



Mōkai Pātea Waitangi Claims Trust

DEED OF TRUST

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He Kupu Whakaaraara

Ka tiaho mai ngā whetū

Hei tohu o te kauae runga

Ka whitiwhiti mai i te rā

Hei ara ki te kauae raro

Ki te whaiao ki te ao mārama

Ko Papa e tūhonotia

E te pito i te hono i wairua

Ko Rangi e tūhonotia

E te kāwai a Tākawe o Kahukura

Whiti whano haramai te toki haumi e hui e tāiki e!

MOKAI PATEA WAITANGI CLAIMS TRUSTDated this 7th day of May 2019**PARTIES**

TE RŪNANGA O NGĀI TE OHUAKE	ROBERT MARTIN MARAEA BELLAMY
TE RŪNANGA O NGĀTI HAUITI	UTIKU POTAKA THOMAS CURTIS
TE RŪNANGA O NGĀTI WHITIKAUPEKA	BARBARA BALL TE RINA WARREN
TE RŪNANGA O NGĀTI TAMAKŌPIRI	HARI BENEVIDES MOIRA RAUKAWA-HASKELL
TUMU MŌKAI	ISAAC HUNTER

*(the Initial Trustees)***BACKGROUND**

- A The Trustees wish to declare a trust primarily for the benefit of the Members of Mōkai Pātea Waitangi Claims Trust, and more broadly for the benefit of the individuals, whānau, marae, hapū and iwi of Mōkai Pātea Nui Tonu.
- B This Deed provides the rules and procedures for the Mōkai Pātea Waitangi Claims Trust.
- C The Mōkai Pātea Waitangi Claims Trust is established under this Deed of Trust to, inter alia, further the claims of Mōkai Pātea Nui Tonu against the Crown for historical breaches of Te Tiriti o Waitangi / the Treaty of Waitangi, and to seek and maintain a mandate to negotiate and settle those claims. Mōkai Pātea Nui Tonu acknowledge and affirm our history of kōtahitanga, but similarly recognise and respect the rangatiratanga of our iwi and hapū, as evidenced by the accountability back to our Iwi Rūnanga as representatives of those iwi and hapū.
- D On signing this Deed the Initial Trustees declare a trust on and subject to the terms of this deed in respect of the \$10 held by them upon the trusts and with the powers set out in this Deed.

NOW THIS DEED RECORDS:**1 DEFINITIONS AND CONSTRUCTION****1.1 Defined terms**

1.1 In this Deed, unless the context otherwise requires:

Adult Member of Mōkai Pātea means, a Member of Mōkai Pātea who is over the age

of 18 years.

Assets means Trust property of any kind, whether tangible or intangible, real or personal and includes choses in action, rights, interests and money.

Balance Date means 30 June or any other date adopted by the Trustees by written resolution as the date up to which accounts are to be made in each year.

Chairperson means a chairperson of an Iwi Rūnanga and includes Chairpersons in the plural, and can include “Convenor” if that term is used by an Iwi Rūnanga to describe its chairperson.

Charitable Purpose means, every purpose within New Zealand which in accordance with the laws of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose that is charitable within the laws of New Zealand and includes the meaning of charitable purpose as defined in section OB1 of the Income Tax Act 2004.

Corporate Trustee means an entity incorporated to act as corporate trustee of the Trust from time to time, in which case any other Trustees appointed in accordance with this deed will be appointed as directors of the corporate trustee and all provisions which would otherwise apply to those individuals as Trustees will apply to those individuals as directors of the Corporate Trustee.

Deed means this Deed and includes any amendments to this Deed made in accordance with this Deed.

Disputes Committee means the committee appointed in accordance with clause 19.4.

Distribution Date means the date that occurs 80 years less one day from the date of this deed or such earlier or later date within the Perpetuity Period applicable to this deed from time to time as provided in clause 2.3.

Election Closing Date has the meaning set out in clause 4.8 of Schedule One.

General Meeting means, an Annual General meeting or a Special General meeting or a Hui ā-Iwi convened and conducted in accordance with clause 16.

Hapū Seats means those seats on each Iwi Rūnanga specified for particular hapū filled by way of Phase II elections in accordance with clause 4 of Schedule One.

Income Year means:

- (a) the period from the date of this deed to the first Balance Date;
- (b) each year ending on a Balance Date during the term of the trusts created by this deed; and
- (c) the period from the Balance Date immediately preceding the Distribution Date to the Distribution Date.

Initial Trustees means the individuals listed in clause 4 of Schedule Two.

Inland Revenue Acts has the meaning given to it in section 3(1) of the Tax Administration Act 1994.

Iwi Rūnanga (and “**Rūnanga**”) means each of the following bodies, or where the context requires, one or more of the following bodies:

- (a) Te Rūnanga o Ngāi Te Ohuake.
- (b) Te Rūnanga o Ngāti Hauti;
- (c) Te Rūnanga o Ngāti Whitikaupeka;
- (d) Te Rūnanga o Ngāti Tamakōpiri.

Major Transaction means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Assets by the Trust the value of which is more than 25% of the value of the Trust Fund before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Assets by the Trust the value of which is more than 25% of the value of the Trust Fund before the disposition; or
- (c) a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities the value of which is more than 25% of the value of the Trust Fund before the transaction;

provided however that nothing in paragraph (c) of this definition applies by reason only of the Trust giving, or entering into an agreement to give, a charge secured over Assets of the Trust the value of which is more than 25% of the value of the Trust Fund for the purpose of securing the repayment of money or the performance of an obligation.

Marae are the seven marae of Mōkai Pātea, namely Te Riu o Puanga, Moawhango, Opaea, Kaiewe, Winiata, Rātā, Tāhuhu, and any marae included under clause 7.6 of Schedule Three.

Members of Mōkai Pātea (and “**Members**”) means persons who:

- (a) descend from Tamatea Pokai Whenua; and
- (b) affiliate by way of verified whakapapa to one or more of the iwi or hapū of Mōkai Pātea Nui Tonu, (and includes Whāngai who satisfy the Iwi Rūnanga verification processes); and
- (c) are registered on the Members’ Register.

and **Member of Mōkai Pātea** (and “**Member**”) has the same meaning in the singular.

Membership Committee means the committee appointed in accordance with clause

4.1 of Schedule Four.

Members' Register means the register of Members of Mōkai Pātea held and maintained by the Trust in accordance with Schedule Four.

Mōkai Pātea Hapū means one or more of the hapū of the Mōkai Pātea Iwi.

Mōkai Pātea Iwi means one or more of the four Iwi of Mōkai Pātea Nui Tonu, namely (1) Ngāi Te Ohuake, (2) Ngāti Hauiti, (3) Ngāti Whitikaupeka, and (4) Ngāti Tamakōpiri as represented by their respective Iwi Rūnanga.

Mōkai Pātea Nui Tonu (and “**Mōkai Pātea**”) means the confederation of each of the following iwi and their respective hapū, or where the context requires, one or more of the following iwi and their respective hapū (and includes any hapū included under clause 7.6 of Schedule Three):

Mōkai Pātea Iwi	Mōkai Pātea Hapū
Ngāi Te Ohuake	Ngāti Hau, Ngāti Tamakorako, Ngāti Hinemanu*, Ngāti Honomōkai*, Ngāi Te Upokoiri*, Ngāi Te Ngāruru, Ngāti Paki
Ngāti Hauiti	Ngāi Te Ngahoa, Ngāti Ruaanga, Ngāti Haukaha, Ngāti Tamatereka, Ngāti Hora, Ngāti Tumōkai*, Ngāti Hinetio, Ngāti Hinemanu*, Ngāi Te Upokoiri (II), Ngāti Whiti-Hauiti, Ngāti Rangiwahiao
Ngāti Whitikaupeka	Ngāti Whiti Tūturu, Ngāti Whiti-Hauiti, Ngāti Whiti-Tama, Ngāi Te Upokoiri*, Ngāti Honomōkai*, Ngāi Tautahi
Ngāti Tamakōpiri	Ngāti Tuope, Ngāti Tamakaiaorangi, Ngāti Hinetai, Ngāti Tamapinea, Rangitoea, Ngāti Tamawhiti, Ngāti Tama Tūturu, Ngāti Te Taenui, Ngāti Tūtakaroa*, Ngāti Tamakaitangi, Hikakainga

* denotes that the hapū is a shared hapū

Mōkai Pātea Waitangi Claims Trust means the trust established by this Deed.

Nominations Closing Date has the meaning set out in clause 4.6 of Schedule One.

Rangatahi Advisory Council means persons up to the age of twenty-five years who are appointed by the Trustees to represent the interests and concerns of the rangatahi of Mōkai Pātea Nui Tonu and the youth who reside in the Mōkai Pātea rohe in accordance with clause 8 of Schedule Three.

Registration Form means the form used from time to time by the Trustees to enter the details of Members of Mōkai Pātea on the Members' Register.

Returning Officer means the individual appointed in accordance with clause 4.2 of Schedule One, or clause 5.1 of Schedule Five (as relevant).

Rūnanga Delegates means those persons elected as Delegates for each of the Iwi Rūnanga in accordance with Schedule One.

SGM means a special general meeting held in accordance with Schedule Five.

Special Resolution means a resolution in accordance with Schedule Five.

Specified Period in relation to an Income Year means a period commencing at the end of that Income Year, being such period as is from time to time specified by law for determining whether income arising from a trust fund is assessable as Member's income or Trustee's income.

Spouse means a person who is married to that person or to a person who, while not being married to that person, is in a civil union with that person or is living with that person in a de facto relationship (as defined in the Property (Relationships) Act 1976) or a relationship which, in the Trustees' opinion, is in the nature of marriage or civil union.

Surplus Income means that part of the income arising from the Trust Fund in an Income Year which the Trustees may not have accumulated, paid, applied or appropriated under clauses 4.1 to 4.3 during that Income Year, or within the Specified Period.

Taumata Tikanga means pakeke, kaumatua and kuia of Mōkai Pātea Nui Tonu who are determined in accordance with tikanga to be the Taumata Tikanga, and who may advise the Trust in accordance with clause 8 of Schedule Three of this Deed.

Teleconference Meeting means a meeting where the participants are contemporaneously linked by telephone or some other means of instant audio or audio and visual communication.

Tikanga means the customary values and practices of Mōkai Pātea Nui Tonu.

Trust means the Mōkai Pātea Waitangi Claims Trust created by this Deed.

Trustees means the persons appointed from time to time in accordance with Schedule Two whether Initial, additional or substituted.

Trust Fund means, all the assets and liabilities including income that are from time to time held by the Trustees on the trusts of this Deed.

Trust Information includes any information regarding the terms of the Trust, the administration of the Trust or the Trust Fund that it may, from time to time, be reasonable for a Member to have in order for the Trust to be enforced by the Member but does not include the Trustees' deliberations in respect of the exercise of any discretion or powers under this deed nor the reasons for any decisions of the Trustees, nor any information received by the Trustees that is determined by them to be confidential.

Tumu Mōkai means the Trustee appointed under clause 5.1(b) of Schedule One, representing all of Mōkai Pātea Nui Tonu and who is responsible for ensuring the cultural safety of the Trust by providing advice on tikanga, kawa and matters of a cultural nature.

Verified Whakapapa means an affiliation by whakapapa to Mōkai Pātea Nui Tonu as verified by the Membership Committee, and includes verification of whāngai who satisfy the Iwi Rūnanga verification processes.

Voting Paper means, a voting paper (including any electronic voting paper) issued in accordance with Schedule One on which the Trustees shall record the membership number of the voter, or in the case of a voter without a registration number, shall have a duly completed Registration Form attached to and forming part of that Voting Paper.

Whāngai means those persons who do not affiliate to Mōkai Pātea by descent from a primary ancestor of Mōkai Pātea but who are adopted by a Member of Mōkai Pātea in accordance with the Tikanga of the particular iwi or hapū; such Tikanga to be determined by the particular Iwi Rūnanga concerned.

Working Day means the days Monday through Friday exclusive of any public holiday and excluding 24 December to 2 January (inclusive).

1.2 Construction

In the construction of this deed:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a clause or a schedule is to a clause or schedule of this deed, and a reference in a schedule to a clause is a reference to a clause in that schedule;
- (c) a reference to a person includes a trustee corporation, and a corporation sole, and also a body of persons, whether incorporated or unincorporated;
- (d) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations; and
- (e) headings appear as a matter of convenience and will not affect the construction of this deed.

2 CREATION OF THE TRUST

2.1 Declaration of trust

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

2.2 Name of trusts

The trusts created by this deed are to be known as “Mōkai Pātea Waitangi Claims Trust”.

2.3 **Perpetuity period**

- (a) The Perpetuity Period is the period of 80 years from the date of this deed (being the maximum perpetuity period under the Perpetuities Act 1964).
- (b) The Trustees declare that if any change in any rule or law applicable to this deed from time to time permits the Perpetuity Period to be extended or deleted, the Trustees may vary this deed pursuant to the power to do so under clause 21:
 - (i) to extend the Perpetuity Period or duration of the Trust (as the case may be) up to the maximum period then permitted; or
 - (ii) to delete the Perpetuity Period; and/or
 - (iii) to make any corresponding changes to this deed as they determine necessary or appropriate.

3 **ROLE OF TRUSTEES**

3.1 **Activities of the Trustees**

The Trustees will have the powers and discretions set out in Schedule Three.

4 **INCOME TRUSTS**

4.1 **Discretionary power to accumulate Income**

- (a) At any time before the Distribution Date the Trustees may accumulate all or part of the Income of the Trust in an Income Year. The accumulated Income will be added to the capital of the Trust, becoming part of the Trust Fund, subject to the trusts and powers applicable to capital under this deed. Subject to any restrictions set out in this deed, the Trustees may still resort to the accumulated Income at any time and pay, apply or appropriate all or part of it as if it were Income of the Trust Fund.
- (b) This power to resort to accumulated Income extends to a payment, application, or appropriation made to or for a Member who at the time of accumulation of that Income was not a Member.

4.2 **Discretionary power to pay, apply or appropriate Income**

- (a) Subject to any restrictions set out in this deed, at any time before the Distribution Date the Trustees may pay, apply or appropriate all or part of the Income arising from the Trust Fund in an Income Year to, or for the maintenance, education or advancement, or in any other way for the benefit, of any one or more of the Members or Iwi Rūnanga.
- (b) If the Trustees so provide for more than one of the Members or Iwi Rūnanga they need not treat each of them equally.

4.3 **Provisions relating to payments, applications and appropriations of Income**

- (a) Subject to any restrictions set out in this deed, at any time before the Distribution Date the Trustees, by written resolution, may transfer any investments to any one or more of the Members or Iwi Rūnanga in satisfaction of a payment, application or appropriation under clause 4.2.

- (b) In making a payment or application under clause 4.2, the Trustees may pay money to the parent(s) of, guardian(s) of, person(s) having the care of, or person(s) providing a service or benefit to, a Member who is a minor. The receipt of such person will be a sufficient discharge to the Trustees for the payment or application.
- (c) The Trustees may make an appropriation of Income even though at the time of appropriation they have not received the Income being appropriated.
- (d) The Trustees may treat any Income appropriated to a minor as if that Income had arisen from investments held on trust for the minor, and accordingly, had become available under section 40 of the Trustee Act 1956 for his or her maintenance, education, advancement or in any other way for his or her benefit.
- (e) If the Trustees appropriate any Income to a Member or Iwi Rūnanga, that Member or Iwi Rūnanga will take an absolute and indefeasible interest in that Income as from the date on which it is appropriated.
- (f) This clause 4 will not operate to vest any part of the capital of the Trust Fund in any of the Members.

4.4 **Accumulation of Surplus Income**

- (a) The Trustees will accumulate any Surplus Income and add it to the capital of the Trust so that it becomes part of the Trust Fund, subject to the trusts and powers applicable to capital under this deed. Subject to any restrictions set out in this deed, the Trustees may still resort to the accumulated Surplus Income at any time and pay, apply or appropriate all or part of it as if it were income of the Trust Fund.
- (b) This power to resort to accumulated Surplus Income extends to a payment, application, or appropriation made to an Iwi Rūnanga or to a Member who at the time of accumulation of that Surplus Income was not a Member.

5 **CAPITAL TRUSTS UNTIL THE DISTRIBUTION DATE**

5.1 **Discretionary power to pay, apply or appropriate capital**

- (a) Subject to any restrictions set out in this deed, at any time before the Distribution Date the Trustees may pay, apply or appropriate as much of the capital of the Trust Fund as they think fit to, or for the maintenance, education or advancement, or in any other way for the benefit, of any one or more of the Members or Iwi Rūnanga.
- (b) If the Trustees so provide for more than one of the Members or Iwi Rūnanga they need not treat each of them equally.
- (c) This power to pay, apply or appropriate capital extends to a payment, application, or appropriation of capital made from Income accumulated under clause 4.1 or Surplus Income accumulated under clause 4.4 to an Iwi Rūnanga or for a Member who at the time of accumulation was not a Member.
- (d) Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of Income.

5.2 Provisions relating to payments, applications and appropriations of capital

- (a) Subject to any restrictions set out in this deed, at any time before the Distribution Date the Trustees, by written resolution, may transfer any investments to any one or more of the Members or Iwi Rūnanga in satisfaction of a payment, application or appropriation under clause 5.1.
- (b) In making a payment or application under clause 5.1, the Trustees may pay money to the parent(s) of, guardian(s) of, person(s) having the care of, or person(s) providing a service or benefit to, a Member who is a minor. The receipt of such person will be a sufficient discharge to the Trustees for the payment or application.
- (c) If the Trustees appropriate any capital to a Member under clause 5.1, that Member or Iwi Rūnanga will take an absolute and indefeasible interest in that capital as from the date on which it is appropriated.

6 CAPITAL TRUSTS FROM THE DISTRIBUTION DATE

6.1 Residual Capital Trusts

From the Distribution Date, the Trustees will hold the Trust Fund (or what remains of it) in accordance with any determination made by the Trustees under clause 7.7 of Schedule Three.

7 CONDITIONAL PAYMENTS, APPLICATIONS, APPROPRIATIONS

7.1 Conditional Payments

The Trustees may make any payment, application, appropriation or transfer of Income or capital of the Trust Fund to or for the benefit of a Member or Iwi Rūnanga under clauses 3, 5 or 6 conditional on:

- (a) that Member or Iwi Rūnanga entering into an agreement in relation to the payment, application, appropriation or transfer (whether under section 21 of the Property (Relationships) Act 1976 or otherwise), on terms acceptable to the Trustees; or
- (b) the payment, application, appropriation or transfer being subject to an existing agreement (whether under section 21 of the Property (Relationships) Act 1976 or otherwise), the terms of which are acceptable to the Trustees.

8 TRUSTEES

8.1 Appointment and removal

Trustees may be elected and removed in accordance with the procedure set out in Schedule One.

9 TRUSTEE PROCEDURAL PROVISIONS

9.1 Meetings

The Trustees will meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, provided that there shall be a minimum of 4 meetings in each financial year.

9.2 Quorum

A quorum for a meeting of Trustees shall be a majority of the Trustees who, for the time being, have been elected or otherwise holding office, provided that at each meeting, the Trustees present shall include at least one Trustee from each of the four Iwi Rūnanga.

9.3 Notice of meetings

- (a) Written notice of every meeting of Trustees will be either hand-delivered, posted or sent by facsimile or email to each Trustee at least 7 days before the date of the meeting.
- (b) Every notice of a meeting will state the place, day and time of the meeting and may also state the subject-matter of the meeting.
- (c) The requirement for notice of a meeting may be waived if all the Trustees give their consent to such a waiver.

9.4 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.

9.5 Resolutions

- (a) Unless specified otherwise in this deed, a decision is taken and a resolution is validly made when it is moved by a representative from one Iwi Rūnanga and seconded by a representative from a second Iwi Rūnanga, and passed by a simple majority of those Trustees present and entitled to vote.
- (b) The chairperson does have a casting vote.
- (c) The Trustees may vary or cancel any resolution at a meeting.
- (d) A written resolution signed by 75% of the Trustees will be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees. Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees.

9.6 Reporting

The Tumu Mōkai Representative will provide an update to the Trustees on the Tumu Mōkai's activities at every meeting held in accordance with clause 9.1.

9.7 Minutes

- (a) The Trustees will keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.
- (b) 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 will be deemed to have been properly convened and its proceedings to have been properly conducted.

9.8 Teleconference Meetings

- (a) A Teleconference Meeting between a number of Trustees who constitute a quorum, will be deemed to constitute a meeting of the Trustees. All the provisions in this deed relating to meetings will apply to Teleconference Meetings so long as the following conditions are met:
- (i) All of the Trustees for the time being entitled to receive notice of a meeting will 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;
 - (ii) Throughout the Teleconference Meeting each participant must be able to hear each of the other participants taking part;
 - (iii) At the beginning of the Teleconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
 - (iv) A participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the consent of the chairperson, or if there is no chairperson, the consent of the other participants. Accordingly, a participant will 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 such consent; and
 - (v) Minutes of the proceedings at the Teleconference Meeting will be sufficient evidence of those proceedings, and of the observance of all necessary formalities.

9.9 Appointment of chairperson

The Trustees will elect one of their number to act as chairperson on such terms as the Trustees agree. If the chairperson cannot be present at a meeting or is not present within 10 minutes of the time appointed for any meeting, the Trustees present may elect one of their number to be the chairperson of that meeting. The Trustees will elect one of their number to act as deputy chairperson on such terms as the Trustees agree, provided that the deputy chairperson shall be a representative appointed by a different Iwi Rūnanga from the chairperson.

10 DISCLOSURE OF INTERESTS

10.1 Interested Trustee

- (a) A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:
- (i) is a party to, or will derive a material financial benefit from that transaction;
 - (ii) has material financial interest in another party to the transaction;

- (iii) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
 - (iv) is the parent, child or Spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
 - (v) is otherwise directly or indirectly interested in the transaction.
- (b) For the avoidance of doubt, a Trustee will not be interested in a transaction if the same material financial benefit from that transaction will be derived by the majority or a large number of the Members.
- (b) As soon as a Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, he or she must disclose to his or her co-Trustees:
 - (i) the nature and monetary value of that interest (if the monetary value of the Trustee's interest is able to be quantified); or
 - (ii) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.
- (c) A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.

10.2 **Interested Trustee may not vote**

A Trustee who is interested in a transaction entered into, or to be entered into, by the Trust may not vote on, or participate in the discussions on a matter relating to the transaction, nor be included among the Trustees present at the meeting for the purpose of determining a quorum, but may:

- (a) attend a meeting of Trustees at which a matter relating to the transaction arises;
- (b) sign a document relating to the transaction on behalf of the Trust; and
- (c) do anything else as a Trustee in relation to the implementation of the transaction, as if he or she were not interested in the transaction.

10.3 **Dealing with interested Trustees**

Subject to clauses 10.1 and 10.2, each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee.

11 **LIABILITY, INSURANCE, INDEMNITY AND STANDARD OF CARE**

11.1 **Liability of Trustees**

- (a) A Trustee will 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.

- (b) No Trustee will be liable for any loss attributable to any breach of trust by any co-Trustee and nor will any Trustee be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.
- (c) For the purposes of this clause 11.1, "Trustee" includes a director of a Corporate Trustee.

11.2 Trustees' Liability Insurance

- (a) The Trustees, in respect of one or more of the Trustees, may take out trustees' liability insurance for such cover (including defence cover) and on such terms as the Trustees think fit.
- (b) Rather than having such insurance arranged by the Trustees, a Trustee, in respect of that Trustee, may take out trustees' liability insurance for such cover and on such terms as that Trustee thinks fit.
- (c) In each case, the reasonable cost of premiums is to be treated as a legitimate expense of the Trust and may be paid directly from the Trust Fund or by way of reimbursement to the Trustees.
- (d) Any insurance cover under this clause 11.2 may extend to the directors of a Corporate Trustee.

11.3 Trustees' Indemnity

A Trustee will be entitled to exoneration, indemnity and reimbursement out of the assets of the Trust for any liability (including without limitation, any expenses) which that Trustee incurs in relation to the Trust and which is not attributable to that Trustee's dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. For the purposes of this clause 11.3, "Trustee" includes a director of a Corporate Trustee.

11.4 Trustees' Standard of Care

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) will 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) will be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. This clause 11.4 will constitute a contrary intention for the purposes of clause 13D of the Trustee Act 1956. For the purposes of this clause 11.4, "Trustee" includes a director of a Corporate Trustee.

12 TRUSTEES' POWERS

12.1 Trustees' General Power

Subject to clause 3, the Trustees have in their discretion, the fullest possible powers in relation to the Trust Fund, and they may in their discretion do anything pertaining to the Trust Fund which they think fit as if they owned it absolutely.

12.2 **Trustees' Specific Powers**

Without prejudice to the generality of clause 12.1, or to any of the Trustees' express or implied powers, the Trustees will have the powers specified in Schedule Three, and may exercise them either alone or with any other person(s).

12.3 **Restriction on exercise of Trustees' Powers**

Notwithstanding clauses 12.1 and 12.2, the Trustees must not enter into a Major Transaction unless that Major Transaction is approved by way of Special Resolution in accordance with Schedule Five.

13 **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 of the High Court of New Zealand of at least 7 years' standing, and they may act upon the barrister's opinion without being liable to any person who may claim to be beneficially interested in respect of anything done in accordance with that opinion. This right to obtain and act upon a barrister's opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

14 **AUDIT, ANNUAL REPORT AND FINANCIAL STATEMENTS**

14.1 At their first meeting in each Income Year the Trustees will present a report dealing with the affairs of the Trust, supported by a statement of the Trust's income and expenditure during the previous Income Year and a statement of its assets and liabilities at the end of that Income Year.

14.2 The Trustees must ensure that the financial statements of the Trust for each Income Year are audited by a chartered accountant in public practice generally within 4 months after the end of that Income Year or in any event, prior to the next AGM. The person appointed as auditor must not be a Trustee of the Trust.

15 **CONTROL OF FUNDS**

All money received by or on behalf of the Trust will 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 will 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.

16 **ANNUAL GENERAL MEETING**

16.1 **Procedure**

(a) The Trustees must call an AGM of the Members within 6 months of the Balance Date.

(b) The AGM must be advertised not less than 30 working days' in advance, by way of newspaper advertisement, and any other means as determined by the Trustees including email and social media, and must state the agenda of the AGM (including the results of any election of Rūnanga Delegates and the appointment of Trustees).

- (c) One or more Special Resolutions may also be considered at an AGM, so long as the “Procedure for passing a Special Resolution” in accordance with Schedule Five is followed as if the AGM was an SGM (though other AGM business can also be transacted). The business of the AGM must include:
 - (i) the chairperson’s report;
 - (ii) presentation by the Trustees of an annual report for the previous Income Year, including an explanation of the Trust’s general activities;
 - (iii) presentation by the Trustees of financial statements for the previous Income Year;
 - (iv) approval of the appointment of the auditor for the next Income Year;
 - (v) a report by the Trustees on Tumu Mōkai’s general activities;
 - (vi) announcing the names of all newly elected Rūnanga Delegates, and appointed Trustees including the Tumu Mōkai in accordance with Schedules One and Two (if applicable);
 - (vii) approval of the Trustees’ remuneration;
 - (viii) setting a date for the next AGM; and
 - (ix) any other general business as determined by the Trustees.
- (d) A quorum for a AGM is:
 - (i) a majority of Trustees who hold office, provided that at each AGM, there must be at least one Trustee representing each of the Iwi Rūnanga which have elected representatives to the Trust; and
 - (ii) an additional ten (10) Adult Members.

16.2 Approval of Trustees’ remuneration and appointment of auditor

- (a) Subject to clause 16.2(b), no remuneration will be paid to a Trustee in his or her capacity as a Trustee unless that remuneration has been authorised by a resolution of the Adult Members present at the AGM. Each such resolution will express the remuneration authorised to be paid to the Trustees as a maximum monetary sum per annum payable either to all Trustees taken together or to any person who from time to time holds office as a Trustee, provided however that a Trustee must satisfy attendance requirements of a Trustee in order to receive remuneration.
- (b) Clause 16.2(a) does not apply to any remuneration paid to the Initial Trustees or any co-opted Trustee appointed under Schedule One. Remuneration shall be set by them for the period they hold office, on the basis of professional advice they must seek. Written confirmation of the professional advice must be provided at each relevant AGM.

- (c) The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Members present at the AGM.
- (d) A resolution of the Adult Members present at an AGM is validly made when it is passed by show of hands by a simple majority of those Adult Members present and entitled to vote.

17 MEMBERS' RIGHTS

17.1 Members' Rights to Trust Information

- (a) If requested to do so by the Members, or any of them, in writing, the Trustees will, subject to clause 17.1(b), provide such Trust Information to those Members as they have requested within a reasonable time of receiving such request.
- (b) The Trustees will consider any request for Trust Information under clause 17.1(a) having regard to the following factors:
 - (i) any issues of personal or commercial confidentiality;
 - (ii) the practicality of providing information where there is a large number of Members;
 - (iii) the age and circumstances of the Members;
 - (iv) the impact of provision of the requested Trust Information on the Trustees, other Members, the Trust Fund and Trust property and third parties;
 - (v) the impact of provision of the requested Trust Information on family relationships, relations between Members, relations between Trustees and Members; and
 - (vi) whether the provision of the requested Trust Information is, in the opinion of the Trustees based on reasonable grounds, in the best interests of the Members as a whole.
- (c) Taking all such factors into account together with any other matters the Trustees consider relevant, the Trustees will decide:
 - (i) what (if any) of the requested Trust Information should be provided to the Members;
 - (ii) whether such Trust Information is to be provided in full or in redacted form; and
 - (iii) whether and if so, what safeguards should be imposed on the provision and/or use of the Trust Information.
- (d) A Member may be charged for the reasonable costs of the provision by the Trustees of the Trust Information requested by that Member.

18 RELATIONSHIP WITH IWI RŪNANGA

18.1 The Iwi Rūnanga are representative of the Members who affiliate to the particular Mōkai Pātea Iwi and Mōkai Pātea hapū, and Rūnanga Delegates have the authority to appoint Trustees. As such, the Trustees are accountable to the Iwi Rūnanga, and the Iwi Rūnanga have the status of beneficial entities of the Trust.

19 DISPUTE RESOLUTION

19.1 Disputes

In the event that a dispute arises between:

- (a) any Members; or
- (b) the Trustees and any Members; or
- (c) the Trustees and any Iwi Rūnanga;

regarding decisions of the Membership Committee under Schedule Four, or the Trust activities and operations generally, then that dispute will be referred in first instance to the Trustees.

19.2 Notice of Disputes

- (a) All disputes referred to the Trustees in accordance with clause 19.1 will be submitted to the Trustees by notice in writing and the Trustees will acknowledge receipt in writing within 10 working days of the date of receipt of the notice.
- (b) Upon receipt of the notice Trustees will contact the affected parties and (if appropriate) assist in convening a hui to resolve the dispute, including the Taumata Tikanga.

19.3 Formal reference to Disputes Committee

If the dispute is not resolved within 30 working days of the receipt by the Trustees of written notice of the dispute in accordance with clause 19.2, then it may be referred to a Disputes Committee constituted in accordance with clauses 19.4 and 19.5.

19.4 Disputes Committee to be appointed as required

There will not be a permanent Disputes Committee, but the Trustees will appoint a Disputes Committee:

- (a) on a case by case basis having regard to the precise subject matter of the dispute in question, and whether the complaint is vexatious or has been previously addressed;
- (b) and only after the expiry of the 30 working day period referred to in clause 19.3.

19.5 **Appointment and composition of Disputes Committee**

A Disputes Committee will comprise at least three members appointed by the Trustees as follows:

- (a) one person with expertise in tikanga of Mōkai Pātea Nui Tonu;
- (b) one Adult Member appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that if the dispute concerns the Trust, then such Adult Member appointed cannot also be a Trustee or employee of the Trust; and
- (c) one independent (non-Member) individual of good standing and reputation in the community;
- (d) provided however that if in the opinion of the Trustees the dispute is of a sufficiently serious or complex nature, the independent non-Member appointment referred to in subclause (c) shall be nominated by the President from time to time of the New Zealand Māori Law Society or his or her nominee, such member to be a barrister or solicitor with 10 or more years' experience or expert with equivalent experience in the relevant field the subject of dispute.

19.6 **Role of Disputes Committee**

The role of a Disputes Committee will be to facilitate and make findings and decisions on the disputes referred to it.

19.7 **Deliberations of Disputes Committee**

In dealing with any dispute a Disputes Committee will, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with, including how costs of the dispute process will be addressed. The findings and decisions of a Disputes Committee will be final and binding on the parties.

19.8 **Notification of Outcome**

A Disputes Committee will give its findings and decision, together with reasons, in writing to the Trustees and any other party to the dispute.

20 **RESETTLEMENT OF THE TRUST FUND**

At any time before the Distribution Date the Trustees may resettle (without infringing the Perpetuity Period) all or part of the Income or capital of the Trust Fund on the trusts and with the powers of any other trust approved by the Trustees, being a trust for the benefit of one or more of the Members or the Iwi Rūnanga, so long as such resettlement is approved by way of Special Resolution in accordance with Schedule Five.

21 VARIATIONS

21.1 Variations by deed

- (a) The Trustees may by revocable or irrevocable deed vary the terms of this deed as long as in doing so:
- (i) the Perpetuity Period is not infringed;
 - (ii) the Trustees are of the opinion that the variation will benefit the Members; and
 - (iii) the variation does not affect the beneficial entitlement of any Member or Iwi Rūnanga to any amount set aside by the Trustees for that Member or Iwi Rūnanga before the date of the variation; and
 - (iv) the variation is approved by way of Special Resolution in accordance with Schedule Five, unless the variation is to remedy a technical slip.
- (b) The powers granted by this clause 21.1 are in addition to and not in derogation of any applicable statutory power to vary the trusts of this deed.

22 REVIEW OF DEED

22.1 Review of deed

No later than 5 years after the date of this deed the Trustees shall commission an independent review of this deed.

22.2 Outcome of review

Following the review, the Trustees may by revocable or irrevocable deed vary the terms of this deed in accordance with clause 21.1.

23 GOVERNING LAW

23.1 New Zealand forum

This deed is governed by and construed in accordance with New Zealand law until the forum of administration and jurisdiction is changed under clause 23.2.

23.2 Change of forum

At any time the Trustees may change the forum of administration and jurisdiction by way of deed, in which event the Trust will be governed according to the laws of the new forum of administration and jurisdiction adopted by the Trustees.

SCHEDULE ONE: ELECTION AND REMOVAL OF RŪNANGA DELEGATES

1 Construction

- 1.1 Unless stated otherwise, reference to clauses are reference to clauses in this Schedule.
- 1.2 For the purposes of this Schedule:
- (a) “Phase I elections” means rules and procedures for elections of Rūnanga Delegates that are set out in clause 3.1 and
 - (b) “Phase II elections” means rules and procedures for elections of Rūnanga Delegates that are set out in clauses 4 and 5.

2 This Schedule to apply

- 2.1 The Rūnanga Delegates must be appointed to office in accordance with the rules and procedures set out in this Schedule.
- 2.2 Subject to clause 6, a Rūnanga Delegate will hold office for a term of four years from the date of election, but will be eligible for re-election for a further term or terms. The Rūnanga Delegates of each Iwi Rūnanga shall appoint a chairperson, and shall regulate their own procedures.
- 2.3 The duly elected Rūnanga Delegates shall have the authority to appoint Trustees to the Mōkai Pātea Waitangi Claims Trust in accordance with the rules and procedures set out in Schedule Two.

3 Phase I Elections

- 3.1 Each Iwi Rūnanga shall hold an election for its Rūnanga Delegates as a Phase I Election by 30 November 2019 as follows:
- (a) The Iwi Rūnanga shall convene a Hui ā-Iwi for the purpose of electing Rūnanga Delegates;
 - (b) Notice of the Hui shall be given by that Iwi Rūnanga:
 - (i) by posting to a physical or electronic address for each Adult Member who is recorded on the Members’ Register as affiliating to that Iwi Rūnanga;
 - (ii) by newspaper advertisement, published on at least two separate occasions not less than 20 working days prior to the Hui, in a newspaper the Iwi Rūnanga considers circulates in an area where a significant number of those Adult Members reside who affiliate to that Iwi Rūnanga; and
 - (iii) any other means as determined by the Iwi Rūnanga, including email and social media.
 - (c) any Member who is recorded on the Members’ Register as affiliating to that Iwi Rūnanga aged 20 years of age or older at the election date is eligible to be nominated as a Rūnanga Delegate;

- (d) nominations may be made on the day and voting shall be by way of show of hands but any person nominated as a Rūnanga Delegate must not be disqualified by any of the criteria laid down in clause 6.1 of this Schedule;
- (e) any Adult Member who is recorded on the Members' Register as affiliating to that Iwi Rūnanga (aged 18 years of age or older) is eligible to vote in the election of the Rūnanga Delegates; provided that special votes can be cast if the voter also completes an application for membership at the same time, in which case the vote is to be treated as provisional and only counted if the application is accepted by the Membership Committee in accordance with Schedule Four within 5 working days of the vote;
- (f) Rūnanga Delegates remain in office for a term of four years and are eligible for re-election unless removed or disqualified in a manner consistent with the processes of this Deed. For the avoidance of doubt, a Rūnanga Delegate can be elected to one or more Iwi Rūnanga, if eligible.

4 Phase II Elections – Hapū Seats

- 4.1 Within the first term of the Phase I elections, and no later than 30 November 2023, each Iwi Rūnanga shall hold a Phase II election for its Rūnanga Delegates to fill the Hapū Seats of the particular Mōkai Pātea Iwi.
- 4.2 Each Iwi Rūnanga shall appoint a Returning Officer for the elections. The Iwi Rūnanga may appoint anyone they think fit to perform the tasks of the Returning Officer, provided that a Rūnanga Delegate or a nominee may not act as Returning Officer. The Returning Officer is responsible for co-ordinating the election, and may appoint others to assist with that co-ordination as they consider necessary, provided that such persons may not be a Rūnanga Delegate or a nominee.
- 4.3 Four months prior to the nominated election date, the Returning Officer must give notice calling for the nomination of Rūnanga Delegates. The notice must specify the method of nominating candidates, the Hapū Seats for which nominations are being sought, and the latest date by which nominations must be made and lodged with the Returning Officer. The notice must be given:
 - (a) by posting to a physical or electronic address for each Adult Member who is recorded on the Members' Register as affiliating to that Iwi Rūnanga;
 - (b) by newspaper advertisement, published on at least two separate occasions not less than 20 working days prior to the Hui, in a newspaper the Iwi Rūnanga considers circulates in an area where a significant number of those Adult Members reside who affiliate to that Iwi Rūnanga; and
 - (c) any other means as determined by the Iwi Rūnanga, including email and social media.
- 4.4 Any Member who is recorded on the Members' Register as affiliating to the Hapū concerned, and aged 20 years of age or older at the election date, is eligible to be nominated as a Rūnanga Delegate for that Hapū Seat.

- 4.5 Each nomination must include a signed nomination declaration form which provides (1) written consent to the nomination from the nominee; (2) a declaration that the nominee affiliates to the Mōkai Pātea hapū for which Hapū Seat the nominee is standing; (3) a brief statement containing details of the nominee's experience and aspirations which are relevant to the position of Rūnanga Delegate; (4) a declaration that the nominee is not ineligible to stand for any of the reasons in clause 6; and such other details as the Rūnanga requires. Each nomination must be seconded by the signature of an Adult Registered Member, who declares that he or she also affiliates to the Mōkai Pātea hapū for which Hapū Seat the nominee is standing.
- 4.6 All nominations must be lodged with the Returning Officer no later than 30 Working Days following the date upon which the notice calling for nominations is given, being the *Nominations Closing Date*.
- 4.7 At the Nominations Closing Date, the number of eligible nominees for Rūnanga Delegate positions shall be determined in accordance with this clause:
- (a) If an eligible nominee is elected to more than one Hapū Seat within the same Iwi Rūnanga, the nominee shall immediately choose the Hapū Seat he or she wishes to hold, and the other Hapū Seat(s) shall then be filled by the next highest polling nominee. For the avoidance of doubt, a Rūnanga Delegate can hold a Hapū Seat in more than one Iwi Rūnanga, if eligible;
 - (b) If the number of eligible nominees exceeds the number of vacant Rūnanga Delegate positions, then an election for Rūnanga Delegates will be held in accordance with this Schedule;
 - (c) If the number of eligible nominees equals the number of vacant Rūnanga Delegate positions, an election for Rūnanga Delegates need not be held, and the nominees eligible for election will be deemed to be elected as Rūnanga Delegates; or
 - (d) If the number of eligible nominees is less than the number of vacant Rūnanga Delegate positions, further nominations for Rūnanga Delegates may be called for until the number of nominees is equal to the number of vacant Rūnanga Delegate positions, at which point the nominees eligible for election will be deemed to be elected as Rūnanga Delegates, or an election is required.
- 4.8 If an election is required to be held under clause 4.7 for Rūnanga Delegates, then immediately following the Nominations Closing Date, the Iwi Rūnanga must fix a closing date for the election, being the last day upon which a vote may be validly cast (the *Election Closing Date*).
- 4.9 The Returning Officer will give not less than 30 working days notice of the Election. Notice of the Election must be given in a manner as required for notice of nominations under clause 4.3 but must also specify:
- (a) the list of nominees for vacant Rūnanga Delegate positions, identifying the Hapū Seats and a brief description of the nominees;
 - (b) details on the method of voting;

- (c) the Election Closing Date; and
 - (d) for notice posted or emailed to an Adult Member, a valid voting form that contains sufficient information to identify the Adult Member to whom the form was sent.
- 4.10 Any Adult Member (aged 18 years of age or older) who is recorded on the Members' Register as affiliating to the Hapū concerned at the Election Closing Date, is eligible to vote for a Rūnanga Delegate for that Hapū Seat.
- 4.11 Voting at any election will be by secret ballot, either posted or returned to the Returning Officer in accordance with the requirements set, or cast at an Election Hui; provided that special votes can be cast if the voter also completes an application for membership at the same time, in which case the vote is to be treated as provisional and only counted if the application is accepted by the Membership Committee in accordance with Schedule Four within 5 working days of the vote.
- 4.12 Adult Members will each have one vote for the Hapū Delegate(s) who are standing to represent the Hapū Seat to which the Adult Member affiliates. An Adult Member can vote for more than one Hapū Seat in one or more Iwi Rūnanga if he or she affiliates to more than one Mōkai Pātea hapū for which elections are being held.
- 4.13 An Adult Member that is also a nominee may vote for him or herself.

5 Election of nominees

- 5.1 On the third day following the Election Closing Date, the Returning Officer must record and count all votes validly cast.
- 5.2 Votes are validly cast if received by the Returning Officer by the third day following the Election Closing Date, provided that the envelope containing the voting form is post-marked on or before the Election Closing Date.
- 5.3 Once all the votes have been counted and recorded by the Returning Officer, and the results of the election determined, the Returning Officer will inform the Iwi Rūnanga of the results and will publicly notify the results to Members.
- 5.4 The number of highest polling nominees for Rūnanga Delegate positions, corresponding to the number of vacant Rūnanga Delegate positions will be elected as Rūnanga Delegates.
- 5.5 Where there is a tied vote between eligible nominees for a vacant Rūnanga Delegate position, and the maximum number of Rūnanga Delegates has been elected, the Returning Officer will inquire as to whether any of the nominees wish to concede election to the other highest polling nominee and if such concession is made, the other highest polling nominee will be deemed to be elected. If no such concession is made, the election will be determined by lot.

6 Termination of office

- 6.1 A Rūnanga Delegate will cease to hold their position if he or she:

- (a) is censured under this Deed for acting in a manner that brings or is likely to bring into disrepute the Mōkai Pātea Waitangi Claims Trust, or the Iwi Rūnanga for which the Rūnanga Delegate has been elected;
- (b) retires from office by giving written notice to the Iwi Rūnanga;
- (c) refuses to act;
- (d) is absent without leave from 3 consecutive ordinary meetings of the Iwi Rūnanga, without reasonable excuse;
- (e) becomes physically or mentally incapacitated to the extent that in the opinion of the other Rūnanga Delegates, expressed in a resolution, he or she is unable to perform the duties of a Rūnanga Delegate;
- (f) ceases to fulfil the eligibility requirements for election;
- (g) becomes bankrupt;
- (h) completes his or her term of office without being re-appointed; or
- (i) dies.

7 Validity of Proceedings

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

SCHEDULE TWO: APPOINTMENT OF TRUSTEES TO MŌKAI PĀTEA WAITANGI CLAIMS TRUST

1 Construction

Unless stated otherwise, reference to clauses are reference to clauses in this Schedule.

2 Authority of Rūnanga Delegates to Appoint Trustees

2.1 All Trustees must be appointed to office in accordance with the rules and procedures set out in this Schedule.

2.2 The Rūnanga Delegates of each of the four Iwi Rūnanga (elected under Schedule One of this Deed) shall have the authority to appoint two persons each to be their representative Trustees on the Mōkai Pātea Waitangi Claims Trust, so as to total eight Trustees.

2.3 The Rūnanga Delegates from each of the four Iwi Rūnanga have the authority to collectively appoint a ninth Trustee as the Tumu Mōkai in accordance with clause 5.1(b) of this Schedule.

3 Number of Trustees

3.1 There shall be nine Trustees, consisting of eight trustees appointed by Iwi Rūnanga Delegates (with a maximum of two trustees appointed to represent each of the four Iwi Rūnanga), plus the Tumu Mōkai trustee.

3.2 The Tumu Mōkai trustee shall hold a voting seat on the Trust.

4 Initial Trustees

4.1 The Initial Trustees are Utiku Potaka and Thomas Curtis (Te Rūnanga o Ngāti Hauiti), Barbara Ball and Te Rina Warren (Te Rūnanga o Ngāti Whitikaupeka), Hari Benevides and Moira Raukawa-Haskell (Te Rūnanga o Ngāti Tamakōpiri), Robert Martin and Maraea Bellamy (Te Rūnanga o Ngāi Te Ohuake), and Ihakara Hunter as Tumu Mōkai trustee.

5 Appointment Process for Trustees

5.1 Within 14 days of the Phase I election of Rūnanga Delegates provided for in Schedule One of this Deed:

(a) the duly elected Delegates of each Iwi Rūnanga shall meet to decide on the appointment of two Rūnanga Delegates to represent their Iwi Rūnanga on the Trust, and the Iwi Rūnanga chairperson shall certify in writing the names of the appointed Rūnanga Delegates to the registered office of the Trust; and

(b) the duly elected Delegates of each Rūnanga shall meet to consider nominations for the position of Tumu Mōkai, and any recommendations for appointment shall be provided to the Taumata Tikanga for consultation. The Rūnanga Delegates shall then collectively appoint a Tumu Mōkai to represent all of Mōkai Pātea Nui Tonu, and the chairpersons shall certify in writing the name of the appointed Tumu Mōkai trustee to the registered office of the Trust.

5.2 Together, the nine Trustees who are appointed by the Iwi Rūnanga under clause 5.1 are referred to in this Schedule as the "Phase 1 Trustees".

6 Term of office

- 6.1 Subject to clauses 6.2 and 8, the Trustees will hold office for a term of four years from the date of appointment, but will be eligible for re-appointment for a further term or terms.
- 6.2 To ensure orderly rotation of Trustees, the Phase I Trustees will retire by rotation as follows:
- (a) The Tumu Mōkai Trustee shall serve a full four-year term;
 - (b) One month before the second AGM of the Trust following the Phase I election, the Trust will determine four of the Phase I Trustees to retire from office, effective from the conclusion of the AGM, and the remaining Phase I Trustees will serve their full four-year term;
 - (c) The Phase I Trustees to retire from office shall be determined by prior agreement among the Trustees, but if the Trustees cannot agree, then the order shall be determined by lot, provided that only one Trustee appointed from each Iwi Rūnanga shall retire. The Trust shall notify each Iwi Rūnanga in writing of the names of the retiring Trustees;
 - (d) Prior to the second AGM of the Trust following the Phase I election, the duly elected Delegates of each Iwi Rūnanga shall meet to decide on the replacement of their retiring Trustee, and the Iwi Rūnanga chairperson shall certify in writing the name of the appointed replacement Trustee to the registered office of the Trust, with the names of the replacement Trustees to be announced at the AGM;
 - (e) The four replacement trustees shall serve their four year term commencing from the date of the AGM.
- 6.3 Nothing restricts the Initial Trustees or the Phase I Trustees who have retired early because of rotation from seeking re-appointment for a further term or terms.

7 Eligibility to be Trustee

- 7.1 Each Trustee to be appointed shall complete a signed declaration form to his or her Iwi Rūnanga which provides (1) written consent to the appointment as the Trustee; (2) that the nominee is a Member of Mōkai Pātea, who is 20 years or older; (3) a brief statement containing details of the nominee's experience and aspirations which are relevant to the position of Trustee; (4) that the nominee is a duly elected Rūnanga Delegate of the applicable Rūnanga; (5) a declaration that the nominee is not ineligible to stand for any of the reasons in clause 6; and such other details as the Iwi Rūnanga requires.

8 Termination of office

- 8.1 A Trustee will cease to hold their position if he or she:
- (a) is censured under this Deed for acting in a manner that brings or is likely to bring into disrepute the Mōkai Pātea Waitangi Claims Trust, the Mōkai Pātea Iwi or the Rūnanga for which the Trustee has been appointed to represent;
 - (b) retires from office by giving written notice to the Trust;

- (c) refuses to act;
- (d) is absent without leave from 3 consecutive ordinary meetings of the Trust, without reasonable excuse;
- (e) 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;
- (f) ceases to fulfil the eligibility requirements for election;
- (g) becomes bankrupt;
- (h) completes his or her term of office without being re-appointed; or
- (i) dies.

9 **Validity of Proceedings**

Where, for any reason, the Trustee is not properly elected or is disqualified from holding office, anything done by the Trustee in relation to the Trust before discovery of the irregularity, will be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).

SCHEDULE THREE: TRUSTEES' POWERS

General Powers

In all activities and decision making that is undertaken pursuant to this Deed, the Trust will respect and acknowledge the mana of Mōkai Pātea Nui Tonu including by:

- (i) acknowledging and respecting the activities and practices of Mōkai Pātea tūpuna, including the kaupapa of whanau ora, tikanga and all aspects of Mōkai Pātea rangatiratanga;
- (ii) uplifting and promoting whanau, hapū and iwi strength, spirituality, development, discipline, esteem, dignity and integrity; and
- (iii) advancing and promoting oranga whanau, employment and wellbeing, education and vocational training, spiritual welfare and te reo Māori me ōna tikanga.

1 Powers of investment

1.1 *To invest*

To invest the Trust Fund, and the income from it, in any form of investment, and to vary any such investment from time to time.

1.2 *To retain investments*

To retain any investments coming into the Trustees' hands as part of the Trust Fund for as long as the Trustees think proper, even if they are not investments which could be properly made by a trustee.

1.3 *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.

1.4 *Investment Policy*

To have regard in formulating investment policy and making investment decisions from time to time to such matters as the Trustees consider in their absolute discretion appropriate having regard to the interests of the Members or Iwi Rūnanga or any of them from time to time.

1.5 *To appoint an investment manager*

To appoint any person as an investment manager to invest and manage all or any investments forming part of the Trust Fund in accordance with the investment policies determined by the Trustees from time to time, on such terms as the Trustees think fit, including regular review of the investment manager's performance.

1.6 *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 will not be liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

1.7 *No Diversification*

To hold investments from time to time without any obligation to diversify between types and nature of investments without being liable for any resultant loss to the Trust Fund.

2 **Funding**

2.1 *To borrow*

To borrow any money at whatever rate of interest and upon whatever other terms and conditions the Trustees may think fit. For this purpose the Trustees may give security for repayment over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the borrowing.

2.2 *To lend*

To make any loans or advances (with or without security and with or without payment of interest) to any person in such manner and on such terms and conditions as the Trustees think fit. In particular, but without limiting the foregoing, the Trustees may make loans or advances, with or without security and with or without payment of interest and otherwise on such terms as they think fit, to any Member or Iwi Rūnanga.

2.3 *To provide guarantees and give security*

To enter into any guarantee or indemnity which the Trustees consider to be in the best interests of the Trust Fund or any Member or Iwi Rūnanga, and to give security for the guarantee or indemnity obligations over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the guarantee or indemnity.

2.4 *Bank accounts*

To open and maintain 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 with or 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.

2.5 *To waive debts and effect compromises*

The Trustees will have power without being liable for loss to:

- (a) waive any debts due to the Trust Fund, either absolutely or on such terms as the Trustees think expedient;
- (b) accept any property whether movable or immovable before the time at which it is transferable or payable;
- (c) pay or allow any debt or claim on any evidence which they may think sufficient;
- (d) accept any composition or any security movable or immovable for any debt or any property due to or claimed by the Trustees;
- (e) allow any time for payment of any debt; and

- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or otherwise relating to the Trust Fund without being liable for any loss to the Trust Fund thereby occurring.

3 Real and Personal Property

3.1 *To purchase property*

To purchase as an asset of the Trust Fund any property or interest in property which the Trustees consider will benefit the Trust Fund. In exercising this power the Trustees will not be taken to be exercising a power of investment.

3.2 *To sell*

To sell any real or personal property forming part of the Trust Fund in the manner and on the terms and conditions the Trustees think fit, including (without limitation) power to allow such part of the purchase price as the Trustees think fit to remain on loan, with or without security and with or without payment of interest, or to be payable by instalments.

3.3 *To postpone sale*

To postpone the sale of any real or personal property forming part of the Trust Fund for as long as the Trustees think fit without being liable for any resultant loss to the Trust Fund.

3.4 *To let*

To let or licence any real and personal property at such rent and on such terms and conditions (including an option to purchase) as the Trustees think fit, and to accept surrenders of any leases, licences and tenancies.

3.5 *To subdivide*

To subdivide any real property forming part of the Trust Fund and meet the costs of subdivision out of the Trust Fund.

3.6 *To maintain property*

To maintain, manage and improve property which, or any interest in which, forms part of the Trust Fund, in whatever manner the Trustees think fit. For those purposes, the Trustees may pay and apply any of the capital and income of the Trust Fund as they think fit.

3.7 *To develop*

To spend any sums out of the capital or income of the Trust Fund the Trustees think fit in developing any real property forming part of the Trust Fund, and to dedicate any roads required in respect of the development.

3.8 *To grant and acquire options*

To grant, acquire, dispose of and exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any sale, lease, exchange or other disposition. An option may be granted, acquired or disposed of on such terms and conditions as the Trustees think fit, and in respect of a grant, may be granted at a price determined at the time of the grant or at such later date as the Trustees think fit. The Trustees will not be personally liable for any loss arising from their exercise of this power and will be indemnified accordingly out of the Trust Fund.

3.9 *To permit occupation of property*

To permit any person to occupy or use any real property forming part of the Trust Fund free of rent or with payment of outgoings and maintenance in place of rent, or otherwise, and generally on such terms and conditions as the Trustees think fit.

3.10 *To insure*

To insure any building or other insurable property to any amount up to its full insurable value, or at the Trustees' 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 effect any such insurances and pay the premiums out of income or capital without obtaining the consent of any of the Members.

3.11 *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.

4 Carrying on business

4.1 *To carry on business*

(a) To carry on any business anywhere in the world, whether through a company, in partnership, limited partnership, joint venture or otherwise, for as long as the Trustees think fit. The Trustees may use any part of the Trust Fund as capital in the business, and may also employ in the business such managers, agents, employees and other persons (including any Trustee or anyone who for the time being is the sole Trustee of the Trust Fund) as they think fit.

(b) The Trustees will be absolutely indemnified out of the Trust Fund for any losses which they may sustain in so carrying on any such business.

(c) Subject to the terms and conditions on which any business is carried on by the Trustees, the net annual profits from any business will, at the Trustees' discretion, be distributable as Income in the Trustees' hands without having to be first applied in making good any earlier business losses. Any business losses for any year, unless the Trustees decide otherwise, will be borne by the capital of the Trust Fund and not recouped out of later profits.

4.2 *To act in relation to certain companies*

In respect of any company in which the Trust Fund holds or is the beneficial owner of shares, notes, stock or debentures:

(a) to act as a director of the company and to receive and retain fees or other remuneration for so acting without having to account to the Trust Fund, unless the Trustees otherwise require;

(b) to provide out of the Trust Fund on such terms as the Trustees think fit further capital for the company either by way of advances, loans, deposits or otherwise (with or without security and with or without payment of interest) or by taking further shares in the company;

(c) to concur in the winding up, reconstruction or amalgamation of the company or in the modification of its regulations, on whatever terms the Trustees think fit; and

- (d) generally to act in relation to the company in whatever manner the Trustees consider to be in the best interests of the Trust Fund.

4.3 *To accept payment in company securities*

In the sale of any business to a company, to accept payment for all or part of the purchase price in ordinary deferred or preference shares (whether fully paid or partly contributory) or debentures or debenture stock of such company. In exercising this power the Trustees will not be taken to be exercising a power of investment.

4.4 *To promote a company*

To promote, form or concur in forming a company or companies for any purpose, including the purpose of acquiring any business or the assets of any business.

4.5 *Not bound to interfere in business*

The Trustees will not be bound to participate or interfere in the management or conduct of any company, partnership or limited partnership, any shares or interest in which may be comprised in the Trust Fund and so long as the Trustees have no notice of any misconduct on the part of the officers of the company or managing or general partners of the partnership, the Trustees will incur no liability in leaving the conduct of the business of such company or partnership wholly to the officers of the company or managing or general partners of the partnership (including the payment of dividends or any distributions) wholly to the officers of the company or managing or general partners of the partnership. Nor will the Trustees be bound to obtain additional information regarding the affairs of the company or partnership over and above what would ordinarily be available to a shareholder or partner in the ordinary course of business and no Member will be entitled to oblige the Trustees to procure distributions or dividends or other payments or otherwise interfere in the company or partnership.

5 **Delegation, employees, agents, attorneys**

5.1 *To appoint officers or employees*

The Trustees may appoint persons as officers or employees (including Trustees) of the Trust if, in their opinion, the affairs of the Trust require such appointments, on such terms and conditions as they think fit. The Trustees may also remove and replace any person so appointed.

5.2 *To delegate collectively administrative functions*

To employ and pay a person or persons to be an agent or attorney of the Trustees and to authorise them to exercise or perform any or all of the functions of the Trustees except Excluded Functions on such terms and conditions as the Trustees think fit provided that such authorisation is given in writing and such arrangements are kept under review. For the purposes of this clause, Excluded Functions means a function that is, or is related to:

- (a) the exercise of a discretion to pay, apply or appropriate or decide to pay, apply or appropriate, the whole or any part of the Trust Fund;
- (b) the exercise of a discretion to determine whether any payment from the Trust Fund is a payment from Income or capital;
- (c) the exercise of a discretion to determine whether any payment received by the Trustees should be appropriated to Income or capital;

- (d) a right conferred on Trustees to apply to the Court; or
- (e) a right to delegate the exercise of the Trustees' functions.

6 **Contracts**

6.1 *To enter into contracts and arrangements*

To enter into any type of contract, commitment, arrangement or understanding to assume or reallocate risk, rewards, rights or obligations on such terms as the Trustees think fit.

6.2 *To vary contracts and arrangements*

To vary, assign, novate, waive, terminate or otherwise deal with on such terms as the Trustees think fit any contract, commitment, arrangement or understanding to which the Trustees are party.

7 **Miscellaneous powers**

7.1 *Accountability to Iwi Rūnanga*

To ensure that the Trustees are duly accountable to the Iwi Rūnanga that appointed them, by providing regular Trustee reports to the Iwi Rūnanga, and by informing themselves of Iwi Rūnanga aspirations and accurately conveying those to the Trust Board, provided that each Trustee must seek to always act in the best interests of all Members.

7.2 *Capital, income and blended funds*

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 also to apportion blended funds. Each determination or apportionment will be final and binding on all persons beneficially interested in the Trust Fund.

7.3 *Depreciation or replacement funds*

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 the amount of Income to be credited from time to time to any of those funds and whether those funds are Income or capital.

7.4 *To receive gifts*

To receive gifts of property and investments as additions to the Trust Fund and refuse or disclaim any gifts of property or investments as additions to the Trust Fund.

7.5 *Maintenance of Members*

To use all or any part of the Income or capital of the vested or contingent interest of any Member in the capital of the Trust Fund for that Member's maintenance, education, advancement or in any other way for his or her benefit. Payments may be made for those purposes to the parent(s) or guardian(s) of, or to the person(s) having the care of, that Member without requiring the recipient or recipients of the payment to account. The Trustees may exercise this power in favour of a Member even though that Member's interest may be liable to be defeated by the exercise of a power of appointment or revocation or to be diminished by the increase of the class to which he or she belongs.

7.6 *To determine and to add Members*

To determine applications to be a Member of the Trust, under Schedule Four.

At any time before the Distribution Date, the Trustees may add a hapū to the list of Mōkai Pātea Nui Tonu, or may add a marae to the list of Mōkai Pātea marae, if that hapū or marae can establish to the Trustees' satisfaction that it is representative of individuals who affiliate to Mōkai Pātea Nui Tonu, and who cannot be otherwise adequately represented.

7.7 *To determine final Beneficial Owners*

For the purposes of clause 6.1 of this deed, at any time before the Distribution Date the Trustees may determine by revocable resolution in writing to hold the Trust Fund (or what remains of it) for one or more Beneficial Owners.

7.8 *To grant annuities*

To grant an annuity to any person and to cancel or redeem it on such terms as the Trustees think fit.

7.9 *To take legal, financial or other professional advice*

To take legal, financial or other professional advice in New Zealand or elsewhere concerning any matter in any way relating to the Trust or to the Trustees' duties under this Trust, and in all matters to act in accordance with such advice.

7.10 *To change name of trusts*

The Trustees may change the name of the trusts created by this deed by passing a written resolution to that effect.

7.11 *To change the Distribution Date*

At any time before the Distribution Date and with approval by Special Resolution in accordance with Schedule Five, the Trustees may by revocable or irrevocable deed appoint that from the date of the deed, or such other date specified in the deed for that purpose, the Distribution Date will be a date earlier than the date first specified in the definition of Distribution Date in clause 1.1 of this deed or such other date as is permitted under clause 2.3 of this deed. As long as they do not make an irrevocable appointment, the Trustees may exercise this power more than once.

8 **Do all other necessary or desirable things**

The Trustees may do all other lawful things that are necessary or desirable in their opinion for the benefit of the Members of the Trust. This may include consulting with pakeke, kaumatua and kuia of Mōkai Pātea Nui Tonu in accordance with tikanga of Mōkai Pātea and who are determined by the Trustees to be the Taumata Tikanga. The Taumata Tikanga may advise the Trust on any matters relating to the affairs of the Trust. The Trustees shall take the views of the Taumata Tikanga into account.

This may include consulting with the Rangatahi Advisory Council, being persons up to the age of twenty-five years who are appointed by the Trustees to represent the interests and concerns of the rangatahi of Mōkai Pātea and the youth who reside in the Mōkai Pātea rohe, and who can recommend to the Trust appropriate action to address those interests and concerns. The Trust shall take the views of the Rangatahi Advisory Council into account.

SCHEDULE FOUR: MEMBERS' REGISTER

1 TRUST TO KEEP REGISTER

1.1 Trust to maintain register

The Trustees will administer and maintain the Members' Register which is a register of Members of Mōkai Pātea.

The Members' Register will incorporate the details of the registers administered by the Iwi Rūnanga. The Members' Register will be made available to Iwi Rūnanga for the purposes of Rūnanga Delegates elections and giving Iwi Rūnanga notices.

1.2 Register to comply with this Schedule

(a) The Members' Register will be maintained in accordance with the rules and procedures set out in this Schedule.

(b) Unless stated otherwise, reference to clauses are reference to clauses in this Schedule.

2 CONTENTS OF REGISTER

2.1 Register to contain Members' details

The Members' Register will record in respect of each Adult Member, (1) their full name, (2) their date of birth, (3) their iwi and hapū affiliation to Mōkai Pātea Nui Tonu, (4) their contact details including postal address and email address (if available) for the purposes of Trustee elections, and receiving notices.

2.2 Member Identification Number

The Trustees will allocate a Member Identification Number to each Member. The Trustees will, immediately after allocation, notify the relevant Member of his or her Member Identification Number.

3 APPLICATIONS FOR REGISTRATION

3.1 Form of applications

All applications for registration as a Member of Mōkai Pātea must be made in writing or by electronic means (if available) to the Trustees in the registration form approved from time to time by the Trustees. The application must contain:

(a) the full name, date of birth, and contact details including postal address and email address (if available);

(b) such evidence as the Trustees may from time to time require to determine that the applicant descends from Tamatea Pokai Whenua and can affiliate by way of verified whakapapa to one or more of the iwi or hapū of Mōkai Pātea Nui Tonu;

(c) where applicable, if the applicant is applying for registration as a whāngai, such evidence as the Trustees may from time to time require to determine that the applicant satisfies the particular Iwi Rūnanga verification processes for whāngai;

- (d) the marae (if known), and the Mōkai Pātea hapū and Mōkai Pātea Iwi to which the applicant affiliates;
- (e) the ability for the applicant to indicate that they agree that his or her details on the Members' Register may be made available to the Iwi Rūnanga, hapū and marae to which the applicant claims to affiliate; and
- (f) the ability for the applicant to indicate that he or she wishes to participate in mandating processes of the Trust, where appropriate, but does not wish to be registered as a Member of Mōkai Pātea.

3.2 **Applications to be made by**

An application for registration as a Member of Mōkai Pātea may be made by:

- (a) Persons who are 18 years of age or older, on their own behalf or by their legal guardian; and
- (b) other persons who are under the age of 18 years, by their parent or legal guardian on their behalf.

4 **DECISIONS AS TO MEMBERSHIP**

4.1 **Membership Committee**

The Trustees will establish a Membership Committee from time to time to make decisions on all applications made pursuant to clause 3.1 for registration as a Member of Mōkai Pātea.

4.2 **Composition of Membership Committee**

The Membership Committee will comprise of Adult Members with the expertise and knowledge of the whakapapa of Mōkai Pātea Nui Tonu necessary to make determinations regarding membership applications, provided that the Membership Committee will have at least one representative of each of the four Mōkai Pātea Iwi.

4.3 **Consideration of applications**

All applications for membership pursuant to clause 3.1 together with any supporting evidence shall be forwarded by the Trustees to the Membership Committee.

4.4 **Decisions to be made on applications**

Upon receipt of an application for membership in accordance with clause 3.1 of this Schedule the Membership Committee will consider the application and will make a decision as to whether or not the applicant should be registered as a Member of Mōkai Pātea.

4.5 **Successful applicants to be notified and registered**

In the event that the Membership Committee decides that the application should be accepted then such decision will be notified in writing to the Trustees, who will in turn notify the applicant and enter the applicants name and other relevant details (including the Member Identification Number in accordance with clause 2.2) in the appropriate part of the Members' Register.

4.6 Notification to unsuccessful applicants

In the event that the Membership Committee decides to decline the application then such decision will be conveyed in writing to the Trustees together with the reasons for the decision. The Trustees will then notify the applicant in writing of the decision together with the reasons given for the decision.

4.7 Unsuccessful applicant may reapply

Any applicant whose application has been declined may:

- (a) dispute the basis on which the application was declined in accordance with clause 19 of this deed; and
- (b) at any time seek to have his or her application reconsidered by the Membership Committee provided that such application for reconsideration may only be made on the basis of new evidence (being evidence that was not submitted or considered as part of the initial or, if more than one, any previous application) as to the applicant's status as a Member of Mōkai Pātea.

5 MAINTENANCE OF REGISTER

5.1 Trustees to establish policies

The Trustees will take such steps and institute such policies as are necessary to ensure that the Members' Register is maintained in a condition that is as up to date, accurate and complete as possible in recording Members of Mōkai Pātea.

5.2 Assistance in identifying membership

In maintaining the Members' Register, the Trustees will develop policies for assisting in the identification and registration of those who affiliate to Mōkai Pātea Nui Tonu but who are not for the time being on the Members' Register. Such policies will include policies as to the nature of the assistance that the Trustees will provide to those persons who believe that they are Members of Mōkai Pātea but for whatever reason are not able to establish such membership.

5.3 Responsibility of Members of Mōkai Pātea

Notwithstanding clause 1.1 it will be the responsibility of each person who is a Member of Mōkai Pātea (or in the case of those persons under 18 years of age, the parent or guardian of that person) to ensure that his or her name is included in the Members' Register and that his or her address details for the time being are provided and updated. Any Member of Mōkai Pātea may choose to terminate their registration of membership of Mōkai Pātea, by notifying the Trustees in writing.

5.4 Consequences of registration

Registration of any person on the Members' Register as a Member of Mōkai Pātea will be conclusive evidence of that person's status as a Member of Mōkai Pātea.

5.5 Verification of Whakapapa

The Membership Committee shall also verify the whakapapa of any person who wishes to participate in mandating processes of the Trust but who does not wish to become a Member of Mōkai Pātea, in accordance with the provisions of clauses 3.1(f) and 4 (where applicable). The Trustees shall maintain a register of such persons.

SCHEDULE FIVE: PROCEDURE FOR PASSING SPECIAL RESOLUTION

1 THIS SCHEDULE TO APPLY

1.1 A Special Resolution to:

- (a) approve a Major Transaction in accordance with clause 12.3 of this deed;
- (b) approve a resettlement in accordance with clause 20 of this deed;
- (c) approve a variation in accordance with clause 21 of this deed;
- (d) to change the Distribution Date in accordance with clause 7.10 of Schedule Three;
or
- (e) otherwise pass a Special Resolution;

will only be passed as set out in this Schedule.

2 VOTING

- 2.1 In order for a Special Resolution to be passed it must receive the approval of not less than 75% of those Adult Members of Mōkai Pātea who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule.

3 SPECIAL GENERAL MEETING REQUIRED

- 3.1 A Special General Meeting (SGM) must be called for the purposes of considering one or more Special Resolutions.
- 3.2 One or more Special Resolutions may be considered at an AGM, so long as the “Procedure for passing a Special Resolution” in accordance with this Schedule Four is followed as if the AGM was an SGM (though other AGM business can also be transacted).

4 Notice of Special General meeting

- 4.1 If an SGM is required to be held under this deed, the Trustees will give not less than thirty working days’ notice of the date, time and place of the SGM called for the purposes of considering any Special Resolution and the details and reasons for the proposed Special Resolution.
- 4.2 Notice under clause 4.1 of this Schedule must be given:
- (a) by posting to a physical or electronic address the Trustees hold for an Adult Member;
 - (b) by newspaper advertisement, published on at least two separate days in a newspaper the Trustees consider circulates in an area where a significant number of Adult Members reside; and
 - (c) any other means as determined by the Trustees, including email and social media.

4.3 Notices posted or emailed to an Adult Member must include:

- (a) a valid voting form for the Special Resolution that contains sufficient information to identify the Adult Member to whom the form was sent; and
- (b) sufficient detail to inform the Adult Member of the Special Resolution or Special Resolutions being considered at the SGM.

5 Returning Officer

5.1 The Trustees will appoint a Returning Officer for the purposes of any Special Resolution. The Trustees may appoint anyone they think fit to perform the tasks of the Returning Officer, provided that a Trustee or a nominee may not act as Returning Officer.

5.2 The Returning Officer is responsible for co-ordinating the Special Resolution, and may appoint others to assist with that co-ordination as they consider necessary, provided that such persons may not be a Trustee or a nominee.

6 Mode of voting

6.1 Voting on any Special Resolution will be by secret ballot. Adult Members will each have one vote in respect of a Special Resolution.

6.2 Voting forms must be delivered to the Returning Officer by way of post, electronic means or hand delivery on the day of the SGM. The Returning Officer must ensure each Adult Member votes only once; provided that special votes can be cast if the voter also completes an application for membership at the same time, in which case the vote is to be treated as provisional and only counted if the application is accepted by the Membership Committee in accordance with Schedule Four within 5 working days of the vote.

7 Counting votes

7.1 Once the Special Resolution has been discussed at the SGM and all attendees have been given the opportunity to hand deliver their voting forms, the Returning Officer must record and count all votes validly cast.

7.2 Once all the votes have been counted and recorded by the Returning Officer, and the result of the Special Resolution is determined, the Returning Officer will inform the Trustees of the result.

7.3 The Trustees will inform the Members of the result of the Special Resolution.