Branch to use to support its activities (but this excludes any funds that are raised locally for national or regional activities of Diabetes New Zealand Aotearoa).

19 LOCAL ADVISORY COMMITTEES

19.1 The operations of branches shall be supported by a network of Local Advisory Committees established under clause 14 (*Power to delegate*).

19.2 The role of Local Advisory Committees is to provide community feedback and support with local activities and initiatives.

19.3 **Meetings of Local Advisory Committees:** the members of each Local Advisory Committee shall meet as often, where and how (whether in person, by teleconference or otherwise) as they consider desirable for the efficient and proper support of the Branch, provided that, at each such meeting, each member of the Local Advisory Committee present at the meeting shall be entitled to one vote.

19.4 **Initial Local Advisory Committees:** as at the date of commencement of the Trust, the branch committees of the Settlor will automatically become Local Advisory Committees of the Trust.

20 REGIONS

20.1 The Purposes of Diabetes New Zealand Aotearoa may be assisted through the establishment of Regions. The number, regional extent and name of Regions shall be as determined from time to time by the Board, provided that each Region shall be known as "Diabetes New Zealand Aotearoa – (Name of Region) Region" (for example, Diabetes New Zealand Aotearoa – Northern Region), or such other name as approved by the Board.

20.2 With respect to any particular Region, the Board may employ a Community Diabetes Coordinator to:

- (a) co-ordinate the work of the Trust in the Region; and
- (b) work with Local Advisory Committees and other support groups in the Region to deliver support programmes to the community.

21 ADVISORY COUNCIL

21.1 Trustees shall establish an Advisory Council

(a) **Establishment and composition:** the Trustees shall establish a committee under clause 14(a) (*Power to delegate*), to be known as the Advisory Council. The Advisory Council shall be comprised of at least 4 and no more than 8 persons, as follows:

- (i) a person representing the youth sector of the diabetes population, such person to be appointed by the Board;

- (ii) a person representing the Māori/Pasifika sector of the diabetes population, such person to be appointed by the Board; and
 - (iii) a person appointed by the Board on the recommendation of the NZ Society for the Study of Diabetes Incorporated, provided that in the event that such society is no longer operational, a diabetes health professional shall be appointed by the Board; and
 - (iv) up to 5 other members, who must each have appropriate knowledge of diabetes-related matters, such persons to be appointed by the Board.
- (b) **Term:** the term of office for a member of the Advisory Council is 3 years from the date of appointment. Retiring members shall be eligible for reappointment, provided that no person may serve more than 3 consecutive terms as a member of the Advisory Council.
- (c) **Process:** the process for identification and assessment of suitable candidates and for appointment of a member of the Advisory Council under clause 21.1(a) shall be determined by the Board and set out in an Advisory Council Appointment Policy. This may include advertising publicly and within Diabetes New Zealand Aotearoa for applications.
- (d) **Nomination:** any Supporter is entitled to nominate a person for a position on the Advisory Council, provided that such nomination is made in accordance with the Advisory Council Appointment Policy as determined by the Board from time to time.
- (e) **Initial Advisory Council:** as at the date of commencement of the Trust, and despite clause 21.1(a) (*Establishment and composition*), the members of the advisory council of the Settlor will automatically become members of the Advisory Council of the Trust. The Board shall determine a schedule of rotation so that the term of all Advisory Council members does not end at the same time.

21.2 Role of the Advisory Council

- (a) The Advisory Council shall take responsibility for providing advice to the Chief Executive and the Board in accordance with this clause 21.2. The role of the Advisory Council is to be a source of sector knowledge, expertise, and experience to:
- (i) act as a conduit to support interaction and communication across the Diabetes New Zealand Aotearoa family and all others involved with Diabetes New Zealand Aotearoa;
 - (ii) assist, support and inform the Chief Executive in the identification, formulation, assessment, evaluation, planning, delivery, and monitoring of ideas, programmes, and initiatives of benefit to Diabetes New Zealand Aotearoa and to meet the strategic and business plans established or approved by the Board;
 - (iii) provide input and recommendations to the Chief Executive and to the Board on issues arising within Diabetes New Zealand Aotearoa and its Membership, and particularly issues at regional and local levels;
 - (iv) recognise and support the role of the Board and the National Office;

- (v) provide input to the Board's strategic and business planning processes to the extent requested by the Board;
 - (vi) be available for consultation on any matters as requested by the Chief Executive and/or the Board;
 - (vii) inform the Chief Executive and the Board on aspects of diabetes awareness, prevention, understanding, advocacy, education, care management and self-management, as may be within its knowledge;
 - (viii) provide specific input and information on issues affecting discrete groups within the overall diabetes population;
 - (ix) undertake such other requirements as set for it by this Trust Deed (for example, first approval of candidates for Life Membership);
 - (x) be a resource to the Board and to the Chief Executive to communicate and promote Diabetes New Zealand Aotearoa ideas, programmes, initiatives, and other messages that the Board and National Office wish to promote to third parties, persons with whom Diabetes New Zealand Aotearoa has relationships, the wider health, government and fundraising sectors and to Members, and at regional and local levels; and
 - (xi) be accountable for its performance to the Board and the Members.
- (b) Unless specifically authorised by the Board, the Advisory Council has no authority to commit Diabetes New Zealand Aotearoa to any financial or performance obligation.

21.3 Chair of the Advisory Council

- (a) **Election:** each year, the members of the Advisory Council shall elect, from amongst their number, a person to serve as Chair of the Advisory Council for a term of 1 year. Retiring persons shall be eligible for re-election.
- (b) **Role:** the role of the Chair of the Advisory Council is to:
 - (i) chair the Advisory Council;
 - (ii) perform such other requirements as set out in a Board policy; and
 - (iii) be a source of sector knowledge, expertise and experience as set out in clause 21.2(a) (*Role of the Advisory Council*).
- (c) **Trustee:** the person holding office as Chair of the Advisory Council shall be a Trustee *ex officio*.
- (d) **Vacancy:** if a vacancy arises in the office of Chair of the Advisory Council prior to the expiry of a term, the Advisory Council shall meet at their earliest convenience to elect a new Chair to serve for the remainder of the term.

21.4 Advisory Council Members generally

- (a) **Role and expectations:** the role and expectations that Diabetes New Zealand Aotearoa has of an Advisory Council Member including the following:
 - (i) Members of the Advisory Council shall perform all of their advisory responsibilities under this Trust Deed in a prudent manner and shall exercise care, diligence, and skill in doing so.

- (ii) Members of the Advisory Council shall devote sufficient time and attention to carry out their advisory obligations to ensure that Diabetes New Zealand Aotearoa achieves its Purposes.
 - (iii) Members of the Advisory Council shall represent Diabetes New Zealand Aotearoa positively and actively seek opportunities that further the aspirations and Purposes of Diabetes New Zealand Aotearoa.
 - (iv) Members of the Advisory Council shall attend all meetings of the Advisory Council prepared to fully participate in the business of the meeting. If unable to attend, the Advisory Council member shall notify the Chairperson as soon as possible.
- (b) **Vacation of position:** an Advisory Council member is deemed to have vacated their position on the Advisory Council upon:
- (i) reaching the end of their term of appointment;
 - (ii) resigning from the Advisory Council by notice in writing to the Board;
 - (iii) being absent from New Zealand for more than 6 months without obtaining a leave of absence from the Chair of the Advisory Council;
 - (iv) failing to attend 3 consecutive meetings of the Advisory Council without providing a reason acceptable to the Chair of the Advisory Council;
 - (v) dying, being found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or becoming a person in respect of whose affairs an order is made under the Protection of Personal and Property Rights Act 1988;
 - (vi) being adjudicated bankrupt;
 - (vii) being convicted of a criminal offence or sentenced to imprisonment;
 - (viii) being removed from office by written resolution passed unanimously by all other members of the Advisory Council. Before passing such a resolution, the Advisory Council must be reasonably satisfied that it has sufficient reason to do so, for example where there is:
 - (i) behaviour that the Advisory Council decides by ordinary resolution is disruptive, disrespectful or detrimental to the effective operation of the Advisory Council; or
 - (ii) repeated failure by the Advisory Council member to attend or contribute to Advisory Council meetings or to make a proper contribution to the Advisory Council.
- The person concerned must be given 14 days' notice of the proposed removal, the reason for the proposed removal, and an opportunity to reply at the meeting considering their removal, before any decision on their proposed removal is made.
- (c) **Vacancy:** in the event of a vacancy on the Advisory Council under clause 21.1(a) (which arises other than by completion of a term of office) the Board shall fill the position with such person as it decides.

21.5 Meetings of the Advisory Council

- (a) **Chairperson:** meetings of the Advisory Council shall be chaired by the Chair of the Advisory Council. In the absence of the Chair of the Advisory Council, the Advisory Council shall elect a person from amongst its number to chair the meeting.
- (b) **Quorum:** the quorum for an Advisory Council meeting is a majority of the members of the Advisory Council in office at the relevant time.
- (c) **Rules:** the Advisory Council shall determine its own rules for its meetings in a policy adopted by the Advisory Council, which shall include that:
 - (i) there must be at least 4 Advisory Council meetings each year;
 - (ii) Advisory Council meetings may be held in person or by teleconference or by other means by which those participating can hear each other simultaneously;
 - (iii) a resolution signed by all Advisory Council members is as effective as a resolution passed at a meeting;
 - (iv) an Advisory Council meeting may be called by the Chair of the Advisory Council or by request of 4 Advisory Council members;
 - (v) decisions are by ordinary resolution (unless otherwise required by this Trust Deed) by voice or, if requested by the chairperson of the meeting, by show of hands and, if requested by any Advisory Council member, by secret ballot;
 - (vi) each Advisory Council member has one vote and in the event of an equality of votes, the chairperson of the meeting has an additional casting vote;
 - (vii) the Advisory Council shall keep minutes of all Advisory Council meetings.

22 CODE OF ETHICS AND PROPER PRACTICE

All persons connected with the Trust shall:

- (a) act honestly and in good faith at all times in the interests of Diabetes New Zealand Aotearoa, its staff and Members, ensuring that all are treated fairly according to their rights;
- (b) carry out their duties in a lawful manner and ensure that Diabetes New Zealand Aotearoa carries out its business in accordance with the law and the terms of this Trust Deed;
- (c) avoid conflicts of interest;
- (d) act in accordance with their fiduciary duties, complying with the spirit as well as the letter of the law, recognising both the legal and moral duties of their role;
- (e) treat each other, staff, Members, and other stakeholders with dignity, integrity, and respect at all times;
- (f) actively support National Office to achieve Diabetes New Zealand Aotearoa's Purposes, goals and strategies.

23 PATRON

One or more Patrons may be appointed by the Board for terms of 3 years, and may be removed at any time by the Board after consultation in each case and with due regard to the views of the Advisory Council. A Patron may not be a Trustee, but may or may not be a Member. The role of the Patron is as determined in a Board policy.

24 DISPUTE RESOLUTION

24.1 Where any dispute arises in relation to the interpretation or operation of any power or discretion contained in this Trust Deed, or in relation to the exercise of any power or discretion conferred on any party under this deed, the Trustees will first attempt to resolve the matter by good faith negotiation. In the event resolution is not reached by negotiation, the Trustees will refer the matter to third party dispute resolution, in the most cost-effective manner available.

24.2 The Board may, but is not required to, adopt a policy to assist with the fair, efficient and timely resolution of disputes that:

- (a) arise between persons connected with the Trust; and
- (b) involve an important activity or responsibility of Diabetes New Zealand Aotearoa; and
- (c) concern a matter that the Board considers in its discretion is of such importance or is causing such a level of disruption to the activities of Diabetes New Zealand Aotearoa that it must be addressed.

25 FINANCIAL ARRANGEMENTS

25.1 The Trustees shall ensure that:

- (a) appropriate policies for the management of the finances of Diabetes New Zealand Aotearoa, including in relation to delegation and authorisation, are adopted and implemented;
- (b) proper books of account are kept in respect of the Trust Fund, and all other matters necessary or appropriate to show the true state of the financial affairs of the Trust, and are made available to any Trustee on request;
- (c) the requirements of the Charities Act, including the requirements to prepare annual financial statements in accordance with generally accepted accounting practice, are complied with;
- (d) all monies received by or on behalf of the Trust are paid immediately to the credit of the Trust in an account with a bank selected from time to time by the Trustees;
- (e) all payments are signed or otherwise approved by 2 Trustees or employees of the Trust, being persons who have been authorised to do so by the Trustees, or otherwise in such manner as the Trustees decide from time to time;
- (f) all payments are properly authorised before payment, promptly paid once authorised, and generally the funds of the Trust are properly accounted for.

25.2 If the Trustees are required, or at any time resolve, to appoint an auditor or a reviewer, then the Trustees shall, as soon as reasonably practicable after the end

of the applicable Financial Year of the Trust, cause the accounts of the Trust to be audited or reviewed, as appropriate, by a Qualified Auditor appointed by the Trustees for that purpose.

- 25.3 The Trustees will ensure that the Qualified Auditor so appointed has access to the documentation of the Trust, and to such information and explanations as the Qualified Auditor thinks fit for the proper performance of their duties.

26 SEAL AND EXECUTION OF DOCUMENTS

26.1 Custody and use of common seal

If, and while, required by the Charitable Trusts Act, the Trust shall have a common seal, which shall be kept in the custody and control of the Chief Executive or such other person as appointed by the Board. The common seal may only be used in accordance with a resolution of the Board. Documents may only be sealed in the presence of at least 2 Trustees who must sign the document.

26.2 Deeds

To execute a deed, it will be sufficient for the deed:

- (a) to be executed under the common seal of the Board attested by 2 of the Trustees if required by the Charitable Trusts Act; or
- (b) if paragraph (a) does not apply, to be signed by 2 Trustees, whose signatures must be witnessed.

26.3 Contracts

To make a contract, it will be sufficient for the contract to be made by 2 Trustees, or by 1 Trustee and 1 other person acting under the express or implied authority of the Board.

27 LIMITATION OF LIABILITY AND INDEMNITY

Liability

- 27.1 No current or former Trustee, and no current or former member of a committee of the Trust, shall have any liability of any nature whatsoever to the Trust, or to any Member, for any act or omission in their capacity as Trustee, or committee member, except in the case of their own fraud, dishonesty, breach of fiduciary duty, or the commission of any act known by them to be a breach of duties owed by them at law.
- 27.2 No Trustee is bound to take any proceedings against a co-Trustee for any alleged breach of trust by the co-Trustee.

Indemnity

- 27.3 Each current or former Trustee, and each current or former committee member of the Trust, is fully indemnified by and out of the Trust Fund for any personal liability or loss incurred by that person arising from or in connection with that person acting or purporting to act as a Trustee of the Trust, or a member of a committee of the Trust, as the case may be.
- 27.4 The indemnity conferred by clause 27.3 may extend to any loss or liability only crystallising after a person has ceased to hold the relevant office.

27.5 The indemnity conferred by clause 27.3 does not extend to a loss or liability that is attributable to the person's fraud, dishonesty, breach of fiduciary duty, or the commission of any act known by them to be a breach of duties owed by them at law.

27.6 This clause is intended to be enforceable by each current or former Trustee, and each current or former member of a committee of the Trust.

28 AMENDMENT OF THE TRUST DEED

28.1 Subject to this clause 28, the Trustees may, by consensus or pursuant to a resolution passed by a 2/3 majority of votes, amend, revoke or add to any of the provisions of this deed.

28.2 The power of amendment conferred by clause 28.1 may not be exercised to make an amendment:

- (a) inconsistent with the charitable purposes of the Trust; or
- (b) that would prejudice the charitable nature of the Trust.

28.3 Any amendment to the Trust Deed must be recorded in writing in a supplemental deed signed by the Trustees, and notified as required by the Charities Act and the Charitable Trusts Act.

29 WINDING UP

29.1 The Trust may be wound up at any time by the Trustees, by resolution passed by at least a 2/3 majority of votes.

29.2 On the winding up of the Trust, the Trustees shall pay or apply such of the capital and income of the Trust as then remains, after satisfaction of all costs, debts and liabilities of the Trust, for such charitable purposes within New Zealand that are similar to and consistent with the purposes outlined in clause 5.1 (*Charitable purposes*) as the Trustees shall determine.

29.3 In the absence of a decision by the Trustees in accordance with clause 29.2, the surplus assets of the Trust Fund shall be applied to such charitable purposes in New Zealand as a Judge of the High Court of New Zealand directs.

30 MATTERS NOT PROVIDED FOR

If any matter arises in relation to Diabetes New Zealand Aotearoa that is not provided for in this Trust Deed, the matter shall be dealt with as required by the Board.

31 GOVERNING LAW

This deed shall be governed by New Zealand law.

EXECUTED AND DELIVERED AS A DEED:

Affix the common seal of the Settlor:

Signed for and on behalf of the Settlor:

[insert name of duly authorised person]

[insert name of duly authorised person]

Signed by **[insert full name of Trustee1]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee2]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee3]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee4]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee5]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee6]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee7]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

Signed by **[insert full name of Trustee8]** as
Trustee

In the presence of:

Name:

Occupation:

Address:

SCHEDULE 1: POWERS

1 Powers

Subject to this deed, the Trustees have the power to undertake any of the following:

- (a) to maintain a bank account, and agree on signatories to the account, and on who shall have access to the account;
- (b) to seek and receive any conveyance, transfer, gift, devise, donation or bequest to help the Trustees promote the charitable purposes of the Trust;
- (c) to pay all costs and expenses incurred in the course of the Trustees carrying out or exercising any of the Trustees' powers and discretions;
- (d) to create a provision for possible expenditures or liabilities;
- (e) to set aside or invest reserves or accumulations for future use or application;
- (f) to engage any person, including volunteers:
 - (i) as an expert to assist the Trustees;
 - (ii) as an attorney or delegate for the Trustees;
 - (iii) as an advisory trustee;
 - (iv) as a custodian trustee or a nominee to hold any part of the Trust Fund;
 - (v) as a manager or agent for the Trustees;
 - (vi) as a secretary of the Trustees; or
 - (vii) as an employee of the Trustees in any matter relating to the Trust, according to principles of good employment and the Employment Relations Act 2000;
- (g) subject to clause 6.3 (*No private pecuniary profit*), to pay reasonable and proper remuneration to any officer, agent, contractor, or servant of the Trust in return for services actually rendered to the Trust;
- (h) to insure personnel, including the Trustees, who undertake the Trust's activities;
- (i) to acquire any real or personal property, or interest in such property, whether by purchase, lease, hire, exchange or otherwise and on such terms and conditions as the Trustees think fit;
- (j) to sell or otherwise dispose of any part of the Trust Fund;
- (k) for any part of the Trust Fund, to:
 - (i) apply it to make an investment in a debt security, an equity security or property;
 - (ii) retain it even if it is of a wasting, speculative or reversionary nature, may not produce income, or might be decreasing or not increasing in value;
 - (iii) pay all insurance premiums, rates, taxes, rents, repairs and other outgoings;
 - (iv) improve, develop or subdivide it;

- (v) do anything that may increase value including, for example, adding to any buildings or structures and entering into leases, tenancy agreements, party wall agreements, easements or *profits à prendre*;
- (vi) grant a lease, licence or bailment;
- (vii) waive breaches, accept surrenders and terminate tenancies, licences and bailments;
- (viii) convert it into money;
- (ix) grant security over it;
- (x) deal generally with and manage the Trust Fund as if the Trustees were beneficially entitled to it;
- (l) to carry on any business or venture and establish or acquire any company, partnership or joint venture to conduct the same;
- (m) to enter into any swap, hedging or other financial transaction;
- (n) to enter into a contract of indemnity and act as surety with any guarantee and security in support;
- (o) in relation to any company or other body:
 - (i) to exercise any voting or decision-making rights or other powers;
 - (ii) to appoint directors, officers or employees or trustees of it; and
 - (iii) to provide further share or loan capital;
- (p) to raise finance, such as by borrowing money or issuing a discounted security;
- (q) to act upon any expert or professional opinion or advice;
- (r) to set apart any part of the Trust Fund under a distinguishing name:
 - (i) as a sub-trust;
 - (ii) as a special endowment;
 - (iii) for a special purpose;
- (s) to decide all questions arising in the course of the management, administration, investment, realisation, distribution, liquidation, partition, resettlement or winding up of the Trust; and
- (t) generally to do all such other lawful acts and things as may from time to time be necessary or desirable for the carrying out of the charitable purposes of the Trust.

2 Restriction

Any borrowing, and any investment of the Trust Fund, is subject to the requirements of clause 7 (*Investment and borrowing*).

SCHEDULE 2: APPOINTMENT, REMOVAL, AND RETIREMENT OF TRUSTEES

1 Number of Trustees

The Board shall comprise no less than 5 and no more than 8 Trustees, one of whom will be the Chair of the Advisory Council *ex officio*.

2 Appointment of Trustees

- 2.1 Subject to rule 1 (*Number of Trustees*), and to rules 3 (*Eligibility*) and 5.1 (*Cessation*), the Board has the power of appointment of new Trustees (including in the course of imminent retirement of a Trustee).
- 2.2 In making any new appointments, the Board shall have regard to the following criteria:
- (a) the candidate must be capable of providing skills and experience sought by the Board that will add value to Diabetes New Zealand Aotearoa. Such skills and experience may include governance, strategic planning, health sector leadership, financial, accounting, commercial, information systems, legal, marketing, sales or other commercial or not for profit experience, and preferably an affinity with the not-for-profit sector; and
 - (b) any other criteria adopted by the Board from time to time.
- 2.3 Subject to rule 2.2, the Board shall determine its own process for identification, assessment, and appointment of suitable candidates, which process shall include advertising publicly and within Diabetes New Zealand Aotearoa for applications.
- 2.4 The appointment of a new Trustee must be in writing and signed by the Trustees. Details of new and retiring Trustees must also be recorded in the minutes of the Trust, and notified as required by the Charities Act and any other applicable legislation.
- 2.5 If there is no Trustee, then the Trustee Act 1956 shall govern the appointment of a new Trustee.

3 Eligibility

- 3.1 The following persons are not eligible to be a Trustee:
- (a) a person disqualified by the Charities Act from being an officer of a charitable entity may not be a Trustee:
 - (b) an employee of Diabetes New Zealand Aotearoa.
- 3.2 The Board may establish additional criteria for eligibility or ineligibility to be a Trustee.

4 Term of office

- (a) Appointed Trustees shall hold office for a term of up to 3 years from the date of appointment. The Initial Trustees shall be deemed to be first appointed on the date of this deed.
- (b) Each year, two Trustees shall retire from the Board. The persons to retire shall be those who have been longest in office on the Board from the date of their most recent appointment to the Board. In the case of persons appointed on the same

day, the persons to retire shall be determined by agreement or, failing agreement, by lot.

- (c) A retiring Trustee shall be eligible for reappointment, provided that no appointed Trustee may serve more than 3 consecutive terms. Time served filling an Interim Vacancy under rule 6 shall count as a term for the purposes of this rule unless the Board decides otherwise in any particular case.

5 Cessation

5.1 A person shall cease to be a Trustee if:

- (a) the Trustee resigns by notice in writing to the Chairperson, which resignation shall take effect from the date on which the Chairperson receives the notice, or from any later date set out in the notice;
- (b) the Trustee reaches the end of their term of office and does not seek reappointment or is not reappointed;
- (c) being a Trustee holding office as Trustee *ex officio* as Chair of the Advisory Council, the person ceases to hold office as Chair of Advisory Council;
- (d) the Trustee becomes a person whom rule 3 (*Eligibility*) does not permit to be a Trustee;
- (e) the Trustee is absent from New Zealand for more than 6 months without obtaining a leave of absence from the Chairperson;
- (f) the Trustee fails to attend 3 consecutive Trustee meetings without providing a reason acceptable to the Chairperson;
- (g) the Trustee dies, is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or becomes a person in respect of whose affairs an order is made under the Protection of Personal and Property Rights Act 1988;
- (h) the Trustee is adjudicated bankrupt;
- (i) the Trustee is convicted of a criminal offence or sentenced to imprisonment;
- (j) the Trustee is removed by resolution passed unanimously by all other Trustees in office. Before passing such a resolution, the Board must be reasonably satisfied that it has sufficient reason to do so, for example where there is:
 - (i) behaviour that the Board decides by ordinary resolution is disruptive, disrespectful, or detrimental to the effective operation of the Board; or
 - (ii) repeated failure by the Trustee to attend or contribute to Board meetings or to make a proper contribution to the Board.

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

5.2 Upon ceasing to be a Trustee, the person must promptly return all Trust documents and property.

6 Interim Vacancy

- 6.1 An Interim Vacancy in the Board arises if a Trustee ceases to be a Trustee under rule 5.1 (*Cessation*).
- 6.2 Subject to rule 1 (*Number of Trustees*), if an Interim Vacancy arises:
- (a) in the case of an Interim Vacancy arising under rule 5.1(c), the Board may, by resolution, appoint a suitable person with the necessary skills and attributes to fill the vacancy until a new Chair of the Advisory Council is elected under clause 21.3 (*Chair of the Advisory Council*); and
 - (b) in any other case, the Board shall expeditiously, by resolution, appoint a suitable person with the necessary skills and attributes to fill the vacancy for the remainder of the term. At the completion of the remainder of the relevant term, the person shall retire, but rule 4(c) shall apply.

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SCHEDULE 3: MEETINGS OF TRUSTEES

1 Meetings

- 1.1 The Trustees shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, provided that they must meet at least 6 times each year.
- 1.2 Meetings of Trustees shall be conducted in accordance with rule 6 (*Methods of holding meetings*).
- 1.3 Every Trustee present at a meeting of Trustees is entitled to one vote.
- 1.4 The Trustees may invite to their meetings such other persons as the Trustees may decide will assist with their deliberations.

2 Notice of meetings

- 2.1 Fourteen days' notice of any meeting of Trustees shall be communicated by the Chairperson to each of the other Trustees. However, all of the Trustees may agree to shorten or waive the period of notice.
- 2.2 The notice shall state the date, time and place of the meeting, sufficient details of the nature of the business to be transacted and, in the case of a Teleconference Meeting, instructions for how to connect to the meeting.
- 2.3 No notice is required for a meeting if:
 - (a) all the Trustees waive the requirement for a notice; or
 - (b) the meeting is the resumption of an adjourned meeting, provided that notice is given to those Trustees who were not present when the meeting was adjourned.
- 2.4 A meeting may be called at any time by the Chairperson, or if 3 Trustees request it.

3 Quorum

- 3.1 A majority of the Trustees in office at the time of any meeting shall constitute a quorum for the meeting.
- 3.2 At any meeting of Trustees, no business shall be transacted unless a quorum is present.

4 Adjournment

- 4.1 If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting will stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be dissolved.
- 4.2 The chairperson of any meeting may adjourn the meeting on the adoption of a resolution for its adjournment.

5 Chairperson

- 5.1 The Board must annually appoint a Chairperson and may also appoint a Deputy Chairperson in each case from amongst themselves. The Chairperson and Deputy

Chairperson shall hold office for 1 year from the date of appointment, provided that they may be reappointed for further terms while they hold office as Trustee.

5.2 The Chairperson shall preside at all meetings of the Trustees. The Chairperson shall have a deliberative vote and, in the event of the voting being declared even, an additional casting vote.

5.3 If the office of Chairperson is vacant, or if, at a meeting of the Trustees, the Chairperson is not present within 10 minutes after the time appointed for the meeting, but the Deputy Chairperson is present, the Deputy Chairperson shall chair the meeting. If both the Chairperson and the Deputy Chairperson are absent, the Trustees present may elect one of their number to chair the meeting.

5.4 The Board shall fill any vacancy in the office of Chairperson expeditiously.

6 Methods of holding meetings

6.1 A meeting of Trustees may be held either:

- (a) by a number of Trustees who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by a Teleconference Meeting at which a quorum of Trustees participating can simultaneously hear each other throughout the meeting, provided that all Trustees received notice of the meeting and the requirements of rule 6.2 are met; or
- (c) by a combination of the methods in paragraphs (a) and (b).

6.2 In the case of a Teleconference Meeting:

- (a) at the start of the meeting, each participant must acknowledge their presence to all the others taking part; and
- (b) a Trustee must not disconnect their means of communication without the prior consent of the chairperson of the meeting.

6.3 A Trustee is conclusively presumed to have been present and to have formed part of the quorum at all times during a meeting unless they previously obtained the express consent of the chairperson to leave the meeting.

7 Conflicts of Interest

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

- (a) the nature and monetary value of that Interest (if the monetary value of the Trustee's Interest is able to be quantified); or
- (b) if the monetary value of the Trustee's Interest cannot be quantified, the nature and extent of that Interest.

7.2 After considering the views of the other Trustees, the chairperson of the meeting may rule that the affected Trustee is not Interested in relation to a disclosure, where no conflict in fact exists.

7.3 A disclosure by a Trustee, and the chairperson's ruling in respect of that disclosure, must be recorded in the minutes of the Trust.

- 7.4 **Consequences of being Interested:** an Interested Trustee may not vote in, or take part in any deliberations concerning, any Matter in which they are Interested.
- 7.5 **Interests Register:** the Board shall maintain an Interests Register, being a register of disclosures made by Trustees under this rule 7. If a Trustee is determined to be Interested in a Matter, all relevant details of the nature and extent of the Interest (including any monetary value of the Interest if that can be quantified) must be recorded in the Interests Register.

8 Decisions

- 8.1 All questions before the Trustees shall, if possible, be decided by consensus.
- 8.2 In the event that a consensus cannot be reached, and except where this deed otherwise provides, the question shall be put as a motion to be decided. A resolution on that motion will be validly made if it is passed by a simple majority of votes of those present and entitled to vote at a duly-convened and conducted meeting of the Trustees. The method of voting shall be by voice or, if requested by the chairperson, by show of hands or, if requested by any Trustee, by secret ballot. If the voting is tied, and the chairperson of the meeting does not exercise the casting vote available under rule 5.2 (*Chairperson*), the motion shall be lost.
- 8.3 A Trustee present at a meeting of the Trustees is presumed to have agreed to, and to have voted in favour of, a resolution of the Trustees unless they expressly dissent from or vote against the resolution at the meeting.
- 8.4 A written resolution signed or assented to in writing by all of the Trustees then entitled to receive notice of a meeting of the Trustees is as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held. Such a resolution may consist of several duplicated documents, each signed or assented to in writing by one or more of the Trustees, and may be provided by electronic or facsimile transmission provided the resolution, and each Trustee's specific position on the resolution, is recorded in the transmission. Such resolution takes effect on the latest date on which a Trustee signs one of the documents.
- 8.5 A resolution of the Trustees may be rescinded or varied by the Trustees in the same manner as it was passed.

9 Minutes

- 9.1 The Board shall ensure that minutes are taken of every meeting of Trustees. The minutes will be available to any Trustee on request. The minutes shall record, for each and every meeting of the Trustees:
- (a) the names of those present;
 - (b) all decisions taken; and
 - (c) any other matters discussed at the meeting.
- 9.2 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place, or by the chairperson of the next succeeding meeting. A minute of a Trustee meeting purporting to be signed by the chairperson of that meeting, or by the chairperson of the next succeeding meeting, shall be *prima facie*

evidence of the first-mentioned meeting having been properly convened and its proceedings properly conducted, unless the contrary is proved.

- 9.3 Decisions recorded in the minutes shall be read in conjunction with this deed and are binding on all persons interested in the Trust.

10 Validity of proceedings

Where, for any reason, a Trustee is not properly appointed, reappointed, or is disqualified from holding office, anything done by that Trustee (or by a meeting at which that Trustee 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, reappointed or had not been disqualified (as the case may be).

11 Trustees may regulate other proceedings

Except as otherwise set out in this deed, the Board will establish its own rules of operation, and may regulate its own procedures as it shall in its discretion decide.

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