

POUARUA FARM GENERAL PARTNER LIMITED

General Partner

NGĀTI MARU AHC

NGĀTI PĀOA AHC

NGĀTI TAMATERĀ AHC

NGĀTI TARA TOKANUI AHC

TE PATUKIRIKIRI AHC

Limited Partners

**LIMITED PARTNERSHIP AGREEMENT
ESTABLISHING THE
POUARUA FARM LIMITED PARTNERSHIP**

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AGREEMENT dated

2013

PARTIES

POUARUA FARM GENERAL PARTNER LIMITED

("General Partner")

NGĀTI MARU AHC

NGĀTI PĀOA AHC

NGĀTI TAMATERĀ AHC

NGĀTI TARA TOKANUI AHC

TE PATUKIRIKIRI AHC

("Limited Partners")

INTRODUCTION

- A. The Limited Partners each represent five separate iwi of Hauraki, being:
 - (a) Ngāti Maru
 - (b) Ngāti Pāoa
 - (c) Ngāti Tamaterā
 - (d) Ngāti Tara Tokanui
 - (e) Te Patukirikiri
- B. On 28 June 2013, the Limited Partners and the Crown initialed an on-account Deed of Settlement in relation to the acquisition of the Pouarua Farm on the Hauraki Plains ("**On-account (Pouarua) Deed of Settlement**").
- C. The On-account (Pouarua) Deed of Settlement was successfully ratified by the members of each signatory iwi, and has been signed. The On-account (Pouarua) Deed of Settlement is to be ultimately given effect to by the Pare Hauraki Collective and/or iwi of Hauraki settlement Bills ("**Bill**").
- D. The Limited Partners will acquire and hold, the Pouarua Farm Property through the Limited Partnership.
- E. The General Partner as general partner and the Limited Partners as limited partners wish to establish the Limited Partnership, to carry on the purposes of the Limited Partnership in accordance with this Agreement.
- F. The Limited Partnership wish to record in this Agreement certain agreed terms relating to the management of the Limited Partnership.

IT IS AGREED**1. PURPOSE OF LIMITED PARTNERSHIP**

- 1.1 **Purpose:** The purpose of the Limited Partnership ("**Purpose**") is to acquire, hold, deal with and manage, the Pouarua Farm Property.
- 1.2 **No other activity:** Unless approved by a resolution passed by Limited Partners representing over 75% of the total of the Capital Contributions (excluding the Capital Contributions of any Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13 of the Agreement), the Limited Partnership will not engage in any business or activity which is not anticipated by the Purpose, or reasonably incidental to, or gives effect to, the Purpose.

2. ESTABLISHMENT AND DURATION OF LIMITED PARTNERSHIP

- 2.1 **Formation:** Subject to the terms of this Agreement, the General Partner, as general partner, and the Limited Partners, as limited partners, agree to establish the Limited Partnership in accordance with the terms and conditions of this Agreement.
- 2.2 **Commencement:** The Limited Partnership will commence on the Registration Date.
- 2.3 **Name:** The name of the Limited Partnership is to be the Pouarua Farm Property Limited Partnership (or such other name as the General Partner from time to time determines provided that the change of name is registered by the Registrar on the Register in accordance with section 35 of the Act).
- 2.4 **Registered office and address for service:** The:
- (a) registered office of the Limited Partnership is to be at the offices of Russell McVeagh in Auckland (or such other place as the General Partner from time to time determines, provided that any change in registered office is to take effect in accordance with section 68(3) of the Act); and
 - (b) address for service of the Limited Partnership is to be at the offices of Russell McVeagh in Auckland (or such other place as the General Partner from time to time determines, provided that any change in address for service is to take effect in accordance with section 71(3) of the Act).
- 2.5 **Duration:** The parties agree that:
- (a) prior to the Registration Date, this Agreement (other than this clause 2.5) is of no legal effect and there is no partnership between any of the Partners (either prior to or after that date);
 - (b) from the Registration Date, the Limited Partnership will commence in accordance with the Act and this Agreement will have effect as a contract between the Partners and the Limited Partnership, and between the Partners themselves, in accordance with section 9(3) of the Act; and
 - (c) the Limited Partnership will terminate, and there will cease to be a partnership between the Partners, on and from the Deregistration Date.
- 2.6 **No agency or authority:** Subject to the Act:
- (a) nothing contained in this Agreement constitutes:

- (i) any Partner the agent or representative of any other Partner; or
 - (ii) any Limited Partner the agent or representative of the Limited Partnership;
- (b) a Limited Partner does not have authority to act for or assume any obligation on behalf of any other Partner or the Limited Partnership.

3. CAPITAL CONTRIBUTIONS

- 3.1 **Each Partner to contribute Capital:** Each Partner will contribute its Capital Contributions to the Limited Partnership, at the times and in the manner specified by this Agreement. The General Partner must not make any Capital Contribution to the Limited Partnership and will not hold a Limited Partnership Interest.
- 3.2 **Initial Capital Contributions:** Each Limited Partner will contribute its Initial Contribution on the First Commitment Date.
- 3.3 **Additional Capital Contributions:** Further Capital Contributions by each Limited Partner will be called for each Financial Period by the General Partner for the purposes of meeting Administration Expenses and any Capital Upgrade and Maintenance Expenses.
- 3.4 **Pro Rata share of Administration Expenses:** Each Limited Partner must contribute to, and pay, its Pro Rata share of the Administration Expenses of the Limited Partnership as set out in the Operating Budget for the relevant Financial Period.
- 3.5 **Pro Rata share of Capital Upgrade and Maintenance Expenses:** Each Limited Partner must contribute to, and pay, its Pro Rata share of any Capital Upgrade and Maintenance Expenses of the Limited Partnership as:
- (a) set out in the Operating Budget for the relevant Financial Period; or
 - (b) may otherwise be Called for by the General Partner in accordance with clauses 4.1 and 4.2.
- 3.6 **Payments:** Any amounts payable by a Limited Partner as Capital Contributions will be paid to the Limited Partnership in immediately available funds:
- (a) free of any restriction or condition; and
 - (b) without any deduction or withholding on account of any amount, whether by way of set-off, counterclaim or otherwise.
- 3.7 **No interest payable:** No interest is payable to Partners on their Capital Contributions.

4. CALLS

- 4.1 **General Partner may call for Capital Contributions:** Subject to clause 4.2, the General Partner may, from time to time, require any Partner to make a payment to the Limited Partnership in partial or full payment of its Capital Contribution required under clause 3.3. The relevant Partner will pay each Call in accordance with the terms set out in the Call Notice.
- 4.2 **Restriction on Calls made for Capital Contributions to meet Capital Upgrade and Maintenance Expenses:** The General Partner may not make a Call for Capital

Contributions to meet Capital Upgrade and Maintenance Expenses of the Limited Partnership if the aggregate of the amount Called for exceeds 30% of the aggregate of the Initial Contributions made by the Limited Partners, unless all Limited Partners have approved, in writing, the Calling of such amount.

- 4.3 **Calls to be notified in writing:** A Call on a Partner must be notified to the Partners in writing, and the Call Notice must specify the amount of the Call, the time that payment is required (which must be at least 15 Business Days from the date of the Call), and directions as to how payment is required to be made. No Call is required to be made in respect of the Initial Contribution.
- 4.4 **Revocation or postponement of Call:** The General Partner may, by written notice to all the Limited Partners, revoke all or any part of, or postpone the time for payment of, a Call.
- 4.5 **Register:** The General Partner will keep and maintain a register that records the Limited Partnership Interest held by the Partners and their respective Capital Contributions in the form set out in Schedule 1. The Partnership Register must be updated within 10 Business Days of the beginning of each Financial Period (or as soon as reasonably practicable thereafter) and otherwise as soon as reasonably practicable following any other change in Limited Partners, Limited Partnership Interests or Capital Contributions.
- 4.6 **No new Limited Partners:** No other person may be admitted as a limited partner unless the terms of their admission have been approved by the General Partner and each and every of the Limited Partners, and the new limited partner has signed an Accession Deed.
- 4.7 **Restriction on withdrawal of Capital Contributions and transfer of Limited Partnership Interest:** A Partner is not entitled to:
- (a) withdraw any or all of its Capital Contribution from the Limited Partnership (except for a distribution pursuant to clause 10) until the dissolution of the Limited Partnership in accordance with clause 20 of this Agreement; or
 - (b) Transfer any of its Limited Partnership Interest until that Partner carries out an assignment in accordance with clauses 11 or 12 of this Agreement.

5. **POUARUA FARM PROPERTY**

- 5.1 **Acquisition:** The Limited Partnership shall, pursuant to the Pouarua On-Account Deed of Settlement acquire the Pouarua Farm Property.
- 5.2 **No sale or charging:** The Limited Partnership must not:
- (a) sell or Transfer the Pouarua Farm Property (or any part of it); or
 - (b) allow a security interest to be granted over the Pouarua Farm Property (or any part of it),

without the prior written approval of all Limited Partners.

- 5.3 **No other acquisitions:** Without limiting clause 1.2, the Limited Partnership will not:
- (a) acquire any land other than the Pouarua Farm Property; or
 - (b) acquire any asset which is not directly required to give effect to the Purpose,

without such action being approved by a resolution passed by Limited Partners representing over 75% of the total of the Capital Contributions (excluding the Capital Contributions of any Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13 of the Agreement).

6. STRATEGIC PLANS

6.1 **General Partner to prepare Strategic Plans:** In accordance with this clause 6, the General Partner shall prepare, no later than two years after the Registration Date and update not less than every three years thereafter, a long-term planning document ("**Strategic Plan**") which specifies in respect of the Limited Partnership:

- (a) the strategic vision for the Limited Partnership over the next 5 year period;
- (b) the nature and scope of the activities proposed by the General Partner for the Limited Partnership in relation to the Purpose;
- (c) the performance targets and measurements by which performance of the Limited Partnership may be judged;
- (d) the manner in which it is proposed that projected income (if any) shall be dealt with;
- (e) any proposals for the ongoing management of the Partnership Assets having regard to the interests of all Limited Partners;
- (f) the policies that are to apply in respect of the preparation and adoption of Operating Budgets and Annual Plans; and
- (g) such other prudential requirements as the General Partner deems appropriate.

6.2 **Limited Partners to discuss Strategic Plans:** The General Partner shall arrange for Strategic Plans prepared in accordance with clause 6.1 to be sent to each Limited Partner for review and will call a meeting of the Limited Partners to discuss the Strategic Plan (provided that the date of the meeting is not less than 60 days after the date that the proposed Strategic Plan is sent to the Limited Partners). Following discussion, the General Partner must consider and, if thought fit, approve (with or without amendments) the Strategic Plan prepared under clause 6.1.

7. OPERATING BUDGETS AND ANNUAL PLAN

7.1 **First Operating Budget:** The Partners agree to adopt the First Operating Budget set out in Schedule 3, which shall apply in respect of the first and second Financial Periods following the Registration Date.

7.2 **Preparation of Operating Budgets:** The General Partner shall, within 20 Business Days of the start of each Financial Period after the first Financial Period, prepare (or procure the preparation of) an Operating Budget in respect of the Limited Partnership, which must include:

- (a) a budget of Administration Expenses and Capital Upgrade and Maintenance Expenses (to the extent known or anticipated) for the relevant Financial Periods;
- (b) the amount of the Capital Contribution that will be required from each Limited Partner in respect of the relevant Financial Periods (being each Limited

Partner's Pro Rata share of the aggregate amount of all Administration Expenses); and

- (c) details of any anticipated material capital upgrades, maintenance and/or material expenditure.

7.3 **First Annual Plan:** The Partners agree to adopt the First Annual Plan set out in Schedule 4, which shall apply in respect of the first and second Financial Periods following the Registration Date.

7.4 **Preparation of Annual Plans:** The General Partner shall, within 20 Business Days of the start of each Financial Period after the first Financial Period, prepare (or procure the preparation of) an Annual Plan in respect of the Limited Partnership, which must include:

- (a) the Operating Budget;
- (b) the nature and scope of the activities to be undertaken, or proposed to be undertaken, by the Limited Partnership in the relevant Financial Periods;
- (c) the Limited Partnership's focus and objectives to execute the Strategic Plan for the relevant Financial Periods; and
- (d) any performance targets and/or measurements by which the performance of the Limited Partnership may be reviewed in respect of the relevant Financial Periods.

7.5 **Operating Budgets and Annual Plan consistent with Strategic Plan:** Each Operating Budget and Annual Plan prepared in respect of a Financial Period after the second anniversary of the Registration Date shall be consistent with the then current Strategic Plan for the Limited Partnership.

7.6 **General Partner to approve Operating Budgets and Annual Plan:** The General Partner must consider and, if thought fit, approve (with or without amendments) an Operating Budget prepared under clause 7.2 and an Annual Plan prepared under clause 7.4 before the commencement of the relevant Financial Period, and thereafter must adopt and implement the relevant Operating Budget and Annual Plan.

7.7 **Peer review:**

- (a) Where:
 - (i) a Director is entitled to vote on the approval of an Operating Budget and/or Annual Plan in accordance with clause 7.6; and
 - (ii) the Board resolved to approve the relevant Operating Budget and/or Annual Plan; and
 - (iii) the Director casts the votes which are exercisable by that Director (in accordance with the constitution of the General Partner) against the resolution to approve the relevant Operating Budget and/or Annual Plan,

the resolution to approve the Operating Budget and/or Annual Plan shall be deemed not to have been passed and the proposed Operating Budget and/or Annual Plan shall immediately be submitted for "peer review" by an independent accountant (who shall be a partner of one of the major accounting firms in New Zealand, who has experience in the review of operating budgets).

- (b) The independent accountant shall be agreed between the Directors or, failing agreement on that issue within two Business Days, shall be determined by the Board by resolution passed by simple majority vote.
- (c) The independent accountant shall be instructed to review the proposed Operating Budget and/or Annual Plan to determine whether it is reasonable having regard to the anticipated activities of the Limited Partnership during the period covered by the Operating Budget and/or Annual Plan.
- (d) Where (a) applies, the meeting of the Board will be adjourned for a period of 15 Business Days to the same time and place (unless otherwise agreed by all Directors) and the independent accountant's review will be presented to the Board at that meeting.
- (e) The Board will re-assess the Operating Budget and/or Annual Plan having regard to the independent accountant's report and shall endeavour to agree unanimously upon the Operating Budget and/or Annual Plan (adjusted, where necessary, to take account of the independent accountant's report). If the Board is unable to reach such agreement the Operating Budget and/or Annual Plan shall be adjusted to reflect the report and that adjusted Operating Budget and/or Annual Plan shall be deemed to have been adopted.

7.8 **Distribution of Annual Plan:** The Annual Plan shall be furnished to each Limited Partner as soon as practicable (but in any event within 10 Business Days) following the date the Annual Plan is approved by the Board.

8. ALLOCATION OF EXPENSES, LIABILITIES, PROFITS AND LOSSES

8.1 **General Principle:** As a general principle, the Partners agree that:

- (a) Administration Expenses will be borne by the Limited Partnership; and
- (b) to the extent that Capital Contributions are Called to fund Administration Expenses and/or Capital Upgrade and Maintenance Expenses, such Calls shall be levied Pro Rata (based on each Limited Partner's Limited Partnership Interest); and
- (c) Investment Expenses will be borne by the Limited Partnership Pro Rata in proportion to the Capital Contribution made by each Limited Partner and, to the extent known at the First Commitment Date, a Pro Rata amount shall be included in each limited Partner's Initial Contribution.

8.2 **Administration Expenses:** The following categories of expenses shall be deemed to be "**Administration Expenses**" of the Limited Partnership:

- (a) All fees, costs and expenses (including GST) associated with operating the Limited Partnership, including reporting, regulatory, accounting and legal costs and the costs of the Limited Partnership's administration.
- (b) All day-to-day overheads and operating costs of the General Partner, including compensation for employees, directors' remuneration, rent, utilities, office expenses and any other incidental operating expenses.
- (c) All costs and expenses (including GST) incurred in relation to the production and distribution of the Operating Budgets and Annual Plan referred to in clause 7.

- (d) All costs and expenses (including GST) incurred in relation to the production and distribution of the reports and accounts referred to in clause 9 and any valuations or certifications required pursuant to this Agreement, including the fees of the Auditors.
- (e) The General Partner's expenses associated with the formation and establishment of the Limited Partnership, including the fees and expenses of the legal, taxation and accounting advisers engaged by the General Partner to assist with such formation and establishment and with the preparation of this Agreement.

8.3 **Investment Expenses:** The following categories of expenses shall be deemed to be "**Investment Expenses**":

- (a) All fees, costs and expenses incurred in relation to the Pouarua Farm Property acquisition, whether or not that transaction is completed successfully (other than the actual purchase price of the Pouarua Farm Property).
- (b) All expenses associated with the formation and establishment of the Limited Partnership including the fees and expenses of the legal, taxation and accounting advisers engaged to assist with such formation and establishment of the Limited Partnership and the preparation of this Agreement.

8.4 **Capital Upgrade and Maintenance Expenses:** The following categories of expenses shall be deemed to be "**Capital Upgrade and Maintenance Expenses**":

- (a) All fees, costs and expenses incurred in the ongoing maintenance of, and potential upgrade to, the Pouarua Farm Property including professional advisers fees such as architectural, accounting and legal costs; and
- (b) All fees, costs and expenses associated with consents required in relation to any upgrade works.

8.5 **Approval of expenses:** Subject to clause 4.2, the General Partner must approve any expenses incurred by the Limited Partnership.

8.6 **Determination of Expenses:** The General Partner may determine which expenses are Administration Expenses, which expenses are Investment Expenses and which expenses are Capital Upgrade and Maintenance Expenses in accordance with clauses 8.2 and 8.3 and such determination will be final and binding.

8.7 **Payments to General Partner:** To the extent that any payment to the General Partner under this clause 8 constitutes a distribution for the purposes of the Act, that payment will be subject to clause 10.2.

8.8 **Determining Amounts of Income, Capital and Losses to be Allocated:** For the purposes of determining the amount of Income, Capital and Losses to be allocated among the Limited Partners after the payment of or provision for fees, costs and expenses referred to in clauses 8.1 to 8.7 above, all Income and Capital arising and Losses accruing must, unless otherwise agreed by all Limited Partners, be allocated to the Limited Partners Pro Rata.

8.9 **Allocation of Liabilities:**

- (a) The Limited Partners have no personal obligation for the debts, liabilities or obligations of the Limited Partnership, except to the extent provided in the Act, this Agreement or in other applicable laws, if any.

- (b) The General Partner is responsible for all the debts, liabilities and obligations of the Limited Partnership to the extent set out in the Act.

8.10 **Accounts:** Subject to the Act, and clause 9, the Limited Partnership must establish and maintain such accounts and records for each of the Partners as the General Partner determines and amounts must be credited or debited to and from these accounts as appropriate to reflect the allocation of Income, Capital and Losses of the Limited Partnership amongst the Partners on the basis set out in clause 8.8.

9. ACCOUNTS, REPORTS AND AUDITORS

9.1 **Accounts:** The General Partner must prepare and approve financial statements of the Limited Partnership in respect of each Financial Period in accordance with the Act and generally accepted accounting practice (as defined in the Financial Reporting Act 1993). The General Partner shall cause such accounts to be audited by the Auditors.

9.2 **Annual Report:** The General Partner must prepare an Annual Report of the Limited Partnership in respect of each Financial Period which must include:

- (a) a set of the audited financial statements prepared in accordance with clause 9.1, together with any report of the Auditors and a statement of accounting policies;
- (b) a summary of activities undertaken by the Limited Partnership in the relevant Financial Periods; and
- (c) a comparison of the Limited Partnership's performance as against the Annual Plan; and
- (d) any relevant tax information in connection with the Limited Partnership,

(the "**Annual Report**"). The Annual Report shall be furnished to each Limited Partner as soon as practicable (but in any event within 80 Business Days) following the end of each Financial Period.

9.3 **Reports:** In addition to clauses 9.1 and 9.2, the General Partner must ensure the following unaudited reports are provided:

- (a) a report to all Limited Partners on the conduct of the Limited Partnership, such reports to be provided in respect of each Quarter; and
- (b) a Partner tax statement setting out the Limited Partner's share of any reasonable income and deductions of the Limited Partnership for the preceding Financial Period, within 80 Business Days of the end of each Financial Period, and other information reasonably required by Limited Partners from time to time to complete any New Zealand taxation returns in respect of their income or loss from the Limited Partnership.

9.4 **Auditor:** The General Partner may appoint the Auditor. The Limited Partners may by Resolution of the Limited Partnership or by a resolution at a Limited Partners' meeting in accordance with clause 18 determine to remove an existing Auditor. Any replacement auditor to be appointed following a removal or resignation of the Auditor will be appointed by the General Partner, following approval of that Auditor by a Resolution of the Limited Partnership or a resolution at a Limited Partners' meeting in accordance with clause 18.

10. DISTRIBUTIONS

10.1 **Nature of Distributions:** For the purpose of this Agreement, distributions of Income and Capital include:

- (a) all sums actually paid or distributed to the Partners from the Limited Partnership out of Capital or Income (without any deduction for any withholding tax payable by any person in respect of the amount paid, or distribution costs or expenses incurred by, or taxation payable by, any Limited Partner in relation to such payments or distributions) and such payments or distributions are deemed to be made on the date of payment or distribution;
- (b) all distributions in kind to the Partners; and
- (c) all distributions in cash or in kind to the Partners following termination of the Limited Partnership.

10.2 **Limitations on Distributions:** The General Partner is not obliged to cause the Limited Partnership to make any distribution and:

- (a) the Limited Partnership and the General Partner will comply with the provisions of the Act relating to such distributions; and
- (b) will not do so to the extent to which the General Partner has made a final determination to issue a Call in respect of an amount equal to or greater than the amount of such distribution (in which case the Call will be deemed to be reduced by the amount of such distribution) provided that the General Partner will nevertheless issue a Call Notice with respect to the amount but will advise the extent to which the Call is satisfied by a distribution in that Call Notice.

10.3 **Allocation:** Distributions made pursuant to this Agreement must be in accordance with the allocation of Income and Capital made to a Partner under clause 8.8 and, for the avoidance of doubt, must be Pro Rata.

10.4 **Interim Distributions:** The General Partner may, provided it has obtained sufficient tax and/or financial advice, allocate Income, Capital and Losses for a Financial Period (or any part thereof) prior to the completion of the financial statements for that Financial Period. If the General Partner does so, then upon completion of the financial statements for that Financial Period:

- (a) if it is determined that Income, Capital and Losses of the Limited Partnership for that Financial Period have not been correctly allocated pursuant to clause 8.8, the General Partner will amend the records of the Limited Partnership to record the correct allocation;
- (b) if it is determined, following the correct allocation of Income, Capital and Losses under 10.4(a), that distributions made pursuant to clause 10 in that Financial Period were not made in accordance with the correct allocation of Income, Capital and Losses for that Financial Period, each Partner which received a greater distribution than the distribution to which the Partner was entitled will pay an amount to the General Partner equal to the excess and the General Partner will then make an additional payment to each Partner which received a lesser distribution than the distribution to which the Partner was entitled of an amount equal to the amount of the shortfall; and
- (c) the accounts of all Partners will be amended to record the correct allocations of Income, Capital and Losses, and payment of distributions, in accordance with this clause.

11. NO ASSIGNMENT BY GENERAL PARTNER

- 11.1 **No assignment by General Partner:** The General Partner shall not Transfer its rights or interests as general partner of the Limited Partnership or voluntarily dissolve or withdraw as the General Partner without the approval of a unanimous Resolution of the Limited Partnership or a unanimous resolution at a Limited Partners' meeting in accordance with clause 18 and provided that a new general partner has been appointed in accordance with clause 11.3. No such dealing shall be valid or effective without such consent.
- 11.2 **Removal of the General Partner:** The General Partner may be removed for any reason by unanimous Resolution of the Limited Partnership, provided that a new general partner has been appointed in accordance with clause 11.3.
- 11.3 **Replacement General Partner:** Any replacement general partner must be appointed by unanimous Resolution of the Limited Partnership with such replacement having effect from registration of the appointment with the Registrar in accordance with the Act.

12. ASSIGNMENT BY LIMITED PARTNERS

- 12.1 **Assignment by Limited Partners:** No Limited Partner may directly or indirectly Transfer all or any part of its Limited Partnership Interest or any of its other rights or interests as a Limited Partner (except by way of an assignment to an Affiliate), nor may there occur any change in control of the ultimate beneficial interest in respect of a Limited Partner, whether voluntary or involuntary, without the prior written consent of the General Partner and the other Limited Partners.
- 12.2 **Transfer procedure:** Any Limited Partner wishing to Transfer all or part of its Limited Partnership Interest must comply with the pre-emptive rights provisions set out in Schedule 5. Notwithstanding any provision in Schedule 5, no such transferee of a Limited Partner's Limited Partnership Interest shall become a Substitute Limited Partner without the further written consent of the General Partner and the other Limited Partners. The transferring Limited Partner must pay all costs and expenses of the Limited Partnership arising in connection with any such proposed Transfer, including (without limitation) reasonable legal fees.
- 12.3 **Accession Deed:** Any Substitute Limited Partner is bound by this Agreement and, as a condition of giving its consent to any transfer to be made in accordance with the provisions of this clause 12, the General Partner must require that the proposed Substitute Limited Partner acknowledge its assumption (in whole or in part) of the obligations and liabilities of the transferring Partner by executing an Accession Deed.

13. DEFAULT BY PARTNER

- 13.1 **Failure to pay Call:** If any Partner ("**Defaulting Partner**") fails to pay a Call in full at the time set by the General Partner for payment of that Call, or otherwise acts in breach of this Agreement and fails to remedy that breach within five Business Days of receiving notice from the General Partner requiring it to be remedied, clauses 13.2 to 13.4 shall apply. This clause shall not limit any other rights any other Partner or the Limited Partnership has at law against the Defaulting Partner or any other person.
- 13.2 **Suspension of participation by Defaulting Partner:** In the circumstances referred to in clause 13.1, until the Defaulting Partner has remedied all defaults, the Defaulting Partner will have no right, unless the General Partner otherwise determines, to:

- (a) participate in, or vote on, any matter (including at any meeting of the Limited Partnership or by Resolution of the Limited Partnership); or
- (b) sign any document relating to any matter on behalf of the Defaulting Partner;

to the extent that matter relates to the default of that Defaulting Partner.

13.3 **General Partner's Right:** In addition to clause 13.2 and without limiting any other powers or remedies of the Limited Partnership or the General Partner, the General Partner will have the right (on behalf of the Limited Partnership) to exercise all or any of the following powers or remedies by Extraordinary Directors' Resolution as concerns the Defaulting Partner:

- (a) where the General Partner determines that the default is significant and/or material, to suspend, until the date of payment in full, the Defaulting Partner's right to participate in or vote on any matter relating to, or contemplated by, this Agreement (including, for the avoidance of doubt, in relation to any action or proposal relating to, or affecting, the Pouarua Farm Property), provided that the Defaulting Limited Partner may never be removed from the Limited Partnership;
- (b) to apply all or any part of any distribution payable to the Defaulting Partner in satisfaction of moneys owed by the Defaulting Partner to the Limited Partnership (including any reimbursement due under clause 13.3(d), and any default interest due under clause 13.4);
- (c) to charge the Defaulting Partner default interest in accordance with clause 13.4; and/or
- (d) to do anything, including paying money, necessary to remedy the breach, and all money paid and expenses incurred in remedying, or attempting to remedy, the breach, or in the exercise or enforcement, or attempted exercise or enforcement, of any power, right or remedy of the General Partner or the Limited Partnership in respect of the breach (under this Agreement or otherwise) will be reimbursed by the Defaulting Partner, and will be a debt due from the Defaulting Partner to the Limited Partnership. Without limiting this clause, all interest paid, and other costs incurred, by the Limited Partnership with respect to borrowings of the Limited Partnership, where such borrowings arise as a result of the default of the Defaulting Partner, will be reimbursed to the Limited Partnership by the Defaulting Partner.

The General Partner's rights under this clause 13.3 will cease to apply if and when the Defaulting Partner has remedied all defaults which have caused that Partner to be a Defaulting Partner.

13.4 **Default interest:** Where a Partner has failed to pay a Call, or other moneys due to the Limited Partnership, in full when due, these moneys will (unless otherwise determined by the General Partner) bear default interest at the Default Rate (compounding at monthly intervals) calculated on a daily basis from the due date until the date of payment in full.

13.5 **Indemnity:** Without limiting and notwithstanding any other provision of this Agreement, each Defaulting Partner will indemnify, and hold harmless, each other Limited Partner, the Limited Partnership and the General Partner from and against all costs, claims, losses or liabilities (including legal fees) arising from any failure of that Defaulting Partner to pay a Call in full at the time set by the General Partner for payment of that Call, or any other breach of this Agreement by that Defaulting Partner.

14. GENERAL PARTNER BOARD PROCEDURE AND DECISION MAKING

14.1 **Matters requiring Extraordinary Directors' Resolution:** Subject to clause 15.3, decisions on the following matters will require the approval of the Board by Extraordinary Directors' Resolution:

- (a) adoption of the Operating Budget and any material deviation from that budget;
- (b) adoption of the Annual Plan and any material deviation from that plan;
- (c) approval of the Limited Partnerships' financial statements;
- (d) approval of the Strategic Plan and any material deviation from that Strategic Plan;
- (e) any alteration to the Purpose;
- (f) appointing the Auditor;
- (g) classification of expenses in accordance with clause 8.6;
- (h) any decision to approve an assignment of a Limited Partnership Interest under clause 12;
- (i) any decision to exercise the rights and powers granted to the General Partner under clause 13.3;
- (j) any amendment to this Agreement under clause 19.1(a), 19.1(b) or 19.1(d);
- (k) any distribution in kind to be made by the Limited Partnership;
- (l) any matter where the Board undertakes in the General Partner's name or in the name of the Limited Partnership to:
 - (i) enter into any transaction or series of related transactions likely to exceed, or to involve liabilities (including contingent liabilities) in excess of \$10,000 (other than as approved in the relevant Operating Budget or Annual Plan);
 - (ii) enter into any contract or arrangement for capital expenditure or realisation of capital assets, whether comprising a single transaction or a series of related transactions, if the amount of such expenditure or realisation exceeds \$10,000 (other than as approved in the relevant Operating Budget or Annual Plan); or
 - (iii) enter into or terminate any acquisition, disposal, joint venture, association, partnership or other business combination with any party (other than in the ordinary course of business or as approved in the relevant Operating Budget or Annual Plan).

14.2 **Constitution:** The constitution of the General Partner shall govern the Board's procedure.

15. PARTNERS' RIGHTS AND DUTIES

15.1 **Management:** The General Partner has responsibility for the management and control of the business and affairs of the Limited Partnership and, subject to the terms of this Agreement:

- (a) must devote as much of its time and attention as is reasonably required for the management of the business of the Limited Partnership (whilst recognising that the General Partner may, in accordance with clause 15.8, also be a general partner of other limited partnerships);
- (b) must keep all records required by the Act to be kept by the Limited Partnership and must procure that all filings and registrations, including the annual return required in relation to the Limited Partnership pursuant to the Act, are promptly made;
- (c) must ensure that all financial statements required by the Act are completed and signed; and
- (d) must operate the Limited Partnership in accordance with this Agreement.

15.2 **Authority and Powers:** Without prejudice to the generality of clause 15.1, but subject to clause 15.3, in respect of the Purposes, the General Partner (and its agents and delegates and their respective delegates) has the power and authority to bind the Limited Partnership without prior consultation with any of the Limited Partners, provided that the General Partner (and its agents and delegates and their respective delegates) must not, unless approved by a unanimous resolution of the Board:

- (a) cause the Limited Partnership to borrow money;
- (b) cause the Limited Partnership to give guarantees, indemnities, covenants and undertakings in favour of third parties; and
- (c) cause the Limited Partnership to sell or Transfer the [Pouarua Farm Property] (or any part of it).

15.3 **Reserved Matters:** Notwithstanding clause 14, the General Partner shall not bind the Limited Partnership in respect of any of the matters set out in Schedule 7 ("**Reserved Matters**") unless that Reserved Matter has:

- (a) been approved by Extraordinary Directors' Resolution pursuant to clause 14.1; and
- (b) subsequently approved by unanimous Resolution of the Limited Partnership.

15.4 **Limitations on Limited Partners:** No Limited Partner shall:

- (a) be entitled to participate in, purport to participate in, or interfere with, the management of the Limited Partnership or the Purpose;
- (b) have any authority to act for the Limited Partnership, or in any way to interfere with the conduct or management of the Limited Partnership;
- (c) purport to act in respect of, or on behalf of, the General Partner, any other Partner or the Limited Partnership; or
- (d) vote on matters relating to the Limited Partnership,

except as expressly provided for in this Agreement and/or where the same is not prohibited by the Act. The Limited Partners must, on request, promptly provide all information to the General Partner as may be reasonably necessary for the operation of the Limited Partnership including any registration, regulatory and taxation requirements.

- 15.5 **Continuing authority:** The rights, powers and discretions of the General Partner under this Agreement continue despite any change in the composition of the Limited Partnership.
- 15.6 **Delegation of General Partner's powers:** The General Partner may delegate its authority and powers to such person or persons (except a Limited Partner) as it may reasonably select and appoint, provided that such person or persons include representatives of an iwi which is part of the Hauraki Collective and which is also a Limited Partner in this Limited Partnership. The General Partner remains liable for the acts and omissions of its delegates as if those acts or omissions were those of the General Partner. Without in any way affecting the generality of the foregoing, the General Partner may, for the purposes described in the foregoing sentences:
- (a) by power of attorney or other deed appoint any person (other than a Limited Partner) to be attorney or agent of the General Partner for such purposes and with such powers, authorities and discretions (not exceeding those vested in the General Partner) as it thinks fit;
 - (b) appoint and engage by writing or otherwise any person (other than a Limited Partner) to be sub-agent of the General Partner as the General Partner may think necessary or proper for such purposes and with such powers, authorities, and discretions (not exceeding those vested in the General Partner) as it thinks fit.
- 15.7 **Best Interests:** The General Partner must act in the best interests of the Limited Partnership, in good faith, openly and honestly in conducting the Purpose.
- 15.8 **Exclusivity:** The functions and duties which the General Partner undertakes on behalf of the Limited Partnership are exclusive to the Limited Partnership and the General Partner may not perform similar functions and duties for itself and/or others. The General Partner may not compete with the Purpose of the Limited Partnership.
- 15.9 **Conflicts of Interest:** If a Partner or the Limited Partnership experiences a Conflict of Interest it shall be dealt with in accordance with the Limited Partnership's conflict of interest policy applicable from time to time.

16. LIABILITY AND INDEMNIFICATION OF GENERAL PARTNER

- 16.1 **Liability generally:** Subject only to clause 16.2, the General Partner and its directors, officers, agents, employees and Affiliates shall not be liable, for damages or otherwise, and whether pursuant to this Agreement, in contract, tort (including negligence) or otherwise at law, to the Limited Partnership or any other Partner for any matter relating to the Limited Partnership, or any other act or omission of the General Partner with respect to the Limited Partnership.
- 16.2 **Exceptions:** Clause 16.1 shall not limit or restrict any liability of the General Partner to the Limited Partnership or Partners for gross negligence, fraud, any illegal act or material breach of this Agreement.
- 16.3 **Indemnity:** The Limited Partnership shall indemnify the General Partner and its directors, officers, agents, employees and Affiliates out of the Partnership Assets from and against all costs, claims, losses or liabilities (including legal fees) arising from any

matter relating to the Limited Partnership, or any act or omission of the General Partner with respect to the Limited Partnership, except for any such cost, claim, loss or liability arising from the gross negligence, fraud, illegal act or material breach of this Agreement of or by the General Partner (or its agents or delegates).

16.4 **Acknowledgments:** Each Partner acknowledges that, except for the obligations expressly provided in this Agreement:

- (a) it has made its own independent enquiry and investigations in relation to the Limited Partnership and the Purpose, and has entered into this Agreement in reliance solely on its own judgment, and not in reliance on any representations from the General Partner or any other Partner or any of their respective affiliates, officers, directors, partners, employees or agents;
- (b) all express (to the extent permitted by law), implied, or other representations or warranties in relation to the Limited Partnership and the Purpose are expressly excluded; and
- (c) no Partner or any of its Affiliates, officers, directors, employees or agents have made or make any representation, or have given or give any warranty (express or implied), as to the accuracy, content, completeness, value or otherwise of, nor have or accept any liability in respect of, any information (written, oral or otherwise) directly or indirectly provided or made available to, or used by, a Partner in connection with the Limited Partnership and the Purpose, and each Partner unconditionally waives any claim (whether arising in tort, in contract, by operation of law or otherwise) it may have against any of them in respect of such information.

17. SECURITY INTEREST

17.1 **Grant of security interest:** Each Partner grants a security interest in all of that Partner's present and after-acquired personal property arising under this Agreement, and all of that Partner's present and future rights in relation to such personal property, to the Limited Partnership as security for:

- (a) the payment and delivery of all amounts of any nature which that Partner (whether alone, or jointly or jointly and severally with any other person) is, or may at any time become, liable (whether actually or contingently) to pay or deliver to the Limited Partnership (whether alone, or jointly or jointly and severally with any other person) under, pursuant to, or arising out of, this Agreement; and
- (b) the performance by that Partner of all that Partner's other obligations to the Limited Partnership at any time.

So far as it concerns each security interest over or in respect of any present or future account receivable and present and future rights in relation to any account receivable, the security interest granted by each Partner will take effect as a transfer (as "transfer" is used in the context of and for the purposes of the PPSA).

17.2 **Enforcement of security interest:** The decision whether to enforce the security interest granted in clause 17.1 above shall be determined by unanimous agreement of the Partners, excluding those Partners who are Defaulting Partners or who are the subject of the decision to exercise the security interest.

18. MEETINGS

18.1 **Meeting of Partners:** The General Partner may call meetings of the Partners for the purposes of discussing the affairs of the Limited Partnership from time to time as it sees fit, and will:

- (a) on an annual basis, call a meeting of the Partners for the purpose of considering the Financial Statements for its last preceding Financial Period, which meeting will be held not later than five months after the end of the Financial Period;
- (b) at the written request of Limited Partners whose aggregate Capital Contributions are equal to, or greater than, 50% of all Capital Contributions, summon a meeting for any purpose required by such Limited Partners; and
- (c) call a meeting whenever a Reserved Matter arises.

18.2 **Rules for convening and conducting meetings:** Every meeting of the Partnership will be convened and conducted in accordance with the Meeting Rules.

19. AMENDMENT

19.1 **Amendments:** The General Partner may amend this Agreement at any time, if:

- (a) the amendment is to vary Schedule 1 so as to record an adjustment to Capital Contributions in accordance with this Agreement;
- (b) the amendment is made to correct a manifest error, inconsistency or is necessary to comply with any law, or is of a formal or technical nature and the General Partner has notified the Limited Partners of the change at least 10 Business Days in advance and no Limited Partner has objected to such change;
- (c) the amendment is approved by a unanimous Resolution of the Limited Partnership or a unanimous resolution at a Partners' meeting in accordance with clause 18; or
- (d) the amendment is required to comply with any law.

19.2 **Limited Partners:** This Agreement (other than amendments made under clauses 19.1(a), 19.1(b) or 19.1(d)) may be amended by the Limited Partners by way of a unanimous Resolution of the Limited Partnership.

19.3 **Amendment deed:** Any amendment to this Agreement will be recorded in a deed of amendment.

20. DISSOLUTION OF THE PARTNERSHIP

20.1 **Termination:** Subject to clauses 20.2 and 20.3, the Limited Partnership and this Agreement will terminate on the occurrence of any of the following events:

- (a) a unanimous Resolution of the Limited Partnership is passed authorising the termination of the Limited Partnership; or
- (b) any event otherwise specified as a terminating event in the Act, excluding section 86(1)(b) of the Act.

20.2 **Provisions Surviving Termination:** In the event that this Agreement is terminated pursuant to this clause 20 then, notwithstanding any other provisions of this Agreement, the provisions of clauses 2, 6, 9, 10, 16, 19, 20.3 and 21 and any other provisions of this Agreement which shall be necessary for the performance of obligations set out under those clauses, are to survive such termination.

20.3 **Liquidation of Interests of Partners:** On the occurrence of a Terminating Event, no further business activities are to be conducted except for such action as necessary for completing a transaction unfinished at the time of termination, winding-up of the affairs of the Limited Partnership and the distribution of the Partnership Assets amongst the Partners in accordance with clause 10.

21. GENERAL

21.1 **Private obligations:** Each Partner will at all times duly and punctually pay and discharge that Partner's personal obligations and liabilities under this Agreement, whether present or future, and indemnify the Limited Partnership from all reasonable losses, costs, actions, proceedings, claims and demands arising out of that Partner's personal obligations and liabilities, and provided the Limited Partnership has taken reasonable steps to mitigate such losses.

21.2 **Confidentiality:** Each Partner will keep confidential, treat as privileged, and not directly or indirectly make or allow to be made any disclosure or use of any information directly or indirectly obtained from any other Partner, or developed or held for the purposes of the Limited Partnership, except to the extent:

- (a) required by law; or
- (b) necessary to satisfy the requirements of any recognised stock exchange; or
- (c) that all Partners otherwise agree in writing; or
- (d) reasonably required by any Partner to enable it to report to its custodian, trustee, manager, beneficiaries (including ultimate beneficiaries and ropu members), limited partners, investors, potential investors or similar; or
- (e) necessary to obtain the benefit of, or to carry out obligations under, this Agreement; or
- (f) that the information is or becomes available in the public domain without breach by a Partner of its confidentiality obligations under this clause or at law.

21.3 **Notices:** Every notice to be given to a party under, or in connection with, this Agreement will be given in writing to the address of that party set out in Schedule 1 or to any other address notified by that party for such purpose from time to time, by:

- (a) personal delivery; or
- (b) mailing by pre-paid post, and will be deemed to be given two Business Days after (but exclusive of) the date of mailing; or
- (c) facsimile transmission, and will be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice, unless that party proves that, contrary to the transmission report, it was not transmitted, or it was not transmitted in a complete and legible state, to that party's facsimile; or

- (d) email, and will be deemed to be given on the day on which it was despatched provided in each case the computer system used to transmit the communication:
- (i) has received an acknowledgement of receipt to the email address of the person transmitting the communication; or
 - (ii) has not generated a record that the communication has failed to be transmitted.

Notwithstanding any other provision contained in this clause, any notice given after 5pm, or on a day which is not a Business Day, will be deemed to be given at 9am on the next Business Day.

- 21.4 **Counterparts:** This Agreement may be executed in any number of counterparts (including facsimile or email copies) and provided that every party has executed a counterpart, the counterparts together will constitute a binding and enforceable deed between the parties.
- 21.5 **Entire agreement:** This Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.
- 21.6 **Severance:** If any provision of this Agreement is, or becomes unenforceable, illegal or invalid for any reason it will be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and will not affect the enforceability, legality, validity or application of any other provision of this Agreement.
- 21.7 **Further assurance:** Each Partner will make all applications, execute all documents, and do all acts and things necessary to implement and to carry out its obligations under this Agreement.
- 21.8 **Agreement binding upon successors and assigns:** Except as otherwise specified in this Agreement, this Agreement is binding upon the heirs, executors, administrators or other representatives, successors and assigns of the parties to it.
- 21.9 **Governing law:** This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Agreement.
- 21.10 **Application of the Act:** Where this Agreement is inconsistent with the Act and such inconsistency is not permitted or contemplated by the Act, the terms of the Act apply.

22. DEFINITIONS AND INTERPRETATION

- 22.1 **Definitions:** In this Agreement, unless the context otherwise requires:

"**Accession Deed**" means a deed in the form set out in Schedule 6.

"**Act**" means the Limited Partnerships Act 2008.

"**Administration Expenses**" has the meaning given in clause 8.2.

"**Affiliate**" means any entity which in relation to the person or persons concerned is:

- (a) a holding company or a subsidiary of that company or another subsidiary of that holding company; or
- (b) any company, body corporate, trust, person, partnership or limited partnership where 50% or more of the votes exercisable, directly or indirectly, at a meeting or partners meeting, or more than 50% of the profits of which, are controlled by, received by or attributed to, directly or indirectly, such person or persons; or
- (c) any company, body corporate, trust, person, partnership or limited partnership which, directly or indirectly, controls, is controlled by or is under effective control of or with the other person or persons,

and "**Affiliated Limited Partner**" shall be construed accordingly.

"**Agreement**" means this Limited Partnership Agreement together with its Schedules, as amended from time to time.

"**Annual Plan**" means the annual plan of the Limited Partnership in respect of two consecutive Financial Periods set by the General Partner in accordance with clause 7.4.

"**Annual Report**" has the meaning given in clause 9.2.

"**Auditor**" means the auditor of the Limited Partnership from time to time as may be appointed pursuant to clause 9.4.

"**Bill**" has the meaning given in recital C.

"**Board**" means the Directors who number not less than the required quorum, acting together as a board of Directors.

"**Business Day**" means any day of the week other than Saturday, Sunday or a public holiday in Auckland.

"**Call**" means a requirement to pay an amount to the General Partner pursuant to clause 4 in fulfilment or partial fulfilment of a Capital Contribution.

"**Call Notice**" means a notice given in accordance with clause 4.

"**Capital**" means the amounts properly determined by the General Partner with appropriate reference to the Auditors to be in the nature of capital (including capital gains) and available for distribution by the Limited Partnership or already distributed by the Limited Partnership, including the value (calculated in accordance with this Agreement) of any assets of the Limited Partnership distributed in kind.

"**Capital Contribution**" means, at any time and in respect of a Partner, the amount of Capital which that Partner has contributed or agreed to contribute, as at the relevant date and, for the avoidance of doubt, includes Capital Contributions made in respect of the Initial Contribution, Administration Expenses and Capital Upgrade and Maintenance Expenses.

"**Capital Upgrade and Maintenance Expenses**" has the meaning given in clause 8.4.

"**Companies Act**" means the Companies Act 1993.

"**Conflict of Interest**" means an actual or potential conflict of interest between:

- (a) the General Partner, a Limited Partner or any of their respective Affiliates; and

(b) the Limited Partnership.

"**Default Rate**" means [Insert]% per annum.

"**Defaulting Partner**" has the meaning set out in clause 13.1.

"**Deregistration Date**" means the date the Limited Partnership is deregistered in accordance with section 97 of the Act.

"**Director**" means a person appointed as a director of the General Partner in accordance with the constitution of the General Partner.

"**Extraordinary Directors' Resolution**" means a resolution approved by not less than 75% of Directors present and voting on that resolution.

"**Financial Period**" means:

- (a) the period from the Registration Date to 31 March immediately following the Registration Date; and
- (b) each period thereafter commencing on 1 April and ending on the next 31 March; and
- (c) the period from 1 April immediately preceding the Deregistration Date to the Deregistration Date.

"**First Annual Plan**" means the annual plan set out in Schedule 5 which the Partners agree shall, subject to clause 7.4, be the Annual Plan for the first two Financial Periods following the Registration Date.

"**First Commitment Date**" means the date for contribution of the Initial Contribution, being at least five Business Days prior to the date of settlement of the acquisition of the Pouarua Farm Property.

"**First Operating Budget**" means the operating budget set out in Schedule 4 which the Partners agree shall, subject to clause 7.2, be the Operating Budget for the first two Financial Periods following the Registration Date.

"**General Partner**" means the general partner of the Limited Partnership, being on the date of this Agreement, Pouarua Farm General Partner Limited.

"**GST**" means goods and services tax as defined by the Goods and Services Tax Act 1985.

"**Hauraki Collective**" means the collective of iwi comprising Ngāi Tai ki Tamaki, Ngāti Hako, Ngāti Hei, Ngāti Maru, Ngāti Pāoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rahiri Tumutumu, Ngāti Tamatera, Ngāti Tara Tokanui, Ngāti Whanaunga, and Te Patukirikiri.

"**holding company**" has the meaning given to it in section 5 of the Companies Act.

"**Income**" means all profits, interests, dividends and other benefits of the Limited Partnership properly determined by the General Partner to be in the nature of income (but excluding Capital).

"**Initial Contribution**" means that part of a Limited Partner's initial Capital Contribution as set out in Schedule 1 (which represents that Limited Partner's contribution to the

purchase price of the Pouarua Farm Property), together with all Investment Expenses known, or incurred by the Limited Partnership, as at the First Commitment Date.

"Investment Expenses" has the meaning given in clause 8.3.

"Limited Partner" means any person admitted to the Limited Partnership in accordance with this Agreement and registered as a limited partner for so long as they remain a limited partner, being on the date of this Agreement:

- (a) Ngāti Maru AHC;
- (b) Ngāti Pāoa AHC;
- (c) Ngāti Tamaterā AHC;
- (d) Ngāti Tara Tokanui AHC; and
- (e) Te Patukirikiri AHC.

"Limited Partnership" means the limited partnership registered pursuant to, and governed by, the Act and this Agreement.

"Limited Partnership Interest" means a Partnership Interest in the Limited Partnership.

"Losses" means a loss of Income or Capital.

"Meeting Rules" means the meeting rules attached as Schedule 2.

"Ngāti Maru AHC" means the asset holding company established by the Ngāti Maru iwi.

"Ngāti Pāoa AHC" means the asset holding company established by the Ngāti Pāoa iwi.

"Ngāti Tamaterā AHC" means the asset holding company established by the Ngāti Tamaterā iwi.

"Ngāti Tara Tokanui AHC" means the asset holding company established by the Ngāti Tara Tokanui iwi.

"On-account (Pouarua) Deed of Settlement" has the meaning given in Recital B and includes any amendments validly made to that deed.

"Operating Budget" means the operating budget of the Limited Partnership in respect of two consecutive Financial Periods set by the General Partner in accordance with clause 7.

"Partner" or **"Partners"** means any one or more of the General Partners and the Limited Partners, as the context requires.

"Partnership Assets" means all of the assets of the Limited Partnership including Capital Contributions Called but not yet paid.

"Partnership Interest" has the meaning given to it in the Act.

"Person" includes an individual, partnership, limited partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity, body of persons or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"**Pouarua Farm Property**" means the property referred to in Recital B and held under computer freehold register 317403 (South Auckland Registration District).

"**PPSA**" means the Personal Property Securities Act 1999.

"**Purpose**" means the purpose of the Limited Partnership as set out in clause 1.

"**Pro Rata**" means on a pro rata basis between the Limited Partners, in proportion to their respective Capital Contributions.

"**Quarter**" means:

- (a) the period from the Registration Date to **[Insert date]**;
- (b) each three-month period thereafter ending on 30 September, 31 December, 31 March or 30 June; and
- (c) the period from the expiry of the immediately preceding Quarter to the Deregistration Date.

"**Register**" means the register of limited partnerships maintained by the Registrar under section 54(1)(a) of the Act.

"**Registrar**" means the Registrar of Companies in New Zealand.

"**Registration Date**" means the date on which the Limited Partnership is registered with the Registrar in accordance with section 51 of the Act.

"**Reserved Matter**" means those matters, set out in Schedule 6, which are to be decided upon by the Limited Partners in accordance with clause 15.3, and "**Reserved Matters**" shall be construed accordingly.

"**Resolution of the Limited Partnership**" means a resolution of the Limited Partnership consisting of one or more documents in similar form which, unless stated to require unanimous approval of the Limited Partners, is signed by one or more of the Limited Partners who together have contributed at least 75% of the Capital Contributions (excluding the Capital Contributions of any Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13).

"**Strategic Plan**" has the meaning given in clause 6.1.

"**subsidiary**" has the meaning given to it in section 5 of the Companies Act.

"**Substitute Limited Partner**" means a person admitted pursuant to clause 12 as the successor to all or part of the rights and liabilities of a Limited Partner in respect of its Partnership Interest.

"**Tax**" means:

- (a) all forms of taxation, withholding, duties, charges, dues, imposts, levies, rates or other statutory, governmental or local governmental impositions of whatever nature, imposed in New Zealand or elsewhere, including income tax, withholding tax, approved issuer levy, fringe benefit tax, stamp duty, GST, gift duty, customs or excise duties, regional or local taxes, municipal taxes and accident compensation levies; and

- (b) all interest, penalties or fines relating to, or arising in connection with, the imposition of, the non-payment of, or late or under-payment of, any such Tax.

"**Te Patukirikiri AHC**" means the asset holding company established by the Te Patukirikiri iwi.

"**Terminating Event**" means any of the events set out in clause 20.1.

"**Transfer**" means to assign, transfer, charge, exchange, pledge, encumber, grant security over or otherwise dispose of or grant any participation in.

22.2 **Interpretation:** Unless the context otherwise requires, in this Agreement:

- (a) headings are inserted for convenience only and will be ignored in construing this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other gender;
- (d) a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;
- (e) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (f) reference to a party, person or entity includes:
- (i) an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having a separate legal personality; and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (g) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (h) reference to monetary amounts, money or money's worth are to New Zealand dollars unless in each case specifically stated otherwise;
- (i) references to times of day are to New Zealand times unless in each case specifically stated otherwise;
- (j) the Schedules to this Agreement form part of this Agreement;
- (k) where any word or expression is defined in this Agreement, any other grammatical form of that word or expression has a corresponding meaning;
- (l) reference to a section, clause, subclause, rule, part, schedule or a party is a reference to that section, clause, subclause, rule, part, schedule or party in this Agreement;

- (m) reference to anything of a particular nature following upon a general statement will not in any way derogate from, or limit the application of, the general statement, unless the particular context requires such derogation or limitation;
- (n) any reference to "month" or "monthly" will mean, respectively, calendar month or calendar monthly;
- (o) examples are used by way of illustration for clarification and interpretative purposes only;
- (p) a reference to one person "controlling" another includes where the first person directly or indirectly, whether by the legal or beneficial ownership of share capital, securities or other equity, the possession of voting power, by contract, trust, or otherwise:
 - (i) has, or may have, the power to appoint or remove the majority of the members of the governing body of the other person;
 - (ii) controls or has the power, or may have the power, to control the affairs or policies of the other person; or
 - (iii) is in a position to derive more than 50% of the benefit of the existence or activities of the other person;
- (q) including, and similar words, do not imply any limitation.

EXECUTION AS A DEED

POUARUA FARM GENERAL PARTNER LIMITED as General Partner by:

Signature of director

Signature of director

Name of director

Name of director

NGĀTI MARU AHC as Limited Partner by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

NGĀTI PĀOA AHC as Limited Partner by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

NGĀTI TAMATERĀ AHC as Limited Partner by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

NGĀTI TARA TOKANUI AHC as Limited Partner by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

TE PATUKIRIKIRI AHC as Limited
Partner by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

SCHEDULE 1

PARTNER DETAILS

PART A - GENERAL PARTNER

Partner	Address for service of notices	Capital Commitment (NZ\$)	Shares	Initial Contribution (NZ\$)
Pouarua Farm General Partner Limited	[Insert address]	Not applicable	Not applicable	Not applicable

PART B - LIMITED PARTNERS

Partner	Address for service of notices	Total Capital Contribution to date (NZ\$)	Initial Contribution (NZ\$)
Ngāti Maru AHC	[Insert address]	\$19,615,000	[Insert]
Ngāti Pāoa AHC	[Insert address]	\$15,625,000	[Insert]
Ngāti Tamaterā AHC	[Insert address]	\$15,300,000	[Insert]
Ngāti Tara Tokanui AHC	[Insert address]	\$2,710,000	[Insert]
Te Patukirikiri AHC	[Insert address]	\$250,000	[Insert]
TOTAL		\$53,500,000	[Insert]

SCHEDULE 2
PARTNER'S MEETING RULES

1. Time and Place

All meetings of the Limited Partnership will be held at such time and place as the General Partner may determine.

2. Notice of meetings

2.1 *Period of notice:* At least 10 Business Days' notice must be given for calling a meeting. The calculation of the period of the notice is to be exclusive of the day on which it is deemed to be served, and of the day for which it is given.

2.2 *Notice to Partners:* Notice of every meeting must be given to all Partners. The accidental or inadvertent failure to give notice of a meeting to any Partner does not invalidate the meeting or anything done at the meeting.

2.3 *Content:* A notice must specify the place and appointed time of the meeting, and the general nature of the business to be transacted. It is not necessary to specify the terms of a resolution to be proposed in the notice unless it is proposed that the resolution be passed pursuant to clause 8.4 of this Schedule 2.

2.4 *Waiver of irregularities:* An irregularity in a notice of a meeting is deemed to be waived if all Partners entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Partners agree to the waiver.

2.5 *Proxies:* Each notice must state that a Partner may appoint a proxy to attend the meeting, and to vote in the place of the Partner.

2.6 *Notice of adjourned meeting:* If a meeting of Partners is adjourned for less than 20 Business Days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clauses 2.1 to 2.5 of this Schedule.

3. Proxies

3.1 *Appointment of proxy:* Any Partner may appoint a proxy to attend and vote for the Partner at any meeting, or at any meetings held during any period, if the meeting or the period are specified in the instrument of appointment. A proxy need not be a Partner. Every proxy must be appointed in writing under the hand of the appointor. The instrument appointing the proxy must be deposited at the office of the General Partner (or such other place as may be specified for that purpose in the notice convening the meeting) at least 48 hours before the time for convening the meeting.

3.2 *Rights of proxy:* Every proxy is to have the same rights as the Partner by which the proxy is appointed:

(a) to attend and speak at the meeting; and

(d) to vote, whether on a show of hands or on a poll.

3.3 *Form of proxy:* An instrument appointing a proxy must be in substantially the following form or such other form as the General Partner will from time to time specify:

[Pouarua Farm Property] Limited Partnership

{I}{We} of being a Limited Partner of the [Pouarua Farm Property] Limited Partnership hereby appoint of or failing {him}{her} of as {my}{our} proxy to vote for {me}{us} on {my}{our} behalf at the meeting of the limited partnership to be held on the day of 2013 (or any adjournment thereof).

Signed this day of 2013

- 3.4 *Exercise of proxy:* A vote given in accordance with the terms of an instrument of proxy is valid despite the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Limited Partnership Interest in respect of which the proxy is given, if no written notification of such is received at the office of the General Partner prior to the commencement of the meeting.

4 Method of holding meetings

- 4.1 A meeting of Partners may be held either:

- (a) by a number of Partners, 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 Partners participating and constituting a quorum can simultaneously hear each other throughout the meeting.

5. Quorum

- 5.1 *Number constituting quorum:* Subject to clause 5.2 of this Schedule, no business is to be transacted at any meeting unless a quorum is present when the meeting proceeds to business. A quorum is a representative of not less than three Limited Partners having the right to vote at the meeting (present in person or by proxy), excluding a Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13.

- 5.2 *Adjournment:* If, within 20 minutes from the time appointed for the meeting, a quorum is not present, the meeting must stand adjourned to the same day of the following week, at the same time and place. If, at the adjourned meeting, a quorum is not present within 20 minutes from the time appointed for the meeting, then the Partners present in person or by proxy will form a quorum.

6. Corporations acting by representative

Any corporation which is a Partner may authorise any person as it thinks fit to act as its representative at any meeting by resolution of its directors or other governing body. Any representative so authorised is to be entitled to exercise the same powers on behalf of that corporation which the representative could exercise if it were an individual Partner. References in these rules to a Partner being present in person is to mean and include a representative appointed by a corporation according to this clause.

7. Chairperson

The Partners present at a meeting must elect one of their number to chair the meeting.

8. Right to attend and speak

The General Partner, the Limited Partners, and the Auditor (or any representative of any of them, provided that the General Partner, each Limited Partner and the Auditor may

each only appoint one representative to attend a meeting of the Partnership) may attend and speak at any meeting of the Partnership on any part of the business of the meeting which concerns them.

9. **Votes**

9.1 *Manner of voting:* In the case of a meeting held in accordance with clause 4.1(a) of this Schedule, a resolution put to the vote of the meeting is to be decided on a show of hands, unless a poll is demanded by the chairperson or by any Partner present in person or by proxy. If a poll is demanded or required, it is to be taken in the manner as the chairperson directs.

9.2 In the case of a meeting held in accordance with clause 4.1(b) of this Schedule, unless a poll is demanded, voting shall be by the Partners signifying individually their assent or dissent by voice.

9.3 *Rights on voting:* Each Partner (other than a Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13) is to have a number of votes set by the General Partner proportionate to the Limited Partner's Capital Contributions. A Partner need not cast all the votes of that Partner, and may cast individual votes in different ways as concerns any proposed resolution.

9.4 *No casting vote:* In the case of an equality of votes on any question, the question must be deemed not to have been carried and the chairperson is not to have a second or casting vote.

9.5 *Removal or approval of Auditors:* Motions to remove or approve the Auditor will bind the General Partner if they are determined by resolutions passed by Limited Partners representing over 75% of the total of the Capital Contributions (excluding the Capital Contributions of any Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13 of the Agreement).

9.6 *Powers of meetings:* A meeting will have the following powers by resolutions passed by Limited Partners (excluding any Defaulting Partner where that Defaulting Partner is suspended in accordance with clause 13 of the Agreement) representing 100% of the total of the Capital Contributions (excluding the Capital Contributions of any Defaulting Partner, where that Defaulting Partner is suspended in accordance with clause 13 of the Agreement):

- (a) power to waive any breach of this Agreement by the General Partner or any Limited Partner;
- (b) power to sanction and cause any alteration, release, modification, waiver, variation, compromise or arrangement in respect of the rights of Partners;
- (c) to approve an amendment to this Agreement under clause 19.1(c) of the Agreement; and
- (d) power to approve any Reserved Matter under clause 15.3 of the Agreement.

Subject to clause 15.3 of the Agreement, a resolution passed at a meeting of Partners will be binding on all Partners, whether present or not, and all Partners will be bound to give effect to it. Any decision that requires a Resolution of the Limited Partnership may alternatively be decided at a Partners' meeting in accordance with this Schedule 2.

9.7 **Written resolution:**

A resolution in writing signed or assented to by all Partners is as valid and effective as if passed at a meeting of the Limited Partnership duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Partners. A copy of the resolution must be entered into the minute book of the Partnership.

10. **Minutes**

The General Partner will cause minutes of all proceedings of meetings to be entered into books kept for that purpose at the office of the General Partner. The books must be open at all reasonable times for inspection by any Partner. The minutes of any meeting must be confirmed either at the meeting to which they relate, or at a subsequent meeting, and must be signed by the chairperson of the meeting at which the minutes are confirmed. On production, the signed minute book is to be conclusive evidence of the proceedings recorded in it, and of their regularity, in the absence of manifest error.

SCHEDULE 3
FIRST OPERATING BUDGET

[To be agreed and inserted]

SCHEDULE 4
FIRST ANNUAL PLAN

[To be agreed and inserted]

SCHEDULE 5**DISPOSAL OF INTEREST - PRE-EMPTIVE RIGHT**

- 1.1 **Sale notice:** If any Limited Partner ("**Seller**") intends to Transfer or receives an offer to Transfer, its Limited Partnership Interest ("**Sale Interest**"), the Seller shall give notice (a "**Sale Notice**") to the other Limited Partners specifying:
- (a) the precise nature of the Sale Interest;
 - (b) the price which the Seller wishes to receive for the Sale Interest; and
 - (c) any other terms and conditions of sale of the Sale Interest (which shall be described sufficiently precisely to enable an acceptance of the offer in the Sale Notice to constitute a binding contract, and which must be terms that are reasonable and practical for the other Limited Partners to accept, including that any consideration payable represents a cash payment (and not a payment in securities, assets or other forms of consideration).
- 1.2 **Acceptance of Sale Notice:** Each Limited Partner other than the Seller may, not later than the date ("**Acceptance Date**") 20 Business Days after the giving of the Sale Notice, give notice to the Seller that the Limited Partner wishes to acquire the Sale Interest on the terms specified in the Sale Notice.
- 1.3 **Terms of sale:** A Limited Partner which gives notice to the Seller in accordance with paragraph 1.2 of this Schedule that it wishes to acquire the Sale Interest ("**Buyer**") shall be entitled and bound (subject to paragraph 1.4 of this Schedule) to acquire the Sale Interest. If more than one Limited Partner gives notice to the Seller that it wishes to acquire the Sale Interest, those Limited Partners shall be entitled and bound to acquire the Sale Interest in proportion to their respective Limited Partnership Interests. The purchase of the Sale Interest shall be effected at the price, and on the terms and conditions, specified in the Sale Notice, and, subject to anything to the contrary in the Sale Notice, on the following terms:
- (a) the purchase of the Sale Interest shall be settled on the date 10 Business Days after the Acceptance Date, or if paragraph 1.4 of this Schedule applies, 10 Business Days after the last of the consents referred to in paragraph 1.4 of this Schedule is obtained;
 - (b) if there is more than one Buyer, the purchase of the Sale Interest by all Buyers shall be settled simultaneously;
 - (c) the Seller shall transfer to each Buyer good title to the Sale Interest free of any charge or encumbrance; and
 - (d) on settlement of the purchase of the Sale Interest each Buyer shall pay the purchase price to the Seller in cleared funds and the Seller shall deliver to each Buyer a transfer of the Sale Interest in a form reasonably acceptable to that Buyer.
- 1.4 **Consent:** Each Buyer and the Seller shall use their reasonable endeavours, with all due speed and diligence, to obtain all necessary consents to the sale and purchase of the Sale Interest, including any consent required from any governmental or regulatory agency or authority. If any necessary consent is:
- (a) not granted within 50 Business Days after the Acceptance Date; or

- (b) granted on terms and conditions that are not reasonably acceptable to the party affected thereby,

the Seller or the Buyer may, by notice to all Limited Partners, terminate the obligation to buy and sell the Sale Interest created by paragraph 1.3 of this Schedule.

1.5 **Sale to third parties:** If no notice is given to the Seller pursuant to, and within the time specified in, paragraph 1.2 of this Schedule, the Seller may within 40 Business Days after the Acceptance Date, transfer the Sale Interest to any other person, for a price not less than, and on terms and conditions no more favourable than, those specified in the Sale Notice. The transferee of the Sale Interest shall, provided that they have signed an Accession Deed, become a Substitute Limited Partner. For the purpose of this paragraph 1.5 of this Schedule, each Limited Partner shall provide such assistance as may reasonably be required by the Seller for the purposes of enabling the Seller to solicit offers for the Sale Interest including:

- (a) allowing prospective purchasers and their advisers to carry out reasonable due diligence enquiries, subject always to confidentiality arrangements approved by the General Partner;
- (b) allowing the Seller to complete any offering or sale document (including any information memorandum); and
- (c) enabling completion of any such sale to take place.

1.6 **Clause to apply again:** If:

- (a) notice is given to the Seller pursuant to paragraph 1.2 of this Schedule, but the obligation to buy and sell the Sale Interest is terminated pursuant to paragraph 1.4 of this Schedule; or
- (b) the Seller proposes to sell, transfer, or otherwise dispose of the Sale Interest outside the period referred to in paragraph 1.5 of this Schedule or at a price, or on terms and conditions more favourable than, those specified in the Sale Notice,

paragraph 1.1 to 1.5 of this schedule shall again apply.

SCHEDULE 6
ACCESSION DEED

INTRODUCTION

- A. The applicant ("**Applicant**") named below wishes to be admitted as a limited partner ("**Limited Partner**") to the Pouarua Farm Property Limited Partnership ("**Limited Partnership**").
- B. It is a condition to being admitted as a Limited Partner that the Applicant executes this deed. In consideration for being admitted as a Limited Partner, the Applicant covenants as set out below (including, without limitation, granting the power of attorney referred to below).

COVENANTS

1. In this deed:
- (a) "**Limited Partnership Agreement**" means the limited partnership agreement dated **[Insert date]** establishing the Pouarua Farm Property Limited Partnership, as amended from time to time; and
 - (b) all capitalised terms will, unless otherwise defined herein, have the meanings given in the Limited Partnership Agreement.
2. The Applicant covenants to:
- (a) observe and perform the covenants and conditions contained in the Limited Partnership Agreement on the part of a Limited Partner to be observed and performed, as if the Applicant were a signatory to the Limited Partnership Agreement; and
 - (b) if the Applicant is acquiring an existing Limited Partnership Interest from another Partner (the "**Transferee**"):
 - (i) duly and fully perform all outstanding obligations under the Limited Partnership Agreement of the Transferee with respect to that Limited Partnership Interest (including paying any prior Calls on that Limited Partnership Interest not paid in full); and
 - (ii) meet in accordance with the Limited Partnership Agreement [any unpaid Capital Commitment of the Transferee][**or**][the proportion of the any unpaid Capital Commitment of the Transferee equal to the proportion that the Limited Partnership Interest acquired from that Transferee bears to the total Limited Partnership Interest held by that Transferee];
 - (c) [if the Applicant is acquiring a new Limited Partnership Interest, pay in accordance with the Limited Partnership Agreement, a Capital Commitment of **[\$[*].]**

and hereby irrevocably and unconditionally grants, ratifies and confirms the powers, authorities and interests given to the General Partner under or by virtue of the provisions of the Limited Partnership Agreement (including, without limitation, the security interest granted in clause 17 of the Limited Partnership Agreement) and all acts and things done by or on behalf of the Limited Partnership, whether before or after the date of this deed.

3. The Applicant agrees that the covenants of the Applicant set out in this deed are given in favour of the General Partner, the Limited Partnership and the Partners from time to time, and agrees that such persons may enforce such covenants under the Contracts (Privity) Act 1982.
4. This deed is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this deed.

EXECUTION AS A DEED

SCHEDULE 7**RESERVED MATTERS**

The following is the list of activities which require a unanimous Resolution of the Limited Partnership under clause 15.3:

- (a) taking part in a decision about the variation or replacement of this Agreement;
- (b) taking part in a decision about whether to approve or veto investments or expenditures proposed to be made by the Limited Partnership if the value of the investments or expenditures would be more than half the value of the Limited Partnership's assets before the investment;
- (c) taking part in a decision about whether the general nature of the Limited Partnership business should change;
- (d) taking part in a decision about whether to dispose of the business of the Limited Partnership or to acquire another business;
- (e) taking part in a decision about whether a person should become or cease to be a Partner;
- (f) taking part in a decision about whether the Limited Partnership should end or be terminated;
- (g) reviewing and approving the accounts of the Limited Partnership;
- (h) discussing the strategic direction or financial prospects of the business of the Limited Partnership; or
- (i) consulting or advising the General Partner about the activities of the Limited Partnership or about its accounts.