FINAL DRAFT

Deed of Trust establishing the Turanganui-a-Kiwa Memorial Putea and Central Leadership Trust

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Her Majesty the Queen in right of New Zealand

Te Runanga o Turanganui-a-Kiwa

Ngāi Tamanuhiri

Rongowhakaata (including Nga Uri o Te Kooti Rikirangi)

Te Aitanga a Mahaki and its Close Affiliate Kin Groups (formerly Te Whakarau) comprising of Te Atianga a Mahaki, Whānau a Kai, NgāAriki Kai Putahi, Te Whānau a Wi Pere and Te Whānau a Rangi Whakataetaea

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Date: 2011

PARTIES

Her Majesty the Queen in right of New Zealand acting by the Minister for Treaty of Waitangi Negotiations (*Crown*)

Te Runanga o Turanganui-a-Kiwa (*TROTAK*)

BACKGROUND

A. The Crown and the Beneficiaries wish to establish a trust to be known (subject to clause 4 of this Deed) as the Turanganui-a-Kiwa Memorial Putea and Central Leadership Trust for the benefit of the beneficiaries in relation to the purposes set out in this Deed.

B. TROTAK has agreed to act as the original Trustee of this Trust.

B. The Crown will pay two amounts, $100,000 and $35,000 (the *Settlement Amounts*), to TROTAK as original Trustee of this Trust.

C. The Trust Fund shall comprise this initial $135,000 and any other Property derived by the Trustee from that property.

D. The Crown and TROTAK have agreed to enter into this Deed for the purpose of declaring and constituting the Trust, specifying its beneficiaries and purposes, and providing for its control, governance and regulation.

OPERATIVE PART

1 **INTERPRETATION**

1.1 In this Deed:

Beneficiaries mean:

(a) Ngāi Tamanuhiri; and

(b) Rongowhakaata (including Nga Uri o Te Kooti Rikirangi); and

(c) Te Aitanga a Mahaki and its Close Affiliate Kin Groups (being the group comprising Te Atianga a Mahaki, Whānau a Kai, NgāAriki Kai Putahi, Te Whānau a Wi Pere and Te Whānau a Rangi Whakataetaea); or

(d) in the event that a ratified Post Settlement Governance Entity (*PSGE*) has been recognised by the Crown as a representative of a Beneficiary, that PSGE will become the representative of the Beneficiary.

Post Settlement Governance Entity means a post settlement governance entity established by one of the Beneficiaries and approved by the Crown for that purpose;

Property means all property (whether real or personal) and includes choses in action, rights, interests and money.

Purposes means the purposes described in clause 4.2(a) and 4.2(b).

Trust means the trust created by this Deed.

Trust Fund means initially the Settlement Amounts and subsequently any other Property that is from time to time held by the Trustee on the trusts of this Deed.

Trustee means the trustee for the time being of the Trust (including TROTAK as original trustee).

Unanimous Resolution means a resolution passed by all of the responsible bodies for the Beneficiaries being:

(a) the trustees of the Tamanuhiri Tutu Porporo Trust;

(b) the trustees of the Rongowhakaata Charitable Trust (or such other persons or body established to act as the Post Settlement Governance Entity for Rongowhakaata); and

(c) the mandated representatives of the group comprising Te Aitanga a Mahaki and its Close Affiliate Kin Groups (or such other person or body that is established to act as the Post Settlement Governance Entity for Te Aitanga a Mahaki and its Close Affiliate Kin Groups).

1.2 In this Deed, terms defined in the deed of settlement, to be entered into on or about the date of this deed between the Crown, Ngāi Tamanuhiri and the Trustees of the Tamanuhiri Tutu Poroporo Trust, have the same meaning, unless the context otherwise requires.

1.3 In this Deed, unless the context otherwise requires:

(a) references to clauses are to clauses of this Deed;

(b) references to schedules are to schedules to this Deed;

(c) references to this Deed include its schedule;

(d) words importing the singular include the plural and vice versa;

(e) words importing one gender include the others; and

(f) the contents pages and the headings to clauses are for convenience only and are not part of the content of this Deed.

1.4 In the interpretation of the Schedule, unless the context otherwise requires:

(a) terms or expressions have the meanings given to them by this Deed;

(b) reference to a clause is a reference to a clause of the Schedule.

1.5 Reference to a statute or statutory provision includes that statute or provision as amended, modified, re-enacted or replaced from time to time.

2 DIRECTION AND ACKNOWLEDGEMENT OF TRUST

The Crown directs and the Trustee acknowledges that the Trustee has been appointed to and will hold the Trust Fund upon the trusts and with the powers set out in this Deed.

3 NAME OF TRUST

The Trust is known as the Turanganui-a-Kiwa Memorial Putea and Central Leadership Trust but the Trustee may amend or change the name by deed.

4 BENEFICIARIES AND PURPOSES OF TRUST

4.1 The parties declare that the Turanganui-a-Kiwa Memorial Putea and Central Leadership Trust is a trust for the benefit of the Beneficiaries in achieving the purposes set out in clause 4.2(a) and (b).

4.2 The Trustee holds the Settlement Amount on the following trusts:

(a) The sum of $100,000 to benefit the Beneficiaries by establishing an appropriate and enduring memorial open to members of the Beneficiaries and the public generally, to commemorate and provide education about those members of the Beneficiaries who lost their lives due to the actions of the Crown in the past.

(b) The sum of $35,000 for the benefit of the Beneficiaries in meeting the establishment and operation costs of the central leadership group.

4.3 In determining how to achieve these purposes, the Trustee will:

(a) be guided by views expressed by the Beneficiaries and persons regarded by the Trustee, in its reasonable discretion, as duly-authorised representatives of the Beneficiaries; and

(b) if specifically requested by Unanimous Resolution of the Beneficiaries to apply any part (or all) of Trust Fund in a particular way, comply with that direction.

5 APPLICATION OF INCOME

Subject to clause 4, the Trustee may at any time, after payment of or provision for all costs, charges and expenses of the Trustee in respect of the establishment, management and administration of the Trust, pay or apply all or any of the income of the Trust to promote or advance for the benefit of the Beneficiaries the Purposes of this trust.

6 APPLICATION OF CAPITAL

Subject to clause 4, the Trustee may at any time pay or apply all or any of the capital of the Trust to promote or advance for the benefit of the Beneficiaries the Purposes of this trust.

7 INVESTMENT OF TRUST FUND

The Trustee may invest all or any of the Trust Fund in any Property that is from time to time permitted by the laws of New Zealand for the investment of the funds of trusts, including full power to buy or otherwise acquire any Property and full power to sell or otherwise dispose of any of the Trust Fund.

8 POWERS AND DISCRETIONS OF TRUSTEE

8.1 In addition to all the powers, authorities and discretions vested in the Trustee by law or by this Deed (but subject to clause 4), the Trustee in advancing or promoting, for the benefit of the Beneficiaries, the Purposes in its discretion may at all times and from time to time exercise the fullest possible powers and authorities as if it was the beneficial owner of the Trust Fund.

8.2 Without prejudice to the generality of clause 8.1 but subject to clause 4, the Trustee has the powers set out in the Schedule and may in its discretion (but subject to clause 4) exercise any one or more of those powers.

8.3 All powers and authorities and discretions that the Trustee has, including the powers in the Schedule, may be exercised by the Trustee (subject to clause 4) in its absolute discretion and from time to time and on such

terms and conditions and in such manner and by such means as it thinks fit.

9 FIRST TRUSTEE AND REPLACEMENT OF TRUSTEE

9.1 TROTAK is the first Trustee of the Trust.

9.2 The Beneficiaries may, by Unanimous Resolution, remove and replace the Trustee.

9.3 TROTAK, in acting as trustee of the Trust, is acting in a separate capacity from its capacity as trustee of the Te Runanga o Turanganui-a-Kiwa charitable trust (the *Charitable Trust*), in relation to which TROTAK has been incorporated as a board under the Charitable Trusts Act 1957.

9.4 Notwithstanding that TROTAK is acting as trustee of the Trust in a different capacity and subject to the provisions of this Deed, the following provisions of the trust deed for the Charitable Trust will apply also for the purposes of the constitution and operation of TROTAK as trustee of this trust:

(a) clause 4 – register of beneficiaries

(b) clause 5 – advisory committee of kaumatua

(c) clause 6 – membership of te runanga

(d) clause 7 – rotation of runanga members

(e) clause 8 – disqualification of runanga members

(f) clause 9 – minutes

(g) clause 10 – meetings of runanga

(h) clause 11 – subcommittees of runanga

(i) clause 12 (except for paragraph (a)) – meetings of beneficiaries

(j) clause 13 – notice of meetings of beneficiaries

(k) clause 14(2) – business at meetings of beneficiaries

(l) clause 15 – chairman of meetings of beneficiaries

(m) clause 16 – voting of beneficiaries

(n) clause 17 – quorum for meeting of beneficiaries

(o) clause 18 – execution of documents by runanga

10 CONFLICT OF INTEREST

10.1 Subject to clause 10.3, a Trustee is entitled to act under this Deed and to exercise all of the powers conferred on it even when the Trustee enters into or proposes to enter into a Conflict Transaction for the Trustee.

10.2 A Conflict Transaction exists for the Trustee when:

(a) the Trustee is or may be or becomes associated (whether as director or otherwise in a private capacity or as trustee of another trust) with any company, partnership, organisation, group or trust with which the Trustee is transacting or dealing in its capacity as Trustee; or

(b) the interests or duty of the Trustee in any particular matter conflict or might conflict with its duty to the Trust; or

(c) the Trustee is transacting or dealing as Trustee with itself in another capacity.

10.3 When there is a Conflict Transaction, the Trustee may still enter into the Conflict Transaction if it has obtained a written confirmation from a lawyer, accountant or other reputable professional person of independent status that the Conflict Transaction is proper and in order for the Trustee to enter into.

11 LIMITATION OF LIABILITY AND INDEMNITY

11.1 The Trustee is not liable for the consequence of any act or omission or for any loss unless the consequence or loss is attributable to its dishonesty or to the wilful commission by it of any act known by it to be a breach of trust or to the wilful omission by it of any act when the omission is known by it to be a breach of trust.

11.2 The Trustee is not liable for any loss or cost to the Trust by any breaches of trust or defaults of any attorney, delegate, manager, agent or employee appointed or engaged or employed by it, despite any rule of law or equity to the contrary.

11.3 The Trustee is fully indemnified by and out of the Trust Fund (whether from the capital or the income of the Trust Fund) for any loss or liability which it incurs in the carrying out or omission of any function, duty or power of the Trustee under this Deed and in respect of any outlay or expenses incurred by it in the management and administration of the Trust unless the loss or liability is attributable to its dishonesty or to the wilful commission by it of an act known by it to be a breach of trust or to the wilful omission by it of any act when the omission is known by it to be a breach of trust. The indemnity given by this clause extends to any loss

or liability which a person after ceasing to be the Trustee incurs through the carrying out of any function, duty or power of the Trustee, whether the carrying out took place before, during or after the period in which it was Trustee.

12 ACCOUNTS AND AUDIT

12.1 The Trustee must ensure that financial records are kept.

12.2 The financial records must present the Trust's receipts, credits, payments, 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 annual accounts of the Trust must be prepared by a chartered accountant appointed by the Trustee.

12.4 The Trustee may have the annual accounts audited by a chartered accountant appointed by it. The auditor must not be the Trustee's accountant.

12.5 The financial records and annual accounts will be kept at the Trustee's office or at such other place as the Trustee thinks fit.

12.6 The financial records and annual accounts must always be available to be inspected by the Trustee.

13 AMENDMENT OF DEED

The Beneficiaries have power by Unanimous Resolution recorded in a deed to amend, revoke or add to any of the provisions of this Deed.

14 WINDING UP AND TERM OF TRUST

14.1 The Trustee may at any time, with the approval of a Unanimous Resolution of the Beneficiaries, wind up the Trust.

14.2 The Trust must be wound up no later than the day that is 80 years, less one day, from the date of this Deed. This is the perpetuity period applicable to this Trust under the rule against perpetuities.

14.3 On the winding up the Trustee will pay or apply such of the capital and income of the Trust Fund as then remains towards the furtherance of the Purposes in such a way as the Beneficiaries, by Unanimous Resolution, determine.

15 GOVERNING LAW

The Trust will be governed by and construed in accordance with the laws of New Zealand.

EXECUTION

Signed for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister for Treaty of Waitangi Negotiations in the presence of:

Honourable Christopher Finlayson

WITNESS

B Considine

Name: BERNADETTE CONSEDINE

Occupation: PRIVATE SECRETARY

Address: WELLINGTON

Signed for and on behalf of **TE RUNANGA O TURANGANUI-A-KIWA** as Trustee in the presence of

Witness signature

RONALD CLIFFORD NEPE

Full name (please print)

MANAGER

Occupation (please print)

GISBORNE

Address (please print)

SCHEDULE – POWERS OF TRUSTEE

The Trustee has power in accordance with clause 8.1 of this Deed:

(a) in relation to any Property that is part of the Trust Fund, generally to deal with it and manage it as if the Trustee was beneficially entitled to it;

(b) to sell, call in, and convert into money or other Property the whole or any part of the Trust Fund;

(c) to accumulate the income of the Trust Fund;

(d) to open and maintain a bank account and to decide who will be the signatories to that account:

(e) to set apart any portion of the Trust Fund:

(i) as a sub-trust;

(ii) as a special endowment;

(iii) for a special purpose;

(iv) under any special or distinguishing name -

and the portion set apart and any accretions to it may be applied for the purpose for which it was set apart or for any other purpose authorised by this Deed;

(f) to advertise the Trust and the Purposes;

(g) to seek, receive or decline conveyances, transfers, gifts, devises, donations or bequests of Property;

(h) to appoint or engage or employ any person or company (including the Trustee) 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;

(ii) as an attorney or delegate for the Trustee in New Zealand or elsewhere for all or any of the purposes of the Trust;

(iii) as a manager or agent for or on behalf of the Trustee in all or any matters relating to the management and the control of the Trust, and any business owned by the Trustee or in which it is concerned;

(iv) as a secretary of the Trustee; or

(v) as an employee of the Trustee in all or any matters relating to the Trust;

(i) to act upon any opinion or advice or information obtained from a person or entity referred to in paragraph (h)(i) of this clause;

(j) 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;

(k) generally to do all such other lawful acts and things that are incidental or conducive to the attainment of the Purposes; and

(l) to pay from the income or capital of the Trust Fund any costs or expenses incurred in the course of the Trustee discharging, carrying out or exercising any of its duties and powers.