

**NEW ZEALAND INSTITUTE OF FORESTRY  
FOUNDATION**

**DEED OF TRUST**

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**between**

**New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere o  
Aotearoa Incorporated, as Settlor**

**and**

**Andrew Durrad McEwen, James Treadwell, and David Evison, as  
Original Trustees**

**dated this 1st day of December 2011**



**Simpson  
Grierson**

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DEED OF TRUST dated the 1st day of December 2011

EXECUTED BY **NEW ZEALAND INSTITUTE OF FORESTRY (NZIF) TE PŪTAHI NGĀHEREHERE O AOTEAROA INCORPORATED**, a society incorporated in New Zealand under the Incorporated Societies Act 1908

AND **ANDREW DURRAD MCEWEN**, of Wellington, Registered Forester, **JAMES TREADWELL**, of Auckland, General Manager, and **DAVID EVISON**, of Christchurch, University Lecturer

## BACKGROUND

- A. In furtherance of its objects, NZIF has recognised the need for a charitable trust, to be known as the New Zealand Institute of Forestry Foundation, for the charitable purposes set out in detail in this deed.
- B. The Original Trustees are prepared to act as trustees of the Trust Fund.
- C. By way of initial settlement to establish the Foundation, NZIF has provided to the Original Trustees the sum of NZ\$100 at the date of execution of this deed to be held on the trust terms set out in this deed.
- D. NZIF anticipates that it will settle additional funds, and that the Trustees will receive funding from other sources, to be held on the trust terms set out in this deed once the Foundation has been established.

## TRUST TERMS

### 1. INTERPRETATION PROVISIONS

**1.1 General:** Clauses 1.2 to 1.10 shall apply to this deed unless the context requires otherwise.

**1.2 Definitions:**

"**AGM**" means an annual general meeting of the Trustees held in accordance with clause 8.1.1;

"**Balance Date**" means 31 March or, subject to clause 9.2.4, any other date adopted from time to time by the Trustees as the end of the Foundation's Financial Year;

"**Chairperson**" means any Trustee appointed to that office in accordance with clause 7.5.1;

"**Charitable Purposes**" means purposes which are charitable in accordance with the law of New Zealand;

"**Concessionary Provisions**" means:

**1.2.1 Income Tax:** 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 a company) and DV 12 (Maori authorities: donations) and subpart LD (Tax credits for gifts and donations) of the Income Tax Act 2007;

**1.2.2 GST:** 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 12 month or other accounting period ending on the Balance Date;

**"Forestry"** includes all those activities involved in the management and use of forests and their products, the objects of which are the production of wood or other forest benefits and the maintenance of the environment in its most beneficial form;

**"Foundation"** means the trust established on the terms set out in this deed;

**"Officer"** means a person for the time being holding an office to which that person has been appointed in accordance with clause 7.5;

**"Original Trustee"** means a person executing this deed as one of the first Trustees of the Foundation, but only until such time as the person first ceases to hold office as a Trustee;

**"NZIF"** means the society incorporated under the Incorporated Societies Act 1908, registration number 216334, under the name "New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere o Aotearoa Incorporated" and with its registered office at Wellington (as at the date of this deed);

**"NZIF Council"** means the Council that governs the affairs of NZIF, established under Section V of the NZIF Articles of Association;

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

**"this deed"** means this deed executed by NZIF and the Original Trustees and, as the context requires, includes any modification of the terms of the Foundation under clause 13;

**"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 includes the initial settlement made by NZIF on the date of execution of this deed;

**"Trustees"** means:

**1.2.3 Trustees Prior to Incorporation:** the trustee or trustees for the time being of the Foundation, whether original, additional or replacement trustees and including the Original Trustees; and

**1.2.4 Trustees Incorporated as a Board:** where the Trustees have incorporated as a board under the Charitable Trusts Act 1957, either the Trustees acting as a board or the Trustees for the time being constituting the board, as the context requires;

- 1.3 Clauses:** references to clauses are references to the clauses of this deed;
- 1.4 Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.5 Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this deed;
- 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;
- 1.8 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;
- 1.9 Plural and Singular:** singular words include the plural and vice versa; and
- 1.10 Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it or under any such amendment or replacement provision.

## 2. NAME OF THE TRUST

- 2.1 Name of the Trust:** The full name of the Foundation is the New Zealand Institute of Forestry Foundation, which may be abbreviated to the NZIF Foundation.
- 2.2 Change of Name:** Subject to prior written approval from the NZIF Council, the Trustees may, by resolution, change the name of the Foundation to any other name which they may determine from time to time, provided that:
- 2.2.1 Incorporation:** the Trustees will be incorporated as a board under the Charitable Trusts Act 1957 under the new name; or
- 2.2.2 Not Offensive or Misleading:** if the Trustees will not be incorporated under the new name, the new name is not offensive or liable to mislead any member of the public.

### 3. PURPOSES OF THE TRUST

**3.1 Trust Fund Held for Charitable Purposes:** The Trustees hold the Trust Fund on trust upon the terms set out in this deed to pay or apply from time to time so much of the capital and income constituting the Trust Fund as the Trustees think fit for or towards exclusively Charitable Purposes, wholly or mainly within New Zealand, and in particular to advance:

**3.1.1 Principal Purposes:** wholly or principally, the specific Charitable Purposes relating to Forestry described in clause 3.2; and

**3.1.2 Secondary Purposes:** as a secondary matter, and subject to prior written approval from the NZIF Council, any other Charitable Purpose relating to Forestry.

**3.2 Specific Charitable Purposes and Activities:** Without limiting the generality of clause 3.1, the focus of the Foundation is the advancement of education in relation to Forestry, including in particular:

**3.2.1 Acquiring, Developing and Disseminating Knowledge:** promoting the acquisition, development and dissemination of scientific and technical knowledge and information relating to Forestry; and

**3.2.2 Educating the New Zealand Public in relation to Forestry:** educating the New Zealand public in relation to the role of Forestry in sustainable economic, environmental and social development and the significant Forestry achievements which form part of the national heritage of New Zealand.

Without limiting the activities that may be carried on by the Foundation in pursuit of its Charitable Purposes, the activities of the Foundation may include (either alone or in conjunction with any other person):

**3.2.3 Research, Education and Training Assistance:** encouraging and supporting Forestry-related research, education and training through the provision of grants, scholarships, prizes or other forms of assistance;

**3.2.4 Educational Initiatives and Publications:** promoting the acquisition, development and dissemination of Forestry-related knowledge and information by supporting conferences, seminars, courses and the publication and distribution of Forestry-related publications; and

**3.2.5 Activities Incidental to the Foundation's Purposes:** carrying on any other activity incidental to, but not any non-charitable purpose independent of, the Charitable Purposes pursued by the Foundation.

**3.3 Trust Funds Held for Specific Purposes:** The Trustees may receive or set aside any part of the Trust Fund to be held upon the terms set out in this deed and paid or applied for or towards any specific purpose

falling within the Charitable Purposes of the Foundation described in clauses 3.1 and 3.2.

- 3.4 Change in Law:** If because of any change in the law, including any change 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 modify the terms of this deed in order to achieve and/or preserve the availability of any concession in relation to the Foundation under any Concessionary Provision that would otherwise be available were it not for the change in the law, then despite clause 13 the terms of this deed will at that time be deemed to be modified to the extent necessary, unless the Trustees have unanimously determined that eligibility for the benefit of such provision is not required in the best interests of pursuing the purposes of the Foundation.
- 3.5 Purposes Not Limited or Restricted:** Unless the context requires otherwise, none of the purposes of the Foundation described in clauses 3.1 and 3.2 will be in any way limited or restricted by reference to or inference from the terms of any other clause or the name of the Foundation.
- 3.6 Status of Purposes:** Unless the context requires otherwise, none of the purposes of the Foundation described in clauses 3.1 and 3.2 will be deemed subsidiary or ancillary to any other purpose of the Foundation and the Trustees may pursue any one or more of those purposes independently of the other purposes of the Foundation.

#### 4. POWERS OF TRUSTEES

- 4.1 Pursuit of Purposes:** The Trustees, in connection with the Foundation, must only pursue the Charitable Purposes of the Foundation described in clauses 3.1 and 3.2.
- 4.2 Extent of Powers:** In addition to all other powers conferred by law, but subject to the restrictions contained in this deed:
- 4.2.1 Trustees Prior to Incorporation:** the Trustees will have the same powers as if they were the absolute owners of, and beneficially entitled to, the Trust Fund; and
- 4.2.2 Trustees Incorporated as a Board:** where the Trustees are incorporated as a board under the Charitable Trusts Act 1957, the Trustees acting as a board will have:
- (a) **Full Capacity:** full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- (b) **Full Rights, Powers, Privileges:** for the purposes of clause 4.2.2(a), full rights, powers, and privileges; and
- 4.2.3 Powers Not Limited or Restricted:** 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 deed or otherwise will be deemed subsidiary or ancillary to any other power or authority and 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 the provision be construed so as to prevent the availability of any concession in relation to the Foundation under any of the Concessionary Provisions.

## 5. RESTRICTIONS RELATING TO PRIVATE BENEFITS

- 5.1 General Restriction:** Notwithstanding provision for remuneration and reimbursement under clauses 10.1 to 10.3, nothing expressed or implied in this deed will permit the activities of the Trustees in connection with the Foundation, or any business carried on by, or for, or for the benefit of the Trustees in connection with the Foundation, to be carried on for the private benefit of any person as to affect:

**5.1.1 Charitable Purposes:** the operation of the Foundation for exclusively Charitable Purposes, for public benefit and not for private profit; or

**5.1.2 Concessionary Provisions:** the availability of any concession in relation to the Foundation under 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.

- 5.2 Business Income Restriction:** Notwithstanding provision for remuneration and reimbursement under clauses 10.1 to 10.3, if within the ambit and scope of the Income Tax Act 2007 and in particular section CW 42 of that Act, any business is carried on by, for, or for the benefit of the Trustees in connection with the Foundation, the Trustees must ensure that, within the ambit and scope of clauses 5.3 to 5.5, no person with some control over the business is able to direct or divert, to their own benefit or advantage, any amount derived from that business.

- 5.3 Persons who may have Control:** For the purpose of clause 5.2, a person who may have some control over the business is a person who is, within the ambit and scope of subsections CW 42(5) to (7) of the Income Tax Act 2007:

**5.3.1 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

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

**5.3.3 Associated Person:** a person associated with any person described in clauses 5.3.1 and 5.3.2.



- 5.4 Relevant Benefits/Advantages:** For the purpose of clause 5.2, an amount is directed or diverted to the benefit or advantage of a person described in clause 5.3 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 subsections CW 42(6) to (8) of the Income Tax Act 2007, or any income of a kind specified in and not excluded by those subsections.
- 5.5 Control over the Business/Ability to Direct or Divert Amounts:** For the purpose of clause 5.2, a person described in clause 5.3 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 5.3 and within the ambit and scope of subsections 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 to materially influence in any way the determination of:
- 5.5.1 Nature/Extent of Benefit/Advantage:** the nature or extent of any benefit, advantage or income described in clause 5.4; or
- 5.5.2 Circumstances of Receipt:** the circumstances in which any benefit, advantage or income described in clause 5.4 is, or is to be, given or received.

## 6. MAINTAINING ELIGIBILITY FOR TAX CONCESSIONS

- 6.1 General Requirement:** The Trustees must do all things necessary to ensure that the Foundation, and the Trustees in connection with the Foundation, are and will remain eligible for the benefit of concessions in relation to the Foundation under each 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.
- 6.2 Specific Requirements:** Without limiting the generality of clause 6.1, the things to be done under that clause will include:
- 6.2.1 Registration under the Charities Act:** maintaining registration with the Charities Commission under the Charities Act 2005;
- 6.2.2 Compliance under the Charities Act and Revenue Acts:** complying with all relevant obligations under:
- (a) **Charities Act:** the Charities Act 2005; and
- (b) **Revenue Acts:** the Income Tax Act 2007, the Estate and Gift Duties Act 1968, the Goods and Services Tax Act 1985 and the Tax Administration Act 1994.

## 7. TRUSTEES AND OFFICERS

**7.1 Number of Trustees:** The following provisions apply in relation to the number of Trustees:

**7.1.1 Maximum/Minimum Numbers:** The number of Trustees must be not less than three and must not be more than five.

**7.1.2 Less than Minimum Number:** If at any time there are less than three Trustees:

(a) **Increase to Minimum:** the remaining Trustee or Trustees must immediately notify NZIF and the power of appointment of Trustees under clause 7.2 must be exercised to increase the number of Trustees to at least three as soon as is reasonably practicable; and

(b) **Actions Pending Increase:** the remaining Trustees will be entitled to act until the number of Trustees is increased, but only for the purpose of increasing the number of Trustees to at least three.

**7.2 Appointment of Trustees:** The following powers are vested in the NZIF Council or, if the NZIF Council would be ineligible for office as a Trustee under clause 7.3.3, in the Trustees for the time being of the Trust:

**7.2.1 Appointment:** to appoint at any time or times an additional Trustee or additional Trustees;

**7.2.2 Reappointment:** to reappoint any retiring or retired Trustee as a Trustee; and

**7.2.3 Removal:** to remove any person from office as a Trustee.

**7.3 Eligibility for Office as a Trustee:** The following persons are not eligible to hold office as a Trustee:

**7.3.1 Youth:** an individual who is under the age of 16 years;

**7.3.2 Bankruptcy:** an individual who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by court order from engaging in any form of business activity;

**7.3.3 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 appointing a liquidator has been applied for or made by the court;

- (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;
- (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; or
- (g) **Appointment of Administrator:** which has an application made to the Court for, or a resolution proposed for, or any other step taken in the anticipation of, the appointment of an administrator;

**7.3.4 Criminal Conviction:** 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, unless that person has:
  - (i) **Pardon:** obtained a pardon; or
  - (ii) **Service of Sentence:** served, or otherwise suffered, the sentence imposed on that person;

**7.3.5 Disqualification from Company Positions:** a person who is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of the Companies Act 1993, the Securities Act 1978, the Securities Market Act 1988 or the Takeover Act 1993;

**7.3.6 Incapacity:** a person:

- (a) **Property Order:** who is subject to a property order made under the Protection of Personal and Property Rights Act 1988;
- (b) **Property Management:** whose property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or

- (c) **Mental Incapacity:** who is mentally incapable in relation to property or personal care and welfare, as defined in respect of a donor of an enduring power of attorney under section 94 of that Protection of Personal and Property Rights Act 1988; or

**7.3.7 Charities Commission 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.

**7.4 Term of Office as a Trustee:** The following provisions apply to the appointment (including reappointment) of a person as a Trustee and in particular the person's term of office as a Trustee:

**7.4.1 Specific Provisions for Original Trustees:** In order to avoid a situation where all or many of the Original Trustees cease to hold office at the same time:

- (a) **Second AGM:** if there are any Original Trustees remaining at the time of the second AGM of the Trust, one Original Trustee will cease to hold office at the close of the AGM, as determined by the Trustees for the time being or otherwise by the NZIF Council;
- (b) **Third AGM:** if there are any Original Trustees remaining at the time of the third AGM of the Trust, one Original Trustee will cease to hold office at the close of the AGM, as determined by the Trustees for the time being or otherwise by the NZIF Council; and
- (c) **Fourth AGM:** any Original Trustees remaining at the time of the fourth AGM of the Trust will cease to hold office at the close of the AGM;

provided that an Original Trustee ceasing to hold office under this clause may be reappointed as a Trustee under the provisions of this deed.

**7.4.2 General Provisions for Other Trustees:** A person may be appointed to hold office as a Trustee (and reappointed as a Trustee) for a term of up to five years from the effective date of their appointment (or reappointment), as determined by the person exercising the power of appointment under clause 7.2, provided that the aggregate of the following must not exceed ten years:

- (a) **Previous Term:** the period or periods for which the person has held office as Trustee in the ten years immediately preceding the effective date of the proposed reappointment; and
- (b) **Proposed Term:** the term of the reappointment.

**7.4.3 Cessation of Office During Term:** A person holding office as a Trustee will cease to hold such office, even though the Trustee's term of office under clause 7.4.1 or 7.4.2 has not expired, if that person:

- (a) **Resignation:** resigns by giving 30 days' written notice to the Trustees and to NZIF;
- (b) **Ineligibility:** is not eligible to hold office as a Trustee under clause 7.3;
- (c) **Failure to Attend Meetings:** fails to attend any three or more consecutive meetings of the Trustees without leave;
- (d) **Death:** dies while holding office as a Trustee; or
- (e) **Removal:** is removed from holding office as a Trustee by the person having the power of removal under clause 7.2.

**7.5 Officers of the Trust:** The Foundation will have the following Officers:

**7.5.1 Chairperson:** The NZIF Council is entitled to appoint one of the Trustees to hold office as Chairperson, who will hold office only while they remain a Trustee, and the NZIF Council may also remove and replace any Trustee so appointed at any time.

**7.5.2 Other Officers:** The Trustees may appoint either one of their number or some other person (provided that the person would be eligible for appointment as a Trustee):

- (a) **Secretary:** to hold office as Secretary of the Trust;
- (b) **Other Officers:** to hold any other office (for example, as Treasurer), as determined by the Trustees;

provided that the Trustees may remove and replace any Trustee or other person appointed to hold any such office at any time.

**7.6 Record Keeping:** On every appointment, reappointment, removal or cessation of office of any Trustee or Officer, the Trustees must cause an entry to that effect to be recorded in the minute book kept by the Trustees in respect of the Foundation.

## 8. MEETINGS AND RESOLUTIONS

**8.1 Meetings of the Trustees:** The following provisions apply in relation to meetings of the Trustees in connection with the Trust:

**8.1.1 Annual General Meetings:** The Trustees must hold an annual general meeting within three months of the end of each Financial Year and in relation to any such meeting:

- (a) **Notice of Meeting:** The Trustees must be given no less than 30 days' notice of the AGM;
- (b) **General Business:** the business to be transacted at the AGM will be:
  - (i) apologies and condolences;
  - (ii) confirmation of minutes of any previous meeting;
  - (iii) presentation of financial statements, as referred to in clause 9.2;
  - (iv) appointment of an auditor (if any), as referred to in clause 9.2; and
  - (v) maintaining eligibility for tax concessions, as referred to in clauses 6.1 and 6.2; and
  - (vi) any other business, which must be treated as special business and dealt with in accordance with clause 8.1.1(c);
- (c) **Special Business:** written notice of any proposed special business must be given to the Trustees no less than 21 days before the AGM; and
- (d) **Notice of Meeting Details:** the Trustees must be given notice of the details of the meeting and the full agenda, including all special business, no later than 14 days before the AGM.

**8.1.2 Special General Meetings:** The Trustees may otherwise meet at any time which they may agree. In addition:

- (a) **Requisitioning Meetings:** the Chairperson or any two or more of the Trustees may at any time requisition a meeting of Trustees by giving no less than 30 days' notice of the meeting and the general business for the meeting to the Trustees;
- (b) **Special Business and Notice Requirements:** in respect of any such meeting, clauses 8.1.1(c) and 8.1.1(d) shall apply in relation to any additional business (to be treated as "special business") and notice of meeting details.

**8.1.3 Method of Meeting:** Any meeting of the Trustees may be held either:

- (a) **Physical Meeting:** by the number of Trustees who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) **Other Means:** provided that all of the Trustees for the time being of the Foundation can reasonably be expected to be able to participate in this form of meeting, by means of audio, or audio and visual, communication by which all Trustees participating and constituting a quorum can simultaneously hear each other throughout the meeting.

**8.1.4 Meeting Notices:** The following requirements apply in relation to any notice in respect of any meeting:

- (a) **In Writing:** the notice must be in writing;
- (b) **Date and Time:** the notice must state the date and time of the meeting;
- (c) **Other Details:** the notice must specify the place or other relevant details for the meeting according to the method of the meeting under clause 8.1.3; and
- (d) **Agenda:** the notice must include the agenda for the meeting (as at the date of the notice);

provided that notice of any meeting may be abridged or waived if all the Trustees consent in writing to that abridgement or waiver.

**8.1.5 Quorum at Meetings:** A quorum at meetings will be established if the number of Trustees in attendance exceeds half of the number of Trustees for the time being. No business shall be transacted when a quorum is not present.

**8.1.6 Chairperson's Role:** The Chairperson for the time being shall act as the chair of any meeting of the Trustees in connection with the Trust. If no person has been appointed Chairperson or if at any meeting the appointed Chairperson is not present within fifteen minutes after the time appointed for the meeting, the Trustees in attendance at that meeting may appoint one of their number to chair the meeting.

**8.2 Resolutions:** Except as otherwise provided in this deed, the following provisions apply in relation to resolutions to be passed by the Trustees:

**8.2.1 Resolutions at Meetings:** Subject to clause 8.1, all resolutions at a meeting of the Trustees may be passed by a majority of Trustees present at the meeting and any such resolution will be binding on all Trustees. Each Trustee shall

have one vote. The Chairperson will have a second or casting vote if there is a tie and equality of votes.

- 8.2.2 Written Resolutions:** A written resolution signed by all of the Trustees for the time being of the Foundation will be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Trustees. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from its transmission.
- 8.2.3 Rescission/Variation of Resolutions:** The Trustees may from time to time rescind or vary any resolution of the Trustees by resolution passed by the same majority as was necessary to pass the resolution that is to be rescinded or varied.
- 8.3 Validity of Meetings/Resolutions/Other Acts:** The proceedings of any meeting of Trustees, any resolution of Trustees, and any act done by any person acting as Trustee will be as valid and effectual as if that Trustee or those Trustees:
- 8.3.1 Duly Appointed:** had been duly appointed;
- 8.3.2 Qualified:** were qualified to hold office as Trustee; and
- 8.3.3 Complied With Rules:** had complied with the rules and regulations relating to meetings, resolutions and other acts set out in this deed;
- even if it is later discovered that:
- 8.3.4 Defect in Appointment:** there was some defect in the appointment of any of the Trustees;
- 8.3.5 Trustee Disqualified:** any of the Trustees were for any reason disqualified from holding office as Trustee; or
- 8.3.6 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.
- 8.4 Minutes:** The Trustees must provide and keep a minute book in respect of the Trust. The Trustees must ensure that a record of all meetings and resolutions of the Trustees is prepared and entered into 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 those minutes.



## 9. ADMINISTRATIVE MATTERS

**9.1 Bank Account and Cheques:** The Trustees must keep an account or accounts, at any bank or banks as determined by the Trustees from time to time. Cheques, withdrawals and authorities must be signed or endorsed, as the case may be, by two persons, each person being either a Trustee or any other person acting on the written authority of the Trustees.

**9.2 Financial Information:** Subject to clauses 6.1 and 6.2, the Trustees must ensure that:

**9.2.1 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;

**9.2.2 Financial Statements:** financial statements are prepared as soon as practicable after the end of each Financial Year, which 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.

**9.2.3 Auditing of Accounts:** If the Trustees so resolve or if required by law (including compliance with clauses 6.1 and 6.2), the financial statements referred to in clause 9.2.2 will be audited by a chartered accountant appointed for the purpose by the Trustees.

**9.2.4 Change of Balance Date:** The Trustees may amend the Balance Date for the Foundation from time to time, provided that approval of any such change has been obtained, if required, from the Charities Commission under the Charities Act 2005 and from any other relevant authority.

**9.3 Execution of Documents:** Subject to clause 9.4, documents required to be executed by the Trustees will be deemed to be validly executed and binding if those documents have been signed by two persons, each person being either a Trustee or any other person acting on the written authority of the Trustees.

**9.4 Common Seal:** If the Trustees become incorporated as a board under the Charitable Trusts Act 1957, the Trustees will provide a common seal for the board and the common seal:

**9.4.1 Deposited with Trustees:** will be deposited with the Trustees;

**9.4.2 Mandatory Use of Seal:** must be affixed to any document that must be executed by the Trustees acting as a board under common seal; and

**9.4.3 Optional Use of Seal:** may be affixed to any other document to be executed by the Trustees acting as a board;

provided that the common seal must in all cases be affixed pursuant to prior authority given by the Trustees and in the presence, and accompanied by the signatures, of at least two Trustees.

**9.5 Provision of Notices:** Any notice required to be given by the Trustees or by any other person (**Sender**) to any person (**Recipient**) under this deed may be:

**9.5.1 Delivery:** delivered to the Recipient directly or to an address given by the Recipient to the Sender for such purpose;

**9.5.2 Post:** posted to an address given by the Recipient to the Sender for such purpose;

**9.5.3 Facsimile:** sent by facsimile transmission to a facsimile telephone number given by the Recipient to the Sender for such purpose; or

**9.5.4 Electronic Means:** sent by electronic means in accordance with any request made by the Recipient from time to time for such purpose.

**9.6 Receipt of Notices:** A notice given by a Sender to a Recipient pursuant to clause 9.5 is deemed to be given:

**9.6.1 Delivery:** in the case of delivery, when the notice is handed to the Recipient or delivered to the address of the Recipient;

**9.6.2 Post:** in the case of posting, 2 days after it is posted;

**9.6.3 Facsimile:** in the case of a facsimile transmission, when the Sender receives a transmission report produced by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Recipient to the Sender; and

**9.6.4 Electronic Means:** in the case of electronic means, at the time of transmission.

## 10. REMUNERATION AND REIMBURSEMENT OF TRUSTEES

**10.1 Professional, Business or Trade Charges:** Subject to clause 10.2, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade may be paid all usual remuneration for services provided (including services which a Trustee, not being in any profession, business or trade, could have done personally) in the course of that profession, business or trade by that Trustee or the Trustee's employee or partner to the Foundation.

**10.2 Remuneration Restrictions:** If any remuneration is to be paid under clause 10.1:

**10.2.1 Fair Market Value:** the amount of the remuneration must not exceed fair market value for the services provided; and

**10.2.2 Business Income Restriction:** where the remuneration is a benefit or advantage in respect of which clauses 5.2 to 5.5 apply, no Trustee receiving the remuneration, and no person associated with such Trustee, may determine or materially influence, directly or indirectly, the nature or amount of that remuneration or the circumstances in which it is to be provided.

**10.3 Reimbursement of Expenses:** Each Trustee is entitled to be indemnified against, and reimbursed for, expenses, including travelling, hotel and other expenses, properly incurred by the Trustee in connection with the Foundation.

## 11. LIABILITY OF TRUSTEES

**11.1 Liability for Loss:** No Trustee (including any former Trustee) will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee or any of the Trustees unless it is attributable to that Trustee's own dishonesty or lack of good faith or to any wilful conduct by that Trustee which is known by that Trustee to be a breach of trust.

**11.2 Standard of Care for Certain Trustees:** Subject to clause 11.1, despite the fact that the Trustees may 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 such persons:

**11.2.1 Section 13C of the Trustee Act 1956:** will not be that required by section 13C of the Trustee Act 1956; and

**11.2.2 Prudent Person Standard:** will at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

**11.3 Proceedings Against Trustees:** No Trustee will be bound to take, or liable for failure to take, any proceedings against any other Trustee (including any former Trustee) for any breach or alleged breach of trust committed by that other Trustee.

**11.4 Receipt of Money:** Subject to clauses 11.1 and 11.2, a Trustee (including any former 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 account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

## 12. INDEMNIFICATION OF TRUSTEES

**12.1 Indemnification:** Subject to clause 12.2, each Trustee (including any 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 in connection with the Foundation.

**12.2 Indemnification Restriction:** The indemnification provided under clause 12.1 will not apply to any Trustee (including any former Trustee) to the extent that the Liabilities suffered or incurred by that Trustee are attributable to:

**12.2.1 Dishonesty/Lack of Good Faith:** dishonesty or lack of good faith on the part of that Trustee; or

**12.2.2 Wilful Breach of Trust:** wilful conduct by that Trustee which is known by that Trustee to be a breach of trust.

## 13. MODIFICATION OF TRUST TERMS

**13.1 Resolution to Modify Terms:** Subject to clause 13.2, and prior written approval from the NZIF Council, the Trustees may from time to time modify or amend any term of this deed by unanimous resolution.

**13.2 Modification Restriction:** No modification may at any time be made to any term of this deed that would:

**13.2.1 Charitable Purposes:** allow the Foundation to operate other than for exclusively Charitable Purposes or to operate for private profit; or

**13.2.2 Concessionary Provisions:** affect the eligibility of the Trust, and the Trustees in connection with 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. WINDING UP THE TRUST

**14.1 Resolution to Wind Up:** Subject to clauses 14.2 and 14.3, and prior written approval from the NZIF Council, the Trustees may wind up the Foundation by unanimous resolution and the resolution may direct the distribution or application of surplus (if any) upon winding up for exclusively Charitable Purposes.

**14.2 Meeting to Pass Resolution:** In relation to any resolution to wind up the Foundation under clause 14.1:

**14.2.1 Resolution at Meeting:** the resolution must be passed at a meeting of Trustees called for that purpose; and

**14.2.2 Notice of Meeting:** all Trustees must be given not less than 30 days' notice of the meeting and the purpose of the meeting.

**14.3 Application of Surplus:** In relation to the winding up of the Trust, if any surplus remains after satisfaction of all the debts and liabilities of the Trustees in connection with the Trust, that surplus must be distributed or applied for exclusively Charitable Purposes in New Zealand:

**14.3.1 Trustee Resolution:** in accordance with the resolution of Trustees under clause 14.1; or

**14.3.2 Court Direction:** otherwise at the direction of a Judge of the High Court of New Zealand.

**15. GOVERNING LAW AND JURISDICTION**

**15.1 Governing Law:** This deed is governed by New Zealand law.

**15.2 Jurisdiction:** The Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

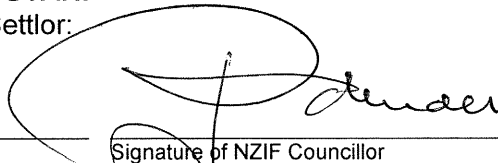
**EXECUTED AND DELIVERED AS A DEED**

**SIGNED by NEW ZEALAND INSTITUTE OF FORESTRY (NZIF) TE PUTAHI NGAHEREHERE O AOTEAROA as Settlor:**



Signature of NZIF Councillor


ANDREW DURRAD M'EWEN  
Name of NZIF Councillor



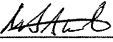
Signature of NZIF Councillor

JOHN ALEXANDER SCHNEIDER  
Name of NZIF Councillor

**SIGNED** by **ANDREW DURRAD MCEWEN**  
as Trustee in the presence of:

  
\_\_\_\_\_  
Andrew McEwen

**Witness:**

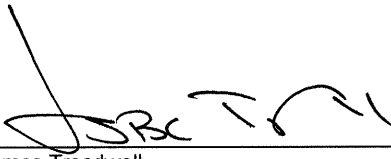
  
\_\_\_\_\_  
Signature of witness

Nicholas Bernard Bland  
\_\_\_\_\_  
Full name of witness

Solicitor  
\_\_\_\_\_  
Occupation of witness

Auckland  
\_\_\_\_\_  
Address of witness

**SIGNED** by **JAMES TREADWELL** as  
Trustee in the presence of:

  
\_\_\_\_\_  
James Treadwell

**Witness:**


  
\_\_\_\_\_  
Signature of witness

Gantle Cumberland  
\_\_\_\_\_  
Full name of witness

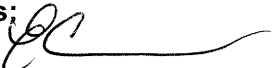
Forester  
\_\_\_\_\_  
Occupation of witness

Rural Post MANUREWA  
\_\_\_\_\_  
Address of witness

**SIGNED** by **DAVID EIVSON** as one of the  
Trustees in the presence of:

  
\_\_\_\_\_  
David Eivson

**Witness:**

  
\_\_\_\_\_  
Signature of witness

E.G. MASON  
\_\_\_\_\_  
Full name of witness

ACADEMIC  
\_\_\_\_\_  
Occupation of witness

SCHOOL OF FORESTRY, UNIVERSITY OF CANTERBURY  
\_\_\_\_\_  
Address of witness