

# Constitution

## of Rangitane Holdings Limited

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LAWYERS

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# 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 Maori Fisheries Act;

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

**Charitable Trust** means the Te Runanga a Rangitane o Wairau Trust;

**Companies Act** means the Companies Act 1993;

**Company** means Rangitane Holdings Limited;

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

**Director** means a person appointed as a director of the Company in accordance with this Constitution;

**Distribution** in relation to Shares held by a Shareholder means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the Shareholder; or
- (b) the incurring of a debt by the Company to or for the benefit of the Shareholder,

whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means;

**Distribution Trust** means the Rangitane o Wairau Settlement Trust;

**Dividend** means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Companies Act applies;

**Income Shares** means the income shares of Aotearoa Fisheries Limited, as that term is defined in the Maori 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 Maori Fisheries Act;

**Managing Director** means a Director who is appointed under clause 14.3 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee);

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

**Maori Fisheries Act** means the Maori Fisheries Act 2004;

**Profit Related Debentures** means profit related debentures as defined in the Income Tax Act 2007 issued by the Company to the Distribution Trust;

**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 Maori Fisheries Act;

**Register** means the register of shares required to be kept by section 87 of the Companies Act;

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

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

**Resolution** means a resolution passed by the Shareholders;

**Settlement Quota** means:

- (a) the settlement quota, as that term is defined in the Maori 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 Assets** means the assets transferred, or as at the date of this Constitution, anticipated to be transferred, by the Crown to Rangitane o Wairau under a deed of settlement of historical claims, including any commercial redress under that deed of settlement;

**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;

**Shareholders** means those persons whose names are entered in the Register as the holders for the time being of the Shares, with the intention being that the Shareholders are the trustees of the Charitable Trust; and

**Working Day** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

## 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 gender;
- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible 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.

### **1.3 Use of electronic means**

Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the Electronic Transactions Act 2002 in the same manner as is required by the Electronic Transactions Act 2002 to meet that legal requirement under the Act. In this clause, the term “legal requirement” has the meaning given to it by the Electronic Transactions Act 2002.

## **2. Capacity and Powers**

Subject to clause 3, the Company, the Board, each Director and the Shareholders have the rights, powers, duties and obligations set out in the Companies Act except to the extent that they are negated or modified by this Constitution or the Maori 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**

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 Maori 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 Shareholders in relation to those matters in the Maori 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 Company to receive, hold and manage Settlement Assets**

The Company is to receive, hold and manage for so long as they are to be retained, the Settlement Assets, including through the issue of Profit Related Debentures to the Distribution Trust.

### **3.6 Delegation**

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

## **4. Asset-Holding Subsidiaries**

### **4.1 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, the Settlement Assets or any other assets of the Company; and
- (b) transfer to those subsidiaries some or all of the Settlement Quota and Income Shares, the Settlement Assets or other assets identified in (a) above.

### **4.2 Wholly owned and controlled**

Any subsidiary established by the Company under sub-clause 4.1 must be and remain wholly owned and controlled by the Company.

### **4.3 Obligations of directors in establishing a subsidiary**

If a subsidiary is established by the Company under sub-clause 4.1, the Directors will ensure that:

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

## 5. Rights attaching to Shares

### 5.1 Number of Shares

As at the date of this Constitution there is one (1) Share in the Company on issue at an issue price of \$1.00 per Share.

### 5.2 Shareholders' Rights

Each Share confers on the Shareholders the right to:

- (a) vote on any resolution at a meeting of the Shareholders, 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 Maori 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;
- (c) the distribution of the surplus assets of the Company; and
- (d) receive notice of, and attend, every Shareholders' meeting.

## 6. Issue, consolidation, subdivision, transfer and repurchase of Shares

### 6.1 Issue of new Shares

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

### 6.2 Consolidation and subdivision of Shares

The Board may authorise:

- (a) the consolidation and division of Shares in proportion to those Shares; and
- (b) the subdivision of the Shares in proportion to those Shares.

### **6.3 Company paying up partly paid shares**

The Board may with the approval of the Shareholders in writing resolve to apply any amount that is available for Distribution to the Shareholders:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to the Shareholders;
- (b) in paying up any amount that is unpaid on any Shares held by the Shareholders referred to in paragraph (a),

or partly in one way and partly in the other.

### **6.4 Shares in lieu of Dividends**

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

### **6.5 Shareholders to be trustees of the Charitable Trust**

The Shareholders of the Company may only be people who are the trustees from time to time of the Charitable Trust.

### **6.6 Entry in Register**

Subject to clause 6.8, Shares may be transferred by entry of the name of the transferee on the Register.

### **6.7 Transfer on Change of trustee**

Shares in the Company may not be transferred except where a transfer is required as a result of a change in the trustees of the Charitable Trust.

### **6.8 Signed transfer**

For the purpose of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

### **6.9 Form of transfer**

The form of transfer:

- (a) may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board;
- (b) must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

### **6.10 Board's right to refuse or delay registration of transfer**

The Board may, within 30 Working Days of the receipt of a form of transfer of Shares, refuse or delay the registration of the transfer if:

- (a) the transfer is to a person other than a trustee of the Charitable Trust; or
- (b) the Board considers that to effect the transfer would result in a breach of the law.

## **6.11 Board resolutions refusing or delaying Share transfers**

A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Working Days of the date of the resolution being passed.

## **6.12 Registration of transfer**

Subject to clauses 6.8 and 6.9, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with clause 6.10 to refuse or delay the registration of the transfer of the Shares.

## **6.13 On death or bankruptcy of Shareholder**

In the event of the death or bankruptcy of a Shareholder, the only person the Company can recognise as having any title to the deceased's interest in the Shares will be the surviving trustees of the Charitable Trust.

## **6.14 Company purchase**

For the purposes of section 59 of the Companies Act, the Company may purchase or otherwise acquire Shares issued by it.

# **7. Shares to be and remain with Shareholders**

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

# **8. 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 and its obligations under the Profit Related Debentures. Dividends may only be paid to the Shareholders.

# **9. Profit Related Debentures**

## **9.1 Issuing of Profit Related Debentures**

For receipt of the Settlement Assets, the Company will issue to the Distribution Trust such number of Profit Related Debentures as is necessary for the aggregate principal amount of the Profit Related Debentures to be equal to the fair market value of the Settlement Assets transferred to the Company.

## **9.2 Company not to adversely affect rights of debentureholder**

Where the Distribution Trust is a debentureholder under a Profit Related Debenture, the Company may not take any step, including under clauses 4, 6 or 8, which prejudicially affects the rights of the Distribution Trust as the debentureholder under this Constitution or the Profit Related Debentures.

## 10. Exercise of powers of Shareholders

### 10.1 Exercise of power by meeting or written resolution

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

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

### 10.2 Powers of the Shareholders

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

## 11. Meetings of the Shareholders

### 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 Shareholders, 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 Shareholders.

### 11.6 Meeting Procedures

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

### 11.7 Provision of Annual Report

At or before each annual meeting, and notwithstanding any agreement made by the Shareholders under section 211(3) of the Companies Act, the Company must provide to the Shareholders 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 4.1 in the previous year;
  - (iii) the investment of the money of the Company and any of its subsidiaries established under sub-clause 4.1 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 Shareholders and any subsidiary of the Company established under sub-clause 4.1 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 4.1 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 4.1 as by buying and selling Settlement Quota in accordance with the Maori 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 4.1;
  - (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 4.1.

## 12. Appointment and removal of Directors

### 12.1 Number of Directors

- (a) Subject to paragraph (b), the Company must have not fewer than 4 and not more than 7 Directors.

- (b) Notwithstanding any other clause of this Constitution, if at any time there are less than the minimum number of Directors specified in paragraph (a):
  - (i) the Directors and the Board may not take any act or make any decision whatsoever in respect of the Company and its assets unless required to do so by law; and
  - (ii) any failure to meet the requirements of paragraph (a) does not represent a breach of this Constitution.

## **12.2 Shareholders must appoint Directors**

- (a) The Shareholders must appoint the Directors of the Company. Accordingly, any person who is not disqualified by the Companies Act, the Maori 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 Shareholders, provided that such person has complied with the requirements of section 152 of the Companies Act.
- (b) The Shareholders when appointing Directors shall ensure that at all times there are two (2) independent directors who are not formal Iwi representatives on the Board. The Shareholders will ensure that the Board includes a mix of financial, legal and marketing skills among the appointed Directors.

## **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 Shareholders.

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**

- (a) Not more than 40% of the Directors of the Company or the directors of any subsidiary of the Company established under sub-clause 4.1 may be trustees of the Charitable Trust. Any Director appointed in breach of this provision will be deemed to be disqualified from acting as a Director until the provisions of paragraph (b) have been satisfied.
- (b) Where any Director is appointed in breach of this clause, the most recently appointed Director who is also a current trustee of the Charitable Trust must resign:
  - (i) as a Director; or
  - (ii) as a trustee of the Charitable Trust,

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 clause 12.4 does not invalidate an action or decision of the Company.

## **12.6 Removal of Directors**

Any Director may be removed from office by written notice to the Company signed on behalf of the Shareholders at any time with or without reason, including (without limitation) if the Shareholders are 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 Shareholders; 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 Maori 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 Shareholders 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 Maori 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 Shareholders 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 Shareholders may agree) to the Shareholders 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 Shareholders 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 Shareholders to the proposed appointment, which approval may be given on such terms and conditions as the Shareholders 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 trustee of the Shareholders, unless the proposed appointor is also an elected representative of the Shareholders.

### **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 Shareholders, 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 Shareholders 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 Shareholders 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 sub-clause 4.1 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 Shareholders 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 Maori Fisheries Act or this Constitution, to be exercised by the Shareholders.

### **14.3 Delegation of powers**

The Board may delegate to a committee of Directors, a Director, a senior employee of the Company called a Managing Director, 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 Shareholders**

Subject to the provisions of section 177 of the Companies Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution, the Companies Act, or the Maori 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 who hold office at the relevant time.

## **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 Maori 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 16.12, 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 whom 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 Exercise of Director's powers**

- (a) 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.
- (b) 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
  - (i) a Shareholder of the Company;

- (ii) a settlor or a trustee of any trust that is a Shareholder of the Company;
- (iii) any associated person (as defined in sections YB 1 to YB 16 of the Income Tax Act 2007) of either a Director, or any person referred to in clauses 16.12(b)(i)-(ii) 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 Shareholders), 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 Shareholders 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 Shareholders 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 7 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 Shareholders.

### **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 Shareholders. The constitution of that wholly-owned company must comply with all of the relevant requirements of the Maori Fisheries Act and the Companies Act.

## **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) one or more attorneys appointed by the Company; or
- (c) 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 Maori 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 Shareholders required**

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

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

### **23.2 Amendment must not be inconsistent with Maori Fisheries Act**

Where any amendment to this constitution or the constitution of any subsidiary established by the Company under sub-clause 4.1 is proposed, to the extent that the relevant constitution relates to matters provided for by or under the Maori Fisheries Act, a proposal to change the relevant constitution must not be inconsistent with the Maori Fisheries Act.

### **23.3 Restrictions on amendment**

Unless any amendment, under sub-clause 23.2, to this Constitution or the constitution of any subsidiary established by the Company under sub-clause 4.1 is required as a consequence of further criteria prescribed by Te Ohu Kai Moana Trustee Limited under section 25 of the Maori Fisheries Act, any proposal to amend the relevant constitution must not be made earlier than 2 years after the date on which the Charitable Trust 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 Shareholders that the change is for the collective benefit of all members of the iwi.

### **23.4 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 4.1 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 Maori Fisheries Act.