

TRUSTEES OF TE ROROA MANAWHENUA TRUST

and

TRUSTEES OF TE ROROA WHATU ORA TRUST

and

HER MAJESTY THE QUEEN

in right of New Zealand

**DEED IN RELATION TO THE DEFERRED SELECTION
PROPERTIES AND CASH SETTLEMENT AMOUNT**

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
SETTLEMENT AMOUNT**

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SCHEDULE 11

**DEED IN RELATION TO THE DEFERRED SELECTION PROPERTIES AND
CASH SETTLEMENT AMOUNT**

THIS DEED is made

BETWEEN

TREVOR EDWARD BIRCH, 83 River Road, Dargaville;
ERANA MENGE CLARKSON, 4 Thompson Place, Tikipunga, Whangarei;
ISOBEL FLORENCE HUTCHINS, 39B Logan Street, Dargaville;
STEPHEN CASSIDY NAERA, 29 Amblers Road, Waimamaku;
ALEXANDER NATHAN, 161A Hokianga Road, Dargaville;
WILLIAM GEORGE NGAKURU, 269 Pokas Road, Waimamaku;
WINIKA TUHIWAI, 121 Station Road, Dargaville;
THALEA TRACEY POMPEY, 12 Memorial Drive, Riverside, Whangarei;
MARAMA REWA, 222 Browns Road, Manurewa, Auckland;
TAOHO SNOW TANE, 148 Awakino Road, Dargaville;
ORIANA VENUS TE RORE, 7 Domain Road, Mangere Bridge, Auckland; and
RANGIORA TIMUTIMU, 121 Station Road, Dargaville

as trustees of Te Roroa Manawhenua Trust (the "**Current Manawhenua Trustees**")

AND

TREVOR EDWARD BIRCH, 83 River Road, Dargaville;
ERANA MENGE CLARKSON, 4 Thompson Place, Tikipunga, Whangarei;
ISOBEL FLORENCE HUTCHINS, 39B Logan Street, Dargaville;
STEPHEN CASSIDY NAERA, 29 Amblers Road, Waimamaku;
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MARAMA REWA, 222 Browns Road, Manurewa, Auckland;
TAOHO SNOW TANE, 148 Awakino Road, Dargaville;
ORIANA VENUS TE RORE, 7 Domain Road, Mangere Bridge, - Auckland; and
RANGIORA TIMUTIMU, 121 Station Road, Dargaville

as trustees of Te Roroa Whatu Ora Trust (the "**Current Whatu Ora Trustees**")

AND

HER MAJESTY THE QUEEN in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (the "**Crown**")

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

BACKGROUND

- A. The Crown and Te Roroa are parties to a deed of settlement dated 17 December 2005.
- B. The Manawhenua Trustees, as the Governance Entity under the deed of settlement, may, on behalf of Te Roroa, agree to amend the deed of settlement.
- C. The Crown, the Manawhenua Trustees, and the Whatu Ora Trustees, entered into a deed dated 30 January 2007 amending the deed of settlement.
- D. The deed of amendment provides that, if the Manawhenua Trustees notifies the Crown, the deferred selection properties (as defined in clause 1.1.1) are to be transferred to the Whatu Ora Trustees.
- E. The parties have agreed that the deferred selection properties are to be transferred to the Whatu Ora Trustees for a purchase price of \$6 million.
- F. That agreement makes unnecessary the provisions in the deed of settlement providing for the following matters in relation to the deferred selection properties:
 - (i) provision by the Manawhenua Trustees of a notice of interest;
 - (ii) the valuation process;
 - (iii) election of whether or not to purchase after determination of value; and
 - (iv) notice that the Whatu Ora Trustees are to be the transferee.
- G. This deed makes the consequential changes to the deed of settlement.
- H. However, the parties agree that, subject to the provisions of this deed, this deed is intended to have the same effect as if the Manawhenua Trustees and the Crown were deemed to have entered into an agreement for sale and purchase of the deferred selection properties under clause 11.15.1 of the deed of settlement.
- I. The Crown has:
 - (i) recognised the significance of the deferred selection properties to Te Roroa; and
 - (ii) made an offer of an ex gratia payment of \$6 million to facilitate the purchase of the deferred selection properties and the passage of the Te Roroa Claims Settlement Bill.
- J. The offer of the ex gratia payment was:
 - (i) made in accordance with a Cabinet Policy Committee decision of 28 May 2008, that was approved by Cabinet on 3 June 2008;

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- (ii) accepted by unanimous resolution of the Whatu Ora Trustees on 21 June 2008.

- K. The Te Roroa Claims Settlement Act 2008 (the **settlement legislation**) has been enacted.

- L. This deed confirms the terms of the ex gratia payment to facilitate the purchase of those properties.

- M. The Parties have agreed, under clause 3.7 of the deed of settlement, that the Cash Settlement Amount of \$77,240 is to be paid by the Crown on the Settlement Date to the Whatu Ora Trustees and not the Manawhenua Trustees.

- N. The Manawhenua Trustees and the Whatu Ora Trustees have resolved to enter into this deed.

IT IS AGREED by the parties as follows:

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this deed:
- 1.1.1 the term **deferred selection properties** has the same meaning as in clause 16.4 of the deed of settlement, and section 87 of the settlement legislation, being the properties described in part 1 of schedule 8 of the deed of settlement; and
 - 1.1.2 for ease of reference, the deferred selection properties are set out in part 1 of the schedule to this deed; and
 - 1.1.3 the term **Cash Settlement Amount** has the same meaning as in clause 11.1 of the deed of settlement being the amount of \$77,240 that is payable by the Crown under clause 11.2.1 of the deed of settlement.
- 1.2 The definitions, and rules of interpretation, set out in part 4 of the schedule apply to this deed.

2. PURCHASE OF THE DEFERRED SELECTION PROPERTIES

- 2.1 The deed of settlement is amended by deleting:
- 2.1.1 clauses 11.11 - 11.21; and
 - 2.1.2 parts 2 - 4 of schedule 8.
- 2.2 The deed of amendment is amended by deleting part 5.
- 2.3 The deed of settlement is further amended by substituting the following provisions for those deleted by clauses 2.1 and 2.2:
- 2.3.1 on the Settlement Date, the Crown must sell, and the Whatu Ora Trustees must purchase, each of the deferred selection properties:
 - (a) for an aggregate purchase price of \$6 million; and
 - (b) on the terms and conditions in part 2 of the schedule;
 - 2.3.2 the tax provisions in part 3 of the schedule apply to the sale and purchase of each of the deferred selection properties; and
 - 2.3.3 one computer freehold register is to be created for the following properties:
 - (a) Aranga Beach Farm;
 - (b) Aranga Beach Farm Coastal Selection;

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

(c) Aranga Beach Farm Part Lot 15 DP 1457.

3. EX GRATIA PAYMENT

3.1 The Crown must, on the Settlement Date, apply the ex gratia payment of \$6 million in satisfaction of the obligation of the Whatu Ora Trustees under clause 2.3.1(a) to pay to the Crown the purchase price of the deferred selection properties.

4. CASH SETTLEMENT AMOUNT

4.1 The Crown confirms that, although the Whatu Ora Trust is not the Governance Entity, the Crown is satisfied that the Whatu Ora Trust satisfies the criteria in clause 3.3.1 of the deed of settlement.

4.2 The Current Whatu Ora Trustees confirm, and the Crown confirms it is satisfied, that the Whatu Ora Trust has been ratified by Te Roroa as an appropriate entity to receive the Cash Settlement Amount.

4.3 The Parties agree that, under clause 3.7 of the deed of settlement, despite any provision of the deed of settlement or the Deed of Covenant, the Cash Settlement Amount:

4.3.1 is not to be paid by the Crown to the Manawhenua Trustees; but

4.3.2 is to be paid by the Crown to the Whatu Ora Trustees on the terms and conditions in the deed of settlement.

5. OTHER MATTERS

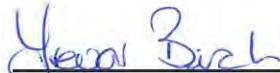
5.1 The deed of settlement, as amended by the deed of amendment, remains unchanged except to the extent provided by this deed.

5.2 This deed takes effect when it is signed by the parties.

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
SETTLEMENT AMOUNT**

SIGNED as a deed on 24 October 2008

SIGNED by **TREVOR EDWARD
BIRCH** in the presence of:


As a Manawhenua Trustee


As a Whatu Ora Trustee

WITNESS


Name:

Occupation: Anthony Grant Ruakere
Solicitor
Address: Auckland

SIGNED by **ERANA MENGE
CLARKSON** in the presence of:


As a Manawhenua Trustee


As a Whatu Ora Trustee

WITNESS


Name:

Occupation: Anthony Grant Ruakere
Solicitor
Address: Auckland

SIGNED by **ISOBEL FLORENCE
HUTCHINS** in the presence of:


As a Manawhenua Trustee


As a Whatu Ora Trustee

WITNESS


Name:

Occupation: Anthony Grant Ruakere
Solicitor
Address: Auckland

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
SETTLEMENT AMOUNT**

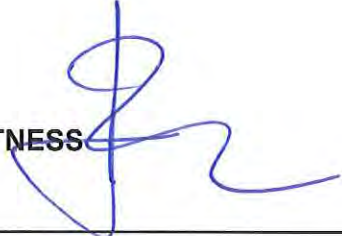
**SIGNED by STEPHEN CASSIDY
NAERA in the presence of:**



As a Manawhenua Trustee



As a Whatu Ora Trustee

WITNESS 

Name: Anthony Grant Ruakere
Occupation: Solicitor
Auckland
Address:

**SIGNED by ALEXANDER NATHAN
in the presence of:**



As a Manawhenua Trustee



As a Whatu Ora Trustee

WITNESS 

Name: Anthony Grant Ruakere
Occupation: Solicitor
Auckland
Address:

**SIGNED by WILLIAM GEORGE NGAKURU
in the presence of:**



As a Manawhenua Trustee



As a Whatu Ora Trustee

WITNESS 

Name: Anthony Grant Ruakere
Occupation: Solicitor
Auckland
Address:

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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SIGNED by WINIKA TUHIWAI
in the presence of:

Winika Tuhiwai
As a Manawhenua Trustee

Winika Tuhiwai
As a Whatu Ora Trustee

WITNESS


Name: _____

Occupation: Anthony Grant Ruakere
Solicitor
Address: Auckland

SIGNED by THALEA TRACEY POMPEY
in the presence of:

M. T. Pompey
As a Manawhenua Trustee

M. T. Pompey
As a Whatu Ora Trustee

WITNESS


Name: _____

Occupation: Anthony Grant Ruakere
Solicitor
Address: Auckland

SIGNED by MARAMA REWA
in the presence of:

Marama Rewa
As a Manawhenua Trustee

Marama Rewa
As a Whatu Ora Trustee

WITNESS


Name: _____

Occupation: Anthony Grant Ruakere
Solicitor
Address: Auckland

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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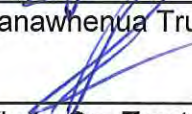
SIGNED by TAOHO SNOW TANE
in the presence of:

WITNESS 

Name:
Occupation: **Anthony Grant Ruakere**
Solicitor
Auckland
Address:



As a Manawhenua Trustee




As a Whatu Ora Trustee

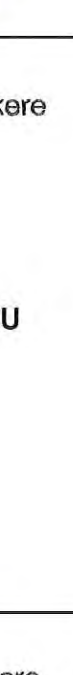
SIGNED by ORIANA VENUS TE RORE
in the presence of:

WITNESS 

Name:
Occupation: **Anthony Grant Ruakere**
Solicitor
Auckland
Address:



As a Manawhenua Trustee

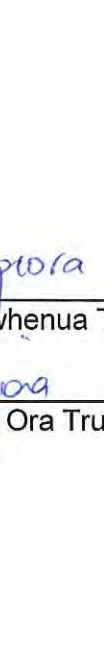


As a Whatu Ora Trustee

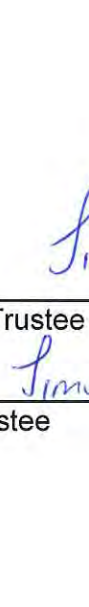
SIGNED by RANGIORA TIMUTIMU
in the presence of:

WITNESS 

Name:
Occupation: **Anthony Grant Ruakere**
Solicitor
Auckland
Address:



As a Manawhenua Trustee



As a Whatu Ora Trustee

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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SIGNED for and on behalf of HER
MAJESTY THE QUEEN in right of
New Zealand by the Minister in
Charge of Treaty of Waitangi
Negotiations in the presence of:



WITNESS



Name:

Katrina Greco-Anstie

Occupation:

Private Secretary

Address:

4 The Beehive, Wellington

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
SETTLEMENT AMOUNT**

SCHEDULE

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

PART 1

THE DEFERRED SELECTION PROPERTIES

Name	Legal description: North Auckland Land District Kaipara District	Landholding agency
Aranga Beach Deferred selection properties	<p>392.76 hectares, approximately, being Lot 17 and Part Lot 16 DP 1457, Part Lot 20 DP 1458, Lot 3 DP 120557 and Part Section 27A Block XIII Waipoua Survey District. Part Document C966049.6. Subject to survey.</p> <p>91.00 hectares, approximately, being Part Section 64 Block I Kaiwi Survey District. Part Document C589493.4. Subject to survey.</p>	Office of Treaty Settlements
Waikara Deferred selection properties 4	<p>305.9300 hectares more or less being Section 5 Block IX Waipoua Survey District. SO 54827. Balance Document D154618.3.</p> <p>224.8433 hectares more or less being Section 6 Block IX and Sections 41, 43, 44 and 45 Block X Waipoua Survey District. SO 51282, SO 54824 and SO 54828. Balance Document D154621.2.</p>	Land Information New Zealand
Waikara Deferred selection properties 5	435.7780 hectares more or less being Section 6 Block VI and Section 4 Block IX Waipoua Survey District. SO 54825. All Document D154617.2.	Land Information New Zealand
Waikara Deferred selection properties 6	379.4360 hectares more or less being Sections 7 and 8 Block VI Waipoua Survey District. SO 54826. All Document D171470.3.	Land Information New Zealand

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

PART 2

TERMS OF TRANSFER OF THE DEFERRED SELECTION PROPERTIES

1. DISCLOSURE INFORMATION

1.1 The Crown warrants that it has given the Whatu Ora Trustees, by letter dated 15 October 2008 from the Office of Treaty Settlements:

1.1.1 all material information in relation to each of the deferred selection properties that the landholding agency for that property is aware of (the **disclosure information**); and

1.1.2 information concerning the Encumbrances that the landholding agency is aware of that affect or benefit a deferred selection property (the **disclosed encumbrances**).

1.2 The disclosure information for a deferred selection property was provided on the basis of the landholding agency:

1.2.1 having inspected its records; but

1.2.2 not having:

(a) inspected any of the deferred selection properties; or

(b) made enquiries beyond its records.

1.3 Except as provided in paragraph 1.1, the Crown does not give any representation or warranty (whether express or implied), and does not accept any responsibility, with respect to:

1.3.1 any of the deferred selection properties, including as to its ownership, management, occupation, physical condition, use or compliance with:

(a) any legislation, including by-laws; or

(b) any enforcement or other notice, requisition or proceedings issued by any authority; or

1.3.2 the completeness or accuracy of the disclosure information, including the disclosed encumbrances.

1.4 Although the Crown is not giving any representation or warranty in relation to any of the deferred selection properties except as provided in paragraph 1.1, the Whatu Ora Trustees had the opportunity under paragraph 3.5, in addition to being able to examine the disclosure information, to:

1.4.1 inspect the deferred selection properties; and

1.4.2 determine their state and condition.

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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2. TRANSFER

- 2.1 The Crown must transfer the fee simple estate in each of the deferred selection properties to the Whatu Ora Trustees subject to and, where applicable, with the benefit of the disclosed encumbrances affecting or benefiting that deferred selection property (as they may be added to under paragraph 2.2).
- 2.2 The Crown and the Whatu Ora Trustees may agree in writing to add to the disclosed encumbrances.
- 2.3 The Whatu Ora Trustees must not unreasonably withhold or delay their consent to granting a new Encumbrance affecting a deferred selection property.
- 2.4 The Crown must pay any survey and registration costs required to transfer the fee simple estate in the deferred selection properties to the Whatu Ora Trustees.

3. OBLIGATIONS PRIOR TO SETTLEMENT

- 3.1 The Crown must maintain each of the deferred selection properties, or will ensure that it is maintained, until the Settlement Date, in substantially the same condition as it is in at the date of this deed, fair wear and tear excepted.
- 3.2 Between the date of this deed and Settlement Date, the Crown must consult with, and obtain the prior consent of, the Whatu Ora Trustees (which will not be unreasonably withheld or delayed) before:
 - 3.2.1 agreeing to a material variation to a disclosed encumbrance; or
 - 3.2.2 procuring a consent, or providing a waiver, under the Resource Management Act, or other legislation, that materially affects a deferred selection property.
- 3.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on a deferred selection property, between the date of this deed and the Settlement Date, comply with any obligations imposed on the Crown under the Building Act in respect of such works.
- 3.4 The Crown must pay all charges for electricity, gas, water, and other utilities that the Crown owes as owner of a deferred selection property until the Settlement Date, except where those charges are payable by any tenant or occupant directly to the relevant supplier.
- 3.5 Subject to the terms of a disclosed encumbrance, the Crown must use reasonable endeavours to obtain permission for a person authorised by the Whatu Ora Trustees, upon reasonable notice, to enter and inspect each of the deferred selection properties on one occasion before the Settlement Date.

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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4. POSSESSION AND SETTLEMENT

- 4.1 On the Settlement Date, possession must be given and taken of each of the deferred selection properties subject to:
- 4.1.1 the disclosed encumbrances; and
 - 4.1.2 any additional encumbrances under paragraph 2.2.
- 4.2 Subject to paragraph 9, on the Settlement Date the Crown must hand to the Whatu Ora Trustees, in relation to each of the deferred selection properties:
- 4.2.1 a registrable transfer instrument;
 - 4.2.2 any other instrument in registrable form required by this Part; and
 - 4.2.3 any contracts and other documents that:
 - (a) create unregistered rights, interests and obligations affecting the registered proprietor's interest (but not proclamations, *Gazette* notices and similar public notices); and
 - (b) continue after the Settlement Date.
- 4.3 On the Settlement Date:
- 4.3.1 the Whatu Ora Trustees must pay to the Crown the amount by which the outgoings (except for insurance premiums) for the deferred selection properties pre-paid by the Crown in respect of a period after the Settlement Date exceed the incomings received by the Crown for the deferred selection properties for that period; or
 - 4.3.2 the Crown must pay to the Whatu Ora Trustees the amount by which the incomings received by the Crown for the deferred selection properties in respect of a period after the Settlement Date exceed the outgoings (except for insurance premiums) for the deferred selection properties pre-paid by the Crown for that period.
- 4.4 The Crown must, before the Settlement Date, supply a statement of apportionments to the Whatu Ora Trustees calculating liability under clause 4.3.
- 4.5 The Crown must make available to the Whatu Ora Trustees on the Settlement Date any keys to exterior doors to, electronic door openers, and/or security codes to alarms for each of the deferred selection properties that are in the possession of the Crown.
- 4.6 Each of the deferred selection properties must be transferred inclusive of all fixtures and fittings that are:
- 4.6.1 owned by the Crown; and
 - 4.6.2 situated on the deferred selection property at the date of this deed.
- 4.7 Fixtures and fittings referred to in clause 4.6 must not be mortgaged or charged.

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

4.8 Chattels situated on a deferred selection property will not be included in its transfer.

4.9 Any issue as to the ownership of, or liability for, a chattel on a deferred selection property, or a fixture or fitting owned or installed by a tenant or occupant of a deferred selection property, must be resolved between the Whatu Ora Trustees and the tenant or occupant (without reference to the Crown).

5. RISK AND INSURANCE

5.1 Each of the deferred selection properties is at the sole risk of:

5.1.1 the Crown until the Settlement Date; and

5.1.2 the Whatu Ora Trustees after the Settlement Date.

5.2 If, between the date of this deed and the Settlement Date, a deferred selection property is destroyed or damaged, and the destruction or damage is not made good by the Settlement Date, the Whatu Ora Trustees must complete the purchase on the condition that the Crown pay to the Whatu Ora Trustees (as a partial refund of the purchase price) an amount equal to the amount of the diminution in the value of the deferred selection property as at the Settlement Date as a result of the destruction or damage.

5.3 The Whatu Ora Trustees are not required to take over from the Crown any insurance policy in relation to a deferred selection property.

6. PURCHASE PRICE FIXED

6.1 The amount payable for the deferred selection properties will not be affected by any addition or variation to the disclosed encumbrances under paragraphs 2.2 or 3.2.1.

7. BOUNDARIES, TITLE AND FENCING

7.1 The Crown is not required to point out the boundaries of the deferred selection properties.

7.2 If the deferred selection properties are subject only to disclosed encumbrances, as they may be added to under paragraph 2.2 or materially varied under paragraph 3.2.1, the Whatu Ora Trustees:

7.2.1 will be treated as having accepted the title to the deferred selection properties as at the Settlement Date; and

7.2.2 may not make any objections to, or requisitions on, the deferred selection properties.

7.3 No error, omission or misdescription of the deferred selection properties, or their titles, annuls the transfer.

7.4 The Crown is not liable to pay for, or contribute towards, the erection or maintenance of a fence between any of the deferred selection properties and contiguous land of the Crown (unless it is the Crown that requires the erection or maintenance).

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

7.5 Paragraph 7.4 does not continue for the benefit of any purchaser from the Crown of land contiguous to a deferred selection property.

7.6 The Crown may require the inclusion of a fencing covenant to the effect of paragraphs 7.4 and 7.5 in the transfer of any or all of the deferred selection properties.

8. OBLIGATIONS AFTER SETTLEMENT

8.1 If the Crown receives a notice or demand in relation to a deferred selection property from the Crown, a territorial authority or a tenant after the Settlement Date, the Crown will:

8.1.1 if it does not pay or comply with the notice or demand, promptly deliver it to the Whatu Ora Trustees; and

8.1.2 if it fails to do so, be liable for any penalty incurred.

8.2 Immediately after the Settlement Date, the Crown must give notice of the transfer of the deferred selection properties to the territorial authority that has jurisdiction in relation to the properties.

9. DELAYED TRANSFER OF LEGAL TITLE

9.1 If all the land comprising any of the deferred selection properties is not all of the land contained in a computer freehold register or registers, the Crown covenants for the benefit of the Whatu Ora Trustees that it will:

9.1.1 subject to clause 2.3.3 of this deed, arrange for the creation of a computer freehold register or registers for all that land; and

9.1.2 transfer title to that deferred selection property, as soon as is reasonably practicable, but no later than five years after the Settlement Date.

9.2 The covenant given by the Crown in paragraph 9.1 has effect and is enforceable, despite it being positive in effect and there being no dominant tenement.

9.3 If paragraph 9.1 applies in relation to any deferred selection property, from the Settlement Date until the date that the Crown transfers the title to the property to the Whatu Ora Trustees:

9.3.1 the trustees are the beneficial owners of the property; and

9.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the trustees on the Settlement Date.

10. MISCELLANEOUS

Further Assurances

10.1 The Crown and the Whatu Ora Trustees must, at the reasonable request of the other, sign and deliver any further documents or assurances, and do all acts and things, required to give full force and effect to clause 2.3.1 of this deed and this Part.

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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Non merger

10.2 On transfer of the deferred selection properties to the Whatu Ora Trustees, the provisions of this Part:

10.2.1 will not merge; and

10.2.2 will remain in force to the extent they have not been fulfilled.

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
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PART 3

**TAX PROVISIONS IN RELATION TO THE SALE AND PURCHASE OF EACH OF THE
DEFERRED SELECTION PROPERTIES**

GST REGISTRATION

- 2.1 The Crown warrants that it, and the Whatu Ora Trustees warrant that they (in their collective capacity as the trustees of Te Roroa Whatu Ora Trust), will be a registered person at the time of supply applicable to the sale and purchase of each of the deferred selection properties made under clause 2.3.1 (each sale and purchase being a **supply**).

SUPPLY OF A GOING CONCERN

- 2.2 In respect of each supply, the Crown and the Whatu Ora Trustees agree that:
- 2.2.1 the supply is a supply of a going concern;
 - 2.2.2 they intend that the supply is of a taxable activity, or part of a taxable activity, that is capable of being carried on as a going concern by the Whatu Ora Trustees;
 - 2.2.3 the supply is zero rated for GST purposes; and
 - 2.2.4 if for any reason the supply (or part of the supply) is not properly zero rated for GST purposes, neither the Crown nor the Whatu Ora Trustees have any liability to the other in respect of the GST treatment of the supply except as provided in this Part.

PAYMENT OF GST AND DEFAULT PAYMENT

- 2.3 If the Commissioner determines that a supply (or part of a supply) is not properly zero rated for GST purposes, the Whatu Ora Trustees must pay to the Crown an amount equal to the GST chargeable on the relevant supply, plus any Default Payment, before the expiry of five (5) Business Days after demand in writing has been made by the Crown to the Whatu Ora Trustees for that GST.
- 2.4 The Whatu Ora Trustees are not required to pay any amount under paragraph 2.3 until the Crown provides to the Whatu Ora Trustees:
- 2.4.1 a tax invoice in respect of the relevant supply (or, where the Crown has previously issued a tax invoice in respect of the supply, a debit note); and
 - 2.4.2 reasonable evidence that the Commissioner has determined that the relevant supply (or part of the supply) is not properly zero rated.

OBLIGATION TO MAKE PAYMENT

- 2.5 The Crown is not required to pay any GST or Default Payment to the Commissioner, or to take any additional steps to minimise the liability in respect of that GST or Default Payment, until the corresponding payment is received in full from the Whatu Ora Trustees.

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

INTERPRETATION

- 2.6 Unless the context otherwise requires, for the purposes of paragraphs 2.1 – 2.7 of this Part:
- (a) **Act** means the Goods and Services Tax Act 1985;
 - (b) **Commissioner** means the Commissioner of Inland Revenue and includes the Inland Revenue Department;
 - (c) **Default Payment** means any interest, penalty or other sum payable by the Crown under the Act, or the Tax Administration Act 1994, by reason of the non or late payment of any GST in respect of a supply, but does not include any amount that:
 - (i) accrues between (A) the date on which the Crown receives written notice that the Commissioner has determined that the relevant supply (or part of the supply) is not properly zero rated for GST purposes and (B) the date on which the Crown satisfies its obligations under clauses 2.4.1 or 2.4.2; or
 - (ii) is attributable to the period after the payment to the Crown by the Whatu Ora Trustees under paragraph 2.3 of this Part of the full amount of owing in respect of GST and any Default Payment;
 - (d) **GST** means goods and services tax chargeable in accordance with the Act;
 - (e) **going concern, debit note, taxable activity, tax invoice, time of supply** and **registered person** have the same meanings as in the Act; and
 - (f) **supply** has the meaning given to that term by paragraph 2.1 of this Part.

DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH SETTLEMENT AMOUNT

PART 4

DEFINITIONS AND INTERPRETATION

1.1 In this deed, unless the context otherwise requires:

“Cash Settlement Amount” has the meaning provided in clause 1.1.3;

“deferred selection properties” has the meaning provided in clause 1.1.1;

“deed of amendment” means the deed amending the deed of settlement referred to in clause C of the Background;

“deed of settlement” means the deed referred to in clause B of the Background, as amended by the deed of amendment;

“disclosed encumbrances” has the meaning given to that term in paragraph 1.1.2 of Part 2 of this schedule;

“disclosure information” has the meaning given to that term in paragraph 1.1.1 of Part 2 of this schedule;

“ex gratia payment” means the ex gratia payment referred to in paragraph I(ii) of the Background and to be applied by the Crown in accordance with clause 3.1;

“landholding agency”, for a deferred selection property, means the landholding agency for that property as provided in column 3 of Part 1 of this schedule;

“Manawhenua Trustees” means the trustees from time to time of the Te Roroa Manawhenua Trust, in their capacity as trustees of that trust;

“party” means each of the Current Manawhenua Trustees, the Current Whatu Ora Trustees and the Crown;

“settlement legislation” has the meaning given to that term by clause K of the Background;

“Te Roroa Manawhenua Trust” means the trust established by the Te Roroa Manawhenua Trust Deed;

“Te Roroa Manawhenua Trust Deed” means the deed of trust establishing the Te Roroa Manawhenua Trust dated 15 August 2006;

“Te Roroa Whatu Ora Trust” means the trust established by the Te Roroa Whatu Ora Trust Deed;

“Te Roroa Whatu Ora Trust Deed” means the deed of trust establishing the Te Roroa Whatu Ora Trust dated 15 August 2006; and

“Whatu Ora Trustees” means the trustees from time to time of the Te Roroa Whatu Ora Trust, in their capacity as trustees of that trust.

**DEED IN RELATION TO DEFERRED SELECTION PROPERTIES AND CASH
SETTLEMENT AMOUNT**

- 1.2 Unless the context requires otherwise:
 - 1.2.1 references in this deed to the schedule are to the schedule to this deed;
 - 1.2.2 terms or expressions defined in the deed of settlement have the same meanings in this deed; and
 - 1.2.3 the rules of interpretation in the deed of settlement apply (with all appropriate changes) to this deed.