

## Trust Deed

THIS DEED is made the 6<sup>th</sup> day of July 2012

### BETWEEN

- Miriam Larsen-Barr
- Daniel Larsen-Barr
- Michelle Durey
- Kenneth Larsen

### WHEREAS

- a. The parties to this Deed wish to establish a charitable trust (in this Deed referred to as “the Trust”) for the purposes described in Clause 3 of this Deed, and
- b. The parties to this Deed have agreed to contribute the sum of one dollar each to establish the Trust, and
- c. The parties have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and management.

### THIS DEED WITNESSES

#### 1. TE INGOA/ NAME:

The name of the Trust will be **Community Mental-Health Resources Trust** (herein called “The Trust”).

#### 2. MātāPONO/PRINCIPLES

The Trust is committed to **ensuring that all New Zealanders with direct or indirect experience of mental-health problems have easy access to mental-health recovery resources** by operating as a not-for-profit charitable trust for the express purpose of sharing free, effective, service-user-informed, mental-health recovery information, skills and supports with individuals in the community in accordance with the principles, policies and guidelines specified below.

##### We will:

- 2.1. respect and implement the dual heritage of the partners of Te Tiriti o Waitangi;
- 2.2. respect the cultural diversity of people and encourage all nationalities to utilise the Trust’s facilities and services;
- 2.3. share a psychological formulation of mental-health problems, informed by personal experience;
- 2.4. acknowledge individuals within their context and the need for social change;
- 2.5. share destigmatising attitudes, language and approaches;
- 2.6. work cooperatively with others in the area of mental health;
- 2.7. maintain the highest standards of professionalism and integrity;
- 2.8. model service-user leadership;
- 2.9. promote service-user participation in policy and service delivery decisions;
- 2.10. utilise a scientist-practitioner model of mental-health promotion based on empirical evidence and responsiveness to evaluation.

#### 3. WHāINGA/ PURPOSE

The purpose of the Trust will be to enable people of all ages, ethnicities and cultures to connect with evidence-based, service-user-informed mental-health recovery information, tools and support. The Trust will serve both people with mental-health problems and those supporting people with mental-health problems, particularly current and potential mental-health service-users and their whanau/family and friends.

**In particular the Trust will:**

- 3.1. **Enable** New Zealanders to engage with their community mental-health resources.
- 3.2. **Empower** people with evidence-based, hopeful information about mental-health problems and recovery.
- 3.3. **Encourage** people to learn healthy ways of coping with distress
- 3.4. **Equip** people to develop practical skills and understandings to improve their mental-health experiences.
- 3.5. **Reach** people with and without computer access.

**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. TE RUNANGA WHAKAHAERE/ OFFICE**

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

**6. TE RUNANGA WHAKAHAERE/ THE BOARD OF TRUSTEES**

- 6.1. The Board will comprise of no less than three (3) and no more than ten (10) 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 from among themselves or from non-trust members. An election of office-bearers will be held at the first meeting of the Board following the execution of this Deed and whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.
- 6.3. A person will immediately cease to be Trustee when she or he resigns in writing, dies or is declared bankrupt.
  - 6.3.1. In the event that a Trustee becomes subject to the conditions of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment, they will be granted leave of absence. As soon as possible and within six months the Trustee and The Board will together negotiate a return to work, starting with reduced duties until both parties are confident full duties are appropriate.
  - 6.3.2. If more than six months leave of absence is required, the person will cease to be a Trustee. The person can reapply for a position on the Board.
- 6.4. The Board will have the power to fill any vacancy that arises on the Board or to appoint any additional trustees subject to clause 6.1.
- 6.5. The Board may continue to act notwithstanding any vacancy, but if their number is reduced below 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 purposes.
- 6.6. The Board may, by a motion decided by a two-thirds ( $2/3^{\text{rd}}$ ) majority of votes, terminate a person's position as a Trustee and member of the Board, if it believes that such action is in the best interests of the Trust.
- 6.7. The name of the Board will be **Community Mental-Health Resources Trust**.

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

- 7.1. The procedure for Board meetings will be as follows:
  - 7.1.1. A quorum will be at least half of its members.
  - 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 questions will, if possible, be decided by consensus. In the event that a consensus cannot be reached then a decision will be made by a majority vote unless otherwise determined by the Board.
  - 7.1.4. If the voting is tied, the Chairperson will have the casting vote.

- 7.1.5. 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 three (3) times every year. Meetings may be held in person or by any other means of communicating as decided on by the Board from time to time. This will include, but not be limited to, internet or teleconference. The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing.
- 7.3. The Secretary will ensure that a minute book is maintained which is available to any member of the Trust and which, for each meeting of the Board, records
  - 7.3.1. The names of those present;
  - 7.3.2. All decisions made by the Board; and
  - 7.3.3. Any other matters discussed at the meeting.

## **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 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 option of purchase or, in any other manner, dispose of such property, rights or privileges;
- 8.3. to invest surplus funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;
- 8.4. 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; and
- 8.5. to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.

## **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. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open-market value).
- 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. TURU TAKETAKE/ POWER TO DELEGATE**

- 10.1. The Board may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person. The committee or person may without confirmation by the Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Board could itself have done.
- 10.2. Any committee or person to whom the Board has delegated powers or duties will be bound by the terms of the Trust and any terms or conditions of the delegation set by the Board.
- 10.3. The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.
- 10.4. It will not be necessary for any person who is appointed to be a member of any such committee, or to whom such delegation is made, to be a Trustee.

## **11. PŪTEA/ FINANCIAL ARRANGEMENTS**

- 11.1. The financial year of the Trust will be from 1 January to 31 December.
- 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 authorise 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 Chair) and one other trustee appointed by the Board.

## **13. TAKAWAENGA/ MEDIATION & ARBITRATION**

- 13.1. Any dispute arising out of or relating 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.
- 13.2. The mediation shall be terminated by-
  - 13.2.1. The signing of a settlement agreement by the parties; or
  - 13.2.2. 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
  - 13.2.3. Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or
  - 13.2.4. The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- 13.3. If the mediation should be terminated as provided in 13.2.2, 13.2.3 or 13.2.4 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.

**14. TAUNAHA/ TRUSTEE LIABILITY**

It is declared that:

- 14.1. 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
- 14.2. They are each answerable and responsible respectively only for their own acts, receipts, omissions, 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;
- 14.3. No Trustees shall be liable personally for the maintenance, repair, or insurance of any charges on such property;
- 14.4. 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:
  - 14.4.1. To his or her own dishonesty; or
  - 14.4.2. To the wilful commission by him or her of an act known by him/her to be a breach of Trust.
  - 14.4.3. 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.
- 14.5. 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.
- 14.6. 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.
- 14.7. The Trustees 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.

**15. 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 the New Zealand mental-health sector 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.

IN WITNESS OF WHICH this Deed has been executed:

SIGNED by the above named) \_\_\_\_\_ )

as Trustee in the presence of:) \_\_\_\_\_

Full Name of Witness: .....

Occupation: .....

Residential address: .....

SIGNED by the above named) \_\_\_\_\_ )