

**NGĀI TE RANGI**

**and**

**NGĀ PŌTIKI**

**and**

**NGĀI TE RANGI SETTLEMENT TRUST**

**and**

**NGĀ PŌTIKI A TAMAPAHORE TRUST**

**and**

**THE CROWN**

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**DEED OF SETTLEMENT SCHEDULE:  
DOCUMENTS**

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**1. STATEMENTS OF ASSOCIATION**

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**1.1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)**

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1:1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)

## NGĀI TE RANGI STATEMENTS OF ASSOCIATION

The statements of association of Ngāi Te Rangi are set out below. These are statements of the particular cultural, spiritual, historical, and traditional association Ngāi Te Rangi to these identified areas.

### **Aongatete** (as shown on deed plan OTS-078-03)

Aongatete is regarded as a significant site for Ngāi Tamawhariua. The site is particularly important for its surrounding ecology, such as the forestry sanctuary which is protected by Ngāi Tamawhariua in their role as kaitiaki.

### **Waiau River** (as shown on deed plan OTS-078-15)

The Waiau (*water that meets the sea*) awa is significant for Te Whānau a Tauwhao ki Otawhiwhi. It is commonly referred to in pepeha, waiata and history of Te Whānau a Tauwhao ki Otawhiwhi. The Waiau awa has provided sustenance for the hapū for many centuries. Whitebaiting, set netting, floundering and kaimoana gathering is still very much a commonly-practised tradition within this area where the awa meets the northern end of the Tauranga harbour. Many pa of significance for the hapū, have drawn sustenance from the river including Puketoki Pa, Koutunui Pa and Anitere Pa to name but a few. There are specific places along the Waiau awa from which water for specific ceremonial occasions is still collected and used.

### **Uretara Stream** (as shown on deed plan OTS-078-17)

Uretara is an awa that runs through Katikati. In the past, the water was used as drinking water. The awa was teeming with an abundance of kai such as tuna, flounder, and even a type of small, black freshwater mussel. This river was also used as the main mode of transport to assist families to travel from one area to another by water. The name Uretara stems from the korero about tipuna wahine noted below.

#### *Kahia*

Kahia was of Ngāi Tamawhariua lineage with connections to the Wharekawa whānau. She led the war parties and participated in battles. She would travel freely throughout the northern region and pass unfettered through Hauraki and Katikati. Her waka taua is said to rest at Te Whare Tapere. It is said she was built like a man and was a tohunga rakau. She was bare-breasted and sometimes wore only a maro. On one of her excursions, when she passed through Katikati, it is said that she did not relieve herself as a woman would, but she stood like a man, hence the name Uretara, half male/half female, whereby the words ure and tara are joined to represent both genders. The name of the marae at Katikati is Te Rereatukahia (the flowing waters of Kahia standing upright) commemorates this event.

### **Waitao Stream** (as shown on deed plan OTS-078-24)

The Waitao Stream is significant to Ngāti He. The water that flows into the Waitao River comes directly from Otawa maunga. There are several important sites such as Te Toto which draw sustenance from the river.

The Waitao River is not only important for historical reasons, but as a source of food and sustenance, including tuna, whitebait, mullet and kahawai. In the past, freshwater mussels and koura were also sourced. The river is also renowned for its recreational use where generations of our children would bathe and enjoy their past-time in the river, and along the

1:1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)

shores. The river is also a source for water, to sustain crops and development that occurs along the waterway.

**Kaiate/Te Rere a Kawau Stream** (recorded name Kaiate Stream) (as shown on deed plan OTS-078-26)

This awa and the adjoining streams are of particular importance to Ngāti He. As well as a source of kai such as fresh water crayfish, eels and whitebait, Te Rere a Kawau falls were also an enormous source of spiritual and recreational enlightenment. Many whānau from these hapū visited the falls on the river and the associated waterway for cleansing and rituals, as well as recreational purposes, fitness and whānau time. Whilst the river was often torrential, the water levels have begun to slowly deplete.

**Waiorooro ki Maketu** (as shown on deed plan OTS-078-13)

Ngāi Te Rangi are a coastal people and for centuries have lived along the coastline in particular, from Waiorooro through to Te Tumu. The area is significant as it tells a story about the existence of Ngāi Te Rangi over time. In particular, Te Whānau a Tauwhao were sentinels for the most northern region of our rohe. All along the coastline from that point, we see symbols of residence, occupation, and active living by our hapū members and our people. From Mauao, our residence stretches unhindered along the shoreline to Waikarei and Te Tumu.

There is a saying for Ngāi Te Rangi that goes, said of a people truly of the water, of the sea and of the people.

*“Ko te moana ko au, ko au te moana”.*

It is therefore part of Ngāi Te Rangi culture and heritage to source much traditional learning and knowledge building from the moana; and the sea is as important if not more so than the land. The moana was the source of food and the means of access and continuing communication between the village communities around its shores.

This is expressed in the whakatauki which describes this tribal area –

*“Ko Mauao te maunga, Ko Tauranga te moana, Ko Tupaea te tangata”.*

Our people are often described as kaimoana, for instance, Tauwhao are patiki, Ngāti He are the papaka, Matapihi is sometimes referred to as titiko, and the island hapu known as mako. This association with taonga of the sea is an essential aspect of our character as Ngāi Te Rangi.

**NGĀI TE RANGI AND NGĀ PŌTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**1:1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)**

**NGĀ POTIKI STATEMENTS OF ASSOCIATION**

The statements of association of Ngā Pōtiki are listed as follows. These statements recognize the spiritual, cultural, historical associations Ngā Pōtiki have and continue to have with those areas.

<b>TE AKAU (as shown on deed plan OTS-078-13)</b>		
<b>Site Type</b>	<b>Coastline &amp; ancestral seascape</b>	<b>Nga Potiki association (history and significance)</b>
<b>Location</b>	Papamoa coast – West of Girven Road to Wairakei (Taylor’s Reserve) ending at Te Tumu (mouth of the Kaituna River)	The coast (Te Akau) and ocean (Te Moana a Toi) represent the easterly extent of the Nga Potiki rohe.  The abundant ocean fisheries and fresh water fisheries from the adjacent and extensive wetlands attracted settlement along the length of the coastal dune system and Papamoa coastal plain.
<b>Description of site</b>	Beach and sand dunes	Te Akau served as an important pataka kai for Nga Potiki for many centuries.
<b>Nga Potiki tupuna association</b>	Tamapahore Te Tauhou Wiparera Tarakiteawa Pine Awanui	Te Akau is also a wahi tapu. Nga Potiki kaumatua referred to Te Akau as ‘nga urupa katoa’, where for centuries Nga Potiki buried their dead. The last known burial was in 1912.
<b>Pepeha, waiata, kiwaha, whakatauki</b>	‘Mai Parakihi ki Wairakei’ ‘Mai Parakihi ki Maketu’  ‘Nga urupa katoa’	The coast and walking trails along the length of the dune system linked Mangatawa to Te Houhou, Te Tumu and Maketu. Te Akau served as a ‘highway’ well into the nineteenth century.

**NGĀI TE RANGI AND NGĀ PŌTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**1:1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)**

<b>TE TAHUNA O RANGATAUA</b> (as shown on deed plan OTS-078-24)		
<b>Site Type</b>	Inner harbour & estuary	<b>Nga Potiki association (history and significance)</b>
<b>Location</b>	Southern end of the Tauranga Harbour	<p>This iconic body of water and surrounding foreshore and seabed are integral to Nga Potiki identity and culture – <i>'ko au te tahuna, ko te tahuna ko au'</i>.</p> <p>Te Tahuna o Rangataua has for centuries served as a pataka kai because of its rich and varied marine life, including the tribal delicacies titiko (mud snail) and patiki (flounder).</p> <p>The nineteenth century Ngati Haua leader Te Waharoa, on one of his many military forays into the Bay of Plenty, observed from the top of Kopukairoa the large numbers of Nga Potiki living in thriving villages below. He compared them with the multitudes of crabs living on Te Tahuna o Rangataua and coined the term 'nga papaka o Rangataua' (the crabs of Rangataua). Nga Potiki are sometimes referred to and/or refer to themselves as 'nga papaka o Rangataua'.</p> <p>There are numerous wahi tapu located along the shoreline including parekura (battle sites) and urupa (burial sites). Tahuwhakatiki marae is also situated on the shoreline.</p> <p>On 10 May 2012 the name Te Tahuna o Rangataua was gazetted by the New Zealand Geographic Board following submissions by Nga Potiki.</p>
<b>Description of site</b>	Mudflats and shoreline	
<b>Nga Potiki tupuna association</b>	Tamapahore Kahukino Rangihouhiri a Kahukino Tahuwhakatiki	
<b>Pepeha, waiata, kiwaha, whakatauki</b>	<p>'He aha kia kii a Rangataua? He paruparu nga kai, He taniwha nga tangata'</p> <p>'Ngaro ake te tangata Waiho ma nga papaka o rangataua e mihi'</p> <p>'Nga tai o Rangataua e whakarara mai nei Kei ake a ano takahiatia ai e au'</p>	

**NGĀI TE RANGI AND NGĀ PŌTIKI DEED OF SETTLEMENT:  
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**1:1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)**

<b>TE AWA O WAITAO</b> (Including Waitao marginal strips) (as shown on deed plan OTS-078-24)		
<b>Site Type</b>	<b>Stream</b>	<b>Nga Potiki association (history and significance)</b>
<b>Location</b>	Waitao   Kopukairoa	A highly significant part of the ancestral landscape, the Waitao Stream served as an important pataka kai providing sustenance for many generations of Nga Potiki, as well as a highway or 'tupuna hoe waka'.
<b>Description</b>	Fresh water stream	
<b>Nga Potiki tupuna association</b>	Tamapahore Rangihouhiri a Kahukino Eruera Te Tauhou	Te awa o Waitao was known as one of the markers of the Nga Potiki rohe and Crown Commissioners used it in 1887 as a boundary for land they awarded to Nga Potiki.
<b>Pepeha, waiata, kiwaha, whakatauki</b>	'I hikohiko te uira ki Kopukairoa Papaa te whaitiri kin runga o Maungamana Papaki tu ana nga tai ki Karikari Te tere o te Waitao Whakapapa pounamu te Tahuna o Rangataua I whakanekehia I whakanukunukuhia Ki tai wiwi ki tai wawa Ki te tai onepu Ki te whai Ao Ki te whai Ao marama'	<i>'Te nuinga o nga whenua o Ngati he kei te taha rato o Waitao, kei nga wahi ngaherehere o Otawa, ki te taha ki Tauranga. A, kei te taha whakaterawhiti o Waitao nga kereme o Ngapotiki.'</i>

**NGĀI TE RANGI AND NGĀ PŌTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**1:1 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSES 5.14 AND 5.15)**

<b>KAIATE &amp; TE RERE A KAWAU</b> (as shown on deed plan OTS-078-26)		
<b>Site Type</b>	Stream & waterfalls	Nga Potiki association (history and significance)
<b>Location</b>	Rear of Kopukairoa	The stream and associated Te Rere a Kawau falls (literally 'flight of the shags') are confirmed as significant areas by nineteenth-century kaumatua who defined the Nga Potiki rohe.
<b>Description of site</b>	Stream and waterfalls	
<b>Nga Potiki tupuna association</b>	Tamapahore Rangihouhiri a Kahukino	Kaiate Stream served as a pataka kai. The bush in close proximity to Te Rere a Kawau was known as a place to collect rongoa (plants with healing properties) used in the manufacture of medicines.
<b>Pepeha, waiata, kiwaha, whakatauki</b>		Te Rere a Kawau continues to attract Nga Potiki and the public generally as a place for recreation, reflection, exploration, and relaxation.

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**1.2 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSE 5.19)**

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**1:2 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSE 5.19)**

**NGĀI TE RANGI STATEMENTS OF ASSOCIATION**

The statements of association of Ngāi Te Rangi with the areas listed in clause 5.26 are set out below. These are statements of the particular cultural, spiritual, historical and traditional association of Ngāi Te Rangi with those areas.

**Kopuaroa Canal** (as shown on deed plan OTS-078-25)

Te Kopuaroa flows through the Te Kopuaroa swamp, then through to Hikutawatawa. It is significant to Ngāi Te Rangi because it provides a link between ngā rae o Pāpāmoa and the lower areas which flow to the coastline through the lowlands of the Ngāi Te Rangi Pāpāmoa Hills and the Kaituna River. The canal was a bountiful source of sustenance for the various hapū of Ngāi Te Rangi. It was a way they travelled into the hills to source kereru and other forms of birdlife; it was also a way in which people travelled down to the shoreline for kaimoana and eels. It is said that along this area, eels were bountiful, and that the overflow would go from the ranges down into the shoreline closer to the sea. This site was renowned as a shared site for many, as a borderline area into the area of Ngāi Te Rangi.

**Waiorooro River** (as shown on deed plan OTS-078-14)

The Otāwhiwhi peninsula and surrounds, including the Waiorooro stream in the north, is a significant historical area for Ngāi Te Rangi. Waiorooro (grinding waters) is an awa of high significance for Te Whānau a Tauwhao ki Otawhiwhi. It was known as being an important ecological site for 'te hekenga tuna' where the migratory eels would exit out to sea as part of their life cycle. There have been many archaeological discoveries in and around the Waiorooro awa with amazing artefacts being unearthed which give a good insight into the history and culture of this place and people. Te Whānau a Tauwhao ki Otawhiwhi have fished in this area for centuries. Kahawai and kanae (mullet) were the target species of this area.

There were a number of significant pa which drew sustenance from the river. .

**Wairakei Stream** (as shown on deed plan OTS-078-022)

The Wairakei Stream is an area of great significance to Ngai Te Rangi. The prominent rangatira Hikareia was killed at Wairakei. The Wairakei Stream is regarded as a common thoroughfare at times for the various tribes. It was also a significant area for accessing kai and stores. Over time this landscape has changed and dried up. The area remains important to Ngāi Te Rangi and many of the hapū of Ngāi Te Rangi, including Te Whānau a Tauwhao, Ngāti He, Ngā Potiki and Ngāi Tukairangi.

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**1:2 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSE 5.19)**

**NGĀ PŌTIKI STATEMENTS OF ASSOCIATION**

The statements of association of Ngā Pōtiki with the areas listed in clause 5.26 are set out below. These are statements of the particular cultural, spiritual, historical and traditional association of Ngā Pōtiki with those areas.

<b>KOPUARO A (KOPUROA) (as shown on deed plan OTS-078-25)</b>		
<b>Site type</b>	Canal	Nga Potiki association (history and significance)
<b>Location</b>	Between Te Puke and Papamoa	Also known as Kopuroa Canal, Kopuroa drains what was formerly known as the 'longswamp' at the Te Puke end of Papamoa.  Kopuroa intersects with SH2 between Te Puke and Papamoa and helps mark the southeastern confiscation line imposed by the Crown in 1865, running from Otara toward Wairakei on the coast.
<b>Description of site</b>	Canal	
<b>Nga Potiki tupuna association</b>	Tamapahore Rangihouhiri a Kahukino Eru Tamapahore Wiparera Tarakiteawa Pine Te Awaiti Pateuru Hoani	
<b>Pepeha, waiata, kiwaha, whakatauki</b>		

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**1:2 STATEMENTS OF ASSOCIATION (AREAS LISTED IN CLAUSE 5.19)**

<b>WAIRAKEI</b> (as shown on deed plan OTS-078-22)		
<b>Site Type</b>	<b>Stream</b>	<b>Nga Potiki association (history and significance)</b>
<b>Location</b>	Papamoa	<p>This stream once ran parallel to Te Akau and extended well into the Te Tumu Block. It drained the extensive Papamoa swamplands and emptied into Te Moana a Toi. Wairakei served as a pataka kai and resting place for travellers walking between Tauranga and Maketu well into the nineteenth century.</p> <p>The mouth of the Wairakei Stream was 'filled in' by a developer in the 1950's. Much of the stream, which is located on private property, has since been dammed but remains clearly visible as a continuous stretch of water.</p> <p>The area in the vicinity of Wairakei is associated with the death of Hikareia following the fall of Te Tumu pa in 1836.</p>
<b>Description of site</b>	Stream and stream bed	
<b>Nga Potiki tupuna association</b>	Tamapahore Rangihouhiri a Kahukino	
<b>Pepeha, waiata, kiwaha, whakatauki</b>	'Mai Parakiri ki Wairakei'	

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**2. RFR DEED OVER CERTAIN QUOTA**

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2 RFR DEED OVER CERTAIN QUOTA

**DEED GRANTING A RIGHT OF FIRST REFUSAL OVER QUOTA**

**BETWEEN**

[Insert the name of the Governance Entity] (the Governance Entity).

**AND**

**HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister for Primary Industries (the **Crown**).

**BACKGROUND**

- A. [...] and the Crown are parties to a deed of settlement to settle the Historical Claims of dated [*Insert the date of the Deed of Settlement*] (the **Deed of Settlement**).
- B. The Crown agreed under the Deed of Settlement that (if the Deed of Settlement became unconditional) the Crown would, by or on the Settlement Date under that Deed, provide the Governance Entity with a deed in this form granting the Governance Entity a right of first refusal over certain Quota.
- C. The Deed of Settlement has become unconditional and this Deed is entered into:
- by the Crown in satisfaction of its obligations referred to in clause Y of the Deed of Settlement; and
  - by the Governance Entity in satisfaction of its obligations under clause Z of the Deed of Settlement.

**IT IS AGREED** as follows:

**1. THIS DEED APPLIES IF THE MINISTER SETS A TACC OF A CERTAIN KIND**

1.1 This Deed applies only if, during the period of 50 years from the Settlement Date:

- 1.1.1 the Minister for Primary Industries declares, under the Fisheries Legislation, a species to be subject to the Quota Management System; and
- 1.1.2 nominates that species as an 'applicable species', meaning one to which they wish to have a right of first refusal (**RFR**); and
- 1.1.3 the Minister for Primary Industries sets, under the Fisheries Legislation, a Total Allowable Commercial Catch (a **TACC**) for that Applicable Species for a Quota

2 RFR DEED OVER CERTAIN QUOTA

Management Area that includes some or all of the coastline of the RFR Area (an **Applicable TACC**).

**2. THIS DEED APPLIES ONLY TO QUOTA ALLOCATED TO THE CROWN UNDER AN APPLICABLE TACC**

2.1 This Deed applies only to Quota (Applicable Quota) that:

2.1.1 relates to an Applicable TACC; and

2.1.2 has been allocated to the Crown as either:

- (a) Individual Transferable Quota (and not as Provisional Individual Transferable Quota) under section 49(1) of the Fisheries Act 1996; or
- (b) Provisional Individual Transferable Quota that has become Individual Transferable Quota under section 49(3) of the Fisheries Act 1996.

**3. THE CROWN MUST OFFER MINIMUM AMOUNT OF APPLICABLE QUOTA TO THE GOVERNANCE ENTITY**

3.1 Before the Crown sells any Applicable Quota relating to an Applicable TACC, the Crown must offer (in accordance with clause 5) the Governance Entity the right to purchase the Required Minimum Amount or more of the Applicable Quota relating to that Applicable TACC calculated in accordance with clause 4.1 or clause 4.2 (whichever is applicable).

**4. CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED**

4.1 Where:

4.1.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.1.2 no person was eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC.

The Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

$$x = \left[ \frac{2}{5} \times \frac{A}{B} \times C \right]$$

4.2 Where:

4.2.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.2.2 a person, or persons, were eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC.

The Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

**2 RFR DEED OVER CERTAIN QUOTA**

$$x = \text{the lessor of } \left[ \frac{2}{5} x \frac{A}{B} x C \right] \text{ or } \left[ \frac{A}{B} x D \right]$$

4.3 For the purposes of this clause:

“A” is the length of coastline of the RFR Area that is within the coastline of the relevant Quota Management Area;

“B” is the length of coastline of the relevant Quota Management Area;

“C” is the total amount of Quota relating to the relevant Applicable TACC;

“D” is the amount of Applicable Quota held by the Crown in relation to the relevant Applicable TACC; and

“x” is the Required Minimum Amount of Applicable Quota.

4.4 For the purposes of this clause:

4.4.1 the length of coastline of the RFR Area, and of the relevant Quota Management Area, will be determined by the Crown and by such method as the Crown considers appropriate; and

4.4.2 In particular, but without limiting the Crown's ability to use a different method, the Crown may determine that the length of coastline of the RFR Area means the distance (being determined by the Crown) between Fisheries Point [iwi's coastal longitude and latitude coordinates to be inserted] (such Fisheries Points being approximately marked on the map of the RFR Area in schedule 1.

**5. CROWN MUST GIVE NOTICE BEFORE SELLING APPLICABLE QUOTA**

**Crown must give RFR Notice**

5.1 Before the Crown Sells any Applicable Quota, the Crown must give a written notice (an RFR Notice) to the Governance Entity which offers to sell not less than the Required Minimum Amount of that Applicable Quota to the Governance Entity at the price and on the terms and conditions set out in the RFR Notice. Crown may withdraw RFR Notice.

5.2 The Crown may withdraw an RFR Notice at any time before the Governance Entity accepts the offer in that RFR Notice under clause 6.

**Effect of withdrawing RFR Notice**

5.3 If the Crown withdraws an RFR Notice, clause 3 still applies to the Applicable Quota referred to in that RFR Notice.

**Crown has no obligation in relation to balance of Applicable Quota**

5.4 Where the Crown has given, in accordance with clause 5.1, an RFR Notice in relation to Applicable Quota relating to an Applicable TACC, the Crown has no obligations under this Deed in relation to the balance of the Applicable Quota (if any) not referred to in that RFR Notice that also relate to that Applicable TACC.

2 RFR DEED OVER CERTAIN QUOTA

**6. ACCEPTANCE OF RFR NOTICE BY THE GOVERNANCE ENTITY**

6.1 A contract for the Sale of the Applicable Quota referred to in an RFR Notice (or a lesser amount referred to in the acceptance) is constituted between the Crown and the Governance Entity, at the price and on the terms and conditions set out in the RFR Notice, if the Governance Entity accepts the offer in that RFR Notice (or accepts a lesser amount) of Applicable Quota:

6.1.1 by notice in writing to the Crown; and

6.1.2 by the relevant Expiry Date.

**7. NON-ACCEPTANCE BY THE GOVERNANCE ENTITY**

7.1 If:

7.1.1 the Crown gives the Governance Entity an RFR Notice; and

7.1.2 the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date, the Crown:

7.1.3 may, at any time during the period of two years from the Expiry Date, Sell any of the Applicable Quota referred to in that RFR Notice that is not accepted by the Governance Entity if the price per Quota Share, and the other terms and conditions of the Sale, are not more favourable to the purchaser than the price per Quota Share, and the other terms and conditions, set out in the RFR Notice to the Governance Entity; but

7.1.4 must, promptly after entering into an agreement to Sell any Applicable Quota referred to in the RFR Notice to a purchaser, give written notice to the Governance Entity of that fact and disclose the terms of that agreement; and

7.1.5 must not Sell any of that Applicable Quota referred to in the RFR Notice after the end of the two year period after the Expiry Date without first offering to Sell that Applicable Quota to the Governance Entity in an RFR Notice under clause 5.1.

**8. RE-OFFER REQUIRED**

8.1 If:

8.1.1 the Crown gives the Governance Entity an RFR Notice;

8.1.2 the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date; and

8.1.3 the Crown during the period of two years from the Expiry Date proposes to offer any of those Applicable Quota not accepted by the Governance Entity for Sale again but at a price (per Quota Share), or on other terms and conditions, more favourable to the purchaser than on the terms and conditions in the RFR Notice.

The Crown may do so only if it first offers that Applicable Quota for Sale on those more favourable terms and conditions to the Governance Entity in another RFR Notice under clause 5.1.

2 RFR DEED OVER CERTAIN QUOTA

**9. EFFECT OF THIS DEED**

9.1 Nothing in this Deed will require the Crown to:

9.1.1 purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996;

9.1.2 introduce any of the Applicable Species into the Quota Management System; or

9.1.3 offer for sale any Applicable Quota held by the Crown.

9.2 The Governance Entity acknowledges that the introduction of any of the Applicable Species into a Quota Management System may not result in any, or any significant, holdings by the Crown of Applicable Quota for that species.

9.3 Nothing in this Deed affects, or limits, and the rights and obligations created by this Deed are subject to:

9.3.1 any requirement at common law or under legislation that:

(a) must be complied with before any Applicable Quota is sold to the Governance Entity; or

(b) the Crown must Sell the Applicable Quota to a third party; and

9.3.2 any legal requirement that:

(a) prevents or limits the Crown's ability to Sell the Applicable Quota to the Governance Entity; and

(b) the Crown cannot satisfy after taking reasonable steps to do so (and, to avoid doubt, reasonable steps do not include changing the law).

**10. THIS DEED DOES NOT APPLY IN CERTAIN CASES**

10.1 Neither clause 3 nor clause 5.1 apply, if the Crown is Selling Applicable Quota to the Governance Entity.

**11. TIME LIMITS**

11.1 Time is of the essence for the time limits imposed on the Crown and the Governance Entity under this Deed.

11.2 The Crown and the Governance Entity may agree in writing to an extension of a time limit.

**12. ENDING OF RIGHT OF FIRST REFUSAL**

**RFR ends on Sale which complies with this Deed**

12.1 The obligations of the Crown set out in this Deed end in respect of any Applicable Quota on a transfer of the Applicable Quota in accordance with this Deed.

**RFR ends after 50 years**

2 RFR DEED OVER CERTAIN QUOTA

12.2 The obligations of the Crown set out in this Deed end 50 years after the Settlement Date.

**13. NOTICES**

13.1 The provisions of this clause apply to Notices under this Deed:

**Notices to be signed**

13.1.1 the Party giving a Notice must sign it;

**Notice to be in writing**

13.1.2 any Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number;

**Addresses for notice**

13.1.3 until any other address or facsimile number of a Party is given by Notice to the other Party, they are as follows:

The Crown:  
The Solicitor-General  
Crown Law Office  
St Pauls Square  
45 Pipitea Street  
(PO Box 5012)  
WELLINGTON

Governance Entity:  
*[Insert the name and address of the  
Governance Entity]*

Facsimile No: 04 473 3482

**Delivery**

13.1.4 delivery of a Notice may be made:

- (a) by hand;
- (b) by post with prepaid postage; or
- (c) by facsimile;

**Timing of delivery**

13.1.5 a Notice:

- (a) delivered by hand will be treated as having been received at the time of delivery;
- (b) delivered by prepaid post will be treated as having been received on the third day after posting; or
- (c) sent by facsimile will be treated as having been received on the day of transmission; and

2 RFR DEED OVER CERTAIN QUOTA

**Deemed date of delivery**

13.1.6 if a Notice is treated as having been received on a day that is not a Business Day, or after 5pm on a Business Day, that Notice will (despite clause 13.1.5) be treated as having been received the next Business Day.

**14. AMENDMENT**

14.1 This Deed may not be amended unless the amendment is in writing and signed by, or on behalf of, the Governance Entity and the Crown.

**15. NO ASSIGNMENT**

15.1 The Governance Entity may not assign its rights or obligations under this Deed.

**16. DEFINITIONS AND INTERPRETATION**

**Definitions**

16.1 In this Deed, unless the context otherwise requires:

**Applicable Quota** means Quota of the kind referred to in clause 2;

**Applicable Species** means a species which nominates as one to which they wish to have a right of first refusal (RFR), under circumstances set out in clause 1;

**Applicable TACC** has the meaning given to that term by clause 1.1.2;

**Business Day** means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Taranaki;

**Crown** has the meaning given to that term by section 2(1) of the Public Finance Act 1989 (which, at the date of this Deed, provides that the Crown means:

- (a) Her Majesty the Queen in right of New Zealand; and
- (b) includes all Ministers of the Crown and all Departments; but
- (d) does not include:
  - (i) an Office of Parliament (as defined in section 2(1) of the Public Finance Act 1989);
  - (ii) a Crown entity (as defined in section 2(1) of the Public Finance Act 1989);  
or

2 RFR DEED OVER CERTAIN QUOTA

- (iii) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986));

**Deed** means this Deed giving a right of first refusal over Shellfish Quota;

**Deed of Settlement** has the meaning given by clause A of the Background to this Deed;

**Expiry Date**, in respect of an RFR Notice, means the date one calendar month after the RFR Notice is received by the Governance Entity;

**Fisheries Legislation** means the Fisheries Act 1983 and the Fisheries Act 1996;

**Individual Transferable Quota** has the same meaning as in section 2(1) of the Fisheries Act 1996;

**Minister for Primary Industries** means the Minister of the Crown who is for the time being responsible for the administration of the Fisheries Legislation;

**Party** means the Governance Entity or the Crown;

**Provisional Individual Transferable Quota** has the same meaning as under section 2(1) of the Fisheries Act 1996;

**Quota** means quota under the Fisheries Legislation;

**Quota Management Area** means any area declared by or under the Fisheries Legislation to be a quota management area;

**Quota Management System** means a quota management system established under Part IV of the Fisheries Act 1996;

**Quota Share** has the same meaning as in the Fisheries Act 1996;

**Required Minimum Amount**, in relation to Applicable Quota, means an amount of that Applicable Quota calculated under clause 4.1 or clause 4.2 (whichever is applicable);

**RFR Notice** and **Notice** means a notice under clause 5.1;

**Sell** means to transfer ownership of Quota for valuable consideration and **Sale** has a corresponding meaning, but neither term includes the transfer by the Crown of Quota under section 22 of the Fisheries Act 1996;

**Settlement Date** means the date which is 20 Business Days after the Deed of Settlement becomes unconditional;

**Quota** means Quota in relation to an Applicable Species (being a species referred to in schedule 1);

**RFR Area** means the area identified in the map included in schedule 1; and

**Total Allowable Commercial Catch** or **TACC** means a total allowable commercial catch for a species under section 20 of the Fisheries Act 1996.

**2 RFR DEED OVER CERTAIN QUOTA**

- 16.2 Terms or expressions that are not defined in this Deed, but are defined in the Deed of Settlement, have the meaning given to them by the Deed of Settlement unless the context requires otherwise.

**Interpretation**

- 16.3 In the interpretation of this Deed, unless the context requires otherwise:
- (a) headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
  - (b) defined terms appear in this Deed with capitalised initial letters and have the meanings given to them by this Deed;
  - (c) where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - (d) the singular includes the plural and vice versa;
  - (e) words importing one gender include the other genders;
  - (f) a reference to legislation is a reference to that legislation as amended, consolidated or substituted;
  - (g) a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced;
  - (h) a reference to a schedule is a schedule to this Deed;
  - (i) a reference to a monetary amount is to New Zealand currency;
  - (j) a reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
  - (k) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
  - (l) a reference to a date on which something must be done includes any other date which may be agreed in writing between the Governance Entity and the Crown;
  - (m) where the day on or by which anything to be done is not a Business Day, that thing must be done on or by the next Business Day after that day; and
  - (n) a reference to time is to New Zealand time.

NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE

---

2 RFR DEED OVER CERTAIN QUOTA

DEED OF SETTLEMENT: CULTURAL REDRESS SCHEDULE

---

PART X: RFR DEED

**SIGNED** as a Deed on [ ]

*[Insert appropriate signing clauses for the Governance Entity]*

**WITNESS**

---

Name:

Occupation:

Address:

**SIGNED** for and on behalf of **HER**

**MAJESTY THE QUEEN** in right of

New Zealand by the Minister of

Fisheries in the presence of:

**WITNESS**

---

Name:

Occupation:

Address:

---

**3. LEASE FOR LEASEBACK PROPERTIES**

---

NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE

3. LEASE FOR LEASEBACK PROPERTIES

WITHOUT PREJUDICE and SUBJECT TO APPROVAL BY MINISTER

Draft Ngāi Te Rangi lease as at 18 October 2013

MINISTRY OF EDUCATION  
TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
[ ]	[ ]	[ ]

Lessor

[ ]

Lessee

**HER MAJESTY THE QUEEN** for education purposes

Estate or Interest

Insert "fee simple"; "leasehold in lease number" etc.

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**3. LEASE FOR LEASEBACK PROPERTIES**

**Attestation**

<b>Signature of the Lessor</b>	<b>Signed in my presence by the Lessor</b>
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[            ]</p>	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[            ]</p>	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[            ]</p>	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[            ]</p>	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[            ]</p>	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>



3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 29 of 21 Pages

*Insert instrument type*

Lease Instrument

**BACKGROUND**

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between [*insert name of claimant group*] and the Crown, under which the parties agreed to transfer the Land to [*insert name of post-settlement governance entity*] and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

**SCHEDULE A**

**ITEM 1 THE LAND**

[*insert full legal description - note that improvements are excluded*].

**ITEM 2 START DATE**

[*insert start date*].

**ITEM 3 ANNUAL RENT**

\$(*insert agreed rent*) plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

**ITEM 4 TERM OF LEASE**

21 Years.

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 2 of 21 Pages

*Insert instrument type*

Lease Instrument

- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

Perpetual rights of renewal of 21 years each with the first renewal date being the 21<sup>st</sup> anniversary of the Start Date, and then each subsequent renewal date being each 21<sup>st</sup> anniversary after that date.

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

As defined in clause 1.9 and including the following existing improvements: ***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

[ ]

The above information is taken from the Lessee's records as at [ ].  
A site inspection was not undertaken to compile this information.

**ITEM 10 CLAUSE 16.5 NOTICE**

To: *[Post-Settlement Governance Entity] ("the Lessor")*

And to: *The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")*

From: *[Name of Mortgagee/Chargeholder] ("the Lender")*

*The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit*

*(i) It has notice of the provisions of clause 16.5 of the Lease; and*

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 3 of 21 Pages

*Insert instrument type*

Lease Instrument

- (ii) *It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and*
- (iii) *It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary; and*
- (iv) *It agrees that this acknowledgement is irrevocable.*

**SCHEDULE**

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 4 of 21 Pages

*Insert instrument type*

Lease Instrument

**ITEM 11**

**CLAUSE 16.6 NOTICE**

To: *[Post-Settlement Governance Entity] ("the Lessor")*

And to: *The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")*

From *[Name of Mortgagee/Chargeholder] ("the Lender")*

*The Lender acknowledges that before it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee's Improvement is fixed to the Land it:*

- (i) will not claim any security interest in any Lessee's Improvement (as defined in the Lease) at any time; and*
- (ii) acknowledges that any Lessee's Improvements remain the Lessee's property at all times.*

**SCHEDULE**

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 5 of 21 Pages

*Insert instrument type*

Lease Instrument

**SCHEDULE B**

**1 Definitions**

1.1 The term “Lessor” includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term “Lessee” includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 “Business Day” means a day that is not:

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of Auckland and Wellington.

1.4 “Crown” has the meaning given in section 2(1) of the Public Finance Act 1989.

1.5 “Crown Body” means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and
- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by one or more of the following:
  - (i) the Crown;

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 6 of 21 Pages

*Insert instrument type*

Lease Instrument

- (ii) a Crown entity;
  - (iii) a State enterprise; and
  - (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 “Department” has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 “Education Purposes” means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 “Legislation” means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 “Lessee’s Improvements” means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 “Lessee’s property” includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 “Maintenance” includes repair.
- 1.12 “Public Work” has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 “Sublet” and “Sublease” include the granting of a licence to occupy the Land or part of it.
- 2 Payment of Annual Rent**
- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.
- 3 Rent Review**
- When a party initiates the rent review process as set out in clause 3.5:
- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6% of the lesser of:

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 7 of 21 Pages

*Insert instrument type*

Lease Instrument

- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
  - (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
  - (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 8 of 21 Pages

*Insert instrument type*

Lease Instrument

- (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
- (e) The parties must try to agree on a new Annual Rent.
- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
  - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
  - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

**Annexure Schedule**

Page 9 of 21 Pages

*Insert instrument type*

Lease Instrument

**4 Payment of Lessee Outgoings**

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

**5 Valuation Roll**

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

**6 Utility Charges**

6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.

6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.

6.3 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

**7 Goods and Services Tax**

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

**8 Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

**9 Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

**10 Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

Annexure Schedule

Page 10 of 21 Pages

*Insert instrument type*

Lease Instrument

**11 Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

**12 Hazards**

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

**13 Damage or Destruction**

**13.1 Total Destruction**

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

**13.2 Partial Destruction**

(a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.

(b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:

- (i) the repair and reinstatement of the Land have been completed; and
- (ii) the Lessee can lawfully occupy the Land.

(a) If:

- (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
- (ii) any necessary council consents shall not be obtainable,

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

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then the term will terminate with effect from the date that either such fact is established.

**13.3 Natural Disaster or Civil Defence Emergency**

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
- (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
- (i) the relevant clause has applied for a period of 6 months or more; or
  - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

**14 Contamination**

14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.

14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.

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14.3 In this clause “Contamination” means any change to the physical, biological, or chemical condition of the Land by a Contaminant and “Contaminant” has the meaning set out in section 2 of the Resource Management Act 1991.

**15 Easements**

15.1 The Lessee may without the Lessor’s consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee’s Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.

15.2 The Lessee agrees to take all steps necessary to remove at the Lessor’s request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.

15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

**16 Lessee’s Improvements**

16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee’s Improvements will remain the Lessee’s property.

16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee’s Improvements without the Lessor’s consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee’s Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.

16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee’s Improvements.

16.4 If any Lessee’s Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee’s property.

16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.

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3. LEASE FOR LEASEBACK PROPERTIES

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- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.
- 17 **Rubbish Removal**
- The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.
- 18 **Signs**
- The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.
- 19 **Insurance**
- 19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.
- 19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.
- 20 **Fencing**
- 20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.
- 20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

All signing parties and either their witnesses or solicitors must either sign or initial this box

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**21 Quiet Enjoyment**

- 21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.
- 21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

**22 Assignment**

- 22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:
- (a) any Department or Crown Body; or
  - (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).
- 22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).
- 22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.
- 22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

**24 Occupancy by School Board of Trustees**

- 24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.
- 24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

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3. LEASE FOR LEASEBACK PROPERTIES

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Lease Instrument

24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

**25 Lessee Break Option**

25.1 The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

25.2 For the initial term only, the Lessee will pay a further 12 months' rent to the Lessor in addition to the 12 months specified in clause 25.1.

**26 Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

**27 Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or
- (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

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Lease Instrument

**28 Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.

**29 Right of First Refusal for Lessor's Interest**

29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.

29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

**30 Exclusion of Implied Provisions**

30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

- (a) Clause 11 – Power to inspect premises.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

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Lease Instrument

**31 Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

**32 Disputes**

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

**33 Service of Notices**

33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education  
Ministry of Education  
PO Box 1666  
WELLINGTON 6011

33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

*[insert contact details]*

33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

**34 Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

**35 Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

All signing parties and either their witnesses or solicitors must either sign or initial this box

3. LEASE FOR LEASEBACK PROPERTIES

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Lease Instrument

**[Insert as a new clause 25A in leasebacks for Mt Maunganui College School site and Omanu Primary School sites]**

**25A Lessee Partial Surrender of Lease Option**

25A.1 The Lessee may, in its sole and absolute discretion and without giving any reasons, partially surrender and convey to the Lessor, this Lease, as it relates to any part of the lease over the Land ("Surrender Land") by providing no less than six months' notice ("Surrender Notice") in writing at any time to the Lessor. The Lessor must accept any partial surrender of the Lease under this clause.

25A.2 A Surrender Notice issued under clause 25A.1 must clearly set out the terms and conditions of the partial surrender and must identify the Surrender Land and provide a reasonable estimate of the area of the Surrender Land ("the Surrender Land Area").

25A.3 The partial surrender will be effective from the date that is six months from the date of receipt of the Surrender Notice by the Lessor or such other later date as may be specified in the Surrender Notice ("Surrender Date").

25A.4 The residue of the Term of this Lease as it applies to the Surrender Land will merge with the Lessor's residual estate and be extinguished from the Surrender Date but without prejudice to either party's rights arising in relation to the Surrender Land before the Surrender Date.

25A.5 The adjusted Annual Rent payable under this Lease from the Surrender Date will be a pro-rated proportion of the Annual Rent payable at the date of the Surrender Notice, being the proportion that the area of the balance Land after the Surrender Land Area has been excluded ("Balance Land") bears to the total area of the Land.

25A.6 On or by the Surrender Date, the Lessee shall pay a further amount ("the Partial Surrender Payment") calculated in accordance with this clause 25A.6 to the Lessor, who agrees to accept the Partial Surrender Payment in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has been partially surrendered. The Partial Surrender Payment shall be calculated as follows:

(a) For the initial term of the Lease, in accordance with the following formula:

$$24 \text{ months' rent } \times \frac{\text{Surrender Land Area}}{\text{Total Area of the Land}}$$

(b) For any subsequent term of the Lease, in accordance with the following formula:

$$12 \text{ months' rent } \times \frac{\text{Surrender Land Area}}{\text{Total Area of the Land}}$$

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3. LEASE FOR LEASEBACK PROPERTIES

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25A.7 Following the issue and receipt of a Surrender Notice under clause 25A.1, the Lessor and Lessee will complete all tasks and actions necessary to give legal effect to the partial surrender, which will include, without limitation:

- (a) The Lessee shall carry out a survey and re-definition of the Balance Land including obtaining all local authority consents necessary for such subdivision for leasehold purposes (as applicable).
- (b) The Lessee shall arrange the preparation and execution of a partial surrender of lease instrument or lease instrument, to record the terms of the partial surrender and to reflect the adjusted Annual Rent.
- (c) The Lessor shall cooperate in all respects with the tasks and actions necessary to give legal effect to the partial surrender and shall execute the partial surrender of lease instrument or lease instrument and do all acts and things necessary or desirable to implement and give full effect to the partial surrender.

25A.8 The parties must pay their own costs in relation to any actions or tasks required to give effect to partial surrender under this clause 25A and otherwise to give legal effect to any partial surrender. The Lessor will not be entitled to claim from the Lessee any damages or compensation arising in any way, either directly or indirectly, from any partial surrender under this clause 25A except as set out in clause 25A.6.

All signing parties and either their witnesses or solicitors must either sign or initial this box

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**4. RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU**

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NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE

4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU

**EASEMENT INSTRUMENT**  
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

South Auckland

Grantor

*Surname must be underlined*

Ngāi Te Rangi Settlement Trust, Tapuika Iwi Authority Trust, Te Kapu o Waitaha, Te Tahuhu  
Tawakeheimoa Trust, Ngā Hapū o Ngāti Ranginui Settlement Trust and Te Tāwharau o  
Ngāti Pukenga Trust

Grantee

*Surname must be underlined*

Her Majesty the Queen acting through the Minister of Conservation

Grant of easement

**The Grantor**, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** in perpetuity the easement **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this

day of

20

ATTESTATION:

*Note all 6 PSGEs are to sign*

-----  
Signature of Grantor

Signed in my presence by the Grantor:

\_\_\_\_\_  
*Signature of Witness*

**Witness Name:**

**Occupation:**

**Address:**

NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
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4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU

<p><b>Signed on behalf of Her Majesty the Queen by</b></p>  <p><b>Acting under a delegation from the Director General of Conservation dated</b></p>  <p>_____</p> <p><b>Signature of Grantee</b></p>	<p><b>Signed in my presence by the Grantee</b></p>  <p>_____</p> <p><i>Signature of Witness</i></p> <p><b>Witness Name:</b></p> <p><b>Occupation:</b></p> <p><b>Address:</b></p>
--	--

**Certified correct** for the purposes of the Land Transfer Act 1952

\_\_\_\_\_

**Solicitor for the Grantee**

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU**

**ANNEXURE SCHEDULE A**

Easement Instrument	Dated:	Page 1 of 5 pages
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Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right of Way	As marked A and B on OTS-209-82  <i><b>[note for the document to be registered need to insert the legal description after the survey is completed]</b></i>  The Easement Area	Part Section 3 Block XVI Otanewainuku SD, SO 31832, Part Section 4 Block XVI Otanewainuku SD, SO 14557, Part Te Puke Block ML 3930 and Pt Waitaha No. 1 Block ML 4631/A  <i><b>[need to add in CT reference following the survey]</b></i>  The Grantor's Land	In gross

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU

**ANNEXURE SCHEDULE B**

Easement Instrument	Dated:	Page 2 of 5 pages
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**RIGHTS AND POWERS**

**1 Rights of way**

- 1.1 The right of way includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the Easement Area.
- 1.2 The right of way includes the right for the public as the Grantee's invitees to go over and along the Easement Area on foot and where the Grantee wishes to carry out work to develop, improve or maintain the Easement Area or undertake conservation activities on adjoining land administered by the Grantee, its employees or contractors may proceed along the Easement Area by vehicle or any other means of transport and with all necessary tools, vehicles and equipment to carry out the work.
- 1.3 The right of way includes—
- 1.3.1 the right to establish a walking track on the Easement Area, to repair and maintain any existing walking track on the Easement Area, to repair, maintain, replace or remove the existing viewing platform on the Easement Area and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
- 1.3.2 the right to have the Easement Area kept clear at all times of obstructions (whether caused by deposit of materials, or unreasonable impediment) to the use and enjoyment of the walking track.
- 1.3.3 The right for the Grantee to improve the Easement Area in any way it considers expedient, including the installation of track markers and stiles, but without at any time causing damage to or interfering with the Grantor's management of the Grantor's Land.
- 1.3.4 The right for the Grantee to erect and display notices on the Easement Area or with the Grantor's prior consent on the Grantor's Land.
- 1.4 The right of way does not confer on the public the right to camp on the Easement Area without the consent of the Grantor which must be first obtained.
- 1.5 No horse or any other animal (including any dogs or other pets of any description whether on a leash or not) may be taken on the Easement Area without the consent of the Grantor.
- 1.6 No firearm or other weapon may be discharged on the Easement Area without the consent of the Grantor.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU**

Easement Instrument	Dated:	Page 3 of 5 pages
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1.7 The public may not use any vehicle, including motorcycles or bicycles or any means of locomotion, mechanical electrical or otherwise on the Easement Area without the consent of the Grantor.

1.8 The public may not light any fires or deposit any rubbish on the Easement Area.

**2 General rights**

2.1 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this easement or of any other party or interfere with the efficient operation of the Easement Area.

2.2 Except as provided in this easement the Grantee must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Area.

2.3 The Grantee may transfer or otherwise assign this easement.

**3 Repair, maintenance, and costs**

3.1 The Grantee is responsible for arranging the repair and maintenance of the walking track and its structures on the Easement Area and for the associated costs, so as to keep the area and structures in good order and to prevent them from becoming a danger or nuisance.

3.2 The Grantee must meet any associated requirements of the relevant local authority.

3.3 The Grantee will repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this easement.

3.4 The Grantor will repair at its cost all damage caused to the walking track or the Grantee's structures located on the Easement Area through its negligence or improper actions.

**4 Rights of entry**

4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —

4.1.1 enter upon the Grantor's Land by a reasonable route and with all necessary tools, vehicles, and equipment; and

4.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and

4.1.3 leave any vehicles or equipment on the Grantor's Land for a reasonable time if work is proceeding.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU**

Easement Instrument	Dated:	Page 4 of 5 pages
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- 4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor's Land or to the Grantor.
- 4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.
- 4.4 The Grantee must ensure that all work is completed promptly.
- 4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.
- 4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

**5 Default**

If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
- (i) meet the obligation; and
- (ii) for that purpose, enter the Grantor's Land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

**NGĀI TE RANGI AND NGĀ POTIKI DEED OF SETTLEMENT:  
DOCUMENTS SCHEDULE**

**4: RIGHT OF WAY EASEMENT OVER OTĀNEWAINUKU**

Easement Instrument	Dated:	Page 5 of 5 pages
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**6 Disputes**

If a dispute in relation to this easement arises between the Grantor and Grantee—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
  - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
  - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

**All signing parties and either their witnesses or solicitors must sign or initial in this box.**