

Constitution

of

Ngaati Ruanui Fishing Limited

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Constitution of Ngaati Ruanui Fishing Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Alternate Director means a person appointed as an alternate of a Director pursuant to clause 13;

Annual Catch Entitlement has the meaning given to it in section 2(1) of the Fisheries Act 1996;

Asset Holding Company has the meaning given to that term in the Māori Fisheries Act;

Board means Directors who number not less than the required quorum acting together as the board of directors of the Company;

Companies Act means the Companies Act 1993;

Company means Ngaati Ruanui Fishing Limited;

Constitution means this constitution, as altered from time to time;

Director means a person appointed as a director of the Company by the Shareholder;

Income Shares means the income shares of Aotearoa Fisheries Limited, as that term is defined in the Māori Fisheries Act, allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by, the Company;

Iwi has the meaning given to that term in the Māori Fisheries Act;

Mandated Iwi Organisation has the meaning given to that term in the Māori Fisheries Act;

Māori Fisheries Act means the Māori Fisheries Act 2004;

Quota Management Stock means any stock subject to the quota management system, as established under Part 4 of the Fisheries Act 1996;

Recognised Iwi Organisation has the meaning given to that term in the Māori Fisheries Act;

Relevant Organisation means a Mandated Iwi Organisation, Asset-Holding Company, Recognised Iwi Organisation or Representative Māori Organisation;

Representative Māori Organisation has the meaning given to that term in the Māori Fisheries Act;

Resolution means a resolution passed by the Shareholder;

Settlement Quota means:

- (a) the settlement quota, as that term is defined in the Māori Fisheries Act, allocated and transferred by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by, the Company; and
- (b) any quota held by the Company against which a Settlement Quota Interest is registered;

Settlement Quota Interest means an interest registered in respect of quota management stocks under section 152A of the Fisheries Act 1996;

Share means a share issued, or to be issued, by the Company; and

Shareholder means the 16 elected trustees at any given time of Te Runanga o Ngaati Ruanui Trust, the parent entity, whose names are entered in the share register as the holder for the time being of the Shares.

1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible reproduction and includes electronic reproduction ;
- (f) the word **person** includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (g) words or expressions defined in the Companies Act have the same meaning in this Constitution.

2. The Companies Act

Subject to clause 3, the Company, the Board, each Director and the Shareholder have the rights, powers, duties and obligations set out in the Companies Act except to the extent that they are negated or modified by the Constitution or the Māori Fisheries Act.

3. Company to be Asset Holding Company

3.1 Application of this clause

Except as otherwise provided in this Constitution, this clause 3 does not limit the rights, powers, duties and obligations of the Company to undertake any activity and to hold, receive and manage any assets.

3.2 Company to receive, hold and manage Settlement Quota and Income Shares

Subject to clause 5, the Company is to receive, hold and manage for so long as they are to be retained, the Settlement Quota and Income Shares.

3.3 Company must not undertake fishing

The Company must not undertake fishing or hold a fishing permit issued under the Fisheries Act 1996.

3.4 Compliance with Māori Fisheries Act required

In the Company's function of receiving, holding and managing Settlement Quota and Income Shares it is bound by all of the requirements specified for the Shareholder in relation to those matters in the Māori Fisheries Act, including:

- (a) the disposal of Income Shares;
- (b) the disposal of Settlement Quota;
- (c) the registration of Settlement Quota Interests;
- (d) the transfer of Settlement Quota;
- (e) the exchange of Settlement Quota;
- (f) entering into a transaction involving an option, security, mortgage or guarantee or a series of transactions that could result in the sale of the Settlement Quota; and
- (g) entering into a transaction involving an option, security, mortgage or guarantee or a series of transactions that could result in the iwi being disentitled to a period of more than 5 years to the income or control or use of the Annual Catch Entitlement.

3.5 Delegation

The Company may act as the delegated agent on behalf of the Shareholder where this is jointly agreed between the Board of the Company and the trustees of the Shareholder.

4. Company to Hold Assets on Trust for Charitable Purposes

Notwithstanding any other provision in this Constitution, the Settlement Quota, the Income Shares and all other assets of the Company whether of a revenue or capital character and all accretions to those assets are to be held by the Company as Trustee for the benefit of the charitable purposes of the Shareholder, such purposes to be promoted by the payment of dividends or other revenue or capital distributions to the Shareholder.

5. Asset-Holding Subsidiaries

5.1 Establishment of, and transfer of assets to, subsidiary

The Company may:

- (a) establish one or more subsidiaries to receive, hold and manage some or all of the Settlement Quota and Income Shares or any other assets of the Company; and
- (b) transfer to those subsidiaries some or all of the Settlement Quota and Income Shares or other assets identified in (a) above.

5.2 Subsidiary to hold assets on trust for charitable purposes

Any subsidiary established by the Company under sub-clause 5.1 must include within its constitution a clause declaring that the subsidiary will hold all of its Settlement Quota, Income Shares and all other assets of the subsidiary whether of a revenue or capital character and all accretions to those assets as Trustee for the charitable purposes of the Shareholder, such purposes to be promoted by the payment of dividends or other revenue or capital distributions by the subsidiary to the Company to be held by the Company subject to the Trust in clause 4 of this Constitution.

5.3 Wholly owned and controlled

Any subsidiary established by the Company under sub-clause 5.1 must be and remain wholly owned and controlled by the Company.

5.4 Obligations of directors in establishing a subsidiary

If a subsidiary is established by the Company under sub-clause 5.1, the Directors will ensure that:

- (a) prior to its registration, the constitution of the subsidiary is:
 - (i) approved by the Shareholder as complying with the requirements of the Māori Fisheries Act; and
 - (ii) ratified by not less than 75% of the trustees of the Shareholder;
- (b) the subsidiary receives, holds and manages the Settlement Quota and Income Shares and any other assets transferred to it on behalf of the Company;
- (c) the subsidiary provides dividends solely to the Shareholder;

- (d) the constitution of the subsidiary provides that:
 - (i) the subsidiary, in its function of receiving and holding Settlement Quota and Income Shares, is bound by all the requirements specified for the Shareholder in relation to those matters in the Māori Fisheries Act and, including those matters outlined in clause 3.4(a) to (g) of this Constitution in respect of the Company, with all necessary modifications;
 - (ii) the subsidiary will not undertake fishing or hold a fishing permit;
 - (iii) the Shareholder must exercise strategic governance over the subsidiary through its strategic governance of the Company; and
 - (iv) the subsidiary will report to the Company on all matters necessary, and at such times, as to allow the Company to fulfil its reporting requirements to the Shareholder.

6. Rights attaching to Shares

The Shares at the date of certification of this Constitution will be issued to the Shareholder, as the person named in the Application for Registration of the Company, at an issue price of **\$1 per share..** Each Share confers on the Shareholder the right to:

- (a) vote on any resolution at a meeting of the Shareholder, including any resolution to:
 - (i) appoint or remove a Director or auditor; or
 - (ii) adopt a constitution, subject to clause 23 of this Constitution; or
 - (iii) alter the Company's constitution, subject to the requirements of the Māori Fisheries Act and clause 23 of this Constitution; or
 - (iv) approve a major transaction; or
 - (v) approve an amalgamation of the Company under section 221 of the Companies Act, provided that:
 - (A) the Company is the amalgamated company after the amalgamation is complete and retains this Constitution; or
 - (B) the constitution of the amalgamated company is in substantially the same form as this Constitution; or
 - (vi) put the Company into liquidation;
- (b) the dividends authorised by the Board; and
- (c) the distribution of the surplus assets of the Company.

The Shareholder has the right to receive notice of and attend every Shareholder meeting.

7. Issue, consolidation, subdivision and repurchase of Shares

7.1 Issue of new Shares

Further Shares in the Company may be issued only to the Shareholder with the approval of the Shareholder in writing.

7.2 Bonus issues

The Board may with the approval of the Shareholder in writing resolve to apply any amount that is available for distribution to the Shareholder either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholder; and
 - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholder, or at some time later, in accordance with their respective entitlements, subject to the requirements of the Māori Fisheries Act; or
- (b) in paying up any amount that is unpaid on any Shares held by the Shareholder referred to in paragraph (a)(i),

or partly in one way and partly in the other.

7.3 Shares in lieu of dividends

The Board may, with the approval of the Shareholder in writing, exercise the right conferred by section 54 of the Companies Act to issue Shares to the Shareholder, where the Shareholder has agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

8. Shares to be and remain with Shareholder

Notwithstanding any other provision in this Constitution all Shares in the Company must be and remain wholly owned and controlled by the Shareholder.

9. Dividends

The Board may, subject to the Companies Act and this Constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test. Dividends may only be paid to the Shareholder.

10. Exercise of powers of Shareholder

10.1 Exercise of power by meeting or written resolution

A power reserved to the Shareholder by the Companies Act or by this Constitution may be exercised either:

- (a) at a meeting of the Shareholder; or
- (b) by a resolution in writing signed by the Shareholder, as provided for in section 122 of the Companies Act.

10.2 Powers of the Shareholder

Unless otherwise specified in the Companies Act, the Māori Fisheries Act or this Constitution, any power reserved to the Shareholder may be exercised and any approval of the Shareholder may be given by Resolution.

11. Meetings of the Shareholder

11.1 Annual meetings

Subject to clause 11.3, the Company must hold an annual meeting not later than:

- (a) five months after the balance date of the Company; or
- (b) fifteen months after the previous annual meeting.

11.2 Time and place of annual meeting

Each annual meeting must be held at such time and place as the Board appoints.

11.3 Resolution in lieu of annual meeting

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed by the Shareholder, as provided for in section 122 of the Companies Act.

11.4 Special meetings

All meetings other than annual meetings shall be called special meetings.

11.5 Calling of special meetings

A special meeting:

- (a) may be called by the Board at any time; and
- (b) must be called by the Board on the written request of the Shareholder.

11.6 Meeting Procedures

The provisions of the First Schedule to the Companies Act govern the proceedings of meetings of the Shareholder.

11.7 Provision of Annual Report

At or before each annual meeting, and notwithstanding any agreement made by the Shareholder under section 211(3) of the Companies Act, the Company must provide to the Shareholder an annual report that:

- (a) complies with each paragraph of section 211(1) of the Companies Act;
- (b) details matters relating to the Company's performance in the previous year, including:
 - (i) the quantity of the Settlement Quota held by the Company at the beginning of the previous year;
 - (ii) the performance of the Company and any of its subsidiaries established under sub-clause 5.1 in the previous year;
 - (iii) the investment of the money of the Company and any of its subsidiaries established under sub-clause 5.1 in the previous year;
 - (iv) the Settlement Quota Interests that were registered against the Quota Shares of the Company in the previous year;
 - (v) the value of any Income Shares sold, exchanged or acquired by the Company in the previous year;
 - (vi) the value of any Settlement Quota sold or exchanged by the Company in the previous year;
 - (vii) the identity of the purchaser or other party to any exchange of the Settlement Quota by the Company in the previous year;
 - (viii) any transaction with the Settlement Quota that resulted in a registered interest by way of caveat or mortgage being placed over the Settlement Quota in the previous year;
 - (ix) the interactions of the Company with the Shareholder and any subsidiary of the Company established under sub-clause 5.1 in fisheries matters in the previous year; and
 - (x) any changes made to this Constitution or the constitution of any subsidiary of the Company established under sub-clause 5.1 in the previous year;
- (c) details matters relating to the Company's projected performance in the current year, including:
 - (i) the key strategies for the use and development of the Settlement Quota and Income Shares and any other assets held by the Company;

- (ii) any programme to reorganise the Settlement Quota held by the Company or any of its subsidiaries established under sub-clause 5.1 as by buying and selling Settlement Quota in accordance with the Māori Fisheries Act;
 - (iii) any programme to manage the sale of Annual Catch Entitlements derived from the Settlement Quota held by the Company or any of its subsidiaries established under sub-clause 5.1;
 - (iv) the expected financial return on the Settlement Quota and Income Shares and any other assets held by the Company; and
 - (v) any proposal to change this Constitution or the constitution of any subsidiary of the Company established under sub-clause 5.1; and
- (d) may include any matters the Director(s) deems relevant to the Shareholders.

12. Appointment and removal of Directors

12.1 Number of Directors

The Company must have not fewer than 1 and not more than 3 Directors.

12.2 Shareholder must appoint Directors

The Shareholder must appoint the Directors of the Company. Accordingly, any person who is not disqualified by the Companies Act, the Māori Fisheries Act or this Constitution from holding office as a Director of the Company may be appointed as a Director by a written notice to the Company signed on behalf of the Shareholder.

12.3 Term of appointment of Directors

The term of appointment of Directors is as follows:

- (a) no Director can be appointed for a term exceeding 3 years;
- (b) at the end of his or her term of appointment a Director shall be eligible for reappointment (for a further term not exceeding 3 years) but, subject to clause 12.3(c), no person can hold office as a Director for more than 9 years in the aggregate;
- (c) where a person has ceased to be eligible to hold office as a Director because he or she has held office for 9 years in the aggregate then that person becomes eligible for another appointment as a Director on the second anniversary of his or her having reached that level of 9 years, and a fresh calculation of the 9 year period for the purposes of clause 12.3(b) commences on the date of that other appointment;
- (d) for the purposes of this clause 12 any period during which a person is an Alternate Director of the Company is to be treated as a period during which that person is a Director unless otherwise agreed in writing by the Shareholder.

Nothing in this clause 12.3 limits any of clauses 12.4, 12.6 or 12.7.

12.4 Restrictions on eligibility to hold office as a Director

Not more than 40% of the Directors of the Company or the directors of any subsidiary of the Company established under sub-clause 5.1 may be current elected representatives on the Shareholder at any time. Any Director appointed in breach of this provision will be deemed to be disqualified from acting as a Director. Where any Director is appointed in breach of this clause, the most recently appointed Director who is also a current elected representative of the Shareholder must resign:

- (a) as a Director; or
- (b) as an elected representative of the Shareholder,

within 5 working days of the breach occurring failing which that person is automatically deemed to have resigned as a Director at the end of that 5 working day period.

12.5 No invalidity for breach

A breach of any one or more of clauses 12.1 or 12.4 does not:

- (a) invalidate an action or decision of the Company; or
- (b) in the case of clause 12.1, occur in the case of a casual or extraordinary vacancy in the office of Director if that vacancy is filled within 3 months after that vacancy occurs.

12.6 Removal of Directors

Any Director may be removed from office by written notice to the Company signed on behalf of the Shareholder at any time with or without reason, including (without limitation) if the Shareholder is satisfied that the relevant Director:

- (a) is not performing satisfactorily the role and/or duties of a Director; or
- (b) without limiting clause 12.6(a), has been absent from 3 or more successive meetings of the Board without the written permission of the Shareholder; or
- (c) is in neglect of his or her duty as a Director or has committed an act of gross misconduct.

12.7 Office of Director vacated in certain cases

The office of Director is vacated if the person holding that office:

- (a) dies; or
- (b) is declared bankrupt or otherwise becomes disqualified from being a director pursuant to the Māori Fisheries Act, the Companies Act or this Constitution; or
- (c) without limiting clause 12.7(b), is deemed (by any clause of this Constitution) to have resigned that office; or
- (d) resigns that office in accordance with this Constitution; or
- (e) is removed from office in accordance with this Constitution.

12.8 Notices of appointment or removal of Directors

Any notice of appointment or removal of a Director or the chairperson or deputy chairperson by the Shareholder takes effect from the time it is served on the Company, or from such later time as the notice states it is to take effect.

12.9 Directors' resignation procedure

A Director may resign office:

- (a) by signing a written notice of resignation and delivering it to the address for service of the Company, the notice being effective when it is received at that address or at a later time specified in the notice; or
- (b) in any other manner permitted by the Companies Act.

13. Alternate Directors

13.1 Directors may appoint and remove Alternate Directors

Every Director may:

- (a) subject to clause 13.2, appoint any person who is not disqualified by the Companies Act, the Māori Fisheries Act or this Constitution from being a Director and/or an Alternate Director to act as an Alternate Director in his or her place; and
- (b) remove that person from that office,

by giving written notice to that effect to the Company, which notice must be accompanied by a certified copy of the written approval of the Shareholder referred to in clause 13.2(c).

13.2 Process for appointment of Alternate Director

A Director who proposes to appoint an Alternate Director must, before making that appointment:

- (a) give at least 10 working days' notice (or such shorter period of notice as the Shareholder may agree) to the Shareholder of the Director's proposal to appoint an Alternate Director, the reasons for the proposed appointment and the period of the proposed appointment;
- (b) provide the Shareholder with details of the proposed appointee, and details of his or her business experience and skills and personal attributes; and
- (c) obtain the prior approval in writing of the Shareholder to the proposed appointment, which approval may be given on such terms and conditions as the Shareholder may decide including, without limitation, a limitation on the period during which the relevant person holds appointment as an Alternate Director.

13.3 Eligibility for appointment as Alternate Director

Without limiting the provisions in this Constitution prohibiting or disqualifying persons from being appointed to, or from continuing to hold, the office of Director, the following persons shall not be eligible for appointment as an Alternate Director:

- (a) a person who is already a Director;
- (b) a person who is already an Alternate Director for three Directors; or
- (c) a director of the Shareholder, unless the proposed appointor is also an elected representative of the Shareholder;

13.4 Alternate Director for up to three Directors

A person may be appointed as the Alternate Director for up to three Directors. However, an Alternate Director may represent only one of the Directors for which he or she is the Alternate Director at any particular Board meeting or in signing any particular written resolution of the Directors or in taking any other particular action as a Director and the alternate must, in each such case, identify the particular Director for whom he or she is acting as alternate in the particular case.

13.5 Term of office for Alternate Director

Unless first approved in writing by the Shareholder, no person can hold office as an Alternate Director:

- (a) for a continuous period of more than 9 years; or
- (b) for two or more periods which, in the aggregate, equal more than 9 years unless between the date on which that person first held such office and the end of that aggregate period there was a continuous period of at least 2 years in which that person did not hold office as an Alternate Director.

13.6 Term as a Director counted

For the purposes of clause 13.5 any period during which a person is a Director shall be deemed to be a period during which that person is an Alternate Director.

13.7 Criteria for Shareholder approval of appointment of Alternate Director

In considering whether to give approval pursuant to clause 13.2(c) to a person becoming an Alternate Director, the Shareholder must take into account the following criteria:

- (a) whether the person has appropriate business skills and experience that will be likely to mean that he or she will make a contribution to the Board in light of the then nature of the business of the Company and any of its subsidiaries established under clause 5.1 and the role of the Company;
- (b) whether his or her personal attributes are likely to mean that he or she is generally compatible with the Board;

- (c) whether the Shareholder would be likely to appoint the person as a Director if there was a vacancy on the Board; and
- (d) the appropriate weighting to be given to the criteria in (a) to (c) in view of:
 - (i) the fact that the relevant person is proposed to be an Alternate Director for his or her proposed appointor and (if applicable) is already or may become an alternate for one or two other Directors;
 - (ii) the reasons for the proposed appointment; and
 - (iii) the period during which the relevant person is proposed to hold appointment as an Alternate Director.

13.8 Alternate Director has powers of appointor

While acting in the place of the Director who appointed him or her, the Alternate Director:

- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, participate in, and vote at a meeting of the Board and to sign any document, including a written resolution, but excluding the right to appoint an alternate Director and also excluding the right to act as chairperson of the Board);
- (b) is also subject to the same terms and conditions of appointment as that Director, subject to clause 13.8(c); and
- (c) may be reimbursed pursuant to clause 17.1(b) his or her reasonable out-of-pocket expenses of performing the role of Alternate Director (subject always to the then prevailing policy of the Company) but is not entitled to the payment of any remuneration pursuant to clause 17.1(a) unless the appointor of that Alternate Director agrees in writing with the Company to forgo the amount of remuneration (if any) that the Company proposes to pay to that Alternate Director.

13.9 Termination of appointment of Alternate Director

The appointment of a person as an Alternate Director for a particular Director terminates automatically if that Director ceases to be a Director. Nevertheless that person may remain as an Alternate Director for another Director who has appointed him or her as an alternate and who continues in office.

14. Powers of Directors

14.1 Management of Company

Except as provided in this Constitution, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

14.2 Exercise of powers by Board

Subject to the provisions of this Constitution, the Board may exercise all the powers of the Company that are not required, either by the Companies Act, the Māori Fisheries Act or this Constitution, to be exercised by the Shareholder.

14.3 Delegation of powers

The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Companies Act.

14.4 Appointment of attorney

The Company may exercise the power conferred by section 181 of the Companies Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

14.5 Ratification by Shareholder

Subject to the provisions of section 177 of the Companies Act (relating to ratification of directors' actions) the Shareholder, or any other person in whom a power is vested by this Constitution, the Companies Act, or the Māori Fisheries Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

15. Proceedings of the Board

15.1 Methods of holding meetings

A meeting of the Board may be held either:

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

15.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to:

- (a) every Director who is in New Zealand; and

- (b) any Alternate Director who is in New Zealand who is an Alternate Director of a Director who is known to be either outside of New Zealand or otherwise unavailable to attend the meeting.

15.3 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

15.4 Quorum

A quorum for a meeting of the Board may be fixed by all of the Directors, and unless so fixed, is a majority of the Directors at the time of the appointment of the Directors.

15.5 Chairperson

At the first meeting after the completion of the previous financial year, the Directors must elect one of their number as chairperson of the Board for a period of one year. If no chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

15.6 Votes

Every Director has one vote. In the case of an equality of votes, the chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it, except in those instances where the Companies Act or the Māori Fisheries Act require otherwise. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents from or expressly abstains from voting on, or votes against, the resolution.

15.7 Resolutions in writing

A resolution in writing, signed or assented to by a majority of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings. The Company shall within seven days after any resolution is passed in accordance with this clause send a copy of the resolution to each Director who has not signed or assented to the resolution but failure to do so shall not invalidate the resolution.

15.8 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

15.9 Validity of acts

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director; or
- (b) that they or any of them were disqualified; or
- (c) any irregularity in a notice of meeting.

15.10 Other procedures

Except as set out in this clause 15, the Board may regulate its own procedure. The provisions of the Third Schedule of the Companies Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

16. Directors' Interests

16.1 Disclosure of interests

Immediately following his or her appointment as a Director, the Director must enter into the interests register, and must disclose to the Board:

- (a) the name of any Iwi of which he or she is a member; and/or
- (b) any Relevant Organisation of which he or she is a director, trustee or officeholder or in respect of which he or she performs another role.

The Director must also, at any time after his or her appointment, enter into the interests register and disclose to the Directors the name of any Relevant Organisation of which he or she becomes a director, trustee or officeholder or in respect of which he or she performs another role.

16.2 Director deemed to be interested

A Director is deemed to be interested in any transaction or proposed transaction that the Company enters into, or proposes to enter into, with that Iwi or Relevant Organisation (irrespective of whether or not the required entry and disclosure has been made).

16.3 Additional requirements for Directors

In addition to the disclosure requirement imposed by clause 16.1, each Director must:

- (a) comply with the provisions of section 140 of the Companies Act (relating to disclosure of interest of Directors either generally or in relation to a specific transaction or matter); and
- (b) disclose to the Board any other potentially relevant conflict of interest that that Director believes he or she has, or may have, in relation to a specific transaction or matter being considered by the Board.

16.4 Relevance of conflict of interests

Where a Director discloses a potentially relevant conflict of interest pursuant to clause 16.3(b) then, for the purposes of clause 16.6, that conflict of interest is not to be treated as being

relevant to the specific transaction or matter being considered by the Board unless a majority of the other Directors resolve or agree in writing that such conflict of interest is relevant.

16.5 Failure to disclose does not affect validity of transaction

Failure to comply with clauses 16.1 to 16.4 does not affect the validity of a transaction entered into by the Company, but, if applicable, the transaction may be avoided under clause 16.9.

16.6 Interested Director may not vote

Subject to clauses 16.7, 16.8 and 16.13, a Director who is interested (whether under the Companies Act or under clauses 16.1 or 16.2) in, or pursuant to clause 16.3(b) has disclosed a potential conflict of interest (which is treated under clause 16.4 as being relevant) in respect of, a transaction entered into, or proposed to be entered into, by the Company must not:

- (a) vote on a matter relating to the transaction; or
- (b) attend that part of a meeting of Directors at which a matter relating to the transaction arises or be included among the Directors present at a meeting for the purposes of a quorum; or
- (c) sign a document relating to the transaction on behalf of the Company; or
- (d) do any other thing in his or her capacity as a Director in relation to the transaction.

16.7 Iwi membership

Where a Director is a member of any Iwi (but not an officeholder of that Iwi or any Relevant Organisation representing that Iwi) and that Iwi benefits or is likely to benefit from the transaction entered into, or to be entered into, by the Company, the Director is not prohibited (by virtue of the Director's membership of that Iwi) from being included among the Directors present at a meeting for the purposes of a quorum or doing any of the matters specified in clause 16.6 unless the Director receives or is likely to receive a benefit that is more advantageous than the benefit conferred on the other members of that Director's Iwi.

16.8 Interested Director may vote on certain matters

Notwithstanding clause 16.6, a Director shall be included among the Directors present at a meeting for the purposes of a quorum and permitted to do any of the matters specified in clause 16.6 in relation to:

- (a) remuneration or any other benefit given to a Director in accordance with this Constitution; or
- (b) an indemnity given or insurance provided to the Directors in accordance with this Constitution.

16.9 Company may avoid transaction if Director interested

Sections 107(3) and 141 of the Companies Act (relating to transactions in which a Director is interested) shall apply to the Company. In addition, a transaction may be avoided by virtue of this Constitution as if each of those sections was set out in this Constitution and the meaning of the Companies Act term "interested" was extended so as to include:

- (a) each interest that is required to be disclosed under clauses 16.1, 16.2 and 16.3(a); and
- (b) each conflict of interest that is disclosed under clause 16.3(b) and that is treated as being relevant under clause 16.4.

16.10 Benefits for Directors

The Directors must not authorise:

- (a) the payment by the Company to a Director of compensation for loss of office;
- (b) the making of loans by the Company to a Director;
- (c) the giving of guarantees by the Company for debts incurred by a Director; and
- (d) the entering into of a contract to do any of the things set out in this clause.

16.11 Payment for professional services

The Board may authorise the payment of remuneration to any Director in respect of any professional services provided by that Director, or any firm or company of which the Director is a partner, director or employee to the Company, other than as a Director. Any such payment must be authorised by the other Directors by majority and certified by the Directors who have authorised such payment as being fair and reasonable (having regard to the level of remuneration that would be paid in an arms-length transaction).

16.12 Interests of Shareholder

Any Director may, when exercising powers or performing duties as a Director, act in a manner that he or she believes is in the best interests of the Shareholder, even though it may not be in the best interests of the Company.

16.13 Exercise of Directors powers

Notwithstanding any other provision of this Constitution, in the exercise of the powers conferred upon them by this Constitution in the carrying on of any business of the Company, no Director of the Company shall be entitled to in any way (whether directly or indirectly) determine, or materially influence the determination of, the nature or the amount of any benefit or advantage or income or the circumstances in which it is to be received, gained, achieved, afforded or derived by that Director, and any payment made in breach of this clause shall be void as against the Company.

In their exercise of the powers conferred upon them by this Constitution, each Director in the carrying on of the business of the Company shall ensure that any person who is

- (a) a settlor of the trusts declared in clause 4 of this Constitution;
- (b) a Shareholder of the Company;
- (c) a settlor or a trustee of any trust that is a Shareholder of the Company;
- (d) any associated person (as defined in section OD 7 of the Income Tax Act 1994) of either a Director, or any person referred to in clauses 16.13(a) – (c) above,

does not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence the determination of, the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person (other than any benefit or advantage or income received, gained, achieved, afforded or derived by that person in that person's capacity as trustee in trust for the charitable purposes of the Shareholder), and any payment made to any person in or following breach of this clause shall be void.

17. Directors' remuneration and other benefits

17.1 Remuneration and expenses

The Company may:

- (a) remunerate a Director for services as a Director; and
- (b) reimburse a Director for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director.

17.2 Payments to Directors

Any payments made under clauses 16.11 or 17.1 to any Director, or to any firm or company of which the Director is a partner, director or an employee must be:

- (a) in accordance with a protocol agreed to by all Directors; and
- (b) separately accounted for by the Company (as a separate item in the financial statements of the Company for the year in which the payments are made); and
- (c) published in the annual report of the Company for the year in which payments are made.

17.3 No Compensation for loss of office

The Company must not pay to, or for the benefit of, any Director any compensation by reason of his or her ceasing to be a Director whether by reason of his or her removal from office as a Director or deemed or actual resignation as a Director or the expiry of his or her term of appointment as a Director or otherwise.

18. Indemnity and insurance for Directors and employees

18.1 Indemnity for Directors

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Companies Act and any liability or costs referred to in section 162(4) of the Companies Act.

18.2 Indemnities and insurance

In addition to the indemnity set out in clause 18.1, the Company may with the prior written approval of the Shareholder and the Board:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Companies Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Companies Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Companies Act.

18.3 Interpretation

Words given extended meanings by section 162(9) of the Companies Act have those extended meanings in this clause.

19. Notices

All notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in section 391 of the Companies Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.

20. Liquidation

20.1 Distribution of surplus

Subject to clause 8 and 20.2 of this Constitution, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed to the Shareholder.

20.2 Distribution of Income Shares and Settlement Quota

Upon liquidation of the Company, any Income Shares and Settlement Quota held by the Company must be distributed to a wholly-owned company of the Shareholder. The constitution of that wholly-owned company must comply with all of the relevant requirements of the Māori Fisheries Act and the Companies Act and must contain within its Constitution a provision to the same effect as clause 4 of this Constitution before it can receive the Income Shares and Settlement Quota.

21. Audit

The financial statements of the Company must be audited on an annual basis in accordance with Part XI of the Companies Act. The Shareholders have no power to resolve not to appoint an auditor in respect of the Company in respect of any accounting period and, to the extent permitted by the Companies Act, section 196(2) of the Companies Act does not apply to the Company.

22. Method of contracting

22.1 Deeds

A deed that is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors;
- (b) if there is only one Director, by that Director whose signature must be witnessed;
- (c) one or more attorneys appointed by the Company; or
- (d) any Director, or any person authorised by the Board, whose signature must be witnessed.

22.2 Other written contracts

An obligation or contract that is required by law to be in writing, and any other written obligation or contract that is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company, subject to the requirements of the Māori Fisheries Act.

22.3 Other obligations

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

23. Approval and amendment of constitution

23.1 Approval by Shareholder required

This Constitution will have no effect under the Māori Fisheries Act until it is:

- (a) approved as complying with the requirements of the Māori Fisheries Act by the Shareholder; and
- (b) ratified as the asset holding company to receive, hold and manage the Settlement Quota and Income Shares on behalf of the Shareholder by not less than 75% of the trustees of the Shareholder.

23.2 Amendment to Constitution

- (a) Notwithstanding any provision of the Companies Act 1993, or the terms of this Constitution, no amendment to this Constitution shall be made, and if purported to be made shall be of no legal effect, if the consequence of that amendment is to prejudice in a material manner the Company's entitlement to charitable status under the law of New Zealand, or its entitlement to an income tax exemption under the Income Tax Act 1994 in respect of income derived by it.
- (b) Prior to any resolution to amend this Constitution being placed before Shareholder, the Directors shall ensure that competent advice is obtained and made available to the Shareholder confirming that the proposed amendments will not jeopardise the charitable status of the Company or its entitlement to an income tax exemption on income derived by it.

23.3 Amendment must not be inconsistent with Māori Fisheries Act

Where any amendment to this constitution or the constitution of any subsidiary established by the Company under sub-clause 5.1 is proposed, to the extent that the relevant constitution relates to matters provided for by or under the Māori Fisheries Act, a proposal to change the relevant constitution must not be inconsistent with the Māori Fisheries Act.

23.4 Restrictions on amendment

Unless any amendment, under sub-clause 23.3, to this Constitution or the constitution of any subsidiary established by the Company under sub-clause 5.1 is required as a consequence of further criteria prescribed by Te Ohu Kai Moana Trustee Limited under section 25 of the Māori Fisheries Act, any proposal to amend the relevant constitution must not be made earlier than 2 years after the date on which the Shareholder is recognised by Te Ohu Kai Moana Trustee Limited as a Mandated Iwi Organisation and may only be promoted if the iwi resolves at a general meeting of the Shareholder that the change is for the collective benefit of all members of the iwi.

23.5 Application of sub-clause 23.1

Sub-clause 23.1 of this Constitution applies, with the necessary modifications, to amendments proposed to this Constitution or the constitution of any subsidiary established by the Company under sub-clause 5.1 under this clause, including amendments required as a consequence of rules made or amended by Te Ohu Kai Moana Trustee Limited under section 25 of the Māori Fisheries Act.