

DATED

21st

day of

July

2015

17 MAY 2016

DEED OF TRUST

MICHAEL AND SUZANNE BORRIN FOUNDATION

BETWEEN

IAN ALBERT BORRIN
("SETTLOR")

AND

IAN ALBERT BORRIN

NIKAU FOUNDATION
("TRUSTEES")

Certified to be a true copy of the original by
a Solicitor of the High Court of New Zealand

Date:

13/5/2016



Anthea Jane Connor
Solicitor
Wellington

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THIS DEED dated the day of July 2015

BETWEEN **IAN ALBERT BORRIN** of Wellington, Retired Judge (“Settlor”)

AND **IAN ALBERT BORRIN** of Wellington, Retired Judge and **NIKAU FOUNDATION** of Wellington, Charitable Foundation (registered number 1768496) (“Trustees”)

BACKGROUND

- A.** The Settlor wishes to create a charitable trust for the development of legal education and legal research to be known initially as the “Michael and Suzanne Borrin Foundation” (“the Foundation”).
- B.** The Settlor also wishes to establish the Foundation to promote legal scholarship in all areas of the law and to promote the development of the law and to provide funds for those purposes.
- C.** The Settlor considers it desirable to establish the Foundation for the purposes set out in detail in this Deed.
- D.** The Trustees have agreed to act as the initial trustees of the Foundation.
- E.** By way of initial gift to establish the Foundation the Settlor has paid the sum of \$100 to the Trustees on the date of execution of this Deed.

TRUST TERMS

1. INTERPRETATION

In this Deed unless the context indicates otherwise:

1.1 Definitions:

“**Balance Date**” means 30 September or any other date adopted from time to time by the Trustees as the end of the Foundation’s Financial Year;

“**Chairperson**” means the Trustee appointed in accordance with clause 6.4;

“**Concessionary Provisions**” means sections CW 41 (Charities: non-business income), CW 42 (Charities: business income), CX 25 (Benefits provided by charitable organisations), DB 41 (Charitable or other public benefit gifts by company) and DV 12 (Maori authorities: donations) and subpart LD (Tax credits for charitable or other public benefit gifts) of the Income Tax Act 2007; and, if the Trustees are registered under the Goods and Services Tax Act 1985, the provisions of that Act relating to non-profit bodies, as defined in section 2(1) of that Act;

“**Financial Year**” means any period of 12 months or other accounting period ending on the Balance Date;

"the Foundation" means the charitable foundation established by this Deed initially known as the **MICHAEL AND SUZANNE BORRIN FOUNDATION**;

"Foundation Trustee" means **IAN ALBERT BORRIN** the Settlor of the Foundation for the period of his lifetime;

"Property" means real or personal property of any kind and includes any right or interest in such property and any thing in action;

"Secretary" means the person appointed in accordance with clause 6.5;

"Trust Fund" means any Property, which may be paid to or held under the control of or vested in or acquired by the Trustees for the Foundation from any source on or after the date of this Deed and whether by way of gift, bequest, devise, purchase, exchange or otherwise; and

"Trustees" means the trustee or trustees for the time being of the Foundation including the Foundation Trustee for his lifetime and, where the trustees of the Foundation have incorporated as a board under the Charitable Trusts Act 1957, either the trustees acting as a board or the trustee or trustees for the time being constituting the board, as the context requires;

- 1.2 **Clauses:** references to clauses are references to clauses contained in this Deed;
- 1.3 **Defined Expressions:** expressions defined in the main body of this Deed have the defined meaning in the whole of this Deed including the background;
- 1.4 **Gender:** references to one gender include the other gender;
- 1.5 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this Deed's interpretation;
- 1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **No Limitation:** references to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;
- 1.8 **Parties:** references to parties are references to parties to this Deed;
- 1.9 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or

authorities or other entities in each case whether or not having separate legal personality;

1.10 Plural and Singular: singular words include the plural and vice versa; and

1.11 Statutes and Regulations: references to any statutory provision include any statutory provision which amends or replaces it and any subordinate legislation made under it.

2. NAME OF THE FOUNDATION

2.1 Name of the Foundation: The name of the Foundation is the **MICHAEL AND SUZANNE BORRIN FOUNDATION**.

2.2 Change of Name: The Trustees may change the name of the Foundation by Deed to any other name which they may unanimously determine from time to time. Nothing in this clause shall enable the name of the Foundation to be changed to any name which does not include reference to the BORRIN family name as the founding benefactors of the Foundation.

3. PURPOSES OF THE FOUNDATION

3.1 Exclusively Charitable Purposes: The Trustees shall hold the Trust Fund on trust to pay or apply so much of the capital and income of the Trust Fund as the Trustees think fit exclusively for or towards any one or more of the following exclusively charitable purposes, which are declared to be the purposes of the Foundation, namely:

3.1.1 To promote the undertaking of legal research and scholarship and legal writing and legal education on a wide area of legal topics of both general and specific interest.

3.1.2 To promote the giving of lectures on the legal matters referred to in this clause 3, in New Zealand or overseas, either in public or in academic forums.

3.1.3 In conjunction with the purposes contained in subclauses 3.1.1 and 3.1.2, to fund travel both within New Zealand and overseas.

3.1.4 To provide grants and scholarships for members of the New Zealand legal community as a whole including members of the judiciary (being Judges or retired Judges of any of the Courts of New Zealand), members of the practising legal profession (whether engaged in the private or the public sector), lawyers holding an academic appointment in a recognised law school within New Zealand, and law students of graduate or postgraduate status.

3.1.5 To do all things incidental to the charitable purposes described in this clause 3.1 as the Trustees shall from time to time believe shall

be compatible with the general charitable objects of the Foundation.

3.1.6 To pay or apply so much of the capital and income of the Trust Fund as the Trustees think fit exclusively for or towards any one or more of the purposes set out in this Deed which are charitable in accordance with the law of New Zealand and which are declared to be purposes of the Foundation.

3.2 Change in Law: If, because of any change in the law brought about by the enactment of new legislation and/or the amendment or repeal of existing legislation, or by any change in the official interpretation or official application of any such legislation, it is at any time necessary to amend the terms of this Deed in order to achieve and/or preserve the availability of any concession in relation to the Foundation under any of the Concessionary Provisions which would otherwise be available were it not for the change in the law, then, despite clause 14, the terms of this Deed will at that time be deemed to be amended to the extent necessary.

3.3 No Limitation: None of the purposes of the Foundation will be:

3.3.1 Limited or Restricted: in any way limited or restricted by reference to or inference from the terms of any other clause or the name of the Foundation, except where the context specifically or expressly requires it; or

3.3.2 Subsidiary or Ancillary: treated as subsidiary or ancillary to any other purpose of the Foundation.

3.4 Purposes Independent: The Trustees are empowered to carry out any one or more of the purposes of the Foundation independently of any other purpose of the Foundation.

3.5 New Zealand Purposes: The purposes of the Foundation are to be pursued primarily for New Zealand purposes but may be implemented both within New Zealand or elsewhere as the Trustees may from time to time determine.

4. POWERS OF TRUSTEES

4.1 Promotion of Purposes: The Trustees, in connection with the Foundation, will only promote the exclusively charitable purposes of the Foundation described in clause 3.

4.2 Extent of Trustees' Powers: In particular and in addition to all other powers conferred by law, but subject only to the restrictions contained in this Deed, the Trustees' powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

4.3 Status of Powers: None of the powers or authorities conferred on the Trustees by this clause or otherwise will be deemed subsidiary or ancillary to any other power or authority. The Trustees may exercise any of those powers and authorities independently of any other power or authority. If there is any ambiguity, this provision will be construed so as to widen and not restrict the Trustees' powers, provided that at no time shall this provision be construed so as to prevent the availability of any concession in relation to the Foundation under any of the Concessionary Provisions which would otherwise be available.

5. APPOINTMENT AND REMOVAL OF TRUSTEES

5.1 Number of Trustees: At such times as the Nikau Foundation is a Trustee of the Foundation and the Foundation Trustee is alive, the number of Trustees may be two (2) Trustees comprising the Nikau Foundation and the Foundation Trustee Ian Albert Borrin for his lifetime. After the death of the Foundation Trustee, the Nikau Foundation may be the sole trustee of the Foundation.

5.2 In the event that the Nikau Foundation is no longer a Trustee of the Foundation then the number of Trustees must be not less than four (4) nor more than eight (8) provided that:

5.2.1 Increase to Minimum Number: if at any time there are less than four Trustees, the person having the power of appointment of Trustees must increase the number of Trustees to four as soon as is reasonably practicable; and

5.2.2 Actions Pending Increase: the remaining Trustees will be entitled to act until the number of Trustees is increased and no act or decision of the remaining Trustees will be called into question on account of the fact that there were less than four Trustees when that act or decision was carried out or made.

5.2.3 The Foundation Trustee shall be a Trustee for his lifetime or until such time as he shall resign his position as Trustee in writing.

5.3 Power of Appointment: The power of appointment of replacement Trustees is vested in Ian Albert Borrin the Foundation Trustee during his lifetime. Following the resignation of the said Ian Albert Borrin as Foundation Trustee, or his otherwise ceasing to be a trustee for any reason, the power of appointment of replacement Trustees shall vest in the Nikau Foundation for such time as the Nikau Foundation is a Trustee of the Foundation.

5.4 Additional Powers: The person holding the power of appointment from time to time as set out in clause 5.3 shall also have the following powers:

- 5.4.1 **Additional Trustees:** the power to appoint at any time or times an additional Trustee or additional Trustees including the appointment of advisory trustees; and
 - 5.4.2 **Reappoint:** the power to reappoint any retiring or retired Trustee as Trustee; and
 - 5.4.3 **Power of Removal:** the power to remove any Trustee.
- 5.5 **Eligibility of Trustees:** The following persons may not hold office as a Trustee:
- 5.5.1 **Youth:** an individual who is under the age of 18 years;
 - 5.5.2 **Bankruptcy:** an individual who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by the Court from engaging in any form of business activity;
 - 5.5.3 **Liquidation, Receivership or Statutory Management:** a company, incorporated society or any other body corporate:
 - (a) **Winding Up or Liquidation:** which is being wound up or has gone into liquidation;
 - (b) **Resolution to Appoint Liquidator:** in respect of which a resolution has been passed appointing a liquidator;
 - (c) **Order to Appoint Liquidator:** in respect of which an order has been applied for or made by the Court appointing a liquidator;
 - (d) **Meeting to Appoint Liquidator:** in respect of which a meeting of shareholders or members has been called at which the appointment of a liquidator will be considered;
 - (e) **Receiver or Statutory Manager Appointed:** for which a receiver or statutory manager has been appointed in respect of all or any part of its assets; or
 - (f) **Arrangement in Respect of Creditors:** which has made or entered into, or attempted to make or enter into, any compromise, assignment or other arrangement with or for the benefit of all or any class of its creditors;
 - 5.5.4 **Criminal Conviction or Sentence:** a person who has been:
 - (a) **Crime Involving Dishonesty:** convicted of any crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or

(b) **Other Offences:** convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence,

provided that that person will not be disqualified from appointment as a Trustee, or may continue to hold office as a Trustee, but will be deemed to have taken leave of absence, until the expiry of the time for appealing against the conviction or sentence of imprisonment, and if there is an appeal against conviction or sentence, until the appeal has been determined;

5.5.5 Disqualification from Company Positions: a person who is prohibited from being a director or promoter of, or being concerned with or taking part in the management of, a company under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, the Financial Markets Conduct Act 2013 or the Takeovers Act 1993;

5.5.6 Incapacity: a person who is subject to a property order made under the Protection of Personal and Property Rights Act 1988 or whose Property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or

5.5.7 Charities Act Order: a person who is subject to an order made under section 31 of the Charities Act 2005 disqualifying the person from being an officer of a charitable entity.

5.6 Ineligibility of Person Having Powers of Appointment: If any person having the powers of appointment under clause 5.3 and removal under clause 5.4:

5.6.1 Death or Dissolution: dies or, in the case of a body corporate, is liquidated or otherwise dissolved; or

5.6.2 Eligibility to be a Trustee: is precluded from holding office as a Trustee under clause 5.5;

then (subject to clause 5.3) the Trustees, but excluding that person if that person is also a Trustee, will have the power to:

5.6.3 Remove Power: remove those powers of appointment and removal from that person; and

5.6.4 Revest Power: revest those powers of appointment and removal in another person who may or may not be a Trustee.

From the date of any such revesting, this clause 5.6 will apply to the person in whom the powers of appointment and removal are revested as if that person were originally named in clause 5.3.

5.7 Term of Office: A Trustee will cease to hold office if that Trustee:

- 5.7.1 Resignation:** resigns by giving 30 days' written notice to the Secretary, who must circulate that written notice to the remaining Trustees within 10 days of receipt;
- 5.7.2 Ineligibility:** is precluded from holding office as a Trustee under clause 5.5;
- 5.7.3 Failure to Attend:** fails to attend a meeting of the Trustees for a period of 12 months;
- 5.7.4 Death:** dies while holding office as a Trustee; or
- 5.7.5 Removal:** is removed by the person having the power of removal of Trustees.

5.8 Recording: On every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees must cause an entry to that effect to be recorded in the Foundation's minute book.

6. ADMINISTRATION OF THE FOUNDATION

6.1 Meetings: The Trustees must regulate and conduct meetings as follows:

- 6.1.1 Annual General Meeting:** within five months of the end of each Financial Year, the Trustees must hold an annual general meeting;
- 6.1.2 Notice:** the Secretary must give no less than 30 days' written notice of the annual general meeting to the Trustees;
- 6.1.3 Business:** the business to be transacted at the annual general meeting will be the:
 - (a) receipt of the financial statements;
 - (b) appointment of the auditor (if any); and
 - (c) setting of the Trustees' remuneration;

and any other business will be treated as special business and will be dealt with in accordance with clause 6.1.4;

- 6.1.4 Special Business:** written notice of any special business must be given to the Secretary no less than 21 days before the annual general meeting and the Secretary must circulate a written agenda including all special business to the Trustees no later than 14 days before the annual general meeting;
- 6.1.5 Other Meetings:** the Trustees may otherwise meet at any times and places which they may agree provided that any two or more

Trustees may at any time requisition a meeting of Trustees by giving written notice to the Secretary and the Secretary must, within 10 days of receipt of that notice, convene a special general meeting by giving, subject to clause 15.1.2, not less than 10 days' notice of the meeting to the Trustees; and

6.1.6 Particulars of Notice: every notice of meeting given by the Secretary to the Trustees must:

(a) be in writing; and

(b) state the date, time and place of the meeting;

and every notice of a meeting requisitioned under clause 6.1.5 must state the matters to be discussed at that meeting, but notice of any meeting may be abridged or waived if all the Trustees consent in writing to that abridgment or waiver.

6.2 Quorum: A quorum at meetings of the Trustees will be comprised of two (2) Trustees which quorum shall include the Foundation Trustee (or his proxy) and the Nikau Foundation, provided that if and for so long as the Nikau Foundation is the sole Trustee of the Foundation, the quorum at meetings of the Trustees will be established if the Nikau Foundation is in attendance (by way of its duly authorised representative(s)).

6.3 Validity of Proceedings: All acts done by any meeting of Trustees or by any person acting as Trustee will be as valid and effectual as if that Trustee or those Trustees:

6.3.1 Duly Appointed: had been duly appointed;

6.3.2 Qualified: were qualified to hold office as Trustee; and

6.3.3 Complied With Rules: had complied with the rules and regulations relating to meetings, resolutions and other acts as set out in this Deed;

even if it is later discovered that:

6.3.4 Defect in Appointment: there was some defect in the appointment of any of the Trustees;

6.3.5 Trustee Disqualified: any of the Trustees were for any reason disqualified from holding office as Trustee; or

6.3.6 Failure to Comply: there was accidental failure to comply with the rules and regulations relating to meetings, resolutions and other acts set out in this Deed.

- 6.4 Chairperson:** The Trustees must appoint a Chairperson of the Trustees from among their number who will hold office at the Trustees' pleasure. The Foundation Trustee Ian Albert Borrin shall be the initial Chairperson from the date of commencement of the Foundation until his resignation or removal or cessation in office.
- 6.5 Secretary:** The Trustees must from time to time appoint either one of their number or some other person to be Secretary who shall hold office at the Trustees' pleasure. During the time that the Nikau Foundation is a Trustee and has been designated with administrative powers by the Trustees of the Foundation, the Nikau Foundation shall as part of its administrative functions provide the services of a person as Secretary of the Foundation.
- 6.6 Majority Decisions:** Except as otherwise provided, and subject to clause 6.2, all resolutions passed at a meeting of the Trustees may be by a majority of Trustees present at that meeting and any such resolution will be *binding on all Trustees*. The Chairperson will have a casting as well as a deliberative vote if there is a tie and equality of votes.
- 6.7 Written Resolution:** A written resolution, signed by all the Trustees, will be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.
- 6.8 Rescission of Resolutions:** The Trustees may from time to time rescind or vary any resolution of the Trustees by the same majority as was necessary to pass the resolution being rescinded or varied.
- 6.9 Minutes:** The Trustees must provide and keep a minute book, to be maintained by the Secretary. The Secretary must prepare and enter a record of all resolutions of the Trustees in the minute book. If confirmed by the Trustees, the Chairperson must sign those minutes as a true and correct record. Every minute purporting to be so signed will be *prima facie evidence of the facts stated in that minute*.
- 6.10 Bank Accounts:** The Trustees must keep an account at a bank, which they may determine from time to time. Cheques must be drawn, signed and endorsed or the account operated by any person whom the Trustees from time to time authorise in writing. During the time that the Nikau Foundation is a Trustee and has been designated with administrative powers by the Trustees of the Foundation (and subject to the resolutions of the Trustees as to the administration of the Foundation from time to time) the Foundation's bank accounts may be operated by the Nikau Foundation for and on behalf of the Foundation.

6.11 Accounts and Audit: The Trustees must ensure that:

6.11.1 Keep Records and Accounts: full and correct records and accounts are kept of all their receipts, credits, payments, assets, liabilities, transactions and all other matters necessary for showing the true state and condition of the Trust Fund; and

6.11.2 Financial Statements: financial statements are prepared as soon as practicable after the end of each Financial Year. Those statements must include:

(a) **Financial Position:** a statement of financial position;

(b) **Financial Performance:** a statement of financial performance; and

(c) **Notes:** notes to those statements;

giving a true and fair view of the financial position of the Trust Fund for that Financial Year and, if the Trustees so resolve, a chartered accountant appointed for the purpose by the Trustees will undertake a review of, or audit (as determined pursuant to the Charities Act 2005), those financial statements; and

6.11.3 Change of Balance Date: any change to the Balance Date for the Foundation which has been approved, if required, pursuant to section 41 of the Charities Act 2005 or otherwise;

and, during the time that the Nikau Foundation is a Trustee and has been designated with administrative powers by the Trustees of the Foundation, the Trustees may by resolution delegate to the Nikau Foundation the responsibility for meeting the accounting and audit obligations of the Foundation as set out in this Deed.

6.12 Execution of Documents: Subject to clause 6.13, all documents required to be executed by the Trustees will be deemed to be validly executed and binding if those documents have been signed by at least two (2) Trustees (if there are two or more Trustees), or if there is only one Trustee then by that person, or by any other person whom the Trustees from time to time authorise in writing.

6.13 Common Seal: If the Trustees become incorporated as a board under the Charitable Trusts Act 1957, then:

6.13.1 Provision and Use of Seal: the Trustees will provide a common seal for the board, which will be:

(a) **Deposited with Secretary:** deposited with the Secretary; and

- (b) **Use of Seal:** affixed to any document requiring execution by the board under common seal; and

6.13.2 Affixation of Seal: every affixing of the common seal must be:

- (a) **Authorisation:** performed in the presence of and accompanied by the signatures of two Trustees (if there are two or more trustees, and otherwise by the sole Trustee), which will be sufficient evidence of authority to affix the seal; and
- (b) **Seal Register:** recorded in a seal register retained for such purpose.

6.14 Preparation and Filing of Documents and Other Information: The Trustees must cause to be prepared, and retained and/or filed with any relevant authority all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed, pursuant to any revenue legislation, the Charities Act 2005 or otherwise, so as to achieve or preserve the availability of any concession in relation to the Foundation under any of the Concessionary Provisions.

During the time that the Nikau Foundation is a Trustee and the Nikau Foundation has been designated with administrative powers by the Trustees of the Foundation, the Nikau Foundation shall have such powers as are necessary to complete such matters on behalf of the Foundation.

6.16 Notices: Any notice to be given to the Secretary under this Deed must be in writing signed by the person giving the notice and served at the office of the Foundation. Any notice or document so served will be deemed to be duly given:

6.16.1 By Hand: if delivered by hand, when so delivered;

6.16.2 By Facsimile: if delivered by facsimile, when receipt is confirmed;

6.16.3 By Post: if delivered by post, on the third working day after posting; or

6.16.4 By E-mail: if sent by e-mail, on the sender's receipt of an e-mail message indicating that the e-mail has been opened at the recipient's terminal.

7. FOUNDATION GRANTS AND SCHOLARSHIPS COMMITTEE

7.1 The Foundation shall operate a committee to be known as the "Grants and Scholarships Committee" which shall recommend the scholarships and grants which are to be made from the Trust Fund.

- 7.2** The Grants and Scholarships Committee shall operate independently of the Trustees of the Foundation and shall make recommendations to the Trustees each year (or at any time on an ad hoc basis) with regard to any proposals which fall within the charitable objects contained in this Deed. Although the recommendations of the Grants and Scholarships Committee shall not be binding on the Trustees, the Trustees shall not ignore or overrule the recommendations of the Grants and Scholarships Committee without substantial reasons which reasons shall be disclosed to the Grants and Scholarships Committee.
- 7.3** The members of the Grants and Scholarships Committee shall be the following persons:
- 7.3.1** The Foundation Trustee or his nominee;
 - 7.3.2** The Chief Justice of New Zealand for the time being or his/her nominee (being a Judge or retired Judge of any of the Courts of New Zealand);
 - 7.3.3** The President for the time being of the New Zealand Law Society or his/her nominee (being a senior member of the practising profession);
 - 7.3.4** The Dean for the time being of the Law School of Victoria University of Wellington or his/her nominee;
 - 7.3.5** Thomas George Goddard, Retired Chief Judge, and following his death or retirement from the Grants and Scholarships Committee, David John Goddard. The said David John Goddard may in addition be a substitute for Thomas George Goddard at any time while Thomas George Goddard is a member of the Grants and Scholarships Committee.
 - 7.3.6** The nominee of the Nikau Foundation while the Nikau Foundation remains a Trustee of the Foundation. In the event that the Nikau Foundation is no longer a Trustee then the nominee of the Trustees.
- 7.4** The terms of appointment (including the duration of an appointment) of the members of the Grants and Scholarships Committee shall be determined by the Trustees and any appointment may be renewed from time to time. Nothing in this clause shall enable the Trustees to terminate the membership of the Grants and Scholarships Committee of Thomas George Goddard and/or David John Goddard.
- 7.5** The Trustees may from time to time (in consultation with the Grants and Scholarships Committee) advertise in such manner as they shall consider appropriate the availability of grants and scholarships.

- 7.6 The Grants and Scholarships Committee may attach to grants and scholarships such conditions as it may consider suitable, including requirements as to reporting to the Foundation and as to the publication where that is appropriate of work produced as a result of the grant or scholarship.
- 7.7 Each member of the Grants and Scholarships Committee shall be paid an honorarium in respect of his or her services to the Foundation, the amount of such honorary sum to be set by the Trustees in each year in arrear.
- 7.8 Each member of the Grants and Scholarships Committee shall be entitled to be reimbursed for any out of pocket expenses incurred in connection with the Foundation's affairs.

8. INVESTMENT OF TRUST FUND

- 8.1 The Trustees may from time to time appoint an Investment Subcommittee to invest the Trust Fund.
- 8.2 During the lifetime of the Foundation Trustee he shall be entitled to appoint members of the Investment Subcommittee from among the Trustees.
- 8.3 For such time as the Nikau Foundation is a Trustee of the Foundation the Nikau Foundation shall be a member of the Investment Subcommittee.
- 8.4 The term of appointment of any member of the Investment Subcommittee (other than the Nikau Foundation and the Foundation Trustee) shall be for a Financial Year, commencing at the start of a Financial Year and ending on the expiry of the Financial Year.

9. LIABILITY OF TRUSTEES

- 9.1 **Liability for Loss:** No Trustee will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee unless it is attributable to that Trustee's own dishonesty or to the wilful commission or omission of any act known by that Trustee to be a breach of trust.
- 9.2 **Trustee Act 1956:** Subject to clause 9.1, despite:
- 9.2.1 **Section 13C:** the provisions of section 13C of the Trustee Act 1956; and
- 9.2.2 **Professional Trustees:** the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others;

the care, diligence and skill to be exercised by those persons will not be that required by section 13C of the Trustee Act 1956 but will at all times be

the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

9.3 Proceedings: No Trustee will be bound to take, or be liable for failure to take, any proceedings against any other Trustee or former Trustee for any breach or alleged breach of trust committed by that other Trustee or former Trustee.

9.4 Receipt of Money: Subject to clauses 9.1 and 9.2, a Trustee will be chargeable only for any money which that Trustee has received. For the purposes of this clause, a Trustee is deemed to have received money even if not actually paid to that Trustee if that money has been credited in an account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

10. INDEMNIFICATION OF TRUSTEES

Each Trustee or former Trustee is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called "liabilities") suffered or incurred by that Trustee or former Trustee in connection with the Foundation, except to the extent that those liabilities are due to:

10.1 Dishonesty: that Trustee's or former Trustee's own dishonesty or lack of good faith; or

10.2 Wilful Breach of Trust: that Trustee's or former Trustee's wilful commission or omission of an act known by that Trustee or former Trustee to be a breach of trust.

11. TRUSTEES REMUNERATION AND EXPENSES

11.1 Professional Remuneration: Any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade (including, for the avoidance of doubt, the Nikau Foundation) is entitled to be paid all usual professional, business and trade charges for services provided by that person or that person's employee or partner in connection with the Foundation including acts which a Trustee, not being in any profession, business or trade, could have done personally.

11.2 General Remuneration: Each Trustee is entitled to such remuneration for services provided as may be reasonable having regard to that Trustee's duties and responsibilities and to any remuneration paid to that Trustee in accordance with clause 11.1 for those services.

11.3 Proviso: Any payment to a Trustee referred to in clauses 11.1 and 11.2 must not exceed fair market value for services provided and, where any such payment is a benefit or advantage to which clauses 13.2 to 13.4 apply, no Trustee receiving such payment and no person associated with such Trustee may:

11.3.1 Take Part: take part in any deliberations or proceedings relating to that payment; or

11.3.2 Determine or Influence: in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

11.4 Expenses: Each Trustee is entitled to be indemnified against, and reimbursed for, all travelling, hotel and other expenses properly incurred in connection with the Foundation.

11.5 The Nikau Foundation:

11.5.1 Notwithstanding any provision in this clause 11 the remuneration of the Nikau Foundation shall be as determined by agreement between the Trustees and the Nikau Foundation from time to time having regard to the extent of the administration of the Foundation to be delegated to the Nikau Foundation from time to time.

11.5.2 Where the Nikau Foundation is sole Trustee of the Foundation, the remuneration of the Nikau Foundation shall be reviewed by the president of the New Zealand Law Society or his nominee every three years and the remuneration shall be subject to that person's approval.

12. NO PRIVATE PROFIT

Nothing expressed or implied in this Deed will permit:

12.1 Trustees' Activities: the Trustees' activities; or

12.2 Business: any business carried on by or on behalf of or for the benefit of the Trustees;

in connection with the Foundation, to be carried on for the private profit of any individual.

13. RESTRICTIONS RELATING TO BUSINESS INCOME

13.1 General Restrictions: In any tax year, for the purposes of the Income Tax Act 2007, where any business, within the ambit and scope of the Income Tax Act 2007 and in particular section CW 42 of that Act, is carried on by or for the benefit of the Foundation:

13.1.1 Tax Exempt Business Income: the Trustees must not derive directly or indirectly from any such business any amount of income that is not exempt from income tax under section CW 42 of the Income Tax Act 2007; and

13.1.2 Benefits/Advantages to Certain Persons: within the ambit and scope of clauses 13.2 to 13.4, no person with some control over the business may direct or divert, to their own benefit or advantage, any amount derived from that business.

13.2 Persons who may have Control: For the purposes of clause 13.1.2, a person who may have some control over the business is a person who is, within the ambit and scope of sub-sections CW 42(5) to (7) of the Income Tax Act 2007:

13.2.1 Settlor or Trustee: a settlor or trustee of a trust carrying on the business or of a trust that is a shareholder in a company carrying on the business; or

13.2.2 Director or Shareholder: a director or shareholder of a company carrying on the business; or

13.2.3 Associated Person: a person associated with any person described in clauses 13.2.1 and 13.2.2.

13.3 Relevant Benefits/Advantages: For the purpose of clause 13.1.2, an amount is directed or diverted to the benefit or advantage of a person described in clause 13.2 if that person is given or receives from the business any benefit or advantage, whether or not convertible into money, within the ambit and scope of sub-sections CW 42(6) to (8) of the Income Tax Act 2007, or any income of a kind specified in and not excluded by those sub-sections.

13.4 Control over the Business and Ability to Direct or Divert Amounts: For the purpose of clause 13.1.2, a person described in clause 13.1.2 has some control over the business and is able to direct or divert amounts from the business to their own benefit or advantage if, by virtue of their position described in clause 13.2 and within the ambit and scope of sub-sections CW 42(5) to (8) of the Income Tax Act 2007, that person is, in any way, whether directly or indirectly, able to determine or materially influence in any way the determination of:

13.4.1 Nature/Extent of Benefit/Advantage: the nature or extent of any benefit, advantage or income described in clause 13.3; or

13.4.2 Circumstances of Receipt: the circumstances in which any benefit, advantage or income described in clause 13.3 is, or is to be, given or received.

14. MODIFICATION OF TRUST TERMS

The Trustees may from time to time by resolution carried by a majority of two-thirds of their number at that time modify or amend any term of this Deed, but no modification may at any time be made that would:

14.1 Charitable Purposes: allow the Foundation to operate other than for exclusively charitable purposes in New Zealand or to operate for private profit; or

14.2 Concessionary Provisions: affect the eligibility of the Foundation for the benefit of any of the Concessionary Provisions, unless in relation to any such provision the Trustees have unanimously determined that eligibility for the benefit of that provision is not required in the best interests of pursuing the purposes of the Foundation.

14.3 Notwithstanding any of the foregoing provisions of clause 14 no resolution to modify or amend the terms of this Deed shall be passed without the approval of the Foundation Trustee (for so long as he is living).

15. WINDING UP THE FOUNDATION

15.1 Resolution: The Trustees may wind up the Foundation by a unanimous resolution of the Trustees, provided that, in the event there is more than one Trustee:

15.1.1 Resolution at Meeting: that resolution must be passed at a Trustees' meeting called for that purpose; and

15.1.2 Notice of Meeting: the Secretary must give not less than 30 days' notice of that meeting to the Trustees.

15.2 Surplus Property: If, on the winding up of the Foundation, any portion of the Trust Fund remains after satisfaction of all the debts and liabilities of the Trustees in connection with the Foundation, none of that portion may be paid out or distributed other than for charitable purposes carried out exclusively within New Zealand. Alternatively, any surplus property remaining after the winding up or dissolution of the Foundation may be disposed of at the direction of a Judge of the High Court of New Zealand.

16. GOVERNING LAW

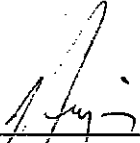
This Deed is governed by New Zealand law. The Trustees submit to the non-exclusive jurisdiction of all Courts having jurisdiction in New Zealand.

Executed as a Deed.

SIGNED by IAN ALBERT BORRIN as Settlor in the presence of:


Ian Albert Borrin

Witness:



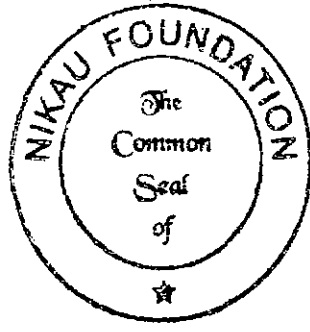
Signature of witness

Full name of witness **F. D. FINLAYSON
SOLICITOR
WELLINGTON**

Occupation of witness:

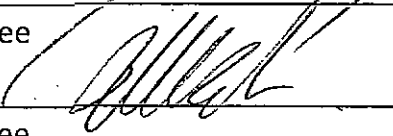
Address of witness

The Common Seal of NIKAU FOUNDATION as one of the Trustees was affixed in the presence of:





Trustee




Trustee

SIGNED by IAN ALBERT BORRIN as one of the Trustees in the presence of:


Ian Albert Borrin

Witness:



Signature of witness

Full name of witness **F. D. FINLAYSON
SOLICITOR
WELLINGTON**

Occupation of witness

Address of witness