

## **KAWENATA**

**BETWEEN**                   The Trustees of \*\*\*\*\*, an Ahu Whenua Trust under Te Ture Whenua Maori Act 1993 (called “the Landowner”) of the one part

**AND**                         Motu Economic and Public Policy Research Trust (called “Motu”)

have agreed to enter into an open space covenant for the purpose and objectives set forth in Schedule 1 below.

### **Preamble**

The Tindall Foundation has contracted Motu to negotiate and execute a contract for carbon sequestration through native forest regeneration on Maori Land and evaluate the process to improve the design of policies that aim to encourage such sequestration, and increase the benefits Maori landowners can receive from such projects.

The Landowner and Motu have mutually agreed to enter into this Kawenata in respect of the Land (defined in Schedule 3 below) having regard to the particular objectives set out in Schedule 1 and subject to the terms and conditions set out in Schedule 2, 3, 4 and 5 of this Kawenata.

The Landowner and Motu have mutually agreed:

- (a) to comply respectively with the terms and conditions set out in the Schedules hereto;
- (b) the covenants and conditions contained in this Kawenata shall bind the Land for the time set out in Schedule 2;
- (c) that if any question arises in the management of the Land that is not clearly covered in the purpose and objectives or terms and conditions of this Kawenata, then that question shall be resolved by the parties hereto in a manner that does not diminish the purpose and objectives or terms and conditions.

### **IN WITNESS WHEREOF:**

This Kawenata was signed this \_\_\_\_\_ day of \_\_\_\_\_ 2007

**SIGNED BY THE RESPONSIBLE TRUSTEES OF \*\*\*\*\* TRUST**

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by Trustees Name }**

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED BY DIRECTOR, MOTU ECONOMIC AND PUBLIC POLICY RESEARCH TRUST**

**SIGNED by \*\*\*\*\***

in the presence of:

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**MAORI LAND COURT**

**A copy of this Kawenata will be noted in the Memorial Schedule.**

## SCHEDULE 1

### Agreed Purpose and Objectives

The Landowner and Motu have mutually agreed the Purpose of this Kawenata is to protect and maintain the capacity and open space value of the Land to provide value through the growth of indigenous vegetation, thereby enhancing the contribution the land makes to removing and storing carbon dioxide, a greenhouse gas, from the atmosphere.

- A. The Landowner is the owner of the land described in **Schedule 3** ("the Land").
- B. The Landowner and Motu are satisfied that the land should be managed so as to preserve the capacity of the land to support indigenous vegetation.
- C. Motu and the Landowner have agreed to execute a Kawenata to provide for the management of the land in a manner that will achieve the purpose and objectives described in this Schedule 1.
- D. The parties have agreed that the land be managed by the parties hereto with the following objectives:-
  - i. Protecting and enhancing the natural character of the land;
  - ii. Embodying the principles of an equal working relationship between Motu and the tangata whenua with particular acknowledgement to the manawhenua of the Landowner;
  - iii. To permit the Landowner and its beneficial owners to utilise the land subject to and in the manner contemplated by this Kawenata.

NOW THEREFORE THIS KAWENATA RECORDS that pursuant to Section 77A of the Reserves Act 1977 the Landowner and Motu MUTUALLY COVENANT that the Land shall be managed in accordance with the terms and conditions set out in Schedule 2 so as to achieve the purpose and objectives listed in Schedule 1 above.

## SCHEDULE 2

### Conditions

Kawenata end date: 31 December 2012

1. The Landowner shall not permit domestic stock to graze the land nor pass through the land, and will provide adequate fencing as necessary. Grazing stock in the set aside blocks will cause a reduction in both current and future carbon levels. If grazing does occur, the Landowner agrees to report it to Motu before 30 December of the relevant year and forfeit any payments for the affected blocks during or attributable to that year. In addition, the schedule of payments for the affected blocks in or attributable to the following years will be recalculated based on the assumption that the level of carbon sequestration returns to that in the first year of the Kawenata (as set out in Schedule 4) and then proceeds according to that Schedule. If the Landowner has received one or more advance payments, those payments shall be recalculated to exclude any payment attributable to the year of the breach and the payments attributable to the following years will also be recalculated. The Landowner will pay to Motu the difference between the amount originally received and the recalculated amount within one month of receiving notice from Motu to do so.
2. Neither the Landowner nor Motu shall carry out or allow to be carried out, without the prior approval of the other party to this Kawenata:-
  - (a) The taking, felling and destroying of any native plants, shrubs, or trees from the land. PROVIDED, however, that the Landowner may authorise the removal of native plants, shrubs, trees and plant material from the land in accordance with tikanga Maori for traditional Maori purposes but strictly on a continuous canopy basis;
  - (b) Any burning on the land;
  - (c) Any cultivation, earthworks or other soil disturbance on the land;
  - (d) Any erection of utility transmission lines across the land;
  - (e) The erection of any fence, building, structure or other improvements on the land whether for the Landowner's own purposes or for other private or public purposes. It is acknowledged, however, that tramping-type huts, kaumatua and educational housing and eco-tourism accommodation and facilities, and wind turbines for electric power generation may be erected by the Landowner in places where their impact in relation to the objectives and purpose of the Kawenata would be minimal and subject to any consents necessary under the Resource Management Act 1991 and the Building Act 1991 and any other consents first being obtained;

- (f) Any action that modifies the condition or flow of any river, stream, lake, pond, wetland or other water resource affecting the land. It is acknowledged, however, that the tangata whenua may take residential water supply from the land subject to any necessary consents being first obtained.
  - (g) Any activity on the balance of the Landowner's land that will adversely affect the Land or the purpose or objectives of this Kawenata;
- 3. Motu and the Landowner shall have regard to the purpose and objectives of this Kawenata when considering any request for approval under clause 2 of this Schedule 2 and shall not unreasonably decline approval.
- 4. If the Landowner carries out or allows to be carried out any of the activities described in clause 2(a) or (b) of this Schedule 2 on the Land without the prior approval of Motu, the Landowner will forfeit any payments during or attributable to that year in relation to the affected block(s). In addition, the schedule of payments in the following years for the affected block(s) will be recalculated based on the assumption that the level of carbon sequestration returns to that in the first year of the Kawenata (given in Schedule 4) and then proceeds according to that Schedule. If the Landowner has received one or more advance payments for the affected block(s), those payments shall be recalculated to exclude any payment attributable to the year of the breach and the payments attributable to the following years will also be recalculated. The Landowner will pay to Motu the difference between the amount originally received and the recalculated amount within one month of receiving notice from Motu to do so.
- 5. The Landowner grants to Motu, any duly authorised officer or agent of Motu, or any other person nominated by Motu, a right of entry onto the land for the purposes of examining and recording the condition of the land or for carrying out protection or maintenance work on the land consistent with the purpose and objectives set out in this Kawenata. In exercising this right, Motu and its officers, agents or nominees shall consult with the Landowner in advance and comply with all reasonable requests.
- 6. Motu may provide to the Landowner (upon the Landowner's request) such technical advice or assistance as may be necessary or desirable to assist in meeting the purpose and objectives set out in this Kawenata.
- 7. (a) The covenants contained in this Kawenata shall bind Motu and the Landowner's successors and assigns and shall bind any lessee for the term of any lease and subject to the terms of any review in terms of this clause, taking binding notice of the wishes of the Landowner, shall continue to apply to any successors and assigns.

- (b) Subject to clause 7(e) of this Schedule 2, the Landowner and Motu, while recognising their mutual intention that this Kawenata shall continue to apply, shall review the purpose, objectives, conditions and continuance of this Kawenata at the request of either party to this Kawenata.
  - (c) On any review of this Kawenata the parties may mutually agree to vary any clause or clauses in the Kawenata except clause 7 of this Schedule 2.
  - (d) The parties agree that in reviewing the purpose, objectives, conditions and continuance of this Kawenata under clause 7(b) of this Schedule 2, Motu shall have regard to the manawhenua of the Landowner.
  - (e) Notwithstanding any other provisions herein, on any review of this Kawenata under clause 7(b) of this Schedule 2 the Landowner may terminate this Kawenata in whole or in part by giving at least six months written notice to Motu of the intention to terminate, and Motu acknowledges that on a review under clause 7(b) of this Schedule 2 the Landowners' right to disengage from the Kawenata shall be unchallenged. Unless the Landowner and Motu mutually agree otherwise, within six months after termination of this Kawenata, the Landowner must comply with the terms of clause 4 of Schedule 5.
8. Motu shall make payments to the Landowner in accordance with the provisions of Schedule 5 of this Kawenata.
9. Enrolment in Permanent Forest Sink Initiative or Equivalent Programme
- (a) The Landowner shall, within one year of the commencement of the Permanent Forest Sinks Initiative, or any equivalent programme under which the economic value of carbon sequestration in the biomass on land is recognised in the form of tradable credits, offsets, rights or instruments ("Carbon Credits") in New Zealand (an "Equivalent Programme"), apply to participate in such initiative or programme in respect of Blocks A, B and C unless Motu agrees to waive this requirement. Motu agrees to provide technical assistance in making any such application. Motu shall also provide technical assistance if the Landowner decides, at the Landowner's discretion, to apply to participate in the Permanent Forest Sinks Initiative or an Equivalent Programme in respect of Blocks C and D.
  - (b) Motu agrees to acquire, and the Landowner agrees to transfer, all legal and beneficial rights and title to any Carbon Credits registered or to be registered for the benefit of, or received or to be received by, the Landowner under the Permanent Forest Sink Initiative or an Equivalent Programme for carbon sequestered on the Land that are attributable to the period from 1 January 2006 to 31 December 2012 or until the Kawenata is terminated, whichever is sooner. The Landowner shall do all things

necessary to assign or transfer such Carbon Credits to Motu in accordance with this clause 9(b).

- (c) On termination of this Kawenata (either in relation to Blocks C and D only or in relation to all blocks comprising the Land), Motu shall, in consideration for the prior transfer of any Carbon Credits from the Landowner in accordance with clause 9(b) of this Schedule 2, transfer to the Landowner as soon as practicable following termination such number of substantially similar Carbon Credits equal to the total number of Carbon Credits received by Motu from the Landowner under clause 9(b) that are attributable to carbon sequestered in Blocks C and D (if any). This clause shall survive, and continue in full force and effect notwithstanding, the termination of this Kawenata.
- (d) For the avoidance of doubt, if:
  - (ii) Carbon Credits have been received by Motu under clause 9(b) that are attributable to carbon sequestered in Blocks C and D; and
  - (iii) as at the date of termination of this Kawenata, Motu is not currently in possession of one or more such Carbon Credits,

Motu shall as soon as practicable acquire and transfer to the Landowner such number of additional Carbon Credits of substantially similar nature to enable Motu to comply with its obligation under clause 9(c) of this Schedule 2.

10. For the avoidance of doubt:-

- (a) Motu shall not assign this Kawenata to any third party without the prior written consent of the Landowner;
- (b) The Landowner has the legal estate in the land, it being Maori freehold land as defined in section 129 Te Ture Whenua Act 1993 (the Maori Land Act 1993). The Landowner holds the land on trust for its beneficiaries. The liability of the Potikirua Trustees as signatories to this Kawenata shall be as provided for by the Te Ture Whenua Act 1993;
- (c) This Kawenata binds a mortgagee in possession and any lessees of the Land;
- (d) The reference to any Act in this Kawenata extends to and includes any amendment to or any Act passed in substitution for that Act;
- (e) All notices and other communications required or permitted under this Kawenata to be sent to either Motu or the Landowner shall be in writing



and shall be either delivered personally, sent by registered post or sent by facsimile transmission or email to the other party at its address or email address, as the case may be. Such notice shall be deemed given when so delivered personally or where sent by registered post the next day after posting or if sent by facsimile transmission upon receipt of an error free transmission slip by the sender or if sent by email upon the receipt by the sender of a delivery receipt or one day after sending.

- (f) Motu's address is Motu Economic and Public Policy Research Trust, P.O. Box 24390, Wellington. Facsimile 64-4-939-4251.

The Landowner address is \*\*\*\*\*

- 11. Motu is a charitable trust and the trustees enter into this Kawenata in their capacities as trustees of that trust. The liability of the trustees of Motu shall be limited to the lesser of:
  - (a) the assets for the time being in their hands (or which would be save for their breach of trust) in their capacities as trustees of Motu; and
  - (b) the aggregate of the payments due by Motu to the Landowner under clauses 1 and 2 of Schedule 5.
- 12. No party to this Kawenata is to commence any court or arbitration proceedings relating to any dispute arising out of this Kawenata (including any dispute as to the validity, breach, or termination of this Kawenata or as to any claim in tort, equity or under any statute) unless that party has complied with the following clauses.
- 13.
  - (a) If either party claims that a dispute has arisen under or in relation to this Kawenata that party must give written notice to the other party specifying the nature of the dispute.
  - (b) Upon receipt of such notice by the other party, both parties to this Kawenata must:
    - (i) co-operate and use their best endeavours to resolve the dispute expeditiously; and, in particular,
    - (ii) submit, within 30 days of receipt of such notice, the dispute to a facilitator who will have responsibility for overseeing the negotiations between the parties and holding documentation relevant to the negotiations.
  - (c) The facilitator is to be appointed by the parties.
  - (d) The costs of the facilitator are to be shared equally between the parties.

- (e) If the parties are unable to resolve the dispute by negotiation within 14 days of submission to a facilitator the matter is to be referred to mediation on 5 days notice by either party.
- 14.
- (a) The mediation is to be conducted by a mediator at a fee agreed by the parties.
  - (c) Any costs of the mediation are to be shared equally.
  - (d) The mediator is not to be the same person as the facilitator.
15. A party who seeks urgent interlocutory relief may, by written notice to the other party to the dispute, elect not to comply with the provisions of 13 to 15 but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, on the disposal of the application, the provisions of clauses 13 to 15 inclusive are once again to take effect.
- 16.
- (a) In the event that the dispute has not been settled within 42 days or such other period as agreed to in writing between the parties after the appointment of the mediator the dispute must be submitted to arbitration in accordance with the Arbitration Act 1996.
  - (b) The arbitrator is not to be the same person as the mediator and, in the event of disagreement:
    - (i) the appointing authority is to be the President of the New Zealand Law Society;
    - (ii) the number of arbitrators is to be one;
    - (iii) the place of arbitration is New Zealand.
  - (c) Any costs of the arbitration are to be shared equally unless the arbitrator determines otherwise.

## **SCHEDULE 3**

### **The Land**

A total of 55.3 hectares as coloured in black on the attached plan, forming part of \*\*\*\*\*. The areas of the set-aside blocks were determined using aerial photography provided by the Landowner; on-site inspection to match landforms and fence lines with map features; and a geographic information system.

Block A: 2.85 ha

Block B: 5.24 ha

Block C: 20.08 ha

Block D: 27.18 ha

[attach plan here]

## SCHEDULE 4

### Calculation of carbon sequestration that will be rewarded on the Land

1. The Landowner and Motu hereby agree that land management agreed to in this Kawenata shall be assumed for the purposes of this Kawenata to sequester carbon in the following amounts:

Block A	Tonnes of CO2-equivalents
2006	0.10
2007	0.29
2008	0.77
2009	1.83
2010	3.65
2011	6.00
2012	8.52

Block B	Tonnes of CO2-equivalents
2006	53.97
2007	55.73
2008	56.85
2009	57.35
2010	57.27
2011	56.66
2012	55.60

Block C	Tonnes of CO2-equivalents
2006	307.48
2007	317.60
2008	323.98
2009	326.92
2010	326.61
2011	323.33
2012	317.41

Block D	Tonnes of CO2-equivalents
2006	208.24
2007	215.05
2008	219.36
2009	221.31
2010	221.00
2011	218.66
2012	214.59

The amount of carbon accumulated was calculated by using the Landcare Research Carbon Calculator. To input the correct settings into the Calculator, we aligned the Block boundaries with the soil type and rainfall boundaries in the New Zealand Land Resources Database in a geographic information system. Each unique combination of rainfall and fertility within the property was calculated separately, inputting the area, fertility level, and rainfall amount into the Carbon Calculator. The soil fertility ranged from below-average to above-average soil and rainfall always exceeded 1500 mm per year.

The Kyoto eligibility of forest in the set-aside areas was determined by inspection of aerial photography from 1988 provided by the Landowner and verified with aerial photography held by Landcare Research for the same date. The Landowner provided information about the age of the scrub, indicating that it had been cleared in the mid-1980s, but due to the steepness of the land, grazing was not effective and the area was scattered scrub in 1990. This information was verified using 1988 aerial photography and the 1996 New Zealand Land Cover Database classification, which shows the Blocks as scrub or indigenous forest at that time. Motu conducted an on-site inspection of Blocks A and B to verify that the forest was adequately fenced and stock had been removed. Blocks C and D have established scrub that is currently open to stock grazing; therefore, Motu or a duly authorised agent of Motu, will conduct an on-site inspection following fence installation and stock removal.

## SCHEDULE 5

### Payments and Liabilities

1. Period for which payments will be made

In accordance with clause 9(b) of Schedule 2, Motu agrees to acquire, and the Landowner agrees to transfer, all Carbon Credits attributable to the Land from 1 January 2006 to 31 December 2012 or until this Kawenata is terminated, whichever is sooner.

2. Schedule of Payments

Motu shall make payments to the Landowner according to the agreed amount of carbon sequestration generated by the Land (as set out in Schedule 4) and the agreed price of carbon sequestration. The Landowner and Motu hereby agree that the payments shall be distributed according to the following terms:

Block A: Annual Payments

2006	\$1.46
2007	\$4.31
2008	\$11.59
2009	\$27.42
2010	\$54.69
2011	\$89.94
2012	\$127.77

Block B: Annual Payments

2006	\$809.48
2007	\$835.93
2008	\$852.69
2009	\$860.24
2010	\$859.03
2011	\$849.87
2012	\$834.01

Block C: Annual Payments

2006	\$0.00
2007	\$258.06
2008	\$521.30

2009	\$786.87
2010	\$1052.07
2011	\$1314.47
2012	\$1571.97

#### Block D: Annual Payments

2006	\$0.00
2007	\$381.12
2008	\$769.90
2009	\$1162.21
2010	\$1554.14
2011	\$1942.13
2012	\$2323.03

#### Summary of Payments: All Blocks

2006	\$810.94
2007	\$1479.42
2008	\$2155.48
2009	\$2836.74
2010	\$3519.93
2011	\$4196.41
2012	\$4856.78

Payments were determined by using a starting price of NZ\$15.00 per tonne of carbon and assuming a 0% annual increase in the price. The interest rate used to calculate the payments in respect of Blocks C and D is 8%.

#### 3. Timing of payments

The initial payment for 2006 shall be paid on signing of this Kawenata, or in the case of blocks C and D, on confirmation that fencing and stock removal is complete. Each subsequent payment shall be paid on 31 December of the relevant year.

#### 4. Landowner liability at 31 December 2012, or on termination of this Kawenata in any circumstances.

##### 4.1 When this Kawenata ends on 31 December 2012 or is terminated, in part or in whole, by the Landowner earlier, the Landowner must take one of the following actions in relation to Blocks A and B:

- (a) provide evidence to the satisfaction of Motu that the blocks of the Land in relation to which the Kawenata is terminated complies with the statutory requirements of the Permanent Forest Sinks Initiative (or an Equivalent Programme), including registering a Forest Sink Covenant against the Land, or has a covenant with Nga Whenua Rahui, the East Coast Forestry Project, Queen Elizabeth II Trust, or some equivalent binding covenant. The Landowner is entitled to all benefits received from the Permanent Forest Sink Initiative, any Equivalent Programme or covenant (including fencing, pest control, environmental rights etc.) except that tradeable Carbon Credits for carbon sequestered in the biomass on the land that are registered or to be registered for the benefit of, or received or to be received by, the Landowner (whether under the Permanent Forest Sink Initiative or any other Equivalent Mechanism) that are attributable to the period up to 31 December 2012 shall be assigned or otherwise transferred to Motu in accordance with clause 9(b) of Schedule 2 (and the Landowner shall do all things necessary to assign or transfer such Carbon Credits to Motu); or
  - (b) return all payments received by the Landowner from Motu under this Kawenata at that point to Motu together with interest accruing at 8% per annum from date of payment; or
  - (c) replace all the Carbon Credits for which the Landowner has received payment from Motu under this Kawenata by transferring as soon as practicable to Motu an equal number of Carbon Credits from the Permanent Forest Sink Initiative or an Equivalent Programme, provided such replacement Carbon Credits satisfy the applicable requirements for applicable replacement obligations under the Permanent Forest Sink Initiative or the Equivalent Programme (as applicable).
- 4.2 Clause 4.1 of this Schedule 5 shall survive, and continue in full force and effect notwithstanding, the termination of this Kawenata.
- 4.3 For the avoidance of doubt, clause 4.1 of this Schedule 5 does not apply in relation to Blocks C and D.
5. Continuing liability
- 5.1 All costs, expenses and liabilities in relation to compliance with the Permanent Forest Sink Initiative (or any Equivalent Programme) shall be the responsibility of the Landowner, and Motu shall have no liability whatsoever in relation to, and the Landowner shall indemnify and hold Motu harmless against, any obligation to replace Carbon Credits or reinstate any part of the biomass on the Land (whether due to acts or omissions by Motu or otherwise) that may arise in relation to any Carbon Credit derived from the Land under the Permanent Forest Sink Initiative



or any Equivalent Programme. This clause shall survive, and continue in full force and effect notwithstanding, the termination of this Kawenata.