

Trust Deed

TECT Community Trust

Draft for consultation



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TECT COMMUNITY TRUST

Date:

PARTIES

[Names] (the *Trustees*)

BACKGROUND

- A The Tauranga Energy Consumer Trust (*TECT*) was established in 1993 as part of the reforms of the energy sector. It was created to be a cornerstone shareholder in the newly established Trustpower Limited, the energy company that succeeded to the assets of the Tauranga Electric Power Board, and to share the benefits of ownership of that company with Trustpower consumers resident in the Tauranga and Western Bays district which it served, by way of payment of rebates and provision of grants and other benefits within the wider community of that district.
- B The original Trustpower was itself the subject of a restructuring in 2016. Following that restructuring, the original Trustpower entity was wound up and TECT became a shareholder in the successor entity, now called Trustpower Limited.
- C As a consequence of gradual changes in the electricity retail market in the District and the undertaking of a strategic review by Trustpower of its retail consumer business in early 2021, TECT itself undertook a restructuring. Pursuant to that restructuring, TECT determined to establish a new community trust that could better serve the wider needs of the Tauranga and Western Bays District (as contemplated by the TECT trust deed), and to settle into that new trust funds that were not needed for the continued servicing of its consumer beneficiary base.
- D Accordingly the Trustees wish to declare a charitable trust for the benefit of the people and community of the Tauranga and Western Bays district administered from time to time by the Tauranga City Council and the Western Bay of Plenty District Council, and for those purpose to receive from TECT the Initial Settlement Assets (including the shares then held by TECT in Trustpower Limited) referred to below.
- E Accordingly on signing this deed the Trustees declare they hold the Initial Settlement Sum on the trusts, for the Charitable Purposes and on and subject to the provisions of this deed.

NOW THIS DEED RECORDS:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this deed, unless the context requires otherwise:

Annual General Meeting means a meeting of Trustees specified as the annual general meeting in the notice calling the meeting;

Annual Plan has the meaning given to it in clause 6.3;

Appointed Trustee has the meaning given to it in clause 7 of Schedule 3;

Balance Date means the date up to which the Financial Statements for the Trust are to be made in each year and at the date of this deed is 31 March;

Chairperson means the Trustee elected as chairperson pursuant to rule 4 of Schedule 4;

Charitable Purposes means the charitable purposes of the Trust under clause 3 and a *Charitable Purpose* means one of those purposes;

Chief Executive means the chief executive of the Trust appointed from time to time by the Trustees;

Confidential Information means information which is by express classification or by its nature reasonably intended to be confidential to the Trust and which has not been released into the public domain by reason of:

- (a) the proper discharge in good faith by a Trustee of duties and obligations created by the Trust;
- (b) the proper discharge in good faith by a Trustee with the express authority or express consent of the Trust of duties and obligations created by the Trust;
- (c) the order or direction of any lawful or regulatory authority; or
- (d) other lawful action by a third party;

Consultative Procedure means the procedure for public consultation set out in Schedule 4;

Core Trust Documents means the documents that are to be kept by the Trustees pursuant to clause 12 of Schedule 1;

Deputy Chairperson means the Trustee elected as deputy chairperson pursuant to rule 4 of Schedule 4;

Designated Gift means a gift which is subject to a trust for a specific purpose that comes within the Charitable Purposes;

District means the areas which as at the date of this deed are administered by the Tauranga City Council and the Western Bay of Plenty District Council, as shown on the map set out in Schedule 5 of this deed;

Elected Trustee means each Trustee elected pursuant to the procedure in clause 5 of Schedule 3;

Elector means a natural person who at the Record Date:

- (a) is entered on the Parliamentary election rolls; and
- (b) has an address on those rolls within the District.

Financial Statements means the financial statements of the Trust prepared in accordance with clause 6.2;

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

Independent Returning Officer means that person appointed to the office of Independent Returning Officer pursuant to clause 6.5 for the purposes of conducting and supervising any Trustee election held pursuant to Schedule 3;

Initial Settlement Assets means assets having an aggregate approximate value of [●] transferred to the Trustees by TECT on or about the date of this deed (including the shares in Trustpower held by TECT at that time) to be held on the trusts, for the Charitable Purposes and on and subject to the provisions of this deed;

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

- (a) is a person who is under the age of 18 years;
- (b) is a mentally disordered person under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (c) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988;
- (d) has a trustee corporation managing the person's property under section 32 or 33 of that Act; or
- (e) is a person who is not wholly competent to manage their own affairs in relation to their property and has been certified as mentally incapable under Part 9 of that Act,

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

Record Date means the date specified in clause 5.1(a)(v) of Schedule 3;

Special Resolution means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

Surplus Income means income which the Trustees have not paid, applied or appropriated to or for a Charitable Purpose under clause 4.1 during an income year;

Trustees means the trustees from time to time of this Trust and includes the Appointed Trustees and the Elected Trustees;

Trusts Act means the Trusts Act 2019; and

Trust Fund or Trust property means the Initial Settlement Sum and includes any money, investments and other property paid to, earned by, given to, settled on, received and accepted by or in any other way acquired by the Trustees after the date of this deed with the intention that it is held by the Trustees on the trusts, for the objectives and on and subject to the provisions of this deed.

1.2 **Construction**

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

- (a) a reference to *the Trust* is a reference to the charitable trusts of this deed;
- (b) a reference to *this deed* is a reference to this deed as amended from time to time;
- (c) a reference to *Trustees* or *Trustee* is a reference to the trustees or a trustee for the time being of the Trust Fund, whether original, additional or substituted;
- (d) a reference to a clause or a Schedule is to a clause or Schedule of this deed, and a reference in a Schedule to a clause is a reference to a clause in that Schedule;
- (e) a reference to a person includes a company, trustee corporation, and a body of persons, whether incorporated or unincorporated;
- (f) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations;
- (g) references to *working days* are to days other than weekends and public holidays; and
- (h) headings appear as a matter of convenience and will not affect the construction of this deed.

2 **CREATION OF THE TRUST**

2.1 **Declaration of trust**

The Trustees declare that they hold the Trust Fund on the trusts, for the Charitable Purposes and with the powers and subject to the provisions of this deed.

2.2 **Name of trusts**

The trusts created by this deed are to be known as the "TECT Community Trust".

2.3 **Incorporation under the Charitable Trusts Act 1957**

- (a) The Trustees shall apply under the Charitable Trusts Act 1957 for incorporation as a Board under the name TECT Community Trust, or under such other name as may be approved by the Registrar of Incorporated Societies.
- (b) If and while so registered, the Trustees will comply with the requirements of that Act.
- (c) Following incorporation as a Board all references in this deed to the Trustees may be read as references to the Trustees as a Board.

2.4 **Registration under the Charities Act 2005**

- (a) The Trustees shall apply to be registered as a charitable entity under the Charities Act 2005.

- (b) If and while so registered, the Trustees will comply with the requirements of that Act.

3 CHARITABLE PURPOSES

3.1 Purposes

The Trust is established for the benefit of:

- (a) every object or purpose which is charitable in accordance with the laws of New Zealand (whether such object or purpose relates to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community) in each case within the District; and
- (b) every other object or purpose which is charitable in accordance with the laws of New Zealand, wherever applied in New Zealand provided that such application benefits (directly or indirectly) members of the community within the District.

4 POWERS TO MAKE DISTRIBUTIONS

4.1 Discretionary power to pay, apply or appropriate income

The Trustees may in their absolute discretion pay, apply or appropriate, all or any part of the income of the Trust Fund to or for one or more of the Charitable Purposes.

4.2 Discretionary power to pay, apply or appropriate capital

The Trustees may in their absolute discretion pay, apply or appropriate, all or any part of the capital of the Trust Fund to or for one or more of the Charitable Purposes.

4.3 Provisions relating to payments, applications and appropriations of income and capital

In making a payment, application or appropriation of income under clause 4.1 or capital under clause 4.2:

- (a) by way of modification to the Trustees' duty of impartiality under clause 11 of Schedule 1, the Trustees need not treat each Charitable Purpose equally;
- (b) the Trustees may transfer any Trust property for one or more of the Charitable Purposes in full or partial satisfaction or in anticipation of the payment, application or appropriation;
- (c) the Trustees may make an appropriation of income even though at the time of appropriation they have not received the income being appropriated;
- (d) any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income;
- (e) if the Trustees appropriate any income or capital for any Charitable Purpose, the recipient of that income or capital will take an absolute and indefeasible interest in that income or capital as from the date on which it is appropriated; and

- (f) the receipt of the secretary, treasurer or other person or persons appearing to the Trustees to be authorised to give receipts on behalf of the recipient of any income or capital will be a complete discharge to the Trustees for that payment.

4.4 **Accumulation of Surplus Income**

The Trustees will accumulate any Surplus Income and add it to the capital of the Trust Fund so that it becomes part of the Trust Fund, subject to the trusts and powers applicable to capital under this deed. The Trustees may however still resort to the accumulated Surplus Income at any time and pay, apply or appropriate all or part of it as if it were income of the Trust Fund.

5 **APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

The rules set out in Schedule 3 of this deed shall upon the execution of this deed govern the appointment, retirement and proceedings of the Trustees and associated matters.

6 **TRUSTEES' DUTIES**

6.1 **General duties**

The Trustees have the duties set out in Schedule 1 and will perform those duties having regard to the context of the Trust, the Charitable Purposes and the terms of this deed.

6.2 **Financial Statements**

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- (b) The Trustees shall within four months after the end of each Financial Year:
 - (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 2013, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
 - (b) submit those Financial Statements to an auditor for audit; and
 - (c) make available to the public in accordance with clause 6.2(d) those audited Financial Statements and the auditor's report on those Financial Statements.
- (c) In addition to clause 6.2(a), the Financial Statements of the Trust shall show separately:
 - (a) the total amount of any distribution of income or capital paid, applied or appropriated by the Trustees in that Financial Year; and
 - (b) the names of persons or organisations to whom income or capital has been paid, applied or appropriated by the Trustees in that Financial Year.
- (d) The Trustees shall make the documents referred to in clause 6.2(c) available to the public (which includes all Electors) by making copies of them available on a website maintained by the Trust.

6.3 **Annual Plan and significant projects**

- (a) The Trustees shall prepare a written plan (an *Annual Plan*) describing the intentions of the Trustees with respect to distributions from the Trust in the next Financial Year.
- (b) The Trustees shall make the proposed Annual Plan for the forthcoming Financial Year available at least ten (10) working days in advance of its proposed adoption by the Trustees for inspection and comment by Electors, by publication on a website maintained by the Trust.
- (c) From time to time the Trustees shall also make available for inspection and comment by Electors, by publication on a website maintained by the Trust at least ten (10) working days in advance of any legally binding commitment by the Trustees to such projects, details of proposed projects which, in the opinion of the Trustees, are significant in the context of the Trust and the Trust Fund.

6.4 **Appointment of auditor**

- (a) The Trustees must appoint an auditor of the Trust Fund at each Annual General Meeting or whenever a vacancy shall occur in such appointment. The auditor shall be a member of the Institute of Chartered Accountants of New Zealand.
- (b) The Trustees shall fix the fees and expenses of the auditor.

6.5 **Appointment of Independent Returning Officer**

- (a) The Trustees must appoint an Independent Returning Officer at each Annual General Meeting or whenever a vacancy shall occur in such appointment. The Independent Returning Officer must be a person who, in the opinion of Trustees, is suitably qualified to act as an independent returning officer and who has no material conflict of interest with the Trust or its affairs.
- (b) The Trustees shall fix the fees and expenses of the auditor.

6.6 **Confidential Information**

- (a) The Trustees shall:
 - (a) keep confidential all Confidential Information (and its existence) which has been provided to or become available to either the Trust or Trustee(s);
 - (b) not disclose or otherwise publish Confidential Information, nor make any copies of, or record any extracts from, Confidential Information and must use their reasonable endeavours to ensure that to the extent possible by law no other person does so; and
 - (c) not use Confidential Information other than for the purpose of the proper discharge in good faith of duties and obligations created by the Trust, with the exception of Confidential Information provided in confidence to a professional advisor of the Trust or to a Trustee for the purposes of the obtaining of advice as to the discharge in good faith of duties and obligations created by the Trust and with the further expectation of compliance with any order or determination made by any Court or lawful authority.
- (b) Trustees acknowledge that a breach of Trusteeship dealing with matters of confidentiality and Confidential Information may amount to a breach of trust of such

a serious nature as to justify an expectation of resignation by the defaulting Trustee, failing which action by the Trust for removal from office may be proper.

6.7 Restrictions on private pecuniary profit

- (a) No private pecuniary profit may be made by any person involved in this Trust (including any Trustee, any person appointed as the secretary or as an officer of the Trust, a person co-opted to a sub-committee of Trustees and a person appointed under clause 12 of Schedule 2), except that:
- (i) any Trustee and any person co-opted to a sub-committee will be entitled to be reimbursed out of the Trust Fund for all expenses which they reasonably and properly incur in connection with the affairs of the Trust;
 - (ii) any Trustee and any person co-opted to a sub-committee may be paid reasonable and proper remuneration for services as Trustee or sub-committee member if and as agreed pursuant to this deed (in the case of the Trustees) or by the Trustees (in the case of any person co-opted to a sub-committee) from time to time;
 - (iii) any secretary or other officer, a person appointed under clause 12 of Schedule 2 and any employee of the Trust (whether a Trustee or not) may be paid reasonable and proper remuneration for services rendered to the Trust if and as agreed by the Trustees from time to time;
 - (iv) if any of the Trustees is engaged in a profession or business, that Trustee may charge reasonable and proper fees for work done by that Trustee or that Trustee's firm (whether or not the work is of a professional or business nature) on the same basis as if that Trustee were not one of the Trustees but had been employed to carry out the work on their behalf, if agreed by the Trustees from time to time; and
 - (v) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust if and as agreed by the Trustees from time to time.
- (b) The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause 6.7, will ensure that the restrictions imposed by this clause are strictly observed.

6.8 Prohibition of benefit or advantage in business activity

- (a) In the carrying on of any business under this deed no benefit, advantage or income will be afforded to, or received, gained, achieved or derived by, any person where that person (or any associated person thereof as that term is defined in the Income Tax Act 2007) is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:
- (i) the nature or amount of that benefit, advantage or income; or
 - (ii) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

- (b) A person who is in the course of, and as part of the carrying on of his or her business of a professional public practice, will not, by reason only of him or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause 6.8.

7 TRUSTEES' POWERS

7.1 Trustees' general powers

The Trustees have the following general powers:

- (a) all the powers necessary to manage the Trust property including, in relation to the Trust property, all the powers of an absolute owner of the property; and
- (b) all the powers necessary to carry out the Trust, including powers incidental to those in clause 7.1(a).

7.2 Trustees' specific powers

Without prejudice to the generality of clause 7.1, or to any of the Trustees' express or implied powers under this deed and at law, the Trustees will have the specific powers set out in Schedule 2, and may exercise them either alone or with any other person or persons. The powers in Schedule 2 are not an exhaustive source or description of the specific powers of the Trustees.

7.3 Exercise of powers

- (a) The Trustees may exercise their powers from time to time in such manner and on such terms and subject to such conditions as they may in their absolute and uncontrolled discretion determine, provided they do so having regard to their duties in law and under this deed.
- (b) The Trustees may not exercise their powers in any manner which may prejudice the charitable nature of the Charitable Purposes and in particular the meeting by the Trust of all the requirements for any exemptions available to charities under the New Zealand revenue laws.
- (c) Any exercise of the Trustees' powers and discretions will be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Trustees, whether the gift is a Designated Gift or is generally for the purposes of the Trust Fund.

8 TRUSTEES' LIABILITY AND INDEMNITY

8.1 Limitation of liability of Trustees

- (a) A Trustee will be liable only for any loss suffered by the Trust Fund attributable to the Trustee's own dishonesty, wilful misconduct or gross negligence.
- (b) No Trustee will be liable for any other loss attributable to any breach of trust by the Trustee.
- (c) No Trustee will be liable for any loss attributable to any breach of trust by any co-Trustee and nor will any Trustee be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

8.2 **Trustees' indemnity and reimbursement**

A Trustee will be entitled to full and complete exoneration, indemnity and reimbursement from the Trust Fund for any and all liability and expense which that Trustee incurs in relation to the Trust (including in defending or prosecuting any proceedings in relation to the Trust) and which is not attributable to that Trustee's own dishonesty, wilful misconduct or gross negligence.

8.3 **Gross negligence**

For the purposes of clauses 8.1 and 8.2 *gross negligence* in relation to any conduct of a Trustee (including any action or inaction) means conduct that is so unreasonable that no reasonable trustee in the Trustee's position and in the same circumstances would have considered the conduct to be in accordance with the role and duties of a trustee having regard to the following factors:

- (a) the circumstances, nature, and seriousness of the breach of trust;
- (b) the Trustee's knowledge and intentions relating to the breach of trust;
- (c) the Trustee's skills and knowledge that are relevant to the role of trustee;
- (d) the purpose for which the Trustee was appointed;
- (e) any other circumstances, including whether the Trustee has been remunerated for the role, or characteristics of the Trustee that are relevant to the role of trustee;
- (f) the type of trust, including, without limitation, the degree to which the Trust is part of a commercial arrangement, the assets held by the trust, how the assets are used, and how the trust operates;
- (g) the purpose of the Trust, including, without limitation, what the Trust is intended to achieve, and whom the Trust is intended to benefit and in what ways; and
- (h) any other factor a court might consider relevant.

8.4 **Trustees' liability insurance**

- (a) The Trustees, in respect of one or more of the Trustees, may take out trustees' liability insurance for such cover (including defence cover) and on such terms as the Trustees think fit.
- (b) Rather than having such insurance arranged by the Trustees, a Trustee may take out personal trustees' liability insurance for such cover and on such terms as that Trustee thinks fit.
- (c) In each case, the reasonable cost of premiums is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustees or Trustee.

9 INFORMATION

For the purpose of complying with any requirement under this deed to make any document or information available to the public, it shall be sufficient for the Trustees to make such document or information available for inspection:

- (a) on a website maintained by the Trust; and
- (b) at any office of the Trust or at any other place in the District during normal business hours on any business day.

10 REMUNERATION AND EXPENSES OF TRUSTEES

10.1 Remuneration for services

- (a) The Trustees shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees. Such remuneration shall be determined annually by the Trustees having regard to such factors as they reasonably determine but including without limitation remuneration paid to trustees of community trusts with trust funds of similar net value.
- (b) In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a Annual General Meeting, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then being paid to each of the other Trustees (excluding the Chairperson).
- (c) The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this deed.
- (d) The payments of remuneration and expenses to the Trustees pursuant to this clause 10 shall be paid out of the Trust Fund or any other fund available for that purpose.

10.2 Procedure for authorisation

- (a) No remuneration shall be paid to a Trustee pursuant to clause 10.1 unless that remuneration has been authorised by a resolution of Trustees passed by a simple majority at an Annual General Meeting. Each such resolution shall express Trustees' remuneration as either:
 - (i) a monetary sum per annum payable to all Trustees taken together; or
 - (ii) a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.
- (b) No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at an Annual General Meeting unless notice of the amount of increase has been given in the notice of meeting.

11 INDEPENDENT RETURNING OFFICER

11.1 Role of Independent Returning Officer

The Independent Returning Officer shall be entrusted with the conduct of a Trustee election held pursuant to this Trust Deed.

11.2 Powers of Independent Returning Officer

The Independent Returning Officer shall have power to and shall:

- (a) appoint such scrutineers and other assistants and delegate to them such powers and duties as it shall see fit;
- (b) provide for the due secrecy, fair conduct and professional nature of any Trustee election process which is to be undertaken in accordance with the relevant provisions of Schedule 1 (as amended from time to time) and the Code of Conduct;
- (c) generally do all things necessary, expedient or advisable in its opinion for the proper conduct of any Trustee election;
- (d) where circumstances arise which create doubt or uncertainty in any Trustee election process, seek, at the Trust's cost, independent advice in the form of a legal opinion on such matters and upon which it may rely in order to resolve or clarify such uncertainties; and
- (e) monitor statements which are brought to the attention of the Independent Returning Officer or which are made publicly by incumbent Trustees and/or election candidates in relation to any Trustee election to ensure that such statements are factually correct and not misleading. The Independent Returning Officer shall be entitled to require that person making offending statements to retract or correct such statements and may, if thought appropriate in the circumstances, publicly correct any misstatements or inaccuracies of fact on that persons behalf if they fail to do so in an appropriate manner and within an appropriate period of time and may disqualify a candidate from a Trustee election or take such other action that he/she may think fit in his/her sole discretion in order to meet the purpose and objectives of this Deed and the Code of Conduct in relation to a Trustee election.

11.3 Indemnification of Independent Returning Officer

The Independent Returning Officer shall be entitled to be indemnified against the Trust Fund and be reimbursed for any reasonable expenses incurred by it in the exercise of its duties and powers under this Trust Deed.

12 VARIATIONS

12.1 General power of variation

The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this deed other than clause 12.2 and the provisions set out in clause 12.2 which shall only be capable of being altered or amended in the manner set out in clause 12.2.

12.2 **Restrictions**

(a) The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consultative Procedure in respect of such proposal to alter or amend:

(a) the definition of "District"; and

(b) clauses 3, 4 or 13.

(b) Notwithstanding anything else in this deed, any variation to this deed that prejudices the charitable nature of the Trust and in particular the meeting by the Trust of all the requirements for any exemptions available to charities under the New Zealand revenue laws, will be invalid.

13 **WINDING UP**

13.1 **Power to wind up Trust**

The Trustees may at any time after first having implemented a Consultative Procedure resolve by unanimous resolution to wind up the Trust.

13.2 **Distribution upon winding up**

On the winding up of the Trust, the Trustees must give or transfer the Trust Fund remaining after the payment of costs, debts and liabilities to one or more other charitable organisations within the District chosen by the Trustees as having, in their unanimous opinion, charitable purposes within the District similar to the Charitable Purposes, on and subject to such terms as the Trustees may, in their absolute discretion, determine.

SCHEDULE 1: TRUSTEES' DUTIES

- 1 **Duty to know the terms of Trust**
A Trustee must know the terms of the Trust.
- 2 **Duty to act in accordance with the terms of Trust**
A Trustee must act in accordance with the terms of the Trust.
- 3 **Duty to act honestly and in good faith**
A Trustee must act honestly and in good faith.
- 4 **Duty to act to further the permitted purpose of the Trust**
A Trustee must hold or deal with the Trust Fund and otherwise act to further the Charitable Purposes in accordance with the terms of the Trust.
- 5 **Duty to exercise powers for a proper purpose**
A Trustee must exercise the Trustee's powers for a proper purpose.
- 6 **Duty of care**
In administering the Trust (other than when exercising a discretion to distribute Trust property under clause 4), a Trustee must exercise the care and skill that is reasonable in the circumstances. However, a Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 6 is to be regarded as a modification of section 29 of the Trusts Act.
- 7 **Duty to invest prudently**
In the exercise of the power of investment of Trust property, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others. A Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. This clause 7 constitutes a contrary intention for the purposes of section 13D of the Trustee Act 1956 (for so long as that Act is in force). For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 7 is to be regarded as a modification of section 30 of the Trusts Act.
- 8 **Duty not to exercise power for own benefit, duty to avoid conflicts of interest, duty not to profit and duty to act for no reward**
The following duties:
 - (a) the duty in section 31 of the Trusts Act not to exercise a power directly or indirectly for the Trustee's own benefit;
 - (b) the duty in section 34 of the Trusts Act to avoid conflicts of interest;
 - (c) the duty in section 36 that a Trustee must not make a profit from the trusteeship of the Trust; and
 - (d) the duty in section 37 that a Trustee must not take any reward for acting as a Trustee,

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

9 Duty to consider exercise of power

Subject to clause 7.1(a) of this deed, a Trustee must actively and regularly consider whether the Trustee should exercise one or more of the Trustee's powers having regard to the nature of the power, the context of the Trust, the Charitable Purposes, the nature of the investments of the Trust and any other matters the Trustee considers relevant. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 9 is to be regarded as a modification of section 32 of the Trusts Act.

10 Duty not to bind or commit Trustees to future exercise of discretion

The duty that a Trustee must not bind or commit the Trustees to a future exercise or non-exercise of a discretion is modified to the extent that a Trustee may bind or commit the Trustees to a future exercise or non-exercise of a discretion in relation to any matter relating to the Trust or the Trust Fund, if the Trustee considers it necessary or desirable for carrying out the Charitable Purposes of the Trust or any administrative or other functions of the Trustees and the Trustee acts honestly and in good faith, and otherwise discharges the duties set out in clauses 1 to 5 of this Schedule. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 10 is to be regarded as a modification of section 33 of the Trusts Act.

11 Duty of impartiality

In the exercise of a discretion to pay, apply or appropriate income or capital under clause 4, a Trustee may favour one or more Charitable Purposes over another as provided in clause 4.3, notwithstanding that the exercise of the discretion may be directly or indirectly to the detriment of other Charitable Purposes. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 11 is to be regarded as a modification of section 35 of the Trusts Act.

12 Duty to keep Core Trust Documents

12.1 Each Trustee must keep, so far as is reasonable, the following Core Trust Documents relating to the Trust:

- (a) the Trust deed and any other document that contains the terms of the Trust;
- (b) any variations made to the Trust deed or Trust;
- (c) records of the Trust property that identify the assets, liabilities, income, and expenses of the Trust and that are appropriate to the value and complexity of the Trust property;
- (d) any records of Trustee decisions made during the Trustee's trusteeship;
- (e) any written contracts entered into during that Trustee's trusteeship;
- (f) any accounting records and financial statements prepared during that Trustee's trusteeship;

- (g) documents of appointment, removal, and discharge of Trustees (including any court orders appointing or removing trustees);
- (h) any other documents necessary for the administration of the Trust; and
- (i) any documents referred to in this clause that were kept by a former Trustee during that person's trusteeship and passed on to the current Trustee.

12.2 If each Trustee holds at least:

- (a) the Trust deed and any other document that contains the terms of the Trust; and
- (b) any variations made to the Trust deed or Trust or copies of those documents,

the Trustees may agree that one or more of their number holds all other Core Trust Documents in (a) to (i) above, provided the Trustees are satisfied that those documents (or copies of them) will be made available to the other Trustees on request.

12.3 The Core Trust Documents must be kept for the duration of the Trustee's trusteeship. When that trusteeship ends, if the Trust continues, the Trustee must give at least one replacement Trustee or the continuing Trustees the Core Trust Documents held by the Trustee on the date the trusteeship ends.

SCHEDULE 2: TRUSTEES' POWERS

1 To raise funds

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

- 1.1 the Charitable Purposes;
- 1.2 any specific Charitable Purpose; and
- 1.3 the general funds of the Trust including funds for administration and other costs and expenses of the Trust.

2 To receive or refuse gifts

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

- (a) the Charitable Purposes;
- (b) any specific Charitable Purpose; and
- (c) the general funds of the Trust including funds for administration and other costs and expenses of the Trust.

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

2.3 To accept a Designated Gift provided the Trustees:

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

3 To invest

3.1 To invest the Trust Fund, and the income from it, in any form of property, in accordance with the investment strategy formulated by the Trustees in accordance with clause 3.3 of this Schedule 2.

3.2 To transact and deal with any such investment in any manner as the Trustees may from time to time in their absolute discretion determine, including, but without limitation:

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

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

- (a) the context and objectives of the Trust;
- (b) the desirability or otherwise of diversifying Trust investments without any obligation to diversify between types and nature of investments (and for the avoidance of doubt it shall not be a breach of trust if the Trustees continue to hold shares or other securities issued by Trustpower Limited);
- (c) the nature of existing Trust investments and other Trust property;
- (d) any need to maintain the real value of the capital or income of the Trust;
- (e) the risk of capital loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the Trust;
- (j) the marketability of the proposed investment during, and on the expiry of, the term of the proposed investment;
- (k) the aggregate value of the Trust property;
- (l) the effect of the proposed investment in relation to the tax liability of the Trust; and

- (m) the likelihood of inflation affecting the value of the proposed investment or other Trust property.

3.4 In exercising their powers under clause 3.3 of this Schedule, provided any such investment is consistent with the Charitable Purposes, the Trustees may apply a responsible investment approach as follows:

- (a) A values based approach to selecting investments may be utilised giving preference to investments that are perceived to have positive social, sustainable, environmental, ethical or other similar effects rather than a more traditional risk/return approach;
- (b) Investments that the Trustees consider to have directly or indirectly harmful social, sustainable, environmental, ethical or other similar effects either by reference to sector or measured by ethical standards or environmental, social and governance ratings or performance may be rejected;
- (c) Investments made applying a responsible investment approach are expected to generate a financial return on capital, or at a minimum, a return of capital although targeted returns may range from concessionary, that is below a market rate of return to a risk adjusted market rate of return; and
- (d) A responsible investment approach requires a commitment to measure and report on the performance and progress of the investments against the social, sustainable, environmental, ethical or other similar objectives, ensuring transparency and accountability, and utilising standardised performance metrics or targets wherever possible.

In deciding whether to adopt such an approach the Trustees will have regard to any matters they consider appropriate in their absolute discretion.

3.5 To appoint any person as an investment manager to invest and manage all or any investments forming part of the Trust Fund in accordance with the overall investment strategy and any investment decisions made by the Trustees from time to time on such terms as the Trustees may from time to time in their absolute discretion determine, including regular review of the investment manager's performance, under clause 11.5 of this Schedule.

3.6 In exercising their powers under clause 3.3 of this Schedule, provided any such investment is consistent with the Charitable Purposes, the Trustees may apply principles of impact investing, that is investing with the intention of generating a measurable and beneficial social and/or environmental impact alongside a financial return as follows:

- (a) Impact investments require intentionality to the effect that an investment must be intended to have a clearly identified and positive social, sustainable or environmental impact;
- (b) Impact investments are expected to generate a financial return on capital, or at a minimum, a return of capital although targeted returns may range from concessionary, that is below a market rate of return to a risk adjusted market rate of return, and can be across all or any asset classes and can be made in developed or emerging markets;

- (c) Impact investing requires a commitment to measure and report on the performance and progress of the investments against the social, sustainable or environmental impacts, ensuring transparency and accountability, and utilising standardised performance metrics or targets wherever possible.

In deciding whether to adopt such an approach the Trustees will have regard to any matters they consider appropriate in their absolute discretion.

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

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

5 To borrow and give security

- 5.1 To borrow any money at such rate of interest and on such other terms and conditions as the Trustees may from time to time in their absolute discretion determine, including giving security for repayment over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the borrowing. A borrowing by the Trustees may include without limitation a loan from the trustees of TECT of all or a portion of the trust fund of TECT, including on a fixed rate of interest and otherwise be on such other terms as the Trustees determine.
- 5.2 To give any guarantee or indemnity on such terms and conditions as the Trustees may from time to time in their absolute discretion determine, including giving security for the guarantee or indemnity over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the guarantee or indemnity.

6 To lend

- 6.1 To make any loans or advances (with or without security and with or without payment of interest) to any person, in such manner and on such terms and conditions as the Trustees may from time to time in their absolute discretion determine.
- 6.2 To do any of the following in relation to any debts owing to the Trustees on such terms and conditions as the Trustees may from time to time in their absolute discretion determine:

- (a) waive any debts due to the Trust Fund, either absolutely or in part;
- (b) accept any property before the time at which it is transferable or payable;
- (c) pay or allow any debt or claim on any evidence which they may think sufficient;
- (d) accept any composition or any security for any debt or any property due to or claimed by the Trustees;
- (e) allow any time for payment of any debt; and
- (f) compromise, compound, abandon, or otherwise settle any debt, account, claim or otherwise relating to the Trust Fund including in any circumstance that may result in a loss to the Trust Fund.

7 To hold and deal with real and personal property

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

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

8 To insure

To insure any insurable Trust property to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against any risk including but without limitation, destruction or damage by fire, earthquake and fire following

earthquake and pay the premiums out of income or capital, in each case on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine.

9 To carry on business

9.1 To carry on any business anywhere in the world, whether through a company, in partnership, limited partnership, joint venture or otherwise and generally to act in relation to that business in any manner the Trustees may from time to time in their absolute discretion determine, including, but without limitation:

- (a) to promote, form or concur in forming a company or companies for any purpose, including the purpose of acquiring any business or the assets of any business.;
- (b) to use any part of the Trust Fund as capital in the business through shares, notes, stock or debentures or other forms of equity or proprietorship, advances, loans, deposits or otherwise (with or without security and with or without payment of interest);
- (c) to employ in any business such managers, agents, employees and other persons (including any Trustee subject to clause 6.7 of this deed);
- (d) in respect of any company in which the Trust Fund has any interest, act as a director of the company and subject to clause 6.7 of this deed, receive and retain director's fees or other remuneration for acting as a director without having to account to the Trust Fund, unless the Trustees otherwise require;
- (e) to concur in the winding up, reconstruction or amalgamation of any company; and
- (f) to concur in the dissolution of any partnership, limited partnership or joint venture.

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

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

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

10 To establish sub-committees of Trustees

- 10.1 Subject to clause 11.3 of this Schedule, to appoint a sub-committee or sub-committees of Trustees from time to time as they think necessary or desirable for carrying out the Charitable Purposes of the Trust and any administrative or other functions of the Trustees on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine.
- 10.2 In particular, but without limitation, the Trustees may wish to appoint a Finance Sub-Committee to assist with the preparation of the annual report, Financial Statements and audit or review thereof and an Investment Sub-Committee to assist with formulation of an overall investment strategy and the investment of the Trust Fund under clause 3 of this Schedule.
- 10.3 A sub-committee may co-opt any other person or persons, (whether a Trustee or not and including a person appointed under clause 12 of this Schedule), to be a member of that sub-committee.
- 10.4 Subject to any directions that the Trustees might give, each sub-committee may regulate its own procedure.
- 10.5 Each sub-committee will report to the Trustees at each meeting of Trustees (or as the Trustees may otherwise direct) on their activities and any other relevant matter as the Trustees may direct.
- 10.6 Having made an appointment under this clause 10, the Trustees must keep the affairs of the sub-committee under review and if the circumstances make it appropriate to do so, consider whether they should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the sub-committee.

11 To appoint persons to exercise or perform certain powers or functions

- 11.1 On such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:
- (a) to appoint a person to exercise or perform, on behalf of the Trustees, specified powers or functions in relation to the Trust;
 - (b) to appoint a person to make specified decisions in relation to all or part of the Trust property;
 - (c) to appoint an eligible person to hold or deal with all or part of the Trust property as nominee or custodian and vest all or part of the Trust property in that person.
- 11.2 For the purposes of clause 11.1(c) of this Schedule, an eligible person means:
- (a) a person who carries on a business that consists of or includes acting as a nominee or custodian; or
 - (b) a body corporate in which the Trustees have a controlling interest or the capacity to determine the outcome of decisions about the body corporate's financial and operating policies; or

- (c) a law firm.

11.3 However, the Trustees may not appoint a person under clause 11.1 of this Schedule to exercise or perform any of the following powers or functions:

- (a) a function that is, or is related to, the determination of whether, when, or in what way any Trust property should be distributed, used, possessed, or otherwise applied to any Charitable Purpose;
- (b) the powers to determine whether a return on investment is to be treated as income or capital, which expenses should be paid out of income and capital and apportionments of receipts and outgoings under clause 4 of this Schedule;
- (c) any other powers where the decision affects any payment, application or appropriation to a Charitable Purpose;
- (d) a right to apply to the court; and
- (e) the Trustees' powers under clause 11.1 of this Schedule and any other power conferred by statute or the terms of the Trust that are exercisable only by the Trustees personally.

11.4 The terms of appointment of any person appointed under clause 11.1 of this Schedule will include that the person appointed does not take on the duties of the Trustees, but must act in accordance with the terms of the appointment and with any directions of the Trustees and is liable to the Trustees for any failure to comply with those terms or directions.

11.5 Having made an appointment under clause 11.1 of this Schedule, the Trustees must keep the arrangements, and how those arrangements are being put into effect, under review and if the circumstances make it appropriate to do so, consider whether they should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the appointment.

11.6 The Trustees will not be liable for any act or default of any person appointed under clause 11.1 of this Schedule, unless the Trustees failed in any duty under clause 6 and Schedule 1 in appointing the person or failed to fulfil the obligations in clause 11.5 of this Schedule.

11.7 The act of an appointee appointed under clause 11.1 is not invalid by reason only of any defect in the appointment.

12 **To delegate**

12.1 After the Trusts Act comes into force, to delegate all or any Trustee powers and functions by power of attorney to any person (provided the person is not ineligible to be a Trustee under clause 2 of Schedule 3) if the delegation is necessary or the Trustee expects that it may from time to time become necessary because of the Trustee's:

- (a) absence from New Zealand;
- (b) temporary inability to be contacted;

- (c) temporary physical incapability; or
- (d) temporary lack of capacity to perform the functions of a trustee.

12.2 Any delegation under clause 12.1 of this Schedule commences when the circumstance for the delegation begins or occurs and continues until either, the circumstance ceases, or for a maximum period of 12 months from commencement. If the circumstance is continuing at the end of the initial 12 month period, the delegation may be extended by the delegating Trustee (or the delegate, if the relevant circumstance is that the delegating Trustee is suffering from a lack of capacity to perform the functions of a trustee) until either, the circumstance ceases, or for a maximum further period of 12 months.

12.3 The delegating Trustee (or the delegate, if the relevant circumstance is that the delegating Trustee is incapable of doing so) must notify any co-Trustees within five (5) working days of the commencement of a delegation under clause 12.1 of this Schedule of:

- (a) the date the delegation commenced;
- (b) the duration of the delegation;
- (c) the name and contact details of the delegate;
- (d) the reason for the delegation; and
- (e) which of the Trustee's powers are delegated if only some are delegated.

12.4 If a power of attorney authorising delegation is executed by a Trustee because the Trustee expects the delegation may from time to time become necessary, the delegating Trustee (or the delegate, if the delegating Trustee is incapable) must within five (5) working days of the date of the power of attorney notify any co-Trustees:

- (a) the date of the power of attorney;
- (b) the name and contact details of the delegate; and
- (c) in which of the permitted circumstance under clause 12.1 of this Schedule the delegation commences.

12.5 The Trustees will not be liable for any act or default of a delegate, unless the Trustee failed in appointing the delegate in any duty under clause 6 and Schedule 1.

12.6 The act of a delegate is not invalid by reason only of any defect in the appointment.

13 **To appoint special trust advisers**

13.1 After the Trusts Act comes into force, to appoint, on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine, a special trust adviser to advise the Trustees on any matter relating to the Trust and any special trust adviser so appointed may be removed by the Trustees at any time.

13.2 The Trustees may consult a special trust advisor on any matter relating to the Trust but are not required to follow the special trust adviser's advice.

13.3 The Trustees will not be liable for any act or omission as a result of following the special trust adviser's advice unless the act or omission involves the Trustee's dishonesty, wilful misconduct or gross negligence.

13.4 If a special trust adviser disagrees with, or objects to, a proposed action by a Trustee, such disagreement or objection will not affect a person dealing with the Trustee in the matter.

13.5 A special trust adviser is not a Trustee and does not have the powers or duties of a Trustee.

13.6 A special trust adviser may be paid for the special trust adviser's services provided remuneration is payable to a Trustee. The remuneration paid will be fixed by the Trustees from time to time.

14 To enter into and vary contracts

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

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

15 Custody and use of common seal

If the Trustees become incorporated as a Board under the Charitable Trusts Act 1957, to adopt a common seal to be affixed to any deed to which the Trustees are a party provided the Trustees have given prior authorisation to the affixing of the common seal to the deed and the seal is affixed in the presence of any two Trustees who must sign the deed.

16 To take legal, financial or other professional advice

To take legal, financial or other professional advice in New Zealand or elsewhere on any matter relating to the Trust, the Trust Fund or to the Trustees' duties and powers, and in all matters to act in accordance with that advice.

17 To change the name of trusts

To change the name of the trusts created by this deed to any other name unanimously approved by the Trustees.

18 To change the Balance Date

To change the Balance Date to any other date unanimously approved by the Trustees provided all regulatory approvals to do so have been obtained.

19 To enter into alternative dispute resolution

19.1 After the Trusts Act comes into force, to agree that any dispute that may give rise to legal proceedings, or any legal proceeding relating to the Trust, the Trust Fund or to the Trustees' duties and powers, and brought by or against a Trustee, between a

Trustee and a third party or between two or more Trustees, may be referred to an alternative dispute resolution process designed to facilitate the resolution of the matter.

- 19.2 Any agreement to enter into an alternative dispute resolution process under this clause 19 will be on such terms and conditions as the Trustees may from time to time in their absolute discretion agree with any other party to the dispute.
- 19.3 The Trustees will be under no obligation to agree to any alternative dispute resolution process notwithstanding the power to do so under this clause 19.
- 19.4 To take all steps necessary or desirable in the Trustees' absolute discretion to reach agreement on any matter referred to an alternative dispute resolution process including, without limitation:
- (a) payment from the Trust Fund of all or any costs and expenses in relation to the alternative dispute process;
 - (b) entering into an enforceable settlement agreement on such terms and conditions as the Trustees in their absolute discretion agree; and
 - (c) giving binding undertakings in relation to the matter (including undertakings that may bind or commit the Trustees to a future exercise or non-exercise of a discretion (notwithstanding, and by way of modification to, the Trustees' duty under clause 10 of Schedule 1).

SCHEDULE 3: APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

1 Number and composition of Trustees

1.1 There shall be up to eight (8) Trustees being:

- (a) up to six (6) Trustees elected by Electors (*Elected Trustees*); and
- (b) if the Elected Trustees so decide, up to two (2) Trustees appointed by the Elected Trustees in accordance with clause 7 of this Schedule 3 (*Appointed Trustees*).

1.2 The first Trustees shall be the six (6) persons signing this deed as Trustees.

1.3 The Trustees must endeavour to hold collectively the skills to manage the Trust, in particular:

- (a) sufficient diversity among Trustees (for example, in relation to background, skillset, ethnicity, demographics, and gender) in order to ensure that the communities in the District and its needs are properly represented;
- (b) sufficient Trustees who have the skills required to manage the Trust Fund's investments (including compliance with financial and legal requirements);
- (c) Trustees who collectively have skills in governance, community experience and the social sector; and
- (d) sufficient institutional knowledge of the Trust's affairs retained amongst the Trustees to enable smooth operation of the Trust.

2 Eligibility

2.1 Subject to clause 2.2 of this Schedule 3, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

- (a) an undischarged bankrupt;
- (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
- (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
- (d) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company pursuant to the Companies Act 1993;
- (e) a person who lacks capacity to perform the functions of a trustee;
- (f) a person who does not otherwise qualify to be an officer of a charitable entity under section 16 of the Charities Act 2005;

- (g) a person who is not entered on the Parliamentary election rolls with an address in the District;
- (h) the Chief Executive and any employees of or contractors to the Trust and any other office holder thereof;
- (i) a person who is, or becomes, a member of Parliament in New Zealand;
- (j) a person who is, or becomes, a councillor or other elected official of any local or regional authority whose territory includes any part of the District;
- (k) a person who is, or becomes, a member (whether elected or appointed) of a Community Board (as that term is defined in the Local Government Act 2002) whose territory includes any part of the District; and
- (l) a person who has previously served in aggregate three terms (including part terms) as a Trustee (whether as an Elected Trustee or an Appointed Trustee), whether or not such terms were served consecutively.

2.2 A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which clause 2.1(b) of this Schedule 3 applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) in any case to which clause 2.1(c) of this Schedule 3 applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined; and
- (c) in any case to which clause 2.1(g) of this Schedule 3 applies, if the Trustee to which the clause applies is an Appointed Trustee who ceases to be entered on the Parliamentary electoral rolls with an address in the District.

3 **Term of office**

3.1 The maximum duration of each term of office of a Trustee (whether an Elected Trustee or an Appointed Trustee) shall be four years, and no such Trustee may serve more than an aggregate of three terms (including part terms) as a Trustee, whether or not such terms are served consecutively.

3.2 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees;
- (b) the Trustee is ineligible for election or appointment as a Trustee pursuant to clause 2.1 of this Schedule 3;
- (c) the Trustee dies while holding office as a Trustee;
- (d) the Trustee, being an Elected Trustee, is not re-elected, when the Trustee shall retire at an Annual General Meeting; or

- (e) the Trustee does not attend three (3) consecutive monthly Trustee meetings of which notice has been properly given without the prior consent of the remaining Trustees.

3.3 The provisions of clause 2.2 of this Schedule 3 shall apply, mutatis mutandis, to clause 3.1 of this Schedule 3. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.

4 **Rotation of Trustees**

4.1 From and including the first Annual General Meeting and at every second Annual General Meeting occurring thereafter, three (3) Elected Trustees shall retire from office.

4.2 The Elected Trustees to retire at any Annual General Meeting shall firstly be any Elected Trustee(s) (if any) appointed to fill any casual vacancy since the last Trustee election and secondly the required number of Elected Trustees (to make the number of retiring Elected Trustees three (3) in total) who have been longest in office since their election.

4.3 If there are more Elected Trustees due to retire than the required number of Elected Trustees to retire as determined in accordance with the previous sentence, then the Elected Trustees to retire shall be determined by lot. Such retiring Elected Trustees shall retire at the conclusion of the relevant Annual General Meeting.

4.4 The new Trustees who have been elected in accordance with clause 5 of this Schedule 3, who may, subject to the other provisions of this deed, include Trustees who have retired, shall be appointed at the conclusion of that Annual General Meeting.

5 **Election of Trustees**

5.1 Other than an Appointed Trustee and any Trustee appointed to fill a casual vacancy, all Trustees shall be elected by the Electors in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:

- (a) Not later than nine weeks before the proposed date of the election the Independent Returning Officer shall insert a notice on a website maintained by the Trust giving:
 - (i) advice of the proposed election;
 - (ii) the place or places at which nomination forms may be obtained;
 - (iii) where completed nominations may be lodged;
 - (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Electors; and
 - (v) the day and time nominations close.

- (b) Every nomination of a candidate shall be in writing and shall include:
 - (i) the full name and address of the candidate;
 - (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in clause 2.1 of this Schedule 3; and
 - (iii) the signature of the nominator and seconder and the candidate all of whom must be Electors.
 - (c) Nominations shall close four weeks after the first notice calling for nominations was given pursuant to clause 5.1(a) of this Schedule 3.
 - (d) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Independent Returning Officer shall declare the candidates duly elected and no election shall be held.
 - (e) Should nominations be received for more than the number of vacancies, the Independent Returning Officer shall conduct an election of Trustees pursuant to this clause 5.1 using any form of electronic voting or such other method as directed by the Trustees. The Independent Returning Officer shall give, not less than three weeks prior to the date on and the time at which voting is to close (in this clause 5.1, the *Voting Period*), to the Electors, in such manner as the Independent Returning Officer shall deem fit, an electronic ballot paper which shall contain:
 - (i) the names of all candidates validly nominated in random order and appropriate provision for recording the Elector's vote;
 - (ii) if postal voting is to be used, a pre-paid envelope in which the ballot paper is to be placed and returned to the Independent Returning Officer; and
 - (iii) a written explanation of the method for recording the Elector's vote, the manner in which the ballot paper is to be returned, and the date and time at which the Voting Period is to close.
- Biographical and other details of the candidates may, if the Trustees approve, be included in the information given to Electors.
- (f) The Independent Returning Officer shall, after close of the Voting Period, count the number of valid votes cast for each candidate and ascertain the candidates elected.
 - (g) A vote is invalid and shall not be counted if:
 - (i) the Elector votes for more candidates than there are Trustees to be elected; or

- (ii) in the opinion of the Independent Returning Officer, the ballot paper does not clearly indicate the candidate or candidates for whom the Elector intended to vote.
- (h) Where, because two (2) or more candidates have received the same number of valid votes, the Independent Returning Officer cannot determine which of them has been elected, the Independent Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Independent Returning Officer and such other person or persons (if any) as the Independent Returning Officer may decide.
- (i) Forthwith after ascertaining which candidates have been elected, the Independent Returning Officer shall declare the names of the candidates so elected, and shall publish those names on the website of the Trust. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting.
- (j) After declaring the result of the election the Independent Returning Officer shall decide when to destroy the voting papers and/ or to permanently delete any computer records or files relating to votes cast electronically.
- (k) Notwithstanding any other provision in the Deed (including the rules set out in this Schedule), the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire. Forthwith upon the conclusion of the relevant Annual General Meeting the candidates declared elected pursuant to this clause 5.1 shall assume office in place of the retiring Trustees.
- (l) The Electors who shall be entitled to vote for the appointment of Trustees shall be those persons who are Electors on the date nominations for candidates close as specified in accordance with clause 5.1(a)(v).

6 Casual vacancy in Trustees

6.1 Any casual vacancy in the number of Elected Trustees:

- (a) shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or
- (b) may, in any other case, shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or

be filled within 3 months of that vacancy occurring providing that the new appointee shall hold office only for the residue of the term of office of the Trustee whose place is taken.

7 Appointment of Trustees

7.1 The following provisions shall apply in respect of Appointed Trustees:

- (a) the Elected Trustees may by resolution (which must be unanimous) appoint any person as an Appointed Trustee, and remove from office any person so appointed by a simple majority. The Elected Trustees may at any time and for any period decide that there should be only one, or no Appointed Trustees;

- (b) in making any appointment, the Elected Trustees shall have regard to the skills, diversity and experience of the Elected Trustees, and shall endeavour to appoint a person or persons with skills that complement those of the Elected Trustees; and
- (c) an Appointed Trustee shall cease to hold office on the date of the next Annual General Meeting after his or her appointment or re-appointment in accordance with this clause 7.1, but shall be eligible for re-appointment by the Elected Trustees at that time.

7.2 Any new appointee, either to fill a casual vacancy or as an Appointed Trustee, may be chosen at the discretion of the remaining Trustees having regard to the range and nature of skills of the appointee so that such skill set complements those of the remaining Trustees and which will add value to the good decision making by Trustees in their administration of the Trust.

8 **Chairperson and Deputy Chairperson**

The Trustees shall elect a Chairperson and (should they so decide) Deputy Chairperson, who shall also be Trustees, at the first meeting of Trustees after the Annual General Meeting in each year and at any other time when either position becomes vacant.

9 **Meetings of Trustees**

9.1 The Trustees shall, subject to clause 12 of this schedule 3, meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.

9.2 Any three (3) or more Trustees may at any time summon a meeting of Trustees.

10 **Notice of meetings**

10.1 Notice in writing of every meeting shall be sent by such method of delivery (whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the Chief Executive or other person acting under the direction of the Trustees or of the Chief Executive. In the case of a meeting summoned pursuant to clause 9.2 of this Schedule 3, the Trustees, Chief Executive, persons summoning the meeting or other person acting under the direction of the Trustees or Chief Executive, as the case may be, shall give at least five (5) working days' notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

10.2 Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to clause 9.2 of this Schedule 3 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

11 **Quorum**

11.1 A quorum at meetings of the Trustees shall comprise four (4) Trustees.

11.2 No business may be transacted at a meeting of Trustees if a quorum is not present, and the meeting shall be adjourned in accordance with clause 13 of this Schedule 3.

12 **Annual General Meetings of trustees**

12.1 The Trustees shall hold an Annual General Meeting of Trustees no later than by 30 November in each calendar year. The following provisions shall apply with respect to that Annual General Meeting:

- (a) The Chief Executive shall give no less than twenty (20) working days' notice of the Annual General Meeting to the Trustees such notice to specify the date, time and place of the Annual General Meeting.
- (b) The business to be transacted at the Annual General Meeting of Trustees shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with clause 12.1(c) of this Schedule 3.
- (c) Notice in writing of any special business shall be given to the Chief Executive no less than fifteen (15) working days prior to the Annual General Meeting. The Chief Executive shall circulate an agenda, including all special business, to the Trustees no later than ten (10) working days prior to the Annual General Meeting and shall also give to Electors not less than ten (10) working days prior written notice of the time, place, date and agenda of the Annual General Meeting by notice on a website maintained by the Trust.
- (d) Electors shall be entitled to attend and speak at the Annual General Meeting but shall not be entitled to vote at such meetings.

13 **Adjournment**

13.1 If a quorum is not present within thirty minutes after the time appointed for any meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as all Trustees who are entitled to vote may agree and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Trustees present will constitute a quorum.

13.2 The Chief Executive will give written notice of a meeting which is adjourned pursuant to clause 13.1 of this Schedule 3 to all Trustees, which must be accompanied by the agenda for the adjourned meeting and any Trustee papers reasonably required to assist the Trustees to assess the matters due for consideration at the adjourned meeting.

13.3 Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

14 **Committees**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these

rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

15 Voting

15.1 Except as otherwise provided in this deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.

15.2 The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue.

16 Disclosure of interests

16.1 A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:

- (a) is a party to, or will derive a material financial benefit from that transaction;
- (b) has a material financial interest in another party to the transaction;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
- (e) is otherwise directly or indirectly interested in the transaction.

16.2 As soon as a Trustee becomes aware of the fact that they are interested in a transaction or proposed transaction with the Trust, they must disclose to their co-Trustees:

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

16.3 A disclosure of interest by a Trustee must be recorded in the minute book of the Trust. The Trustees shall record or cause to be recorded in the minute book of the Trust a disclosure of interests on behalf of all Trustees from time to time for such time as the Trustees of the Trust are the same persons as the trustees of TECT, and such disclosure shall be deemed to relate to, and be satisfactory for, all transactions or other dealings between the Trust and TECT or any entity controlled by TECT.

16.4 Although a Trustee who is interested in a transaction entered into or to be entered into by the Trust may not vote on a matter relating to the transaction, nor be included among the Trustees present at the meeting for the purpose of determining a quorum under clause 9 of this Schedule 3 the Trustee may:

- (a) attend a meeting of Trustees at which a matter relating to the transaction arises;
- (b) sign a document relating to the transaction on behalf of the Trust; and
- (c) do anything else as a Trustee in relation to the implementation of the transaction, as if he or she were not interested in the transaction.

17 **Minutes**

- 17.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 17.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 17.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

18 **Resolutions in writing**

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

19 **Meetings by telephone / video conferencing**

- 19.1 Notwithstanding any other provision in this deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee (the *participants*) being not less than a quorum, together with the person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone or by video conferencing.
- 19.2 Minutes of the proceedings at such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by a person acting as a secretary.

20 **Validity of proceedings**

All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

21 **Execution of documents**

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and

executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.

SCHEDULE 4: CONSULTATIVE PROCEDURE

In respect of any provision of this deed which requires the Trustees to implement a Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees.
- (b) Give notice of the proposal to Electors in accordance with clause 9 of the Trust Deed.
- (c) In every notice given under paragraph (b) of this Schedule, specify a period within which Electors interested in the proposal may make submissions on the proposal to the Trustees.
- (d) Ensure that any Elector who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this Schedule is given a reasonable opportunity to be heard by the Trustees.
- (e) Ensure that every meeting at which submissions are heard are open to Electors.
- (f) Make all written submissions on the proposal (excluding address details of the submitters if so determined by the Trustees) available to Electors.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.

SCHEDULE 5: MAP OF DISTRICT

[Attached]

EXECUTION

[Execution blocks for signing to be inserted]