

**DEED OF AMENDMENT AND RESTATEMENT
OF THE TRUST DEED ESTABLISHING THE TOITU NGATI POROU TRUST**

BY **Te Runanganui o Ngati Porou Trustee Limited**, a duly incorporated company having its registered office at Rainey Collins, Level 19, 113-119 The Terrace, Wellington 6014 acting in its capacity as the settlor of the Toitu Ngati Porou Trust (**Settlor**)

BACKGROUND

- A. The Toitu Ngati Porou Trust (**Trust**) was settled by the Settlor by way of trust deed dated 16 June 2013 (**Trust Deed**). Toitu Ngati Porou Trustee Limited (**Trustee**) was appointed as, and continues to be, the sole trustee of the Trust.
- B. The Settlor may amend the Trust Deed by deed. Following review of the Settlor's trust deed and another subsidiary constitution within the Ngati Porou Group, the Settlor has decided to amend the Trust Deed.
- C. The Settlor now enters into this deed of amendment and restatement of the Trust Deed to record and give effect to the amendments approved by the Settlor and to restate the Trust Deed in its entirety.

COVENANTS

1. Definitions

- 1.1 In this deed, **Effective Date** means the date of this deed. Unless otherwise defined in this deed, capitalised terms shall have the meaning given to those terms in the Trust Deed.

2. Amendment and restatement of Trust Deed

- 2.1 The Trust Deed shall, with effect on and from the Effective Date, be amended and restated in the form set out in the schedule to this deed so that all matters relating to the Trust shall be governed by, and construed in accordance with, the terms in the schedule.

3. Confirmation of correct process and ongoing obligations

- 3.1 The Trustee confirms that the amendments in the schedule were made with the approval of an ordinary resolution of Elected Representatives, being the directors of the Settlor, and the amendments comply in all respects with the requirements of, and limitations in, clause 16 of the Trust Deed.
- 3.2 Except to the extent set out in this deed, the provisions of the Trust Deed and the various covenants and obligations of the Trustee are hereby ratified and confirmed and shall remain in full force and effect.

DATED this 14th **day of** December **2020**

SIGNED by Te Runanganui o Ngati Porou)
Trustee Limited in its capacity as the)
Settlor by)

Name: SELNHYN T PARATA
Director

Name: Rei Kohere
Director

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SCHEDULE

TRUST DEED

ESTABLISHING

TOITU NGATI POROU

Dated

2020

Rule
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**TOITU NGATI POROU
AMENDED AND RESTATED TRUST DEED
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**RAINEY COLLINS
L A W Y E R S**

TRUST DEED of TOITU NGATI POROU

This Trust Deed is amended and restated as at

2020

Between

Te Runanganui o Ngati Porou Trustee Limited, a duly incorporated company (Company number 3179347) in its capacity as trustee of Te Runanganui o Ngati Porou ("**Settlor**")

and

Toitu Ngati Porou Trustee Limited, a duly incorporated company (Company number 4452818) ("**Trustee**")

NOW THIS DEED RECORDS:

INTRODUCTION

- A.** The Settlor is the post-settlement governance entity for Ngati Porou under the Ngati Porou Claims Settlement Act 2012.
- B.** The Settlor is the trustee of Te Runanganui o Ngati Porou under the Runanganui Trust Deed.
- C.** The Runanganui Trust Deed requires the Settlor to establish a subsidiary, or subsidiaries, the objective and sole purpose of which will be to use and administer on behalf of Te Runanganui o Ngati Porou such of that trust's assets as may be transferred or allocated to it or them for the purposes of conducting or otherwise undertaking certain cultural development activities of the Ngati Porou Group.
- D.** The Trustee has been appointed by the Settlor to be the trustee of a trust to be known as Toitu Ngati Porou and established under this Deed.
- E.** In order to establish the Trust, the Settlor has paid to the Trustee the sum of \$10.00 the sum of which the Trustee agrees to hold upon the trusts evidenced by this Deed.
- F.** In accordance with the Runanganui Trust Deed, the Settlor will apply in each Income Year such portion of its assets as it may determine to the Trustee to be held upon the trusts evidenced by this Deed.

1. ESTABLISHMENT, PURPOSE AND PRINCIPLES OF TOITU NGATI POROU

1.1 Toitu Ngati Porou Established

The trust established by this Deed is to be known as Toitu Ngati Porou. The Settlor and the Trustee each declare that the Trustee will hold and administer the Trust Funds upon the trusts and for the Cultural Development Activities on the terms set out in this Deed.

1.2 Trust Funds

The Settlor has paid to the Trustee the sum of \$10.00 to constitute the initial Trust Funds and the Trustee acknowledges the receipt of that sum. The Trustee declares that it holds the sum of \$10.00 together with all other money and property which may be added to it by way of capital or income upon the trusts and with the powers set out in this Deed.

1.3 Purpose

The purpose of Toitu Ngati Porou is to receive, use and administer the Trust Funds exclusively for Cultural Development Activities.

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1.4 Trust governance

Subject to *clause 1.3* of this Deed, Toitu Ngati Porou shall be governed and administered by and in accordance with this Deed.

1.5 Principles

Subject to *clause 1.3* of this Deed, Toitu Ngati Porou shall, in giving effect to Toitu Ngati Porou's Purpose, be guided by the following principles:

- (a) the Trustee is to act in the interests of all Members of Ngati Porou – Nga uri o nga whanau hapu o Ngati Porou mai i Potikirua ki Te Toka a Taiau;
- (b) Te reo ake o Ngati Porou me ona tikanga are to be fostered; and
- (c) the Trustee is to act in accordance with the relevant Ngati Porou tikanga to achieve the best possible standards of stewardship.

1.6 Amendment of purpose

If, by reason of any alteration in the law relating to income tax, it is at any time necessary to amend the purpose in *clause 1.3* in order to preserve the right to exemption from income tax of the kind referred to in sections CW 41 and CW 42 of the Income Tax Act 2007, the purpose may be amended by the Settlor by deed to the extent necessary so long as the amendment is not inconsistent with:

- (a) Te Runanganui o Ngati Porou's purposes and principles as set out in clauses 1.6 and 1.9 of the Runanganui Trust Deed; and
- (b) clause 1.3 of the seventh schedule to the Runanganui Trust Deed.

2. APPLICATION OF INCOME AND CAPITAL

2.1 Application of income and capital

To achieve Toitu Ngati Porou's Purpose and subject to any other requirements in this Deed:

- (a) the Trustee may, at any time, after payment of, or provision for, all reasonable costs, charges and expenses of the Trustee in respect of the establishment, management and administration of Toitu Ngati Porou, pay or apply all or any of the income of Toitu Ngati Porou for Toitu Ngati Porou's Purpose; and
- (b) the Trustee may, at any time, pay or apply all or any of the capital of Toitu Ngati Porou for Toitu Ngati Porou's Purpose.

2.2 Business income

Any income derived by Toitu Ngati Porou, directly or indirectly, from a business (within the meaning of section CW 42 of the Income Tax Act 2007) carried on by, or for, or for the benefit of Toitu Ngati Porou must be applied to Cultural Development Activities within New Zealand.

3. MAJOR TRANSACTIONS

3.1 Restriction on Major Transactions

Toitu Ngati Porou and any Subsidiary must not enter into a Major Transaction unless notice is given to the Adult Members of Ngati Porou in accordance with rule 6 of the Fourth Schedule to the Runanganui Trust Deed, and that Major Transaction:

- (a) is approved by way of Special Resolution of Members; or
- (b) is contingent upon approval by way of Special Resolution of Members.

3.2 Approval for transactions

If more than half of the value of the Trust Funds are dealt with in a manner described in (a)-(c) of the definition of Major Transaction in *clause 20.1* of this Deed, then the Trustee must seek Te Runanganui o Ngati Porou's approval of the transaction.

4. TRUSTEE'S POWERS AND DUTIES

4.1 The Trustee shall have all the powers and duties set out in the *Second Schedule*.

5. ESTABLISHMENT BOARD MEMBERS

5.1 Establishment Board Members

The Establishment Board Members shall be the shareholders and directors of the Trustee at the date of this Deed.

5.2 Removal of the Establishment Board Members

Each Establishment Board Member shall retire from office at the end of one year following the date of this Deed, unless:

- (a) he or she earlier ceases to be a Board Member in accordance with *clause 6.10* of this Deed; or
- (b) The Settlor decides, on recommendation from the Board, to amend the one-year term.

5.3 Establishment Board Members must not risk Trust Funds

Subject to *clauses 17 and 18*, the Establishment Board Members shall have no authority to:

- (c) sell, exchange, transfer, or otherwise permanently dispose of any of the Trust Funds beyond the Ngati Porou Group;
- (d) grant any mortgage, charge or other encumbrance over any of the Trust Funds or part of them which confers a power of sale;
- (c) use any of the Trust Funds as the subject of any guarantee or collateral security arrangement;
- (d) invest any of the Trust Funds in any entity other than another member of the Ngati Porou Group; or
- (e) otherwise dispose of any of the Trust Funds before an Annual Plan has been implemented in accordance with *clauses 10.3 and 10.4* of this Deed and internal policies and guidelines have been developed in accordance with *clause 10.8* of this Deed.

6. APPOINTMENT OF TRUSTEE AND BOARD MEMBERS

6.1 Appointment of Trustee and Board Members

The Settlor shall fill vacancies in the office of Trustee and vacancies on the Board by appointment in accordance with rule 2 of the Seventh Schedule to the Runanganui Trust Deed.

6.2 Appointment of further Board Members

The Settlor may at any time appoint further members, provided that the Board shall have no more than seven Board Members in accordance with *clause 6.6* of this Deed.

6.3 Eligibility

A person is not permitted to be a Board Member or Trustee if that person is:

- (a) under the age of 18 years;
- (b) a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967; or
- (c) a person who is subject to a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act; or
- (d) a "patient" as defined in s 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

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- (e) a person who has been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- (f) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person; or
- (g) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence; or
- (h) a person in respect of whom an order has been made under section 199L of the Companies Act 1955 or section 383 of the Companies Act 1993; or
- (i) an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1955, the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993; or
- (j) a person to whom a written notice has been given in accordance with section 199N of the Companies Act 1955 or section 385 of the Companies Act 1993;
- (k) a person who is disqualified from being an officer of a charitable entity under section 16 or section 31(4) of the Charities Act 2005; or
- (l) a body corporate that is being wound up, is in liquidation or receivership, or is subject to statutory management under the Corporations (Investigation and Management) Act 1989.

6.4 Skills and Expertise

In appointing the Board Members, the Settlor must have regard to the particular skills and expertise of the appointees. In addition to the matters listed in rule 2.3 of the Seventh Schedule of the Runanganui Trust Deed, the Settlor shall determine the appointments so that, to the greatest extent possible, the Board collectively possesses skills and expertise in:

- (a) Ngati Poroutanga;
- (b) delivery of social services;
- (c) health;
- (d) education;
- (e) development and/or management of research, archives and records facilities;
- (f) development, enhancement and management of environmental and natural resources;
- (g) management and protection of taonga tuturu and/or cultural property;
- (h) creative arts;
- (i) oral and traditional history research and compilation of historical material;
- (j) development of community facilities;
- (k) marae development; and
- (l) commerce.

6.5 Termination of Trusteeship or Board Membership

Any Trustee or Board Member may be removed from office by written notice to the Board signed on behalf of the Settlor at any time with or without reason.

6.6 Number of Board Members

The Board must have no less than five and no more than seven Members.

6.7 Members of Ngati Porou

A majority of the Board Members must be Members of Ngati Porou.

6.8 Elected Representatives and employees of the Ngati Porou Group

An Elected Representative may be a Board Member. An employee of the Ngati Porou Group shall not be a Board Member.

6.9 Term of Board Members

Following the retirement of the Establishment Board Members in accordance with *clause 5.2*, the term of appointment of Board Members is as follows:

- (a) No Board Member can be appointed for a term exceeding 3 years;
- (b) At the end of his or her term of appointment, a Board Member shall be eligible for re-appointment, however, no person can hold office as a Board Member for more than 9 years aggregate;
- (c) Where a person has ceased to be eligible to hold office as a Board Member under *clause 6.9(b)*, that person will become eligible for re-appointment as a Board Member after 2 years has passed from the date of cessation of eligibility, and a fresh calculation of the 9 year period commences on the date of that re-appointment.

Nothing in this clauses limits any of *clauses 6.5* or *6.10*.

6.10 Cessation of Trusteeship

A Trustee or Board Member shall cease to be a Trustee or Board Member (as the case may be) if that person:

- (a) is removed by the Settlor in accordance with *clause 6.5* of this Deed; or
- (b) states in writing that she, he or it wishes to resign from the Trusteeship or Board; or
- (c) dies; or
- (d) becomes a person whom *clause 6.3* of this Deed does not permit to be a Trustee or Board Member; or
- (e) is absent without leave from three consecutive ordinary meetings of the Board without good reason or without the permission of the Chairperson; or
- (f) has come to the end of his or her term without being re-appointed.

6.11 Proceedings of Board

Except as otherwise provided in this Deed, the proceedings and other affairs of the Board shall be conducted in accordance with the rules set out in the *First Schedule*.

7. TOITU NGATI POROU MAY ESTABLISH SUBSIDIARIES

7.1 The Trustee may establish Subsidiaries to carry out any of the Cultural Development Activities in accordance with the *Third Schedule*.

8. REVIEW OF TRUST DEED

8.1 The Settlor shall undertake a review of this Deed and its operation at the same time as it undertakes a review of the Runanganui Trust Deed in accordance with *clause 10.1* of the Runanganui Trust Deed, with a view to reporting to the next annual general meeting of Te Runanganui o Ngati Porou after the completion of the review on the effectiveness of the arrangements set out in this Deed and the Runanganui Trust Deed. Such report shall include recommendations as to the alterations (if any) that should be made, subject to this Deed, to this Deed.

9. ACCOUNTS

9.1 Bank accounts

The Board shall keep an account or accounts at such bank or banks or financial institutions as it

shall from time to time determine. Cheques and other debits from the account or accounts shall be signed by such person or persons as the Board shall from time to time authorise in writing.

9.2 Accounts

The Board shall keep full and correct records and accounts of all of their receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of Toitu Ngati Porou.

10. STATEMENTS OF INTENT, PLANS, REPORTS AND POLICIES

10.1 Board to prepare Statements of Intent

The Board shall:

- (a) maintain a Statement of Intent for Toitu Ngati Porou setting out its long term objectives and the general principles by which it proposes to operate (in addition to those set out in *clause 1.5* of this Deed); and
- (b) as required by the Settlor, update the Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business, the business of any of its Subsidiaries and the nature of its distributions.

10.2 Board to prepare Five-Year Strategic Plan

The Board shall prepare and maintain a Five-Year Strategic Plan, which shall be updated not less than once a year, and which sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent referred to in *clause 10.1*.

10.3 Board to prepare Annual Plan

The Board shall prepare, no later than two months before the commencement of each Income Year, an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its five-year planning objectives and fulfil the objectives and principles of the Statement of Intent. Without limitation, the Annual Plan shall include the following information in respect of that Income Year:

- (a) the objectives of the Annual Plan;
- (b) the nature and scope of the activities proposed by the Board for Toitu Ngati Porou in the performance of Toitu Ngati Porou's Purpose;
- (c) the performance targets and measurements by which performance of Toitu Ngati Porou may be judged;
- (d) the manner in which it is proposed that projected income will be dealt with;
- (e) any proposals for the Cultural Development Activities of Ngati Porou, including for example marae grants; and
- (f) any proposals for the ongoing management of the Trust Funds having regard to Toitu Ngati Porou's Purpose and the interests of all Members of Ngati Porou.

10.4 Settlor approval required

Prior to being implemented, all Statements of Intent, Five-Year Strategic Plans and Annual Plans must be approved by the Settlor. However, nothing in this clause shall allow the Settlor to give directions beyond approving or not approving any plan or Statement of Intent or otherwise exercising its powers as appointor, with the intention that the Board shall otherwise retain full discretion, subject to this Deed, in respect of the implementation of the plans and Statements of Intent.

10.5 Preparation and filing of annual returns

The Settlor shall ensure that all necessary Annual Returns and other information required by the Charities Commission or the Inland Revenue Department or otherwise by law are prepared and filed so as to allow Toitu Ngati Porou to retain its charitable status for taxation purposes.

10.6 Audit of financial statements

The Settlor must ensure that the financial statements included in Toitu Ngati Porou's Annual Returns in accordance with *clause 10.5* of this Deed for each Income Year are audited by a chartered accountant in public practice.

10.7 Reports to the Settlor

Within two calendar months after the completion of the first, second, third and fourth quarter of each Income Year the Board shall send to the Settlor reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form and with such detail as the Settlor may require from time to time). Without limitation, such reports shall include:

- (a) a comparison of Toitu Ngati Porou's performance against both its respective Annual Plans for that Income Year and any medium and longer term planning objectives (as set out in the Five-Year Strategic Plans and Statement of Intent); and
- (b) consolidated financial statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of Toitu Ngati Porou for that quarter or Income Year. The financial statements shall include as a separate item details of any remuneration or fees paid to any Trustee or Board Member; and
- (c) a report on distributions.

10.8 Policies and guidelines to ensure distributions for charitable purposes

Within six calendar months following the date of this Deed, the Board shall develop internal policies and guidelines for Toitu Ngati Porou that seek to ensure, without limitation, that all distributions are made for charitable purposes.

10.9 Policies to be kept under review

The Board shall review the policies and guidelines developed under *clause 10.8* of this Deed at least once every Income Year to ensure, without limitation, that:

- (a) Toitu Ngati Porou complies with all tax advice current at the time of the review; and
- (b) Toitu Ngati Porou preserves its right to exemption from income tax of the kind referred to in sections CW 41 and CW 42 of the Income Tax Act 2007.

11. CONFLICT OF INTERESTS

11.1 Disclosure of interest to other Board Members

A Board Member must, after becoming aware of the fact that he or she is interested in a transaction or proposed transaction of Toitu Ngati Porou, disclose to his or her co-Board Members at a meeting of the Board:

- (a) if the monetary value of the Board Member's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of that Board Member's interest cannot be quantified, the nature and extent of that interest.

11.2 Business or professional fees

If any Board Member is engaged in any profession or business then that Board Member or that

Board Member's firm or business may not:

- (a) be engaged by Toitu Ngati Porou; or
- (b) charge Toitu Ngati Porou professional fees,

unless the remuneration payable under the engagement is reasonable and relative to payments that would be made between unrelated parties.

11.3 Dealings with interested Board Members

A Board Member shall not vote in respect of any matter in which that Board Member is interested, nor shall the Board Member be counted for the purposes of forming a quorum in any meeting to consider such a matter. Any interested Board Member must leave the meeting for the duration of the deliberation and voting on the matter in which that Board Member is interested and the minutes should record the Board Member's absence and return.

11.4 Disclosure of interest of other Board Members

Where a Board Member is aware of an actual or potential conflict of interest of another Board Member then that person has a duty to draw the attention of the Board to the conflict of interest.

11.5 Recording of interest

The Board shall establish and maintain an interests register for the purpose of recording details of interested Board Members. Immediately following his or her appointment, a Board Member must enter any interests he or she has or may have into the interests register. A Board Member must also enter into the interests register the details of any interest disclosed to other Board Members in accordance with *clause 11.1* of this Deed.

11.6 Definition of interested Board Member

A Board Member will be interested in a matter if the Board Member:

- (a) is a party to, or will derive a material financial benefit from that matter;
- (b) has a material financial interest in another party to the matter;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or in the case of a trust controlled, by Te Runanganui o Ngati Porou or any subsidiary of Te Runanganui o Ngati Porou;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from, the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

11.7 Deficiency or irregularity in disclosure of interest

A deficiency or irregularity in a disclosure or recording of interest will not necessarily invalidate any decision made involving an interested Board Member.

12. PROHIBITION OF BENEFIT OR ADVANTAGE

12.1 No benefit or advantage to Related Person

No amount derived from a business carried on by Toitu Ngati Porou may be directed or diverted to the benefit or advantage of a Related Person where that Related Person is able, directly or indirectly, to determine or materially influence either the determination of the nature or extent of the relevant benefit or advantage or the circumstances in which the relevant benefit or advantage is, or is to be, given or received.

12.2 Definition of Related Person

"Related Person" means a person specified in paragraphs (i) to (iv) of section CW 42(5)(b) of the

Income Tax Act 2007, the person specified being:

- (a) a settlor or trustee of the trust by which the business is carried on; or
- (b) a shareholder or director of the company by which the business is carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) a person associated (as that term is defined in sections YB 1 to YB 12 and YB 14 to YB 16 of the Income Tax Act 2007) with a settlor, trustee, shareholder or director referred to in any of paragraphs (a), (b) or (c) of this definition.

13. REMUNERATION AND EXPENSES

13.1 No private pecuniary profit

No person may make a private pecuniary profit from Toitu Ngati Porou or any of the Trust Funds.

13.2 Remuneration of Trustee and Board Members

Subject to *clause 13.1*, the Settlor shall determine the remuneration payable (if any) to the Trustee or Board Members in accordance with Rules 1.7 and 1.8 of the Seventh Schedule of the Runanganui Trust Deed.

14. LIABILITY OF TRUSTEES OR BOARD MEMBERS

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

15. NO DISREPUTE

- 15.1** No Trustee or Board Member shall act in a manner which brings or is likely to bring Toitu Ngati Porou, Te Runanganui o Ngati Porou or any of their respective subsidiaries into disrepute.

16. AMENDMENTS TO TRUST DEED

16.1 Settlor may amend

Subject to *this clause 16*, the Settlor may, by deed, amend this Deed.

16.2 Ordinary Resolution of Elected Representatives required

Subject to *clauses 1.6 and 16.3* of this Deed, all amendments to this Deed shall only be made with the approval of an ordinary resolution of the Elected Representatives.

16.3 Amendments due to mistake or change in legislation

Notwithstanding *clause 16.2* of this Deed, any amendment to this Deed may be made without an ordinary resolution of the Elected Representatives provided the amendment is made to:

- (a) correct a minor mistake in the Deed, provided the correction will not materially change the effect of the relevant provision or provisions of the Deed; or
- (b) give effect to an amendment made to legislation referred to in this Deed, provided the amendment will not materially change the effect of the relevant provision or provisions of the Deed.

16.4 Limitations on Amendment

No amendment shall be made to this Deed which:

- (a) without independent tax advice and approval by Special Resolution of Elected Representatives, changes the charitable nature of Toitu Ngati Porou, or the status of Toitu Ngati Porou for taxation purposes, or *clause 17 or clause 18* of this Deed; or

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- (b) changes any of *clauses 11.2, 12 or 13* of this Deed; or
- (c) changes this *clause 16.4*; or
- (d) changes *clause 3* of this Deed; or
- (e) changes the requirement in *clause 16.2* of this Deed for an ordinary resolution of Elected Representatives to amend the Deed.

17. RESETTLEMENT

17.1 Toitu Ngati Porou has the power to settle or resettle any or all of the Trust Funds upon trust in any manner in which in the opinion of the Board is for the advancement or benefit of all Members of Ngati Porou, provided that:

- (a) the resettlement is for Cultural Development Activities; and
- (b) the Board has obtained independent tax advice on the resettlement; and
- (c) the resettlement is approved:
 - (i) if the assets are being resettled on a trust that is a Subsidiary or a subsidiary of Te Runanganui o Ngati Porou, by a Special Resolution of Elected Representatives; or
 - (ii) if the assets are being resettled on a trust that is neither a Subsidiary nor a subsidiary of Te Runanganui o Ngati Porou, by a Special Resolution of Members.

17.2 Notwithstanding anything in *this clause*, if the resettlement constitutes a Major Transaction, it must be approved by a Special Resolution of Members.

18. WINDING UP

18.1 Toitu Ngati Porou shall only be wound up or dissolved if Te Runanganui o Ngati Porou, by Special Resolution of Elected Representatives, has resolved that it has become impossible, impracticable or inexpedient to carry out Toitu Ngati Porou's Purpose.

18.2 On the winding up or dissolution of Toitu Ngati Porou, the Trustee must give or transfer all of the Trust Funds after the payment of costs, debts and liabilities to one or more organisations or bodies within New Zealand having a similar charitable purpose or purposes to Toitu Ngati Porou (being purposes beneficial to all members of Ngati Porou) as Te Runanganui o Ngati Porou by Special Resolution of Elected Representatives shall decide.

19. ARCHIVING OF RECORDS

19.1 Records to be held for seven years

All minutes and other records of any proceedings of the Trustee or Toitu Ngati Porou shall be held by the Trustee for a period of not less than seven years.

19.2 Records may be archived

At the expiry of seven years records of Toitu Ngati Porou and the Trustee may be forwarded to a place established for archiving purposes.

19.3 Records may be retained for longer

Notwithstanding *clauses 19.1 and 19.2* of this Deed the Trustee may hold on to any records for a period exceeding seven years if in the Board's discretion it considers that such records contain information that is commercially or otherwise sensitive or is still required by Toitu Ngati Porou or the Trustee.

20. DEFINITIONS AND INTERPRETATIONS

20.1 Defined Terms

In this Deed, unless the context otherwise requires:

"Acts" means the Ngati Porou Claims Settlement Act 2012, the Charitable Trusts Act 1957, the Trustee Act 1975 and the Charities Act 2005;

"Adult Members of Ngati Porou" means those Members of Ngati Porou registered on the Ngati Porou Register and who are identified as being 18 years and over;

"Annual Plan" means, as the context requires, the annual plan of:

- (a) Toitu Ngati Porou, which is prepared in accordance with clause 10.3; and
- (b) any Subsidiary.

"Annual Return" means an annual return that complies with section 41 of the Charities Act 2005;

"Balance Date" means 30 June or any other date that the Elected Representatives by resolution adopt as the date up to which Te Runanganui o Ngati Porou's financial statements are to be made in each year;

"Beneficial Member" means any present or future Member of Ngati Porou;

"Board" means the Board comprising:

- (a) the board of directors of the Trustee, if the Trustee is a company; and
- (b) the Trustees, if the Trustee is replaced by a group of individuals;

"Board Member" means a director, trustee or member appointed to the Board, and includes, for the avoidance of doubt, an Establishment Board Member;

"Chairperson" means the chairperson from time to time elected by the Trustees in accordance with *rule 5 of the First Schedule*;

"Cultural Activities" means any activity carried out in pursuit of Te Runanganui o Ngati Porou's Purposes (as defined in the Runanganui Trust Deed), which has as its principal objective to serve the needs of Ngati Porou now and in the future, and may include without limitation:

- (a) the strengthening of all aspects of te reo ake me nga tikanga ake o Ngati Porou;
- (b) the provision of support and assistance to Members of Ngati Porou in respect of education, housing, health care, age care and relief of those suffering from mental or physical sickness or disability;
- (c) the development and enhancement of community facilities for the benefit of Ngati Porou;
- (d) the provision of funding to the Marae and/or Hapu for the cultural and social development of the Marae and/or Hapu;
- (e) carrying out cultural arrangements with the Crown, including but not limited to, Ngati Porou's relationships with the Crown through the protocols and the letter of commitment as set out in the Deed of Settlement;
- (f) the provision of Ngati Porou Research, Archives and Records facilities; and,
- (g) the development, enhancement and management of environmental and natural resources.

"Cultural Development Activities" means only those Cultural Activities which are carried out on behalf of and solely for the benefit of the Beneficial Members and have a charitable purpose as defined in the Income Tax Act 2007 and the Charities Act 2005.

Rule 17

"Deputy Chairperson" means the deputy chairperson from time to time if one is elected in accordance with *rule 5 of the First Schedule*;

"Elected Representatives" means the representatives elected from time to time in accordance with the Second Schedule of the Runanganui Trust Deed to act as the directors and shareholders of the Settlor;

"Establishment Board Members" means the caretaker shareholders and directors appointed in accordance with *clause 5*.

"Five Year Strategic Plan" means, as the context requires, the five year strategic plan of:

- (a) Toitu Ngati Porou prepared in accordance with *clause 10.2*; or
- (b) any Subsidiary.

"Hapu" means the hapu listed in the Ninth Schedule of the Runanganui Trust Deed, including any changes thereto;

"Income Year" means any year or accounting period ending on the Balance Date;

"Major Transaction" in relation to any transaction of a member of the Ngati Porou Group means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by that member the value of which is more than half the value of all of the assets of the Ngati Porou Group before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by that member the value of which is more than half the value of all of the assets of the Ngati Porou Group before disposition; or
- (c) a transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of all of the assets of the Ngati Porou Group before the transaction, but does not include:
 - (i) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the assets of the Ngati Porou Group (whether the assets are held by Te Runanganui o Ngati Porou or any subsidiary of it or of Toitu Ngati Porou); or
 - (ii) any acquisition or disposition of Property by that member from or to any other wholly owned member of the Ngati Porou Group or any other member of the Ngati Porou Group controlled directly or indirectly by any other member of the Ngati Porou Group; and

nothing in paragraph (c) of this definition applies by reason only of that member giving, or entering into an agreement to give, a charge secured over assets of the member the value of which is more than one half of the value of all the assets of the Ngati Porou Group for the purpose of securing the repayment of money or the performance of an obligation;

"Marae" means the marae located in the Rohenga Tipuna and listed in the Ninth Schedule of the Runanganui Trust Deed;

"Member of Ngati Porou" means any individual who is of Ngati Porou descent. Whangai must descend from a Primary Ancestor of Ngati Porou to be a Member of Ngati Porou;

“Ngati Porou” means the iwi comprising nga uri o nga whanau hapu o Ngati Porou mai i Potikirua ki Te Toka a Taiau (the descendants of the whanau and hapu of Ngati Porou from Potikirua to Te Toka a Taiau) who thereby affiliate to Ngati Porou through descent from a Primary Ancestor of Ngati Porou, (that is, the ancestors, eponymous or otherwise, of the Hapu listed in the Ninth Schedule of the Runanganui Trust Deed);

“Ngati Porou Group” means the Settlor, any subsidiaries of the Settlor established under the Runanganui Trust Deed and any Subsidiaries of Toitu Ngati Porou established under this Deed;

“Ngati Porou Register” means the register of Members of Ngati Porou that is to be maintained by Te Runanganui o Ngati Porou in accordance with the First Schedule of the Runanganui Trust Deed;

“Primary Ancestor of Ngati Porou” means the ancestors, eponymous or otherwise of the Hapu listed in the Ninth Schedule of the Runanganui Trust Deed;

“Property” means all property (whether real or personal) and includes choses in action, rights, interests and money, and for the avoidance of doubt, includes all Settlement Property (as defined in the Runanganui Trust Deed), and all assets transferred that previously belonged to the Runanga and the Porou Ariki Trust;

“Runanga” means Te Runanga o Ngati Porou as constituted by Te Runanga o Ngati Porou Act 1987;

“Runanganui Trust Deed” means the Deed of Trust between Te Runanga o Ngati Porou as settlor and the Settlor as trustee dated 14 December 2010;

“Secretary” means the Secretary from time to time appointed by the Board in accordance with *rule 6 of the First Schedule*;

“Securities” means any share, stock, debenture, debenture stock, bond, note, option, or form of other security.

“Special Resolution of Members” means a resolution that requires the approval of not less than 75% of the Adult Members of Ngati Porou who validly cast a vote in accordance with the process set out in the Fourth Schedule of the Runanganui Trust Deed;

“Special Resolution of Elected Representatives” means a resolution that requires the approval of not less than 75% of the Elected Representatives present at a duly convened meeting of the Settlor held in accordance with the rules in the Third Schedule of the Runanganui Trust Deed.

“Statements of Intent” means, as the context requires:

- (a) the statements of intent prepared by Toitu Ngati Porou in accordance with clause 10.1; or
- (b) the statements of intent of any Subsidiaries.

“Subsidiaries” means any entity that is:

- (a) wholly-owned;
 - (b) controlled directly; or
 - (c) controlled indirectly,
- by Toitu Ngati Porou;

“Te Runanganui o Ngati Porou” means the trust established under the Runanganui Trust Deed;

“Toitu Ngati Porou’s Purpose” or **“Purpose”** means the purpose of Toitu Ngati Porou as set out in *clause 1.3* of this Deed;

“Treasurer” means the Treasurer from time to time appointed by the Board in accordance with *rule 6 of the First Schedule*;

“Trust” means the trust established under this Deed;

“Trustee” means a Trustee of Toitu Ngati Porou, including for the avoidance of doubt the first Trustee and any other Trustee appointed under *clause 6* of this Deed;

“Trust Funds” means all Property received or otherwise owned or acquired from time to time by Toitu Ngati Porou.

“Whangai” means those persons who are adopted by a Member of Ngati Porou in accordance with the tikanga of Ngati Porou;

“Working day” means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day;
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year;
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

1.1 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other gender;
- (c) references to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;
- (d) references to a statute or provision of a statute shall be deemed to be references to that statute or provision as amended, re-enacted or substituted from time to time;
- (e) references to a clause, recital or a schedule shall be to a clause, recital or a schedule to this Deed;
- (f) the schedules to this Deed shall form part of this Deed;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Deed;
- (h) references to a company are references to a company incorporated pursuant to the Companies Act 1993.

FIRST SCHEDULE – PROCEEDINGS OF THE BOARD

1. BOARD MEETINGS

1.1 The Board shall ensure that all meetings of its members shall be run in accordance with this Schedule.

2. BOARD TO REGULATE MEETINGS

2.1 Frequency of meetings

The Board shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, provided that the Board meets no less than four times a year.

2.2 Calling of meetings

Subject to *rule 9* of this Schedule, the Board shall take such steps as are necessary to convene a meeting if a meeting is called at any time by notice in writing to the Board by:

- (a) any five Board Members; or
- (b) the Settlor.

3. NOTICE OF MEETING

3.1 Period of notice

Subject to *rule 9.2* of this Schedule, the Board shall communicate seven Working Days' notice of any meeting to each of the Board Members.

3.2 Form and content of notice

Notice may be communicated by post, facsimile, or email, and shall state the place, day, time, mode and subject-matter of the meeting.

3.3 Notice to Board Member absent from New Zealand

It shall not be necessary to give notice of a meeting of the Board to any Board Member for the time being absent from New Zealand unless that Board Member has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Board Members who were not present when the meeting was adjourned.

3.4 Waiver of notice

The requirement for notice of a meeting may be waived if all the Board Members who are at the time entitled to receive notice of the meeting give their written consent to such a waiver.

3.5 Meeting limited to notified business

No business shall be transacted at any meeting of the Board other than the business expressly referred to in the notice calling the meeting, unless all Board Members are present and agree to transact other business.

3.6 Deficiency of notice

Subject to *rule 3.1* of this Schedule, no deficiency or irregularity in a notice of any meeting of the Board shall invalidate such meeting or the proceedings at such meeting.

4. QUORUM

4.1 A majority of the Board shall constitute a quorum at meetings of the Board.

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5. CHAIRPERSON AND DEPUTY CHAIRPERSON

5.1 Board to appoint Chairperson

The Board Members shall appoint one of their number to be Chairperson and (at the Board's discretion) one to be Deputy Chairperson.

5.2 Powers of Chairperson

The Chairperson shall have the following powers while presiding over a meeting:

- (a) to exercise a vote and, in the case of equality of voting at a Board meeting, also a second or casting vote;
- (b) to decide the order of business and declare the result of the voting;
- (c) to order the removal from a meeting of any person obstructing the business of the meeting or behaving in a disorderly manner, or of any person not entitled to be present; and
- (d) by a resolution of the meeting or in the absence of a quorum, to adjourn a meeting or to declare a meeting closed.

5.3 Termination of office

The Chairperson (or Deputy Chairperson) will cease to hold office in the event that he or she resigns from that office, ceases to be a Board Member or is removed from office as Chairperson (or Deputy Chairperson) by the Settlor. In the event that the Chairperson (or Deputy Chairperson) ceases to hold that office then the Settlor shall appoint a replacement.

6. SECRETARY AND TREASURER

6.1 Board may appoint Secretary and Treasurer

At the first meeting of the Board following an appointment the Board may appoint a Secretary and Treasurer.

6.2 Eligibility

The Secretary and Treasurer need not be Board Members. If the Secretary and/or Treasurer are not Board Members, they shall have the right to attend Board meetings, but shall not have voting powers.

6.3 Duties and powers of the Secretary

The Secretary shall have the following powers and duties:

- (a) Notice: to notify Board Members of intended meetings and the business to be transacted at such meetings.
- (b) Reporting the Board's affairs: to provide full and timely reporting of the affairs of the Board, keep proper minutes of the proceedings of all meetings, ensure such minutes shall be signed by the Chairperson, and keep a minute book in which the duly signed minutes shall be affixed or entered.
- (c) Correspondence: to conduct the correspondence of the Board.
- (d) Interests Register: to maintain the interests register in accordance with *clause 11.5* of this Deed.
- (e) All lawful instructions: to obey all such lawful instructions and to do and perform all such lawful things and acts as may be given or required to be done by a meeting of the Board, the Acts, or this Deed.
- (f) Other duties: to do and perform such other lawful duties as may usually appertain to the office of Secretary.

6.4 Duties and powers of the Treasurer

The Treasurer shall have the following powers and duties:

- (a) Collect and receive monies: to collect and receive all monies due to Toitu Ngati Porou, and to give a receipt in a form approved by the Board, and in no case hold any such moneys without the authority of the Board for any period exceeding one week, and to bank all such monies in the name of Toitu Ngati Porou in a bank approved by the Board.
- (b) Financial records: to keep usual and proper books of account and other financial records of Toitu Ngati Porou.
- (c) Financial reports: to prepare immediately prior to each Annual General Meeting the financial reports required by *clause 10.7* of this Deed.
- (d) Financial information: to provide financial information to the Board when requested.
- (e) All lawful instructions: to obey all such lawful instructions and to do and perform all such lawful things and acts as may be given or required to be done by a meeting of the Board, the Acts, or this Deed.
- (f) Other duties: to do and perform such other lawful duties as may usually appertain to the office of Treasurer.

6.5 Termination of office

The Secretary and Treasurer will cease to hold office in the event that he or she resigns from that office or is removed from office by the Board. In the event that the Secretary or Treasurer ceases to hold that office then a further appointment may be made for the position.

7. PROCEEDINGS AT MEETINGS

7.1 Decisions by majority vote

Unless stated otherwise in this Deed, questions arising at any meeting of the Board shall be decided by a majority of votes. In the case of an equality of votes, the Chairperson shall have a second or casting vote.

7.2 Chairperson

The Chairperson shall take the chair at all the meetings of the Board. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the Chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Board Members present shall elect one of their number to be Chairperson of the meeting.

7.3 Vacancies

The Board may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the minimum fixed by this Deed, the continuing Board Members may act only for the purpose of advising of the vacancy and taking the steps necessary to procure the appointment of new Board Members to fill any vacancy or vacancies, and for no other purpose.

7.4 Unruly meetings

If any meeting of Board becomes so unruly or disorderly that, in the opinion of the Chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the Chairperson becomes unduly protracted, the Chairperson may, and without giving any reason, adjourn the meeting and may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote without discussion.

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8. DELEGATION BY BOARD

8.1 Board may delegate

The Board may from time to time as it thinks expedient for carrying out any of Toitu Ngati Porou's purposes delegate any one or more of their powers under this Deed to a committee, Board Member, employee or other person.

8.2 Delegate bound

Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable and other terms of the Deed.

8.3 Delegation revocable

Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

8.4 Board to remain responsible

Notwithstanding the delegation by the Board of any of their powers under *rule 8.1* of this Schedule, the Board shall remain responsible for the exercise of that power by the delegate as if the Board had exercised the power itself, unless the Board:

- (a) believed on reasonable grounds when making the delegation that the delegate would exercise the power in accordance with the provisions of this Deed and the duties owed by the Trustee in the exercise of its office under this Deed; and
- (b) has monitored, by means of reasonable methods that it has followed, the exercise of the power by the delegate.

8.5 Regulation of procedure by committees

Subject to these rules and the provisions of this Deed, any committee established by the Board may co-opt any person to be a member of that committee and otherwise regulate its procedure as it sees fit provided that the committee must notify the Board of all persons co-opted to the committee.

9. ANNUAL GENERAL MEETING

9.1 Holding of Annual General Meeting

A general meeting of the Board to be called its Annual General Meeting shall be held no later than two months before the commencement of each Income Year.

9.2 Notice of Annual General Meeting

The Secretary shall give no less than 20 Working Days' notice of the Annual General Meeting to the Board Members. *Rules 3.2 to 3.4 and rule 3.6* of this Schedule shall apply to any such notice.

9.3 Agenda

The Secretary shall circulate an agenda, including all special business, no later than 10 days prior to the Annual General Meeting.

9.4 Business

The business to be transacted at the Annual General Meeting shall include:

- (a) preparation and maintenance of the Five-Year Strategic Plan, as required under *clause 10.2* of this Deed; and
- (b) preparation of the Annual Plan as required under *clause 10.3* of this Deed.



9.5 Special business

Any Board Member may give notice of special business, provided that such notice shall be given to the Secretary no later than 15 days before the Annual General Meeting.

10. RESOLUTIONS

10.1 A written resolution signed by all the Board 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 Board 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 Board Members or members of the committee (as the case may be).

11. MINUTES

11.1 Board to keep minutes

The Board shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting, which, if confirmed at a subsequent meeting of the Board, shall be signed by the Chairperson as a true and correct record.

11.2 Minutes to be evidence of proceedings

Any minute of the proceedings at a meeting which is purported to be signed by the Chairperson of that meeting shall be evidence of those proceedings.

11.3 Minutes to be evidence of proper conduct

Where minutes of the proceedings at a meeting of the Board 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.

11.4 Failure to record does not invalidate decisions made

Any failure to keep proper minutes of meetings in accordance with *this rule* does not necessarily invalidate any decisions made at those meetings.

12. MODE OF MEETINGS

12.1 For the purposes of this Schedule the contemporaneous linking together by telephone or any other means of audible communication of enough of the Board to constitute a quorum shall be deemed to constitute a meeting of the Board so long as the following conditions are met:

- (a) all of the Board must have received notice of the meeting (or have waived notice) under *rule 3* or *rule 9.2* of this Schedule as the case may be;
- (b) throughout the meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the meeting 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; and
- (e) a minute of the proceedings at the 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.

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13. FORM OF CONTRACTS

13.1 Contracts by deed

Any contract which, if made between private persons, must be by deed, shall, if made by the Trustee, be in writing signed by:

- (a) two Board Members;
 - (b) an authorised signatory, appointed in accordance with *rule 13.3 of this Schedule*; or
 - (c) an attorney,
- on behalf of or by direction of the Board.

13.2 Contracts in writing

Any contract which, if made between private persons, must be in writing signed by the parties to be bound by the contract shall, if made by the Trustee, be in writing signed by:

- (a) two Board Members;
 - (b) an authorised signatory, appointed in accordance with *rule 13.3 of this Schedule*; or
 - (c) an attorney,
- on behalf of or by direction of the Board.

13.3 Process for appointing Authorised Signatory

An authorised signatory shall be appointed by resolution of the Board at any meeting held in accordance with this Schedule.

13.4 Oral contracts

Any contract which, if made by private persons, may be made orally, may be made in the same manner by or on behalf of the Trustee by any Board Member, in either case acting by direction of the Board.

13.5 Contracts pursuant to resolution

Notwithstanding anything to the contrary in this rule, no contract made by or on behalf of the Trustee shall be invalid by reason only that it was not made in the manner provided by this rule, if it was made pursuant to a resolution of the Board.

14. ATTENDANCE OF MEMBERS

14.1 Members of Ngati Porou may attend meetings of Board, on notice and at the discretion of the Chairperson.

14.2 Members of Ngati Porou shall not actively participate at meetings of members without the prior approval of the Chairperson, but in any case shall not be entitled to vote.

SECOND SCHEDULE – TRUSTEE’S POWERS AND DUTIES

1. TRUSTEE’S POWERS

1.1 General powers

To achieve Toitu Ngati Porou’s Purpose, subject to clauses 3 and 5.3 of this Deed and rule 1.3 of this Schedule:

- (a) the Trustee shall have in the administration and management of the Trust Funds all the rights, powers and privileges of a natural person;
- (b) the Trustee shall have the power to receive, hold (on trust) and exercise stewardship over, and/or establish Subsidiaries to receive, hold (on trust) and exercise stewardship over, Property, including performing all of the functions of Toitu Ngati Porou;
- (c) the Trustee may deal with the Trust Funds as if the Trustee were the absolute owner of, and beneficially entitled to, the Trust Funds;
- (d) in addition to any specific powers vested in the Trustee by law, in carrying out Toitu Ngati Porou’s Purpose the Trustee may do any act or thing or procure the doing of any act or thing, or enter into any obligation whatever, including exercising unrestricted powers to buy, acquire, sell or otherwise dispose of, any Property and to borrow and raise money, to loan money, and to give securities and guarantees;
- (e) except as otherwise expressly provided in this Deed, the Trustee may exercise all the powers and discretions vested in it by this Deed in the absolute and uncontrolled discretion of the Trustee, at such time or times, upon such terms and conditions, and in such manner as the Board may decide;
- (f) if the Trustee is not already a body corporate, the Trustee is empowered to seek incorporation in accordance with the provisions of the Charitable Trusts Act 1957.

1.2 Powers of Investment

Subject to clauses 3 and 5.3 of this Deed and rule 1.3 of this Schedule, the Trustee may invest all or any of the Trust Funds in any Property that is from time to time permitted by the laws of New Zealand for the investment of the funds of trusts.

1.3 Investment obligations

To the extent reasonably possible, the Trustee must ensure that the Trust Funds are not invested in high-risk Securities.

1.4 Contrary Intention

The investment obligations under rule 1.3 of this Schedule constitute a contrary intention for the purposes of sections 2(5) and (5A) of the Trustee Act 1956.

1.5 Management powers

In managing the affairs of Toitu Ngati Porou, the Trustee:

- (a) shall have the absolute management and entire control of the Trust Funds;
- (b) may from time to time, and subject to *clause 11.2* of this Deed, appoint or engage any individual or company for defined purposes and for a defined period:
 - (i) to provide expert, professional or other services to the Trustee or the Board and, where relevant, to act upon their opinion or advice;
 - (ii) to implement decisions of the Trustee or the Board; or
 - (iii) as an attorney for the Trustee in New Zealand or elsewhere for all or any of the purposes of Toitu Ngati Porou.

Rule 1.5
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2. TRUSTEE'S DUTIES

2.1 Subject to the provisions of this Deed, Toitu Ngati Porou is to be managed and administered by the Trustee and without limiting the generality of the foregoing:

- (a) the Trustee and the Board must always act, collectively and individually, in accordance with their fiduciary duties and obligations;
- (b) in performing their duties the Trustee and the Board will act in good faith and in a manner that the Trustee and the Board believe on reasonable grounds is in the interests of the Members of Ngati Porou;
- (c) the Trustee and the Board must not act or agree to act in a manner which contravenes this Deed;
- (d) the Trustee and the Board, when exercising powers of performing duties as the Trustee or Board, must exercise the care, diligence and skill to be reasonably expected of a person acting in like circumstances, taking into account any special skills or experience that the Trustee or the Board Members (as the case may be) have;
- (e) the Trustee and the Board must not pay out, invest, or apply money belonging to Toitu Ngati Porou for any purpose that is not directed by, or authorised in, this Deed;
- (f) the Trustee and the Board must comply with all taxation law or charities law rules applying to Toitu Ngati Porou; and
- (g) the Trustee and the Board must take every action to allow Toitu Ngati Porou to retain its charitable status for taxation purposes

THIRD SCHEDULE – SUBSIDIARIES

1. TOITU NGATI POROU MAY ESTABLISH SUBSIDIARIES

1.1 Establishment of Subsidiaries

In receiving, controlling, and supervising the use of the Trust Funds in accordance with Toitu Ngati Porou's Purpose, the Trustee may, subject to this Deed, establish Subsidiaries. The Settlor shall, subject to the terms of this Deed, exercise strategic governance over Subsidiaries.

1.2 Trustee to monitor

In giving effect to Toitu Ngati Porou's Purpose, but subject to the terms of the Trust Deed, the Settlor shall be responsible for monitoring and otherwise overseeing the activities of Subsidiaries. The Trustee shall exercise its ownership or other interests in Subsidiaries in such a way as to promote the performance by Subsidiaries of their respective objectives and respective purposes. Nothing in *this rule* shall prevent the Trustee from holding Property in its own name.

1.3 Directors responsible for governance

For the avoidance of doubt, and except as expressly provided by this Trust Deed, Subsidiaries shall be governed by their respective boards and the role of the Trustee in respect of Subsidiaries shall be limited to the exercise of the rights conferred on the Trustee as shareholder, or (as applicable) appointor, and beneficiary of the relevant entity.

2. APPOINTMENT OF BOARD MEMBERS OF SUBSIDIARY

2.1 Appointment and removal of board members

The Trustee shall appoint and remove board members of Subsidiaries owned and/or controlled by Toitu Ngati Porou.

2.2 Members of boards

- (a) A majority of the board members of each Subsidiary must be Members of Ngati Porou.
- (b) Each Subsidiary must have no less than three and no more than seven board members.
- (c) An Elected Representative may be a board member.
- (d) A Board Member of the Trustee may be a board member of a Subsidiary.
- (e) An employee of the Ngati Porou Group shall not be a board member of a Subsidiary.

2.3 Appointments with regard to skills and expertise

Board members of Subsidiaries shall only be appointed if that person has the particular skills and expertise that are required of a member of the board to which the appointment relates and bearing in mind the activities that the particular Subsidiary undertakes or is likely to undertake in the future and the mix of skills and expertise that is required on the relevant board. In considering whether to appoint any person as a board member, the Board shall determine the appointments so that the relevant board collectively possess the following attributes:

- (a) Those listed in of the Seventh Schedule of the Runanganui Trust Deed; and
- (b) Those listed in *clause 6.4* of this Deed.

2.4 Guidelines for appointment of board members

The Board will establish guidelines for the appointment of board members of Subsidiaries. The term of a board member shall not exceed five years. A board member may sit on the Board for more than one term.

3. SUBSIDIARY TRUSTS

- 3.1** Any Subsidiary that is established as a trust must have an appointor who must be the Trustee.

- 3.2** Where a Subsidiary is established as a trust then its constitutional documents shall require that, if more than half of the value of the assets of that trust are dealt with in a manner described in paragraphs (a) to (c) of the definition of Major Transaction, then that trust must seek Te Runanganui o Ngati Porou's approval of the transaction. If Te Runanganui o Ngati Porou's approval is sought accordingly, Te Runanganui o Ngati Porou may decide if a Special Resolution of Members of Ngati Porou is required to approve that transaction.
- 3.3** Nothing in *this clause* removes the obligation of a Subsidiary that is established as a trust to comply with *clause 3.1* of this Deed.

Executed as a deed

SIGNED for and on behalf of)
TE RUNANGANUI O NGATI POROU TRUSTEE LIMITED)
as Settlor)
in the presence of:)

SILWYN I PARATHA

Name of Director

A. T. Parak

Signature

2.1 Kohärenz

Rm. Kalman

Name of Director

Signature

Name of Witness

Signature

SIGNED by for and on behalf of)
TOITU NGATI POROU TRUSTEE LIMITED)
in the presence of:)

Name of Director

Signature

Name of Director

Signature

Name of Witness

Signature