

ATIHOU-WHANGANUI INCORPORATION

**AMENDED TRUST DEED OF THE
TE ATI HAU TRUST**

**HORSLEY CHRISTIE
LAWYERS
WANGANUI**

TE ATI HAU TRUST

THIS DECLARATION OF TRUST IS MADE ON

2011

BY

ATIHAU–WHANGANUI INCORPORATION a body corporate under the provisions of Part 13 of the Te Ture Whenua Maori Act 1993 (“**AWHI**”)

(as a reprint which incorporates changes to the original Trust Deed dated 23 April 2009)

BACKGROUND

- A. AWHI was established by Order of the Maori Land Court in 1969 and has the power to do all that bodies corporate may lawfully do.
- B. AWHI holds the lands and other assets which it owns on trust for the Incorporated owners and has full capacity in the discharge of the obligations of the trust in the best interests of the shareholders to undertake any activity and do any act.
- C. AWHI believes that it is in the best interests of the shareholders to apply some part of the resources of the Incorporation for charitable purposes to support, nurture and assist AWHI stakeholders.
- D. This Deed of Trust establishes a charitable trust for the purposes set out in the preceding paragraph and in clause 3.

NOW IT IS DECLARED that there is hereby established a Trust, in relation to an initial fund of \$100 donated by AWHI, which is empowered to receive all other moneys or property which may be paid, transferred, donated, lent or otherwise acquired by the Trust, together with all items of income, and to hold the same **UPON THE TRUSTS** and with the powers and authorities set out in this deed.

1. NAME OF TRUST

The Trust created by this deed shall be known as **TE ATI HAU TRUST**.

2. INTERPRETATION

In this deed, unless the context otherwise requires:

“**AWHI**” means Atihau-Whanganui Incorporation.

“**Charitable purposes**” means purposes or objects which are charitable in accordance with the law of New Zealand, and if by reason of any alteration in the law relating to charities, or to the taxation of charities, it is at any time necessary or desirable to amend such purposes in order to preserve exemption from taxation, or registration as a charity, such purposes shall be deemed to be amended to the extent necessary to preserve those rights.

“**Financial year**” means a year ending on 30 June (or such other date as the Trustees may determine).

“**Shareholders**” means the holders of shares in AWHI.

“**Stakeholders**” includes Shareholders, whanau, hapu, iwi, marae, ropu, local communities, regional and national individuals, groups and organisations with which AWHI is associated.

“**Trustees**” means the trustees for the time being of the Trust.

“**Trustee Act**” means the Trustee Act 1956 and any statutory modifications or re-enactment.

“**Trust Fund**” means all the assets of the Trust for the time being.

3. OBJECTS OF THE TRUST

- 3.1 The Trustees shall stand possessed of the Trust Fund **UPON TRUST** for use and application for charitable, cultural, philanthropic, educational, recreational and other purposes, being purposes beneficial principally to the Shareholders and Stakeholders.
- 3.2 The objects set out in the preceding subclause may include Maori cultural development and support, educational and vocational development and support, social development and support, marae development and support, health and welfare development and support, and the fostering of strategic alliances with persons promoting or assisting with any of these objects.

4. GUIDING PRINCIPLES IN RELATION TO GRANTS

When considering applications for grants from the Trust Fund, or proposals for the application of Trust funds for charitable purposes, the Trustees shall be guided by, but not limited to, the following principles:-

▪ <u>Matauranga</u>	Education
▪ <u>Kotahitanga</u>	Unity of purpose
▪ <u>Manaakitanga</u>	Nurture and reciprocate
▪ <u>Whanaungatanga</u>	Collaboration
▪ <u>Rangatiratanga</u>	Leadership
▪ <u>Wairuatanga</u>	Spirituality
▪ <u>Mana Whenua</u>	Responsibility to the land and the people
▪ <u>Kaitiakitanga</u>	Active stewardship
▪ <u>Mana Tupuna</u>	Legitimacy

▪ Te Reo	Identity
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5. RECEIPTS

The receipt of a recipient of funds, or of any person purporting to hold a position of responsibility in any organisation or body to whom payments are lawfully made pursuant to this deed shall be a sufficient discharge for the Trustees who shall not be obliged to see to the application of the funds.

6. RAISING FUNDS

The Trustees may alone, or together with others, raise money and accept gifts and donations for the purposes of the Trust and incur costs in advertising or promoting the activities and benefits of the Trust, and in promoting activities which may generate further income, funds or assets for the Trust.

7. TRUSTEES

7.1 There shall be five (5) Trustees who shall be appointed as follows:

- (a) Three (3) of the Trustees shall be persons holding office as members of the Committee of Management of AWHI, who are appointed as Trustees by resolution of that Committee of Management (“COM Trustees”);
- (b) Two (2) of the Trustees shall be persons who are not holding office as members of the Committee of Management of AWHI, who are appointed as Trustees by resolution of that Committee of Management (Independent Trustees”).

7.2 When considering the appointment of Independent Trustees, the Committee of Management shall take into account the desirability of having a range of skills and experience amongst the Trustees, and the suitability of possible appointees by reason of their knowledge of, or experience in, business, banking or investment, law or accountancy, or their interest or involvement in the community or in Maori affairs.

7.3 The Committee of Management may appoint persons to fill any vacancies amongst Trustees at any time.

7.4 The Committee of Management shall appoint the Chairperson of the Trust from the five Trustees, and may remove any such chairperson from office. Subject to the right of removal, the Committee of Management shall determine the term of office for which any chairperson is appointed, provided that the term of office does not exceed the chairperson’s term of appointment as a Trustee. Subject to this clause, a chairperson may hold office as a chairperson on more than one occasion.

8. TERM OF OFFICE OF TRUSTEES

8.1 Without limitation of the rights of removal from office of Trustees as contained in the following clauses, and without prejudice to the right of the Committee of Management of AWHI to appoint a Trustee for a shorter period, at the conclusion of the 30th day of June in every year, two (2) Trustees shall retire from office (one being a COM Trustee and the other being an Independent Trustee) but may be re-appointed as provided in clause 7, and if a Trustee is reappointed, the reappointment shall be deemed to be effective from

the 1st day of July immediately following the date of retirement. The Trustees to retire from office pursuant to this clause shall be those (within each category of Trustees) who have been longest in office since their last appointment.

8.2 As between Trustees who become Trustees (by virtue of their last appointment) on the same day, those to retire on the basis of being longest in office since last appointment shall be determined by lot, unless they otherwise agree among themselves.

8.3 Trustees shall be eligible for re-appointment (subject to clause 8.4) in accordance with clause 7.

8.4 The appointment of a Trustee shall be terminated if that Trustee:

- (a) Dies;
- (b) Resigns from office by notice in writing addressed to AWHI and to the Secretary of the Trust;
- (c) Is by notice in writing to the Trustee removed from office by a unanimous resolution of all the members of the Committee of Management of AWHI;
- (d) Becomes bankrupt or makes an assignment by way of composition with creditors;
- (e) Is convicted of any offence punishable by imprisonment for a term of two (2) years or more;
- (f) Is convicted of any offence and is sentenced to imprisonment for that offence;
- (g) Is a person to whom an order under Section 383 of the Companies Act 1993 applies, or who is prohibited from managing companies by virtue of Section 382 or 385 Companies Act 1993;
- (h) Becomes a special patient or is the subject of an inpatient order under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (i) Is subject to an order under the Protection of Personal and Property Rights Act 1988;
- (j) Is, in the unanimous option of the other Trustees, unfit to act or incapable of acting as a Trustee;
- (k) Has held office as a Trustee for nine (9) years.

If the appointment of a Trustee is terminated by virtue of sub-clause (k) the termination shall not take effect until the 1st day of July immediately succeeding the date of the event described in sub-clause (k).

8.5 The appointment of a COM Trustee shall be terminated if that Trustee ceases for any reason to be a member of the Committee of Management of AWHI.

9. TRUSTEES LIABILITY

9.1 A Trustee shall not be liable for:

- (a) Any losses other than those arising from the Trustee's own wilful default; or

- (b) The acts or defaults of a co-Trustee, of which the Trustees had no actual knowledge; or
- (c) Any act done bona fide in conformity with the decision of the Trustees; or
- (d) The neglect or default of any accountant, banker, broker or solicitor or other agent whose advice is sought in good faith by the Trustees.

9.2 A Trustee shall be entitled to be indemnified from the Trust Fund for any liability or costs incurred in respect of any of the matters set out in clause 9.1, and the Trustees may resolve to effect insurance for the Trustees in respect of any such liability or costs at the expense of the Trust.

9.3 For the purposes of this clause 9, the expression "a Trustee" includes a former trustee of the Trust.

10. POWERS OF TRUSTEES

10.1 The Trustees may distribute the whole or any part of the income or accumulated income or capital of the Trust Fund in or towards carrying out the objects of the Trust.

10.2 The Trustees shall have the power and obligation to make investments of the Trust Fund in accordance with the provisions of the Trustee Act relating to the investment of trust funds.

10.3 Notwithstanding anything in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others, or that a prudent person engaged in a profession, employment or business that is or includes acting as a Trustee or investing money on behalf of others would exercise in managing the affairs of others, merely (in either case) because the investments of the Trust Fund are not diversified.

10.4 Notwithstanding the provisions of Section 13C of the Trustee Act and the likelihood that one or more of the Trustees may be a person whose profession, employment or business is or includes acting as a Trustee or investing money on behalf of others, the care, diligence and skill to be exercised by all Trustees in exercising any power of investment shall not be that required of such persons by Section 13C of the Trustee Act but, subject to clause 10.3, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

10.5 The Trustees shall have the power to pay all expenses and outgoings incurred in relation to the Trust including Trustee's remuneration and to do such other lawful acts and things as are incidental to or conducive to the attainment of the purposes of the Trust.

10.6 If the Trust is incorporated under the provisions of the Charitable Trusts Act 1957, the affixing of the common seal of the Trust to documents shall be authorised by a resolution of the Trustees, or a committee of the Trustees authorised for that purpose, and shall be verified by the signatures of two (2) Trustees.

10.7 The Trustees may accumulate the whole or any part of the current net annual income of the Trust, may designate all or any part of such accumulations as a reserve fund for any specific purpose and may cancel or vary such designation as they see fit.

10.8 The Trustees may borrow money at any time, with or without security from AWHI or from any other person, and may provide loans or guarantees for any purpose consistent with the purposes of the Trust.

- 10.9 The Trustees may employ and pay any person, firm or corporation and may contract with any Trustee or any firm or corporation associated with a Trustee.
- 10.10 Any Trustee may act as a director of any company or body corporate in which the Trust holds shares and receive director's fees or other remuneration without being liable to account for the same to the Trust.
- 10.11 The Trustees may hand over the investments and money belonging to the Trust to any nominee company or custodian trustee to be held or dealt with by the company or trustee, but always subject to and in accordance with the directions of the Trustees, and may delegate to that company or trustee such powers, discretions and authorities in relation to the collection, investment and payment of moneys as they think fit and may revoke the same at any time.
- 10.12 No Trustees or associated person (as defined in the Income Tax Act 2004 or subsequent amendments) shall receive, gain, achieve or derive from the Trust any benefit or advantage, whether or not convertible into money, or any income, where that person is able by virtue of his or her capacity as a Trustee or associated person in any way (whether directly or indirectly) to determine or materially influence the nature or amount of that benefit or advantage or income, provided that a Trustee or associated person may receive property and reasonable payments at current commercial rate for premises let or leased to the Trust, for professional or other services rendered to the Trust, for interest on money lent and for payments under clause 12.

11. INTERESTED TRUSTEES

- 11.1 A Trustee is interested in a transaction to which the Trust is a party if, and only if, the Trustee
- (a) is a party to or will derive a material financial benefit from the transaction; or
 - (b) has a material financial interest in another party to the transaction; or
 - (c) is a Trustee or officer of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is a subsidiary of the Trust; or
 - (d) is the parent, child or spouse of another party to, or person who may derive material financial benefit from, the transaction; or
 - (e) is otherwise directly or indirectly materially interested in the transaction.
- 11.2 The Trust shall keep and maintain an interests register.
- 11.3 A Trustee shall not be deemed to be interested in a transaction to which both the Trust and AWHI are parties merely because the Trustee is a Shareholder, or member of the Committee of Management, of AWHI.
- 11.4 A Trustee who is interested in a transaction to which the Trust is a party shall disclose the nature of that interest, either by entry in the interests register, or by disclosure at a meeting of the Trustees, and such disclosure shall be recorded in the minutes of the meeting, and in the interests register.
- 11.5 A Trustee required to disclose an interest by clause 11.4 may be counted in the quorum present at the meeting, but shall not vote in respect of the matter in which that Trustee is interested (and if the Trustee does so vote, the vote shall not be counted), provided that

the Trustee may be expressly permitted to vote by a majority vote of the other Trustees present, given after the disclosure of the interest.

- 11.6 The restriction on voting set out in clause 11.5 shall not apply if the matter affects Trustees in such a manner that all Trustees have an interest in that matter, or if the matter involves the reimbursement of a Trustee for reasonable expenditure incurred by the Trustee on behalf of the Trust.

12. REMUNERATION OF TRUSTEES

- 12.1 Trustees shall be entitled to receive out of the Trust Fund such fees or other remuneration for their services as may be reasonable having regard to their duties and responsibilities. The amount of such remuneration shall be set by the Committee of Management of AWHI, having regard to the recommendations of the Trustees.
- 12.2 Notwithstanding 12.1 the Trustees may authorise special remuneration for any Trustee who is or has been engaged by the Trust to carry out any work or perform any services deemed by the Trustees to be of a nature or extent that is beyond the normal services or time commitment reasonably expected of a Trustee.
- 12.3 Any Trustee who shall be employed by the Trustees in connection with these trusts may be paid such reasonable remuneration for his services, or those of his firm, as may be normal if he had not been a Trustee.
- 12.4 The Trustees shall be entitled to be paid out of the Trust Fund reasonable travelling and other expenses incurred in attendance at meetings of Trustees and when otherwise engaged on the business or affairs of the Trust.

13. MEETINGS OF TRUSTEES

- 13.1 Subject to the provisions of the Schedule attached, the Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of equality of votes the Chairperson shall have a second or casting vote. The Chairperson or any two Trustees may, and the Secretary on the requisition of such Trustees shall, at any time summon a meeting of the Trustees. It shall not be necessary to give notice of a meeting to Trustees for the time being absent from New Zealand.
- 13.2 The quorum necessary for the transaction of the business of the Trustees may be fixed by the Trustees, but shall not be less than three (3) at least one of whom shall be an Independent Trustee, and two of whom shall be COM Trustees. Until otherwise determined the quorum shall be four (4), at least one of whom shall be an Independent Trustee. Notwithstanding the foregoing provisions, the quorum for the first meeting of Trustees shall be the three COM Trustees.

14. ADMINISTRATION

- 14.1 The Trustees shall cause minutes of their resolutions to be kept in a book provided for that purposes and will circulate a copy of those minutes to all Trustees within ten (10) working days of each meeting, and within the same period send a copy to AWHI.
- 14.2 The Trustees shall cause an account of the money received and disbursed to be kept and shall ensure that:

- (a) Proper books of account are kept in respect of the Trust in accordance with generally accepted accounting practice; and
- (b) Financial statements are prepared annually in respect of the Trust and that the financial statements are audited each year.

14.3 The Trustees shall, within three (3) months after the end of each Financial Year, prepare a report on the Trust for that year (which includes the audited financial statements) which shall be sent to AWHI, and shall arrange for a meeting between the Trustees and the Committee of Management of AWHI to discuss the report.

14.4 The audited financial statements shall consist of:

- (a) A statement of financial position;
- (b) A statement of income and expenditure;
- (c) A statement of cashflows;
- (d) Such other statements as may be necessary to fairly reflect the financial position of the Trust, the resources available to it and the financial results of its operations.

14.5 The auditor shall be a person having the qualifications set out in Section 277(4) or (5) of Te Ture Whenua Maori Act 1993.

15. CONTINUING TRUSTEES TO ACT

The continuing Trustees may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this deed as the necessary quorum of Trustees, the continuing Trustees may act only for the purpose of advising the Committee of Management of AWHI of the need to appoint Trustees so that the activities of the Trust may continue, and making recommendations for that purpose.

16. OFFICERS

The Trustees may from time to time appoint (and remove) a Secretary, a Treasurer and other such officers, employees, managers and agents as the Trustees may think fit. The respective duties and conditions of appointment of such officers shall be as prescribed by the Trustees from time to time.

17. ALTERATION OF THE DEED

17.1 This deed may be altered, added to, rescinded or otherwise amended by a 75% majority of all the members of the Committee of Management of AWHI, following the receipt by AWHI of a recommendation for that purpose by a 75% majority of all Trustees; provided that no amendment or rescission of this deed shall be made which affects the charitable nature of the Trust.

17.2 If the Trust is incorporated under the Charitable Trusts Act 1957, then copies of every such alteration, addition, rescission or amendment shall be delivered to the Registrar of Charitable Trusts forthwith.

18. MERGER OF TRUSTS

- 18.1 The Trustees may, in accordance with a resolution passed by a 75% majority of all the members of the Committee of Management of AWHI, following the receipt by AWHI of a recommendation for that purpose passed by a 75% majority of all the Trustees, prepare a scheme for the merger or amalgamation of the Trust with another or other trusts established for charitable purposes.
- 18.2 The Trustees may proceed to implement the scheme and shall have all such powers as shall be necessary for the purpose of effecting the merger or amalgamation, the establishment of any new trust for the purpose, the transfer of the property, rights, assets and liabilities of the Trust pursuant to the scheme, and the consequential winding-up of the Trust (if this is required).

19. DISSOLUTION AND DISPOSAL OF PROPERTY AND FUNDS

- 19.1 If at any time the Committee of Management of AWHI, exercising its discretion by a 75% majority of all members of the Committee of Management considers that it is impossible or impractical or inexpedient to carry out the purposes of this Trust, or the amount available is inadequate to carry out those purposes, or those purposes have been effected already, then the Trustees may voluntarily wind-up the Trust.
- 19.2 Any determination or winding up or dissolution of the Trust shall be in the manner prescribed by the Charitable Trusts Act 1957 for the time being in force; in the event of a dissolution of the Trust then, subject to section 27 of the Charitable Trusts Act 1957 or any statutory modification, variation or re-enactment thereof, all property and moneys remaining after due settlement of the affairs of the Trust shall be accounted for and handed over to such charitable organisations or purposes within New Zealand as shall be approved by 75% of all the members of the Committee of Management of AWHI.

DATED this day of 2010

THE COMMON SEAL OF ATIHAU-WHANGANUI INCORPORATION was affixed pursuant to a resolution of the Committee of Management by two Committee Members:

Committee Member

Committee Member

SCHEDULE

PROCEEDINGS OF TRUSTEES

1. If at a meeting of the Trustees the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the Trustees present may choose one of their number to be chairperson of the meeting.
2. Not less than two days notice of a meeting of the Trustees must be sent to every Trustee who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
3. An irregularity in the notice of a meeting is waived if all Trustees entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all Trustees entitled to receive notice of the meeting agree to the waiver.
4. A meeting of the Trustees may be held either:
 - a. By a number of the Trustees who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
 - b. By means of audio, or audio and visual, communication by which all Trustees participating and constituting a quorum can simultaneously hear each other throughout the meeting.
5. No business may be transacted at a meeting of Trustees if a quorum is not present