27/6/2009.

Trust Deed

Her Majesty the Queen

Christopher Finlayson
Hera Smith

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Date:

PARTIES

Her Majesty the Queen (*Settlor*)

Christopher Finlayson
Hera Smith (*Trustees*)

BACKGROUND

A The Settlor recognises that Ngati Rangitihi (being a Te Arawa group not represented by the Governance Entity) and Tuhourangi, each has an interest in the Land.

B In accordance with the Deed of Settlement, an undivided one half share of the fee simple estate in the Land is to be vested in the Governance Entity as tenant in common with the Trustees.

C Also in accordance with the Deed of Settlement, an undivided one half share of the fee simple estate in the Land is to be vested in the Trustees as tenant in common with the Governance Entity.

D The Settlor has acknowledged and agreed in the Deed of Settlement that the Trustees will hold the interest in the Land vested in them on trust for the Settlor for a future potential settlement of the Ngati Rangitihi Claims, and will manage the Land with the Governance Entity in accordance with the provisions of the Management Deed.

E Pursuant to the Deed of Settlement the interest in the Land held by the Trust is available for transfer to the Ngati Rangitihi governance entity on the settlement of the Ngati Rangitihi Claims.

F On signing this deed the Settlor has paid $100 to the Trustees to be held upon the trusts and with the powers set out in this deed.

G It is intended that the trust established by this deed will be an organisation named or described in Schedule 4 of the Public Finance Act 1989.

OPERATIVE PART

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms

In this deed (including the *Schedule*), unless the context requires otherwise:

Beneficiary means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Maori Affairs;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Auckland but shall exclude any day in the period commencing 25 December in any year, and ending on 5 January in the following year and shall be deemed to commence at 9.00am and to terminate at 5.00pm;

Claim Property means an undivided one half share of the fee simple estate in the Land. This half share is provided by the Settlor as potential redress for the Ngati Rangitihi Claims which will vest in this Trust on the Settlement Date as defined in the Deed of Settlement;

Claim Property Income means any income received by the Trustees which is derived from the Claim Property;

Deed of Settlement means the Deed of Settlement of the Historical Claims of the Affiliate Te Arawa Iwi/Hapu dated 11 June 2008;

Distribution Date means the date 15 years from the Settlement Date;

Governance Entity means the trustees of Te Pumautanga o Te Arawa Trust, being the Governance Entity established in accordance with the Deed of Settlement;

Income Year means any year or other accounting period ending on 30 June;

Interim Period means the period commencing on the date the Settlor signs this deed and expiring on the date on which two Ngati Rangitihi Trustees are first appointed;

Interim Trustee means the Minister for Treaty of Waitangi Negotiations;

Land means all that land being Sections 1, 2 & 3 Block XII Tarawera Survey District and Sections 1 & 2 SO 354515;

Management Deed means the Deed between the Governance Entity and the Trustees whereby the parties agree to own and manage the Land in a way that recognises the parties' common ownership of the Land;

Ngati Rangitihi means

(a) the iwi of Ngāti Rangitihi, being the collective group composed of individuals descended from one or more Ngāti Rangitihi ancestors

(b) every individual referred to in (a); and

(c) includes any iwi; hapū or group of individuals to the extent that iwi, hapū, whanau or group of individual is composed of individuals referred to in (a);

Ngati Rangitihi Claims means every claim made by Ngāti Rangitihi or by any representative entity of Ngāti Rangitihi, and that

(d) is founded on a right arising from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles, under legislation, at common law (including aboriginal title or customary law), from a fiduciary duty or otherwise;

(e) and 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 any legislation; and

(f) accordingly includes every claim to the Waitangi Tribunal that relates specifically to Ngāti Rangitihi, including:

(i) Wai 524

(ii) Wai 996

(iii) Wai 1116

(iv) Wai 1117

(v) Wai 1118

(vi) Wai 1119

(vii) Wai 1120

(g) All other claims to the Waitangi Tribunal, insofar as they relate to Ngāti Rangitihi.

Ngati Rangitihi governance entity means an entity established in accordance with the deed of settlement that settles the Ngati Rangitihi Claims to receive redress under that deed, as notified in writing by the Settlor to the Trustees;

Ngati Rangitihi Trustee means a trustee appointed under clause 9.1(g);

Related Person for the purposes of *clause 9.5* and in relation to any business to which section CB(1)(e) of the Income Tax Act 1994 applies, means a person specified in paragraphs (i) to (iv) of the second proviso to that section, the persons currently specified being:

(h) a settlor or trustee of the trust by which the business is carried on; or

(i) a shareholder or director of the company by which the business is carried on; or

(j) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or

(k) that person, where he or she and the settlor, trustee, shareholder or director already mentioned in this definition, are associated persons for the purposes of the Income Tax Act 1994;

Settlement Act means such Act or Acts of Parliament that may be passed so as to give effect to the deed of settlement that settles the Ngati Rangitihi Claims;

Settlement Date has the meaning set out in the Deed of Settlement;

Settlor means:

(a) for the purposes of the vesting of the Claim Property in the Trustees, execution of this deed and appointment of the initial Trustees and the first two Ngati Rangitihi Trustees, Her Majesty the Queen in right of New Zealand acting by and through the Minister for Treaty of Waitangi Negotiations; and

(b) for all subsequent issues relating to the Claim Property or this deed (including the appointment of replacement Trustees from time to time and giving directions to the Trustees) Her Majesty the Queen in right of New Zealand acting by and through the Minister of Maori Affairs;

Teleconference Meeting for the purposes of *rule 17* in the *Schedule* means a meeting where the participants are contemporaneously linked by

telephone or some other means of instant audio or audio and visual communication;

Termination Date means the date on which the Trust is terminated or dissolved pursuant to *clause 5.2*;

Trust means the trust created by this deed;

Trust Deed when appearing in the rules set out in the *Schedule*, means this deed; and

Trust Fund means the sum of $100 referred to in *Recital F* and includes any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees after this deed has been signed, including the Claim Property and the Claim Property Income, with the intention that it be held by the Trustees subject to the trusts and other provisions set out in this deed.

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

(a) a reference to "Trustees" is a reference to the trustees for the time being of the Trust Fund, whether original, additional or substituted, and including the Interim Trustee;

(b) a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;

(c) a reference to the *Schedule* is a reference to the schedule forming part of this deed;

(d) headings appear as a matter of convenience and shall not affect the construction of this deed; and

(e) if there is a conflict between the rules set out in the *Schedule* and the other provisions of this deed and other provisions of this deed shall prevail.

2 CREATION OF THE TRUST

2.1 Declaration of Trust

The Settlor directs, and the Trustees acknowledge, that the Trustees shall hold the Trust Fund upon the trusts and with the powers set out in this deed.

2.2 **Name of Trust**

The trust created by this deed is to be known as the "Te Ariki Trust".

3 **PURPOSES**

The Trust is established for the following purposes:

3.1 **Hold Claim Property**

To hold the Claim Property and the Claim Property Income under the terms of this deed and until the Claim Property is vested or sold in accordance with *clause 5.1* (whereupon the trust established by this deed will terminate in accordance with *clause 5.2*).

3.2 **Manage and Maintain Claim Property**

To manage and maintain or procure management and maintenance of the Claim Property with the Governance Entity in accordance with the Management Deed until the time of such vesting.

3.3 **Use Claim Property Income**

To use any Claim Property Income to meet the costs of holding the Claim Property.

3.4 **Transfer Claim Property on Termination**

To transfer the Claim Property and unexpended Claim Property Income in the manner provided for in *clause 5.1*.

4 **INCOME TRUSTS**

The Trustees shall deal with all Claim Property Income and Trust income arising from the Trust Fund in an Income Year in accordance with the provisions of this *clause 4*.

4.1 **Administration of Trust**

The Trustees shall first pay from any Claim Property Income the costs of administering the Trust.

4.2 **Power to Pay, Apply or Appropriate Income**

The Trustees may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the Claim Property Income as they think fit for or towards one or more of the purposes of the Trust and in accordance with the objects of the Trust. For the avoidance of doubt, this power specifically:

(a) includes the right to apply any Claim Property Income to the costs of managing and maintaining the Claim Property and to payment of any tax on the Claim Property Income; and

(b) excludes the right to apply any Claim Property Income to any audit fees incurred in respect of the Trust.

4.3 Powers to Retain or Accumulate Income

(a) The Trustees may retain or decide to retain part of the Claim Property Income arising from the Trust Fund in an Income Year to establish or augment any reserve fund which may be used at any later time for any purpose for which the Claim Property Income may be used.

(b) The Trustees may accumulate or decide to accumulate all or part of the Claim Property Income arising from the Claim Property in an Income Year. The accumulated income shall become part of the Trust Fund and is held on the same trusts and with the same powers. But the Trustees may still resort to the accumulated Claim Property Income at any time and pay, apply or appropriate all or part of its as if it were Claim Property Income.

5 VESTING AND TERMINATION

5.1 Vesting or sale of Claim Property

(a) If, on or before the Distribution Date:

(i) a deed of settlement of the Ngati Rangitihi Claims has been entered into between the Settlor and Ngati Rangitihi; and

(ii) the Claim Property is to be vested in Ngati Rangitihi pursuant to the terms of the deed of settlement,

then the Trustees will arrange for the vesting of the Claim Property in the Ngati Rangitihi governance entity upon and in accordance with the direction of the Settlor and will comply with all requirements of the Settlement Act in relation to the Claim Property.

(b) If a deed of settlement has not been entered into between the Settlor and Ngati Rangitihi by the Distribution Date in accordance with *clause 5.1(a),* but the Settlor believes, on reasonable grounds, that:

(i) a deed of settlement of the Ngati Rangitihi Claims will be entered into between the Settlor and Ngati Rangitihi; and

(ii) the Claim Property will be vested in Ngati Rangitihi pursuant to the deed of settlement,

then the Trustees will arrange for the Claim Property to be vested in the trustees of a trust to be established by the Settlor in accordance with the direction of the Settlor:

(i) for the benefit of Ngati Rangitihi; and

(ii) whose trustees will be representatives of Ngati Rangitihi,

and with effect from the Distribution Date and until such vesting is effected, the Trustees will hold the Claim Property on trust for the benefit of such trust to be established by the Settlor.

(c) If the Claim Property is not vested in accordance with *clauses 5.1(a)* or *(b)* by the Distribution Date, then the Trustees shall offer to sell the Claim Property to the Governance Entity in accordance with the procedure set out in clause 8 of the Management Deed, as if the right of first refusal in the Management Deed applied, and if the offer is accepted the Trustees shall sell the Claim Property to the Governance Entity upon and in accordance with the direction of the Settlor.

(d) If the Claim Property is not vested or sold in accordance with *clauses 5.1(a), (b)* or *(c),* the Trustees shall vest the Claim Property in any person upon and at the direction of the Settlor.

(e) The Trustees will not apply to the Court under the Property Law Act 1952 for partition of the sale of or disposal of the Claim Property, or sell or otherwise dispose of the Claim Property, except in accordance with the Management Deed and the directions of the Settlor.

(f) The Trustees will, at the time of any vesting, sale or other disposal, apply any capital or Claim Property Income held by the Trustees in accordance with directions from the Settlor.

5.2 **Termination**

The Trust shall terminate and dissolve upon the vesting or sale of the Claim Property in accordance with the requirements of *clauses 5.1(a), (b), (c)* or *(d).*

5.3 **Perpetuities**

The perpetuity period for the Trust is the period that commences on the date of this deed and ends eighty years less one day after that date of

this deed, that period being within the perpetuities period permitted by Section 6 of the Perpetuities Act 1964.

6 FUNDING AND FEES

6.1 Funding from Settlor

The Settlor agrees to provide funding to the Trustees in the manner prescribed in this *clause 6* for the purposes of carrying out their functions and duties under this deed. For the avoidance of doubt, the Trustees may apply the funding to meet expenses which would otherwise be met out of Claim Property Income under *clause 4.3(b)* if no Claim Property Income is available to meet that expense.

6.2 Agreed Budget

Such funding shall be provided in accordance with agreed annual budgets submitted to the Settlor by the Trustees and approved by the Settlor.

6.3 Submission of Draft Budget

The Trustees shall, no later than five months prior to the commencement of a financial year, provide to the Chief Executive Officer of Te Puni Kokiri (on behalf of the Settlor), or such other person as the Settlor may nominate in writing, a draft budget of expenditure for the financial year to which it relates, which shall also include indicative estimates of expenditures for the following three years. In the case of the period immediately following the date of the establishment of the Trust, the draft budget shall be submitted as soon as reasonably practicable after the date of the establishment of the Trust. If required by the CEO or other nominated person, the Trustees will provide any further details relating to the Budget as may reasonably be required by the CEO.

6.4 Provision of Funding

Once the Settlor has approved the budget (with or without any amendments), the Settlor will provide to the Trustees the amount shown in the approved budget (less any surplus remaining from the previous year's budget, if any) in such manner and at such times as the Settlor and the Trustees agree.

6.5 Refund on Termination Date

If, at the Termination Date, any amount provided to the Trustees under *clause 6* has not been spent, such amount shall be forthwith refunded to the Settlor.

6.6 Trustee's Fees

In addition to the funding provided consistently with *clause 6.4*, the Settlor will pay to each Trustee such trustee's fee as may be determined from time to time by the Settlor. Such fees shall be at the same level for each Trustee, apart from the chairperson of Trustees for whom the level of fees may be greater than that for the other Trustees to reflect the more onerous duties of the chairperson of Trustees.

6.7 Provision of Information

The Trustees shall provide to the Settlor, upon request, any information concerning all or any of the following:

(a) the expenditure of the Trust during any period specified in the request (and a comparison of actual expenditure against budgeted expenditure);

(b) any Claim Property Income received during any period specified in the request;

(c) any contracts or similar arrangements entered into by the Trust during any period specified in the request; and

(d) any other information relating to the administration of the Trust as may be required for the Minister responsible for the Trust to answer any Parliamentary question.

7 FINANCIAL STATEMENTS

7.1 Full and Correct Account

The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets, liabilities, and funds are kept. These accounts shall identify and show separately the Claim Property Income and expenditure attributable to the Claim Property.

7.2 True and Fair View

The Trustees shall, after the end of each financial year, have prepared financial statements including a balance sheet and income and expenditure account and notes thereto, giving a true and fair view of the financial affairs of the Trust for the financial year.

7.3 Auditing of Financial Statements

The financial statements shall be audited by the Auditor-General.

7.4 **Auditor's Certificate**

The auditor shall certify whether the financial statements are properly drawn up and give a true and fair view of the financial affairs of the Trust for the financial year.

8 **RULES**

The rules (with any valid alterations) set out in the *Schedule* which govern the appointment, retirement and proceedings of the Trustees subject to the provisions of this deed, will bind the Trustees.

9 **GENERAL PROVISIONS**

9.1 **Appointment of New Trustees**

(a) During the interim Period there shall be two trustees and after the Interim period there shall be three Trustees.

(b) At all times the Trustees shall be appointed by the Settlor (*the Appointer*).

(c) One of the Trustees shall be appointed by the Appointer as the chairperson of Trustees.

(d) To be appointed or to continue in office a Trustee must, as at the date of appointment and throughout the Trustee's term of office:

(i) have the particular skills and expertise that are required of a Trustee, having regard to the purposes of the Trust and the activities that the Trust undertakes or is likely to undertake; and

(ii) not otherwise be disqualified from holding office as a Trustee under *rule 4 of Schedule 1*.

(e) During the Interim Period one of the Trustees shall be the Interim Trustee.

(f) At least one of the Trustees shall be a representative of the Department of Conservation or its successor.

(g) Two of the Trustees shall be representatives of Ngati Rangitihi.

(h) On the appointment of the first two Ngati Rangitihi Trustees, the office of the Interim Trustee is automatically terminated.

(i) Notice in writing shall be given promptly by the Settlor to the Ngati Rangitihi Governance Entity (when it is established) and the

Governance Entity, of any removal or appointment of a Trustee and/or the appointment of the chairperson of Trustees.

(j) The statutory power of appointment of new Trustees shall be vested in the Appointer.

9.2 **Alterations to Deed**

(a) This deed may be altered only by a resolution of all the Trustees present and voting at a duly convened and conducted meeting of the Trustees and no such resolution shall be of any effect unless the Settlor has given prior written notice to the Trustees that the Settlor consents to the proposed alteration to this deed.

(b) The secretary of the Trust shall give each Trustee written notice of any proposed resolution for the alteration of this deed at least 10 Business Days (or such lesser period as the Trustees agree) before the date of the meeting at which it is to be considered. Such written notice shall be accompanied by evidence that the approval of the Settlor has been given.

9.3 **Advice of Counsel**

If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister or solicitor of the High Court of New Zealand of at least seven years' standing without being liable to the Beneficiary. This right to obtain and act upon a barrister's or solicitor's opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

9.4 **Prohibition of Benefit or Advantage**

In the carrying on of any business under this deed, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related person, in his or her capacity as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence that determination of:

(a) the nature or amount of that benefit, advantage or income; or

(b) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

9.5 **Liability of Trustees**

A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

9.6 **Indemnity**

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust (other than the Claim Property) against:

(a) any liability which he or she incurs in successfully defending any criminal proceedings issued because of his or her actions or omissions in relation to the Trust; and

(b) any liability of the Trustee or officer or employee of the Trust for any act done or omission made in the Trustee's capacity as a Trustee or in the course of the officer's or employee's carrying out his or her functions as an officer or employee of the Trust (other than any criminal liability, any liability of any kind described in *clause 9.5* or any liability for breach of fiduciary duty), including all costs the Trustee incurs in defending or settling any claim or proceedings relating to such liability.

9.7 **Reimbursement for Out of Pocket Expenditure**

The Trustees shall also be entitled to be reimbursed for out of pocket expenditure properly incurred by the Trustees on behalf of the Trust in the course of the Trustee's duties including reasonable travelling and accommodation expenses.

9.8 **Charges**

If any of the Trustees is engaged in a profession or business, that Trustee may charge fees for work done by the Trustee or that Trustee's firm (whether or not the work is of a professional or business nature) on the same basis as if that Trustee were not one of the Trustees but employed to carry out the work on their behalf.

9.9 **Delegation by Interim Trustee**

The Interim Trustee may, by written notice given to the other Trustees, delegate all or any of the Interim Trustee's powers, duties and responsibilities to another person identified in the written notice.

9.10 **Winding up of a Trust**

This Trust shall terminate on the Termination Date unless extended for a further period or periods up to a maximum aggregate period of five years. Any extension shall be effected by a resolution of all the Trustees present and voting at a duly convened and conducted meeting of the Trustees and only with the prior written agreement of the Settlor.

10 GENERAL POWERS

10.1 The Trustees may exercise the powers, authorities and discretions conferred by this deed in addition to, and not so as to limit, the powers, authorities and discretions conferred upon trustees generally by the Trustee Act 1956.

10.2 Notwithstanding any provision in this deed, the Trustees shall comply with the provisions of the Management Deed. If there is a conflict between the provisions of this deed and the Management Deed, the provisions of the Management Deed shall prevail.

11 POWERS

Subject to *clause 10.2*, the Trustees shall have the following powers and may exercise them either alone or with any other person(s):

11.1 **To Invest**

(a) subject to paragraph *(b)*, to invest the Trust Fund and the income from it in any form of investment, in accordance with the Trustee Act 1956 and to vary any such investment from time to time and to keep separate accounting records for the income from the Claim Property. Where, for the time being, there is more than one person acting as a trustee of the Trust Fund, and one or more, but not all, of them is or are engaged in a profession, employment or business which is or includes acting as a trustee or investing money on behalf of others, then in exercising any power of investment, that trustee or those trustees (as the case may be) shall, in terms of section 13D(1) of the Trustee Act 1956, not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that trustee or those trustees (as the case may be) shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others; and

(b) any investment must be in accordance with written directions on investment notified in writing from time to time by the Settlor, or otherwise only with the written consent of the Settlor.

11.2 **To Borrow**

To borrow any money at whatever rate of interest and upon whatever other terms and conditions the Trustees may think fit. The Trustees may not give security for repayment over the entire Trust Fund or any part of it.

11.3 **To Maintain Claim Property**

To maintain and manage the Claim Property in accordance with the Management Deed including the engagement of any contractors or agents to undertake the maintenance and management of the Claim Property. For those purposes, the Trustees may pay and apply any of the income of the Trust Fund as they think fit, subject to *clause 4.1*.

11.4 **Capital, Income and Blended Funds**

Subject to *clause 4* and *clause 6*, to determine whether any money is to be considered as capital or income, and which expenses should be paid out of capital and out of income respectively, and to apportion blended funds. Each determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund.

11.5 **Depreciation or Replacement Funds**

Subject to *clause 4* and *clause 6*, to set up and maintain any depreciation or replacement funds for any purpose the Trustees may consider advisable, and in this regard to determine in their discretion:

(a) the amount of income to be credited from time to time to any of those funds; and

(b) whether those funds are income or capital.

11.6 **Bank Accounts**

To open any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), and to overdraw any such account without giving security. The Trustees may also make arrangements with any bank for any one or more of the following persons to operate on any of the Trustees' accounts at that bank:

(a) the Trustees; and

(b) any delegate(s) named in writing by all the Trustees.

11.7 **To Insure**

To insure any building or other insurable property forming part of the Claim Property to any amount up to its full insurable value, or at the Trustee's option, up to its full replacement value, against destruction or damage by fire, earthquake, fire following earthquake and such other risks as the Trustees think fit. The Trustees may pay the premiums out of income as they think fit, subject to *clause 4.1*.

11.8 **To Waive Debts**

Without being liable for loss, to waive any debts due to the Trust Fund, either absolutely or on such terms as the Trustees think expedient.

11.9 **To Deposit Funds**

To deposit all or part of the Trust Fund in any currency in a savings or other interest or non-interest bearing account with any bank, trust, company or other financial or investment institution in any jurisdiction in the world. In making any deposit the Trustees shall not be liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

11.10 **To Hold the Trust Fund Uninvested**

To hold any part of the Trust Fund uninvested and in any currency for as long as the Trustees think fit without being liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

11.11 **To Protect or Enhance Assets**

To enter into any type of contract whatever to protect, maintain or enhance the value of any assets acquired or held by the Trustees or which they have the right to acquire or hold.

11.12 **To Pay Taxes, Rates and Other Expenses**

To pay all rates, taxes and assessments (including Goods and Services Tax) charged upon the Claim Property and any income tax payable in respect of any Claim Property Income.

11.13 **To Apply for and Accept New Leases and Licences**

To apply for and accept new leases and licences, and amalgamate, surrender, convert and change tenures of leases and licences, and in particular, to duly execute and register all leases and licences prescribed for execution and registration by the Trustees in the Deed of Settlement.

11.14 **To Execute and Register Encumbrances**

To create, execute and register new covenants, easements and other encumbrances, and in particular, to duly execute and register all covenants, easements and other encumbrances prescribed for execution and registration by the Trustees in the Deed of Settlement.

12 INDEMNITY BY SETTLOR

The Settlor agrees that, in the event that any Trustee, officer or employee of the Trust incurs a liability for which that person is entitled to be indemnified under *clause 9.7* but cannot be indemnified or fully indemnified under that clause because the assets or funds available to meet such indemnity are not sufficient to do so, the Settlor will indemnify the Trustee against the liability (or so much of it as is not indemnified under *clause 9.7*). As a condition of the provision of such indemnity, the Trustee shall:

(a) notify the Settlor immediately the Trustee becomes aware of any actual or threatened actions, proceedings, claims or demands, or any facts or circumstances likely to give rise to a claim against the Trustee for which the Trustee may be entitled to the indemnity under this *clause 12*;

(b) fully consult with the Settlor on the steps to be taken, if any, in defending such actions, proceedings, claims or demands;

(c) give the Settlor and its representatives (including legal representatives) such information and assistance and co-operation as may reasonably be required, having regard to the interests of the Trustee and the Settlor;

(d) if required by the Settlor, ensure that the proceedings are conducted in a manner approved by the Settlor; and

(e) obtain the Settlor's written consent, which consent will not be unreasonably withheld before incurring any defence costs or making any settlement or compromise.

13 COMPLIANCE WITH PUBLIC FINANCE ACT 1989

For so long as the Trust is an organisation named or described in Schedule 4 of the Public Finance Act 1989, the Trustees shall ensure that the Trust complies with the requirements of that Act and the Official Information Act 1982.

EXECUTION

Executed on

Signed for and on behalf of **Her Majesty the Queen** in right of New Zealand by the Minister for Treaty of Waitangi Negotiations

C. J. Finlayson

Hon Christopher Finlayson

Signed in the presence of

Witness signature

Marian Smith

Full name (please print)

Private Secretary

Occupation (please print)

Reikorangi, Waikanae

Address (please print)

Signed by **Christopher Finlayson** in the presence of

C. J. Finlayson

Christopher Finlayson

Witness signature

Marian Smith

Full name (please print)

Private Secretary

Occupation (please print)

Reikorangi, Waikanae

Address (please print)

Signed by **Hera Smith** in the presence of

H. Smith

Hera Smith

L Fraser

Witness signature

Leilani Fraser

Full name (please print)

Public Servant

Occupation (please print)

Owhata, Rotorua

Address (please print)

SCHEDULE 1 – RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

PART I – CONSTITUTION OF THE TRUSTEES

1 The Trustees

The initial Trustees shall be Christopher Finlayson and Hera Smith and will be deemed to have been appointed by the Settlor pursuant to *clause 9.1* of the Trust Deed. Hera Smith will be deemed to have been appointed as chairperson of Trustees by the Settlor pursuant to *clause 9.1* of the Trust Deed.

2 Term of Office

The Interim Trustee shall hold office during the Interim Period. Otherwise, a Trustee shall hold office for a term expiring three years after that Trustee's date of appointment unless he or she ceases to hold office under *rule 4*.

3 Quorum

Two Trustees shall constitute a quorum at meetings of the Trustees.

4 Termination of Office

A Trustee shall cease to hold office if he or she:

(a) retires from office by giving notice to the Trustees or the secretary of the Trust;

(b) is removed from office by the Appointer;

(c) completes his or her term of office;

(d) refuses to act;

(e) is absent without leave from three consecutive ordinary meetings of the Trustees;

(f) becomes physically or mentally incapacitated to the extent that in the opinion of the other Trustees, expressed in a resolution, he or she is unable to perform the duties of a Trustee properly;

(g) becomes bankrupt or makes any composition or arrangement with his or her creditors;

(h) is convicted of an indictable offence;

(i) in the opinion of the other Trustees, expressed in a resolution, is for any other reason unfit to carry out the duties of a Trustee;

(j) no longer meets the criteria set out in *clause 9.1* of the Trust Deed.

5 **Record of Changes of Trustees**

Upon every appointment, retirement, re-appointment or termination of office of any Trustee the Trustees will ensure that an entry is made in the minute book of the Trust to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Trustees are satisfied.

6 **Validity of Proceedings**

Where, for any reason, a Trustee is not properly appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which he was present as a Trustee or committee member) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).

7 **Appointment of Secretary and Others**

The Trustees may appoint a secretary and any other officers or employees that the affairs of the Trust may require on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

8 **Do all other Necessary or Desirable Things**

The Trustees may, subject to *clause 11* of the Trust Deed, do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Trust.

PART II – ADMINISTRATIVE PROVISIONS

9 **Ordinary Meetings**

The Trustees shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, but in any event at least quarterly in each Income Year.

10 **Special Meetings**

A special meeting may be called at any time by one or more Trustees.

11 Notice of Meetings

11.1 Written notice of every ordinary or special meeting, shall be either hand-delivered, posted or sent by facsimile to each Trustee at least five Business Days before the date of the meeting. The secretary or some other person acting under the direction of the Trustees or, in the case of a special meeting, acting under the direction of the Trustee(s) calling the meeting, shall give the notice of the meeting. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.

11.2 Every notice of a meeting shall state the place, day and time of the meeting, and in the case of a notice of a special meeting, shall also state the subject-matter of the meeting.

11.3 The requirement for notice of a meeting may be waived if all of those Trustees who are for the time being in New Zealand give their written consent to such a waiver.

12 Chairperson

The chairperson of Trustees shall take the chair at all the meetings of the Trustees. If the chairperson cannot be present, or is not present within 10 minutes of the time appointed for any meeting, the Trustees present shall elect one of their number to be chairperson of the meeting.

13 Adjournment

If a quorum is not present within 30 minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. The chairperson may adjourn any meeting on the adoption of a resolution for its adjournment.

14 Committees

The Trustees may appoint sub-committees, ad hoc committees or executive committees as they may from time to time think expedient for carrying out the purposes of the Trust. Any such committee may co-opt any other person, whether a Trustee or not, to be a member of that committee. Subject to these rules and to any directions that the Trustees might give, each committee may regulate its own procedure.

15 Resolutions

15.1 Except where these rules or the Trust Deed provide otherwise, a resolution is validly made when it is passed by a simple majority of those present and voting at a duly convened and conducted meeting of the Trustees or of a committee (as the case may be).

15.2 The Trustees may vary or cancel any resolution at an ordinary or special meeting.

15.3 A written resolution signed by all the Trustees or by all the members of a committee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees or of that committee (as the case may be). Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees or members of the committee (as the case may be).

16 Minutes

16.1 The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.

16.2 Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting shall be evidence of those proceedings.

16.3 Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

17 Teleconference Meetings

For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum, shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:

17.1 All of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;

17.2 Throughout the Teleconference Meeting each participant shall be able to hear each of the other participants taking part;

17.3 At the beginning of the Teleconference Meeting each participant shall acknowledge his or her presence for the purpose of that meeting to all the others taking part;

17.4 A participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first

obtaining the chairperson's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the Teleconference Meeting unless he or she leaves the meeting with the chairperson's express consent;

17.5 Where any resolution is put to the Teleconference Meeting, the Chairperson shall require that each participant individually exercise his or her vote by saying whether he or she votes for or against the resolution or abstains from voting; and

17.6 A minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting and by the secretary or person acting as a secretary.

18 Reimbursement of Expenses

Each Trustee or committee member shall be entitled to be reimbursed out of the assets of the Trust for all reasonable expenses which he or she properly incurs in administering the Trust.

19 Reporting and Financial Statements

The Trustees shall cause to be prepared annual reports and financial statements in accordance with the provisions of the Public Finance Act 1989. Copies of the annual reports and financial statements shall be provided on each occasion they are prepared to the Settlor.

20 Control of Funds

All money received by or on behalf of the Trust shall be paid immediately to the credit of the Trust in an account or accounts with a bank or banks selected from time to time by the Trustees. All cheques and other negotiable instruments, withdrawal slips and receipts for money shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) on behalf of the Trust in such manner as the Trustees decide from time to time.