

Trust Deed

Establishing the

NGĀTI RUAPANI MAI WAIKAREMOANA
NEGOTIATING GROUP

[A]
as Settlor

and

[A] and
[B] and

as Trustees

Dated

2016

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This Deed is made on

2016

between (1) [A], ####, of #### ("the Settlor")

and (2) [A], ####, of ####, [B], ####, of #### and ##### ("the Trustees").

Recitals

- A. The Trust shall solemnly facilitate a Ngāti Ruapani mai Waikaremoana settlement outcome that heals our whanau; raises the prestige of our Waikaremoana marae; excites our rangatahi; and brings the return of influence over our taonga back to Waikaremoana.
- B. The Trust must bring about enduring development for Waikaremoana whanau that is both emotional and physical and that reinforces the values, behaviours and disciplines that will be necessary to meet the coming future.
- C. The Settlor has transferred an amount of Ten Dollars (\$10.00) to the Trustees, and intends to transfer Property to the Trustees to be held by them jointly upon the trusts and with the duties, powers and discretions set out in this Deed.
- D. The Trust is intended to represent Ngāti Ruapani mai Waikaremoana members until the establishment of a Post-Settlement Governance Entity.

It is agreed

1. Interpretation

1.1 Definitions

In this Deed (including its schedules):

Advisory Trustee means a person appointed as an advisory trustee under Clause 13.1;

Charity means any trust or entity that has purposes in New Zealand that are wholly charitable;

Custodian Trustee means a person appointed as a custodian trustee under Clause 13.2;

Financial Year means the period ending on 31 March or such other balance date as may be determined by the Trustees;

Ngāti Ruapani mai Waikaremoana means whanau members who descend from the tipuna Hinekura, or Pukehore and or Tuwai and who affiliate to one or all of the marae being Te Kuha Tarewa, Te Putere and or Te Waimako.

Nominee means a person appointed as a nominee under Clause 13.2;

Property means all real and personal property (including choses in action, rights, interests and money);

Trust Fund means all Property that is from time to time held by the Trustees on the trusts of this Deed.

1.2 General references

In this Deed, a reference to:

- (a) One gender includes each other gender;
- (b) The singular includes the plural and vice versa;
- (c) Parties is a reference to the parties to this Deed and includes those parties' successors, permitted assignees and permitted transferees;
- (d) Persons includes a reference to human beings, companies, corporations, firms, partnerships, joint ventures, associations, organisations, estates, trusts, states or agencies of state, government departments and local and municipal authorities, in each case irrespective of whether having a separate legal personality;
- (e) Clauses, schedules and recitals is a reference to the clauses, schedules and recitals of this Deed, except that references to the clauses of a schedule are references to the clauses of that schedule;
- (f) An agreement includes the agreement as modified, supplemented, novated or substituted from time to time;
- (g) Legislation includes amendments to and re-enactments of that legislation.

2. Direction and acknowledgment of trust

- 2.1 The Settlor directs the Trustees to hold, and the Trustees acknowledge that the Trustees will hold, the Trust Fund upon the trusts and with powers set out in this Deed.

3. Objects of Trust

- 3.1 The Settlor declares that the Trust is a charitable trust for purposes within New Zealand being the advancement of Ngāti Ruapani mai Waikaremoana by way of the advancement of education, relief of poverty and such other charitable purposes as the Trustees shall from time to time determine ("the Objects") and the Settlor directs that the Trust Fund must be applied and used exclusively by the Trustees for the Objects as the Trustees from time to time decide upon in their absolute discretion, provided that any private benefit conferred to any person (other than a Charity) is incidental to these overriding objects.

4. Name of Trust

- 4.1 The Trust is to be known as the Ngāti Ruapani mai Waikaremoana Negotiating Group Trust but the Trustees may amend or change the name by deed.
- 4.2 The Trustees may apply for the Trust to be incorporated under the Charitable Trusts Act 1957.

5. Application of income

- 5.1 The Trustees may at any time, after payment of or provision for all costs, charges and expenses of the Trustees in relation to the establishment, management and administration of the Trust, pay or apply all or any of the income of the Trust to promote or advance such of the Objects as the Trustees determine, including any Object that relates to a Designated Trust Fund.

6. Application of capital

- 6.1 The Trustees may at any time pay or apply all or any of the capital of the Trust to promote or advance such of the Objects as the Trustees determine, including any Object that relates to a Designated Trust Fund.

7. Receipt of charitable recipient

- 7.1 The receipt of the secretary treasurer or other officer of any Charity to which all of any of the Trust Fund is paid or applied will constitute a sufficient discharge to the Trustees for the payment or application.

8. Donations

- 8.1 The Trustees may accept any Property that is donated to the Trust.
- 8.2 The Trustees must not accept any Property subject to any condition that is inconsistent with the achievement of the Objects of the Trust.
- 8.3 The Trustees may refuse to accept any Property which is subject to reservations, trusts, liabilities or obligations that the Trustees believe to be impractical or too onerous.
- 8.4 If Property is accepted by the Trustees subject to reservations, trusts, liabilities or obligations ("Donated Property Restrictions"), the Trustees must hold the Property (and any proceeds of disposition of it) as part of the Trust Fund and subject to the Donated Property Restrictions and must pay or apply (to the extent of the Trust Fund) such amounts as are required by the Donated Property Restrictions.

9. Resettlement

- 9.1 The Trustees have power in their discretion to settle or resettlement any or all of the Trust Fund upon trust for the advancement or benefit of one or more of the Objects as the Trustees decide, but the settlement or resettlement must not breach the rule against perpetuities as it applies to charities.

10. Trustees

- 10.1 There shall be a minimum of three Trustees and a maximum of eight Trustees.
- 10.2 A person is eligible to be a Trustee if the person is not disqualified by section 16 of the Charities Act 2005.
- 10.3 The power of appointment of new trustees of the Trust is vested in the Trustees. Every appointment of a new trustee of the Trust under this Clause 10.3 must be made in writing.
- 10.4 A person shall cease to be a Trustee if the Trustee:
- (a) Resigns or retires by giving written notice to the other Trustees;
 - (b) Dies;
 - (c) Ceases to be eligible to be a Trustee under Clause 10.2;

- (d) Refuses to act in his or her capacity as a Trustee.
- 10.5 Upon a person commencing or ceasing to be a Trustee, the Trustees shall record that fact in the minute book of the Trust.
- 10.6 Meetings of the Trustees shall be governed by the rules contained in Schedule 2.
- 10.7 Every decision of the Trustees in relation to the Trust and the Trust Fund may be decided by majority vote

11. Trustees' powers and decisions

- 11.1 The Trustees have all the powers of a natural person and all other powers that the law permits trustees to have.
- 11.2 Without limiting any of the powers of the Trustees, the Trustees have the powers set out in Schedule 1 and may in their discretion exercise any one or more of those powers in pursuit of the general administration of the Trust
- 11.3 The Trustees may invest all or any of the Trust Fund in any Property that is permitted by the laws of New Zealand for the investment of the funds of trusts or as otherwise permitted by this Deed, including power to buy or acquire any Property and power to sell or dispose of any Property.
- 11.4 The Trustees in their absolute and uncontrolled discretion may exercise all powers and discretions of the Trustees at any time, on such terms and conditions and in such manner as the Trustees think fit.

12. Accounts

- 12.1 The Trustees must ensure that financial records are kept.
- 12.2 The financial records must present the Trust's receipts, credits, payments, assets, liabilities and all other matters necessary or appropriate in a way that shows the true state and condition of the financial affairs of the Trust.
- 12.3 The financial records and annual accounts will be kept at the Trustees' office or at such other place, as the Trustees think fit.
- 12.4 The financial records and annual accounts must always be available to be inspected by the Trustees.
- 12.5 The Trustees shall prepare, or cause to be prepared, financial statements for each Financial Year and shall procure the review of the financial statements by an independent reviewer.
- 12.6 At least once in every calendar year, the Trustees shall present an annual report, including the financial statements for the most recent Financial Year, to a public meeting that shall be advertised by notice on the website of the Trust.

13. Advisory Trustee, Custodian Trustee and Nominee

- 13.1 The Trustees may, by resolution in writing, appoint any person as an advisory trustee of the Trust. The Advisory Trustee shall have the status and powers conferred on advisory trustees by the Trustee Act 1956.

13.2 The Trustees may, by resolution in writing, appoint any person as a custodian trustee or nominee of the Trust Fund. The provisions of the Trustee Act 1956 shall apply as if references in it to a custodian trustee were references to Custodian Trustee or Nominee, except as modified or extended as follows:

- (a) All or any of the Trust Fund may be vested in the Custodian Trustee or Nominee as if the Custodian Trustee or Nominee were sole trustee;
- (b) The portion of the Trust Fund that is from time to time vested in the Custodian Trustee or Nominee is the Custodial Trust Fund, and the provisions of section 50 of the Trustee Act 1956 shall apply as if references in it to the trust property were references to the Custodial Trust Fund;
- (c) The Custodian Trustee or Nominee must:
 - (i) Get in and hold the Custodial Trust Fund;
 - (ii) Invest it and dispose of it in accordance with any direction in writing by the Trustees
 - (iii) Execute all documents and perform all acts that the Trustees in writing direct.

13.3 The Trustees may, without needing to give any reason, remove any Advisory Trustee or Custodian Trustee or Nominee by resolution in writing.

13.4 The Trustees may pay a fee to the Advisory Trustee, Custodian Trustee or Nominee.

14. Pecuniary profit and benefits and advantages

14.1 No payments shall be made to any Trustee from the Trust without a resolution in writing by the Trustees and compliance with Clauses 14.2 to 14.6.

14.2 No private pecuniary profit shall be made by any person from the Trust, except that (but subject to Clause 14.4):

- (a) Each Trustee may receive full reimbursement for all costs, charges and expenses properly incurred by the Trustee in connection with the affairs of the Trust;
- (b) The Trustees may pay reasonable and proper remuneration to any person or firm or company (other than a Trustee) in return for services actually rendered to the Trust;
- (c) Each Trustee may be paid all usual professional, business or trade charges for services rendered, time spent and acts done by the Trustee or by any firm or entity of which the Trustee is a member, employee or associate in connection with the affairs of the Trust;

14.3 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this Deed, must ensure that the restrictions imposed by Clause 14.4 are strictly observed.

14.4 Notwithstanding anything to the contrary in this Deed, no remuneration or benefit or advantage (regardless of whether it is convertible into money) or income of any of the kinds referred to in section CW 35(1)(b) and (5) to (8) of the Income Tax Act 2004 shall be paid or afforded to or received or gained or achieved or derived by any person ("the Determining Person") if section CW 35(1) of the Income Tax Act 2004 denies the Trustees an exemption from tax on income derived by the Trustees from the carrying on of any business by or on behalf of or for the benefit of the Trustees in the circumstances set out in Clause 14.5.

14.5 The circumstances referred to in Clause 14.4 are those in which the Determining Person is:

- (a) a Settlor or a trustee of the Trust; or
- (b) a shareholder or director of any company carrying on any business of or for the Trust; or
- (c) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of or for the Trust; or
- (d) an associated person (as defined by the Income Tax Act 2004) of any Trustee or any such settlor, shareholder, director or trustee -

and the Determining Person can, by virtue of being a Settlor, a Trustee or such shareholder, director, trustee or associated person, in any way (whether directly or indirectly) determine, or materially influence in any way the determination of, the nature or the amount of the remuneration or benefit or advantage or income referred to in Clause 14.4 or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by the Determining Person.

- 14.6 A person who, in the course of and as part of the carrying on of his or her business of a professional public practice, renders professional services to the Trust, shall not, by reason only of his or her rendering professional services to the Trust, be in breach of Clause 14.4.

15. **Limitation of liability and indemnity**

- 15.1 No Trustee is liable for the consequence of any act or omission or for any loss unless the consequence or loss is attributable to his or her dishonesty or to the wilful commission by him or her of a breach of trust.
- 15.2 No Trustee is bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust by the co-Trustee.
- 15.3 The Trustees are not liable for any loss or cost to the Trust by any breaches of trust or defaults of any attorney, delegate, manager, agent, secretary, employee or any other person (including, without limitation, any expert or professional person) appointed or engaged or employed by them, despite any rule of law to the contrary.
- 15.4 No Trustee is liable for any breach of trust or for any loss in relation to the Trustee's duties of investment merely because the investments of the Trust Fund are not diversified.
- 15.5 Each Trustee is fully indemnified by and out of the Trust Fund (whether from capital or income) for any loss or liability that he or she incurs in the carrying out or omission of any function, duty, power or discretion of the Trustees under this Deed and in respect of any outlay or expenses incurred by him or her in the management and administration of the Trust unless the loss or liability is attributable to his or her dishonesty or to the wilful commission by him or her of a breach of trust.
- 15.6 The indemnity given by Clause 15.5 extends to any loss or liability which a person incurs, after ceasing to be a Trustee, through the carrying out of any function, duty, power or discretion of the Trustees, whether the carrying out took place before, during or after the period in which the person was a Trustee.

16. **Governing law**

- 16.1 This Deed and the Trust are governed by and construed in accordance with the laws of New Zealand, but the Trustees have power at any time by deed to change the governing law.

16.2 The courts of New Zealand have exclusive jurisdiction to decide all claims, actions or other proceedings in connection with the Trust or this Deed.

17. Power of amendment

17.1 Subject to any relevant legislation for the time being in force relating to charitable trusts, the Trustees have power by deed:

- (a) to amend, revoke or add to any of the provisions of this Deed unless to do so would amend, revoke or add to the Objects or would enable a payment or application of any part of the Trust Fund in a manner that is inconsistent with the Objects; and
- (b) notwithstanding paragraph (a) of this Clause, to amend, revoke or add to the Trust Deed including the Objects if and to the extent that it is necessary to do so for the Trust to qualify as a charitable trust under the Income Tax Act 2007 or the Charities Act 2005.

Execution

Executed as a deed

SIGNED by [A]
as a Settlor and a Trustee
in the presence of :

)
)
)

[A]

Witness Signature

Witness Name

Occupation

Address

SIGNED by [B]
as a Trustee
in the presence of :

)
)
)

[B]

Witness Signature

Witness Name

Occupation

Address

SIGNED by #####
as a Trustee
in the presence of :

)
)
)

#####

Witness Signature

Witness Name

Occupation

Address

Schedule 1: Powers of Trustees

1. The Trustees shall have power in accordance with Clause 11.2 of this Deed:
- (a) To carry on or form any business, whether or not in partnership or joint venture, to achieve the Objects of the Trust;
 - (b) To form or acquire any company to achieve the Objects of the Trust;
 - (c) To enter into contracts for the provision of services to achieve the Objects of the Trust and to enter into joint ventures with other charitable entities in order to achieve the Objects of the Trust;
 - (d) To open and maintain a bank account and to decide who will be the signatories to that account;
 - (e) To acquire, hold and dispose of Property;
 - (f) To lease Property;
 - (g) To grant leases of Property;
 - (h) To borrow or obtain credit;
 - (i) To guarantee or act as a surety;
 - (j) To enter into transactions denominated in a foreign currency and to make or receive payments in a foreign currency;
 - (k) To give security in respect of any obligation of the Trustees;
 - (l) To accumulate the income of the Trust Fund;
 - (m) To apply or set aside any part of the Trust Fund towards the payment of any liabilities or obligations incurred or suffered by the Trustees or falling due in future;
 - (n) In relation to any share or other security that is part of the Trust Fund:
 - (i) to exercise any voting or controlling or decision-making rights or powers attaching to it; and
 - (ii) to concur in any reconstruction or amalgamation of it or in any modification of the rights of the holders of it or of others interested in it and generally to act in respect of it;
 - (o) To advertise the Trust and the Objects;
 - (p) To obtain incorporation or registration of the Trust in accordance with any law from time to time in force relating to charitable trusts;
 - (q) To appoint or engage or employ any person or company (including any of the Trustees) for any period:
 - (i) as an expert or professional person or entity to advise on or carry out any of the trusts and powers authorised by this Deed; or

- (ii) as an attorney or delegate for the Trustees in New Zealand or elsewhere for all or any of the purposes of the Trust; or
- (iii) as a manager or agent for or on behalf of the Trustees in all or any matters relating to the management and the control of the Trust, and any business owned by the Trustees or in which they are concerned; or
- (iv) as Secretary; or
- (v) as an employee of the Trustees in all or any matters relating to the Trust;
- (r) To act upon any opinion or advice or information obtained from a person or entity referred to in paragraph (q)(i) of this Schedule;
- (s) To determine all questions and matters of doubt which may arise in the course of the management, administration, investment, realisation, distribution, liquidation, partition, resettlement or winding up of the Trust Fund or the Trust, or to apply for directions under section 66 of the Trustee Act 1956;
- (t) Generally to do all such other lawful acts and things that are incidental or conducive to the attainment of the Objects; and
- (u) Subject to Clauses 14.1 to 14.4 of the Trust Deed, to pay any costs or expenses incurred in the course of the Trustees discharging, carrying out or exercising any of their duties and powers.

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Schedule 2: Meetings of Trustees

1. A quorum of trustees shall be a simple majority of the Trustees.
2. Subject to these rules and to this Trust Deed, the Trustees shall meet and regulate their meetings as they think fit.
3. The Trustees may from time to time appoint one of their number as Chair of the Trustees and decide on the period for which the Chair will hold office. The Trustees may from time to time remove the Chair.
4. The Chair (or in the absence of the Chair, another Trustee elected by the meeting) shall take the chair at all meetings of the Trustees, but shall not have a casting vote.
5. The Chair or any two Trustees may at any time summon a meeting. Seven days notice of any meeting (stating the place, day and time of the meeting) shall be communicated to each of the other Trustees unless all of the Trustees agree to shorten or waive the period of notice.
6. All questions and matters arising at meetings of Trustees shall be decided by majority resolution of the Trustees present at the meeting.
7. A resolution in writing signed by all of the Trustees shall be as effective as if it had been passed at a meeting. Such a resolution may consist of several like documents each signed by one or more of the Trustees and may be sent by facsimile or other electronic transmission.
8. Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees.
9. The contemporaneous linking together by telephone or any other means of audible communication of enough of the Trustees to constitute a quorum shall be deemed to constitute a meeting of the Trustees so long as the following conditions are met:
 - (a) Each of the Trustees must have received notice of the meeting (or have waived notice) under Clause 5;
 - (b) Each of the Trustees taking part in the meeting must be able to hear each of the other Trustees taking part at the commencement of the meeting and throughout the meeting; and
 - (c) At the commencement of the meeting each of the Trustees must acknowledge his or her presence to all the other Trustees taking part in the meeting.
10. A Trustee must not leave a meeting (whether by departing or by disconnecting his or her telephone or other means of communication) unless he or she has previously obtained the express consent of the Chair of the meeting. A Trustee shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the Chair to leave the meeting.
11. The Trustees are to keep minutes of their meetings and of all their decisions. The minutes shall be kept in a minute book maintained by a person appointed by the Trustees.
12. Any minute of a meeting of the Trustees (including their decisions) purporting to be signed by the Chair of the meeting or of the next meeting shall be prima facie evidence of the matters referred to in such minute having been authorised done or passed by the Trustees. The decisions

recorded in the minutes will be read in conjunction with the Trust Deed and will be binding on all persons interested in the Trust.

13. If a quorum is not present within twenty minutes after the time appointed for any meeting, the Chair of the meeting may adjourn the meeting to another time.
14. Any meeting may be adjourned if the Trustees present so resolve. No notice will be necessary for the resumption of adjourned meetings except to Trustees not present at the meeting adjourned.

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