

Kaipara Moana Remediation DEED OF FUNDING



Ministry for the
Environment
Manatū Mō Te Taiao

PART A: PROGRAMME AND PARTIES		
DEED OF FUNDING	The Joint Committee has been approved for a grant, administered by the Ministry. The grant is subject to the terms of this Deed. This Deed is made up of the following parts: <ol style="list-style-type: none">Part A: Programme and PartiesPart B: Special TermsPart C: General TermsAny Schedules and Annexures attached to this Deed or incorporated by reference.	
PROJECT NAME	Kaipara Moana Remediation Programme	
DEED NUMBER	[generated by MfE]	
TERM	Commencement Date:	The date this Deed is executed by all Parties.
	Expiry Date:	The date being the earlier of: <ol style="list-style-type: none">the termination of this Deed; andthe end of the Financial Year immediately following the establishment of the Future Kaipara Moana Body.
PROJECT PURPOSE	The purpose for which the grant is provided is to provide Crown funding to the Joint Committee via the Recipient to contribute towards the Joint Committee's delivery of the Project to remediate the Kaipara Moana by halting its degradation and working towards more productive, sustainable, and high value use of surrounding land.	
BACKGROUND	The Kaipara Harbour ("Kaipara Moana") is New Zealand's largest harbour and is suffering from decreased and degraded water quality issues.	

	<p>Ngā Maunga Whakahi o Kaipara Development Trust, Te Rūnanga o Ngāti Whātua, and Te Uri o Hau Settlement Trust (together “Kaipara Uri”) and Northland Regional Council, Auckland Council and the Ministry entered into a memorandum of understanding dated 9 October 2020 (“Memorandum of Understanding”), as annexed to this Deed as Annexure 2.</p> <p>The Memorandum of Understanding sets a framework for the Parties to formally engage with each other to determine mutually acceptable arrangements for the future of Kaipara Moana, its remediation and associated funding. This engagement aspires to a healthy and productive Kaipara Moana for Kaipara Uri and all New Zealanders of present and future generations.</p> <p>As anticipated in the Memorandum of Understanding, the Parties are now entering into this Deed to set out the terms and conditions of the Ministry’s funding towards the Project.</p> <p>The Crown and Kaipara Uri are parties to the Kaipara Moana Framework Agreement, dated 18 August 2014, which records the intentions of the Crown and Kaipara Uri to establish a Kaipara Moana body through legislation (“Future Kaipara Moana Body”) to provide for the involvement of Kaipara Uri in decisions on the Kaipara Moana, including through the preparation and approval of a Kaipara Moana Strategic Document setting out the issues, vision, and objectives for the Kaipara Moana.</p> <p>The Parties acknowledge that it will be some time until Future Kaipara Moana Body is established, but the Parties wish to commence the Project as soon as possible. To this effect the Parties, through the Memorandum of Understanding, have established the Joint Committee, being a joint committee under the Local Government Act 2002 to provide the initial engagement, stewardship and governance in respect of the Project.</p> <p>However, as the Joint Committee is not a legal entity itself and therefore cannot enter into its own contractual arrangements or hold bank accounts in its own name, the Parties have nominated the Northland Regional Council to be the recipient to receive the Grant funding under this Deed and hold and account for the same on trust to the benefit and direction of the Joint Committee’s collective governance.</p> <p>The Parties acknowledge that once the Future Kaipara Moana Body is established the arrangements in this Deed will no longer be required as the Future Kaipara Moana Body will be a legal entity and therefore be able to contract direct with the Ministry in regards to any subsequent funding and delivery in respect of the Project. It is intended that the Ministry and the Future Kaipara Moana Body will enter into a new funding deed, on terms similar to that provided for herein, to record the Ministry’s continued funding, and Future Kaipara Moana Body delivery, of the Project.</p>
SUMMARY OF KEY PROJECT REQUIREMENTS	The initial summary of key requirements, the Project objectives and activities are set out in the Year 1 Annual Work Plan.
PARTIES	
MINISTRY	THE SOVEREIGN in right of New Zealand, acting by and through the Secretary for the Environment
RECIPIENT	Northland Regional Council
MEMBER PARTIES	Ngā Maunga Whakahi o Kaipara Development Trust; Te Rūnanga o Ngāti Whātua; Te Uri o Hau Settlement Trust; Northland Regional Council; and

	Auckland Council, in their respective individual and separate capacities.	
JOINT COMMITTEE	Ngā Maunga Whakahī o Kaipara Development Trust; Te Rūnanga o Ngāti Whātua; Te Uri o Hau Settlement Trust; Northland Regional Council; and Auckland Council, in their joint capacity as members of the joint committee formed and established between them under the Memorandum of Understanding and Terms of Reference to oversee the stewardship, governance and direction of the Project.	
RECIPIENT CONTACT DETAILS	Postal address: Physical address:	
	MAIN CONTACT PERSON	BACKUP CONTACT PERSON
	Name: Title: Phone: Mobile: Email:	Name: Title: Phone: Mobile: Email:
JOINT COMMITTEE CONTACT DETAILS	Postal address: Physical address:	
	MAIN CONTACT PERSON	BACKUP CONTACT PERSON
	Name: Title: Phone: Mobile: Email:	Name: Title: Phone: Mobile: Email:
MINISTRY FOR THE ENVIRONMENT DETAILS	MAIN CONTACT PERSON	BACKUP CONTACT PERSON
	Name: Julia Price Title: Senior Analyst Phone: +64 211585590	Name: Jessica Dickinson Title: Analyst Phone: +64

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PART B SPECIAL TERMS

1. **Joint Committee:** The Member Parties will establish the Joint Committee as set out in and in accordance with the Memorandum of Understanding and Terms of Reference.
2. **Project Management:** The Joint Committee is responsible for appointing appropriately trained, qualified, and experienced personnel and ensure that the Project is appropriately managed and delivered in accordance with the Year 1 Annual Work Plan. The Joint Committee has appointed the main contact set out in Part A of this Deed or otherwise notified by the Joint Committee in writing.
3. **Ministry representative:** The Joint Committee agrees that the Ministry may, on written notice, appoint a Ministry representative (or representatives) to be present at meetings of the Joint Committee as an observer only. If appointed, the Joint Committee shall ensure the Ministry representative(s) is/are provided with reasonable prior notice of, and any relevant documentation in relation to, Joint Committee meetings. For the sake of clarity, the Minister representative(s) may not vote on any matter and may only talk to a matter if agreed to by the Chair of the Joint Committee.
4. **Programme Reporting:**
Annual Reports:
 - 4.1 The Joint Committee will submit to the Ministry an annual report that relates to the previous Financial Year by the date being four (4) months following the end of each Financial Year during the term of this Deed, or by such other later date to be agreed in writing by the Parties (each, an **"Annual Report"**).
 - 4.2 The Joint Committee will ensure each Annual Report:
 - (a) uses the template agreed between the Ministry and the Joint Committee, with that template to be agreed prior to the end of the first Financial Year;
 - (b) includes a comparison of the Project activities undertaken (including Deliverables and Project activities achieved and not achieved) for the previous Financial Year against those set out in the applicable Annual Work Plan and the Year 1 Annual Work Plan;
 - (c) in relation to funding and expenditure, sets out:
 - i. the amount budgeted for on the Project activities to be undertaken and a breakdown of the budgeted expenditure for the Financial Year;
 - ii. the amount spent on the Project activities and a breakdown of the expenditure in aggregate for the period starting on the Commencement Date and ending the last day of the previous Financial Year;
 - iii. confirmation and details of contributions made by the Member Parties:
 - (i) for the Financial Year; and
 - (ii) in aggregate for the period starting on the Commencement Date and ending the last day of the applicable Financial Year;
 - iv. the amount of Grant funding invoiced and received from the Ministry under this Deed for the Financial Year, the activities to which Grant funding was applied, and any amount not spent;
 - v. the amount and details of funding contributions from any other sources:
 - (i) applied to the Project activities; and
 - (ii) in aggregate of the period starting on the Commencement Date and ending the last day of the applicable Financial Year;
 - vi. a reconciliation of the Grant monies received from the Ministry and expenses paid with the Grant monies during the period covered by the report and any interest received by the Recipient on the Grant;
 - (i) during the Financial Year; and
 - (ii) in aggregate for the period starting on the Commencement Date and ending the last day of the applicable Financial Year; and
 - vii. any unspent Grant funding from the previous Financial Year that is to be carried over to the next;
 - (d) addresses any issues raised and provides any additional information reasonably requested by the Ministry;

- (e) provides an update of health and safety in relation to the Programme activities; and
 - (f) provides the Change Control Register (in accordance with paragraph 2.7 of Schedule 6).
- 4.3 The Joint Committee will prepare and submit each Annual Report to the Ministry for approval at the cost of the Joint Committee.
- 4.4 For the avoidance of doubt, the Recipient may hold and the Joint Committee may use Grant funding unspent in respect of a Financial Year in the following Financial Year.

Annual Report Issues:

- 4.5 If at any time during a Financial Year the Joint Committee reasonably considers that there are issues or risks or any matter detailed within the Annual Report for that Financial Year or Year 1 Annual Work Plan that may require discussion or action before the end of the Financial Year then the Joint Committee will submit a report to the Ministry on the same.

Audit Reports:

- 4.6 As part of each Annual Report the Recipient will submit (via the Joint Committee) an audit report to the Ministry in respect of the Grant funding received by the Recipient for the previous Financial Year (each, an **"Audit Report"**).
- 4.7 Each Audit Report must be prepared by an auditor (independent from the Recipient and the Recipient's related entities) who is a chartered accountant and the scope of the audit must include:
- (a) compliance with the terms and schedules of this Deed;
 - (b) appropriate use of the Grant funding and Project funding from other sources; and
 - (c) any other reasonable matter raised by the Ministry in relation to the proposed audit.
- 4.8 In the event that an audit reveals the Recipient has misappropriated or material discrepancies in the Recipient's accounting of the Grant funding, the Recipient will be liable for the repayment of any misappropriated Grant funding monies, in addition to any other rights or remedies that the Ministry may be entitled to under the terms of this Deed and at law.
- 4.9 In the event that an audit reveals a Member Party has misappropriated or material discrepancies in the Member Party's use of the Grant funding received via the Recipient, then that Member Party will be liable for the repayment of any misappropriated Grant funding monies, in addition to any other rights or remedies that the Ministry may be entitled to under the terms of this Deed and at law.
- 4.10 Special term 4.9 will also apply to each Member Party in performance of their obligations as the Joint Committee under this Deed.

Six Monthly Reports:

- 4.11 In addition to the Annual Work Plan, the Joint Committee will submit to the Ministry an abbreviated report that relates to the period from 1 July to 31 December in each Financial Year (save for the first Financial Year in which this Deed is entered into) by the date being two (2) months following 31 December, or by such other later date to be agreed in writing by the Parties (each, a **"Six-Month Report"**).
- 4.12 The Joint Committee will ensure that each Six-Month Report:
- (a) provides an update on progress towards delivering environmental outputs as outlined in the Annual Work Plan;
 - (b) where any formal training of personnel is funded by the Grant:
 - i. the number of personnel who undertook formal training;
 - ii. the number of personnel who completed that training; and
 - iii. the number of any New Zealand Qualifications Authority credits obtained by personnel undertaking that training,
 within the previous six-month period (together **"Trainees"**); and
 - (c) a financial summary that provides an update on expenditure to date, and invoice for the following 6-month period and corresponding projected expenditure for the following 6-month period tracked against the Annual Work Plan budget. The Joint Committee will supply this financial summary prior 30 November in each year.

Monthly Job Metrics:

- 4.13 With regard jobs which are funded wholly or partially from the Grant, the Joint Committee will report to the Ministry at the end of each month during the Term of this Deed with a calculation of:
- (a) the then current full-time equivalent personnel employed or contracted (**"FTEs"**); and

- (b) the number of new FTEs in the previous month, (each, a “**Job Metric Report**”).
- 4.14 For clarification, the calculation of the Trainees and FTEs under special terms 4.124.12(b) and 4.13 respectively will include personnel employed or contracted or training directly with a Member Party (or any entity created by the Joint Committee or a Member Party for the purposes of delivering the Project) or any contractor contracted in the delivery of the Project.
- 4.15 The Ministry acknowledges the Joint Committee will use reasonable endeavours to provide accurate reporting under special terms 4.124.12(b) and 4.13 respectively and in some circumstances may supply the Ministry with an estimate of these figures.

5. Approval of Reports

- 5.1 The Ministry will consider the Annual Report or Six-Month Report submitted to it under special term 4 and notify the Joint Committee in writing within twenty (20) Working Days (time being of the essence) of receipt whether the Ministry:
 - (a) accepts the report, or
 - (b) requests reasonable modifications to the report, such request to be accompanied by the Ministry's rationale for the modification request.
- 5.2 If the Ministry accepts the Annual Report or Six-Month Report or does not reply in the timeframe provided for in special term 5.1 above, then the relevant report will be deemed to be accepted.
- 5.3 Where the Ministry requests reasonable modifications to any Annual Report or Six-Month Report submitted to it under special term 5.1, the Joint Committee will promptly and as it reasonably considers appropriate update the report accordingly and resubmit to the Ministry for its subsequent review in accordance with special term 5.1, save that the time period for the Ministry's review of the same will reduce to five (5) Working Days (time being of the essence).
- 5.4 Where the Ministry and the Joint Committee disagree on any modifications requested by the Ministry or suggested by the Joint Committee the appointed representatives of the Minister and Joint Committee will discuss matters related to the report.
- 5.5 The parties acknowledge that the Job Metric Reports are submitted on an information basis only and no consideration or approval will be required in respect of these reports.

6. Annual Work Plans

- 6.1 The Parties acknowledge that the Year 1 Annual Work Plan is the Annual Work Plan applicable from the Commencement Date until 30 June 2021.
- 6.2 The Joint Committee shall prepare a draft Annual Work Plan for each Financial Year of the Term and submit this draft to the Ministry for review and comment by 30 April of each year of the Project. The Parties acknowledge that should an Annual Work Plan not be provided by 30 April it can be provided later; however, this may delay the payment of the associated Grant funding.
- 6.3 The Joint Committee will ensure that each Annual Work Plan:
 - (a) uses the template form agreed between the parties under special term 4.2(a);
 - (b) details the budget and funding sources for all Project activities;
 - (c) details the amount of funding required from all sources;
 - (d) details the amount of Grant funding required from the Ministry in the first six (6) months of the relevant Financial Year (**First Payment**) and the amount of Grant funding required from the Ministry in the second six (6) months of the relevant Financial Year (**Second Payment**);
 - (e) details the Project activities and associated Deliverables; and
 - (f) details any statutory permissions or consents required to undertake any of the proposed Project activities.

7. Review of Annual Work Plans

- 7.1 The Ministry will consider the draft Annual Work Plan submitted to it and notify the Joint Committee in writing within twenty (20) Working Days (time being of the essence) of receipt whether the Ministry:
 - (a) accepts the draft Annual Work Plan; or

- (b) requests reasonable modifications to the draft Annual Work Plan, such request to be accompanied by the Ministry's rationale for the modification request.
- 7.2 If the Ministry accepts the draft Annual Work Plan or does not reply in the timeframe provided for in special term 7.1 above, then it will be deemed to be incorporated into and form part of this Deed from the date of the notice. For the avoidance of doubt, acceptance of a draft Annual Work Plan is not subject to the Change of Control Process in Schedule 6.
- 7.3 Where the Ministry requests reasonable modifications to a draft Annual Work Plan, the Joint Committee will promptly and as it reasonably considers appropriate update the draft Annual Work Plan accordingly and resubmit to the Ministry a revised and final Annual Work Plan for subsequent review under special term 7.1, save that the time period for the Ministry's review of the same will reduce to five (5) Working Days (time being of the essence). Upon the Ministry's approval of the resubmitted Annual Work Plan it will be deemed to be incorporated into and form part of this Deed from the date of the resubmission.
- 7.4 Save as otherwise provided for in the Year 1 Annual Work Plan or a finalised Annual Work Plan, the Joint Committee must not begin delivering any new Project activities and Deliverables for a particular Financial Year that are intended to be funded by the Grant until the Annual Work Plan has been finalised in accordance with this special term 7.
- 7.5 The Ministry will make payment of the First Payment and Second Payment for each Financial Year following the Ministry's approval of the Annual Work Plan received from the Joint Committee and valid tax invoices received from the Recipient.
- 7.6 Where an Annual Work Plan has been submitted to the Ministry but is yet to be finalised in accordance with this special term 7, then, to enable continuity of the Project programme, the Ministry will advance that portion of the Grant funding for those Project activities and Deliverables set out in the draft Annual Work Plan that it does agree with as if and on the basis that the Annual Work Plan has been agreed and finalised.
- 7.7 In the event this Deed is entered into without a Year 1 Annual Work Plan attached, then the Joint Committee will prepare and submit the same to the Ministry on the same basis as an Annual Work Plan as detailed in special terms 6 and 7.

8. Remedial Plan:

- 8.1 If at any time:
 - (a) the Ministry considers that the Recipient or a Member Party or the Joint Committee (within this clause 8 the "**Breaching Party**") has breached, or will imminently breach, any of its obligations under this Deed; or
 - (b) the Breaching Party has given the Ministry notice of a breach or likely breach of any of its obligations under this Deed,
 (in each case a "**Delivery Issue**"), the Ministry may give notice to the Breaching Party (with a copy to the Joint Committee if not the Breaching Party) setting out the Delivery Issue ("**Delivery Notice**").
- 8.2 As soon as practicable after receipt of a Delivery Notice (and in any event within three (3) Working Days of receipt) the Breaching Party will consult with the main contact of the Ministry as set out in Part A of this Deed or otherwise notified by the Ministry in writing.
- 8.3 As soon as reasonably practicable after receipt of a Delivery Notice the Breaching Party will prepare and provide to the Ministry (with a copy to the Joint Committee if not the Breaching Party) a proposed plan setting out ("**Remedial Plan**"):
 - (a) full details of the Delivery Issue (including its causes, expected duration and impact on the Project and the Breaching Party's obligations under this Deed);
 - (b) a plan (including defined timeframes setting out the steps it will take to eliminate, and mitigate the effect of, the Delivery Issue and prevent the Delivery Issue from recurring, as applicable; and
 - (c) success criteria to determine whether the Delivery Issue has been rectified ("**Success Criteria**").
- 8.4 The Breaching Party will (as soon as reasonably practicable following receipt of a request by the Ministry) make such amendments to the proposed Remedial Plan as the Ministry may reasonably require and deliver the amended Remedial Plan to the Ministry for review (with a copy to the Joint Committee if not the Breaching Party).
- 8.5 The Ministry will review the amended Remedial Plan and will promptly at its sole discretion (and, in any event, within five (5) Working Days of receipt) either:
 - (a) approve the Remedial Plan by written notice to the Breaching Party;
 - (b) notify the Breaching Party of any amendments required to the Remedial Plan; or

- (c) issue to the Breaching Party a further notice which specifies that the relevant Delivery Issue has not been remedied.
- 8.6 If the Ministry approves the Remedial Plan, the Breaching Party will implement the Remedial Plan in accordance with its terms and this Deed.
- 8.7 The Ministry agrees to follow the process set out in special terms 8.1 - 8.5 before:
 - (a) exercising its rights under clause 5.4(a) to reduce the Grant; or
 - (b) exercising its rights under clause 5.5 to terminate this Deed, unless the Ministry at its sole discretion considers the circumstances are a material breach of this Deed that is not capable of remedy; or
 - (c) claiming any or all of the Clawback Amount under clause 2.8 of Schedule 4 (Capital Assets) of this Deed.

For the avoidance of doubt, the fact that the Ministry follows the process in special terms 8.1 - 8.5 does not prevent it from subsequently exercising the rights referred to in special terms 8.7 (a) and (b) above.

- 8.8 The exercise, or deferral, by the Ministry of its rights in this special term 8 will be without prejudice to any other rights of remedies of the Ministry under this Deed or otherwise.

9. Payment of Funding

- 9.1 Subject to special term 9.2, in each Financial Year the Grant funding is the amount set out in the Annual Work Plan as the amount to be paid by the Ministry.
- 9.2 Subject to the Annual Work Plan requirements set out in special term 7, in each Financial Year, the Ministry shall pay to the Joint Committee (via the Recipient) the Grant funding amount set out in the Year 1 Annual Work Plan or Annual Work Plan. Payment shall be made, following the Ministry's receipt of a valid tax invoice from the Recipient as follows:
 - (a) in the 2020/21 Financial Year, the Initial Amount (set out in clause 2.1 of Part C) or any portion of the Initial Amount as specified in the Year 1 Annual Work Plan before the date being ten (10) Working Days following the date on which the Ministry receives a valid tax invoice from the Recipient; and
 - (b) subject to the satisfaction of the condition subsequent at special term 10.1, and if applicable, any Financial Year thereafter during the term of this Deed:
 - i. the First Payment within ten (10) Working Days of the final Annual Work Plan being provided to the Ministry under special term 7; and
 - ii. the Second Payment on 1 January of the relevant Financial Year.
- 9.3 The parties acknowledge that if any portion of the Initial Amount has not been invoiced by the Recipient in the 2020/21 Financial Year (and subject to the satisfaction of the condition subsequent at special term 10.1) then the Recipient may invoice the Ministry for the remainder of the Initial Amount in subsequent Financial Years.

10. Further Funding:

- 10.1 It shall be a condition subsequent to the payment of any Grant funding in the 2021/22 Financial Year, and if applicable, any Financial Year thereafter that Auckland Council and Northland Regional Council (at their respective discretion) committing to co-fund (whether through direct funding, financing, staff and resource allocation or otherwise) the Project through their respective Long-Term Plans, in combination with other third-party contributions (i.e., landowner, industry association, philanthropic), to the total of \$100 million (the "**Co-funding**"). The Co-Funding, for the first year of this Deed, will be up to \$1 million from Auckland Council and up to \$500,000 from Northland Regional Council.
- 10.2 The condition subsequent at special term 10.1 is inserted for the benefit of the Ministry and the Ministry may, at its discretion and on written notice to the Member Parties waive or defer the satisfaction of the same.
- 10.3 Any extension of this Deed's duration and change to the Grant amount specified in clause 2.1(a) of Part C will comply with clause 3.2 (Changes) of Part C to this Deed.
- 10.4 Further to clause 2.2 (Maximum) of Part C to this Deed, the Joint Committee acknowledges and agrees that the availability of further Grant funding is not guaranteed.

11. Grant Administration:

From the Commencement Date, the Recipient will establish and maintain for the duration of this Deed a reserve account representing the accumulated balance of the Grant. This reserve account will only be used for the purposes of receiving and distributing the Grant. The Recipient will include an interest

calculation on its monthly closing balance in that reserve account at the deposit/investment monthly average interest rate. Any interest calculation shall be notified to the Ministry in each Annual Report required by special term 3.

12. Co-funding:

Further to clause 2.6 (Full Funding) of Part C of this Deed, in the event that the Annual Work Plan or Year 1 Annual Work Plan states the Joint Committee has or will obtain any Co-Funding, then the Joint Committee must as soon as reasonably practicable notify the Ministry if it becomes aware of any circumstances that may result in some or all of the Co-Funding not being secured and available to the Joint Committee.

13. COVID-19 Pandemic:

The Joint Committee confirms that it is able to meet its obligations as contained in this Deed, on the basis of the Government imposed restrictions in place as a result of the COVID-19 pandemic as at the Commencement Date. The Joint Committee will take appropriate steps to address any potential risks to and impacts upon the successful delivery of the Project, which may include requesting the Project be suspended or varied in accordance with the terms of this Deed.

14. Te Roroa:

The parties acknowledge that Te Roroa may wish to enter into this Deed in the capacities of a Member Party and member of the Joint Committee at a future date. Should Te Roroa, with the agreement of the other contracting parties, enter into the Memorandum of Understanding and the Joint Committee then the Parties will enter into such amendment and variation of this Deed as is required to incorporate Te Roroa as a Member Party and member of the Joint Committee herein.

PART C: GENERAL TERMS

Section 1: Definitions and Interpretation

1. Definitions and Interpretations:

1.1 In this Deed, unless the context requires otherwise, the following definitions shall apply:

“Annual Work Plan” means the annual plan prepared by the Joint Committee, detailing Year 1 Annual Work Plans, budgets and funding sources, Project activities and Deliverables for a particular Financial Year (or part thereof) of the Project;

“Capital Assets” means those assets used in the production of goods or the rendering of services by a Member Party that are acquired, enhanced or brought to working order, by the Joint Committee using an amount of the Grant but exclude the Excluded Assets;

“Capital Costs” means costs incurred by the relevant Member Party in acquiring an asset, enhancing an asset or in bringing an asset to working order or to a state in which it can produce the goods or render the services as required for the Project;

“Clawback Amount” means an amount calculated as follows:

Clawback Amount = $G - (G \times (x/y))$,

Where, for the relevant Capital Asset:

G = that amount of the Grant applied to Capital Costs

x = the number of whole calendar months since the first payment of that part of the Grant applied to Capital Costs

y = the number of months of the restriction period set out in Schedule 4;

“Commencement Date” means the date specified in Part A of this Deed;

“Deed” means this deed comprising Parts A-C of this deed, and any and all Schedules, Annexures, Year 1 Annual Work Plan and Annual Work Plans attached or incorporated by reference;

“Deliverable” means any deliverable to be completed as part of the Project as set out in the relevant Annual Work Plan;

“Excluded Assets” mean any asset that in the course of undertaking and facilitating the Project and its Deliverables have, and in the normal course would have, vested and/or transferred to a third party including, by way of example only, fences, plants and other improvements to land;

“Expiry Date” means the date specified in Part A of this Deed;

“Financial Year” means any twelve (12) calendar month period, or part period thereof, commencing on 1 July;

“Force Majeure Event” means:

- (a) fire, explosion, lightning, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, epidemic or pandemic, riot and civil commotion;
- (b) failure by any utility company or other like body to carry out works or provide services;
- (c) any failure or shortage of fuel or transport;
- (d) war, civil war, armed conflict or terrorism;
- (e) any official or unofficial strike, lockout or other labour dispute;
- (f) governmental action; or
- (g) such other substantially similar circumstances which prevents a Party from performing its obligations under this Deed;

“Grant” means the sum of funding provided by the Ministry to the Recipient pursuant to this Deed, initially being the amount specified at clause 2.1 of Section 2;

“Insolvency Event” means:

- (a) the Recipient is unable or is deemed to be unable to pay its debts when they fall due;

- (b) a receiver, liquidator or other encumbrancer is appointed to the Recipient or to any part of its assets or undertakings;
- (c) a compromise or arrangement is proposed or made between the Recipient and its creditors or any class of them;
- (d) any indebtedness of the Recipient is not paid when due or shall become due and payable or steps are taken to enforce any charge, mortgage or Security Interest for such indebtedness; and/or
- (e) any present or future charge, mortgage or Security Interest over or in respect of any of the assets of the Recipient becomes enforceable or is enforced;

"Intellectual Property" means all manner of intellectual property rights including (without limitation) patents, trademarks and service marks, logos, copyright, design rights and know-how whether registrable or not in any country;

"Joint Committee" means together initially Ngā Maunga Whakahī o Kaipara Development Trust, Te Rūnanga o Ngāti Whātua, and Te Uri o Hau Settlement Trust, Northland Regional Council and Auckland Council as defined formed and established between them under the Memorandum of Understanding and Terms of Reference, each contracting individually to this Deed;

"Minister" means the Minister for the Environment;

"Parties" means together the parties to this Deed and **"Party"** means any one of them;

"Member Parties" means together initially Ngā Maunga Whakahī o Kaipara Development Trust, Te Rūnanga o Ngāti Whātua, and Te Uri o Hau Settlement Trust, Northland Regional Council and Auckland Council as defined in the Memorandum of Understanding and **"Member Party"** means any one of them, each contracting as individuals to this Deed;

"Project" means the Kaipara Moana Remediation Programme and the projects and activities to be undertaken by the Joint Committee in accordance with this Deed;

"Project Closure Report" means the project closure report prepared by the Joint Committee in accordance with clause 4.9;

"Project Costs" means those costs incurred by the Member Parties that are reasonable (including the costs associated with administering and participating in the Joint Committee) and either:

- (a) directly attributable to the Deliverables; or
- (b) if they cannot be directly attributed to the Deliverables, can be allocated to the Project in accordance with a standard cost allocation system and cost drivers,

measured in standard accrual accounting terms but excluding:

- (c) any mark up or profit margin by the Member Party; and
- (d) any costs based on theoretical or perceived market rates;

"Restriction Period" means in respect of each Capital Asset, a period of sixty (60) months from the date of first payment of any portion of the Grant is applied to relevant Capital Costs;

"Security Interest" has the meaning given to that term in the Personal Property Securities Act 1999;

"Terms of Reference" means the terms of reference set out in the Memorandum of Understanding describing the functions, make-up and procedure of the Joint Committee;

"Working Day" has the same meaning as defined in the Property Act 2007; and

"Year 1 Annual Work Plan" means the work plan prepared by the Joint Committee covering the life of the Project but particularly focused upon the period between the Commencement Date until the end of the first Financial Year and attached at Annexure 1 to this Deed.

1.2 In the interpretation of this Deed, unless otherwise stated:

- (a) no executive or prerogative power or right, or any immunity, of the Crown is affected by this Deed;
- (b) "including" and similar words do not imply any limitation;
- (c) reference to the singular includes the plural and vice versa and references to any gender includes both genders;
- (d) headings are included for ease of reference only and shall not affect the interpretation of this Deed;
- (e) references to clauses and schedules are references to clauses of and schedules to this Deed;
- (f) amounts are in NZ\$ and exclude GST (if any);

- (g) if the Recipient or Member Party or Joint Committee comprises more than one person, each of those person's liability to the Ministry is joint and several;
- (h) references to a party or a person includes any form of entity and their respective successors, assigns and representatives; and
- (i) any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.3 **Precedence:** In the event of a conflict between:

- (a) the terms of Part B and Part C of this Deed, Part B (Special Terms) shall take precedence;
- (b) Parts A-C of this Deed, and any other Schedule or attachment (including the Year 1 Annual Work Plan and Annual Work Plans), Parts A-C of this Deed shall take precedence;

except to the extent the Parties expressly agree in writing otherwise with reference to this clause 1.3.

Section 2: The Grant

2. The Grant:

- 2.1 **Initial Grant amount:** The Ministry approves the Grant for the Project for the 2020/2021 Financial Year of twelve million dollars (\$12,000,000) ("**Initial Amount**").
- 2.2 **Balance Grant amount:** The Parties acknowledge that, subject to special term 10, Schedule 5, and all other respective obligations and limitations within this Deed, it is intended that the Ministry will contribute up to one hundred million dollars (\$100,000,000) towards the Project, twelve million dollars (\$12,000,000) for the 2020/2021 Financial Year (as above) and the balance over the subsequent five (5) years.
- 2.3 **Maximum:** Under no circumstances shall the Grant funding payable to the Joint Committee via the Recipient exceed the amount specified in 2.2.
- 2.4 **Multi-year Projects:** If the Project spans or shall span over multiple Financial Years, the terms in Schedule 5 (Multiyear Projects) shall apply.
- 2.5 **Capital Assets:** The terms in Schedule 4 (Capital Assets) shall apply to Capital Assets (if any).
- 2.6 **Full funding:** The Joint Committee warrants and represents that, as at the Commencement Date, it will not require any further funding from the Ministry for the 2020/2021 Financial Year in respect of the Project.
- 2.7 **Use of Grant:** The Recipient and Joint Committee must only use the Grant for the purposes of the Project and in accordance with this Deed. In particular, the Joint Committee shall:
 - (a) ensure that the Grant is only used for costs that are Project Costs;
 - (b) ensure that expenses incurred in carrying out the Project are reasonable;
 - (c) only use that part of the Grant for Capital Costs identified within the Year 1 Annual Work Plan or an Annual Work Plan approved by the Ministry;
 - (d) account for the Grant received under this Deed in accordance with generally accepted accounting practices, with appropriate internal controls to ensure that the Grant is applied for the purposes of this Deed;
 - (e) establish, and maintain for the period of the Project, cost codes that relate specifically to all costs incurred for the purposes of this Project so that the Project Costs can be categorised and reported by their nature;
 - (f) comply with any cost policies provided by the Ministry from time to time in relation to the accounting treatment of Project Costs and use of the Grant;
 - (g) ensure that the Grant is used to fund the Project Costs incurred by a Member Party or subcontractor specified in the Annual Work Plan, when those costs are properly due and payable;
 - (h) follow appropriate procurement processes when buying goods or services for the Project so that only reasonable, open market costs are incurred on an arm's length basis managing any conflict of interest. If there is a conflict of interest such conflict must be declared to the Ministry and managed appropriately by the Joint Committee;
 - (i) not claim for costs or expenses that have been, or will be, claimed from other sources, except as expressly provided for in this Deed or identified within an Annual Work Plan approved by the Ministry; and

- (j) not claim or use any part of the Grant to support or assist activities which are political (e.g. supporting a political party or movement, running a political campaign, or lobbying against the Government).
- 2.8 **Expenses:** The Joint Committee will formulate and establish its own expense policy by reference to the cabinet guidelines and the existing arrangements of Auckland Council and Northland Regional Council.
- 2.9 **Public statements:** Before making any public statement in respect of this Deed or the Grant the Party wishing to make such a statement will request feedback from the other Parties and consider such feedback.
- 2.10 **No Retrospective Costs:** The Ministry will not be liable for any costs or liabilities incurred by the Member Parties in relation to the delivery of the Project prior to 9 October 2020, being the date of each council's formal resolution to sign the Memorandum of Understanding.
- 2.11 **Costs included as part of Council co-funding:** Northland Regional Council and Auckland Council may include any reasonable cost they have incurred on the Project since 9 October 2020 (inclusive), being the date of each council's formal resolution to sign the Memorandum of Understanding, as part of their individual contribution to the co-funding of the Project.
- 2.12 **Early Costs Recovery:** The Ministry acknowledges and agrees that the Recipient, at the Joint Committee's direction, may repay, out of the Initial Funding, the Northland Regional Council and Auckland Council for any sums spent on the Project for the period from 9 October 2020 to the date immediately prior to the Commencement Date (both dates inclusive). If the Northland Regional Council and Auckland Council are repaid as provided for in this clause 2.12 then the Northland Regional Council and Auckland Council will not account for the same expenditure as part of their individual contribution to the co-funding of the Project under clause 2.11.

Section 3: General Terms and Conditions

3. General Terms and Conditions:

- 3.1 **Entire Agreement:** This Deed (including the Year 1 Annual Work Plan, Annual Work Plans and attachments) contains everything the Parties have agreed on in relation to the Grant. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, save as permitted by law.
- 3.2 **Changes:** Any variation to this Deed (including variations to the Year 1 Annual Work Plan, the Annual Work Plans) must be in accordance with Schedule 6 (Change Control Process).
- 3.3 **Severability:** If any term of this Deed becomes or is declared by any court to be invalid or unenforceable in any way:
 - (a) such invalidity or unenforceability shall in no way impair or affect the remainder of the Deed which will remain in full force and effect; and
 - (b) the invalid or unenforceable term will be replaced with a provision which as far as possible accomplishes the original purpose of the term.
- 3.4 **Waiver:** Any delay or failure by a Party at any time to exercise (in whole or in part) any right or remedy under this Deed shall not be construed as a waiver of any such right or remedy and shall not affect the validity of this Deed (in whole or in part). No waiver shall be effective unless it is expressly stated in writing to be a waiver and communicated to the other Parties in writing. Any waiver will not constitute a waiver of any subsequent exercise of the same right or remedy in the future.
- 3.5 **Governing Law and Jurisdiction:** This Deed is governed by the laws of New Zealand and the Parties submit to the exclusive jurisdiction of New Zealand's courts.
- 3.6 **Dispute Resolution Procedure:** If any dispute arises out of or in connection with this Deed, the dispute will be referred to the dispute resolution process provided for in the Memorandum of Understanding as if that were incorporated in this Deed in full *mutatis mutandis*.
- 3.7 **Intellectual Property Rights:**
 - (a) Intellectual Property owned by a Party or its licensors prior to the Commencement Date and Intellectual Property developed by a Party independently from this Deed, remains the property of that Party or its licensors as the case may be.
 - (b) Intellectual Property developed by the Joint Committee, whether before or following the Commencement Date, remains the property of the Joint Committee and will be treated in accordance with the Memorandum of Understanding.
 - (c) Subject to clause 3.7(a), any Intellectual Property created or developed in the course of the Project shall become the property of the Joint Committee.

- 3.8 **Third Party Rights:** Unless expressly stated no part of this Deed shall create rights in favour of any third party pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (contractual privity).
- 3.9 **Term:** This Deed shall commence on the Commencement Date and shall, subject to rights of termination under this Deed, continue in force until the Expiry Date.
- 3.10 **Consequences of Expiry / Termination:** Termination of this Deed shall be without prejudice to any rights or liabilities accrued at the date of termination, provided that the Ministry shall cease to have any obligation to pay the Grant to the Recipient.
- 3.11 **Notices:** Any notice given under or pursuant to this Deed shall be in writing and signed by an authorised person and may be delivered personally by hand, post or email to the other party at the address stated in this Deed. Notices shall be deemed delivered as follows:
- (a) if delivered personally by hand, at the time of delivery;
 - (b) if posted, on the third (3rd) Working Day after posting;
 - (c) if emailed, on the day of successful transmission as confirmed by the email system; and
 - (d) if delivered after 5pm, at 9am the next Working Day.
- 3.12 **Counterparts:** This Deed may be executed by the Parties in two or more counterparts (including scanned and emailed PDF copies), each of which shall be deemed an original but when taken together will constitute a binding and enforceable agreement between the Parties.
- 3.13 **Force Majeure:** A Party ("**the affected party**") shall not be liable to the other Parties for any delay or failure to perform any of their obligations under this Deed if such delay or failure results from a Force Majeure Event, provided that where a Party seeks to rely upon this clause:
- (a) As soon as reasonably practicable following the affected party becoming aware of the Force Majeure Event, it shall notify the other Parties and confirm the estimated period that the delay or failure may continue.
 - (b) The affected party shall use its reasonable endeavours to continue to perform its obligations under this Deed and minimise the effect of the event for the duration of any Force Majeure Event.
 - (c) If any Force Majeure Event prevents the affected party from performing its obligations under the Deed for a period in excess of thirty (30) calendar days, then Party may terminate the Deed by notice in writing with immediate effect.
- The affected party will not be entitled to relief under this clause in any circumstances to the extent it has caused or substantially contributed to any delay or failure in the performance of its obligations.
- 3.14 **Survival:** The following clauses shall remain in full force and effect after expiry or termination:; clauses 2.9 (No Retrospective Costs), 3.5 (Governing Law and Jurisdiction), 3.6 (Dispute Resolution Procedure), 3.7 (Intellectual Property Rights), 3.11 (Notices), 4.5 (Endorsement), 4.6 (Publications), 4.7 (Project Information), 4.10 (Allow Access), 4.11 (Confidentiality), 4.12 (Recordkeeping), 4.13 (Official Information Requests), 4.14 (Reputations), 4.15 (Third Party Intellectual Property Rights), 4.20 (Insurance), 4.23 (Default Interest), 4.24 (Indemnity), 5.3 (Project Review), 5.4 (Ministry Publicity and Confidentiality), 5.5 (Recovery of Grant), 5.9 (Ministry Not Liable), Schedule 2 (Publications), Schedule 3 (Audit), Schedule 4 (Capital Assets), Schedule 5 (Multiyear Project), Schedule 6 (Change Control Process), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

Section 4: Joint Committee's Rights and Obligations

4. Joint Committee's Rights and Obligations:

- 4.1 **Programme Delivery:** The Joint Committee must carry out the Project and complete the Deliverables in accordance with the Year 1 Annual Work Plan and Annual Work Plans, the terms and conditions of this Deed. In particular, the Joint Committee shall:
- (a) comply with all New Zealand laws, codes and standards and all applicable international conventions; and
 - (b) obtain every necessary and prudent authorisation in order to carry out the Project before any actions requiring the authorisations are commenced and comply with such consent or authorisation.
- 4.2 **Keep the Ministry Informed:** The Joint Committee shall keep the Ministry properly informed in writing (and in electronic form if requested) about:
- (a) progress any important issues in relation to the Project including notifying the Ministry immediately if it becomes aware of any issues that may affect delivery of the Project in accordance with the Year 1

Annual Work Plan or an Annual Work Plan that may require any material changes to be made in relation to the Project, or that might give rise to liability or enforcement action under any laws and obligations; and

- (b) any enforcement action commenced against the Member Parties under any laws, regulations, codes, standards or applicable international convention, in relation to the Project or its role in the Joint Committee.
- 4.3 **Endorsement:** The Joint Committee acknowledges and agrees that the Minister does not necessarily endorse the Project and accordingly the Joint Committee shall not represent that the Minister endorses the Project. However, the Joint Committee will appropriately acknowledge the Grant in all publications and publicity about the Project, and the form and content of such acknowledgement shall comply with Schedule 2 (Publications).
- 4.4 **Publications:** The Joint Committee shall comply with the requirements detailed in Schedule 2 (Publications) in respect of any publication (in any form) arising from this Deed or the Grant.
- 4.5 **Post-Programme review:** The Joint Committee agrees that following the Expiry Date, it shall provide access to its personnel and make information available as reasonably required by the Ministry for the purposes of reviewing the Project and/or the Grant.
- 4.6 **Programme Closure Report:** At the completion of the Project the Joint Committee will prepare a Programme Closure Report and submit it to the Ministry no later than three (3) months after the Expiry Date. The Programme Closure Report is to include:
 - (a) an assessment of the extent to which the Project objectives (agreed in the Year 1 Annual Work Plan) have been achieved;
 - (b) a comparison of the Project's activities undertaken during the Term against those set out in each of the Annual Work Plans;
 - (c) identification of any lessons learned through the delivery of the Project;
 - (d) the budget for the Project activities set out in the Year 1 Annual Work Plan and the Annual Work Plans, the actual amount spent and variance for the Term;
 - (e) a reasonable breakdown of expenditure;
 - (f) confirmation and details of contributions made by the Member Parties;
 - (g) the amount of the Grant received and the activities to which it was applied; and
 - (h) the amount and details of contributions from any other funding source towards the Project,

provided that no such report will be required from the Joint Committee if the Future Kaipara Moana Body is established and continues with the Project.
- 4.7 **Allow Access:** The Recipient and the Joint Committee agree that upon the Ministry's request it shall provide, at all reasonable times and upon reasonable notice, reasonable access to their premises, personnel and records (physical files and electronic) for the purpose of audit and verification of work undertaken, use of the Grant and other reasonable purposes in connection with this Deed in accordance with Schedule 3 (Audit) and completion of the Post-Programme review in accordance with clause 4.5.
- 4.8 **Confidentiality:** Confidential information between the parties shall be treated as provided for in the Memorandum of Understanding as if the confidential information provisions were incorporated in this Deed in full *mutatis mutandis*.
- 4.9 **Recordkeeping:** The Recipient shall keep accounts (to Generally Accepted Accounting Practice standards) and other records, which enables prompt and accurate verification of any matter in relation to the Project, particularly about how the Grant has been or will be used, and what expenditure by item has been incurred. Records must be retained and available for review, audit, copying and use by the Ministry's representatives at any time during, and for at least 7 years after the Expiry Date.
- 4.10 **Official Information Requests:** The Parties will inform each other of any request received for information under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987.
- 4.11 **Third Party Intellectual Property Rights:** The Joint Committee:
 - (a) warrants that it has a legal entitlement to use the Intellectual Property provided as part of the Deliverables and that providing the Deliverables does not infringe the Intellectual Property of any third party; and
 - (b) indemnifies the Ministry against any claim arising from the Joint Committee's infringement or alleged infringement of any third party's Intellectual Property.

- 4.12 **Representations and Warranties:** Each Member Party represents and warrants (in its various capacities under this Deed) to the Ministry that:
- (a) it has full power and authority to enter into and perform this Deed and this Deed has been executed by a duly authorised representative of the Member Party;
 - (b) all information, documents and accounts of the Member Party submitted to the Ministry for its appraisal of the Project for the purposes of this Deed are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Recipient since such information was provided; and
 - (c) the Member Party has disclosed to the Ministry all information which would or might reasonably be thought to influence the Ministry in awarding the Grant to the Joint Committee or the amount thereof.
- 4.13 **Assignment:** No party may assign its rights under this Deed.
- 4.14 **Subcontracting:** A party may sub-contract any of its obligations or make any sub-grant under this Deed but such party continues to be responsible for delivery of the Project and its performance under this Deed and will remain wholly responsible for the work, acts and/or omissions of its subcontractor or subgrantees.
- 4.15 **Relationship and Authority:**
- (a) Nothing in this Deed shall constitute a partnership (being a relationship between persons carrying on a business in common with a view to profit), joint venture, principal/agent or employer/employee relationship between the Parties for any purposes. The relationship between the Parties is a relationship only for the supply of funding on the terms set out in this Deed.
 - (b) The Recipient and Joint Committee may not say or do anything on behalf of the Ministry (or the Minister).
- 4.16 **Insurance:** Each Member Party warrants that it has public liability insurance. Each Member Party shall provide the Ministry with evidence of such cover if requested.
- 4.17 **Financing Statements:** The Recipient agrees to not register a financing statement against the Ministry, the Minister or the New Zealand Government on the Personal Property Securities Register in respect of the arrangements under this Deed.
- 4.18 **Default Interest:** If the Recipient fails to pay, when due, an amount payable by it under this Deed then, without prejudice to its other obligations, the Recipient will pay default interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Ministry (after as well as before judgment) payable daily and to the extent not paid in any calendar month compounded on the first day of the next calendar month. This obligation to pay default interest will arise without the need for notice or demand. The rate of default interest in a calendar month will be 5 per cent per annum above the Ministry's cost of funds (expressed as an annual percentage rate) from whatever sources the Ministry may select, calculated on a daily basis.
- 4.19 **Acknowledgement:** The Joint Committee acknowledges the intention of the Ministry to enter in to a new funding deed with the Future Kaipara Moana Body in the event it is established, that reflects the Vision of the Memorandum of Understanding (at point 2 of the Memorandum of Understanding) and wherever practicable on terms similar to that provided herein.

Section 5: Ministry's Rights and Obligations

5. Ministry's Rights and Obligations:

- 5.1 **Payment:** The Ministry shall pay the Grant to the Recipient upon, subject to:
- (a) the Recipient's and Joint Committee's compliance with the terms of this Deed (including the Year 1 Annual Work Plan, Annual Work Plans and the special terms); and
 - (b) the availability of funds due to changes in the appropriation of funding for activities of the type covered by this Deed as a result of an Act of Parliament or the directives of the New Zealand Government.
- 5.2 **Invoice:** Payment of any Grant monies is not due until the Ministry has received and approved from the Recipient, in accordance with special term 9 (Payment of Funding), all supporting documentation required by the Ministry. Sufficient evidence of the costs budgeted by the Recipient for undertaking the Project, requested by the Ministry from time to time, shall be provided promptly upon the Ministry's request.

5.3 **Ministry Publicity and Confidentiality:** The Ministry may disclose (including via the Ministry's website on the Internet) any information in relation to the Project to anyone at any time. However, the Ministry shall not publicly disclose information that is:

- (a) the intellectual property of another Party;
 - (b) confidential information of another Party (save as provided for at clause 4.8);
 - (c) deemed by the Ministry to be commercially sensitive,
- except:
- (d) with the prior written consent of the relevant other Party;
 - (e) as necessary to fulfil the Ministry's obligations in this Deed;
 - (f) to the extent the information is in the public domain (other than through a breach by the Ministry of its obligations in this clause);
 - (g) as otherwise required by law, including the Ministry's obligations under the Official Information Act 1982, the Privacy Act 1993 and any other legislation or regulations relevant to its operations and nothing in this Deed applies to any disclosure required under any such legislation or regulations; or
 - (h) as required by a Select Committee or a Minister of the Crown, parliamentary convention or by procedures in relation to the appropriation of public money.

5.4 **Reduction of Grant:**

- (a) Subject to special item 8.7, the Ministry may reduce, suspend, or withhold the Grant, if:
 - i. the Ministry judges the performance of the Project to be unsatisfactory;
 - ii. the Recipient or a Joint Committee breaches clause 2.7 (Use of Grant) of this Deed or fails to comply with any other term or condition of this Deed that the Ministry considers to be material;
 - iii. any enforcement action is commenced against the Recipient under laws, regulations, codes, standards or any applicable conventions, in relation to the Project;
 - iv. this Deed is terminated in accordance with clause 5.6 (Termination);
 - v. there is a substantial change to the Project which the Ministry has not agreed to;
 - vi. any information provided in the application for Grant funding, the Year 1 Annual Work Plan or Annual Work Plans, in a claim for payment, or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Ministry considers to be material;
 - vii. the Ministry agrees to a change in the Project which in its opinion reduces the amount of Grant needed;
 - viii. an Insolvency Event occurs in relation to the Recipient; or
 - ix. any other circumstances or events that in the reasonable opinion of the Ministry are likely to adversely affect the Joint Committee's ability to deliver the Project in accordance with the requirements for its delivery.
- (b) Save as otherwise provided for in this Deed, on the Expiry Date:
 - i. if the Future Kaipara Moana Body has been established the Recipient will pay to the Future Kaipara Moana Body any unspent Grant monies held by the Recipient and it shall make such payment within twenty (20) Working Days of such date provided that:
 - (i) first the Future Kaipara Moana Body has entered into its own funding deed with the Ministry in respect of the Ministry's continued funding, and the Future Kaipara Moana Body's delivery, of the Project; and
 - (ii) subject to the Recipient holding back any funds it may reasonably need to retain to meet any contractual commitments it has made in respect of the Project that it will need to account for and such contractual commitments cannot be terminated or are not being assumed by the Future Kaipara Moana Body; or
 - ii. if this Deed is terminated before the establishment of the Future Kaipara Moana Body the Recipient will repay to the Ministry any unspent Grant monies held by the Recipient and it shall make such repayment within twenty (20) Working Days of such date. Provided that the Recipient may hold back any funds it may reasonably need to retain to meet any contractual commitments it has made in respect of the Project that it will need to account for and such contractual commitments cannot be terminated.

5.5 **Termination:** Without prejudice to any other rights to which the Ministry may be entitled but subject to special item 8.7, if:

- (a) the Recipient or Joint Committee breaches, or fails to properly or promptly perform, any of their obligations in a way that the Ministry considers to be material, including, for the avoidance of doubt, any misappropriation of all or part of the Grant;
- (b) the Joint Committee fails to achieve any Project activity in a way that the Ministry considers to be material;
- (c) an Insolvency Event occurs in relation to the Recipient;
- (d) the Ministry believes that the Joint Committee is generally in financial difficulty which, in the reasonable opinion of the Ministry, reduces the Joint Committee's ability to perform its obligations under this Deed; and/or
- (e) the Ministry reasonably considers that the Joint Committee and/or any acts or omissions of the Joint Committee (whether or not related to the Project):
 - i. is bringing the Ministry, the Minister or the New Zealand Government into disrepute; and/or
 - ii. has become undesirable in light of the Fund's objectives or those of the Minister,
- (f) any enforcement action against the Recipient is successful under laws, regulations, codes, standards or any applicable conventions, in relation to the Project,

then the Ministry may terminate this Deed by written notice to the Recipient and the Joint Committee with immediate effect.

5.6 **Termination on Expiry:** If the Joint Committee has not completed the Deliverables to the Ministry's reasonable satisfaction by the Expiry Date, the Ministry may terminate this Deed at any time by written notice to the Recipient with immediate effect.

5.7 **Limitation of Liability:** Each Parties liability for a breach of its obligations under this Deed is limited to losses, damages and costs caused directly by the breach. This limitation does not apply to a Party, if and to the extent there has been malicious wrongdoing, gross negligence or fraud by the Party.

5.8 **Acknowledgement:** Without limiting the Ministry's rights in this Deed or at law, the Ministry acknowledges that any termination, reduction or delay in the grant of the Grant funding under this Deed will have a material impact upon the Project, the Joint Committee's ability to undertake its planned works and ultimately the remediation of the Kaipara Moana.

SCHEDULE 1: EXPENSE POLICY

Not applicable.

DRAFT

SCHEDULE 2: PUBLICATIONS

Ministry for the Environment Logo

The Ministry for the Environment logo may not be used in any publication without the prior and express written approval of the Ministry; any use must be consistent with the guide to using the logo provided by the Ministry.

Acknowledgments

All publications must acknowledge that financial support has been received from **“the funding administered by the Ministry for the Environment.”**

Disclaimer Clause

The following disclaimer must appear on the inside front cover of all publications supported by the Fund.

“The Ministry for the Environment does not necessarily endorse or support the content of the publication in any way.”

Copyright Clause

All publications supported by the Fund must include the following clause relating to copyright:

“This work is copyright. The copying, adaptation, or issuing of this work to the public on a non-profit basis is welcomed. No other use of this work is permitted without the prior consent of the copyright holder(s).”

Or an alternate version is:

“Reproduction, adaptation, or issuing of this publication for educational or other non-commercial purposes is authorised without prior permission of the copyright holder(s). Reproduction, adaptation, or issuing of this publication for resale or other commercial purposes is prohibited without the prior permission of the copyright holder(s).”

Paper and Ink

You should consider using environmentally sound paper and inks when producing publications. Preferably use paper with a recycled content that is either elemental chlorine free or totally chlorine free. Specify vegetable inks or mineral-free inks wherever possible.

Electronic Copies of Written Material

On completion of the Project all written results must be provided in an electronic Word Format. Where possible, please also publish electronic copies of written material to your website and provide us with the URL. We will link to these from our website.

Websites

It is recommended that any website, or content published on a website, developed using the Grant is developed in accordance with the NZ Government Web Guidelines to ensure it is accessible to a wide audience.

Information systems

It is recommended that any information system, including databases, developed using funds from this Deed observes the standards in the E-government Interoperability Framework (e-GIF). Following the e-GIF will allow the information system to more easily work together with systems in government agencies and other organisations that are following the e-GIF.

Any programmes, databases or spreadsheets must have instructions for their use, including the versions of software needed to run databases or spreadsheets, and the platforms on which the software will run. These instructions should be in the form of a short word file.

SCHEDULE 3: AUDIT

Scope of audit

The Project may be audited by the Ministry or its agent (separate from any audit requirements imposed on the Recipient or the Joint Committee in the special terms). The Ministry may also carry out an audit at its or its agent's sole discretion. An audit may take the form of a full technical, financial, compliance and/or health & safety audit. The purpose of an audit is to check compliance with the terms and schedules of this Deed, the appropriate use of the Grant and/or reviewing the Recipient's and Joint Committee's ability to perform any obligations under or in connection with this Deed.

Audit requirements

The Ministry will inform the Recipient or Joint Committee if an audit is to be carried out ("**Notification of Audit**") and will seek an appropriate date and time for both parties. The date of the audit must be within ten (10) Working Days of the Notification of Audit. Audits will usually be carried out either by a fully qualified accountant or technical specialist who is independent of the Ministry or by Ministry staff. In most cases, the Ministry's representative for the Project will accompany the auditor. The Recipient or Joint Committee must promptly provide or ensure the provision of adequate access, assistance and facilities for audit personnel as required by the Ministry during the hours of 8:00am and 5:00pm on Working Days.

Audit report

A full report of the outcome of any audit will be made available to the Recipient and Joint Committee.

Cost of audit

In the event that the audit reveals any misappropriation of the Grant or material discrepancies (particularly those related to Project activities and Deliverables), the Recipient or Joint Committee (as the case may be) will be liable for the costs of the audit.

SCHEDULE 4: CAPITAL ASSETS

1. Asset Register

Member Party	Capital Asset	Capital Cost	Portion of Grant	Restriction Period
	<i>[description of asset, including any serial number, registration number or vehicle identification number]</i>	<i>[costs incurred by the Member Party in acquiring the Capital Assets or in bringing a Capital Asset to working order or to a state in which it can produce the goods or render the services as required for the Programme – should be identified by the Joint Committee in the Annual Work Plan]</i>	<i>[Portion of Grant that is applied to the Capital Cost]</i>	<i>5 years from first payment of any portion of the Grant applied to Capital Costs.</i>

2. Additional Terms and Conditions

- 2.1 The Parties acknowledge that as the Joint Committee is not a legal entity itself, as such the Member Parties will hold any Capital Assets purchased through the Capital Costs by the Joint Committee in the name of the relevant Member Party.
- 2.2 All Capital Assets will be and remain the property of the Member Party and will at all times be at the risk of the Member Party. The Member Party will bear the risk of any loss, theft, damage or destruction of any Capital Assets and if Capital Assets require repair or replacement, the Member Party will bear the cost of such repair or replacement.
- 2.3 The Joint Committee will maintain an up to date register of Capital Assets in the form set out in section 1 of this Schedule 4. Any changes to the register shall be made in accordance with this Deed and promptly notified to the Ministry in writing.
- 2.4 In consideration of the Ministry consenting to the application of all or part of the Grant to pay for Capital Costs, the Member Party agrees that, during the Restriction Period, the Member Party's ability to deal with Capital Assets shall be restricted as set out in sections 2.5 to 2.10 below.
- 2.5 During the Restriction Period, the Member Party shall not, without the prior written consent of the Ministry:
 - (a) sell, assign or pledge any Capital Asset; or
 - (b) underlet, lend or otherwise part with possession of any Capital Asset, save that the Member Party may loan any Capital Asset to its agents or another Member Party for the purposes of the Project; or
 - (c) create, agree to create, allow to come into existence or permit to subsist any Security Interest, mortgage, charge (fixed or floating), encumbrance, hypothecation, lien, pledge, trust, finance lease, deferred purchase, sale and lease-back, sale and repurchase, flawed asset arrangement, title retention or any other arrangement which has the practical effect of securing payment or performance of an obligation over or affecting all or any part of any Capital Asset.
- 2.6 During the Restriction Period, the Member Party shall:
 - (a) protect all Capital Assets against distress, execution and seizure;
 - (b) maintain all Capital Assets in a good state of repair and in good working order and condition; and
 - (c) upon request by the Ministry, notify the Ministry of the present location of any Capital Asset.
- 2.7 During the Restriction Period the Member Party shall maintain at its cost insurance for all Capital Assets against all such risks as it is prudent in accordance with best commercial practice to insure against and any other risks which the Ministry may from time to time reasonably require for their full replacement value or on such other basis as the Ministry may agree in writing, and shall provide evidence of such insurance as and when reasonably requested by the Ministry.
- 2.8 If any of the following events occurs (whether or not within the control of any party) at any time prior to the expiry of the Restriction Period:

- (a) the Member Party fails to perform or observe any obligation under this Deed regarded by the Ministry as material, including the obligations in sections 2.5 to 2.7 in this Schedule 4, and, in the case of a failure which is capable of remedy, that failure is not remedied within ten (10) Working Days after written notice thereof has been given to the Member Party by the Ministry;
- (b) any representations or warranty made under or in connection with this Deed by the Member Party is false or misleading in any respect regarded by the Ministry as material; or
- (c) the Member Party suffers an Insolvency Event,

then the Member Party must notify the Ministry, immediately on becoming aware of it, of the occurrence of such event and subject to special item 8.7, at any time (and notwithstanding the previous waiver of any default) the Ministry may by notice to the Member Party declare any or all of the Clawback Amount to be immediately due and payable.

- 2.9 In order to secure the Member Party's obligations under this Deed in respect of the Clawback Amount, the Member Party hereby grants to the Ministry a Purchase Money Security Interest (as that term is defined in the Personal Property Securities Act 1999) in each Capital Asset. The Member Party will take all necessary steps (including as required by the Ministry from time to time) to ensure that the Security Interest becomes a "Perfected Security Interest" (as that term is defined in the Personal Property Securities Act 1999) including:

- (a) giving the Ministry written notice immediately following (and in any case, within two (2) Working Days) the Member Party taking possession of a Capital Asset; and
- (b) signing and delivering any necessary documentation.

- 2.10 The Ministry will, at the expiry of the Restriction Period, register a release of any relevant financing statement on the Personal Property Securities Register.

SCHEDULE 5: MULTIYEAR PROGRAMMES**1. Additional terms**

- 1.1 The Ministry shall, subject to section 1.3 of this Schedule 5, pay the Grant funding to the Joint Committee via the Recipient for each Financial Year as set out below.
- 1.2 The Grant funding in each Financial Year will be the lesser of:
 - (a) the total amount set out in the Tasks/Activities table of the relevant Annual Work Plan; or
 - (b) an amount equal to the difference between the budgeted total costs of the Project for that Financial Year and the total value (assessed by the Ministry) of any type of contribution to the Project for that same Financial Year by a Member Party and/or from any other source.
- 1.3 Any Grant funding after the Initial Amount grant provided for at clause 2.1 for the subsequent Financial Years is subject to:
 - (a) the Joint Committee's use of the Grant funding for the previous Financial Year is in accordance with their obligations under this Deed and the Annual Work Plan for that same Financial Year;
 - (b) the Recipient, the Member Parties or the Joint Committee not being in breach of this Deed;
 - (c) the Annual Work Plan being finalised in accordance with this Deed; and
 - (d) the availability of funds due to changes, or directives of the New Zealand Government.
- 1.4 In the event that any of the above conditions have not been satisfied then the Ministry may withhold payment of the Grant funding until the conditions have been satisfied.

SCHEDULE 6: CHANGE CONTROL PROCESS

1. Definitions:

- 1.1 For the purposes of this Schedule, the following words shall have these definitions unless the context requires otherwise:

Change means any amendment, deletion or addition to the Year 1 Annual Work Plan, Annual Work Plans or this Deed;

Change Control Register has the meaning given to it in paragraph 2.7 of this Schedule;

Change Request means a written request for a Change which shall be substantially in the form attached to this Deed as Annexure 4;

Minor Change means any Change (including the reallocation of Grant from one Project activity or Deliverable to another) and the Change does not:

- (a) result in a change in Project Costs;
- (b) result in any change to an activity which would be likely to prevent the Project from substantially achieving its Objectives;
- (c) affect or likely affect the total Grant;
- (d) materially affect the Objectives;
- (e) affect or likely affect the Expiry Date; or
- (f) amend the terms of the Deed (including to any Schedule); and

Objectives mean the main goals of the Project to be undertaken as specified in the Year 1 Annual Work Plan.

2. Change Requests

- 2.1 A Party must notify the other Parties, through a Change Request form, of any Changes (other than a Minor Change) it proposes to make to this Deed, the Year 1 Annual Work Plan, or an Annual Work Plan. Any Change Request must be submitted to the other Parties for prior written approval in accordance with this Schedule.

- 2.2 **Change Request Form:** The Recipient, the Ministry or the Joint Committee may issue a Change Request form at any time. The Change Request shall:

- (a) be substantially in the form provided by the Ministry;
- (b) if issued by the Recipient or the Joint Committee, include an impact assessment (being an analysis of the effect of the proposed Change, including on costs and timelines); and
- (c) if issued by the Ministry, explain why the change is requested and require the Joint Committee to complete the impact assessment in the Change Request form and return to the Ministry as soon as reasonably practicable and in any event within ten (10) Working Days of receiving the relevant Change Request.

- 2.3 **Further Information:** If the Ministry reasonably considers it requires further information regarding a proposed Change, then the Ministry shall notify the Joint Committee and detail the further information required. The Joint Committee shall then re-issue the relevant impact assessment to the Ministry as soon as reasonably practicable and in any event within ten (10) Working Days of receiving such a request. The Parties may repeat the process described in this paragraph until the Ministry is reasonably satisfied that it has sufficient information to properly evaluate the proposed Change ("**Further Information**").

- 2.4 **Right of approval:** Within ten (10) Working Days of receiving an impact assessment in a Change Request or within five (5) Working Days of receiving Further Information under paragraph 2.3, the Parties shall, at their sole discretion:

- (a) approve the proposed Change, and the Change may come into effect in accordance with paragraph 2.5 of this Schedule; or
- (b) reject the proposed Change. The Party rejecting the Change shall explain its reasons for rejection in writing, as soon as reasonably practicable following such rejection.

- 2.5 **Change authorisation:** Any Change proposed in a Change Request will not be authorised and shall not implement any proposed Change until:

- (a) the Change Request is signed by all Parties including in accordance with the Ministry's Change authorisation and sign off procedure, as notified by the Ministry in writing from time to time; and
 - (b) if the Change is significant the Ministry may require (at its sole discretion), it is signed and delivered as a deed by the duly authorised representatives of the Parties.
- 2.6 **Costs:** The Parties shall bear their own costs in relation to the preparation and agreement of each Change Request (including each impact assessment). For the avoidance of doubt, the Grant may not be used to fund such costs unless expressly agreed in writing by the Ministry.
- 2.7 **Change Control Register:** The Programme Manager shall, for the period of this Deed, maintain a change control register, substantially in a form provided by the Ministry, documenting any Changes that are not Minor Changes (the "**Change Control Register**"). The Change Control Register shall be attached to the Annual Reports.

EXECUTION

IMPORTANT: By signing this Deed, the parties acknowledge that:

- they have read and understood the terms of this Deed; and
- they have had the opportunity to seek independent legal advice (in their respective capacities under this Deed) about this Deed before signing it.

SIGNED as a deed on: _____ 2020

[The date that the Deed is signed is the date at which both parties have signed the Deed i.e. the date the final party signed the Deed. This date must be handwritten on both original copies of the Deed by the party who signs the Deed last.]

Signed and delivered as a deed by [name], [role],
[team] on behalf of the **Ministry for the Environment**

Signature

On date: _____

In the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signed and delivered as a deed on behalf of
Northland Regional Council in its capacity as
Recipient, Member Party and Joint Committee
in the presence of:

Signature

Witness Signature

Print Full Name
(For a Local Authority specify Description
Director/Authorised Signatory)

Witness Name

Witness Occupation

Signature

Witness Address

Print Full Name
(For a Local Authority specify Description
Director/ Authorised Signatory)

On date: _____

Signed and delivered as a deed on behalf of
Auckland Council in its capacity as Member Party
and Joint Committee in the presence of:

Signature

Witness Signature

Print Full Name
(For a Local Authority specify Description
Director/Authorised Signatory)

Witness Name

Witness Occupation

Signature

Witness Address

Print Full Name
(For a Local Authority specify Description
Director/ Authorised Signatory)

On date: _____

Signed and delivered as a deed on behalf of **Ngā
Maunga Whakahī o Kaipara Development Trust** in
its capacity as Member Party and Joint Committee in
the presence of:

Signature

Witness Signature

Print Full Name
(For a Local Authority specify Description
Director/Authorised Signatory)

Witness Name

Witness Occupation

Signature

Witness Address

Print Full Name
(For a Local Authority specify Description
Director/ Authorised Signatory)

On date: _____

Signed and delivered as a deed on behalf of **Te Rūnanga o Ngāti Whātua** in its capacity as Member Party and Joint Committee in the presence of:

Signature

Witness Signature

Print Full Name
(For a Local Authority specify Description
Director/Authorised Signatory)

Witness Name

Signature

Witness Occupation

Witness Address

Print Full Name
(For a Local Authority specify Description
Director/ Authorised Signatory)

On date: _____

Signed and delivered as a deed on behalf of **Te Uri o Hau Settlement Trust** in its capacity as Member Party and Joint Committee in the presence of:

Signature

Witness Signature

Print Full Name
(For a Local Authority specify Description
Director/Authorised Signatory)

Witness Name

Witness Occupation

Signature

Witness Address

Print Full Name
(For a Local Authority specify Description
Director/ Authorised Signatory)

On date: _____

[Under the Local Government Act 2002, a Local Authority is a "body corporate" (section 12). The Property Law Act 2007 section 9(3)-(4) sets out the requirements for a body corporate to sign a Deed: This document must be executed in accordance with the enactment forming the Regional Council, District Council or any Constitution for that entity, or otherwise by two directors.]