

# **Deed of declaration of charitable trust**

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**The Kind Foundation**

## Deed of declaration of charitable trust

Dated: 1 October 2023

### Parties

**Jonathon Mark Purdue, Edward George Heald, Josie Samantha Ogden Schroeder, Emily Jane Walton, Zhi Jian David Wong and Dominic Stephen Bain (Trustees)**

### Background

- A. The Trustees have established a charitable trust in New Zealand (**Trust**) for such charitable purposes as are defined in clause 1.1.3 below.
- B. The Trust is incorporated as a charitable trust board and is registered with the Companies Office with the date of registration being recorded as 08 June 1908 and incorporation number 211188.
- C. The Trust is registered as a charity under the Charities Act 2005 with Charities Services with the date of registration being 30 June 2008 and registration number CC32107.
- D. The Trustees are the present Board of Trustees of the Trust.
- E. The Trustees declare that all Property currently held and which they receive at any time after the date of this deed (**Trust Fund**) will be held upon the trusts and other provisions set out in this deed.
- F. The Trustees have agreed to sign this deed for the purpose of establishing and determining the trusts and conditions on which such Trust Fund is to be held.

### Operative part

#### 1. Definitions and interpretation

1.1. In this deed, unless the context otherwise requires:

- 1.1.1. **Administration Costs** means all administration charges, other fees, taxes and duties which in the opinion of the Trustees are properly payable from the income and/or capital of the Trust Fund, including the employment of professional advisers, agents, officers and staff.
- 1.1.2. **Balance Date** means 31 January of each year, or such other date as the Trustees may from time to time determine.
- 1.1.3. **Charitable Purpose** means, subject to the express terms of any particular charitable gift which can be carried out within the terms of this deed, and

with particular emphasis on youth, the purposes set out in clause 3 of the Deed, being to support people and communities through:

- 1.1.3.1. The search for a deeper understanding of humanitarian values and their application to daily life; and
  - 1.1.3.2. The recognition of the sanctity of each individual and the encouragement of that individual's entire development in body, mind and spirit; and
  - 1.1.3.3. The encouragement of a community spirit in which people care for and support each other and work together in searching for justice, freedom and peace; and
  - 1.1.3.4. The foregoing activities are to be conducted only in furtherance of the Charitable Purpose and are not to be so construed as to authorise the pursuit of any activity which is not part of the Charitable Purpose as defined in this deed. Any private benefit which is conferred on any individual or individuals must be incidental to the pursuit of the Charitable Purpose. The duties, powers and discretions of the Trustees shall be limited accordingly and shall be restricted to activities carried out in, or provided from, New Zealand.
- 1.1.4. The term "Charitable Purpose" as used and defined in this deed shall only include those purposes which are:
- 1.1.4.1. charitable in the legal sense, and
  - 1.1.4.2. which are from time to time regarded as being exclusively charitable for the purpose of the revenue laws of New Zealand, and
  - 1.1.4.3. which are acceptable for the purpose of obtaining and maintaining registration under the Charities Act 2005 (NZ) and the Charitable Trusts Act 1957, or any enactment replacing either of those statutes.
- 1.2. **Person** includes any natural person, bank, company, corporation, corporation sole, firm, government, trust, or body of persons where the corporate or unincorporated and any other legal entity.
- 1.3. **Property** means cash, real and personal property of every type, choses in action and all other rights and interests.
- 1.4. **Trust** means **The Kind Foundation**.
- 1.5. **Trust Fund** means the present assets and liabilities held by the Trustees and all other money, property and assets transferred to or acquired by the Trustees by whatever means, including all accumulations of income and additions thereto not appropriated to or applied for any other purpose in accordance with this deed.

- 1.6. **Trustees** means the Trustees hereinbefore mentioned or otherwise the Trustee or Trustees for the time being of this Trust.

## **2. Name and office**

- 2.1. The Trust as constituted by this deed shall be called **The Kind Foundation** or such other name as the Trustees shall at any time in their discretion determine by resolution.
- 2.2. The office of the Trust shall be such place in Christchurch as the Trustees may from time to time determine.

## **3. Acknowledgement and variation of trust**

- 3.1. The Trustees acknowledge that the activities of the Trustees pursuant to this Deed should wherever possible follow the specific purposes set out in clause 1.1.3 above, and in doing so the Trustees should seek to achieve the widest possible benefit for the Charitable Purpose. The Trustees further declare that they will hold the Trust Fund on the trusts and with the powers set out in the Deed and implied by law.

## **4. Trusts of income and capital**

- 4.1. The Trustees shall hold the Trust Fund in perpetuity upon the following trusts:
- 4.1.1. Firstly, towards the payment of any or all Administration Costs.
- 4.1.2. Secondly, the Trustees may pay or apply the whole or any part of the net annual income arising from the Trust Fund for the Charitable Purpose as defined in this deed, in such manner as the Trustees shall in their absolute discretion and from time to time think fit.
- 4.1.3. Thirdly, the Trustees shall accumulate so much of the net annual income which is not paid or applied in accordance with clause 4.1.2 above, so that such accumulations shall be added to and form part of the capital of the Trust Fund, provided however that no such accumulations shall take place if they would infringe any legal or equitable rule which may be in existence at any time during the term of this Trust, and provided further that the Trustees shall have the power to resort to such accumulations at any time and to pay or apply those accumulations or any part of them as if they were income in the then current year without being required to recoup the same.
- 4.1.4. Fourthly, the Trustees may, at any time, and in their absolute discretion, pay, apply or appropriate all or any part of the capital of the Trust Fund for the Charitable Purpose as defined in this deed, in such manner as the Trustees shall in their absolute discretion and from time to time think fit. Any such payment, application or appropriation made by the Trustees may be made upon such terms and conditions as the Trustees may in their absolute discretion think fit.

**5. Income benefit or advantage to be applied to the charitable purpose**

- 5.1. Any income, benefit or advantage shall be applied to the Charitable Purpose of the Trust.
- 5.2. No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Trust, where they can materially influence the payment of the income, benefit or advantage, except where that income, benefit or advantage is derived from:
  - 5.2.1. Goods and services provided to the Trust rendered in the course of business charged at no greater rate than current market rates; or
  - 5.2.2. Interest on money lent at no greater rate than current market rates.
- 5.3. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

**6. Power of appointment and removal of trustees**

- 6.1. The Trustees for the time being shall have the power, exercisable from time to time and by simple majority decision, to appoint such additional Trustees and advisory Trustees as they may determine. Each such appointment shall be for a maximum term of three years and may be reviewed at the expiry of that period. If a Trustee is re-appointed then such re-appointment shall again be for a maximum term of three years and may be reviewed at the expiry of that period. A Trustee is eligible to be re-appointed in this manner for a further two terms of three years each, but no Trustee shall hold office for a continuous period exceeding twelve years. Notwithstanding the provisions of this clause 6, the Chief Executive Officer who is for the time being employed by the Trustees to carry out that role shall at all times be appointed and act as a Trustee of the Trust, and the above terms regarding the period of appointment shall not apply to such person.
- 6.2. The Trustees for the time being shall have the power, exercisable from time to time and by a minimum of a two-thirds majority decision, to remove any Trustee or any advisory Trustees as they may determine, without giving any reason for such removal.
- 6.3. Exercise of the powers of appointment and removal shall always be by deed.
- 6.4. Each appointment or removal of a Trustee shall take effect as provided in the instrument of appointment or of removal, may take effect on a future date or upon the occurrence of a future event, and may, if so specified, be revocable until effective.
- 6.5. To facilitate the vesting, transfer or assignment of the assets comprising the Trust Fund to the Trustees for the time being, following the exercise of the power of removal, every person, at any time being a Trustee, irrevocably appoints the holders of the power of removal to be their attorneys to do all things necessary to vest, transfer and assign all Property forming the Trust Fund and no person shall be concerned to inquire of or question the propriety or otherwise of such vesting, transfer or assignment.

- 6.6. Vacation of office: A Trustee ceases to be a Trustee:
- 6.6.1. If that person dies, or loses the physical or mental capacity required to carry out the role, or becomes subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
  - 6.6.2. If that person becomes bankrupt or otherwise insolvent or makes an arrangement or composition with their creditors generally; or
  - 6.6.3. If that person is convicted of a criminal offence which in the opinion of a simple majority of all other Trustees makes that person's position as a Trustee undesirable; or
  - 6.6.4. If that person resigns by written notice addressed to the Trustees and delivered to the office of the Trust, such notice to be effective at the time when it is so received unless a later time is specified in the notice; or
  - 6.6.5. If that person is removed from office in accordance with Clause 6.2 above; or
  - 6.6.6. If that person is absent from two consecutive Trustee meetings without the prior approval of the Chairperson, which approval shall not be unreasonably withheld.

## **7. Trustees' powers**

- 7.1. To achieve the objects of the Trust, the Trustees shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person, including the employment of professional advisers, agents, officers and staff (which may include a Trustee or Trustees), and co-opting the services of other persons (in addition to the Trustees who are for the time being appointed), as the Trustees from time to time think fit. Subject to the Trusts imposed by this deed, the Trustees may deal with the Trust Fund as if the Trustees were the absolute owners of and beneficially entitled to the Trust Fund. Accordingly, in addition to any specific powers vested in the Trustees by law, the Trustees may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including without limiting the extensive powers given by this clause, the unrestricted power to borrow and raise money, and to give securities and guarantees.
- 7.2. Without in any way limiting the wide powers conferred by clause 7.1, the Trustees shall:
- 7.2.1. Have power to invest the Trust Fund and the income from the Trust Fund not immediately required for the objects of the Trust;
  - 7.2.2. Have power to purchase, take on lease, rent, or otherwise acquire any real or personal Property;
  - 7.2.3. Have power to sell, exchange, maintain, improve, lease, hire, mortgage, dispose of, manage, control, invest, reserve, or otherwise deal with and turn to account any real or personal Property vested in the Trust;

- 7.2.4. Have power to borrow or raise money by any means and upon any conditions;
  - 7.2.5. Have power to make loans to any person, unincorporated body or corporation, whether secured or unsecured upon any terms;
  - 7.2.6. Have power to give guarantees in favour of any person, unincorporated body or corporation, whether secured or unsecured and upon any terms;
  - 7.2.7. Have power to open and operate trading and savings accounts and other bank accounts of any nature;
  - 7.2.8. Have power to carry on business;
  - 7.2.9. Have power to employ and monitor a Chief Executive Officer, Managers and staff, and engage agents and appoint representatives;
  - 7.2.10. Have power to apply for and acquire licences or permits;
  - 7.2.11. Have power to engage in prosecution, defend, and otherwise take any legal action or legal proceedings (including arbitration or mediation) on behalf of the Trust or any of its affiliated bodies and for that purpose to expend monies and employ solicitors, counsel and other advisers;
  - 7.2.12. Have power to join and affiliate with any person or other organisation of whatever kind and having similar objects so long as that person or other organisation does not have objects that prejudice or contravene the objects of the Trust;
  - 7.2.13. Have power to promote branches of the Trust at any place and to assist such branches either financially or otherwise;
  - 7.2.14. Have power to edit, print, publish, and distribute magazines, posters, newspapers, books, pamphlets, and other literature; and
  - 7.2.15. Have power to exercise all the other powers contained in the Trusts Act 2019.
  - 7.2.16. Have power to procure the support of other persons by way of the raising of funds from the public generally, or from any other body or organisation, whether charitable or non-charitable.
- 7.3. The Trustees may exercise their powers in any manner and upon such terms and conditions as they think fit.

## **8. Miscellaneous provisions**

- 8.1. The Trustees shall be entitled to retain any assets of whatever kind or nature gifted or transferred to the Trustees by any person, or otherwise acquired by the Trustees, and the retention of such assets by the Trustees shall not breach any duty or obligation of the Trustees under the Trusts Act 2019 or otherwise.

- 8.2. The Trustees in investing any part of the Trust Fund shall not be under any obligation or duty to diversify investments. In exercising their powers of investment the Trustees may acquire any property, or retain or deal with any property which from time to time comprises the whole or part of the Trust Fund notwithstanding that any act or omission by the Trustees in the exercise of those powers and discretions would be, or could be, contrary to the principles governing the investment of trust funds set out in the Trusts Act 2019 or any other legislation which amends or replaces that Act. This clause expresses a "contrary intention" for the purposes of section 30 of that Act.
- 8.3. If any trustee is engaged in a profession, employment or business that is or includes acting as trustee or investing money on behalf of others, then in exercising any power of investment, that Trustee or those Trustees (as the case may be) shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that Trustee or those Trustees (as the case may be) shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others and Section 30 of the Trusts Act 2019 is modified in this regard.
- 8.4. The Trustees shall have no liability to a donor or to any person in respect of the investment of the Trust Fund, including in respect of any loss of income or capital suffered by the Trust Fund, except in the case of the Trustees own dishonesty, wilful misconduct or gross negligence. This shall constitute a contrary intention for the purposes of Section 30 of the Trusts Act 2019.

## **9. Limitation of trustee liability**

- 9.1. **No liability of trustees with exceptions:** No Trustee or former Trustee or any officer of any Trustee or former Trustee shall be liable for any loss incurred by the Trust Fund not attributable to that Trustee's or officer's own dishonesty, wilful misconduct or gross negligence. No Trustee shall be bound to take any proceedings against a co-Trustee or former Trustee for any breach or alleged breach of trust committed by a co-Trustee or former Trustee or any officer of any co-Trustee or former Trustee.
- 9.2. **Limitation of liability for trust liabilities:** No person enforcing any liability entered into or incurred by the Trustees shall have recourse to any property belonging to any one or more of the Trustees which does not form part of the Trust Fund.
- 9.3. **Indemnity of trustees:** Each Trustee or former Trustee or officer of any Trustee or former Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any liability which that Trustee, former Trustee or officer may incur in any way arising out of or in connection with that Trustee or officer acting or purporting to act as, or on behalf of, a Trustee of the Trust, provided such liability is not attributable to that Trustee's or officer's own dishonesty, wilful misconduct or gross negligence.

## **10. Amendment of Trust deed**

- 10.1. The provisions of this deed may be altered, added to, rescinded or otherwise amended by a unanimous resolution passed at a meeting of the Trustees, provided that no such amendment shall detract from the exclusively charitable nature of the Trust, or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.
- 10.2. Notice of any modification or variation of this deed under this clause 10 must be given to Charities Services (or other entity which provides such services) in accordance with the Charities Act 2005 and to the Registrar of Incorporated Societies in accordance with the Charitable Trusts Act 1957 (if applicable).

## **11. Special charging clause**

- 11.1. Any Trustee of this Trust, being a Solicitor or other professional or business person, will be entitled to charge all usual and proper fees for:
  - 11.1.1. Services performed as a Trustee of this Trust, and
  - 11.1.2. Professional and other services performed in the administration of this Trust, whether performed personally or by that person's firm, as if that person was not a Trustee hereof,

and this clause 11 modifies the default duty at section 37 of the Trusts Act 2019.

## **12. Proceedings of the trustees**

- 12.1. In addition to the Chief Executive Officer as referred to in clause 6.1 above (and who shall at all times be appointed as a Trustee), the minimum number of other Trustees who are appointed under this deed at any time shall be five (5) and the maximum number shall be nine (9).
- 12.2. All decisions of the Trustees shall be made by a minimum of a two-thirds majority unless otherwise specified in this deed or in the rules referred to below.
- 12.3. The Trustees may make their decisions and hold and regulate meetings on such terms and in such manner as they shall from time to time think fit. This includes the power to make decisions by telephone, facsimile, electronic and other means of communication and by any one or more documents in the same or similar form.
- 12.4. The Trustees may from time to time delegate any of their powers or duties to any person or persons as the Trustees may think fit, to assist in promoting or achieving the Charitable Purpose of this Trust, and the Trustees may from time to time make rules (and vary such rules at any time) relating to the delegation and administration of such powers or duties as they think fit. The Trustees shall have the power to revoke any such delegation at such time as they shall think fit, and any person or persons to whom any powers or duties are delegated shall at all times be bound by the Charitable Purpose of the Trust.

- 12.5. The Trustees may in their discretion procure the support of other persons by way of the raising of funds from the public generally, or from any other body or organisation, whether charitable or non-charitable.
- 12.6. The Trustees shall meet on at least an annual basis, on dates to be decided, for the purpose of carrying out the administration of the Trust. The Trustees shall establish rules regarding the conduct of such meetings and the appointment of a chairperson, secretary and treasurer, or other officers, for such meetings. Any such person who shall hold office at such meetings may be a Trustee, or may be a person who is not a Trustee, at the discretion of the Trustees.
- 12.7. Trustees shall be reimbursed for all approved reasonable expenditure directly incurred in carrying out agreed duties on behalf of the Trust.
- 12.8. The Trustees may from time to time establish committees. The Trustees shall in all cases retain the right to revoke the establishment of a committee. The existence of a committee shall not prevent the exercise of any power by the Trustees.
- 12.9. The Trustees shall cause proper books of account to be maintained. True and accurate entries shall be made of all assets and liabilities and of all the sums of money received and paid by the Trust in the management of the Trust. The books of account and financial statements shall be maintained and presented with common accounting policies. All moneys received by the Trust shall promptly be paid into an account in the name of the Trust at such bank as the Trustees shall from time to time in writing appoint. No money may be withdrawn from the account except by the authority of the Trustees and under such terms and conditions as the Trustees shall determine in writing.
- 12.10. As soon as practicable after the Balance Date the Trustees shall arrange for the preparation of the Trust's annual accounts. At least once in every year the annual accounts must be examined by independent audit and the correctness of the balance sheets and statement of income and expenditure ascertained by the auditor to the Trust. The audit shall be carried out in accordance with the standards for audits issued from time to time by Chartered Accountants Australia and New Zealand. A copy of the audited accounts shall be made available to members of the public on request.
- 12.11. In addition to the meeting referred to in clause 12.6 above, the Trustees may in their discretion convene an annual meeting which members of the public can attend, to enable the Trustees to report to those present on the activities of the Trust and answer questions raised by any person who is present at the meeting. The Trustees shall give suitable notice to the public of the time and place of such meeting.
- 12.12. Subject to clause 13 below, if at any time the Trustees cease to be incorporated as a Board under the Charitable Trusts Act 1957, all documents and contractually binding agreements must be signed on behalf of the Trust by:
  - 12.12.1. all of the Trustees acting together, or
  - 12.12.2. a lesser number of the Trustees, under the authority of a decision of all the Trustees, or

12.12.3. the Chief Executive Officer of the Trust or such other officer or employee of the Trust who is acting under the authority of a decision of all the Trustees.

### **13. Incorporation of the trust**

13.1. The Trustees acknowledge that they have already incorporated as a Board under the Charitable Trusts Act 1957 (as referred to in clause B above) and that accordingly each reference to "Trustees" in this deed shall be deemed to mean and refer to "the Board" which is constituted under the provisions of the above Act.

13.2. All documents and contractually binding agreements can therefore be signed by the Board on behalf of the Trust, either under seal, or by a number of members of the Board as approved by the Board from time to time, or by the Chief Executive Officer of the Trust or such other officer or employee of the Trust who is acting under the authority of a decision of the Board.

### **14. Winding up**

14.1. The Trust may be wound up at any time on the passing of a resolution to wind up carried by all of the Trustees who are acting in such capacity at that time, and who are all present and voting at a Trustee meeting called for the purpose.

14.2. If at any time the objects of the Trust shall fail, or if for any other reason the purposes hereof shall become wholly frustrated and incapable of being carried out, then and in such case the Trustees shall proceed to wind up the Trust.

14.3. Upon a winding up for any reason, the remaining Trust Fund (after payment of all costs, expenses, debts and liabilities) shall be transferred and distributed to such charitable organisation in New Zealand which is determined by the Trustees to have a similar purpose to this Trust, but failing that, then to such other charitable organisation in New Zealand which is determined by the Trustees, in their absolute discretion, in writing. Any charitable organisation which benefits under this clause 14.3 must be registered under the Charities Act 2005 (or any enactment replacing that statute) as at the date on which such benefit passes to the organisation.


### **15. Counterparts**

15.1. This deed may be executed in any number of counterparts (including email and facsimile copies), all of which, when taken together, will constitute one and the same instrument. A party may enter into this deed by executing any counterpart.

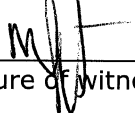
15.2. This document will be deemed to be executed by a party if that party has executed an original, a facsimile copy, a photocopy or a PDF or other scanned copy of it.

**Signed**

Signed by **Jonathon Mark Purdue** as Trustee

  
Trustee

in the presence of

  
Signature of witness

Mandy Jean Fastier  
Full name of witness


Executive Assistant  
Occupation of witness

Christchurch  
City/Town of residence of witness

Signed by **Edward George Heald** as Trustee

  
Trustee

in the presence of

  
Signature of witness

Mandy Jean Fastier  
Full name of witness

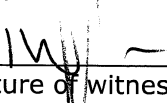
Executive Assistant  
Occupation of witness

Christchurch  
City/Town of residence of witness

Signed by **Josie Samantha Ogden Schroeder** as Trustee

  
Trustee

in the presence of

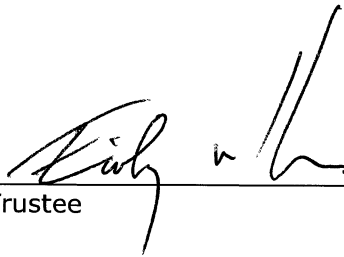
  
Signature of witness

Mandy Jean Fastier  
Full name of witness

Executive Assistant  
Occupation of witness

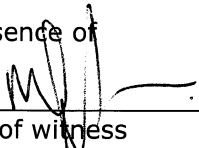
Christchurch  
City/Town of residence of witness

Signed by **Emily Jane Walton** as Trustee

  
Trustee

in the presence of

Signature of witness

  
Mandy Jean Fastier

Full name of witness


Executive Assistant

Occupation of witness

Christchurch

City/Town of residence of witness

Signed by **Zhi Jian David Wong** as Trustee

  
Trustee

in the presence of

Signature of witness

DA HEA KIM

Full name of witness

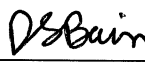
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Occupation of witness

CHRISTCHURCH

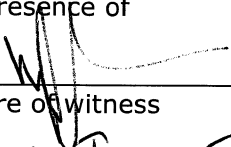
City/Town of residence of witness

Signed by **Dominic Stephen Bain** as Trustee

  
Trustee

in the presence of

Signature of witness

  
Mandy Jean Fastier

Full name of witness

Executive Assistant

Occupation of witness

Christchurch

City/Town of residence of witness