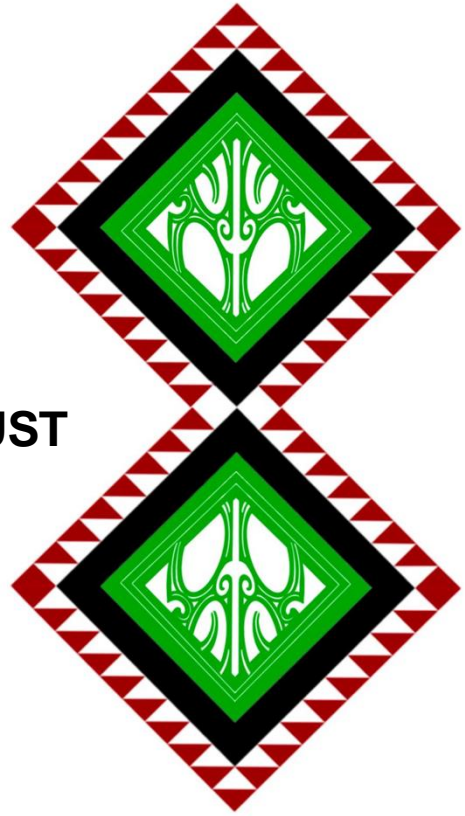


**DEED OF TRUST OF
TE WHĀNAU A KAI TRUST**



DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

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DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

Executed as a deed on the

day of

2020

BACKGROUND

- A** The Trustees of the Te Whānau a Kai Trust are responsible for the establishment of a post-settlement governance entity for Te Whānau a Kai to receive and hold assets provided by the Crown and Crown-related trusts under the terms of recommendations made by the Waitangi Tribunal under section 8HB of the Treaty of Waitangi Act 1975, and any other settlement with the Crown.
- B** Following feedback from members, specialist advice, advice from the Waitangi Tribunal and the Crown, a final proposal was presented for ratification on [insert date]. Through voting at publicly notified hui, postal and electronic voting, Te Whānau a Kai members supported the Te Whānau a Kai Trust being established as the post-settlement governance entity for Te Whānau a Kai.
- C** On [insert date], the Waitangi Tribunal provided their approval of the ratification process for the Te Whānau a Kai Trust [insert information regarding WT approval of PSGE]
- D** This deed is signed by the Initial Trustees to record the terms on which the Te Whānau a Kai Trust is established as the post-settlement governance entity to receive the above settlement assets for Te Whānau a Kai and any other settlement with the Crown.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Trust Deed unless the context otherwise requires:

Adult Member of Te Whānau a Kai means a Member of Te Whānau a Kai who is 18 years of age or older;

Adult Registered Member of Te Whānau a Kai means a Member of Te Whānau a Kai identified on the Register as being 18 years of age or older;

Annual Plan means the annual plan of the Trust prepared in accordance with clause 2.2 of Schedule 3;

Annual Report means the annual report of the Te Whānau a Kai Group, which is prepared by the Trustees in accordance with clause 4 of Schedule 3;

Associated Person has the same meaning as provided in the Income Tax Act 2007;

Balance Date means 30 June or any other date that the Trustees by resolution adopt as the date up to which the Trust's financial statements are to be made in each year;

Business Day means any day on which registered banks are open for business in Auckland and Wellington;

Chairperson means the chairperson of the Trust from time to time appointed by the Trustees in accordance with clause 7 of Schedule 4;

Chief Executive means the Chief Executive of the Trust appointed in accordance with Schedule 8;

Chief Returning Officer means as the context requires:

- (a) the person appointed from time to time as chief returning officer for the purposes of Trustee elections in accordance with clause 14 of Schedule 2; or

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- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with clause 14.1 of Schedule 2;

Commercial Activities mean any activity carried on in pursuit of the Trust's purpose and objectives which has as its principal objective the maximising of financial and economic returns on assets employed;

Consolidated Financial Statements means the consolidated financial statements of the Te Whānau a Kai Group prepared by the Trustees in accordance with clause 4 of Schedule 3;

Contemporary Claims means all claims not included within the definition of Historical Claims and/or Takutai Moana Claims and not included in any Agreement in Principle, Deed of Settlement or Settlement Act;

Cultural Assets means those assets listed in Schedule 9 as amended from time to time;

Cultural Committee means the cultural committee appointed by the Trustees in accordance with Schedule 7;

Customary rights mean rights according to Te Whānau a Kai tikanga (customary values and practices) including:

- (a) rights to occupy land, and
(b) rights in relation to the use of land or other natural or physical resource;

Deed and Trust Deed mean this deed of trust and include the background and the schedules to this deed;

Deed of Settlement means the deed [dated [date] / that will be entered into] between Te Whānau a Kai and the Crown recording the settlement of Te Whānau a Kai's historical claims;

Deputy Chairperson means the deputy chairperson of the Trust from time to time elected in accordance with clause 7 of Schedule 4;

Disputes Committee means a committee formed in accordance with clauses 11.4 and 11.5;

Election Year means the Income Year in which the Trustees are elected;

Establishment Period means the period from the date of this Deed until the first annual general meeting when the names of the Establishment Trustees are announced;

Establishment Trustees means those Trustees elected immediately following the Initial Trustees in accordance with clause 10 of Schedule 2;

Five Year Plan means the five year plan of the Trust prepared in accordance with clause 2.3 of Schedule 3;

Historical Claims has the same meaning given to Historical Claims in the Deed of Settlement and Settlement Act against the Crown for the Crown's breaches of its obligations to Te Whānau a Kai;

Income Year means any year or accounting period beginning 1 July of one calendar year and ending 31 June of the following calendar year or any other period that the Trustees by resolution adopt;

Initial Trustees means the Trustees Identified in clause 4.1;

Major Transaction in relation to any member of the Te Whānau a Kai Group means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by that member the value of which is more than half the value of the Trust's Assets before the acquisition; or
(b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by that member the value of which is more than half the value of the Trust's Assets before disposition; or

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- (c) a transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the Trust's Assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust's Assets (whether the Assets are held by the Trust or any other member of the Te Whānau a Kai Group; or
- (e) any acquisition of Property by a member of the Te Whānau a Kai Group from any other member of Te Whānau a Kai Group; or
- (f) any disposition of Property by a member of the Te Whānau a Kai Group to any other member of the Te Whānau a Kai Group;

Nothing in paragraph (c) of this definition applies by reason only of that member giving, or entering into an agreement to give, a charge secured over assets of the member the value of which is more than half of the value of the Trust's Assets for the purpose of securing the repayment of money or the performance of an obligation;

For the purposes of paragraphs (a) to (c) of this definition, the value of the Trust's Assets shall be calculated based on the value of the assets of the Te Whānau a Kai Group;

Marae means a marae of Te Whānau a Kai and specifically listed in Schedule 9 and any additional marae added pursuant to clause 6.7;

Member or **Member of Te Whānau a Kai** means an individual referred to in paragraph (a) of the definition of Te Whānau a Kai;

Membership Validation Committee means the committee appointed in accordance with clause 4 of Schedule 1;

Property means all property (whether real or personal) and includes choses in action, rights, interests and money, and for the avoidance of doubt, includes all property received pursuant to the Deed of Settlement and Settlement Act;

Registrar-General of Land or **Registrar-General** means the Registrar-General of Land appointed in accordance with section 4 of the Land Transfer Act 1952;

Rotation Period means the period from the second annual general meeting when the first resignations of the Establishment Trustees occur until the fourth annual general meeting when the last Establishment Trustees resign in accordance with clause 11 of Schedule 2;

Settlement Act means such Act or Acts of Parliament that may be passed so as to give effect to the Deed(s) of Settlement and the premises contained within that deed;

Settlement Date means the date that final recommendations are issued by the Waitangi Tribunal under section 8HB of the Treaty of Waitangi Act 1975 or the date defined as the Settlement Date in the Deed(s) of Settlement or Settlement Act;

Special Resolution means a resolution that has been passed with the approval of not less than 75% of the Adult Registered Members of Te Whānau a Kai who validly cast a vote in accordance with the process set out in the Schedule 5;

Subsidiary or **Subsidiaries** means any entity or trust that is:

- (a) wholly owned; or
- (b) controlled directly

by the Trust;

Takutai Moana Claims means every claim, application or matter (whether or not a claim, application or matter has arisen or been considered, researched, filed, notified or heard) that Te Whānau a Kai (or a representative entity of Te Whānau a Kai) has under the Marine and Coastal area (Takutai Moana) Act 2011 or replacement legislation;

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Trust means the trust created by this Deed which is to be called Te Whānau a Kai Trust;

Trustees means the trustees appointed from time to time in accordance with clause 3.1 and Schedule 2 of this Deed to represent Te Whānau a Kai and to act as the trustees for the time being of the Trust and **Trustee** shall mean any one (1) of those persons;

Trust's Assets means the trust fund of the Trust and shall include all assets received or otherwise owned or acquired from time to time by the Trustees, including without limitation all assets received pursuant to the Deed of Settlement and Settlement Act, and any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees;

Trust Deed or **Deed** mean this deed of trust and includes the recitals and the schedules to this deed;

Trust's Purpose means the object and purpose set out in clause 2.3;

Trust Period means the period from the date of this Deed until the Vesting Day;

Te Whānau a Kai means:

- (a) the collective group composed of individuals who descend from one or more of Te Whānau a Kai's Ancestors;
- (b) every whanau, hapū or group to the extent that it is composed of individuals referred to in paragraph (a), including the following groups:
 - (i) Ngāti Ruarapua;
 - (ii) Ngāti Hinetai;
 - (iii) Ngāti Maru;
 - (iv) Ngāi-te-whakahone;
 - (v) Ngāi Te Ika;
 - (vi) Ngāi Torohina;
 - (vii) Ngāti Kohuru
 - (viii) Ngāi Te Pokingaiwaho and
 - (ix) Ngāi Tawhiri
- (c) every individual referred to in paragraph (a);

For the purposes of this definition, a person is descended from another person if the first person is descended from the other by:

- (a) birth; or
- (b) legal adoption; or
- (c) Māori customary adoption (Whāngai) in accordance with Te Whānau a Kai's tikanga (Māori customary values and practices);

Te Whānau a Kai Ancestor means an individual who exercised Customary Rights by virtue of being descended from:

- (a) Te Haaki, Whareana or Kai-kore-au-nei; or
- (b) a recognised ancestor of any of the groups referred to in paragraph (b) of the definition of Te Whānau a Kai; and
- (c) who exercised customary rights predominantly in relation to the Te Whānau a Kai Rohe at any time after 6 February 1840;

Te Whānau a Kai Rohe means the geographic area that extends from the headwaters of the Waioeka river at Koranga Forks and Waimaha in the west, to the Pipi-wha-kao stream opposite Matawhero in the south and to Pa-ko-hai in the east. This includes the land blocks of

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Pātutahi/Kaimoe, Repongaere, Tangihanga, O-kahu-a-tiu No 1 and No 2, Hangaroa-Matawai, Wharekopae, Hihi-ro-roa and the Te Wera and Koranga parts of Tahora No 2, in total amounting to an area in excess of 240,000 acres.

Te Whānau a Kai Claims means Te Whānau a Kai historical claims against the Crown in respect of the Crown's breaches of its obligations to Te Whānau a Kai under the Treaty of Waitangi, as identified in the Waitangi Tribunal Orders or Deed of Settlement;

Te Whānau a Kai Group means the Trust and its Subsidiaries (if any);

Te Whānau a Kai Register means the register of Members of Te Whānau a Kai that is to be maintained by the Trustees in accordance with Schedule 1 to this Deed;

Vesting Day has the meaning set out in clauses 10.1 and 10.2;

Waitangi Tribunal Orders means the final recommendations made by the Waitangi Tribunal under sections 8HB to 8HC of the Treaty of Waitangi Act 1975 in the Mangatū Remedies Inquiry;

1.2 **Interpretation:** In this deed unless the context otherwise requires:

- (a) reference to any **party** includes that party's successors, executors, administrators and permitted assigns including any person taking by way of novation;
- (a) words importing the **singular** include the plural (and vice versa);
- (b) **headings** are for convenience only and do not affect interpretation;
- (c) the word **person** includes a natural person and any body or entity whether incorporated or not;
- (d) a reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established; and
- (e) where any party comprises more than one person, each person shall be deemed to have entered into the deed jointly and severally, and the provisions of this deed shall bind such persons jointly and each of them severally.

2. CONSTITUTION, STATUS AND OBJECTS OF THE TRUST

2.1 Trust Established

The Trustees acknowledge that they hold the Trust's Assets upon the trusts and with the powers set out in this Deed. The Trustees further acknowledge that the trust hereby created shall be known as the Te Whānau a Kai Trust.

2.2 Trust Administration

The Trust shall be governed and administered by and in accordance with this Deed.

2.3 Object and purpose of the Trust

The purpose for which the Trust is established is to receive, manage, hold and administer the Trust's Assets on behalf of and for the benefit of the present and future Members of Te Whānau a Kai in accordance with this Deed. Without limitation, the Trustees may:

- (a) promote the educational, spiritual, economic, social and cultural advancement or well-being of Te Whānau a Kai and its Members, including but not limited to:
 - (i) organise, manage, plan, arrange and oversee the negotiation and pre-settlement processes relating to historical, contemporary and Takutai Moana Claims of Te Whānau a Kai;
 - (ii) undertake all steps necessary to achieve the best outcomes for the settlement of historical, contemporary and Takutai Moana Claims including court proceedings and/or remedies applications to the Waitangi Tribunal;
 - (iii) establish processes and structures to protect the assets and resources of the Trust and the reputation and mauri of Te Whānau a Kai people;

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- (b) provide for the on-going maintenance and establishment of places of cultural or spiritual significance to Te Whānau a Kai and its Members;
- (c) promote the health and well-being generally, including of the aged or those suffering from mental or physical sickness or disability of Te Whānau a Kai and its Members;
- (d) undertake commercial activities to support the object and purpose of the Trust; and
- (e) any other purpose that is considered by the Trustees from time to time to be beneficial to Te Whānau a Kai.

2.4 **Restriction on Major Transactions**

Notwithstanding clause 3.1, the Trustees must not enter into a Major Transaction; and must ensure that any Subsidiaries are established on terms which provide that such Subsidiaries must not enter into a Major Transaction; unless that Major Transaction:

- (a) is approved by way of Special Resolution in accordance with Schedule 5; or
- (b) is contingent upon approval by way of Special Resolution.

3. **POWERS OF THE TRUSTEES**

3.1 **Powers of Trust**

Subject to this clause 3.1, the Trustees shall have all the powers of a natural person and may exercise those powers in accordance with the terms of this Trust. As set out in more detail in Schedule 3, the Trustees shall have the following general powers:

- (a) to receive or accept, or to make any disposition of, any real property, including any interest of any type in real property (whether corporeal or incorporeal hereditament);
- (b) to receive or accept, or to make any disposition of, any personal property (whether chattels, choses in action, intellectual property, and otherwise howsoever), including any interest of any type in personal property;
- (c) to receive or grant any security, including any mortgage, pledge, charge, security interest, or otherwise howsoever, in relation to all, or any part of, the Property;
- (d) to contract, to grant a release, to grant a power of attorney, to appoint an agent, a receiver, or a stakeholder, to settle property on, or declare, a trust;
- (e) to issue or take any debt or equity security; and
- (f) to borrow or to lend money.

4. **APPOINTMENT, POWERS AND MEETINGS OF TRUSTEES**

4.1 **Initial Trustees**

Pending election and appointment of Trustees in accordance with Schedule 2, the initial Trustees shall be:

- (a) David Hawea (Chairperson);
- (b) Keith Katipa;
- (c) George Horsfall;
- (d) Fred Mulligan;
- (e) Mitchell Ratapu;
- (f) John Ingram;
- (g) Nolene Terere;
- (h) Maxwell Matenga;
- (i) Boydie Pohoiwi; and

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(j) Kuki Green

4.2 **Appointment in accordance with Schedule 2**

Subject to clause 4.1, the ten (10) Trustees from time to time of the Trust shall be appointed to office in accordance with the rules set out in Schedule 2.

4.3 **Extent of Trustees' discretion to manage Trust affairs**

Subject to any requirements imposed by this Deed and in accordance with law the Trustees shall control and supervise the business and affairs of the Trust in such a manner as they, in their sole discretion, see fit.

4.4 **Proceedings of Trustees**

Except as otherwise provided in the Deed, the proceedings and other affairs of the Trustees shall be conducted in accordance with the rules set out in Schedule 4.

4.5 **Trustees Remuneration**

Trustees' remuneration must:

- (a) be authorised by a resolution of Adult Registered Members of Te Whānau a Kai in accordance with clause 5.5. In recommending trustee remuneration levels, the Trustees must first seek professional advice in that regard; but
- (b) in respect of the Initial Trustees in clause 4.1, be set by them for the period they hold office as initial Trustees, on the basis of professional advice they must seek.

4.6 **Trustee Expenses**

Trustees will be entitled to be reimbursed reasonable expenses reasonably incurred in relation to their acting as Trustees.

5. **GENERAL MEETINGS**

5.1 **Annual general meeting**

The Trust shall, no later than six (6) calendar months after the end of each Income Year, and in any event no more than fifteen (15) months after the date of the last annual general meeting of the Trust, hold a general meeting for the Members of Te Whānau a Kai, to be called its annual general meeting, and shall at that meeting:

- (a) report on the operations of the Te Whānau a Kai Group for the preceding Income Year;
- (b) present the Annual Report and duly audited Consolidated Financial Statements;
- (c) present the proposed Annual Plan;
- (d) announce the names of all newly appointed Trustees in accordance with the rules set out in Schedule 2;
- (e) approve the appointment of the auditor for the next Income Year;
- (f) approve the Trustees' remuneration;
- (g) undertake all other notified business; and
- (h) at the discretion of the Chairperson, undertake any other general business raised at that meeting.

5.2 **Notice of general meeting**

The Trustees shall give not less than twenty one (21) days notice of the holding of the annual general meeting. Notice shall be given in the following manner:

- (a) post (including by electronic form where available) to all Adult Registered Members of Te Whānau a Kai at the last address shown for each such Adult Registered Member of Te Whānau a Kai on the Te Whānau a Kai Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address;

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- (b) advertised prominently on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Te Whānau a Kai reside;
- (c) advertised on radio stations broadcasting in the districts where Trustees consider a significant number of Members reside;
- (d) advertised by electronic or digital means; and
- (e) such other means as the Trustees may determine.

5.3 **Form of notice of general meeting**

Notice for the annual general meeting must include the following:

- (a) the date, time and place of the meeting;
- (b) details of where copies of any information to be laid before the meeting may be inspected; and
- (c) an agenda of matters to be discussed at the meeting, including the following matters:
 - (i) confirmation of appointment of Trustees by each Marae;
 - (ii) minutes of the previous annual general meeting;
 - (iii) Chairperson's Annual Report;
 - (iv) presentation of the audited financial statements for the previous financial year;
 - (v) approval of Trustees fees for the ensuing financial year;
 - (vi) approval of Trustees expenses for the financial year;
 - (vii) approval of grants paid;
 - (viii) appointment of Auditor for the ensuing year;
 - (ix) report on the Five Year Plan under clause 2.3 of Schedule 3;
 - (x) report on the Annual plan under clause 2.2 of Schedule 3; and
 - (xi) general business.

5.4 **Notice of special meetings**

In addition to the annual general meeting of the Trust, the Trustees shall convene a special general meeting of the Trustees for the Members of Te Whānau a Kai on the requisition of:

- (a) the Chairperson and Deputy Chairperson for the time being of the Trust; or
- (b) the majority of the Trustees then in office; or
- (c) 5% of the Adult Registered Members of Te Whānau a Kai.

Notice and form of notice of such a meeting shall be given in the same manner and in the same form as for a notice of the annual general meeting and those requisitioning the meeting shall be required to provide a statement to the Trustees setting out the purposes for which the meeting has been requisitioned and the specific agenda items proposed for such a meeting. The Trustees shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

5.5 **Approval of Trustees' remuneration**

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 Registered Members of Te Whānau a Kai present at the annual General Meeting. Each such resolution will express the remuneration to be paid to the Trustees as a 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. This clause does not apply to any remuneration paid to any Trustee in his or her capacity as a director or trustee of a Subsidiary and that remuneration shall be determined by the Trustees pursuant to clause 1.1(a) of Schedule 6.

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- 5.6 **Annual general meeting not limited to notified business**
At the discretion of the Chairperson of the meeting, any general business raised at the designated time for general business at any annual general meeting may be transacted in addition to the business expressly referred to in the notice calling that meeting.
- 5.7 **Special meeting limited to notified business**
No business shall be transacted at any special general meeting other than the business expressly referred to in the notice calling that meeting.
- 5.8 **Invalidation**
The proceedings of a meeting are not invalidated by the accidental omission to give notice to, or a failure to receive notice of an annual or special general meeting by, a Member of Te Whānau a Kai.
- 5.9 **Deficiency of notice**
Subject to clause 5.7, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if the deficiency or irregularity is not material.
- 5.10 **Approval of Auditor**
The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Registered Members of Te Whānau a Kai present at the annual general meeting.
- 5.11 **Chairing of meetings**
The Chairperson for the time being of the Trust will be the chairperson of any annual general meeting or special general meeting and will preside over and have control over the meeting. If the Chairperson is not present at the time appointed for holding a meeting, then the Deputy Chairperson shall be the chair. If the Deputy Chairperson is also not present, then the Trustees present shall elect one (1) of their number to substitute as the chairperson for that meeting.
- 5.12 **Voting**
To the extent that a vote is sought or required at any annual general meeting or special general meeting:
- (a) every Adult Registered Member of Te Whānau a Kai present shall have one (1) vote. All resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members of Te Whānau a Kai who validly cast a vote;
 - (b) voting shall be by voice or a show of hands;
 - (c) voting for the election of Trustees will be conducted in the manner set out in clauses 3 and 4 of Schedule 2; and
 - (d) the chairperson of the meeting may also demand a poll on a resolution either before or after any vote, which among other things, requires the Adult Registered Members to verify their eligibility by a process directed by the chairperson of the meeting. Except as provided in clauses 2.4, 5.1(e), 5.1(f), 5.5, 5.10, 6.1, 8.1 and 9.1 and where Special Resolutions have been passed in accordance with Schedule 5 the Trustees shall not be bound by a resolution passed at any annual or special general meeting, but will only be required to give consideration to any such resolution in administering the Trust's Assets and carrying out the Trust's Purpose. The latest version of the Te Whānau a Kai Register will be present at any annual general meeting or special general meeting.
- 5.13 **Quorum**
The quorum required for any annual general meeting or special general meeting of the Trust shall be 25 Adult Registered Members of Te Whānau a Kai present in person, and one or more Trustees present in person. For the avoidance of doubt, if a Trustee is an Adult Registered Member of Te Whānau a Kai he or she is entitled to vote.
- 5.14 **Adjournment of meeting**
If within one hour of the time appointed for any annual general meeting or special general meeting, a quorum is not present, the meeting will stand adjourned to be re-convened fourteen (14) days after the date of the advertised meeting. On that later date the meeting will be held again at the same time and place as the adjourned meeting. If a quorum is not present within

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one (1) hour from the time appointed for that adjourned meeting, Members present will constitute a quorum.

5.15 **Minutes**

The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every annual general meeting or special general meeting.

5.16 **Minutes to be evidence of proceedings**

Any minute of the proceedings at an annual general meeting or special general meeting which is purported to be signed by the Chairperson at that meeting shall be evidence of those proceedings.

5.17 **Minutes to be evidence of proper conduct**

Where minutes of an annual general meeting or special general meeting have been made in accordance with this clause then, until the contrary is proven, the meeting shall be deemed to have been properly convened and its proceedings to have been conducted properly.

5.18 **Proxies**

Proxies will not be permitted in any of the Trust's meetings, voting or resolutions.

6. **AMENDMENTS TO DEED**

6.1 **Special Resolution required**

Subject to clause 6.3 and clause 6.4, all amendments to the Deed shall only be made with the approval of a Special Resolution passed in accordance with Schedule 5.

6.2 **Amendments due to a mistake or change in legislation**

Notwithstanding clause 6.1 any amendment to the Trust Deed may be made without a Special Resolution provided the amendment is made to:

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

6.3 **Limitations on Amendment**

No amendment may be made to the Deed which:

- (a) changes the Trust's purpose so that the Trustees are no longer required to act for the collective benefit of the present and future Members of Te Whānau a Kai.
- (b) changes clause 9.1;
- (c) changes the finally agreed definition of Member of Te Whānau a Kai, Te Whānau a Kai Ancestor, Te Whānau a Kai Rohe, or Te Whānau a Kai Claims after the Waitangi Tribunal Orders have been issued or settlement legislation has been passed.
- (d) changes this clause 6.3;
- (e) changes the requirement for a Special Resolution (as defined from time to time) in clause 6.1;
- (f) changes the membership and beneficiary of the Trust; and
- (g) changes the definition of Special Resolution and the clauses in Schedule 5 relating to the voting threshold of 75% of the Adult Members of Te Whānau a Kai.

6.4 **Amendment to reflect Deed of Settlement and Settlement Legislation**

Notwithstanding any other provision in this Deed to the contrary, this Deed:

- (a) must be amended by the Trustees if necessary to make the definition of Member of Te Whānau a Kai, Te Whānau a Kai, Te Whānau a Kai Ancestor or Te Whānau a Kai Claims consistent with that set out in the final Deed of Settlement and the Settlement Act; and

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- (b) may be amended by the Trustees to reflect provisions (if any) in the Deed of Settlement and the Settlement Legislation in relation to rights and powers of the Trustees.

If the Deed is amended due to operation of this sub-clause a Special Resolution passed in accordance with Schedule 5 is not required.

6.5 **Consideration of proposals**

Every Adult Registered Member of Te Whānau a Kai may put forward for consideration by the Trustees proposals for amendments to the Deed. Any proposal put forward under this clause 6.5 must be in writing and addressed to the Chairperson at the registered office of the Trust and considered by the Trustees at their next available meeting. If the proposal for an amendment to the Deed complies with clauses 6.3 and this clause 6.5, the Trustees must call a special general meeting to consider the proposal. If the Trustees do not discard the proposal in accordance with clause 6.6, they may, in their discretion, discuss it at the next annual general meeting.

6.6 **Proposals to be discarded**

Where a proposal for amendments to the Deed does not comply with clauses 6.3 and 6.5, the Trustees may discard the proposal and the Trustees will not be required to call a special general meeting in accordance with Schedule 5.

6.7 **Requirements to alter Marae list**

Where a proposed amendment to the Deed will have the effect of either adding a new Marae to the list of Marae set out in Schedule 9 or deleting a Marae from that list, then no special general meeting may be called in accordance with the requirements of Schedule 5 until the following additional requirements have been met:

- (a) the proposed amendment to add or delete the Marae has been submitted by a Member of Te Whānau a Kai to the Trustees, who have then sought the advice of the Cultural Committee;
- (b) the Cultural Committee have at a duly convened meeting of the Cultural Committee resolved to endorse the addition or deletion of the Marae and have advised the Trust accordingly;
- (c) in the case of a proposal to delete a Marae, the Trustees have ensured that all Members of Te Whānau a Kai registered with that Marae on the Te Whānau a Kai Register have been registered with another Marae or that the rights of those Members to vote on the election of Trustees have been preserved by some other method; and
- (d) following the receipt of the advice of Cultural Committee under clause 6.7(b) above, the Trust has by Special Resolution agreed to submit to a special general meeting a proposal to amend Schedule 9 by adding or (as applicable) deleting the relevant Marae.

7. **APPLICATION OF INCOME AND CAPITAL**

7.1 **Trustees may apply income and capital**

During the Trust Period, and subject to any other requirements in this Trust Deed, the Trustees may:

- (a) provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income in any Income Year to or for the benefit of Members of Te Whānau a Kai;
- (b) use or apply any capital of the Trust's Assets to or for the benefit of Members of Te Whānau a Kai for the Trust's Purpose without first using or applying the whole or any portion of the income of the Trust's Assets for that year; or
- (c) set aside reserves or accumulations for future use or application by the Trustees, as the Trustees in their sole discretion think fit for or towards the Trust's Purpose.

7.2 **Payments out of income**

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

The Trustees may, in making any decisions about the application of income in any Income Year, decide to have set aside, deducted from, or paid out of income such amounts as the Trustees in their discretion think fit, including:

- (a) as a reserve against losses and contingencies, and the Trustees may write off losses from time to time or resort to any reserve fund in mitigation of losses or for any other purpose; or
- (b) as a reserve to meet fluctuations of income in future years and other contingencies.

7.3 **Matters to consider in applying income**

In making any decision as to the application of the income in any Income Year, the Trustees shall, in exercising their discretion:

- (a) determine how much of the income should cease to be income and be added to and form part of the capital of the Trust's Assets, provided that the Trustees may not in the Income Year convert the entire income of the Trust into capital; and
- (b) endeavour to act fairly in considering the needs and interests of present and future Members of Te Whānau a Kai.

7.4 **Accumulation in six months where income not applied**

Any income from any Income Year that is not paid or applied in accordance with this clause 7 during or within the six (6) months from the end of that Income Year shall be accumulated and any income so accumulated shall be added to and form part of the capital of the Trust's Assets and shall be subject to the trusts and powers herein declared in respect of the capital of the Trust's Assets.

8. **RESETTLEMENT**

8.1 **Power to Resettle**

The Trustees have the power to settle or resettle any or all of the Trust's Assets upon trust in any manner in which, in the opinion of the Trustees is for the advancement or benefit of the present and future Members of Te Whānau a Kai provided that the resettlement is approved by a Special Resolution.

9. **TERMINATION OF TRUST BY MEMBERS**

9.1 Subject to clause 6.3:

- (a) the Trust established by this Deed may be terminated or dissolved if:
 - (i) it has become impossible, impractical or inexpedient to carry out the purposes of the Trust; and
 - (ii) the Adult Registered Members of Te Whānau a Kai have, by Special Resolution, resolved to do so;
- (b) on the termination or dissolution of this Trust under this clause, the Trust's Assets after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of Te Whānau a Kai as long as such payment does not offend against the rule against perpetuities to the extent such rule applies to this Trust.

10. **PERPETUITIES AND VESTING DAY**

- 10.1 The Vesting Day for the Trust is the day that is eighty years less one (1) day after the date of this Deed, that date being within the perpetuities period permitted by section 6 of the Perpetuities Act 1964 and the perpetuities period applicable to the Trust is hereby specified accordingly. On the Vesting Day, the Trustees shall hold the remaining capital and income of

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

the Trust's Assets on trust for the Members of Te Whānau a Kai then living as tenants in common in equal shares.

- 10.2 If the Settlement Act provides that the rule against perpetuities, and the other rules of law regulated by the Perpetuities Act 1964, are not to apply to the Trust, clause 10.1 shall be void.

11. DISPUTE RESOLUTION

11.1 Disputes

In the event that a dispute arises between:

- (a) any Members of Te Whānau a Kai; or
- (b) the Trustees and any Members of Te Whānau a Kai.

regarding membership or otherwise in connection with the tikanga, reo, kawa, whakapapa and korero of Te Whānau a Kai then that dispute shall be referred in first instance to the Trustees.

11.2 Notice of Dispute

All disputes referred to the Trustees in accordance with clause 11.1 shall be submitted to the Trustees by notice in writing and the Trustees shall acknowledge receipt in writing within 10 Business Days of the date of receipt of the notice.

11.3 Reference of Dispute

If a dispute is not settled within 30 days of the receipt by the Trustees of written notice of the dispute in accordance with clause 11.2 then it shall be referred to a Disputes Committee constituted in accordance with clause 11.4 and 11.5.

11.4 Disputes Committee to be appointed as required

There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed on a case by case basis, having regard to the precise subject matter of the dispute in question, and only after the expiry of the 30 day period referred to in clause 11.3.

11.5 Appointment and composition of Disputes Committee

A Disputes Committee shall comprise three members who shall be appointed by the Trust as follows:

- (a) one (1) independent (non-Te Whānau a Kai) member nominated by the President from time to time of the Gisborne District Law Society or his or her nominee, such member to be a barrister or solicitor with seven (7) or more years experience, to act as the chair of the Disputes Committee; and
- (b) two Adult Registered Members of Te Whānau a Kai appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that such members cannot also be Trustees or employees of the Trust.

11.6 Role of Disputes Committee

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

11.7 Deliberations of Disputes Committee

In dealing with any dispute a Disputes Committee shall, 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. The findings and decisions of a Disputes Committee shall be final and binding on the parties.

11.8 Disputes Committee may convene hui

In facilitating the resolution of any dispute a Disputes Committee may convene a general meeting of Te Whānau a Kai in order to discuss the matters that are in dispute.

11.9 Hui to meet notice requirements

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

Any general meeting called by a Disputes Committee in order to try to settle any disputes shall be called in accordance with the requirements as to notice and meeting procedure that apply in respect of general meetings of Te Whānau a Kai as set out in this Deed.

11.10 **Notification of outcome**

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

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

EXECUTED AS A DEED

EXECUTED by **DAVID HAWEA** as trustee of)
TE WHĀNAU A KAI TRUST in the presence)
of: _____

WITNESS:
Signature: _____
Print Name: _____
Occupation: _____
Address: _____

EXECUTED by **KEITH KATIPA** as trustee of)
TE WHĀNAU A KAI TRUST in the presence)
of: _____

WITNESS:
Signature: _____
Print Name: _____
Occupation: _____
Address: _____

EXECUTED by **BOYDIE POHOIWI** as trustee of)
of **TE WHĀNAU A KAI TRUST** in the)
presence of: _____

WITNESS:
Signature: _____
Print Name: _____
Occupation: _____
Address: _____

EXECUTED by **KUKI GREEN** as trustee of)
TE WHĀNAU A KAI TRUST in the presence)
of: _____

WITNESS:
Signature: _____
Print Name: _____
Occupation: _____
Address: _____

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

EXECUTED by **GEORGE HORSFALL** as)
trustee of **TE WHĀNAU A KAI TRUST** in the)
presence of: _____

WITNESS:
Signature: _____

Print Name: _____

Occupation: _____

Address: _____

EXECUTED by **FRED MULLIGAN** as trustee)
of **TE WHĀNAU A KAI TRUST** in the)
presence of: _____

WITNESS:
Signature: _____

Print Name: _____

Occupation: _____

Address: _____

EXECUTED by **MITCHELL RATAPU** as)
trustee of **TE WHĀNAU A KAI TRUST** in the)
presence of: _____

WITNESS:
Signature: _____

Print Name: _____

Occupation: _____

Address: _____

EXECUTED by **JOHN INGRAM** as trustee of)
TE WHĀNAU A KAI TRUST in the presence)
of: _____

WITNESS:
Signature: _____

Print Name: _____

Occupation: _____

Address: _____

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

EXECUTED by **NOLENE TERERE** as trustee)
of **TE WHĀNAU A KAI TRUST** in the)
presence of: _____

WITNESS:

Signature: _____

Print Name: _____

Occupation: _____

Address: _____

EXECUTED by **MAXWELL MATENGA** as)
trustee of **TE WHĀNAU A KAI TRUST** in the)
presence of: _____

WITNESS:

Signature: _____

Print Name: _____

Occupation: _____

Address: _____

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

Schedule 1 – Te Whānau a Kai Register

1. TRUST TO KEEP REGISTER

1.1 Trust to maintain register

The Trustees shall administer and maintain the Te Whānau a Kai Register.

1.2 Register to comply with this Schedule

The Te Whānau a Kai Register shall be maintained in accordance with the rules and procedures set out in this Schedule.

2. CONTENTS OF REGISTER

2.1 Register to contain Members' details

The Te Whānau a Kai Register shall record in it the full names, dates of birth, postal addresses and email addresses of Members of Te Whānau a Kai. It shall also record the name of the Marae to which each Member of Te Whānau a Kai is registered for the purposes of Trustee elections.

2.2 Beneficiary Registration Number

The Trustees will allocate a beneficiary identification number to each Adult Registered Member of Te Whānau a Kai on the Register. The Trustees will, immediately after allocation, notify the relevant Adult Registered Member of Te Whānau a Kai of his or her beneficiary identification number.

2.3 Registration limited to one Marae

A Member of Te Whānau a Kai may belong by whakapapa to more than one (1) Marae and may register with each Marae to which the member claims affiliation. An Adult Registered Member of Te Whānau a Kai must nominate a Marae of primary affiliation to which he or she chooses to register for the purposes of Trustee elections.

3. APPLICATIONS FOR REGISTRATION

3.1 Form of applications

All applications for registration as a Member of Te Whānau a Kai must be made in writing to the Trustees in the application form approved from time to time by the Trustees. The application must contain:

- (a) the full name, date of birth and postal address of the applicant;
- (b) the name or names of the Marae to which the applicant claims affiliation for the purposes of Trustee elections;
- (c) the whakapapa (genealogical connections) through which the applicant claims affiliation to Te Whānau a Kai and the name of the Marae to which the applicant claims to affiliate in terms of paragraph (b) of this clause, including details of the whakapapa connection of the applicant to Te Whānau a Kai and to the relevant Marae; and
- (d) such evidence as the Trustees may from time to time require as to that applicant's status as a Member of Te Whānau a Kai and affiliation to the particular Marae.

3.2 Applications to be made by

An application for registration as a Member of Te Whānau a Kai may be made by:

- (a) Members of Te Whānau a Kai who are 18 years of age or older, on their own behalf or by their legal guardian; and
- (b) other Members of Te Whānau a Kai 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 Validation Committee to be established

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

The Trustees shall establish a Membership Validation Committee to make decisions on all applications made pursuant to clause 3.1 of this Schedule for registration as a Member of Te Whānau a Kai.

4.2 **Composition of Membership Validation Committee**

The Membership Validation Committee shall comprise not less than three (3) and not more than five (5) Adult Registered Members of Te Whānau a Kai, appointed by the Trustees from time to time, with the expertise and knowledge of Te Whānau a Kai whakapapa necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Te Whānau a Kai whakapapa may be appointed to the Membership Validation Committee.

4.3 **Consideration of applications**

All applications for membership pursuant to clause 3.1 of this Schedule together with any supporting evidence shall be forwarded by the Trustees to the Membership Validation 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 Validation Committee shall consider the application and shall make a decision as to whether or not the application should be accepted both as to the applicant's status as a Member of Te Whānau a Kai and as a member of the Marae to which the applicant claims to affiliate.

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

In the event that the Membership Validation Committee decides that the application should be accepted then such decision shall be notified in writing to the Trustees, which shall in turn notify the applicant and enter the applicant's name and other relevant details (including beneficiary identification number in accordance with clause 2.2 of this Schedule) in the appropriate part of the Te Whānau a Kai Register.

4.6 **Notification to unsuccessful applicants**

In the event that the Membership Validation Committee decides to decline the application (whether as to the status of the applicant as a Member of Te Whānau a Kai or as a member of any Marae) then such decision shall be conveyed in writing to the Trustees together with the reasons for the decision. The Trustees shall 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 at any time seek to have his or her application reconsidered by the Membership Validation 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 (1), any previous application) as to the applicant's status as a Member of Te Whānau a Kai.

4.8 **Members may change Marae**

Any Member of Te Whānau a Kai who is registered on the Te Whānau a Kai Register may, by applying in writing to the Trustees, change the Marae that he or she is for the time being recorded as registered with.

4.9 **Process to change Marae**

Any application to change Marae shall be dealt with by the Trustees in the same manner as applications for membership as set out in this Schedule.

5. **MAINTENANCE OF REGISTER**

5.1 **Trustees to establish policies**

The Trustees shall take such steps and institute such policies as are necessary to ensure that the Te Whānau a Kai Register is maintained in a condition that is as up to date, accurate and complete as possible in recording Members of Te Whānau a Kai.

5.2 **Assistance in identifying membership**

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

In maintaining the Te Whānau a Kai Register, the Trustees shall include in the policies that it develops policies for assisting in the identification and registration of those Members of Te Whānau a Kai who are not for the time being on the Te Whānau a Kai Register. Such policies shall include policies as to the nature of the assistance that the Trustees will provide to those persons who believe that they are Members of Te Whānau a Kai but for whatever reason are not able to establish such membership.

5.3 **Responsibility of Members of Te Whānau a Kai**

Notwithstanding clause 1.1 of this Schedule, it shall be the responsibility of each person who is a Member of Te Whānau a Kai (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 Te Whānau a Kai Register and that his or her full postal address for the time being is provided and updated. Any Member of Te Whānau a Kai may choose to terminate their registration of membership of Te Whānau a Kai, by notifying the Trustees in writing.

5.4 **Consequences of registration**

Registration of any person on the Te Whānau a Kai Register as a Member of Te Whānau a Kai shall be conclusive evidence of that person's status as a Member of Te Whānau a Kai and affiliation to the Marae under whose name he or she is recorded.

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

Schedule 2 – Election of Trustees

1. PROCEDURE

1.1 This Schedule to apply

The Trustees shall be appointed in accordance with the rules and procedures set out in this Schedule.

2. ELIGIBILITY FOR APPOINTMENT

2.1 Nominee to be registered

To be elected as a Trustee the nominee must, as at the closing date for nominations, be an Adult Registered Member of Te Whānau a Kai and be eligible in accordance with clause 6 of this Schedule.

2.2 Trustees may not be Chief Executive or employee or contractor

A Trustee may not hold the position of Chief Executive nor be an employee of, or a contractor to, any entity or trust in the Te Whānau a Kai Group.

2.3 Trustees to be registered with Marae

To be eligible to be elected as a Trustee, a person must:

- (a) at least seven (7) days prior to the Hui-a-Marae, be recorded in the Te Whānau a Kai Register as being registered with the Marae for which the election is being held;
- (b) not have ceased to hold office in the last three (3) years for any of the reasons set out in sub clause (a) to (d) of clause 17 of this Schedule; and
- (c) not be a person in which any of the sub-clauses (e) to (h) of clause 17 of this Schedule apply.

3. ELECTION OF TRUSTEES

3.1 Entitlement to elect Trustees

The Adult Registered Members of Te Whānau a Kai listed in the Te Whānau a Kai Register shall be entitled to elect the Trustees in accordance with the rules for elections as set out in this Schedule.

3.2 Election to be by Marae

Each Marae, acting through the Adult Registered Members of Te Whānau a Kai listed in the Te Whānau a Kai Register with that Marae, shall be entitled to elect up to two (2) Trustees in accordance with clause 4 of this Schedule.

3.3 Trustee elections every three (3) years

Subject to clause 4.6 of this Schedule, elections of the Trustees by each Marae must be held every three (3) years from the Income Year commencing 1 July 2020, except in the case of elections held for the Rotation Period under clauses 3.4 and 11 of this Schedule, and must be concluded in time for the Trustees elected in each Election Year to take office immediately following the announcement of the names of those elected Trustees in the annual general meeting of the Trust held in that year.

3.4 Trustee elections by Marae during Rotation Period

Subject to this Schedule, elections of Trustees must be held by each Marae every year that an originally elected Establishment Trustee is to resign under clause 11 of this Schedule, to replace that resigning Establishment Trustee, and must be concluded in time for the Trustee elected to take office immediately following the announcement of the names of elected Trustees in the annual general meeting of the Trust held in that rotation year under clause 11 of this Schedule.

3.5 Trustee elections by Marae during Establishment Period

Subject to this Schedule, elections of the Establishment Trustees by each Marae must be held during the Establishment Period and must be concluded in time for the Establishment Trustees elected in the Establishment Period to take office immediately following the announcement of

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

the names of those elected Establishment Trustees in the first annual general meeting of the Trust held in that year.

3.6 **Obligations and responsibilities**

Upon appointment, each Trustee shall have the same obligations and responsibilities to all Members of Te Whānau a Kai.

3.7 **Best interests**

The Trustees must represent and act in the best interests of all Members irrespective of hapū or marae affiliations.

3.8 **Domiciled in New Zealand**

All persons standing to fill a vacancy among the Trustees must be domiciled in New Zealand.

4. **HUI-A-MARAE**

4.1 **Appointment by Hui-a-Marae**

Each Trustee will be appointed by the Adult Registered Members of Te Whānau a Kai registered with that Marae, by a Hui-a-Marae (a meeting of the Marae) duly convened and notified in accordance with clause 4.2 of this Schedule.

4.2 **Notice of Hui-a-Marae**

Notice of a Hui-a-Marae must be given not less than twenty-one (21) days before the Hui-a-Marae and shall be:

- (a) in writing and sent by electronic form to all Adult Registered Members of Te Whānau a Kai. Where the Trustees do not have an electronic address for an Adult Registered Member, or a notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent by post to the last known postal address of that Adult Registered Member;
- (b) advertised prominently in any newspaper circulating in regions where the Trustees consider that a significant number of Adult Registered Members of Te Whānau a Kai registered with the relevant Marae reside; and
- (c) such other means as the Trustees may determine.

4.3 **Content of notices**

All notices under clause 4.2 of this Schedule must contain:

- (a) the date, time and place of the Hui-a-Marae; and
- (b) a list of the nominees for election as Trustees.

4.4 **Eligibility to vote**

Those eligible to vote on the election of a Trustee are those Adult Registered Members of Te Whānau a Kai that are registered with their Marae of primary affiliation in accordance with clause 3.1 of this Schedule. For avoidance of doubt, each such Adult Member of Te Whānau a Kai will only be eligible to vote at Trustee elections of their Marae of primary affiliation.

4.5 **Date by which Members to be registered**

An Adult Member of Te Whānau a Kai must be recorded in the Te Whānau a Kai Register as registered with his or her Marae of primary affiliation on a date that is seven (7) days prior to the Hui-a-Marae for the purposes of Trustee elections.

4.6 **Election process**

The chairperson of the Hui-a-Marae will determine the election process for that Marae, and any such election process must give the Adult Registered Members of Te Whānau a Kai registered with that Marae a fair and reasonable opportunity to participate in the election of a Trustee for that Marae.

4.7 **Confirmation of Marae election**

Promptly upon the election of its Trustee or Trustees, each Marae must give written notice to the Chief Executive, signed by the newly elected representative as evidence of their consent to be a trustee and to be bound by the terms of the Trust Deed.

5. **NUMBER OF TRUSTEES**

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

5.1 There shall be ten (10) positions for appointment of Trustees, with each of the five (5) Marae appointing 2 positions.

6. ELIGIBILITY FOR NOMINATION TO BE A TRUSTEE

6.1 In accordance with clause 2.3 of this Schedule, a Trustee must be registered with a Marae and must not:

- (a) be bankrupt or have within the last five years has been adjudged bankrupt;
- (b) have ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
- (c) be or have been disqualified from being a director of a company registered under the Companies Act 1993;
- (d) be or ever be removed as a Trustee of a Trust by Order of Court on the grounds of breach of trust, lack of competence or failure to carry out successfully, the duties of a Trustee;
- (e) be physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;
- (f) be subject to a property order made under section 30 or 31 of the Protection of Personal Property Rights Act 1988; and
- (g) have been convicted in the last 10 years of an offence punishable by more than three years imprisonment (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004).

7. DETERMINATION OF ELIGIBILITY

7.1 Where any question arises as to the eligibility of a nominee to stand for election, eligibility shall be determined:

- (a) at the closing date for nominations; and
- (b) by the Trustees who are not standing for re-election.

8. ENTITIES

8.1 Subject to clause 2.2 of this Schedule and clause 1.1(d) of Schedule 6, nothing in this Deed shall prevent a Trustee from holding a position on the governance of an entity of the Te Whānau a Kai Group.

9. TERMS OF OFFICE

9.1 Subject to clauses 3.4, 10 and 11 of this Schedule, Trustees from time to time shall hold office for a term of three (3) years.

10. RETIREMENT OF INITIAL TRUSTEES

10.1 The Initial Trustees shall retire from office at the commencement of the first annual general meeting, where the names of the Establishment Trustees are to be announced. The announced Establishment Trustees, will be the trustees elected by each of the five (5) Marae under clause 3 of this Schedule, by Hui-a-Marae in accordance with clause 4 of this Schedule.

11. ROTATION OF FIRST APPOINTED ESTABLISHMENT TRUSTEES

11.1 Following the retirement of the Initial Trustees and the announcement of the Establishment Trustees at the first annual general meeting in accordance with this clause 11 of this Schedule, the Establishment Trustees will hold office as follows in order to retain continuity and knowledge of the Trusteeship:

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

- (a) at the second annual general meeting four (4) of the Establishment Trustees must resign according to their surnames by alphabetical order. Subject to clause 6 of this Schedule they will be eligible for re-election by their Marae under clause 3.4, for appointment at the second annual general meeting in accordance with the clauses in this Schedule;
- (b) at the third annual general meeting the next four (4) of the Establishment Trustees must resign according to their surnames by alphabetical order. Subject to clause 6 of this Schedule they will be eligible for re-election by their Marae under clause 3.4, for appointment at the second annual general meeting in accordance with the clauses in this Schedule; and
- (c) at the fourth annual general meeting, which will coincide with the first Election Year, the final two (2) Establishment Trustees must resign. All five (5) Marae shall then be entitled to elect Trustees for each Election Year in accordance with clauses 3.3 and 3.4.

The above resignations will now allow all Trustees to serve their full three year term with future retirements ensuring continuity of service and knowledge of the Trusteeship.

12. ELIGIBILITY OF RETIRING TRUSTEES

- 12.1 Retiring Trustees shall be eligible for re-election provided they meet the criteria in as set out in clause 6 of this Schedule and offer themselves for re-election in accordance with clause 2.3 of this Schedule.

13. TRUSTEE CASUAL VACANCIES

13.1 Filling vacancies

Should a confirmed Trustee vacancy occur for whatever reason, the remaining Trustees may make an appointment to fill the vacancy. The Trustee appointed shall hold office until the next annual general meeting at which the appointee must resign as Trustee.

13.2 Powers and authority

The Trustee appointed under clause 13.1 of this Schedule shall have the same powers and authority as the formally elected Trustees.

14. APPOINTMENT OF CHIEF RETURNING OFFICER

14.1 Chief Returning Officer

The Trustees shall appoint as required a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the provisions of this Deed setting out the powers and duties of the Chief Returning Officer. The Chief Returning Officer shall be responsible for co-ordinating Trustee elections.

14.2 Chief Returning Officer to be present at Hui-a-Marae

The Chief Returning Officer shall be present at every Hui-a-Marae where Trustee elections take place to ensure that appropriate measures are in place so that each Adult Registered Member of Te Whānau a Kai validly casts only one (1) vote per Trustee nominee for their Marae of primary affiliation in accordance with this Schedule.

15. COUNTING OF VOTES

- 15.1 The Chief Returning Officer shall count all of the votes in accordance with the process election process set out by the chairperson of the Hui-a-Marae under clause 4.6 of this Schedule. Once all votes have been counted and the result of the election is determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Chairperson prior to the annual general meeting of that year. A record shall be kept by the Chief Returning Officer of all votes received. The Trustees shall thereafter advise the candidates of the result.

16. RECORDING OF CHANGES OF TRUSTEES

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

16.1 Upon the notification of every appointment, retirement, termination and casual appointment of any Trustee, a proper record of changes must be properly recorded in the appropriate minutes of the Trust and advised to the appropriate authorities.

17. TERMINATION OF OFFICE OF TRUSTEES

17.1 Notwithstanding the foregoing rules of this Schedule, a Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to the Trustees;
- (b) completes his or her term of office and is not reappointed;
- (c) refuses to act;
- (d) is absent without leave from three (3) consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (e) is or becomes bankrupt or makes any composition or arrangement with his or her creditors;
- (f) is convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993;
- (g) is convicted of an indictable offence;
- (h) becomes subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or becomes subject to a care and protection order under the Protection of Personal and Property Rights Act 1988; or
- (i) dies.

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Schedule 3 – Powers and Duties of Trustees

1. MANAGEMENT AND ADMINISTRATIVE POWERS

1.1 Management of Trust Affairs by Trustees

Subject to clause 3.1 of this Deed, in managing the affairs of the Trust, the Trustees:

- (a) shall have the absolute governance and management of the Te Whānau a Kai Group in accordance with this Deed;
- (b) may from time to time appoint, remunerate and dismiss officers or employees of the Trust, unless, either generally or in a particular case, it shall have for the time being delegated any one or more of the powers of appointment, remuneration or dismissal, as the case may be, to a person holding the position of Chief Executive in accordance with Schedule 8;
- (c) may from time to time appoint or engage an individual or company for a defined purpose(s) and for a defined period:
 - (i) to provide expert, professional or other services and, where relevant and appropriate, act upon their advice or opinion;
 - (ii) to implement the decisions of the Trustees; and
 - (iii) appoint an attorney for the Trustees in New Zealand or elsewhere for all or any of the purposes of the Trust;
- (d) must not pay out, invest or apply monies belonging to the Trust for any purpose that is not directed or authorised by the Deed.

1.2 Policies

It shall be the express responsibility of the Trustees to ensure that appropriate policies are prepared for all areas of the Trust's operations including its entities, and including, but not limited to:

- (a) Investments,
- (b) expenditure,
- (c) banking authorities,
- (d) asset management,
- (e) human resources,
- (f) health and safety,
- (g) business and economic development; and
- (h) acquisitions

1.3 Investment

In preparing a policy for investment of the Trust's funds the Trustees must prepare a schedule of investment types which the Trustees have the power to invest Trust funds and include specific investments that are forbidden for investment. The Trustees should seek professional advice on the appropriate investment types and review these on a regular basis with those professional advisers.

1.4 Borrowing funds

Further to clause 1.1(d) of this Schedule, funds should only be borrowed from authorised and commercially accepted sources. The Trustees should prepare and approve a schedule of authorised sources containing details on funds and professional advice.

1.5 Trustees to prepare list of Trust property

The Trustees must prepare a list of Trust property, particularly land, that cannot under any circumstances be offered as security for any funds borrowed by the Trustees.

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2. TRUSTEE DUTIES

2.1 Subject to the provisions of this Deed the Trust is to be managed and administered by the Trustees and without limiting the generality of the foregoing:

- (a) the Trustees must always act in accordance with their fiduciary duties, responsibilities and obligations;
- (b) in performing their duties the Trustees will act in good faith and in a manner that the Trustees believe are reasonable grounds and in the interests of the members;
- (c) the Trustees must not, when exercising powers of performing their duties, act or agree to act in a manner which unfairly prejudices or unfairly discriminates against any particular Member(s) unless the Trustees believe on reasonable grounds that the fundamental duty set out in in this clause requires such action and that the action will not breach the Trustees fiduciary duties and obligations;
- (d) the Trustees must not, collectively or individually, act or agree to act in a manner which contravenes this Deed;
- (e) the Trustees when exercising their powers and duties as Trustees, must exercise the care, due diligence and skill to be reasonably expected of a person acting in like circumstances, taking into account any special skills or experience that are expected of Trustees; and
- (f) the Trustees must comply with all taxation legislation that applies to the Trust.

2.2 Trustees to prepare Annual Plan

In addition to the requirement in clause 2.4 of this Schedule, the Trustees shall prepare no later than one (1) month before the commencement of each Income Year an Annual Plan which specifies in respect of that Income Year information including:

- (a) the strategic vision of the Trust for the Te Whānau a Kai Group, consistent with the longer term vision of the Te Whānau a Kai Group as identified in the Five Year Plan;
- (b) the nature and scope of the activities proposed by the Trustees for the Te Whānau a Kai Group in the performance of the Trust's Purpose;
- (c) the ratio of capital to total assets;
- (d) the performance targets and measurements by which performance of the Te Whānau a Kai Group may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with;
- (f) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Members of Te Whānau a Kai; and
- (g) any other information as the Trustees in their discretion consider necessary or appropriate.

2.3 Trustees to prepare Five Year Plan

In addition to the requirements in clause 2.4 of this Schedule, the Trustees shall produce, within 18 months following the execution of this Deed, with updates not less than every two (2) years a Five Year Plan. Such a plan shall set out in the plan the longer term vision of the Trustees in respect of the matters referred to in clause 2.2 of this Schedule and shall include a statement by the Trustees of the commercial, management and distribution policies that the Trustees intend to follow in respect of the Trust's Assets. Without limiting the generality of the foregoing:

- (a) the Trustees are to base each year of the plan on the Trust's financial year ending 30 June;
- (b) the Trustees are to report to members at every annual general meeting on:
 - (i) achievements and non-achievements of the plan and
 - (ii) how they propose to address non-achievement areas of the plan and

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- (iii) their rationale for new opportunities now included in the plan;
- (c) Members are to approve the plan for the next five years, with amendments, if any.

2.4 Initial Annual Plan and Five Year Plan

In addition to the requirements in clauses 2.2 and 2.3 of this Schedule, the Trustees shall, within one (1) month of establishment of the Trust prepare and produce an Annual Plan and Five Year Plan that comply with the matters in clause 2.2 and 2.3 of this Schedule. Those plans shall have effect until such time as they are replaced by new plans as required in clause 2.2 and 2.3 of this Schedule.

2.5 Documents to be available for inspection

The Trustees shall hold at their offices and make available for inspection by any Member of Te Whānau a Kai during normal business hours on any Business Day:

- (a) the Annual Report for each of the preceding three (3) Income Years;
- (b) the Consolidated Financial Statements for the preceding three (3) Income Years;
- (c) the Annual Plan;
- (d) the Five Year Plan;
- (e) the Statements of Intent;
- (f) the minute book kept in accordance with clause 5.15 of this Deed of all decisions taken and business transacted at every annual general meeting and special general meeting;
- (g) their own personal details on the Register;
- (h) the Deed and any amendment to the Deed; and
- (i) the current constitution or trust deed of any Subsidiary.

2.6 Costs of copying

Any Member of Te Whānau a Kai shall be entitled to obtain copies of the information referred to in clause 2.5 in this Schedule. The Trustees shall also be entitled to recover at their discretion all reasonable copying or postage costs (if any).

3. TRUSTEES RENUMERATION AND EXPENSES

3.1 Remuneration and expenses

Subject to clauses 4.5 and 4.6 of this Deed, each Trustee shall be entitled to:

- (a) Trustees fees for services rendered as a Trustees for each financial year of the Trust ending 30 June having regard to the duties and responsibilities required of the Trustees. The amount payable will be determined at the Trust's annual general meeting each year and the approval shall be for the ensuing year. The timing of payment of fees will be decided by the Trustees;
- (b) charge for their services for work done by a Trustee or that Trustee's firm on the same basis as if that Trustee was not one of the Trustees but contracted to carry out the work on their behalf, subject to clause 9 of Schedule 4;
- (c) fees payable to Initial Trustees will be decided at the annual general meeting when they are required to resign following the election of the Trustees.

4. PREPARATION OF ANNUAL REPORT

4.1 Annual reports

Within five (5) months after the end of each Income Year and no later than 20 Business Days prior to an annual general meeting, the Trustees must cause to be prepared an annual report on the affairs of the Te Whānau a Kai Group covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan, and Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Te Whānau a Kai Group for that Income Year. The Consolidated Financial Statements

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shall include as a separate item details of any remuneration or fees paid to any Trustee or any Trustee's firm (including without limitation any such payment to any Trustee as a director or trustee of a Subsidiary) and details of any premiums paid in respect of Trustees' indemnity insurance (or any indemnity payments made by an insurer).

5. AUDITS OF FINANCIAL STATEMENTS

5.1 Consolidated financial statements

The Trustees must also ensure that the Consolidated Financial Statements for each Income Year are audited by a chartered accountant in public practice prior to the date for giving notice of the annual general meeting of the Trust for the Income Year immediately following the Income Year to which the financial statements relate.

6. APPOINTMENT OF AUDITOR

6.1 Auditor

The auditor shall be appointed by the Trustees prior to the end of the Income Year to which the audit relates and, where possible, the fee of the auditor shall also be fixed at that time. No Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the Trust's accountant shall not be appointed as the auditor.

7. LIABILITY OF TRUSTEES

7.1 Liability

A Trustee shall only be liable for losses attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows or should have known to be a breach of this Trust Deed. In particular, no Trustee shall be bound to take, or be liable for failing to take, any proceedings against another Trustee for any such breach or alleged breach.

8. INDEMNITY AND INSURANCE

8.1 Indemnity and insurance for Trustees

Any Trustee, officer or employee of the Trust may be indemnified or have their insurance costs met out of the Trust's Assets against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust, where:

- (a) those proceedings do not arise out of any failure by the Trustee, officer or employee; and
- (b) he or she was acting in good faith in a manner that he or she believed to be in the best interests of the Trust with the object of fulfilling the Trust's Purpose.

8.2 Indemnity and insurance costs to be just and equitable

All indemnities and insurance costs may only be provided to the extent that the Trustees in their discretion think just and equitable. Without limitation, Trustees should have regard to prevailing market rates for such costs in organisations of a similar nature, asset base and risk profile to the Trust or the relevant entity.

8.3 Indemnity and insurance for specific trusts

If any assets are held by the Trustees on any separate specific trust, then any Trustee, officer or employee of the Trust may in respect of proceedings brought in relation to that separate specific trust only be indemnified or have their insurance costs met out of those assets.

8.4 Record of decisions

All decisions made under this clause to give indemnities or meet or approve any insurance costs shall be recorded in the minutes of the meeting of Trustees at which such a decision was made together with the reasons why such indemnities or insurance costs were thought to be just and equitable.

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Schedule 4 – Proceedings of Trustee Meetings

1. TRUSTEE MEETINGS

1.1 All meetings of Trustees shall take place in accordance with this Schedule.

2. TRUSTEES TO REGULATE MEETINGS

2.1 Trust's business

The Trustees shall meet together for the Trust's business, adjourn and otherwise regulate their meetings as they consider appropriate and expeditious. The Trustees must meet as Trustees no less than four times each income year to attend to business that is the responsibility of the Trustees.

2.2 Meetings schedule

The Chairperson shall at the first meeting of Trustees following the annual general meeting, prepare a meetings schedule for approval by the Trustees of the dates and venue for the meetings of Trustees until the ensuing annual general meeting.

2.3 Summoning meeting

Any three Trustees may at any time by notice in writing to the Chairperson summon a meeting of the Trustees at a time not included on the meetings schedule in clause 2.2 of this Schedule. This request must be made to the Chairperson who shall take such steps as are necessary to convene such meeting.

3. NOTICE OF MEETINGS

3.1 Notice

Notwithstanding the meetings schedule in clause 2.2 of this Schedule, written notice of every meeting shall be either hand-delivered, posted or sent by facsimile or by electronic form to each Trustee at least seven (7) days before the date of the meeting. It shall not be necessary to give notice of a meeting of Trustees to any Trustee for the time being absent from New Zealand unless that Trustee has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.

3.2 Content of notice

All notices of meetings must include the place, day and time of the meeting, and an agenda of the business to be transacted, documentation, reports and correspondence of items on the agenda where this is practical. There must be mandatory items on every agenda including the review and follow up of the Five Year Plan and Annual Plan.

3.3 Waiver of notice

The requirement of notice of a meeting may be waived if all Trustees who are at the time entitled to receive notice of the meeting give their written consent to such a waiver prior to or at the meeting. This waiver must be recorded in the minutes of that meeting.

3.4 Meeting limited to notified business

Subject to clause 3.3 of this Schedule, no business shall be transacted at any meeting of Trustees other than the business expressly referred to in the notice calling the meeting. Without limitation, if all Trustees are present other business may be transacted if they all agree in writing.

3.5 Deficiency of notice

Subject to clause 3.4 of this Schedule, no deficiency or irregularity in a notice of any meeting of Trustees shall invalidate such meeting or the proceedings and decisions from such meeting.

4. ABSENCE FROM MEETINGS

4.1 Non-attendance

If a Trustee is unable to attend a Trustee meeting, then that Trustee must give the Chairperson at least one weeks notice and the reason for non-attendance.

4.2 Non-attendance of three consecutive meetings

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If a Trustee does not attend three consecutive meetings of Trustees, the remaining Trustees must decide, despite non-attendance was previously advised to the Chairperson, whether that Trustee should continue in that position. Their decision will be final.

4.3 **Vacancies**

The Trustees may act notwithstanding any vacancy or vacancies in their body, but if and so long as their number is reduced below the quorum fixed by these rules, the continuing Trustees may act only for the purpose of advising of the vacancy or vacancies and taking the steps necessary to procure the election of new Trustees to fill any vacancy or vacancies, and for no other purpose.

5. **DETERMINATION OF TRUSTEES PRESENT AT TRUSTEE MEETINGS**

5.1 **Present at meetings**

In order to determine the number of Trustees present at Trustee meetings, Trustees may be present in person, audio visual link, telephone or by some form of electronic or digital device.

5.2 **Present remotely**

To be counted as being present in clause 5.1 of this Schedule, the Trustees on audio visual link, telephone or some other form of electronic or digital device must be able to be heard by all of the other Trustees and conversely must be able to hear all of the discussion from the other Trustees.

5.3 **Acknowledging presence**

At the beginning of the meeting, each participant must acknowledge his or her presence at that meeting to all others taking part if clause 5.2 of this Schedule applies. Further, in this circumstance a participant may not leave the meeting without first obtaining the Chairperson's express consent. The time the participant leaves will be noted by the Chairperson. If that participant returns to the same meeting the Chairperson will acknowledge that return and time, for purposes of the record.

5.4 **Quorum**

Six (6) Trustees then at office shall constitute a quorum at meetings of the Trustees. The Chairperson shall have a casting vote at all Trustee meetings to resolve a voting deadlock should this arise.

6. **PROCEEDINGS AT MEETINGS**

6.1 **Decisions by Majority Vote**

Unless stated otherwise in this Deed, questions arising at any meeting of Trustees shall be decided by a majority of votes of Trustees present at a validly called meeting. In the case of an equality of votes, the Chairperson shall have a casting vote to resolve a voting deadlock should this arise.

6.2 **Chairperson**

The Chairperson shall take the chair at all meetings of the Trustees. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Trustees present shall elect one (1) of their number to be chairperson of the meeting.

6.3 **Defect in appointment**

All acts done by any meeting of the Trustees or of any committee appointed under clause 8.3 of this Schedule shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Trustee or person co-opted to any committee, or that they were disqualified, be valid as if every such person had been duly appointed and was qualified to act.

6.4 **Unruly meetings**

If any meeting of Trustees becomes so unruly or disorderly that in the opinion of the Chairperson of the meeting, the business of the meeting can no longer be conducted in a proper and orderly manner, or if any meeting in the opinion of the Chairperson becomes protracted, the Chairperson may, and without giving a reason, adjourn the meeting and may direct that any

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uncompleted item of business for which notice was given and which in his or her opinion, requires to be voted upon, be put to the vote without discussion.

7. CHAIRPERSON AND DEPUTY CHAIRPERSON

7.1 Trustees to appoint Chairperson and Deputy Chairperson

At the first meeting of Trustees immediately following the annual general meeting, the Trustees shall appoint one (1) of their number to be Chairperson and (at their discretion) another to be Deputy Chairperson.

7.2 Term

The Chairperson and Deputy Chairperson so elected shall hold office until the conclusion of the next annual general meeting.

7.3 Resignation or removal

The Chairperson and Deputy Chairperson will cease to hold office in the event that he or she resigns as a Trustee or is removed as a Trustee. If this occurs then the remaining Trustees must appoint replacements as in clause 7.1 of this Schedule.

8. DELEGATION BY TRUSTEES

8.1 Delegation

The Trustees may from time to time as they consider expedient for carrying out any of the Trust's purposes, delegate any one or more of their powers under this Deed to a Trustee, employee or other person.

8.2 Responsibility

Notwithstanding the delegation by the Trustees of any of their powers under clause 8.1 of this Schedule, the Trustees shall remain responsible for the exercise of that power by the delegate as if the Trustee has exercised the power themselves. The Trustees must by reasonable processes monitor the exercise of the power by the delegate.

8.3 Committees

Subject to the any clauses of this Deed, the Trustees may appoint one (1) or more Trustees to establish a committee for a particular purpose by resolution. Any committee so appointed may co-opt for the purposes of consultation and advice, persons who are not Trustees, provided that a Trustee shall chair any such committee. The Trustees must put in writing the duties, responsibilities, term, reporting requirements and any limits of the authority of each committee. The Chairperson of any committee shall be appointed by the Trustees. The Trustees have the authority to terminate any committee it has established or remove any person from a committee with or without any explanation.

8.4 Remuneration

Remuneration for services referred to in clause 8.3 of this Schedule will be at the sole discretion of the Trustees, with the exception of the Cultural Committee referred to in the Schedule 7.

9. MINUTES OF TRUSTEE MEETINGS

9.1 Minutes to be kept

The Trustees shall keep a complete, accurate and proper written record in a minute book of all matters discussed and business transacted at every meeting of the Trustees. All decisions must be recorded in the minutes including all resolutions passed and approved, with the names of the mover and seconder, and abstentions, if any, of all resolutions.

9.2 Digital records of minutes to be kept

The Trustees should arrange digital recordings of their meetings for checking the written minutes if required, and for later digitisation if considered appropriate.

9.3 Minutes to be evidence of proceedings

Minutes of the proceedings signed by the Chairperson of that meeting shall be evidence of those proceedings.

9.4 Minutes to be evidence of proper conduct

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

9.5 **Minutes not publicly available**

Minutes of Trustee meetings are not available for inspection by the Members or the public due to privacy reasons and the need for commercial sensitivity.

10. **CONFLICTS OF INTEREST**

10.1 **Register**

The Trustees must keep a register of organisations that Trustees have an interest in and the register must be tabled, reviewed and updated at every Trustee meeting.

10.2 **Definition of interested Trustee**

A Trustee will be interested in a matter if the Trustee:

- (a) is a party to, or will derive a material financial benefit from, that matter;
- (b) has a material financial interest in another party to the matter;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or in the case of a trust controlled, by the Trustees or any other member of the Te Whānau a Kai Group;
- (d) is the parent, child, spouse, de facto or civil union partner of another party to, or person who will or may derive a material financial benefit from, the matter; or
- (e) Is otherwise directly or indirectly interested in the matter.

10.3 **Interests in common with Marae or hapū**

Notwithstanding clause 10.2 of this Schedule, no Trustee will be interested in the matter where that Trustee is a member of a Marae or hapū and where his or her interest is not different in kind from the interests of other members of that Marae or hapū.

10.4 **Disclosure of interest to other Trustees**

A Trustee must forthwith, after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trustees, disclose to the other Trustees at a meeting of the Trustees:

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

10.5 **Recording of Interest**

A disclosure of interest by a Trustee and the nature and the extent or monetary value of that interest shall be recorded in the minute book and the interest register of the Trust.

10.6 **Dealing with "interested" Trustees**

An interested Trustee shall not take part in any deliberation or vote in respect of any matter in which that Trustee is interested, nor shall the Trustee be counted for the purposes of forming a quorum in any meeting to consider such a matter. Any interested Trustee must leave the meeting for the duration of the deliberation and voting on the matter in which that Trustee is interested and the minutes of the meeting must record the time of the Trustees exit from the meeting and return.

10.7 **Prohibition of Benefit or Advantage**

In the carrying on of any business by any member of the Te Whānau a Kai Group under this Deed, and in the exercise of any power authorising the remuneration of the Trustees, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Associated Person where that Associated Person, in his or her capacity as an Associated Person, is able by virtue of that capacity in any way (whether directly or indirectly) to determine,

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or to materially influence the determination of the nature or amount of that benefit, advantage or income, or the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

10.8 **Disclosure of Trustee Remuneration**

The Trustees shall, in accordance with clause 4 of Schedule 3, show the amount of any remuneration paid to any Trustee or any Trustee's firm and the amount of any premiums paid out of the Trust's Assets for any Trustee indemnity insurance separately in the financial statements including any payments made pursuant to clause 8.1 of Schedule 3.

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Schedule 5 – Procedure for Passing Special Resolutions

1. SPECIAL RESOLUTIONS

1.1 Business requiring Special Resolution

Special Resolutions are required to:

- (a) approve a major transaction in accordance with clause 2.4 of this Deed;
- (b) amend this Deed in accordance with clauses 6.1 to 6.6 of this Deed;
- (c) approve a resettlement in accordance with clause 8.1 of this Deed; or
- (d) terminate Trust in accordance with clause 9.1 of this Deed.

2. SPECIAL GENERAL MEETINGS

2.1 Purpose

A special general meeting of the Trust must be called for the purpose of considering business that is required to be approved by Special Resolution as set out in clause 1.1 of this Schedule. No other business can be transacted at that meeting except the business included in the notice of the meeting.

3. NOTICE

3.1 Method of giving notice

Trustees shall give not less than twenty-one (21) days notice of the date, time and place of the special general meeting called for the purpose of considering any Special Resolution. Notice shall be given in the following manner:

- (a) post (including by electronic form where available) to all Adult Registered Members of Te Whānau a Kai at the last address shown for each such Adult Registered Member of Te Whānau a Kai on the Te Whānau a Kai Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address;
- (b) advertised prominently on at least two (2) separate days in appropriate major newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Te Whānau a Kai reside;
- (c) advertised on radio stations broadcasting in the districts where Trustees consider a significant number of Members reside;
- (d) advertised by electronic or digital means; and
- (e) such other means as the Trustees may determine.

3.2 Contents of the Notice

All notices given in accordance with clause 3.1(a) of this Schedule shall contain:

- (a) the date, time and place of the special general meeting;
- (b) details of the proposed Special Resolution including setting out the relevant business in accordance with clause 1.1 of this Schedule;
- (c) details of the reasons for the proposed Special Resolution and the effect that the Special Resolution will have;
- (d) details of the procedure to be followed in making a vote at the special general meeting; and
- (e) confirmation that only members over the age of 18 years and recorded on the Register of Members are entitled to vote.

3.3 Content of advertisement

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All advertisements published in accordance with clause 3.1(b) of this Schedule shall contain the matters referred in clauses 3.2(a) and (b) of this Schedule together with details of how and where any further information can be obtained.

4. VOTING

4.1 Method

Voting on a Special Resolution will be by voice or on a show of hands. The chairperson of the meeting may also demand a secret ballot on a Special Resolution either before or after any vote.

4.2 Eligibility to Vote

Those eligible to vote on a Special Resolution are those Adult Members of Te Whānau a Kai recorded in the Te Whānau a Kai Register as an Adult Registered Member of Te Whānau a Kai on the closing day for voting.

4.3 One vote

Each Adult Registered Member of Te Whānau a Kai present at the special general meeting will only have one (1) vote. The chairperson at the meeting may (in his or her sole discretion) require that the persons present at the meeting verify their eligibility to vote under a process directed by the chairperson.

4.4 Chief Returning Officer

The Chief Returning Officer, appointed in accordance with clause 14 of Schedule 2, shall ensure that appropriate measures are in place so that only one (1) vote is validly cast by each Adult Registered Member of Te Whānau a Kai in the manner set out in clause 4.1 of this Schedule.

4.5 Counting of votes and recording of result

The Chief Returning Officer shall count all of the votes. Once all of the votes have been counted and the result of the Special Resolution determined by the chairperson of the meeting, the chairperson of the meeting will certify the result of the Special Resolution and communicate the result to the meeting and to the Trustees. A record shall be kept by the Chief Returning Officer of all votes received.

5. ADJOURNED MEETING

5.1 Quorum not present

If within one hour of the time appointed for a special general meeting, a quorum is not present, the meeting will stand adjourned to be re-convened in 14 days after the date of the meeting. On that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting. If the quorum is not present within one hour from the time appointed for that adjourned meeting, Members present will constitute a quorum.

6. PROCEEDINGS AT SPECIAL GENERAL MEETINGS

6.1 Proceedings

Except as otherwise set out in this Schedule, the provisions of clause 5 shall apply to the holding of any special general meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.

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Schedule 6 – Subsidiaries

1. ESTABLISHMENT OR ACQUISITION OF SUBSIDIARIES

- 1.1 In receiving, controlling, investing and supervising the use of the Trust's assets the Trustees may establish, oversee and acquire Subsidiaries in pursuance of the objects and purpose of the Trust as set out in clause 2.3 of this Deed. In doing so the Trustees must exercise strategic governance over all entities owned by the Trust or in which the Trust has a controlling interest.

2. COMMERCIAL OPERATIONS

- 2.1 All entities shall undertake Commercial Activities on a prudent and commercial basis that does not put any Subsidiaries at an unacceptable level of commercial risk.

3. TRUSTEE OVERSIGHT

- 3.1 The Trustees shall be responsible for monitoring and otherwise overseeing the activities of all Subsidiaries to ensure entities are performing consistent with the objects and purpose of the Trust as set out in clause 2.3 of this Deed.

4. APPOINTMENT AND REMOVAL OF DIRECTORS AND TRUSTEES

- 4.1 The Trustees shall ensure that Subsidiaries are established on terms which ensure that the directors and trustees or other controlling body of the Subsidiary shall be appointed and removed by the Trustees. Without limitation:

- (a) the appointments, remuneration, terms and conditions shall be determined by the Trustees;
- (b) the Trustees shall also have the power to remove any members of governance of any of the Trust's entities;
- (c) the Trustees may appoint one of their number to the governance of any entity;
- (d) no more than 40% of the Trustees then in office may be appointed as directors or trustees of any individual Subsidiary; and
- (e) an employee of the Te Whānau a Kai Group shall not be appointed to governance of any entity.

5. SUBSIDIARIES TO PREPARE PLANS AND STATEMENTS OF INTENT

- 5.1 The Trustees shall procure that each Subsidiary will:
- (a) within three (3) months of the establishment of the Subsidiary, prepare a Statement of Intent setting out its long term objectives and the general principles by which it proposes to operate;
 - (b) as required by the Trustees, update the Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business and the business of any of its subsidiaries;
 - (c) within three (3) months of the establishment of the Subsidiary, prepare a Five Year Plan which shall be updated not less than every two (2) years, and which sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent referred to in paragraph (a) of this clause;
 - (d) no later than one (1) month following the completion of the Five Year Plan referred to in paragraph (c) of this clause, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its five year planning objectives and fulfil the objectives and principles of the Statement of Intent;

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

- (e) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year send to the Trustees reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form as the Trustees may require from time to time).

6. TRUSTEE APPROVAL REQUIRED

- 6.1 Prior to being implemented all Statements of Intent, Five Year Plans and Annual Plans must be approved by the Trustees. Such approval shall be given in light of the Trust's overall plans and policies in respect of the Trust's Assets.

7. REPORTS TO COMPLY WITH COMPANIES ACT 1993

- 7.1 The Trustees shall procure that all annual reports by any Subsidiary that is a company comply in all respects with the requirements of the Companies Act 1993, including without limitation:
 - (a) the description required by section 211(1)(a) of the Companies Act 1993 of the nature of the business of the company or any of its subsidiaries, or the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;
 - (b) the financial statements (or as appropriate group financial statements) for that Income Year completed and signed in accordance with the Financial Reporting Act 1993; and
 - (c) the auditor's report of the financial statements (or group financial statements) of the company for that Income Year.

8. SUBSIDIARIES TO MEET COMPANIES ACT 1993 STANDARD

- 8.1 All reports of any Subsidiary that is a trust shall be provided to the same standard, including as to form and content, as is required under clause 7 of this Schedule as if the Subsidiary was a company.

9. REPORT TO INCLUDE COMPARISON AGAINST PLANS

- 9.1 In addition to the matters set out in clauses 7 and 8 of this Schedule, the Trustees shall procure that all reports by any Subsidiary include a comparison of its performance against both its respective annual plans for that Income Year and its medium and longer term planning objectives, as set out in the Five Year Plan and Statement of Intent.

10. PROTECTION OF INFORMATION

- 10.1 For the avoidance of doubt, nothing in this Schedule limits or affects the rights of the Trustees, as shareholders in any Subsidiary that is a company, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual report of the Subsidiary.

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Schedule 7 – Cultural Committee

1. APPOINTMENT

- 1.1 The Trustees shall appoint three (3) members to this Committee.
- 1.2 The Trustees shall have the right to remove any member of this Committee and appoint a replacement.

2. ELIGIBILITY FOR APPOINTMENT

- 2.1 Appointees must be Members of Te Whānau a Kai, be of good standing and if possible, be knowledgeable in the tikanga, te reo and kawa of Te Whānau a Kai.

3. DUTIES OF CULTURAL COMMITTEE

- 3.1 Appointees shall be responsible for protecting the mauri of Te Whānau a Kai and facilitate meetings and discussions with the Trustees relating to their duties as they consider necessary. The Trustees may seek advice from the Committee on matters of tikanga, te reo and kawa. Conversely, the Committee may offer advice to the Trustees on matters they consider appropriate.
- 3.2 The Committee do not have any rights, powers, obligations or liabilities of a Trustee.

4. TRUSTEES NOT TO BE MEMBERS

- 4.1 A Trustee may not contemporaneously with his or her holding office as Trustee be appointed to or remain part of this Committee.

5. OTHER DUTIES

- 5.1 The Committee shall also be responsible for the following:
- (a) **Education grants**
All applications for these grants will be reviewed, confirmed and forwarded to the Trustees for approval and payment;
 - (b) **Tangi grants**
The process will be similar to clause 5.1(a) of this Schedule;
 - (c) **Marae grants**
The Committee will receive and manage all Marae applications for grants and other forms of assistance. They will report their recommendations to the Trustees for their consideration and response;
 - (d) **Register of Members**
Subject to the role of the Trustees to administer and maintain the Te Whānau a Kai Register in Schedule 1, the Cultural Committee will take full responsibility for the establishment of an appropriate electronic database for the Register of Members. They must work closely with the Trustees throughout this process and recruit independent qualified personnel to assist as required but must submit a business case for such recruitment;
 - (e) **Electronic register**
With the establishment and testing of the electronic register completed to the satisfaction of the Trustees, Members can be contacted through the appropriate avenues to apply for registration in the Register;
 - (f) **Remuneration**
The Trustees shall determine the remuneration payable to members of the Committee and the reimbursement of their reasonable expenses.

6. CONTENTS

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

6.1 The Cultural Committee will allocate an identification number to each Member on the Register following the approval of the application for membership.

7. CRITERIA FOR MEMBERSHIP

7.1 Cultural Committee

The Cultural Committee to make decisions on all applications by any person for membership and shall prepare, on a regular basis, a report to the Trustees scheduling all applications received since their last report and will include applications approved and those not approved. The Trustees will have the final approval of these reports and advise the Cultural Committee accordingly:

- (a) that Committee shall then advise applicants of the outcome of their application; and
- (b) the Committee shall ensure that applications approved by the Trustees are entered into the Register of Members.

7.2 Composition of the Cultural Committee

Subject to the clauses set out in this Schedule, this Committee shall comprise three registered Members appointed by the Trustees from time to time, with the expertise and knowledge of Te Whānau a Kai whakapapa necessary to make determinations regarding membership applications. The Committee shall have the right to make enquiries to any third party to assist them in the determination of any applicants whakapapa or legal standing when considering application for membership.

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

Schedule 8 – Chief Executive

1. TRUSTEES TO APPOINT CHIEF EXECUTIVE

- 1.1 The Trustees may, on such terms as the Trustees determine, appoint a Chief Executive to:
- (a) manage the day to day operations, administration and business responsibilities of all the Te Whānau a Kai Group as detailed in his/hers Contract of Employment;
 - (b) ensure the economic growth and profitability of the Te Whānau a Kai Group;
 - (c) protect the assets of the Te Whānau a Kai Group;
 - (d) manage and mitigate risk;
 - (e) assist with the preparation of the Five Year Plan and the Annual Plan and ensure the achievements of those plans in the required time frames;
 - (f) ensure the objects and purpose of the Deed are achieved;
 - (g) employ all other employees of the Te Whānau a Kai Group during the Establishment Period. Thereafter this may change to meet the prevailing needs and circumstances; and
 - (h) report to the Trustees as required.

2. OTHER MATTERS

2.1 Responsibility

The Chief Executive shall be directly responsible to the Trustees.

2.2 Cannot be a Trustee

A Trustee may not hold the position of Chief Executive nor be an employee of, or a contractor to, any entity or trust in the Te Whānau a Kai Group.

DEED OF TRUST FOR TE WHĀNAU A KAI TRUST

Schedule 9 – Marae

Pākōwhai

Takitimu

Rongopai

Ngātapa

Mokonuiarangi