

**The Evolve Foundation**

**Charitable Trust**

**kemps weir**  
LAWYERS

TSO-149001-1-8-V1

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DATED: 2 November 2016

## PARTIES

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1. NEVIL NIVLESH CHAND (*Settlor*)
2. NEVIL NIVLESH CHAND, BHAMITA DEVI CHAND AND JENNIFER HELEN RADICH (*Trustees*)

## INTRODUCTION

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- A. The Settlor wishes to establish a trust for charitable purposes.
- B. The Settlor has paid into the name of the Trustees the sum of \$10.00 to be held by the Trustees upon the trusts and with the powers set out in this deed.
- C. It is anticipated that further moneys investments or property may from time to time be paid transferred or vested in the names and control of the Trustees.
- D. The Trustees have consented to become Trustees, upon the trusts and with and subject to the powers and provisions expressed in this deed.

## OPERATIVE PART

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### 1. Establishment of Trust

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- 1.1 The Settlor has contemporaneously with the signing of this deed paid to the Trustees the sum of \$10 which the Settlor directs the Trustees to hold and which the Trustees acknowledge and declare that they hold upon the trusts and with the powers set out in this deed.
- 1.2 The name of this Trust shall be ***The Evolve Foundation***.
- 1.3 The Trustees may change the name of the Trust by deed.

### 2. Definitions and Interpretation

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- 2.1 **Definitions:** In this deed the following terms where the context admits shall have the following meanings:

***Charitable Purposes*** has the same meaning as is given to that term in Part Y, Subpart YA of the Income Tax Act 2007 and section 5 of the Charities Act 2005.

***Confidential Information*** means any information:

- (a) Relating to any details of the proceedings of the Trust; or

- (b) Disclosed by one Trustee to another in connection with the affairs or proceedings of the Trust, on the express basis that such Information is confidential; or
- (c) Relating to the terms of reference, results or any details as to the preparation of any reports or research undertaken by or on behalf of the Trust; or
- (d) Relating to any details as to the Financial Statements and other accounts, agenda for meetings, minutes or any other written material relating to the affairs or proceedings of the Trust; or
- (e) Relating to any intellectual property which may be, or which becomes at any time, the property of the Trust; or
- (f) Which might reasonably be expected by the Trustees of the Trust to be confidential in nature.

**Conflict of Interest** means where a Trustee is or becomes associated (as a director, manager, trustee or otherwise in a personal capacity) with any entity which the Trustee is proposing to deal with or transact in his or her capacity as a Trustee.

**Financial Year** means the 12 month period ending on 31 March (or such other date stipulated by the Trustees).

**Objects** means the objects of the Trust defined in clause 3.

**Trustees** shall include the trustee or trustees for the time being of this deed whether original, additional or substituted.

**Trust Fund** means:

- (a) The sum of \$10.00 referred to in clause 1.1 of this deed being the initial capital settled on the Trustees; and
- (b) All other moneys or property paid or transferred to or acquired by the Trustees to be held by them upon the trusts established by this deed; and
- (c) All accumulations of income made pursuant to clause 5.1(c) of this deed and all other accretions to capital; and
- (d) All moneys invested and property from time to time representing the items mentioned in (a), (b) and (c) of this definition.

## 2.2 Interpretation: In this deed:

- (a) The singular includes the plural and vice versa.
- (b) Where the context permits, references to a "person" include any individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.

- (c) All references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any reenactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.

### **3. Objects**

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3.1 The object of the Settlor in establishing this Trust is to create a fund to be used exclusively for Charitable Purposes in New Zealand, including:

- (a) Relief of Poverty
  - (i) To promote and provide relief of poverty including making provision for:
    - (A) Those experiencing domestic distress;
    - (B) The disabled, needy and at risk;
    - (C) The homeless;
    - (D) Others in similar need.
  - (ii) To work co-operatively with such other organizations and individuals in further of the above charitable purposes.
  - (iii) To own, provide or maintain any property in connection with the above purposes.
- (b) Advancement of Education
  - (i) To organise, provide, assist in or promote the advancement of education for New Zealanders regardless of age, race, sex, disability or economic circumstances generally.
  - (ii) To help all persons seeking to further their education, and to help all students, tutors and co-ordinators in ways that best suits their personal needs.
  - (iii) To promote, establish, operate or maintain any school or training facility.
  - (iv) To promote community arts, education, lectures, classes and seminars to encourage knowledge and participation in the arts.
  - (v) To work co-operatively with such other organizations and individuals in further of the above charitable purposes.
  - (vi) To own, provide or maintain any property in connection with the above purposes.



- (c) Purposes Beneficial to the Community
- (i) To encourage and promote the achievements of creative artists, musicians, designers and painters and other creative persons and organizations.
  - (ii) To encourage participation of and enjoyment in the arts by promoting arts initiatives and opportunities.
  - (iii) To establish facilities and provide equipment in support of the arts.
  - (iv) To promote and support any work for purposes beneficial to the community including the work of churches and other organisations.
  - (v) To promote and support any work for purposes beneficial to the health and wellbeing of the community, including assisting those with illness, both mental and physical.
  - (vi) To promote and support any work for purposes beneficial to the elderly community, including working with other organisations who already meet this purpose.
  - (vii) To work co-operatively with such other organizations and individuals in further of the above charitable purposes.
  - (viii) To own, provide or maintain any property in connection with the above purposes.

#### **4. Settlor Direction and Trustee Acknowledgement**

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- 4.1 The Settlor directs and declares and the Trustees acknowledge that they shall hold the Trust Fund upon the trusts and with the powers contained in this deed.

#### **5. Application of Trust Fund**

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- 5.1 The Trustees shall hold the Trust Fund upon trust:
- (a) To pay out of the Trust Fund for each Financial Year all costs and expenses of and incidental to the administration of the Trust.
  - (b) To apply and distribute the balance of the income of the Trust Fund for each Financial Year or such part as the Trustees think fit for Charitable Purposes in New Zealand; and if more than one Charitable Purpose is selected in such shares and proportions as the Trustees in their discretion may decide.
  - (c) Any income not so paid or applied within six months after the end of that Financial Year shall be accumulated and added to the capital of the Trust Fund.
  - (d) To apply and distribute all or part of the capital of the Trust Fund for Charitable Purposes in New Zealand.

## 6. Trust Term

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- 6.1 The Trust created by this deed shall continue in perpetuity unless the Trustees decide to wind up the Trust in which case the provisions of clause 13 shall apply.

## 7. Appointment and Removal of Trustee / New Trustees

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- 7.1 **Power of Appointment/Removal:** The power of appointment of new trustees shall be vested in the Trustees. The appointment of new trustees must be approved by the Trustees by unanimous vote. The removal of any Trustee under clause 7.2(d) shall be by vote of all Trustees excluding the Trustee who is being considered for removal.

- 7.2 **Extent of Powers:** The person or persons in whom the power of appointment is vested under clause 7.1 shall have power:

- (a) To appoint at any time or times an additional or replacement Trustee.
- (b) To appoint a retired or retiring trustee or any person at any time as advisory trustee.
- (c) To appoint himself, herself or themselves or any of themselves to be a Trustee of the Trust.
- (d) To remove any Trustee considered unfit, or no longer capable or suitable to act as a Trustee of the Trust.

- 7.3 **Minimum and maximum number of Trustees:** The number of Trustees shall be maintained at not less than three, and no more than ten.

- 7.4 **Resignation of Trustee:** A Trustee shall be entitled to resign as a Trustee at any time, by providing, at a meeting of Trustees, at least two weeks written notice to the other remaining Trustees.

## 8. Proceedings of Trustees

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- 8.1 **Meetings:** The Trustees shall hold such meetings as may from time to time be necessary for the transaction of such business as the Trustees may consider desirable at the times and places to be fixed by the Trustees. Special Meetings may be called at any time by any Trustee. 5 working days' notice of Special Meetings shall be given to each Trustee. At all meetings of the Trustees:

- (a) If the total number of Trustees at the time is three, then all of the Trustees personally present shall form a quorum; or
- (b) If the total number of Trustees at the time is more than three, then all of the Trustees less one personally present shall form a quorum.

- 8.2 **Chairperson:** The Trustees shall at their first meeting following the commencement of each Financial Year elect a chairperson who shall hold office until the end of the Financial

Year. In the event of the chairperson not being present at any meeting the members present shall elect a chairperson for such meeting.

- 8.3 **Other Officers:** The Trustees may appoint a secretary and a treasurer or a person to act as secretary or treasurer or such officers as the Trustees may think fit.
- 8.4 **Financial Statements:** The Trust shall cause to be prepared such financial statements and other returns as are from time to time required by the Trust, or by law.
- 8.5 **Accounting for Moneys:** All moneys received by or on behalf of the Trust shall be paid to the credit of the Trust at such bank as the Trustees may determine from time to time.
- 8.6 **Authority to Operate Bank Account:** All cheques or withdrawals or other transactions on the Trust bank account shall be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Trust by no less than two Trustees or in such other manner as the Trustees determine from time to time.
- 8.7 **Voting of Trustees:** At every meeting of Trustees each Trustee present shall have one vote. All decisions or resolutions of the Trustees must be passed by majority vote except where otherwise expressly provided.
- 8.8 **Resolution of Trustees:** A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees.
- 8.9 **Minutes to be Kept:** The Trustees shall cause minutes to be maintained of all proceedings of their meetings. Any such minute if purporting to be signed by the chairperson of the meeting shall be evidence of the particular meeting and proceedings until the contrary is proved. For the avoidance of doubt, electronic signatures shall be acceptable for this purpose. If the Trustees become incorporated as a Board under Part II of the Charitable Trusts Act 1957 the Trustees shall have a common seal kept in the custody of such person as shall be appointed and shall be used only as directed by the Trustees. The seal shall be witnessed by not less than two Trustees.
- 8.10 **Method of Contracting:** Whenever there is more than one Trustee and the Trustees in the exercise of any power, authority or discretion conferred upon them need to make any contract or agreement, it will be sufficient (and regardless of whether the Trustees are incorporated as a board under the Charitable Trusts Act 1957) for that contract or agreement, which if made between private persons would by law be:
- (a) required to be in writing signed by the parties to be charged with it; or
  - (b) valid although made orally and not in writing,
- to be made on behalf of the Trustees by any Trustee who is acting under the express written authority of the Trustees.
- 8.11 **Confidential Information:** The Trustees shall maintain as confidential at all times, and shall not at any time, directly or indirectly:
- (a) Disclose or permit to be disclosed to any person; or



- (b) Use for themselves; or
- (c) Use to the detriment of another party,

any Confidential Information except:

- (i) As required by law.
- (ii) As is already or becomes public knowledge, otherwise than as a result of a breach of this clause.
- (iii) As authorised by resolution of the Trustees.

8.12 Any of the Confidential Information referred to in clause 8.11, if released either in whole or in part, shall be released:

- (a) To the persons, at the times, upon the terms, and in the form determined from time to time by the Trustees in their absolute discretion.
- (b) By the chairperson of the Trust or such other person as the Trustees may authorise for such purpose.

## 9. Trustees' Powers

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9.1 **Powers in Trustee Act 1956:** The Trustees' powers for investing, managing and otherwise dealing with the Trust Fund shall be those contained in the Trustee Act 1956 or any amendment to that Act or statute passed in substitution for that Act.

9.2 **Additional Powers of Trustees:** In addition to the above powers the Trustees shall have and may at their absolute and uncontrolled discretion exercise the following powers, authorities and discretion:

- (a) To accept payments or transfers of additional assets to be added to the Trust Fund and to become subject to all trusts powers and provisions concerning the same.
- (b) To sell all or any part of the Trust Fund subject to such terms and conditions as may be reasonable and appropriate with power to allow the whole or any part of the purchase money to remain outstanding.
- (c) To postpone the sale, calling in and conversion of the Trust Fund or any part of it so long as may be appropriate notwithstanding that it may be of a wasting speculative or reversionary nature.
- (d) To let any real property forming part of the Trust Fund for the time being remaining unsold either from year to year or for any term of years or otherwise at such rent and subject to such covenants and conditions as are reasonable and appropriate including any optional or compulsory rights of purchase. To accept surrenders or leases and tenancies and generally to manage the same.

- (e) To take on lease, or under bailment, any property whatever, from any person either from year to year or for any term of years or otherwise, at whatever rent and subject to whatever terms and conditions they think fit, including at their discretion an optional or compulsory purchasing clause, to surrender such leases tenancies and bailments and generally to deal with leases, tenancies and bailments as they think fit.
- (f) To allow any securities or investments transferred to them or acquired by them to remain in the actual state of investment or at their discretion to realise those securities or investments or any part of them. To invest the proceeds of such realisation, with power and at their discretion to vary or transpose such investments.
- (g) To invest any money in shares, such other investments as may be reasonable whether or not they are authorised by statute for the investment of trust funds and with or without security.
- (h) To purchase or agree to purchase out of the Trust Fund any real or personal property of any kind whatsoever.
- (i) For any purpose deemed by the Trustees to be in the interests of the Trust Fund to borrow or raise funds jointly or in common with others and to execute any document in connection with the borrowing. The lender shall be in no manner concerned to inquire as to the application of such funds or as to the purpose for which such moneys may be borrowed.
- (j) From time to time renew or vary any mortgages, charges, debts or overdrafts payable out of the Trust Fund upon such terms as the Trustees think fit.
- (k) To agree and settle accounts with all persons firms or companies (including any trustee or all the trustees) liable to account to the Trustees and to compromise all questions relating to the Trust Fund (including questions affecting any trustee or all the trustees) and to grant effectual receipts, discharges and releases.
- (l) At any time or times and for any period any Trustee(s) (and if incorporated, the Trust itself) may appoint any other person or any company to act as Attorney for such Trustee or Trustees (or the Trust) in New Zealand or elsewhere for all or any of the purposes of this deed.
- (m) At their uncontrolled discretion instead of acting personally to employ and pay any other person or persons to transact any business or to do any act of whatever nature in relation to the trusts referred to in this document including the receipt and payment of money without being liable for loss incurred. Any Trustee being a solicitor or accountant or other person engaged in any profession or business may be so employed or act and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trust including acts which a Trustee could have done personally.



- (n) To carry on any business venture or undertaking and to delegate the actual management or supervision of it to any manager or other person at such rates of remuneration as are usual for such work.
- 9.3 **Conflict of Interest:** Subject to clauses 9.4 and 9.5, a Trustee is entitled to act under this deed and to exercise all of the powers conferred on him or her even when there exists a Conflict of Interest.
- 9.4 When a Conflict of Interest exists for a Trustee and there is more than one Trustee:
- (a) The Trustee for whom the Conflict of Interest exists must declare the nature of the conflict or potential conflict at a meeting of the Trustees; and
- (b) The Trustee must not take part in any deliberations or proceedings, including voting or other decision-making, relating to the transaction giving rise to the Conflict of Interest; and
- (c) If the Trustee contravenes paragraphs (a) or (b) of this clause, his or her vote or other decision will not be counted, and neither will the Trustee be counted in the quorum present at the meeting.
- 9.5 When there is a Conflict of Interest and there is only one Trustee of the Trust or there is only one Trustee with the power or ability to vote due to clause 9.4, the Trustees may still enter into the transaction causing the Conflict of Interest if they have obtained a written confirmation from an independent, reputable, suitably qualified professional person that the transaction causing the Conflict of Interest is proper and in order for the Trustees to enter into.
- 9.6 **Incorporating as a Board:** The Trustees shall have power to make application to become incorporated under Part II of the Charitable Trusts Act 1957.
- 9.7 **No Power to Benefit Non Charitable Purposes:** Notwithstanding any other provision contained in this deed no provision or power expressed or implied in this deed shall be interpreted varied or exercised to allow:
- (a) Any non charitable purpose to benefit; and
- (b) Any individual to receive private pecuniary profit which would be contrary to the Charitable Purposes of this deed for the purposes of the Income Tax Act 2007 and the Charities Act 2005.

## 10. Trustees Liability and Indemnity

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- 10.1 **No Trustee Liability:** No Trustee or former Trustee shall be liable for any loss suffered by the Trust Fund not attributable to that Trustee's own dishonesty, or to the willful commission or omission by that Trustee of any act known by that Trustee to be a breach of trust. No Trustee shall be bound to take any proceedings against a co-Trustee or former Trustee for any breach or alleged breach of trust committed by a co-Trustee or former Trustee.

10.2 **Indemnity of Trustees:** Each Trustee or former Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any personal liability which that Trustee may incur in any way arising out of or in connection with that Trustee acting or purporting to act as a Trustee of the Trust, provided such liability is not attributable to that Trustee's own dishonesty, or to the willful commission or omission by that Trustee or an act known by that Trustee to be a breach of trust.

**11. Amendment of Deed**

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11.1 **Amendment may not affect Charitable Purposes:** It shall be lawful for the Trustees by unanimous resolution to revoke vary or add to any of the provisions of this deed provided that no addition to or alteration or recession of the Trust shall be approved if it affects the Charitable Purposes, Objects, personal benefit clause (clause 9.7(b)) or the winding up clause (clause 13).

11.2 The provisions and effect of this clause shall not be removed from this deed and shall be included and implied into any document replacing this deed.

**12. Resettlement**

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12.1 Without breaching the rule of perpetuities as it applies to charities, the Trustees have the power to settle or resettle all or any of the capital and/or income of the Trust upon trust for the advancement or benefit of one or more of the Objects.

**13. Winding Up**

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13.1 Upon the winding up of the Trust any residue shall be applied, at the discretion of the Trustees, to a charitable organisation or organisations within New Zealand with similar objects as the Trust provided that such organization satisfies the charitable purpose requirements of the Income Tax Act 2007 and the Charities Act 2005.

**Executed as a deed**

**Signed by Nevil Nivlesh Chand as Settlor**  
in the presence of:

  
\_\_\_\_\_  
Nevil Nivlesh Chand



Witness sign \_\_\_\_\_

Print name **Timothy Stephen Oliver** \_\_\_\_\_  
**Lawyer**

**Kemp & Weir Lawyers** \_\_\_\_\_  
**Auckland**

Occupation \_\_\_\_\_

Address \_\_\_\_\_



Signed by **Nevil Nivlesh Chand** as trustee of **The Evolve Foundation** in the presence of:

Nevil Nivlesh Chand

Witness sign

Print name **Timothy Stephen Oliver**

Occupation **Lawyer  
Kempster Weir Lawyers  
Auckland**

Occupation

Address

Signed by **Bhamita Devi Chand** as trustee of **The Evolve Foundation** in the presence of:

Bhamita Devi Chand

Witness sign

Print name **Timothy Stephen Oliver**

Occupation **Lawyer  
Kempster Weir Lawyers  
Auckland**

Occupation

Address

Signed by **Jennifer Helen Radich** as trustee of **The Evolve Foundation** in the presence of:

Jennifer Helen Radich

Witness sign

Print name **Timothy Stephen Oliver**

Occupation **Lawyer  
Kempster Weir Lawyers  
Auckland**

Occupation

Address