

THE TRUSTEES OF THE NGĀTI PAOA IWI TRUST

and

THE CROWN

DEED RECORDING ON-ACCOUNT ARRANGEMENTS
in relation to the
NGĀTI PAOA DEED OF SETTLEMENT

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

THIS DEED is made between

The trustees of the Ngāti Paoa Iwi Trust

and

THE CROWN

1 BACKGROUND

- 1.1 Ngāti Paoa gave the Ngāti Paoa Trust Board and Iwi Mandated Negotiators Hauāuru Eugene Rawiri and Morehu Anthony Wilson a mandate to negotiate a deed of settlement with the Crown by resolution at hui held between 13 and 17 March 2011.
- 1.2 The Crown recognised the mandate on 29 June 2011 and the Mandated Negotiators and the Crown entered into an Agreement in Principle Equivalent on 22 July 2011.
- 1.3 Ngāti Paoa and the Crown are in negotiations to settle the Ngāti Paoa historical claims.
- 1.4 The parties acknowledge and agree:
 - 1.4.1 Ngāti Paoa established the Ngāti Paoa Iwi Trust by deed dated 4 October 2013;
 - 1.4.2 The Ngāti Paoa Iwi Trust, through its trustees, will be the post settlement governance entity for the Ngāti Paoa settlement; and
 - 1.4.3 the Crown will provide the trustees of the Ngāti Paoa Iwi Trust with payments on-account of the settlement of the Ngāti Paoa 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 trustees of the Ngāti Paoa Iwi Trust \$0.500 million being the **on-account payment**.
- 2.2 The trustees of the Ngāti Paoa Iwi Trust acknowledge and agree that:
- 2.2.1 the on-account payment forms part of the Ngāti Paoa financial redress amount;
 - 2.2.2 the on-account payment will be deducted from the financial redress amount offered by the Crown to Ngāti Paoa;
 - 2.2.3 any interest payable by the Crown to the trustees of the Ngāti Paoa on the on-account payment will only be payable for the period:
 - (a) beginning on 17 May 2013 being the date the Crown and Ngāti Paoa agreed the financial redress amount; 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 Paoa financial redress amount;
 - 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 the trustees of the Ngāti Paoa Iwi Trust on-account of the financial redress amount.

SETTLEMENT

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

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.

4 TAX

INDEMNITY

- 4.1 The provision of the on-account payment, or an indemnity payment, to the trustees of the Ngāti Paoa Iwi Trust 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 the trustees of the Ngāti Paoa Iwi Trust for:
- 4.2.1 any GST payable by the trustees of the Ngāti Paoa Iwi Trust in respect of the provision of the on-account payment or an indemnity payment; and
 - 4.2.2 any income tax payable by the trustees of the Ngāti Paoa Iwi Trust as a result of the on-account payment, or an indemnity payment, being treated as assessable income of the trustees of the Ngāti Paoa Iwi Trust; and
 - 4.2.3 any reasonable cost or liability incurred by the trustees of the Ngāti Paoa Iwi Trust 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 the trustees of the Ngāti Paoa Iwi Trust'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; and

- (b) with no other consideration being provided;
- 4.4.2 nothing in this part is intended to imply that the provision of the on-account payment, or an indemnity payment, is:
- (a) a taxable supply for GST purposes; or
 - (b) assessable income for income tax purposes; and
- 4.4.3 the trustees of the Ngāti Paoa Iwi Trust 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 the trustees of Ngāti Paoa Iwi Trust, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 4.
- 4.6 In particular, the trustees of the Ngāti Paoa Iwi Trust agree 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 The trustees of the Ngāti Paoa Iwi Trust and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the trustees of the Ngāti Paoa Iwi Trust 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 the trustees of the Ngāti Paoa Iwi Trust are entitled to an indemnity payment, the Crown may make the payment to:
 - 4.9.1 the trustees of the Ngāti Paoa Iwi Trust; or
 - 4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the trustees of the Ngāti Paoa Iwi Trust.
- 4.10 The trustees of the Ngāti Paoa Iwi Trust 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, the trustees of the Ngāti Paoa Iwi Trust must promptly repay to the Crown any amount that:
 - 4.11.1 the Commissioner of Inland Revenue refunds or credits to the trustees of the Ngāti Paoa Iwi Trust; or
 - 4.11.2 the trustees of the Ngāti Paoa Iwi Trust have received but have not paid, and are not required to pay, to the Commissioner of Inland Revenue.
- 4.12 The trustees of the Ngāti Paoa Iwi Trust have no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

RULINGS

- 4.13 The trustees of the Ngāti Paoa Iwi Trust 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.

CONTROL OF DISPUTES

- 4.14 If the trustees of the Ngāti Paoa Iwi Trust are entitled to an indemnity payment, the Crown may:
 - 4.14.1 by notice to the trustees of the Ngāti Paoa Iwi Trust, 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 the trustees of the Ngāti Paoa Iwi Trust 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:

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

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) 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
- (c) the day observed as the anniversaries of the province of Wellington or Auckland;

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

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

deed means this deed recording on-account arrangements between the trustees of the Ngāti Paoa Iwi Trust on behalf of Ngāti Paoa and the Crown, and that deed as amended from time to time;

financial redress amount means the financial redress payable by the Crown pursuant to a deed of settlement for the settlement of Ngāti Paoa historical claims;

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;

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;

indemnity demand means a demand made by the trustees of the Ngāti Paoa Iwi Trust under part 4 for an indemnity payment;

indemnity payment means a payment made by the Crown to the trustees of Ngāti Paoa Iwi Trust under part 4;

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

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

payment date means the date the on-account payment is paid to the trustees of the Ngāti Paoa Iwi Trust in accordance with clause 2.1;

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

Ngāti Paoa Iwi Trust means the trust of that name established by the trustees of the Ngāti Paoa Iwi Trust deed acting by and through the trustees of that trust;

Ngāti Paoa Iwi Trust deed means the deed of trust establishing the Ngāti Paoa Iwi Trust dated 4 October 2013 and includes the schedules and any amendments to that deed;

tax includes income tax and GST;

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

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

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 Paoa deed of settlement, the definitions in the Ngāti Paoa 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.

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

SIGNED by the trustees of the
NGĀTI PAOA IWI TRUST
in the presence of:




Gary Thompson - Chairman

Signature of Witness

Witness Name: *Hayden Solomon*
Occupation: *Policy Manager*
1 Tomlinson St
Address: *Auckland*


Bryce Heron - Initial Trustee

Date: *20 / 6 / 2014*

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

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


Hon Christopher Finlayson



Signature of Witness

Witness Name: **BERNADETTE CONSEIDINE**

Occupation: **PRIVATE SECRETARY**

Address: **WELLINGTON**

Date:

SIGNED for and on behalf of **THE CROWN**
by the Minister of Finance (only in relation
to the tax indemnities)
in the presence of:



Hon Simon William English



Signature of Witness

Witness Name: **Amraere Haukama**

Occupation: **Public Servant**

Address: **Wellington.**

Date: **4 August 2014**