TE KĀHUI MARU TRUST: TE IWI O MARUWHARANUI

TE RŪNANGA O NGĀTI MARU TRUST

and

THE CROWN

DEED RECORDING ON-ACCOUNT ARRANGEMENTS
in relation to
NGĀTI MARU HISTORICAL CLAIMS

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

THIS DEED is made between

TE KĀHUI MARU TRUST: TE IWI O MARUWHARANUI

TE RŪNANGA O NGĀTI MARU TRUST

and

THE CROWN

1 BACKGROUND

1.1 Ngāti Maru gave Te Rūnanga o Ngāti Maru Trust a mandate to negotiate a deed of settlement with the Crown by resolution at mandate hui held in August 2015.

1.2 The Crown recognised the mandate on 29 March 2016 and Ngāti Maru, Te Rūnanga o Ngāti Maru Trust and the Crown have entered into an agreement in principle.

1.3 Ngāti Maru and the Crown are now in negotiations to settle the Ngāti Maru historical claims.

1.4 The parties acknowledge and agree:

1.4.1 Ngāti Maru established the Te Kāhui Maru Trust: Te Iwi o Maruwharanui by deed dated 13 July 2018;

1.4.2 Te Kāhui Maru Trust: Te Iwi o Maruwharanui will be the post settlement governance entity for the Ngāti Maru settlement; and

1.4.3 the Crown will provide Te Kāhui Maru Trust: Te Iwi o Maruwharanui with a payment on-account of the settlement of the Ngāti Maru historical claims according to the terms and conditions of this deed.

2 ON-ACCOUNT ARRANGEMENTS

ON-ACCOUNT PAYMENT

2.1 Within ten business days of the date of this deed, the Crown will pay to the Te Kāhui Maru Trust: Te Iwi o Maruwharanui $15,000,000 (plus GST if any), being the **on-account payment.**

2.2 The Te Kāhui Maru Trust: Te Iwi o Maruwharanui acknowledges and agrees that:

2.2.1 the on-account payment forms part of the financial and commercial redress to be provided by the Crown in the settlement of Ngāti Maru historical claims;

2.2.2 the on-account payment will be deducted from the financial and commercial redress amount offered by the Crown in the Ngāti Maru settlement;

2.2.3 the on-account payment is made with the intention that it is invested to establish an economic base for Ngāti Maru; and

2.2.4 any interest payable by the Crown to Te Kāhui Maru Trust: Te Iwi o Maruwharanui on the on-account payment will only be payable for the period:

(a) beginning on the date of the agreement in principle; and

(b) ending on the day before the payment date.

2.3 This deed:

2.3.1 records on-account arrangements in relation to the Ngāti Maru historical claims;

2.3.2 subject to clause 2.2, does not settle or otherwise affect those claims; but

2.3.3 may be used by the Crown in any proceedings whatsoever as evidence of redress previously provided by the Crown to Te Kāhui Maru Trust: Te Iwi o Maruwharanui on-account of the settlement of Ngāti Maru historical claims.

SETTLEMENT

2.4 Except as provided in this deed, the parties' rights and obligations remain unaffected.

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3 MISCELLANEOUS

AMENDMENT

3.1 This deed may be amended only by a written amendment signed by the parties.

ENTIRE AGREEMENT

3.2 This deed:

3.2.1 constitutes the entire agreement in relation to the matters in it; and

3.2.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

NO WAIVER OR ASSIGNMENT

3.3 Except as provided in this deed:

3.3.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power; and

3.3.2 a single, or partial, exercise of a right or power under this deed, does not preclude:

(a) a further exercise of that right or power; or

(b) the exercise of another right or power; and

3.3.3 a person may not transfer or assign a right or obligation under this deed.

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4 TAX

INDEMNITY

4.1 The provision of the on-account payment, or an indemnity payment, to Te Kāhui Maru Trust: Te Iwi o Maruwharanui is not intended to be:

4.1.1 a taxable supply for GST purposes; or

4.1.2 assessable income for income tax purposes.

4.2 The Crown must, therefore, indemnify Te Kāhui Maru Trust: Te Iwi o Maruwharanui for:

4.2.1 any GST payable by Te Kāhui Maru Trust: Te Iwi o Maruwharanui in respect of the provision of the on-account payment or an indemnity payment; and

4.2.2 any income tax payable by Te Kāhui Maru Trust: Te Iwi o Maruwharanui as a result of the on-account payment, or an indemnity payment, being treated as assessable income of the Te Kāhui Maru Trust: Te Iwi o Maruwharanui; and

4.2.3 any reasonable cost or liability incurred by Te Kāhui Maru Trust: Te Iwi o Maruwharanui in taking, at the Crown's direction, action:

(a) relating to an indemnity demand; or

(b) under clause 4.13 or clause 4.14.1(b).

LIMITS

4.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment):

4.3.1 Te Kāhui Maru Trust: Te Iwi o Maruwharanui's:

(a) use of the on-account payment or an indemnity payment;

(b) payment of costs, or any other amounts, in relation to the on-account payment; or

(c) receipt of any income from the on-account payment or an indemnity payment.

ACKNOWLEDGEMENTS

4.4 To avoid doubt, the parties acknowledge:

4.4.1 the on-account payment is provided:

(a) on-account of the future settlement redress of Ngāti Maru historical claims in relation to the Treaty of Waitangi; and

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(b) with no other consideration being provided;

4.4.2 nothing in this part is intended to imply that –

(a) the provision of the on-account payment, or an indemnity payment, is:

(i) a taxable supply for GST purposes; or

(ii) assessable income for income tax purposes; and

(b) if Te Kāhui Maru Trust: Te Iwi o Maruwharanui is a charitable trust, or other charitable entity, it receives –

(i) the on-account payment, assets or rights other than for charitable purposes; or

(ii) income other than as exempt income for income tax purposes; and

4.4.3 Te Kāhui Maru Trust: Te Iwi o Maruwharanui is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

CONSISTENT ACTIONS

4.5 Neither Te Kāhui Maru Trust: Te Iwi o Maruwharanui, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 4.

4.6 In particular, Te Kāhui Maru Trust: Te Iwi o Maruwharanui agrees that:

4.6.1 from the payment date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and

4.6.2 neither it, nor any person associated with it, will claim with respect to the provision of the on-account payment, or an indemnity payment:

(a) an input credit for GST purposes; or

(b) a deduction for income tax purposes.

INDEMNITY DEMANDS

4.7 Te Kāhui Maru Trust: Te Iwi o Maruwharanui and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that Te Kāhui Maru Trust: Te Iwi o Maruwharanui may be entitled to an indemnity payment.

4.8 An indemnity demand:

4.8.1 may be made at any time after the payment date; but

4.8.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is:

(a) specified in an assessment; or

(b) a date for the payment of provisional tax; or

(c) otherwise determined; and

4.8.3 must be accompanied by:

(a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and

(b) if the demand relates to GST and the Crown requires, a GST tax invoice.

INDEMNITY PAYMENTS

4.9 If Te Kāhui Maru Trust: Te Iwi o Maruwharanui is entitled to an indemnity payment, the Crown may make the payment to:

4.9.1 Te Kāhui Maru Trust: Te Iwi o Maruwharanui; or

4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, Te Kāhui Maru Trust: Te Iwi o Maruwharanui.

4.10 Te Kāhui Maru Trust: Te Iwi o Maruwharanui must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of:

4.10.1 the due date for payment of the tax; or

4.10.2 the next business day after receiving the indemnity payment.

REPAYMENT

4.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, Te Kāhui Maru Trust: Te Iwi o Maruwharanui must promptly repay to the Crown any amount that:

4.11.1 the Commissioner of Inland Revenue refunds or credits to Te Kāhui Maru Trust: Te Iwi o Maruwharanui; or

4.11.2 Te Kāhui Maru Trust: Te Iwi o Maruwharanui has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

4.12 Te Kāhui Maru Trust: Te Iwi o Maruwharanui has no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

RULINGS

4.13 Te Kāhui Maru Trust: Te Iwi o Maruwharanui must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of the on-account payment.

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CONTROL OF DISPUTES

4.14 If Te Kāhui Maru Trust: Te Iwi o Maruwharanui is entitled to an indemnity payment, the Crown may:

4.14.1 by notice to Te Kāhui Maru Trust: Te Iwi o Maruwharanui, require it to:

(a) exercise a right to defer the payment of tax; and/or

(b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest:

(i) a tax assessment; and/or

(ii) a notice in relation to the tax, including a notice of proposed adjustment; or

4.14.2 nominate and instruct counsel on behalf of Te Kāhui Maru Trust: Te Iwi o Maruwharanui whenever it exercises its rights under clause 4.14.1; and

4.14.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

5 DEFINITIONS AND INTERPRETATION

DEFINED TERMS

5.1 In this deed, unless the context requires otherwise:

agreement in principle means the agreement in principle entered into and dated 20 December 2017 by Ngāti Maru, Te Rūnanga o Ngāti Maru Trust and the Crown recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling Ngāti Maru historical claims; and

assessable income has the meaning given to it by section YA 1 of the Income Tax Act 2007; and

business day means the period of 9am to 5pm on any day other than -

(a) a Saturday or a Sunday; or

(b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; or

(c) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour Day; or

(d) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and

(e) a day that is observed as the anniversary of the province of –

(i) Wellington; or

(ii) Taranaki; and

Crown has the meaning given to it in section 2(1) of the Public Finance Act 1989; and

date of this deed means the date this deed is signed by the parties; and

deed means this deed recording on-account arrangements between Te Kāhui Maru Trust: Te Iwi o Maruwharanui, Te Rūnanga o Ngāti Maru Trust on behalf of Ngāti Maru and the Crown, and that deed as amended from time to time; and

financial and commercial redress means the financial and commercial redress payable by the Crown pursuant to a deed of settlement for the settlement of Ngāti Maru historical claims; and

GST means -

(a) goods and services tax chargeable under the Goods and Services Tax Act 1985; and

(b) includes, for the purposes of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of GST; and

income tax means income tax imposed under the Income Tax Act 2007 and includes, for the purpose of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of income tax; and

indemnity demand means a demand made by Te Kāhui Maru Trust: Te Iwi o Maruwharanui under part 4 for an indemnity payment; and

indemnity payment means a payment made by the Crown to Te Kāhui Maru Trust: Te Iwi o Maruwharanui under part 4; and

Ngāti Maru deed of settlement means the Ngāti Maru deed of settlement of historical claims to be signed between the Crown, Ngāti Maru and the Te Kāhui Maru Trust: Te Iwi o Maruwharanui; and

Ngāti Maru historical claims means every claim, whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the settlement date (as defined in the Ngāti Maru deed of settlement to be entered into between the Crown and Ngāti Maru that Ngāti Maru had at, or at any time before, that date, or may have at any time after that date and that:

(a) is, or is founded on, a right arising -

  (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or

  (ii) under legislation; or

  (iii) at common law (including in relation to aboriginal title or customary law); or

  (iv) from a fiduciary duty or otherwise; and

(b) arises from or relates to acts or omissions before 21 September 1992 -

  (i) by or on behalf of the Crown; or

  (ii) by or under legislation; and

Ngāti Maru settlement means the settlement of the Ngāti Maru historical claims as agreed between the Crown and Ngāti Maru; and

Te Rūnanga o Ngāti Maru Trust means the trust of that name given a mandate by Ngāti Maru to represent it in negotiations with the Crown to settle Ngāti Maru's historical claims; and

on-account payment means the sum referred to in clause 2.1; and

payment date means the date the on-account payment is paid to Te Kāhui Maru Trust: Te Iwi o Maruwharanui in accordance with clause 2.1; and

provision, in relation to the on-account payment, includes its allotting, payment, credit, transfer, vesting, making available, creation, or grant; and

Te Kāhui Maru Trust: Te Iwi o Maruwharanui means the trust of that name established by the Te Kāhui Maru Trust: Te Iwi o Maruwharanui trust deed acting by and through the trustees of that trust; and

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Te Kāhui Maru: Te Iwi o Maruwharanui trust deed means the deed of trust establishing the Te Kāhui Maru Trust: Te Iwi o Maruwharanui dated 13 July 2018 and includes the schedules and any amendments to that deed; and

tax includes income tax and GST; and

tax indemnity means an indemnity given by the Crown under part 4; and

taxable activity has the meaning given to it by section 6 of the Goods and Services Tax Act 1985; and

taxable supply has the meaning given to it by section 2 of the Goods and Services Tax Act 1985; and

use, in relation to the on-account payment or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

INTERPRETATION

5.2 In the interpretation of this deed, unless the context otherwise requires:

5.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed;

5.2.2 defined terms have the meanings given to them by this deed but if there are any inconsistencies between the definitions in this deed and the Ngāti Maru deed of settlement, the definitions in the Ngāti Maru deed of settlement shall prevail;

5.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning;

5.2.4 the singular includes the plural and vice versa;

5.2.5 a word importing one gender includes the other genders;

5.2.6 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted;

5.2.7 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors;

5.2.8 an agreement on the part of two or more persons binds each of them jointly and severally;

5.2.9 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time;

5.2.10 a reference to a monetary amount is to New Zealand currency;

5.2.11 a reference to written or in writing includes all modes of presenting or reproducing words, figures, and symbols in a tangible and permanently visible form;

5.2.12 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;

5.2.13 a reference to the Crown endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives, any legislation;

5.2.14 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the working party and the Crown;

5.2.15 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and

5.2.16 a reference to time is to New Zealand time.

SIGNED as a deed on 28th day of August 2018

SIGNED for and on behalf of

TE KĀHUI MARU TRUST: TE IWI O MARUWHARANUI by the trustees
in the presence of:

Holden Brent Hohaia

Signature of Witness

Tamzyn Rose Pue

Witness Name: Katy Te Amo

Occupation: Negotiation Manage

Address: Wellington

Kiriana Burrows

SIGNED for and on behalf of
TE RŪNANGA O NGĀTI MARU TRUST
by the mandated negotiators

Andrew (Anaru) Waiora Marshall

in the presence of:

Signature of Witness

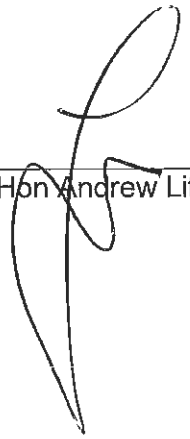
Nathan Dean Peri

Witness Name: Katy Te Amo

Occupation: Negotiation Manager

Address: Wellington

SIGNED for and on behalf of
THE CROWN
by the Minister for Treaty of Waitangi
Negotiations in the presence of:



Hon Andrew Little

Signature of Witness

Witness Name: Alexander Lyons

Occupation: Private Secretary

Address: Parliament Buildings, Wellington

SIGNED for and on behalf of
THE CROWN
by the Minister of Finance only in relation to the indemnities given in part 4 of this deed
in the presence of:

Hon Grant Robertson

Signature of Witness

Witness Name: Angela Bray

Occupation: Senior Private Secretary

Address: Parliament Buildings, Wellington