

## Trust Deed Clauses

### 1. TE INGOA / NAME

The name of the Trust is Trust Home Birth, hereafter called the Trust.

### 2. MATAPONO / PRINCIPLES

The Trust is committed, in attaining its purposes, to:

- 2.1 Promoting the fact that birth is a natural, normal, physiological life event which women are inherently capable of;
- 2.2 Upholding the right of women and their Whanau to make informed choices about birth including the option of birth at home;
- 2.3 Respecting and implementing the dual heritage of the partners of Te Tiriti o Waitangi (the Treaty of Waitangi);
- 2.4 Being guided by the principle of partnership (where the contribution and responsibility of both parties is equally valued, respected and mutually considered) and working to strengthen this within member and affiliated organisations and with midwives who uphold the home birth philosophy;
- 2.5 Maintaining, supporting and strengthening a national collective of associations and support groups from throughout Aotearoa New Zealand connected by their commitment to home birth.

### 3. WHAINGA / PURPOSE

The purpose of the Trust which is charitable in all respects according to the laws of New Zealand is to support networking, and to provide information, education, support and resources about the home birth option and related issues to the national collective of organisations and to the general public, in particular the Trust will:

- a) Provide resources, initiative and leadership to further the promotion and protection of the home birth option
- b) Promote, provide and encourage public education and information about planned home birth
- c) Promote, protect and encourage the right of women and their Whanau to plan a home birth
- d) Support the on-going availability of fully subsidised home birth maternity services for the women and Whanau of Aotearoa New Zealand
- e) Acknowledge, value and support the diversity of grass-roots home birth support groups and Home Birth Associations in Aotearoa New Zealand
- f) Provide a national home birth voice, which will be a resource for maternity service providers and policy makers and the wider community on issues pertinent to home birth
- g) Celebrate and value the home birth experience and the herstory of home birth in Aotearoa New Zealand
- h) Provide and maintain information and resources via appropriate media and relevant printed material
- i) Encourage and support research into the benefits of planned home birth
- j) Promote and organise networking opportunities for, and with, home birth groups locally and internationally
- k) Raise money through grants, donations and by any other lawful means or methods that the Trust considers appropriate for the furtherance of these purposes
- l) Undertake other initiative or activities consistent with the charitable purpose of this Trust

#### **4. NGA MAHI KI AOTEAROA ANAKE / ACTIVITIES LIMITED TO AOTEAROA NEW ZEALAND**

The activities of the Trust will be limited to Aotearoa New Zealand.

#### **5. TARI / OFFICE**

The office of the Trust will be in such place in New Zealand as the Board of Trustees may from time to time determine.

#### **6. TE RUNUNGA WHAKAHAERE / THE BOARD OF TRUSTEES**

- 6.1 The Board will comprise no less than three (3) Trustees and no more than six (6) Trustees
- 6.2 The signatories to this Deed will be the first Board. The Trustees will elect from among themselves a Chairperson. A Secretary and Treasurer will also be appointed by the Trustees from among themselves or outside the Trust. The election of appointed office holders will be held at the first meeting of the Board following the execution of this Deed and thereafter bi-ennially or whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.
- 6.3 A person will immediately cease to be a Trustee when she or he resigns in writing, dies, is declared bankrupt or is found to be a mentally disordered person within the meaning of the Mental Health Act (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment
- 6.4 The Board will have the power to fill any vacancy that arises in the Board or to appoint any additional trustees subject to clause 6.1
- 6.5 Board members will be appointed from Home Birth Support Groups or Associations via a transparent process of nomination and ratification and will hold office until they retire or removed
- 6.6 Any employee of the Trust may hold office of Trustee if so appointed by the Board
- 6.7 A system of rotation will be encouraged to support emergent leadership for trusteeship from within home birth support groups or associations
- 6.8 The Board may continue to act notwithstanding any vacancy, but if their number is reduced below the minimum number of trustees as stated in this deed, the continuing trustee/s may act for the purpose of increasing the number of trustees to that minimum but for no other purpose
- 6.9 A Trustee may be removed as a trustee if the Trust upon a resolution passed by no less than two-thirds of the Trustees to that effect of the Trustees determine that such an action is in the best interests of the Trust. A Trustee removed pursuant to such a resolution shall cease and be discharged as a Trustee immediately upon the passing of such a resolution
- 6.10 The name of the Board will be Trust Home Birth

#### **7. NGA HUI O TE RUNUNGA WHAKAHAERE / MEETINGS OF THE BOARD**

- 7.1 The procedure for Board meetings will be as follows:
  - 7.1.1 The quorum necessary for the transaction of the business of the Board shall be three (3)
  - 7.1.2 If a Trustee, including an office-bearer, does not attend three (3) consecutive meetings of the Board without leave of absence that member may, at the discretion and on decision of the Board, be removed as a Trustee and /or from any office of the Trust which she or he holds
  - 7.1.3 All decisions will be made by consensus (where consensus is defined as "all in consent"). In the event that a decision cannot be reached the status quo will prevail. The Board will be committed to working through differences and ensuring that all trustees are heard at all times, thereby enabling robust consensual decision making to take place.
  - 7.1.4 In the absence of the Chairperson, the board will elect a person to chair the meeting from among the Trustees present.

- 7.2 The Board will meet at least two (2) times every year. Board members will meet together in person or by any other means of communication as may be agreed by the Board from time to time. The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing. It will not be necessary to give notice of a meeting of the Board to any member who is for the time being absent from New Zealand.
- 7.3 The Secretary will ensure that a minute book is maintained. The minute book will be available to any member of the Trust. It will hold a record of each meeting to the Board including:
- 7.3.1 the names of all those present;
  - 7.3.2 all decisions made by the Board; and
  - 7.3.3 any other matters discussed at the meeting.
- 7.4 A resolution in writing signed by all Board members for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the members duly convened and held.
- 7.5 An Annual Meeting will be held every twelve months for the purpose of presenting annual financial and business information.

## **8 TAKETAKE / POWERS**

In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:

- 8.1 to use the funds of the Trust as the Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers and staff, according to principles of good employment and the Employment Relations Act 2000 or any subsequent enactment;
- 8.2 to use the funds of the Trust as the Board thinks necessary or expedient and to do all lawful things to enable the Board to give effect to and attain the charitable purposes of the Trust;
- 8.3 to purchase, take on, lease or in exchange or hire or otherwise, acquire any real or personal property and any rights or privileges which the Board thinks necessary or expedient in order to attain the purpose of the Trust and to sell, exchange, let, bail or lease, with or without the option of purchase or, in any other manner, dispose of such property, rights or privileges;
- 8.4 to invest surplus funds in such a way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;
- 8.5 to borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Board thinks fit.

## **9 KO NGA RAWA HEI PAINGA MO TE IWI / INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**

- 9.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust.
- 9.2 No trustee or members of the Trust or any person associated with a trustee shall participate in or materially influence any decision made by the trustees in respect of any payment to or on behalf of that trustee or associated person of any income, benefit or advantage whatsoever.
- 9.3 The provision and effect of this clause shall not be removed from this deed and shall be implied into any document replacing this deed of trust.

## **10 REHITA / REGISTRATION**

- 10.1 The Trustees will take all necessary steps to register the Trust as a charitable organisation under the Charities Act 2005.

## **11 PUTEA / FINANCIAL ARRANGEMENTS**

- 11.1 The financial year of The Trust shall be from 1 August to 31 July.
- 11.2 At the first meeting of the Board in each financial year, the Board will decide by resolution the following:
  - 11.2.1 how money will be received by the Trust;
  - 11.2.2 who will be entitled to produce receipts;
  - 11.2.3 what bank accounts will operate for the ensuing year, including the purposes of and access to accounts;
  - 11.2.4 who will be allowed to authorize the production of cheques and the names of cheque signatories; and
  - 11.2.5 the policy concerning the investment of money by the Trust, including what type of investment will be permitted.
- 11.3 the Treasurer will ensure that true and fair accounts are kept of all money received and expended by the Trust.
- 11.4 The Board may arrange for the accounts of the Trust for that financial year to be audited by an accountant appointed for that purpose.

## **12 TE TOHE TAKETAKE / COMMON SEAL**

- 12.1 The Common Seal of the Board, following its incorporation, will be kept in the custody and control of the Secretary, or such other officer appointed by the Board.
- 12.2 When required, the Common Seal, will be affixed to any document following a resolution of the Board and will be signed by the Chairperson (or a trustee acting as the Chari) and one other trustee appointed by the Board.

## **13 WHAKAREREKETANGA TURE / ALTERATION OF THIS DEED**

- 13.1 The Trustees may, by consensus or pursuant to a motion decided by a two-thirds majority of votes, by supplemental Deed make alterations or additions to the terms or provisions of the Deed provided that no alteration or addition will:
  - 13.1.1 detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
  - 13.1.2 be made to the Purpose Clause (3), the Activities Limited to New Zealand Clause (4), the Pecuniary Interests Clause (9) or the Disposition of Surplus Assets Clause (15) unless it is first approved in writing the Department of Inland Revenue and the Charities Commission.

## **14 TAKAWAENGA / MEDIATION & ARBITRATION**

- 14.1 Any dispute arising out of or in relation to this deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 14.2 The mediation shall be terminated if:
  - 14.2.1 The signing of a settlement agreement by the parties; or
  - 14.2.2 Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
  - 14.2.3 Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or

14.2.4 The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

14.3 If the mediation should be terminated as provided in 14.2.2, 14.2.3 or 14.2.4 any dispute or difference arising out of or in connection with this deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

## **15 TAUNAHA / TRUSTEE LIABILITY**

It is declared that:

15.1 The Trustees are chargeable respectively only in respect of the money and securities they actually receive, or which, but for their own acts, omissions, neglects, or defaults they would have received, notwithstanding their signing any receipt for the sake of conformity; and

15.2 They are each answerable and responsible respectively only for their own acts, receipts, omission, neglects and defaults and not for those of each other, or of any banker, broker, auctioneers, or other person with whom, or into whose hands, any Trust money or security is properly deposited or has come;

15.3 No Trustees hereof shall be liable personally for the maintenance, repair, or insurance of any charges on such property;

15.4 No Trustees hereof shall be liable for any loss arising from any cause whatsoever including a breach of the duties imposed by Section 13B and/or Section 13C Trustees Act 1956 (as enacted by the Trustee Amendment Act 1988) (or any statutory replacement or equivalent) unless such loss is attributable:

15.4.1 To his or her own dishonesty; or

15.4.2 To the wilful commission by him or her of an act known by him/her to be a breach of the Trust.

And pursuant to Section 13D of the Trustees Act 1956 it is intended by this clause that the duties imposed by Section 13B and 13C of the Trustees Act 1956 shall not apply to any Trustee hereof.

15.5 No Trustees shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of Trust committed by that co-Trustee.

15.6 Notwithstanding the procedure or otherwise of retaining assets in the Trust Fund no Trustee shall be liable for any loss suffered by the Trust Fund by reason of the Trustees retaining any asset forming part of the Trust Fund.

15.7 The Trustee shall from time to time and at all times be indemnified by and out of the Trust property from and against all costs, charges, losses, damages, and expenses sustained or incurred by them or in or about the execution and discharge of their office, or in or about any claim, demand, action, proceeding or defence at law or in equity in which they may be joined as a party.

## **16 TE TUKU TOENGA RAWA / DISPOSITION OF SURPLUS ASSETS**

On the winding up of the Trust, or on its dissolution by the Registrar, all surplus assets, after the payment of costs, debts and liabilities will be given to other charitable organisation/s within New Zealand as the Board will decide. If the Trust is unable to make such a decision, the surplus assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.