

# Wellington Regional 2020 Communications Trust Deed

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## SCHEDULE ONE – Financial Requirements

## **PARTIES**

### ("The Seniors")

1. Ashley Blair, Philip Bridgen, Barbara Craig, Ted Fox, Duncan McLachlan, Chris Mathews, Bill Mudgway, Paul Reynolds, Simon Riley, Ian Thomson, Celia Wade-Brown and Laurence Zwimpfer

.

### ("The Trustees")

2. Erina Papp, Mike Ennis, Nathan Donaldson, Heather Newell, Hannah Pia Baral and Barbara Crump.

## **BACKGROUND**

- A. The Seniors wish to establish and register under the Charitable Trusts Act 1957 a Trust to be known as the Wellington Regional 2020 Communications Trust to ensure that every citizen in the Wellington region is equipped throughout life with the essential values, information, skills and opportunities to participate effectively in the emerging knowledge economy and to establish an independent community network for the Wellington region, providing people with world-wide access to education, information and communication resources, promoting participation in civic life and enhancing the community socially, culturally and economically.
- B. The Seniors have paid the sum of \$10 to the Trustees to be held upon the trusts set out in this Deed.
- C. The Trustees have agreed to act as trustees of the Trust.
- D. This Deed is being completed by the Seniors and the Trustees to establish the terms of the Trust.

## **THIS DEED WITNESSES**

- 1. The Seniors hereby settle the sum of \$10.00 on the Trustees as an initial settlement of the Trust.
- 2. The Trustees agree to act as trustees on the terms set out in this Deed.

## **PART 1 - ESTABLISHMENT, OBJECTS AND POWERS OF THE TRUST**

### **1.0 Interpretation**

#### 1.1

A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, or agency of state (in each case whether or not having separate legal personality).

#### 1.2

Headings and marginal notes are included for convenience only and do not affect the interpretation of this Deed.

#### 1.3

This Deed is binding upon all parties and their respective successors and permitted assigns.

#### 1.4

Where the context permits words describing the singular include the plural and vice versa and words imputing masculine, feminine or neuter gender include all genders.

#### 1.5

In this deed, unless the context otherwise requires, any reference to any legislation includes a modification and re-enactment of that legislation or legislation enacted to substitution for any regulation, order in council and other instrument from time to time issued or made under that legislation.

#### 1.6

For the purposes of the Perpetuity Act 1964, the perpetuity period applicable to this document shall be 80 years from the date of this document.

## **2.0 Establishment of the Trust**

### **2.1**

The Trust shall comprise all Trust Assets from time to time held by the Trustees upon the trusts of this Deed including the income arising therefrom.

### **2.2**

The Trust Assets shall be held on trust by the Trustees and shall be managed and administered on the terms contained in this Deed.

### **2.3**

The Trust shall commence on the date of this Deed and shall continue until terminated pursuant to clause 13.0 (Winding Up of the Trust).

## **3.0 Name of the Trust**

### **3.1**

The name of the Trust is the "**Wellington Regional 2020 Communications Trust**".

## **4.0 Objects of the Trust (the "Objects")**

### **4.1**

The objects for which the Trust is established are to the extent that they are a charitable purpose within NZ, as follows:

#### **4.1.1**

To ensure that every citizen in the Wellington region is equipped throughout life with the essential values, information, skills and opportunities to participate effectively in the emerging knowledge economy.

#### **4.1.2**

To establish an independent community network for the Wellington region, providing people with world-wide access to education, information and communication resources, promoting participation in civic life and enhancing the community socially, culturally and economically.

#### **4.1.3**

To undertake community initiatives which will resolve Digital Divide" issues.

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#### **4.1.4**

To cooperate with as many different Wellington and Wellington region communities as possible including (but not limited to) the Tangata Whenua of New Zealand, educational institutions at all levels, the business community, ethnic and cultural groups, people with disabilities and the wide range of social groups found within New Zealand in projects consistent with the Objects.

#### **4.1.5**

To enquire, gather information, learn, analyse and share theories and practices about information management, dissemination and utilisation, including but not limited to:

- promoting, planning and organising ways of sharing in this research activity.
- acting as a resource for people interested in furthering theirs or others' understanding of the effects, culturally, socially and economically of the digital information revolution.
- developing learning resource material

#### **4.1.6**

To assist in the facilitation of the expansion of the work of the 2020 Trust and its initiatives within New Zealand

#### **4.1.7**

To establish and maintain connections and co-operate with organisations in New Zealand and overseas that the Trustees determine to be advantageous to the Trust.

#### 4.1.8

To solicit and raise funds and carry out such activities as are necessary or conducive for the carrying out and giving effect to the objects of the Trust.

#### 4.1.9

To do any lawful act nationally and internationally that advances the above charitable aims.

#### 4.1.10

Generally to do all things necessary and desirable to achieve the aims set out in these Objects to the intent that the declaration of Objects shall not be exclusive and may at any time be extended to permit the Trust to give such assistance in other ways to persons or bodies who are undertaking initiatives consistent with the Objects.

#### 4.2

For the avoidance of doubt, the objects of the Trust expressed at clauses 4.1.1 to 4.1.11 are set out in no particular order of priority.

### **5.0 Powers of the Trust**

#### 5.1

Subject to the provisions of this Deed, and in particular clauses 5.2 and 5.3 and the resolution requirements, the Trustees shall have all the powers over and in respect of the Trust and the Trust Assets which they could exercise if they were the absolute and beneficial owners of the Trust Assets. In particular, without in any way limiting the wide powers conferred by the foregoing, the Trustees shall have full and absolute power to do the following:-

##### 5.1.1

Enter into management agreements and other contracts with any person for the purpose of organising and operating any activities in furtherance of the Objects of the Trust.

##### 5.1.2

Enter into lease arrangements or other contracts for the management of assets in furtherance of the Objects of the Trust.

##### 5.1.3

Purchase, sell, lease or otherwise deal with assets on behalf of the Trust upon such terms as the Trustees think fit.

##### 5.1.4

Carry out and pay for repairs and improvements relating to Trust Assets.

##### 5.1.5

Insure any Trust Assets for such amounts and on such conditions as the Trustees determine.

##### 5.1.6

Instruct agents and consultants to act in relation to Trusts Assets or assets intended to be acquired by the Trust.

##### 5.1.7

Agree, enter into and perform any contract, option or other right relating to any part or all of the Trust Assets or proposed assets.

##### 5.1.8

Enter into any arrangements with any government, public body or authority to obtain any rights, authorities, concessions or clearances and to give any undertakings binding upon the Trustees either generally or on conditions that the Trustees think fit and to carry out, exercise and comply with any of the same.

##### 5.1.9

Employ, engage or contract with upon such terms and conditions as to salary, remuneration, contract, payment or other consideration any employee, manager, agent, professional advisor or other person (including any person who is a Trustee) as the Trustees think fit upon such terms as

the Trustees deem expedient provided that any payment to a Trustee must be fair and reasonable for the services provided.

5.1.10

Participate in the rights and obligations, including obligations to contribute in any manner to the liabilities of the parties, under any partnership, joint venture, or other agreement relating to Trust Assets or to act as the operator or one of the operators under any such agreement which relates to Trust Assets.

5.1.11

Perform and enforce agreements.

5.1.12

Determine whether any money or other Trust Asset is capital or income and what expenses ought to be paid out of income and capital respectively and also apportion blended funds. Every such determination or apportionment shall be final and binding on all persons interested in the Trust provided that such determination is made in good faith and in accordance with the requirements of this Deed.

5.1.13

Place or permit to be placed any Trust Assets in the name of any agent or nominee for such period or periods as the Trustees in their absolute discretion think fit.

5.1.14

Appoint a custodian trustee for all or part of the Trust Assets and to terminate any such appointment.

5.1.15

Open a bank account or accounts in the names of the Trustees or the Trust and operate that account in accordance with the Schedule.

5.1.16

To adopt such means of making known the activities and Objects of the Trust as may seem expedient in particular by advertising by press, by circulars and by periodicals whether through paper or by digital communication.

5.1.17

Receive donations and seek and obtain sponsorship.

5.1.18

Pay all or any of the expenses incurred in connection with the incorporation and establishment of the Trust or otherwise in accordance with the Schedule.

5.1.19

Obtain any statutory or similar order or Act of Parliament enabling the Trust to carry or better carry any of its Objects into effect or to effect any modification to the Trust Deed or for any other purpose which the Trustees consider expedient.

5.1.20

Enter into an arrangement with the 2020 Trust for the 2020 Trust or an associate of the 2020 Trust to provide services to the Trust

5.1.21

To charge on a cost recovery basis for services provided to third parties in pursuance of the Objects.

5.1.22

To make any Rules for the management and administration of the Trust which are not inconsistent with the Objects;

#### 5.1.23

To do all such other things as in the opinion of the Trustees may be incidental or conducive to the attainment of any of the foregoing Objects or the exercise of any of the foregoing powers.

#### 5.2

The Trustees shall also have the following additional powers, but will not exercise any of the following powers unless the exercise of the power is authorised by Special Resolution or contingent upon the passing of a Special Resolution:

##### 5.2.1

Lend money whether secured or unsecured to further the Objects of the Trust.

##### 5.2.2

Borrow or raise money whether unsecured or secured.

##### 5.2.3

Guarantee the performance of any person in relation to any agreement, security, charge, contract, undertaking or promise and secure any such guarantee by mortgage, charge or other encumbrance over the whole or any part of the Trust Assets.

##### 5.2.4

Create, grant, renew, alter, or vary any mortgage, charge, or other encumbrance over the whole or any part of the Trust Assets for the purposes of the Trust and upon such terms and conditions as the Trustees may in their absolute discretion think fit.

##### 5.2.5

Agree to the release, modification or variation of any rights, privileges or liabilities of any Trust Assets from time to time or any securities given in relation thereto.

##### 5.2.6

Institute, prosecute, compromise and defend legal proceedings.

##### 5.2.7

Invest in pooled or mixed forms of investment in common with other investors [see schedule 1 - for discussion].

##### 5.2.8

Incorporate any company or to purchase, establish and carry on any business or shares in a company or other commercial venture for the purposes of benefiting the Trust.

##### 5.2.9

Make donations and grant sponsorships.

#### 5.3

The Trustees may not enter into a Major Transaction unless the Major Transaction is.

##### 5.3.1

Authorised by Special Resolution; or

##### 5.3.2

Contingent upon the passing of a Special Resolution.

#### 5.4 **Trustees Responsibilities**

The Trustees shall take overall control of and responsibility for the governance of the Trust.

##### 5.4.1

The Trustees will perform all of their responsibilities under this deed in a prudent manner and shall exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

##### 5.4.2

The Trustees shall devote adequate and sufficient time, attention and resources to carry out their obligations under this deed to ensure the Trust achieves its objectives.

#### 5.4.3

The Trustees shall only act in accordance with the objects of the Trust.

### 5.5 Trustees Declaration of Interest

It shall be the duty of a Trustee who is in any way directly or indirectly interested in any contract or arrangement with the Trustees to declare the nature of his or her interest at a meeting of the Trustees, but failure to do so shall not disqualify the Trustee or invalidate the contract, proposed contract or any other matter in which the interest lies. A Trustee who is interested shall not be entitled to vote on any issue related to the contract, proposed contract or other matter in which the interest lies.

#### 5.6

If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and his or her ruling in relation to any such Trustee shall be final and conclusive. A Trustee shall be deemed to have an interest in any matter in which he or she would reasonably be regarded as likely to be influenced materially to prefer interests other than those of the Trust, or any other affected party, for reasons of personal advantage or the advantage of business or family associates.

## 6.0 Transactions with Related Parties

### 6.1

The Trustees may:

#### 6.1.1

Sell, purchase or otherwise dispose of or acquire any asset to or from any Related Party; or

#### 6.1.2

Enter into any contract, agreement or other arrangement with any Related Party to provide management, administration or other services for the Trust; or

#### 6.1.3

Enter into any other transaction with any Related Party in relation to the Trust; or

#### 6.1.4

Cause any Trust Assets that comprise cash to be invested or lodged with any Related Party. Provided that the Trustees in good faith are of the opinion that the particular transaction is on reasonable commercial terms and is in the best interest of the Trust.

### 6.2 Prohibition of Benefit or Advantages by Related Parties

#### 6.2.1

In the carrying on of any business under this deed, and in the exercise of any power authorising the remuneration of Trustees, no benefit, advantage or income shall be afforded to or received, gained, achieved or derived by any Related Party where that Related Party, in his or her or its capacity as related person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

##### 6.2.1.1

The nature or amount of that benefit, advantage or income; or

##### 6.2.1.2

The circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or desired.

## 7.0 Trustees' Indemnity and Liability

Wellington Regional 2020 Communications Trust Deed

7.1

The Trustees shall not be liable for:

7.1.1

Any losses in the carrying out of their legal responsibilities except losses arising from their own dishonesty, wilful default or wilful breach of trust or gross negligence; or

7.1.2

Any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this Deed; or

7.1.3

Any omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustee under this Deed.

7.2

The Trustees and every other person acting on behalf of the Trustees shall be indemnified out of Trust Assets against all liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the Trust. This indemnity shall extend to any payments made to any Person whom the Trustees bona fide believe to be entitled thereto though it may be subsequently found that the person was not in fact entitled. The Trustees shall have a lien or charge on the Trust Assets and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.

7.3

The liability of the Trustees in connection with this Deed or at law shall at all times be limited to the Trust Assets.

## **8.0 Delegation by Trustees**

8.1

The Trustees shall have, to the extent permitted by law, full power to delegate to any one or more Trustees or to any attorney, agent or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this Deed but without in any way releasing the Trustees from their obligations under this Deed.

8.2

Without in any way affecting the generality of the foregoing the Trustees may in exercising this power of delegation:

8.2.1

By power of attorney appoint any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions.

8.2.2

Appoint by writing or otherwise any person to be agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such agent or sub-agent for any reason as the Trustees think sufficient.

8.3

The Trustees shall be entitled to delegate any of their powers and duties under this Deed to any committee or committees consisting of such of the Trustees (or any other person) as the Trustees may appoint for such purpose.

## **9.0 Incorporation under the Charitable Trusts Act 1957**

9.1

The Trustees shall forthwith after the execution of this Deed apply for incorporation under the

Charitable Trusts Act 1957 and the Trustees are authorised to make such application on behalf of the Trust.

9.2

Upon incorporation of this Trust in accordance with clause 9.1 the Trustees shall procure a common seal for the Trust and shall provide for its custody. Any documents required to be signed under the common seal shall be attested by any two Trustees.

## **10.0 Income of the Trust**

10.1

The Trustees may with respect to all or any part of the income arising from the Trust Fund for each Financial Year:

10.1.1

Pay, apply, or appropriate from income (to the extent income is available) all expenses and other charges and provisions ordinarily met from income;

10.1.2

Make, retain or charge against income any payments, reserves or provisions necessary or desirable for the proper administration and maintenance of the Trust and the Trust Fund including any appropriate reserves for capital works which the Trustees consider desirable to achieve the objects of the Trust;

10.1.3

Reduce or repay any loans or liabilities of the Trust; and

10.1.4

Pay, apply or appropriate from income such amount as the Trustees decide for or towards 1 or more of the objects of the Trust.

10.2

Any income of any Financial Year not dealt with under clause 10.1 shall be accumulated and added to the capital of the Trust Fund.

## **10.3 Trusts of Capital**

At any time the Trustees may, or may decide to, pay, apply or appropriate as much of the capital of the Trust Fund as they think fit for or towards 1 or more of the objects of the Trust. If the Trustees provide for more than 1 or such object they need not treat each object equally. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income.

## **10.3 Receipts**

Any funds allocated to any body or institution may be paid to any responsible officer or member of the body or institution concerned who is recognised by the Trustees as having responsibility for that body or institution. The receipt of such officer or member shall be a full discharge to the Trustees who shall not be bound to see the further application of the funds.

## **11.0 Accounts and Audit**

11.1

The Trustees shall keep proper records and accounts relating to the Trust including a record of all sums of money received and expended by or on behalf of the Trust.

11.2

At the end of each financial year, the Trustees shall prepare accounts which comply with the requirements of generally accepted accounting practices for not for profit organisations.

11.3

The Trustees shall forward a copy of the annual accounts and other annual reports to the 2020 Trust promptly on completion.

#### **11.4 Remuneration and Expenses**

Each Trustee shall be entitled in each Financial Year:

##### 11.4.1

To remuneration for his or her services as a Trustee as may be fair and reasonable having regard to his or her duties and responsibilities; and

##### 11.4.2

To be reimbursed for fair and reasonable expenditure incurred by him or her on behalf of the trust, subject in every case to approval by the Trustees.

##### 11.5

The Trustees may pay reasonable and proper remuneration to any officer, agent, contractor or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust.

##### 11.6

The Trustees shall be entitled to take out a Trustee's indemnity insurance policy or policies in relation to the Trustees and any person employed by the Trustees and to pay premiums in respect of that policy or those policies of the Trust Fund.

##### 11.7

The Trustees shall, in accordance with Auditing and Financial Reporting clauses show the amount of any remuneration or fees charged by any Trustee or any Trustee's firm and the amount of any premiums paid out of the Trust Fund for any Trustees' indemnity insurance separately in the financial statements.

#### **12.0 Alterations to the Deed**

##### 12.1

The Trustees may from time to time by amending deed or instrument alter, rescind or add to any of the provisions of this Deed subject to:

##### 12.1.1

At least 14 days notice of intention to move any amendment to this Deed being given to all Trustees;

##### 12.1.2

The alteration, rescission or addition being not prejudicial to the legal charitable status of the Trust; and

##### 12.1.3

The alteration, rescission or addition does not vary (objects, remuneration for services, reimbursement for expenditure, alteration to deed, and winding-up) clauses.

##### 12.2

Any amendment to this Deed shall be made by Special Resolution passed by the Trustees in accordance with Part II of this Deed.

#### **13.0 Winding Up of the Trust**

##### 13.1

The Trust shall terminate and be wound up and dissolved if:

##### 13.1.1

The Trustees resolve by Special Resolution that the Trust shall be wound up; or

##### 13.1.2

The Trust is wound up by law.

##### 13.2

Every resolution to wind up the Trust shall specify an effective termination date of the Trust and

thereafter the Trustees shall realise or dispose of the Trust Assets as soon as reasonably practicable in accordance with this clause.

### 13.3

The Trust Assets or the proceeds resulting therefrom shall be applied by the Trustees upon a winding up in the following order of priority and manner:

#### 13.3.1

First in meeting all costs, expenses and liabilities of the Trust including the costs and expenses or winding up the Trust and setting aside any amount that the Trustees consider necessary or desirable in respect of any contingent liability of the Trust.

#### 13.3.2

Secondly, in the payment or distribution (by instalments if the Trustees consider appropriate) of the balance to or for the benefit of the 2020 Trust or such replacement trust or body or such other Charitable Purpose or Charitable Purposes as the Trustees shall determine.

### 13.4

Subject to the provisions of clause 13.3, on winding up no part of the Trust Fund shall be paid, applied or transferred except in accordance with the objects of the Trust, and no private pecuniary profit, benefit or advantage shall be made by any person from the Trust, except in accordance with all remuneration and expenses clauses.

## 14.0 Members of the Trust

### 14.1

The Trustees may establish a members group (in this clause called "the Members"). The Trustees shall establish rules regarding Members.

### 14.2

The following provisions shall apply to Members:

#### 14.2.1

The Members will not be a separate legal entity and shall have no rights to the Trust Assets at any time.

#### 14.2.2

Subject to sub-clause (14.2.4) below on payment to the Trust of such amount or by contribution of such services to the Trust as the Trustees shall determine from time to time (if any) each Member shall become a Member of the Trust and shall have such rights as the Trustees shall determine.

#### 14.2.3

Subject to sub-clause (14.2.4) below the Trustees may determine different classes of Member which shall enjoy such different rights and privileges and be subject to making such payment or other liability as the Trustees shall determine.

#### 14.2.4

Notwithstanding any of the provisions of the above sub-clauses the Trustees will not establish rules which confer to any Member rights or privileges of a pecuniary nature.

## 15.0 Major Sponsors

### 15.1

The Trustees may appoint Major Sponsors for the Trust. Any Major Sponsor shall make a donation, grant, gift or other payment with a substantial monetary value as determined by the Trustees.

### 15.2

The Major Sponsors shall have such rights as the Trustees shall determine and may have a right to nominate an Associate Trustee under clause 16.3.

15.3

Notwithstanding the provisions of clause 15.2 no Major Sponsor shall have any right or privilege of a pecuniary nature and shall have no rights to the Trust Assets.

## **PART 2 - PROCEEDINGS OF TRUSTEES**

### **16.0 Appointment and Removal of Trustees**

16.1

There shall be a minimum of 6 and a maximum of 12 Trustees. The Trustees at the date of execution of this Deed are those set out on the first page of this Deed ("the Initial Trustees"). Subject to clause [16.2 and 16.3], subsequent Trustees shall be appointed by the Trustees in the manner set out in this Deed.

16.2

Nominations for the Trustees shall be called for publicly and encouraged from persons who will be likely to best assist in the fulfilment of the Objects. Trustees shall be appointed by majority vote of the Trustees.

16.3

In addition to the Trustees there shall be up to 20 associate trustees ("Associate Trustees") appointed by the Trustees from time to time. The Trustees may invite any person to nominate an Associate Trustee to serve as a Trustee for a period of one year. Such persons will be invited for nomination on the basis of their being a representative of part of the community, and/or affinity with the Objectives, and/or being a Major Sponsor. Associate Trustees shall not have voting rights at Trustee meetings.

16.4

If the number of Trustees at any time is lower than the minimum permitted under this Deed (through retirement or other eventuality) the Trustees shall call for nominations to fill the vacancies and/or fill the vacancies as they see fit. Trustees appointed to fill vacancies shall hold office from the time at which their appointment is announced until the subsequent Annual General Meeting.

16.5

Trustees shall elect up to 6 Trustees in any one year. Elected Trustees shall be elected to serve for a two year term. Outgoing Trustees shall be eligible for re-appointment.

### **16.6 Termination of Office**

The office of trustee shall become vacant if a Trustee:

- Resigns.
- Dies.
- Becomes bankrupt.
- Becomes of unsound mind.
- Becomes for any reason unable in the reasonable opinion of the remaining Trustees to perform the duties of a trustee satisfactorily, including (if the Trustees determine) failing to participate in the business of the Trust over a period of at least four months without having previously obtained special leave.
- Is convicted of an indictable offence.
- Is under clause 16.7 not capable of holding office as a Trustee;
- Refuses to act;
- Has come to the end of his or her term of office and has not been reappointed.
- Is removed from office pursuant to the removal of trustees clause

16.7

The following persons shall not be capable of being appointed or reappointed or holding office as a trustee:

- A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
- A person who has been convicted within the last 5 years of a criminal offence punishable by imprisonment;
- A person who would be subject to an order under section 189 of the Companies Act 1955 but for the repeal of that section;
- A person to whom an order made under section 199I of the Companies Act 1955 applies (or would apply but for the repeal of that Act) or to whom an order made under section 383 of the Companies Act 1993 applies;
- A mentally disordered person within the meaning of the Mental Health Act 1969; or
- Any person who is the subject of an order under the Protection of Personal and Property Rights Act 1988.

#### **16.8 Record of Appointment or Removal**

The appointer shall complete a certificate recording the appointer's decision that:

##### **16.8.1**

A person has been appointed as a Trustee and the term of their appointment.

##### **16.8.2**

A person has been removed from the office of trustee.

##### **16.9**

The appointer's certificate recording that a person has been appointed or removed from the office of Trustee shall be given by the appointer to the Trustees and placed in the Trust's minute book. The appointer's certificate recording that person has been appointed or removed from the office of trustee shall be conclusive evidence of that fact.

#### **16.10 Appointment of New Trustees**

Trustees shall be appointed by a majority vote of the Trustees.

##### **16.11**

If the office of trustee becomes vacant for any reason, then the appointer shall have the power to appoint a new Trustee. In appointing Trustees, the appointer shall ensure that the Trustees as a body have an appropriate range and balance of skills and experience, having regard to the following criteria:

- experience in corporate governance and financial control;
- absence of any clear and irreconcilable conflict of interest;
- ability to set strategies and monitor performance;
- an understanding and commitment to the objects of the Trust; and
- The Treaty of Waitangi.

#### **16.12 Removal of Trustees**

The Trustees (individually or en bloc) may be removed from office by the appointer, at any time without giving reason, provided in exercising the power of removal the appointer must:

- Act reasonably having regard to the objects of the Trust; and
- only exercise its power to remove a Trustee or Trustees if that power is also exercised in conjunction with the appointment of a replacement Trustee or Trustees and a sufficient number of Trustees remain.

### **17.0 Appointment of Chairperson**

17.1

The Trust shall have a chairperson who shall be a Trustee of the Trust. The chairperson shall be elected by the Trustees annually.

17.2

Any retiring chairperson shall have the right to stand for re-election.

17.3

If a chairperson is unable for any reason to perform the chairperson's duties then the Trustees may elect an acting chairperson during the relevant period of inability.

## **18.0 Proceedings of Trustee Meetings**

18.1

Subject to this Deed the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit.

18.2

At any meeting of the Trustees the chairperson shall preside or in the absence of the chairperson the Trustees may elect one of their members to preside.

18.3

At all formal meetings of Trustees:

18.3.1

No business shall be transacted unless the requisite quorum is present at commencement of business.

18.3.2

At any meeting to consider a matter that requires a special resolution the quorum shall be 75% of the number of Trustees.

18.3.3

The quorum for the transaction of any other business (an "Ordinary Resolution") at a meeting shall be 30% of the number of Trustees.

18.3.4

The expression "Special Resolution" means a resolution passed at a meeting of Trustees at which not less than 80% of the appointed Trustees present in person or by proxy vote in favour of the resolution.

18.3.5

A resolution put to the vote of a meeting shall be decided on a show of hands. On a show of hands each Trustee present in person or by proxy at the meeting shall have one vote only. The chairperson shall not have a second or casting vote. A declaration by the chairperson that a resolution has been carried shall be conclusive evidence of the fact.

18.4

Where any Trustee or any Related Party has been engaged by the Trust to carry out consultancy or other services for the Trust that will result in the Trustee or the Related Party receiving a financial benefit for such services then that Trustee shall not be entitled to vote on any resolution to carry out any proposal for the Trust recommended by the Trustee or the Related Party.

18.5

An act or decision of the Trustees shall not be invalid by reason only of:

- A fault, default or irregularity in or in connection with the appointment of a Trustee; or
- a vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee; or
- the accidental omission to give notice to or the non-receipt of notice by any Trustee.

18.6

The Trustees shall keep a minute book and shall cause minutes to be kept therein of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the chairperson of the Trustees of a meeting shall be receivable as prima face evidence of the matters contained in such minutes.

## **19.0 Convening of Meetings**

19.1

The Trustees shall hold at least one Annual General Meeting each year but otherwise shall hold such meetings in any calendar year as they shall decide.

19.2

The chairperson shall convene the meetings of the Trustees.

19.3

The chairperson shall convene any meeting of the Trustees if the chairperson receives a written request from at least three Trustees to hold a meeting. At least seven days prior notice of meetings of Trustees shall be given to all Trustees.

## **20.0 Resolutions in Lieu of Meetings**

20.1

A resolution in writing signed or assented to by letter, telegram, cable, telex, facsimile or other written or auditable electronic manner, by:

- 80% of the appointed Trustees in the case of a Special Resolution. and
- 51% of the appointed Trustees in the case of an ordinary resolution;

shall be as valid and effective as if it had been passed at a meeting of Trustees duly called and constituted.

20.2

Any such resolution may consist of several documents in like form either signed or purporting to have been despatched by any one or more of the Trustees.

## **21.0 Proxies**

21.1

A Trustee may exercise the right to vote either by being present in person or by proxy. Only an existing Trustee of the Trust may be appointed as a proxy.

21.2

A proxy for a Trustee is entitled to attend and be heard at a meeting of Trustees as if the proxy were the Trustee.

21.3

A proxy must be appointed by notice in writing signed by the Trustee which must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months, and a copy of which must be produced before the start of the meeting.

21.4

No proxy is effective unless it is produced not less than 24 hours before the start of the meeting.

## **22.0 Teleconference Meetings of Trustees**

22.1

The contemporaneous linking together by telephone or other means of communication of a number of Trustees not less than the required quorum (whether or not anyone or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this deed in respect of such meetings shall apply so long as the following conditions are met:

#### 22.1.1

All Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting and shall have first received 2 working days prior notice of such meeting.

#### 22.1.2

Each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees, or contemporaneously communicate with each of the Trustees taking part in the meeting;

#### 22.1.3

At the commencement of the meeting each Trustee must acknowledge that Trustee's presence for the purpose of the meeting to all other Trustees taking part.

#### 22.2

The Trustees shall take steps to further develop a legally acceptable method of holding electronic meetings.

### 23.0 Service of Notices

#### 23.1

Notices shall be deemed served by one party upon another party:

- If posted, 2 days following posting;
- If delivered personally, at the date of service; or
- If sent by facsimile or other electronic device, on the day following the date of transmission.

### 24.0 Executive (The "Executive")

#### 24.1

There may be appointed by the Trustees from time to time an Executive to carry out management and administration functions of the Trust.

#### 24.2

The Executive shall carry out the goals, objectives and powers of the Trust at the direction of the Trustees and in accordance with the Rules specified from time to time by the Trustees.

#### 24.3

The Trustees may appoint full or part-time staff to the Executive on terms and conditions agree by the Trustees.

### 25.0 Definitions

"2020 Trust" means the 2020 Communications Trust established on 10 July 1996

"Charitable Purpose" means any purpose which in accordance with the law of New Zealand is a charitable purpose for the benefit of the people of New Zealand.

"Council" means Wellington City Council;

"Digital Divide" means the division between those who have access to and are capable of taking advantage of digital and Internet networking technologies and those who, because of lesser financial capacity, education and skill levels do not have the same access or capability;

"Internet Site" means a node of the worldwide network of computer networks and includes the hardware, the operating software and the data stored on it.

"Major Sponsor" means an individual or corporation making a contribution with a substantial monetary value to the Trust to assist the Trust in its work.

"Major transaction" means a transaction, undertaking, agreement or arrangement that has or is likely to have the effect of the Trustees acquiring rights or interests or incurring obligations or liabilities the value of which are more than 25% of the value of the Trusts Assets at that time.

"Related Party" means:

- (a) the Council, the Mayor or any Councillor or any employee of the Council or any company or other entity owned or controlled by the Council; or
- (b) the Chairperson or any Board Member or employee of the Wellington Regional Development Agency or any company or other entity owned or controlled by the Wellington Regional Development Agency; or
- (c) any of the Trustees from time to time; or
- (d) any company, partnership, trust or other entity in which a Trustee or any spouse of a Trustee is financially interested whether as a shareholder, partner, director, employee, beneficiary or otherwise; or
- (e) any spouse of a Trustee.
- (f) that person where he or she already mentioned in this section, are associated persons for the purposes of the Income Tax Act 1994

"Rules" means any rules made by the Trustees from time to time for the administration and management of the Trust.

"Special Resolution" means a special resolution of Trustees passed in the manner provided in clauses 18.3.2, 18.3.4 and 20.1.

"The Trustees" means the trustees of the Trust described in paragraph 2 above and as removed or appointed under this Deed from time to time.

"this Deed" means this deed including any schedules and any amendments as amended from time to time in accordance with the powers contained herein.

"Trust" means the trust established by this deed and known as the Wellington Regional 2020 Communications Trust.

"Trust Assets" means all money, investment, property and assets from time to time owned or held by the Trust.

"Wellington Community Network (WCN)" means a community networking system to provide Web hosting, communications services, database information, training resources and the sharing of best practice to individuals and organisations.

"Wellington Region" means the geographic region that encompasses Wellington, Porirua, Lower Hutt, Upper Hutt, Kapiti.

"Working Day" means a day in which the trading banks are open for business in Wellington"

## Schedule One - Financial Requirements

### 1 Funds Property and Accounts

- a. Subject to this Schedule, the funds and property of and belonging to the Trust may be applied in payment of all expenses of and incidental to the carrying out of the Objects of the Trust.
- b. All moneys received by the Trust shall be paid immediately into a bank account (of a bank registered in New Zealand) to the credit of Wellington Regional 2020 Trust.
- c. All expenditure to be incurred must be authorised by the Trustees in accordance with clauses 5 and 18, as appropriate.
- d. All accounts presented for payment shall be paid by an instrument duly signed by two authorised officials of the Trust.
- e. Surplus funds of The Trust may from time to time be invested by the Treasurer on deposit with any bank registered in New Zealand or in public securities as defined in the Public Finance Act 1989 or any statute passed to replace that Act from time to time.
- f. Each year the Trustees shall cause to be prepared an asset register of Trust assets.
- g. In making any investment exercise the care, diligence and skill required of a prudent Trustee as set out in the Trustee Act 1956.