

Muriwhenua Tika Charitable Trust

Dated: 16 May 2023

KRH-445984-16-51-V1

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Muriwhenua Tika Charitable Trust

Date:

This Trust Deed is made on

2023

BETWEEN Kimiora Jacqueline Brown, Renata Kahuroa, Marama Hine Pohatu, Nassah Rolleston-Steed and Margaret Merimeri Taurere (“**Initial Trustees**”)

BACKGROUND

- A. The Initial Trustees have determined to establish the Muriwhenua Tika Charitable Trust (the “**Trust**”) to assist with the advancement, independence and security of the all those who whakapapa to or live in the rohe of Muriwhenua through a range of charitable initiatives and activities.
- B. In order to establish the Trust, the Initial Trustees have received the sum of ten dollars (\$10.00), which the Initial Trustees agree to hold upon the trusts evidenced by this Deed.

THIS DEED RECORDS

1.0 DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Deed unless the context otherwise requires:

- (a) “**Administration Officer**” means an Administration Officer appointed by the Trustees in accordance with clause 12.0;
- (b) “**Annual General Meeting**” means the annual general meeting of the Trust required to be held pursuant to clause 8.1 of this Deed;
- (c) “**Board**” means the board of Trustees of the Trust constituted in accordance with this Deed;
- (d) “**Chairperson**” means the chairperson of the Trustees elected in accordance with clause 11.0;
- (e) “**Charitable Purposes**” means every purpose within New Zealand that is in accordance with the laws of New Zealand for the time being that benefits all those who whakapapa to or live in the Rohe and is charitable (including the meaning of charitable purposes as defined in section YA1 of the Income Tax Act 2007), whether it relates to:
 - (i) the relief of poverty; or
 - (ii) the advancement of education or religion; or
 - (iii) any other matter that is beneficial to the community,and which is beneficial all those who whakapapa to or live in the Rohe;
- (f) “**Financial Year**” means the 12 month period ending on 31 March in each year, or such other date adopted by the Trustees as the date up to which financial statements are to be prepared for the Trust in each year;
- (g) “**General Meeting**” means an Annual General Meeting or a Special General Meeting;

- (h) **“Incorporation”** means the Muriwhenua Incorporation, a Maori land incorporation established pursuant to an order of the Maori Land Court under section 247 of the Te Ture Whenua Maori Land Act 1993;
- (i) **“Management Committee”** means the committee of the Incorporation as the term is defined in the Māori Incorporations Constitution Regulations 1994;
- (j) **“Member”** means all those who whakapapa to Muriwhenua, or live in the Rohe. The following persons may be Members:
 - (i) Any person who may whakapapa to an iwi comprising Muriwhenua;
 - (ii) Any shareholder of the Incorporation;
 - (iii) Any other person resident within the Rohe; and
 - (iv) Any other person who, because of marriage or other reasons, is determined by the Trustees (in their sole discretion) to deserve the status of a Member;
- (k) **“Muriwhenua”** means the iwi group comprising Ngāti Kurī, Ngāi Takoto, Te Pātū, Ngāti Kahu, Te Aupōuri and Te Rarawa.
- (l) **“Rohe”** means the area traditionally occupied by the Muriwhenua iwi, being the area between the Maungataniwha Range in the south and Cape Rēinga in the north;
- (m) **“Property”** means all property (whether real or personal) and includes choses in action, rights, interests and money;
- (n) **“Special General Meeting”** means a meeting held pursuant to clause 8.3;
- (o) **“Trust”** means the Muriwhenua Tika Charitable Trust established by this Deed;
- (p) **“Trustee Act”** means the Trustee Act 2019 or any Act enacted in substitution for it;
- (q) **“Trustees”** means the Trustees elected in terms of clause 5.0 and, as the context may require, means all, some or any such Trustees; and
- (r) **“Trust Fund”** means the sum of \$10.00 held by the Trustees on the terms of this Deed and all other moneys, investments and property of any nature or kind which may be received or acquired by the Trustees from any source and whether by way of gift, bequest, purchase, exchange or otherwise (including, for the avoidance of doubt, from the Society).

1.2 **Interpretation:** Unless the context otherwise requires:

- (a) Headings to clauses have been inserted for convenience and are not an aid to construction;
- (b) Words importing the singular include the plural and vice versa, and words of one gender include every other gender;
- (c) A reference to a clause is to a clause of this Deed;
- (d) References to any legislation or to any provision in any legislation (including regulations and orders) includes that qualifying legislation or provision as amended, re-enacted or replaced from time to time, and any statutory instalments, regulations and orders issued under any legislation or provision

- (e) References to a party, person or entity includes:
 - (i) An individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of state, government department and local and municipal authority, in each case whether or not having separate legal personality; and
 - (ii) An employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (f) A reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done.

2.0 ESTABLISHMENT OF THE TRUST

- 2.1 The Trustees acknowledge and declare that they will hold, administer, and distribute the Trust Fund, including both capital and income, on trust exclusively for the Charitable Purposes set out in this Deed and not for private profit, on the terms and conditions expressed or implied in this Deed.
- 2.2 Subject to the terms of this Deed, the Trustees have power to distribute the income or capital of the Trust Fund for such Charitable Purposes as the Trustees may from time to time in their absolute discretion determine.
- 2.3 The Trustees have the power in their absolute discretion to accept gifts, bequests, legacies or other acquisitions of whatever nature whether conditional or otherwise for the carrying out of the purposes of the Trust and all such gifts, bequests, legacies or acquisitions will, when accepted, form part of the Trust Fund.

3.0 NAME OF THE TRUST AND REGISTERED OFFICE

- 3.1 The Trust will be called Muriwhenua Tika Charitable Trust.
- 3.2 The registered office of the Trust will be 9047 Far North Road, Waitiki, Kaitaia, 0484 or such other address as the Trustees from time-to-time resolve.

4.0 OBJECT OF THE TRUST

- 4.1 The Trustees declare and acknowledge that the primary object of the Trust is to receive, use and administer the Trust Fund exclusively for the Charitable Purposes set out in this Deed. The Trustees have all the powers and duties set out in this Deed for the purposes of achieving this object.
- 4.2 The Trustees will hold the Trust Fund upon trust to pay or apply in New Zealand the capital and income of the Trust Fund in such amounts, at such times and subject to such terms and conditions as the Trustees, in accordance with the terms of this Deed, decide, exclusively for the purposes stated in clause 4.3.
- 4.3 Subject to the exclusively Charitable Purposes of the Trust, the objects of the Trust include:
 - (a) To receive, hold, manage and administer the Trust Fund for every Charitable Purpose benefiting all those who whakapapa to Muriwhenua or live in the Rohe whether it relates to the relief of poverty, the advancement of education, cultural, health and social services or any other matter beneficial to the community of Muriwhenua and its Members;
 - (b) To provide support and assistance to the Members in respect of education and training, housing, health care, age care as well their mental, emotional, physical and cultural wellbeing;

- (c) To carry out such activities which promote literacy and education within the community including to make education and scholarship grants to Members;
- (d) To promote and support all aspects of Muriwhenua tikanga and history for the social and cultural benefit of the Members of Muriwhenua; and
- (e) To carry out such other Charitable Purposes within New Zealand as the Trustees determine from time to time.

4.4 The Trustees are empowered to carry out any one or more of the Charitable Purposes of the Trust independently of any other Charitable Purpose of the Trust.

4.5 The Trust may do all other things incidental or conducive to attaining the Trust's objectives.

4.6 The Trustees will do all things practicable and expedient (including but not limited to registering as a charity under the Charities Act 2005, maintaining such registration, and complying with all applicable provisions of the Income Tax Act 2007) to ensure that the Trust is eligible to benefit from tax concessions directly or indirectly benefiting charitable entities.

4.7 If, by reason of any alteration in the law relating to income tax or charities and having received independent tax advice, it is at any time necessary to amend the Charitable Purposes set out in clause 4.3 above in order to preserve the right to benefit from tax concessions, the Charitable Purposes may be amended to the extent necessary so long as the amendment is not inconsistent with clause 4.1.

5.0 APPOINTMENT AND ELIGIBILITY OF TRUSTEES

5.1 At any one time the minimum number of Trustees will be five (5) and the maximum number of Trustees will be seven (7). The Board of Trustees must at all times comprise of:

- (a) Subject to clause 5.4, all members of the Management Committee.
- (b) Have at least one Trustee who is skilled and knowledgeable in matters of whakapapa and tikanga;
- (c) Have at least one Trustee who is hau kainga; and

While the Incorporation remains incorporated, the Trustees will be the members of the Management Committee, and Trustees will be elected and removed in parallel with the election of the members of the Management Committee, in accordance with the Constitution of the Incorporation. After the Incorporation is wound up, the Trustees will be elected and removed in accordance with clauses 5.2 to 5.6 and Schedule Two of this Deed.

5.2 A majority of Trustees must be Members.

5.3 Except for the appointment of the Initial Trustees pursuant to this Deed, and subject to the requirements in clause 5.1, the power to appoint new or additional Trustees from time-to-time is vested in the Management Committee provided that the number of Trustees does not at any time exceed the maximum number of Trustees specified in clause 5.1.

5.4 A person will not be eligible for election as a Trustee and may not hold office as a Trustee if that person is:

- (a) Under the age of 18 years; or
- (b) Does not have permanent resident status in New Zealand; or

- (c) A person who has within the last three years been removed from the office of Trustee; or
- (d) A bankrupt or a person who has ever been bankrupt; or
- (e) A person who has been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961 or an offence relating to the administration of justice under the Crimes Act 1961 or an offence under section 373(4) of the Companies Act 1993; or
- (f) A person who has been convicted of any offence punishable by a term of imprisonment of two or more years, unless that person has obtained a pardon or has served or otherwise suffered the sentence imposed on that person, or is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004; or
- (g) A person who has been sentenced to imprisonment for any offence, unless that person has obtained a pardon or has served the sentence; or
- (h) A person who is or has ever been disqualified from being involved in the management of a company under the provisions of the Companies Act 1993; or
- (i) A person in respect of whom an order has been made under section 383 of the Companies Act 1993;
- (j) A person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1998, the Takeovers Act 1993, or the Financial Markets Conduct Act 2013; or
- (k) A person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988 or whose property is managed by a trustee corporation under section 32 of that Act; or
- (l) A person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (m) A person who is disqualified from being an officer of a charitable entity under section 16 of the Charities Act 2005 or is subject to an order made under section 31 of that Act disqualifying the person from being an officer of a charitable entity; or
- (n) Is or has ever been removed as trustee of a trust by order of a Court on the grounds of breach of trust, lack of competence or failure to carry out the duties of a trustee satisfactorily.

5.5 If the number of Trustees is reduced below the number required in clause 5.1, or the Board does not comply with clause 5.1, then the Board may continue to act only for the purposes of:

- (a) Co-opting a Trustee or Trustees pursuant to clause 5.6 below; or
- (b) Addressing any matter which the Trustees reasonably consider to be urgent and which cannot be deferred until the election of any new Trustee or Trustees has been completed.

5.6 The Trustees are empowered to co-opt a Trustee or Trustees to fill any vacancy created by the retirement or removal of a Trustee or Trustees. The Trustees will exercise this power where the number of Trustees falls below the minimum number specified in clause 5.1. Any Trustee co-opted pursuant to this clause 5.6 must meet the eligibility requirements in clause 5.5 above and must not result in the

Board being in breach of clause 5.2. A co-opted Trustee will hold office until the following Annual General Meeting, at which time they will resign but will be eligible for election subject to this clause 5.0.

6.0 RESIGNATION OR REMOVAL OF TRUSTEES

6.1 The office of any Trustee will become vacant at any time during the Trustee's term of office if:

- (a) The Trustee resigns by written notice to the Chairperson;
- (b) The Trustee ceases to be eligible in terms of clause 5.4;
- (c) The Trustee, without the leave of the Chairperson, is absent from more than 3 consecutive meetings of the Board;
- (d) The Trustee dies; or
- (e) The Trustee is dismissed by the Trust in accordance with clause 6.2.

6.2 If in the opinion of the other Trustees, a Trustee brings or is likely to bring the Trust or Muriwhenua into disrepute, a Trustee may be removed as a Trustee by a majority vote at a meeting of the Trustees.

6.3 The Chairperson must keep a register stating the names and addresses of the Trustees, the date on which each person was entered on the register as a Trustee, and the date on which any person ceased to be a Trustee.

7.0 TRUSTEES' POWERS AND DUTIES

7.1 The Trustees will be guided by the general principle of maintaining the highest standards of professionalism and integrity. The Trustees must not act in a manner which brings or is likely to bring the Trust or Muriwhenua into disrepute.

7.2 In order to advance the Charitable Purposes of the Trust, in addition to all other powers conferred by law but subject to the terms of this Deed and any other applicable law, the Trustees have all the powers as if they were the absolute owner of and beneficially entitled to the Trust Fund. Such powers will not be restricted by any principle of construction or rule of law except to the extent that such restriction is obligatory.

7.3 Without limiting the generality of clause 7.2, the Trustees have all the powers set out in Schedule One, which may be exercised either alone or jointly with any other person or corporation.

7.4 Notwithstanding anything contained in this Deed, the Trustees must not do or allow to be done any act or omission which would cause the Trust to cease to be a charitable trust (in accordance with the Income Tax Act 2007 or any Act enacted in substitution for it).

8.0 MEETINGS OF THE TRUST

8.1 **Annual General Meetings:** The Trustees must hold an annual general meeting within six months of the end of each Financial Year.

8.2 The business to be transacted at the Annual General Meeting will be:

- (a) The receipt of the annual report and financial statements;
- (b) The election of Trustees, if required;

- (c) The appointment of the auditor (if any);
- (d) The consideration of any business of which notice has been given in the notice calling the meeting; and
- (e) Any other business any of the Trustees or the Members request to be considered, that is accepted by the Chairperson.

8.3 **Special General Meeting:** The Chairperson, or in the Chairperson's absence or inability, any other Trustee, will at any time for any purpose call a Special General Meeting upon the requisition in writing of any twenty Members.

8.4 If the Special General Meeting is held for the purpose of altering this Deed, clause 17.0 applies.

8.5 Subject to clause 17.2, a quorum for a General Meeting is twenty (20) Members (including Trustees). No business may be transacted at any General Meeting unless a quorum is present.

8.6 Every Member entitled to vote at a General Meeting will have one vote. Votes may be recorded personally or by proxy. The form of proxy must be received at the office of the Trust on the working day prior to the date of the General Meeting to which the proxy relates. No person may carry more than five proxy votes.

8.7 An instrument appointing a proxy must be signed by the Member making the appointment, and must be in the following form:

"I, _____, being a Member entitled to vote at a General Meeting of the Muriwhenua Tika Charitable Trust, hereby appoint _____ my proxy to vote for me on my behalf at the [Annual/Special] General Meeting of the Trust to be held on the _____ day of _____ or at any adjournment of that meeting.

Signed:

(Designation)

8.8 **Trustee Meetings:** The Trustees may also meet at such times and places and on such dates as they think fit, provided they must meet at least four (4) times per Financial Year. Trustees must be given at least ten (10) days' notice of the time, date and place of such meetings.

8.9 Meetings of the Trustees may be held in person or by any other means of communicating including telephone and audio visual communication.

8.10 A quorum for a meeting of the Board is a majority of the Trustees. No business of the Trust may be transacted at any meeting unless a quorum is present.

9.0 MEETING PROCEDURE

9.1 Each notice of meeting must be in writing and specify the date, time and location of the meeting and matters to be discussed at the meeting.

9.2 Notice of an Annual General Meeting or a Special General Meeting must be given to the Members at least twenty-one (21) Working Days prior to the date of the meeting. Notice may be given by advertisement in the appropriate media as determined by the Chairperson.

9.3 Voting at meetings will be verbal, by show of hands or by ballot at the discretion of the Chairperson, unless otherwise specifically stated in this Deed. In the case of an equality of votes at a General Meeting, the Chairperson will have the casting vote.

9.4 The Trustees must ensure that full and proper minutes of all resolutions and proceedings at all meetings are taken and copies of the minutes sent to all the Trustees within ten (10) days following each meeting.

10.0 VOTING OF THE TRUSTEES

10.1 Each Trustee will have one (1) vote. In the case of equality of votes the Chairperson will have the casting vote.

10.2 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, all decisions will be made by ordinary resolution and any such resolution will be binding on Trustees.

10.3 Every resolution passed at any meeting must be entered in the minute book and must be signed by the Chairperson. The minutes signed by the Chairperson will be prima facie evidence of the decisions of the meeting concerned.

10.4 A resolution in writing signed by all the Trustees will be as valid and effectual as if it had been passed at a duly convened meeting of the Trustees. Such a document may consist of one or more documents in like form each signed by one or more Trustees. The Trust must send a copy of any such resolution to all Trustees within ten (10) days following the passing of the resolution.

11.0 CHAIRPERSON

11.1 The Trustees must elect a Chairperson from among themselves by majority vote at the first meeting of the Trustees following each Annual General Meeting and at any other time when the Trustees deem appropriate or the position becomes vacant.

11.2 The Chairperson will preside at all meetings of the Board at which she or he is present. If the Chairperson is not present at any meeting of the Trustees, the Trustees present must appoint one (1) of their number to act as Chairperson at that meeting and that person while acting as Chairperson will have all the powers of the Chairperson.

12.0 ADMINISTRATION OFFICER

12.1 The Trustees may appoint from time to time an Administration Officer at their discretion. It will be the duty of the Administration Officer, if appointed, to manage the day to day affairs of the Trust, keep usual records of the business of the Trust and to undertake all other administrative matters required of the Trust in terms of this Deed.

13.0 AUDITOR AND FINANCE

13.1 At the first meeting of the Board in each Financial Year, the Trustees will decide by resolution the following:

- (a) How money will be received by the Trust;
- (b) Who will be entitled to produce receipts;
- (c) What bank accounts the Trust will operate, including the purposes of and access to accounts;
- (d) Who will be allowed to be the authorised signatories; and
- (e) Who will be allowed to transmit electronic banking payments and the names of authorisers of such payments.

13.2 Subject to any contrary requirements of:

- (a) Law; or
- (b) The Department of Internal Affairs (Charities Services) in approving the Trust's status as a charitable entity;

no auditor will be appointed unless the Members resolve at the Annual General Meeting that an auditor be appointed. If an auditor is appointed pursuant to this clause 13.2, then the auditor must not be a Trustee and must, as a minimum requirement, be a member of Chartered Accountants Australia & New Zealand or other professional body qualified to undertake audit services in New Zealand. If appointed pursuant to this clause 13.2, the form of audit or review to be undertaken by the auditor will be at the Trustee's discretion. The auditor may receive payment for his or her services.

14.0 INCOME, CAPITAL AND ACCOUNTS

14.1 The Trustees may, in their sole discretion and subject to the terms of this Deed, at any time apply any or all of the capital and/or income of the Trust to advance any one or more of the Charitable Purposes of the Trust. Without limiting the Trustees' discretion, the Trustees may:

- (a) In each Financial Year, determine what part or parts (if any) of the income of the Trust should be capitalised and applied as an accretion to the capital of the Trust Fund and what part (if any) should be distributable income, and to pay and apply the amounts so determined accordingly;
- (b) Pay or apply any part of the Trust Fund, whether capital or income, in or towards any of such Charitable Purposes of the Trust as the Trustees may in their absolute and unfettered discretion deem appropriate; and
- (c) Make distributions and allocations of capital and/or income in such form as the Trustees determine whether in cash or by transfer in specie.
- (d) Nothing will require or compel the Trustees to make any payment, allocation or distribution of the whole or any part of the capital and/or income of the Trust at any particular time during the Financial Year.

14.2 The Board will keep full and correct records and accounts of all receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of the Trust.

14.3 Within four (4) months after the end of every Financial Year and prior to each Annual General Meeting of the Trust, the Trustees must arrange the preparation of the annual report and accounts for the Trust. The report and accounts may be in such form and specify such particulars as the Trustees from time to time prescribe but in any event must:

- (a) Include a statement of the assets, liabilities, investments, income, expenditure and distributions of the Trust;
- (b) Include a summary of any changes to investments since the last annual report and accounts;
- (c) Be prepared to the same standard, including as to form and content, as if the Trust was a company but with such adjustments as are required for a corporate body that is not a company, and in particular to include:
 - (i) The description of the nature of the activities of the Trust, or the classes of activities or businesses in which the Trust has an interest, whether as a shareholder of a company or otherwise;

- (ii) The financial statements for that Financial Year, completed and signed in accordance with applicable financial reporting legislation; and
- (iii) The auditor's report of the financial statements of the Trust for that Financial Year (if required by law or resolution of the Trustees pursuant to clause 13.2).

- 14.4 A copy of the annual report and accounts must be provided to the Trustees at least ten (10) days prior to the Annual General Meeting of the Trust.
- 14.5 The Board will ensure that all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed pursuant to any revenue legislation, the Charities Act 2005 or otherwise are prepared and filed so as to allow the Trust to retain its charitable status for taxation purposes.
- 14.6 The Trustees will ensure that any change to the balance date of the Trust's Financial Year is approved by any necessary authority, including without limitation the Inland Revenue Department and, if required, pursuant to section 41 of the Charities Act 2005.

15.0 RELIANCE ON ADVICE

- 15.1 The Board, when exercising powers or performing duties as Trustees, may rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given by any of the following persons:
- (a) An employee of the Trust whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) A professional adviser or expert in relation to matters which the Trustees believe on reasonable grounds to be within the person's professional or expert competence;
 - (c) Kaumātua, in relation to tikanga and related matters; and
 - (d) A committee of Trustees.
- 15.2 Clause 15.1 only applies if the Trustees:
- (a) Act in good faith;
 - (b) Make proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) Have no knowledge that such reliance is unwarranted.

16.0 TRUSTEES' CONFLICT OF INTERESTS

- 16.1 The Trustees are entitled to enter into any contract and to act and exercise all of the powers conferred on them notwithstanding that their interests in any private capacity or duties as trustees of any other trust or as shareholders in or directors of any company conflict with their duties as Trustees of the Trust.
- 16.2 A Trustee who is in any way, whether directly or indirectly, interested in any matter in terms of clause 16.1 must declare the nature of his or her interest at a meeting of the Trustees.
- 16.3 A Trustee, having declared his or her interest in accordance with clause 16.2 will be counted in the quorum present at the meeting and may witness the affixing of the common seal to any contract or agreement but must not vote in respect of the matter in which the Trustee is interested.

17.0 VARIATION OF THE TRUST DEED

- 17.1 This Deed may be amended by a resolution approved by at least 75% of Members entitled to vote and voting at a Special General Meeting called for that purpose, subject to this clause 17.0.
- 17.2 The quorum for a Special General Meeting to determine an amendment to this Deed is three (3) Trustees and twenty (20) Members.
- 17.3 Notwithstanding clause 17.1 above, an amendment to this Deed may be made by ordinary resolution of the Trustees alone if that the amendment is made to:
- (a) Correct a minor mistake in the Deed, provided the correction will not materially change the effect of the relevant provision(s) of the Deed; or
 - (b) Give effect to an amendment made to legislation referred to in this Deed, provided the amendment will not materially change the effect of the relevant provision(s) of the Deed.
- 17.4 No amendment will be made to this Deed which:
- (a) Without independent tax advice, changes the exclusively charitable nature of the Trust or the status of the Trust for taxation purposes, or results in the distribution of the Trust's assets or winding up or dissolution for any purpose that is not exclusively charitable;
 - (b) Changes either of clauses 16.0 (Trustees Conflict of Interest), except insofar as a change is required in order to reflect changes to the Income Tax Act 2007; or
 - (c) Changes this clause 17.4.

18.0 INCORPORATION OF THE BOARD

- 18.1 The Trustees will as soon as possible after the date of this Deed, apply for incorporation as a charitable trust board under Part II of the Charitable Trusts Act 1957. Upon incorporation, the powers and discretions conferred upon the Trustees by law or by this Deed will be conferred upon the Trustees as a trust board.
- 18.2 Upon incorporation under the Charitable Trusts Act 1957 and as long as it is required by law, the Trust will have a common seal that will:
- (a) Be in the custody of and under the control of the Trust; and
 - (b) Not be affixed to any instrument except pursuant to a resolution of the Trustees and in accordance with clause 22.2 below.

19.0 REMUNERATION OF TRUSTEES

- 19.1 No person may make a private pecuniary profit from the Trust or any of the Trust Fund.
- 19.2 Notwithstanding clause 19.1:
- (a) The Trustees will determine, after seeking external professional advice, the remuneration payable to the Trustees (if any);
 - (b) A Trustee is entitled to be reimbursed for all reasonable expenses properly incurred in the conduct of his or her duties as a Trustee; and

- (c) Any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade is entitled to be paid all usual professional, business and trade charges for services provided by that person or that person's employee or partner in connection with the Trust including acts which a Trustee, not being in any profession, business or trade, could have done personally.

20.0 PROHIBITION OF BENEFIT OR ADVANTAGE

- 20.1 Any income derived by the Trust directly or indirectly from a business (within the meaning of section CW42 of the Income Tax Act 2007) carried on by or for, or for the benefit of the Trust must be applied to the Charitable Purposes.
- 20.2 No amount derived from a business carried on by the Trust may be directed or diverted to the benefit or advantage of a Related Person where that Related Person is able, directly or indirectly, to determine or materially influence either the determination of the nature or extent of the relevant benefit or advantage, or the circumstances in which the relevant benefit or advantage is, or is to be given or received.
- 20.3 For the purposes of this clause 20.0, "**Related Person**" means a person specified in paragraphs (i) to (iv) of section CW42(5)(b) of the Income Tax Act 2007, the person specified being:
 - (a) A settlor or trustee of the trust by which the business is carried on; or
 - (b) A shareholder or director of the company by which the business is carried on; or
 - (c) A settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
 - (d) A person associated (as that term is defined in sections YB1 to YB12 and YB14 to YB16 of the Income Tax Act 2007) with a settlor, trustee, shareholder or director referred to in any of paragraphs (a), b) or (c) of this definition.

21.0 TRUSTEES' LIABILITY AND INDEMNITY

- 21.1 No Trustee will be liable for any loss not attributable to his or her own dishonesty or to the wilful commission by that Trustee of any act known by him or her to be in breach of trust.
- 21.2 Notwithstanding the provisions of section 30 of the Trustee Act and the likelihood that the Trustees will, from time to time, include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care, diligence and skill to be exercised by the Trustees in exercising any power of investment is not that required of such persons by section 30 but must at all times be the care, diligence and skill that a prudent person in business would exercise in managing the affairs of others.
- 21.3 No Trustee will be bound to take any proceedings against any other Trustee for any breach or alleged breach of trust committed by that other Trustee.
- 21.4 Subject to clauses 21.1 and 21.2, a Trustee will be chargeable only for any money which that Trustee has received. For the purposes of this clause 21.4, a Trustee is deemed to have received money even if not actually paid to that Trustee if that money has been credited in account, reinvested, accumulated, capitalised, carried to any reserve sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

- 21.5 Every Trustee and former Trustee will be absolutely indemnified out of the Trust Fund from and against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together “costs”) sustained, suffered or incurred by that Trustee or former Trustee in connection with the Trust, except to the extent that such costs are due to:
- (a) That Trustee’s or former Trustee’s own dishonesty or lack of good faith; or
 - (b) That Trustee’s or former Trustee’s wilful commission or omission of an act known by that Trustee or former Trustee to be in breach of trust.

22.0 ENTRY INTO OBLIGATIONS

- 22.1 Subject to clause 22.2, all documents required to be executed by the Trust will be deemed to be validly executed and binding if those documents have been signed by at least two (2) persons either being Trustees or any other person who the Trustees from time to time authorise in writing to enter into such documents.
- 22.2 If the Trustees become incorporated as a board under the Charitable Trusts Act 1957, then the Trustees will provide a common seal for the board as long as it is required by law, which will be affixed to any document requiring execution under seal. Every affixing of the common seal must be performed in the presence of and be accompanied by the signatures of two (2) Trustees, which will be sufficient evidence of the authority to affix the seal.

23.0 NOTICES

- 23.1 Any notice in writing given in terms of this Deed may be:
- (a) Delivered personally, in which case the notice will be deemed to have been given on delivery;
 - (b) Sent to an email address which has been notified to the Trust for that person, in which case the notice will be deemed to have been given when acknowledged by the recipient by way of return email or otherwise in writing; and/or
 - (c) Sent by ordinary post, in which case the notice will be deemed to have been given on the third day after being posted.

24.0 RESETTLEMENT


- 24.1 The Trustees may, by unanimous resolution recorded by deed, resettle any or all of the Trust Fund on trust in any manner which in the opinion of the Trustees is for the advancement or benefit of Muriwhenua, provided that:
- (a) The resettlement is for one or more exclusively charitable purposes of the same or a similar nature to the Charitable Purposes; and
 - (b) The Trustees have obtained independent tax advice on the resettlement.


25.0 WINDING UP

- 25.1 The Members may by special resolution at a General Meeting, wind up or dissolve the Trust.
- 25.2 If the Members do resolve to wind up or dissolve the Trust, the net assets of the Trust after payment of all liabilities and costs must be disposed of by the Trustees to another trust or entity that has been established for the benefit of the present and future Members of Muriwhenua for charitable purposes.

Signed by **Kimiora Jacqueline Brown as Initial Trustee** in the presence of:

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)
)

DocuSigned by:

41530CF401D1400...

DocuSigned by:


218F94B6CC55467...
Signature of Witness

Katia Holland

Name of Witness

Solicitor


Occupation

Hamilton

Address

Signed by **Renata Kahuroa as Initial Trustee** in the presence of:

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)

DocuSigned by:

586C75A0199348B...

DocuSigned by:


218F94B6CC55467...
Signature of Witness

Katia Holland

Name of Witness

Solicitor


Occupation

Hamilton

Address

Signed by **Marama Hine Pohatu as Initial Trustee** in the presence of:

)
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)

DocuSigned by:

ACB19E6F558F453...

DocuSigned by:


218F94B6CC55467...
Signature of Witness

Katia Holland

Name of Witness

Solicitor

Occupation

Hamilton

Address

Signed by **Nassah Rolleston-Steed** as Initial)

Trustee in the presence of:)

DocuSigned by:

K Holland

218F94B6CC55467...

Signature of Witness

Katia Holland

Name of Witness

Solicitor

Occupation

Hamilton

Address

Signed by **Margaret Merimeri Taurere** as Initial)

Trustee in the presence of:)

DocuSigned by:

K Holland

218F94B6CC55467...

Signature of Witness

Katia Holland

Name of Witness

Solicitor

Occupation

Hamilton

Address

DocuSigned by:

Margaret Taurere

03B38DEDC2634FB...

SCHEDULE ONE

POWERS OF TRUSTEES

Without limiting the generality of clause 7.2, the powers which the Trustees have include:

- (a) To invest the Trust Fund or any portion of the Trust Fund, notwithstanding that it may be subject to any liability, in any Property whether in New Zealand or overseas.
- (b) To buy or sell Property comprising or which will comprise all or part of the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit. Further, in the case of sale, to allow the whole or any part of the purchase money remaining owing as a debt to the Trust.
- (c) To lend all or any part of the Trust Fund to any person or persons or company with or without interest and with or without security and on such other terms and conditions as the Trustees in their absolute discretion think fit.
- (d) To retain Property forming part of the Trust Fund for so long as the Trustees think fit without being liable for any loss resulting to the Trust Fund.
- (e) To lease or to take on lease or licence any Property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) To commence and carry on any business (whether alone, in partnership or otherwise) including acquiring from any person or company any business or any interest in any business. Further, the Trustees have power to use and apply any part of the Trust Fund as capital in such business and remunerate all such managers, agents, servants and others as the Trustees from time to time think fit.
- (g) To make a gift or gifts to any person or company for the purpose of furthering the Charitable Purposes of the Trust.
- (h) To borrow money on such terms and subject to such conditions as the Trustees think fit provided that the total borrowings of the Trust must not at any time exceed the value of the Trust's realisable assets.
- (i) In respect of any company in which the Trust holds shares, notes, stock, or debentures:
 - (i) To act as director or appoint a director or directors of such company.
 - (ii) To provide out of the Trust Fund further capital for such company either by way of advances, loans, deposits, or otherwise (with or without security) or by taking further shares, notes, stocks, or debentures in such company and in any case on such terms as the Trustees think fit.
 - (iii) To concur on such terms as the Trustees think fit in any reconstruction or amalgamation of any company in which the Trustees hold shares, notes, stock, or debentures or in any modification of the rights of the shareholders or other parties.
 - (iv) Generally to act in respect of any such company in such manner as the Trustees in their absolute discretion deem to be in the interests of the Trust Fund.

- (j) To promote or form any company or join in so doing for the purpose of its acquiring any Property which or an interest in which forms part of the Trust Fund or acquiring the Property of any company in which the Trustees hold shares notes stock or debentures and to sell or concur in selling any Property in exchange for shares, notes, stock, debentures or other interests in any company on such terms and conditions as the Trustees think fit.
- (k) To determine whether any money is income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion blended funds.
- (l) To maintain, manage, repair, improve, and develop any Property which or any interest in which forms part of the Trust Fund in such manner as the Trustees think fit.
- (m) To employ any person, firm or company to do any act of whatever nature relating to the Trust or the administration of the Trust without being liable for loss incurred.
- (n) To guarantee the liability of any person, company or other entity and to give security in support of any such guarantee.
- (o) To open an account or accounts in any name or names and either on their own behalf or jointly with another at any bank. Further, to overdraw any such account with or without giving security and to make arrangements with any bank for such signatories as resolved by the Trustees to operate on any account at that bank.
- (p) To insure against loss or damage by any cause whatsoever any insurable Property on terms and conditions as the Trustees in their absolute discretion think fit.
- (q) To enter into contracts of any nature whatsoever for any purpose which in the opinion of the Board is necessary or conducive to the Charitable Purposes of the Trust.
- (r) To delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (s) To do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the Charitable Purposes of the Trust.

SCHEDULE TWO

ELECTION OF TRUSTEES

N.B. While the Incorporation remains established pursuant to section 247 of Te Ture Whenua Māori Land Act 1993, the Trustees will be the members of the Management Committee, and Trustees will be elected and in parallel with the election of the members of the Management Committee, in accordance with the Constitution of the Incorporation. After the Incorporation is wound up, the Trustees will be elected and removed in accordance with clauses 5.2 to 5.6 and this Schedule Two.

1.0 ELECTION OF TRUSTEES

- 1.1 All Members over the age of eighteen (18) (**Adult Members**) will be entitled to vote for the number of candidates as Trustees in accordance with the rules for elections as set out in this Schedule.
- 1.2 In each election, the candidates who receive the highest number of valid votes for the number of vacancies will be deemed duly elected as Trustee/s. If there is an equal number of votes for the last available position, then the drawing of lots will decide the successful candidate.

2.0 TERM OF OFFICE

- 2.1 Subject to paragraph 2.2 of this Schedule and clause 6.1 of the Trust Deed, the Trustees shall hold office for a term of three (3) years.
- 2.2 Subject to clause 5.4 of the Trust Deed, Initial Trustees and subsequent retiring Trustees shall be eligible for re-election.
- 2.3 Casual vacancies may occur when:
- (a) there is no nomination/s to replace a Trustee following that Trustee's retirement; or
 - (b) a Trustee vacates his/her office prior to the expiry of the Trustee's term of office.
- 2.4 In the event of a casual vacancy, the Trustees will have the power to co-opt any person to act as a Trustee until the next Annual General Meeting of the Trust in accordance with clause 5.6 and subject to clause 5.1 of the Deed.

3.0 TIMING OF ELECTIONS

- 3.1 Elections shall be held at an Annual General Meeting following the retirement of the Initial Trustees and the expiry of term of office of any elected trustee, or where a casual vacancy has arisen in the previous year.

4.0 CALL FOR NOMINATIONS

- 4.1 The Trustees shall give notice calling for nominations for those Trustee positions becoming vacant in any given year and for which elections are required as follows:
- (a) Notice must be given calling for nominations at least three (3) months before the Annual General Meeting for that year;
 - (b) The notice must specify the method for making nominations, where nomination forms can be accessed, and the criteria for Trustee eligibility as per clause 5.4 of this Schedule; and

- (c) The latest date (being ten (10) working days prior to the Annual General Meeting) by which nominations must be made and lodged with the Trustees or such other person (e.g. a Returning Officer, if one has been appointed) as the notice directs.

4.2 Notices shall be given by:

- (a) email, where email addresses are available and a Member has consented to receive notice by email;
- (b) social media posts (e.g. Facebook) and posts on the Trust's website;
- (c) advertising the notice in appropriate newspapers circulating in areas where the Trustees consider a significant number of Members reside. The notices should feature at least on two (2) separate days; and
- (d) any other means the Trustees deem appropriate.

4.3 Nominations:

- (a) The nomination of a candidate for election as a Trustee must be in writing.
- (b) Consent of each candidate to his or her nomination shall be endorsed by the candidate signing the nomination form.
- (c) The nomination must be signed by the nominator, who must be an Adult Member, and two additional Adult Members (other than the candidate).

4.4 In the event that the total number of nominations is less than or equal to the number of Trustee vacancies, no election shall be necessary and the person or persons nominated shall be deemed to have been duly appointed.

5.0 HOLDING OF ELECTIONS

5.1 The mode of Trustee elections shall be determined by the Trustees. The two options are 'By Attendance' (either by ballot or show of hands) or by 'Postal Voting'. The applicable election process for each election shall be notified at the time of notification to the Members of pending elections.

5.2 The Trustees will engage the services of a Returning Officer to co-ordinate the election process. The Returning Officer shall not be a Trustee or employee of the Trust.

5.3 By Attendance:

- (a) When the Trustee election is to be held "By Attendance", notification of the pending election shall include the location, date and time of the voting day, which is the date of the Annual General Meeting.
- (b) On the nominated voting day, the Returning Officer shall ensure that each Member who attends to cast a vote is an Adult Member.
- (c) Every Adult Member personally present at the Annual General Meeting, at which the voting is to be held, is entitled to vote.
- (d) Voting shall be by ballot or show of hands, as decided by the Trustees.

- (e) If the voting is to be by ballot, the Returning Officer shall write the Adult Member's name on the voting form and hand to the Member.
- (f) Before votes are cast, the Returning Officer shall address the meeting to explain the process through to the result of the election.
- (g) The Returning Officer shall call each candidate to give a two (2) minute kōrero. Once these have been completed:
 - (i) If the voting is to be by show of hands:
 - (A) The Returning Officer will call all Adult Members to cast their vote by show of hands.
 - (B) The Returning Officer will count the votes. The Returning Officer may ask for two (2) Adult Members present to assist with the vote count.
 - (C) Once all valid votes have been counted the Returning Officer shall announce the results of the election.
 - (ii) If the voting is to be by ballot:
 - (A) The Returning Officer shall call Adult Members to cast their vote and place in a sealed box.
 - (B) The Returning Officer shall vacate the meeting to count the votes. The Returning Officer may ask for two (2) Adult Members present to assist with the vote count.
 - (C) Once all valid votes have been counted the Returning Officer shall return to the meeting and announce the results of the election.
- (h) The election results will be advertised in local paper/s and on the Hapū websites.

5.4 By Postal Voting:

- (a) Postal voting forms must contain information that is sufficient to identify the Adult Member.
- (b) The voting form must clearly state the number of Trustee vacancies, names of candidates, and the closing date for elections (which must be no later than three (3) days prior to date of the Annual General Meeting) and include candidate profiles.
- (c) Voting instructions must be clearly articulated on the voting form.
- (d) Votes must be posted no later than the closing date for the election, notwithstanding votes validly cast and received three (3) days after the closing date will be counted, but only if the envelope containing the voting form is date stamped on or before the closing date for the election.
- (e) Voting papers must be received by the Returning Officer by dropping it off at the Receiving Officer's office or posted to the address specified on the voting form.
- (f) All returned voting forms shall be placed in a sealed box by the Returning Officer until the closing date for elections.

- (g) The Returning Officer shall ensure that appropriate procedures are in place to ensure that only one vote is cast by each Adult Member.
- (h) Counting of Votes: On expiry of the date for receipt of postal votes the Returning Officer shall record all votes received and count all votes which have been validly cast.
- (i) Once all valid votes have been counted, the Returning Officer shall certify the result and communicate the result to the Trustees.

5.5 The Trustees shall advise all candidates of the result and give notice of the result at the Annual General Meeting.

5.6 The Returning Officer shall ensure all election voting forms and associated records are placed in a box and sealed. The box must have a description of the contents and date for destruction which shall be one (1) year from closing date of the election.