

MORIORI IMI SETTLEMENT TRUST

and

THE CROWN

DEED RECORDING ON-ACCOUNT ARRANGEMENTS
in relation to
MORIORI HISTORICAL CLAIMS

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

THIS DEED is made between

MORIORI IMI SETTLEMENT TRUST

and

THE CROWN

1 BACKGROUND

- 1.1 Moriori in March and April 2003, by undertaking consultation and hui, gave the Hokotehi Moriori Trust a mandate to negotiate with the Crown a deed of settlement settling the historical claims of the settling group.
- 1.2 The Crown recognised this mandate on 19 November 2003.
- 1.3 The mandated negotiators and the Crown agreed the scope, objectives, and general procedures for the negotiations by terms of negotiation dated 26 July 2004.
- 1.4 After a pause in negotiations, Hokotehi Moriori Trust reconfirmed their mandate on 22 March 2016 following hui-ā-Moriori and a public submissions process.
- 1.5 On 16 August 2017, Hokotehi Moriori Trust and the Crown entered into an agreement in principle.
- 1.6 Through a ratification process run between 15 August and 15 September 2018, the Moriori claimant community mandated a proposed Moriori Imi Settlement Trust to:
 - 1.6.1 represent them going forward in negotiations with the Crown for a Treaty settlement; and
 - 1.6.2 be the entity to receive and hold Treaty settlement redress on their behalf.
- 1.7 Moriori established the Moriori Imi Settlement Trust by deed of trust dated 3 December 2018.
- 1.8 The parties acknowledge and agree:
 - 1.8.1 the mandate to negotiate the settlement of Moriori historical claims transferred from Hokotehi Moriori Trust to Moriori Imi Settlement Trust when the Moriori Imi Settlement Trust was established;
 - 1.8.2 the Moriori Imi Settlement Trust will be the post settlement governance entity for the Moriori settlement; and
 - 1.8.3 the Crown will provide the Moriori Imi Settlement Trust with a payment on-account of the settlement of the Moriori historical claims according to the terms and conditions of this deed.

2 ON-ACCOUNT ARRANGEMENTS

ON-ACCOUNT PAYMENT

- 2.1 Within ten business days of the date of this deed, the Crown will pay to the Moriori Imi Settlement Trust \$3.6 million (plus GST if any), being the on-account payment.
- 2.2 The Moriori Imi Settlement Trust acknowledges and agrees that:
 - 2.2.1 the on-account payment forms part of the financial and commercial redress to be provided by the Crown in the settlement of Moriori historical claims;
 - 2.2.2 the on-account payment will be deducted from the financial and commercial redress amount offered by the Crown in the Moriori settlement;
 - 2.2.3 any interest payable by the Crown to the Moriori Imi Settlement Trust on the on-account payment will only be payable for the period:
 - (a) beginning on the date of the agreement in principle; and
 - (b) ending on the day before the payment date.
- 2.3 Both parties acknowledge the on-account payment is made on the basis that the agreed financial and commercial redress amount for the settlement of Moriori historical claims is \$18 million, consistent with paragraphs 6.2 and 6.3 of the agreement in principle.
- 2.4 This deed:
 - 2.4.1 records on-account arrangements in relation to the Moriori historical claims;
 - 2.4.2 subject to clause 2.2, does not settle or otherwise affect those claims; but
 - 2.4.3 may be used by the Crown in any proceedings whatsoever as evidence of redress previously provided by the Crown to the Moriori Imi Settlement Trust on-account of the settlement of Moriori historical claims.

SETTLEMENT

- 2.5 Except as provided in this deed, the parties' rights and obligations remain unaffected.

3 MISCELLANEOUS

AMENDMENT

- 3.1 This deed may be amended only by a written amendment signed by the parties.

ENTIRE AGREEMENT

- 3.2 This deed:
- 3.2.1 constitutes the entire agreement in relation to the matters in it; and
 - 3.2.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

NO WAIVER OR ASSIGNMENT

- 3.3 Except as provided in this deed:
- 3.3.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power; and
 - 3.3.2 a single, or partial, exercise of a right or power under this deed, does not preclude:
 - (a) a further exercise of that right or power; or
 - (b) the exercise of another right or power; and
 - 3.3.3 a person may not transfer or assign a right or obligation under this deed.

4 TAX

INDEMNITY

- 4.1 The provision of the on-account payment, or an indemnity payment, to the Moriori Imi Settlement Trust is not intended to be:
- 4.1.1 a taxable supply for GST purposes; or
 - 4.1.2 assessable income for income tax purposes.
- 4.2 The Crown must, therefore, indemnify the Moriori Imi Settlement Trust for:
- 4.2.1 any GST payable by the Moriori Imi Settlement Trust in respect of the provision of the on-account payment or an indemnity payment; and
 - 4.2.2 any income tax payable by the Moriori Imi Settlement Trust as a result of the on-account payment, or an indemnity payment, being treated as assessable income of the Moriori Imi Settlement Trust; and
 - 4.2.3 any reasonable cost or liability incurred by the Moriori Imi Settlement Trust in taking, at the Crown's direction, action:
 - (a) relating to an indemnity demand; or
 - (b) under clause 4.13 or clause 4.14.1(b).

LIMITS

- 4.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment):
- 4.3.1 the Moriori Imi Settlement Trust's:
- (a) use of the on-account payment or an indemnity payment;
 - (b) payment of costs, or any other amounts, in relation to the on-account payment; or
 - (c) receipt of any income from the on-account payment or an indemnity payment.

ACKNOWLEDGEMENTS

- 4.4 To avoid doubt, the parties acknowledge:
- 4.4.1 the on-account payment is provided:
- (a) on-account of the future settlement redress of Moriori historical claims in relation to the Treaty of Waitangi; and

- (b) with no other consideration being provided;
- 4.4.2 nothing in this part is intended to imply that the provision of the on-account payment, or an indemnity payment, is:
- (a) a taxable supply for GST purposes; or
 - (b) assessable income for income tax purposes; and
- 4.4.3 if the Moriori Imi Settlement Trust is a charitable trust, or other charitable entity, it receives –
- (a) the on-account payment, assets or rights other than for charitable purposes; or
 - (b) income other than as exempt income for income tax purposes; and
- 4.4.4 the Moriori Imi Settlement Trust is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

CONSISTENT ACTIONS

- 4.5 Neither the Moriori Imi Settlement Trust, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 4.
- 4.6 In particular, the Moriori Imi Settlement Trust agrees that:
- 4.6.1 from the payment date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and
 - 4.6.2 neither it, nor any person associated with it, will claim with respect to the provision of the on-account payment, or an indemnity payment:
 - (a) an input credit for GST purposes; or
 - (b) a deduction for income tax purposes.

INDEMNITY DEMANDS

- 4.7 The Moriori Imi Settlement Trust and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the Moriori Imi Settlement Trust may be entitled to an indemnity payment.
- 4.8 An indemnity demand:
- 4.8.1 may be made at any time after the payment date; but
 - 4.8.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is:
 - (a) specified in an assessment; or
 - (b) a date for the payment of provisional tax; or

- (c) otherwise determined; and

4.8.3 must be accompanied by:

- (a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and
- (b) if the demand relates to GST and the Crown requires, a GST tax invoice.

INDEMNITY PAYMENTS

4.9 If the Moriori Imi Settlement Trust is entitled to an indemnity payment, the Crown may make the payment to:

4.9.1 the Moriori Imi Settlement Trust; or

4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the Moriori Imi Settlement Trust.

4.10 The Moriori Imi Settlement Trust must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of:

4.10.1 the due date for payment of the tax; or

4.10.2 the next business day after receiving the indemnity payment.

REPAYMENT

4.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the Moriori Imi Settlement Trust must promptly repay to the Crown any amount that:

4.11.1 the Commissioner of Inland Revenue refunds or credits to the Moriori Imi Settlement Trust; or

4.11.2 the Moriori Imi Settlement Trust has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

4.12 The Moriori Imi Settlement Trust has no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

RULINGS

4.13 The Moriori Imi Settlement Trust must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of the on-account payment.

CONTROL OF DISPUTES

4.14 If the Moriori Imi Settlement Trust is entitled to an indemnity payment, the Crown may:

4.14.1 by notice to the Moriori Imi Settlement Trust, require it to:

- (a) exercise a right to defer the payment of tax; and/or

- (b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest:
 - (i) a tax assessment; and/or
 - (ii) a notice in relation to the tax, including a notice of proposed adjustment; or

4.14.2 nominate and instruct counsel on behalf of the Moriori Imi Settlement Trust whenever it exercises its rights under clause 4.14.1; and

4.14.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

5 DEFINITIONS AND INTERPRETATION

DEFINED TERMS

5.1 In this deed, unless the context requires otherwise:

agreement in principle means the agreement in principle entered into and dated 16 August 2017 by the Moriori, Hokotehi Moriori Trust and the Crown recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling Moriori historical claims;

assessable income has the meaning given to it by section YA 1 of the Income Tax Act 2007;

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 day observed as the anniversaries of the province of Wellington;

Crown has the meaning given to it in section 2(1) of the Public Finance Act 1989;

date of this deed means the date this deed is signed by the parties;

deed means this deed recording on-account arrangements between the Moriori Imi Settlement Trust on behalf of Moriori and the Crown, and that deed as amended from time to time;

financial and commercial redress means the financial and commercial redress payable by the Crown pursuant to a deed of settlement for the settlement of Moriori historical claims;

GST means:

- (a) goods and services tax chargeable under the Goods and Services Tax Act 1985; and
- (b) includes, for the purposes of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of GST;

income tax means income tax imposed under the Income Tax Act 2007 and includes, for the purpose of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of income tax;

indemnity demand means a demand made by the Moriori Imi Settlement Trust under part 4 for an indemnity payment;

indemnity payment means a payment made by the Crown to the Moriori Imi Settlement Trust under part 4;

Moriori deed of settlement means the Moriori deed of settlement of historical claims to be signed between the Crown, Moriori and the Moriori Imi Settlement Trust;

Moriori historical claims means every claim, whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the settlement date (as defined in the Moriori deed of settlement to be entered into between the Crown and Moriori) that Moriori had at, or at any time before, that date, or may have at any time after that date and that:

- (a) is, or is founded on, a right arising:
 - (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;
 - (ii) under legislation;
 - (iii) at common law (including in relation to aboriginal title or customary law);
 - (iv) from a fiduciary duty or otherwise; and
- (b) arises from or relates to acts or omissions before 21 September 1992:
 - (i) by or on behalf of the Crown; or
 - (ii) by or under legislation;

Moriori settlement means the settlement of the Moriori historical claims as agreed between the Crown and Moriori;

on-account payment means the sum referred to in clause 2.1;

payment date means the date the on-account payment is paid to the Moriori Imi Settlement Trust in accordance with clause 2.1;

provision, in relation to the on-account payment, includes its allotting, payment, credit, transfer, vesting, making available, creation, or grant;

Moriori Imi Settlement Trust means the trust of that name established by the Moriori Imi Settlement Trust trust deed acting by and through the trustees of that trust;

Moriori Imi Settlement Trust trust deed means the deed of trust establishing the Moriori Imi Settlement Trust dated 3 December 2018 and includes the schedules and any amendments to that deed;

tax includes income tax and GST;

tax indemnity means an indemnity given by the Crown under part 4;

taxable activity has the meaning given to it by section 6 of the Goods and Services Tax Act 1985;

taxable supply has the meaning given to it by section 2 of the Goods and Services Tax Act 1985; and

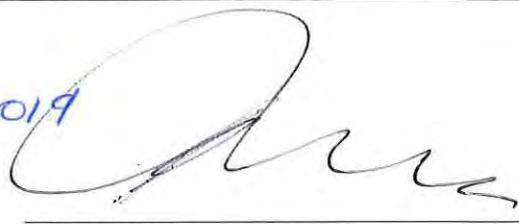
use, in relation to the on-account payment or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

INTERPRETATION

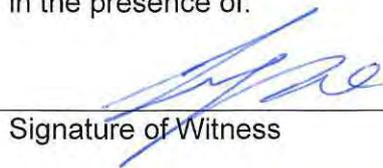
- 5.2 In the interpretation of this deed, unless the context otherwise requires:
- 5.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed;
 - 5.2.2 defined terms have the meanings given to them by this deed but if there are any inconsistencies between the definitions in this deed and the Moriori deed of settlement, the definitions in the Moriori deed of settlement shall prevail;
 - 5.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
 - 5.2.4 the singular includes the plural and vice versa;
 - 5.2.5 a word importing one gender includes the other genders;
 - 5.2.6 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted;
 - 5.2.7 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors;
 - 5.2.8 an agreement on the part of two or more persons binds each of them jointly and severally;
 - 5.2.9 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time;
 - 5.2.10 a reference to a monetary amount is to New Zealand currency;
 - 5.2.11 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;
 - 5.2.12 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;
 - 5.2.13 a reference to the Crown endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives, any legislation;
 - 5.2.14 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the working party and the Crown;
 - 5.2.15 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and
 - 5.2.16 a reference to time is to New Zealand time.

SIGNED as a deed on [date] 13 August 2019

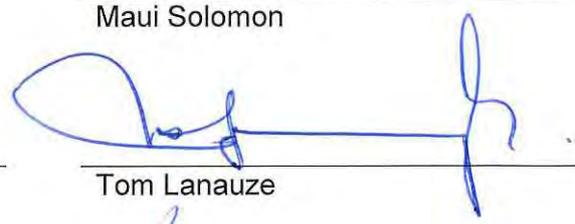
SIGNED by the trustees of
Mori Mori Imi Settlement Trust
in the presence of:



Maui Solomon



Signature of Witness

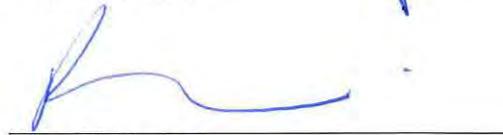


Tom Lanauze

Witness Name: Susan Thape

Occupation: archaeologist

Address: 2350 Omeypa Rd
Rēkohu

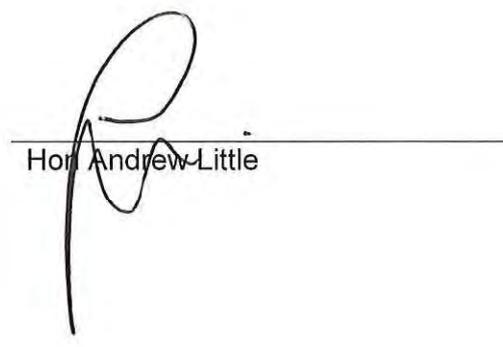


Paul Solomon



Grace Le Gros

SIGNED for and on behalf of THE CROWN
by the Minister for Treaty of Waitangi
Negotiations in the presence of:



Hon Andrew Little



Signature of Witness

Witness Name: ANNA GALVIN

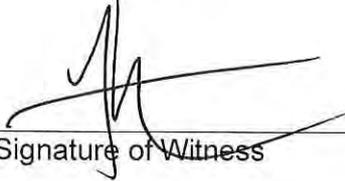
Occupation: PRIVATE SECRETARY

Address: WELLINGTON

SIGNED for and on behalf of **THE CROWN**
by the Minister of Finance only in relation to
the indemnities given in part 4 of this deed in
the in the presence of:



Hon Grant Robertson



Signature of Witness

Witness Name: *Angus Hodgey*

Occupation: *Public Servant*

Address: *Wellington*