

**MINISTER OF ENERGY AND RESOURCES**

**and**

**CHIEF EXECUTIVE OF THE MINISTRY OF ECONOMIC DEVELOPMENT**

**and**

**WAIKATO-TAINUI**

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**ENERGY ACCORD**

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**ENERGY ACCORD**

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**ENERGY ACCORD**

**THIS ACCORD is made between**

**THE MINISTER OF ENERGY AND RESOURCES (“MINISTER”)**

**and**

**THE CHIEF EXECUTIVE OF THE MINISTRY OF ECONOMIC DEVELOPMENT  
 (“CHIEF EXECUTIVE”)**

**and**

**WAIKATO-TAINUI TE KAUHANGANUI INCORPORATED, in its capacity as trustee  
 of the WAIKATO RAUPATU RIVER TRUST (“WAIKATO-TAINUI”)**

**1. BACKGROUND**

- a) The Waikato Raupatu Claims Settlement Act 1995 gave effect to certain provisions of the deed of settlement between Her Majesty the Queen in right of New Zealand (“the Crown”) and Waikato dated 22 May 1995 and settled certain Raupatu claims made to the Waitangi Tribunal by Robert Te Kotahi Mahuta, the Tainui Maaori Trust Board and Ngaa Marae Toopu (Wai 30). The 1995 Act expressly excluded certain historical claims, including the claim to the Waikato River.
- b) In the spirit of co-operation, compromise and good faith, and as foreshadowed in the 1995 Deed, Waikato-Tainui and the Crown entered into negotiations in respect of the claims of Waikato-Tainui concerning the Waikato River.
- c) By deed of settlement dated 22 August 2008 Waikato-Tainui and the Crown reached agreement on the terms of a settlement to enter a new age of co-management over the Waikato River with an overarching purpose to restore and protect the health and wellbeing of the Waikato River for future generations.
- d) The Crown is committed to restoring and protecting the health and wellbeing of the Waikato River for future generations and to the new era heralded by the 2008 deed. However, subsequent to the 2008 deed, the Crown requested to review the co-management arrangements to assess whether it was possible to better deliver the objectives and overarching purpose of the settlement.
- e) With the agreement of Waikato-Tainui, the Crown appointed an advisory panel. The Crown approached Waikato-Tainui with the advisory panel’s recommendations and Waikato-Tainui agreed to consider revisiting the arrangements in the 2008 deed.
- f) In the spirit of good faith and on the basis that the arrangements in the 2008 deed could be enhanced while preserving the integrity of the settlement, Waikato-Tainui and the Crown agreed on a revised deed of settlement dated 17 December 2009.
- g) The 2009 deed now supersedes the 2008 deed and contains the terms of settlement between the Crown and Waikato-Tainui in relation to the Waikato River.
- h) The Kiingitanga Accord signed between the Crown and Waikato-Tainui on 22 August 2008 remains in full force and effect except to the extent that its requirements are expressly satisfied by the 2009 deed.

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- i) Waikato-Tainui and the Crown have agreed that accords will be entered into between Waikato-Tainui and various Ministers of the Crown to enhance the relationship between the Crown and Waikato-Tainui and facilitate the new era of co-management contemplated by the settlement.
  
- j) To give effect to the obligations under clause 9.4 of the deed of settlement and clause 3.1 of the schedule to the Kiingitanga Accord, and to further enhance the relationship between Waikato-Tainui, the Minister, and the Ministry of Economic Development (“the Ministry”), this Accord is entered into by Waikato-Tainui, the Minister, and the Chief Executive.

**TERMS OF THIS ENERGY ACCORD:**

**2 PURPOSE**

2.1 The purpose of this Accord is to:

- (a) reflect the commitment of the Crown (including the Minister and the Ministry) and Waikato-Tainui to enter a new era of co-management over the Waikato River with the overarching purpose of restoring and protecting the health and wellbeing of the Waikato River for future generations;
- (b) recognise that Waikato-Tainui has interests in many aspects of the Minister's and Ministry's portfolio responsibilities as they relate to the Accord area; and
- (c) ensure that the Crown, through the Minister and the Ministry, provides recognition for the exercise of the mana whakahaere of Waikato-Tainui in relation to the Waikato River.

**3 ACCORD AREA**

- 3.1 This Accord will apply to all functions, responsibilities and actions of the Minister and the Chief Executive that affect the health and wellbeing of the Waikato River and its catchments from Karapiro to Te Puuaha o Waikato, including the Waipaa River from its junction with the Puuniu River to its junction with the Waikato River, being the parts of those rivers shown as located within the area marked "A" on the SO plan in part 6 of the schedule to the Waikato-Tainui deed of settlement (the "Accord Area").
- 3.2 The Minister and the Chief Executive acknowledge that Waikato-Tainui interests and the exercise of mana whakahaere by Waikato-Tainui extend beyond the Accord Area.
- 3.3 The parties may, on a case-by-case basis, agree to engage in accordance with the principle of co-management and the purpose and relationship principles of this Accord, on matters that relate to their specific roles and responsibilities that impact on Waikato-Tainui's mana whakahaere outside the Accord area.

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### **4 IMPLEMENTATION AND APPLICATION**

- 4.1 In implementing this Accord, Waikato-Tainui, the Minister and the Chief Executive will give effect to achieving the purpose, joint objectives and relationship principles of this Accord.
- 4.2 Within 6 months of the signing of this Accord, Waikato-Tainui and the Chief Executive will agree the timeframes and priorities for the implementation and application of this Accord.

### **5 PRINCIPLES UNDERLYING THIS ACCORD**

- 5.1 The following principles underlie:
- (a) the relationship of Waikato-Tainui with the Waikato River; and
  - (b) this Accord.
- 5.2 **TE MANA O TE AWA (THE SPIRITUAL AUTHORITY, PROTECTIVE POWER AND PRESTIGE OF THE RIVER):**
- (a) To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The River has its own mauri, its own spiritual energy and its own powerful identity. It is a single indivisible being.
  - (b) Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship between the tribe and their ancestral River. Waikato-Tainui regard their River with reverence and love. It gave them their name and is the source of their tribal identity. Over generations, Waikato-Tainui have developed tikanga (values, ethics governing conduct) which embody their profound respect for the Waikato River and all life within it. The Waikato River sustains the people physically and spiritually. It brings them peace in times of stress, relief from illness and pain, and cleanses and purifies their bodies and souls from the many problems that surround them. Spiritually, to Waikato-Tainui, the Waikato River is constant, enduring and perpetual.

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### **5.3 MANA WHAKAHAERE (AUTHORITY AND RIGHTS OF CONTROL):**

- (a) Mana whakahaere refers to the authority that Waikato-Tainui and other Waikato River iwi have established in respect of the Waikato River over many generations. Mana whakahaere entails the exercise of rights and responsibilities to ensure that the balance and mauri (life force) of the Waikato River are maintained. It is based in recognition that if we care for the River, the River will continue to sustain the people.
- (b) In customary terms mana whakahaere is the exercise of control, access to, and management of the Waikato River, including its resources in accordance with tikanga (values, ethics, governing conduct). For Waikato-Tainui, mana whakahaere has long been exercised under the mana of the Kiingitanga.

### **5.4 HEALTH AND WELLBEING:**

- (a) The principle of health and wellbeing reflects the overarching purpose of the Settlement, which is to restore and protect the health and wellbeing of the Waikato River.
- (b) The health and wellbeing of Waikato-Tainui and its special relationship with the Waikato River is inherently connected with the health and wellbeing of the Waikato River.

### **5.5 CO-MANAGEMENT:**

5.5.1 The Crown and Waikato-Tainui have committed to enter into a new era of co-management in respect of the Waikato River. The principle of co-management includes:

- (a) the highest level of good faith engagement; and
- (b) consensus decision-making as a general rule;

while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi.

5.5.2 To be effective, co-management must:

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- i) be implemented and achieved at a number of levels and across a range of management agencies, bodies and authorities, including (but without limitation) the following:
  - (a) the development, amendment and implementation of strategies, policy, legislation and regulations that may potentially impact on the health and wellbeing of the Waikato River; and
  - (b) the processes for granting, transfer, variation and renewal of consents, licenses, permits and other authorisations for all activities that potentially impact on the health and wellbeing of the Waikato River; and
- ii) include provision for effective Waikato-Tainui input and participation by engagement at an early stage in statutory and management processes, and other actions, that may affect the health and wellbeing of the Waikato River, including the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. This is a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult.

### **5.6 INTEGRATION:**

Arising from the principles of te mana o te awa and mana whakahaere, and inter-related to the principle of co-management, is the principle of integration. The health and wellbeing of the Waikato River and successful co-management requires effective integration of management between the relevant government agencies, Crown entities, local authorities and non-governmental agencies who have roles and responsibilities in respect of the Waikato River.

### **5.7 TREATY OF WAITANGI**

Te Tiriti o Waitangi/the Treaty of Waitangi and its principles apply to this Accord and the relationship between the Crown and Waikato-Tainui reflected in this Accord.

### **5.8 HONOUR AND INTEGRITY**

Underpinning the deed of settlement is the principle of honour and integrity. Waikato-Tainui and the Crown entered into the deed of settlement in good faith relying on the commitments of each other contained in the deed and the



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Kiingitanga Accord with the intention of achieving a full, fair and durable settlement of the claims of Waikato-Tainui in relation to the Waikato River. The principle of honour and integrity is reflected in this Accord.

### **6 RELATIONSHIP PRINCIPLES**

6.1 Waikato-Tainui, the Minister and the Chief Executive agree to abide by the following relationship principles when implementing this Accord and exercising their various roles and functions under this Accord:

- (a) working in a spirit of co-operation;
- (b) ensuring early engagement on issues that the Chief Executive has the mandate from the Minister to work on;
- (c) operating a 'no surprises' approach;
- (d) acknowledging that the relationship is evolving, not prescribed;
- (e) respecting the independence of the parties and their individual mandates, roles and responsibilities impacting on the Waikato River;
- (f) recognising and acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise; and
- (g) committing to the highest level of engagement as indicated in this Accord and consistent with the principle of co-management.

### **7 OBJECTIVES OF THE PARTIES**

7.1 JOINT OBJECTIVES:

- (a) Waikato-Tainui, the Minister, the Chief Executive are committed to the restoration and protection of the health and wellbeing of the Waikato River for future generations;
- (b) Waikato-Tainui, the Minister, the Chief Executive and the Ministry will establish and maintain a positive, co-operative and enduring relationship.

7.2 WAIKATO-TAINUI OBJECTIVES FOR THE WAIKATO RIVER INCLUDE:

- (a) the restoration and protection of the health and wellbeing of the Waikato River;

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- (b) the restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships;
- (c) the integrated, holistic and co-ordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River;
- (d) the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the River;
- (e) the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the River;
- (f) the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities;
- (g) the protection and enhancement of significant sites, fisheries, flora and fauna; and
- (h) the application to the above of both maatauranga Maaori and latest available scientific methods.

### **7.3 MINISTRY OBJECTIVES:**

Under the Crown Minerals Act 1991 ("the Act") the objectives and obligations of the Chief Executive and the Ministry in relation to the administration of the Crown mineral estate include:

- (a) the efficient allocation of rights in respect of Crown owned minerals;
- (b) the obtaining by the Crown of a fair financial return from its minerals; and
- (c) having regard to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

## **8 ROLE OF THE PARTIES**

### **8.1 WAIKATO-TAINUI ROLE:**

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The role of Waikato-Tainui in respect to this Accord includes:

- (a) input into the policy and decision-making processes as set out in this Accord; and
- (b) the sharing of information.

### **8.2 MINISTER AND MINISTRY ROLE:**

8.2.1 The Minister and the Chief Executive have certain functions, powers and duties in terms of the Act and in the development and implementation of the Government's energy and bioprospecting policy.

8.2.2 The Minister's and the Chief Executive's specific roles relevant to this Accord include:

- (a) administration of the Crown mineral estate, which includes allocating permits for prospecting, exploration and mining of Crown owned minerals;
- (b) the development of minerals programmes under the Act;
- (c) the development and implementation of energy and bioprospecting policy; and
- (d) the monitoring of the effect and implementation of minerals programmes and minerals permits.

## **9 AGREEMENTS**

9.1 In accordance with relevant provisions of the deed of settlement, and in order to achieve the objectives of the parties to this Accord, the Minister and the Chief Executive agree to:

- (a) assist in the development of the Waikato Tainui Environmental Plan; and
- (b) establish mechanisms to provide for Waikato-Tainui input into administration of the Crown mineral estate under the Act.

9.2 The development of policy:

- (a) The Ministry will engage with Waikato-Tainui on the development of policy which is likely to impact the health and wellbeing of the Waikato River or

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Waikato-Tainui's mana whakahaere when considered appropriate by both the Chief Executive and Waikato-Tainui.

### 9.3 Waikato-Tainui Environmental Plan:

- (a) Clause 8.4 of the deed of settlement provides for Waikato-Tainui to develop their Environmental Plan ("the Plan"). The Plan will apply to the Waikato River and its catchments as defined in clause 8.21 in the deed of settlement.
- (b) The Ministry will assist Waikato-Tainui, within the resources available to the Ministry, to develop relevant parts of the Plan.
- (c) Where agreed between Waikato-Tainui and the Chief Executive, the relevant sections of the Waikato-Tainui Environment Plan shall be recognised and provided for in the development of policy.

### 9.4 Administration of the Crown mineral estate under the Act;

- (a) The Chief Executive will consult Waikato-Tainui in regard to any of the following things which relate, whether wholly or in part, to the Accord Area:
  - (i) on the planning of a competitive tender allocation of a permit block for petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme);
  - (ii) when any application for a petroleum exploration permit is received, except where the application relates to a block offer over which consultation has already taken place under the above clause;
  - (iii) when any application to amend a petroleum exploration permit, by extending the land to which the permit relates, is received;
  - (iv) on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme);

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- (v) when any application for a permit in respect of Crown owned minerals other than petroleum is received, except where the application relates to a competitive tender allocation of a permit block offer over which consultation has already taken place under clause 9.4(a)(iv) or where the application relates to newly available acreage;
  - (vi) when the Chief Executive (as the Secretary under the Act) proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum;
  - (vii) when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit, is received;
  - (viii) on the preparation of new minerals programmes; and
  - (ix) on the amendment of minerals programmes.
- (b) The principles that will be followed by the Ministry in consulting with Waikato-Tainui in each case are:
- (i) ensuring that Waikato-Tainui is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues in relation to any matters under clause 9.4(a) of this Accord;
  - (ii) providing Waikato-Tainui with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 9.4(a) of this Accord;
  - (iii) ensuring that sufficient time (consistent with the timeframes in the Act and minerals programmes) is given for the participation of Waikato-Tainui in the decision making process and consideration of Waikato-Tainui's submissions in relation to any of the matters described in clause 9.4(a) of this Accord; and
  - (iv) ensuring that the Ministry will approach the consultation with Waikato-Tainui with an open mind, and will genuinely consider the

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submissions of Waikato-Tainui in relation to any of the matters described in clause 9.4(a) of this Accord.

- (c) Each decision on a matter referred to in clause 9.4(a) will be made having regard to any matters raised as a result of consultation with the Waikato-Tainui, and having regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.

### **10 INFORMATION SHARING:**

10.1 Waikato-Tainui and the Chief Executive recognise the benefit of mutual information exchange. In order to facilitate the exchange of information, the parties may agree, on a case by case basis, that certain information may only be released publicly by agreement.

10.2 The Ministry will make available to Waikato-Tainui all existing information held by, or reasonably accessible to, the Ministry where that information is requested by Waikato-Tainui for the purposes of assisting them to exercise their mana whakahaere in respect of the Waikato River, particularly where that information is necessary for:

- (a) developing and implementing the Integrated River Management Plan and Waikato-Tainui Environmental Plan; and
- (b) enabling Waikato-Tainui to exercise their rights fully under this Accord.

10.3 In addition to the provision of information in accordance with clause 10.2(b) of this Accord, the Ministry will:

- (a) if requested by Waikato-Tainui, make available reports that the Ministry has received that relate to the Crown mineral estate within the Accord Area; and
- (b) make available to Waikato-Tainui access to technical data held by the Ministry relating to the Crown mineral estate within the Accord Area.

10.4 The obligations in clauses 10.2 and 10.3 of this Accord do not apply to information that the Minister, the Chief Executive or the Ministry is legally prevented from providing (for example, information that is the subject of an

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obligation of confidentiality or non-disclosure) or to information that the Minister or Ministry may withhold under the Official Information Act 1982.

### **11 COMMUNICATION BETWEEN THE PARTIES**

11.1 The Ministry and Waikato-Tainui will establish and maintain effective and efficient communication with each other on a continuing basis by:

- (a) Waikato-Tainui providing, and the Ministry maintaining, contact details for the Waikato-Tainui personnel responsible for engagement under this Accord;
- (b) the Ministry providing, and Waikato-Tainui maintaining, contact details for Ministry personnel responsible for administration of the Crown mineral estate;
- (c) providing reasonable opportunities for their relevant personnel to meet with each other, including arranging meetings to discuss and (if possible) resolve any issue when required; and
- (d) identifying staff who will be working closely with staff of the other party, and informing those staff of the contents of this Accord and their roles and responsibilities under it.

### **12 ESCALATION OF MATTERS**

12.1 If one party considers that there has been a breach of this Accord then that party may give notice to the other that they are in dispute. The following process shall be undertaken once notice is received by either party to this Accord:

- (a) Within 20 working days of being given notice, the relevant business manager from the Ministry and the relevant representative of the Waikato Raupatu River Trust will meet to work in good faith to resolve the issue.
- (b) If the dispute has not been resolved within 20 working days of receipt of the notice referred to in 13.1(a), the Chief Executive and General Manager for the Waikato Raupatu River Trust will meet to work in good faith to resolve the issue.

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- (c) If the dispute has still not been resolved within 40 working days of receipt of the notice referred to in 13.1(a), the Minister and a representative appointed by the trustees of the Waikato Raupatu River Trust will meet to work in good faith to resolve the issue.

### **13 ADDITIONAL ACCORD MECHANISMS**

- 13.1 The Minister and Chief Executive agree to explore and have ongoing discussions with Waikato-Tainui regarding the development of additional Accord mechanisms, as appropriate and necessary.
- 13.2 In accordance with clause 9.4 of the Deed of Settlement, Waikato-Tainui, the Chief Executive and the Ministry are committed to exploring the possibility of further Accords with other Minister(s) that the Ministry is responsible to.

### **14 REVIEW AND AMENDMENT**

- 14.1 The Minister and Waikato-Tainui agree that this Accord is a living document which should be updated and adapted to take account of future developments.
- 14.2 The first review of this Accord will take place no later than 3 years from the Settlement Date. Thereafter it will be reviewed as agreed by the parties.
- 14.3 If however, the statutory or regulatory functions of the Minister, Chief Executive or Ministry should change prior to the first review taking place or prior to any review there after, then the parties, where agreed, can amend this Accord to ensure that the intent and integrity of the Accord is protected and maintained.
- 14.4 Where the parties cannot reach agreement on any review or variation proposal they will use the escalation processes contained in clause 13 of this Accord.
- 14.5 Waikato-Tainui and the Crown may only vary this Accord by agreement in writing.
- 14.6 In respect of the exercise of rights and obligations under this Accord:
  - (a) any right of Waikato-Tainui will be exercised through the Waikato Raupatu River Trust; and
  - (b) where the Minister, the Chief Executive or the Ministry is required to engage, or otherwise interact, with Waikato-Tainui (including, without limit,



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making available information, consulting, informing Waikato-Tainui of certain matters, seeking advice, providing notice or assistance, or meeting with Waikato-Tainui), the Minister, the Chief Executive or the Ministry will satisfy that obligation by engaging, or otherwise interacting, with the Waikato Raupatu River Trust.

### 15 LIMITS OF ACCORD

15.1 This Accord does not override or limit:

- (a) any legislative rights, powers or obligations; or
- (b) the functions, duties and powers of the Minister, Chief Executive and any Ministry officials under legislation; or
- (c) the ability of the Crown to introduce legislation and change government policy; or
- (d) the ability of the Crown to interact or consult with any other person, including any iwi, hapu, marae, whanau or their representative; or
- (e) the legal rights and obligations of Waikato-Tainui.

15.2 This Accord does not have the effect of granting, creating or providing evidence of an estate or interest in, or rights relating to, land or any other resource held, managed or administered by the Crown.

### 16 DEFINITIONS AND INTERPRETATION

16.1 The provisions of this Accord shall be interpreted in a manner that best furthers the purpose of this Accord and is consistent with the principles set out in clauses 5 and 6 of this Accord;

16.2 In this Accord, unless the context requires otherwise:

- (a) Terms defined in the deed of settlement and the settlement legislation have the same meaning in this Accord;
- (b) **Waikato-Tainui** means Waikato-Tainui Te Kauhanganui Incorporated in its capacity as trustee of the Waikato Raupatu River Trust;
- (c) **Crown** means Her Majesty The Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the

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Crown that are involved in, or bound by the terms of the deed of settlement to participate in, any aspect of the redress under the deed of settlement;

- (d) **The Minister** means the Minister of Energy and Resources;
- (e) **The Ministry** means the Ministry of Economic Development;
- (f) **Chief Executive** means the Chief Executive of the Ministry of Economic Development and includes any authorised employee of the Ministry of Economic Development acting for and on behalf of the Chief Executive;
- (g) **Settlement legislation** means the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill and where the Bill has become law, means the Act; and
- (h) **Accord area** has the same meaning given in clause 3 of this Accord; and
- (i) **Newly available acreage** has the meaning provided in clause 3.5 of the Minerals Programme for Minerals (Excluding Petroleum) 2008.

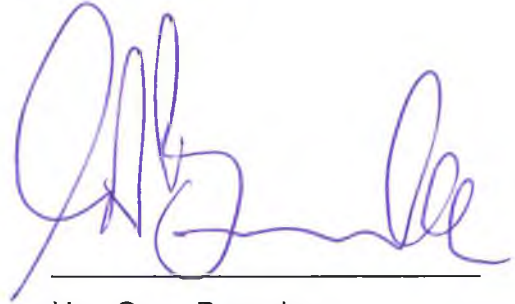
16.3 Subject to clause 17.1, the rules of interpretation in the deed of settlement apply to the interpretation of this Accord.

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**SIGNED** as a deed on 18 JUNE 2010

**SIGNED** by  
**THE MINISTER OF ENERGY AND RESOURCES**  
in the presence of:



Hon Gerry Brownlee


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Name: *Jamie Gray, Private Secretary to Hon Gerry Brownlee,  
Minister of Energy and Resources.*

**SIGNED** by  
**THE CHIEF EXECUTIVE OF  
THE MINISTRY OF ECONOMIC  
DEVELOPMENT**

in the presence of:



David Smol

WITNESS

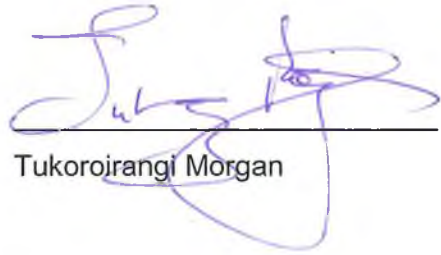


Name: *Jane Carpenter*

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**SIGNED** for and on behalf  
of **WAIKATO-TAINUI** by  
Tukoroirangi Morgan  
in the presence of:



Tukoroirangi Morgan

WITNESS



Name: **TIM MANUKAU**