

Constitution / Tūtohunga

1. Name / Te Ingoa

The name of the Trust is **Kōtūi Ako - Virtual Learning Network Aotearoa**, hereafter called **Kōtūi Ako** or **the Trust**.

2. Purpose / Kaupapa

The purpose of Kōtūi Ako is to provide equitable educational opportunities within and across schools and kura for all ākonga/learners through online learning.

In particular the Kōtūi Ako will:

- 2.1 Enable a collaborative community of schools, kura, teachers, students and whānau throughout Aotearoa New Zealand.
- 2.2 Create high quality learning pathways and opportunities to meet the current and future needs of all ākonga learners.
- 2.3 Build teaching and leadership capacity for online learning through the provision of professional growth and mentoring.
- 2.4 Honour Te Tiriti o Waitangi to support the needs of Māori learners and their whanau/hapu/iwi.
- 2.5 Advocate for sustainable online learning in the Aotearoa New Zealand education system.

Kōtūi Ako is committed, in attaining its purposes, to positive relationships that are based on active participation, collaboration and reciprocity.

3. Office / Tari

The office of Kōtūi Ako will be in such a place in New Zealand as Kōtūi Ako may from time to time determine.

4. Membership / Ngā Mema

Membership is open to all New Zealand schools and kura.

- 4.1 Membership conditions will be set by the Governance group each year.
- 4.2 Voting rights at General Meetings are restricted to schools and kura with financial membership as determined by the Governance Group. Each financial member shall be entitled to 1 one vote.
- 4.3 Membership will be terminated when either: a member resigns; or a member is ejected, for example for the non-payment of subscriptions, or for bringing Kōtūi Ako into disrepute. The decision to eject a member is made by the Governance Group.
- 4.4 Termination of membership may be appealed, with the member concerned having an opportunity to put their case on the issue before the Governance Group, or the membership vote at a General Meeting.

5. The Governance Group / Te Poari Whakahaere

- 5.1 The Governance Group will comprise no less than five (5) and no more than nine (9) Trustees in total as follows:
 - 5.1.1 Five (5) Trustees, elected by the Members, with representation from Primary Schools/Kura and Secondary Schools/Kura, with the trusteeship to commence at the conclusion of the Annual Meeting at or before which the election takes place.
 - 5.1.2 At least one (1) Te Ao Māori representative Trustee, elected by the Members with the trusteeship to commence at the conclusion of the Annual Meeting at or before which the election takes place.
 - 5.1.3 One (1) independent Chair appointed for a term of no more than three (3) years following an appointment panel process as set out in [Schedule one](#)
 - 5.1.4 Up to two (2) Trustees co-opted onto the Governance Group for periods of no more than three (3) years each by a resolution of the majority of the elected trustees having regard to the relevant skills, expertise, standing in the community and/or other qualifications that are held by the Governance Group and the additional skills, expertise or standing that the appointed trustee has that will enhance or add value to Kōtui Ako and its ability to pursue its purposes.
- 5.2 Governance Group Elections will be held at, or prior to, the Annual General Meeting of Kōtui Ako, in the year elections are scheduled to be held.
 - 5.2.1 Governance Group elections will take place every 3rd and 4th year as detailed in [Schedule Two](#)
 - 5.2.2 The Governance Group shall appoint some disinterested person to be a Returning Officer for the elections. The Returning Officer shall be entrusted with the whole conduct of the election.
 - 5.2.3 The electors are the financial members entitled to vote.
- 5.3 In order to establish a rotation practice for trustee elections, which will provide for continuity of knowledge and business, at the first election of trustees under this constitution:
 - 5.3.1 three (3) elected Trustees will be elected for a term of three (3) years ending at the Annual Meeting of Kōtui Ako in the third year after appointment; and
 - 5.3.2 three (3) elected Trustees will be elected for a period of four (4) years ending at the Annual Meeting of Kōtui Ako in the fourth year after appointment.
- 5.4 After the first elections, all elected Trustee positions will be for a period of no more than three (3) years ending at the Annual Meeting of Kōtui Ako in the third year after appointment unless an adjustment to the terms is needed to reinstate the rotation practice if it becomes disrupted over time.
- 5.5 The process for all elections under clause 5.5 will be determined by the Governance Group and notified to members, including the process for calling for nominations from persons interested in vacant positions, and setting any nomination criteria having regard to the representative nature of the roles and also the skill sets required of trustees in order to add value to Kōtui Ako and further its purposes.
- 5.6 Any trustee must resign at the end of their term (but can then offer themselves for re-election or appointment and a further term of up to three (3) years as Governance Group member).
- 5.7 A person will immediately cease to be a Governance Group member when she or he resigns in writing, dies, is declared bankrupt or is found to be a mentally disordered person within the

meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment, or is removed under clause 4.3 or 7.2.

- 5.8 The Governance Group will have the power to fill any casual vacancy that arises in the Governance Group or to appoint any additional Governance Group members subject to clause 5.1.4.
- 5.9 In the event of a vacancy in the independent Chairperson role, the Governance Group may choose one of the Trustees to be an interim Chairperson until such time as a replacement Independent Chairperson is appointed.
- 5.10 The Governance Group may continue to act notwithstanding any vacancy, but if their number is reduced below minimum number of Governance Group members as stated in this Constitution, the continuing Governance Group members may act for the purpose of increasing the number of Governance Group members to that minimum but for no other purpose.
- 5.11 The Governance Group may, by a motion decided by a two-thirds (2/3rd) majority of votes, terminate a person's position as a Governance Group member, if it believes that such action is in the best interests of Kōtui Ako.
- 5.12 The name of the Governance Group will be the 'Kōtui Ako Governance Group'.

6. Meetings / Ngā Hui Whānui

- 6.1 The Annual Meeting shall be held in person or by any other means of communication as decided on by the Governance Group no later than 5 months after the end of the financial year at a venue decided by the Governance Group.
- 6.2 The Annual Meeting shall include: a) the Chair's report ; b) Annual Operational Report; c) Consideration of the Annual Accounts (*Financial Report*); d) Election of Trustees; e) General Business.
- 6.3 A Special General Meeting shall be called on receipt of a requisition signed by the Governance Group on its own motion, or a written requisition signed by not fewer than five (5) financial members, setting out the purpose of such meeting.
- 6.4 Special Business which may be considered at either the Annual Meeting or a Special General Meeting shall include:
 - 6.4.1 the alteration or suspension of any part of this constitution;
 - 6.4.2 the addition of a new rule;
 - 6.4.3 the removal of any Governance office holder or member;
 - 6.4.4 the expression of no confidence in the Governance Group or any office holder;
 - 6.4.5 the moving, without notice of motion, on matters of extreme urgency, provided this shall not include the alteration or annulment of any part of this constitution.
- 6.5 Written notice of all General Meetings shall be advised to all members at least six (6) weeks before the date of the meeting and shall specify the date, time and place of the meeting. Full details of the business to be transacted shall be forwarded to all members at least fourteen (14) days before the date of the Meeting.
- 6.6 The quorum at any General Meeting shall be a representation of 25% of the Membership.

- 6.7 All ordinary business of any General Meeting shall be decided by a bare majority of those present and eligible to vote, and shall be by voices or a show of hands unless any member calls for a ballot. Issues shall be decided on a majority of votes, with the Chair having a casting vote.
- 6.8 All financial members shall have the right to speak and vote at General Meetings.
- 6.9 The Governance Group shall have the right to conduct a postal or electronic vote on matters of importance and where it is impracticable to convene a General Meeting

7. Meetings of the Governance Group / Ngā hui o te Poari Whakahaere

The procedure for Governance Group meetings will be as follows:

- 7.1 A quorum will be at least half of its members.
- 7.2 If a Governance Group member, including an office-bearer, does not attend three (3) consecutive meetings of the Governance Group without leave of absence that member may, at the discretion and on decision of the Governance Group, be removed as a Governance Group Member, and/or from any office of the Governance Group which she or he holds.
- 7.3 All ordinary business of Governance Group meeting 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 by show of hands, with the Chair having a casting vote.
- 7.4 In the absence of the Chairperson, the Governance Group will elect a person to chair the meeting from among the Governance Group members present.
- 7.5 The Governance Group will meet at least four (4) times every year. Meetings are defined to include teleconference meetings and meetings conducted in an electronic form. Participation by such means shall constitute presence in person at such a meeting. The Secretary will ensure that all members of the Governance Group are notified of the meeting, either verbally or in writing.
- 7.6 The Secretary will ensure that accurate minutes are maintained which are available to any member of Kōtui Ako and which, for each meeting of the Governance Group, records
 - 7.6.1 the names of those present;
 - 7.6.2 all decisions made by the Governance Group;
 - 7.6.3 and any other matters discussed at the meeting.

8. Powers / Ngā Mana Whakahaere

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

- 8.1 to use the funds of Kōtui Ako as the Governance Group thinks necessary or expedient in payment of the costs and expenses of Kōtui Ako, 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 Governance Group thinks necessary or expedient in order to attain the purpose of Kōtui Ako 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 open and operate such bank account or accounts in such bank or banks as the Governance Group shall by resolution determine in the name of Kōtui Ako;
- 8.4 to invest surplus funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Governance Group thinks fit;
- 8.5 to borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Governance Group thinks fit;
- 8.6 to give guarantees of any debts or obligations of any person or entity where such debt or obligation is consistent with or for similar purposes as those in this Constitution, and to give security to any bank or creditor for the purposes of such guarantees;
- 8.7 to do all things as may from time to time be necessary or desirable to enable the Governance Group to give effect to and attain the charitable purposes of the Kōtui Ako;
- 8.8 to negotiate and enter into all such agreements, arrangements and contracts as may be necessary to create, administer and monitor and extend Kōtui Ako activities and funds. 8.9 to adopt such means of publicising the objectives and activities of Kōtui Ako as may seem expedient.

9. Income, benefit or advantage to be applied for charitable purposes / Ko ngā rawa hei whai hua mō te kaupapa

- 9.1 Any income, benefit or advantage will be applied to the charitable purposes of Kōtui Ako.
- 9.2 The assets of Kōtui Ako are the initial amounts contributed by the signatories of this Constitution. All property held and accrued by Kōtui Ako will be listed on an Assets Register maintained by the Governance Group.
- 9.3 No Governance Group member or member of Kōtui Ako or any person directly associated with a Governance Group member shall participate in or materially influence any decision made by the Governance Group, in respect of any payment to or on behalf of that Governance Group member 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).
- 9.4 Governance Group members are required to disclose any pecuniary interest, or dealings with any third party which may be pertinent in discussion and decisions made by the Kōtui Ako Governance Group.
- 9.5 The provision and effect of this clause shall not be removed from this Constitution and shall be implied into any document replacing this Constitution.

10. Power to delegate / Te tuku mana ki te whakahaere

- 10.1 The Governance Group may from time to time appoint any committee and may delegate any

of its powers and duties to any such committee, 'working group' or to any person. The committee, 'working group' or person may without confirmation by the Governance Group exercise or perform the delegated powers or duties in the same way and with the same effect as the Governance Group could itself have done.

- 10.2 Any committee, 'working group' or person to whom the Governance Group has delegated powers or duties will be bound by the terms of Kōtui Ako and any terms or conditions of the delegation set by the Governance Group .
- 10.3 The Governance Group 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 Governance Group.
- 10.4 It will not be necessary for any person who is appointed to be a member of any such committee or 'working group', or to whom such delegation is made, to be a Governance Group member.

11. Financial arrangements / Ngā tikanga putea

- 11.1 The financial year of Kōtui Ako will be from 1 January to 31 December.
- 11.2 At the first meeting of the Governance Group in each financial year, the Governance Group will decide by resolution the following:
 - 11.2.1 how money will be received by Kōtui Ako;
 - 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 payment transactions and the names of account signatories; and
 - 11.2.5 the policy concerning the investment of money by Kōtui Ako, including what type of investment will be permitted.
- 11.3 The Governance Group may arrange for the accounts of Kōtui Ako for that financial year to be audited by an accountant appointed for that purpose.
- 11.4 The previous year's Financial Statement is presented at the Annual General Meeting of Kōtui Ako.

12. Alteration of this Constitution / Te whakarerekētanga o tēnei tūtohunga

- 12.1 No alteration of this Constitution shall be made except at a General Meeting. Any alteration shall require the assent of two thirds of the voting strength of the meeting.
- 12.2 Remits concerning changes to the Constitution must reach the Governance Group at least four (4) weeks before the Annual General Meeting and be forwarded to members at least two (2) weeks before the Annual General Meeting.
- 12.3 In accordance with the Charities Act any changes to the Constitution will need to be approved by the Charities Commissioner before taking effect.

13. Mediation and arbitration / Te whakatau raruraru

- 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. Trustee liability / Ngā kawenga kaitiakitanga

It is declared that:

14.1 The Governance Group 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 Kōtui Ako money or security is properly deposited or has come;

14.3 No Governance Group member shall be liable personally for the maintenance, repair, or insurance of any charges on such property;

14.4 No Governance Group member here of 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. 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 Governance Group member shall be bound to take any proceedings against a co-Governance Group member for any breach or alleged breach of Trust committed by that co-Governance Group member.
- 14.6 Notwithstanding the procedure or otherwise of retaining assets in the Kōtui Ako - Virtual Learning Network Aotearoa Trust Fund no Governance Group member shall be liable for any loss suffered by the Trust Fund by reason of the Governance Group member retaining any asset forming part of the Trust Fund.
- 14.7 The Governance Group shall from time to time and at all times be indemnified by and out of Kōtui Ako 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. Disposition of surplus assets / Te tuku rawa

On the winding up of Kōtui Ako, or on its dissolution by the Registrar, all surplus assets, after the payment of costs, debts and liabilities will be given to other educational or charitable organisation/s within New Zealand as the Governance Group will decide. If Kōtui Ako 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.

16. Matters Not Stated / Ngā kaupapa kaore e korerohia

- 16.1 If any matter is not provided for in these rules, the Governance Group shall have the Power to deal with it.
- 16.2 The Governance Group shall have the sole authority to interpret these rules. The Decision of the Governance Group on any question or interpretation or on any matter affecting the Trust not provided for in these rules, shall be final and binding on all members.

Schedule 1 – Appointment process for independent chairperson

Appointment process for independent chairperson

- 1.1 The Governance Group will seek nominations for the independent Chairperson role from financial members and from the members of the Governance Group. The Governance Group may also, at its discretion advertise for the role.
- 1.2 Following the date for closure of nominations, the Governance Group will convene an appointment panel to shortlist and interview candidates for appointment.
- 1.3 The appointment panel will be convened and operate pursuant to the then current Governance Group policy applying to the appointment and operation of the Appointment Panel, but in the absence of any such policy will consist of between three (3) and (5) persons who will include up to two (2) Trustees, up to two (2) member representatives and may include an independent person appointed by the Governance Group who may have Human Resource advisory experience or some other expertise or experience relevant to the appointment process, with the process of the panel to be determined by the Governance Group.
- 1.4 The Appointment Panel will make a recommendation for the successful appointees to the Governance Group who will resolve to make the appointment to take effect from the conclusion of the following Annual Meeting or such other date as is determined by the Governance Group.

Schedule 2 - Governance Group elections

Governance Group Rotations											
	May	May	May	May	May	May	May	May	May	May	
	Year 1 2023 - 24	Year 2 2024-25	Year 3 2025-26	Year 4 2026-27	Year 5 2027-28	Year 6 2028-29	Year 7 2029-30	Year 8 2030 -31	Year 9 2031-32	Year 9 2032-33	
Chair	Chair A	Chair A	Chair A	Chair A	Chair B	Chair B	Chair B	Chair C	Chair C	Chair C	4 yr cycle (then 3)
GG 1	Elected A	Elected A	Elected A	*Elected B	Elected B	Elected B	*Elected C	Elected C	Elected C	*Elected D	3 yr cycle
GG 2	Elected A	Elected A	Elected A	*Elected B	Elected B	Elected B	*Elected C	Elected C	Elected C	*Elected D	3 yr cycle
GG 3	Elected A	Elected A	Elected A	*Elected B	Elected B	Elected B	*Elected C	Elected C	Elected C	*Elected D	3 yr cycle
GG 4	Elected A	Elected A	Elected A	Elected A	*Elected B	Elected B	Elected B	*Elected C	Elected C	Elected C	4 yr cycle
GG 5	Elected A	Elected A	Elected A	Elected A	*Elected B	Elected B	Elected B	*Elected C	Elected C	Elected C	4 yr cycle
GG 6	Elected A	Elected A	Elected A	Elected A	*Elected B	Elected B	Elected B	*Elected C	Elected C	Elected C	4 yr cycle
GG 7	Co-opted A	Co-opted A	Co-opted A	Co-opted B	Co-opted B	Co-opted B	Co-opted C	Co-opted C	Co-opted C	Co-opted D	3 yr cycle
GG 8	Co-opted A	Co-opted A	Co-opted A	Co-opted B	Co-opted B	Co-opted B	Co-opted C	Co-opted C	Co-opted C	Co-opted D	3 yr cycle
				*Election held for GG 1, 2, 3	*Election held for GG 4, 5, 6		*Election held for GG 1, 2, 3	*Election held for GG 4, 5, 6		*Election held for GG 1, 2, 3	*Election held for GG 4, 5, 6