
Constitution of Te Ohu Kai Moana Trustee Limited

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INTRODUCTION

1 Defined Terms

In this constitution:

1.1 The following terms have the following meanings:

Appointed Day has the meaning given to that term by the Maori Fisheries Act;

Asset–Holding Company means an asset-holding company established by a Mandated Iwi Organisation in accordance with section 12(1)(d) of the Maori Fisheries Act, and includes a subsidiary of that asset-holding company;

Board means the board of directors of Te Ohu Kai Moana Trustee;

Companies Act means the Companies Act 1993;

Commission means the Commission established as the Maori Fisheries Commission under section 4 of the Maori Fisheries Act 1989 and renamed the Treaty of Waitangi Fisheries Commission by section 14(1) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;

Director means a person holding office as a director of Te Ohu Kai Moana Trustee in accordance with this constitution and wherever consistent with the context, includes an alternate Director;

Income Share has the meaning given to that term by the Maori Fisheries Act;

Iwi has the meaning given to that term by the Maori Fisheries Act;

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

Maori Fisheries Act means the Maori Fisheries Act 2004;

Recognised Iwi Organisation has the meaning given to that term by the Maori Fisheries Act;

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

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

Settlement Assets has the meaning given to that term by the Maori Fisheries Act;

Settlement Quota has the meaning given to that term by the Maori Fisheries Act;

Single Share means the single share in Te Ohu Kai Moana Trustee;

Special Resolution has the meaning given to that term by the Maori Fisheries Act, which is a resolution approved by 75% or more of the Directors entitled to vote on the resolution;

Te Kawai Taumata means the electoral college established under section 55 of the Maori Fisheries Act;

Te Ohu Kai Moana means the Trust established by the Commission under the authority of section 31 of the Maori Fisheries Act;

Te Ohu Kai Moana Group has the meaning given to that term by the Maori Fisheries Act;

Te Ohu Kai Moana Trustee means Te Ohu Kai Moana Trustee Limited;

Trust Deed means the trust deed under which Te Ohu Kai Moana is established, and Te Ohu Kai Moana Trustee is appointed trustee, pursuant to the Maori Fisheries Act;

Maori Fisheries Act and Companies Act Terms

- 1.2 In this constitution terms defined in the Companies Act or the Maori Fisheries Act (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by the relevant Act, and where there is inconsistency between those Acts in relation to the meaning of a term then the Maori Fisheries Act meaning prevails.

2 Construction

- 2.1 In this constitution, unless the context otherwise requires:

- (a) a reference to an enactment is a reference to that enactment as amended from time to time to any enactment made in substitution or consolidation that enactment; and
- (b) if there is a conflict between a Schedule and another provision of this constitution, then that other provision of this constitution prevails.

- 2.2 The Schedules form part of this constitution.

RELATIONSHIP BETWEEN THE CONSTITUTION AND OTHER ACTS

3 Effect of the Companies Act and Maori Fisheries Act on this Constitution

- 3.1 To the extent that a provision of this constitution is inconsistent with the Maori Fisheries Act, the provision has no effect.
- 3.2 Te Ohu Kai Moana Trustee, each Director and the holder for the time being of the Single Share have the rights, powers, duties, and obligations set out in the Companies Act except to the extent, as permitted by the Companies Act, they are negated or altered by this constitution, or are negated or altered by the Maori Fisheries Act or any other Act.

4 Alteration of the Constitution

The holder of the Single Share may alter this constitution by a special resolution (as defined in the Companies Act) of the shareholder. However, the Board (as the holder of the Single Share) must not authorise the passing of such resolution unless not less than 75% of the members of the Board agree in writing that such a resolution should be authorised, and at least 1 month's notice of the intended alteration has been given to all Mandated Iwi Organisations and Recognised Iwi Organisations, or by public notice.

ACTIVITIES OF TE OHU KAI MOANA TRUSTEE

5 Trustee Role

- 5.1 As and to the extent required by section 44(2)(a) of the Maori Fisheries Act, the role of Te Ohu Kai Moana Trustee is restricted to acting as the trustee of Te Ohu Kai Moana.
- 5.2 Generally, Te Ohu Kai Moana Trustee must perform the obligations imposed on it by the Maori Fisheries Act, the Companies Act, any other Act, and the Trust Deed.

6 Administration of Settlement Assets

As required by section 34 of the Maori Fisheries Act, Te Ohu Kai Moana Trustee must administer the Settlement Assets in accordance with the purposes of the Maori Fisheries Act and the purpose of Te Ohu Kai Moana, including performing the duties set out in that section.

7 Duties and Functions

Te Ohu Kai Moana Trustee:

- (a) must perform the duties imposed on it by section 34 of the Maori Fisheries Act or by law; and
- (b) may perform the functions set out in section 35(1) of the Maori Fisheries Act to further the purpose of Te Ohu Kai Moana; and

- (c) may perform any other function conferred on it by law whether as trustee or otherwise, or by virtue of its status as a shareholder of Te Ohu Kai Moana Trustee, Te Putea Whakatapu Trustee Limited, Te Wai Maori Trustee Limited, or any other company.

8 **No Fishing**

So long as and to the extent stipulated by section 35(2) of the Maori Fisheries Act, Te Ohu Kai Moana Trustee must not undertake fishing or hold a fishing permit but this prohibition and *clause 6* do not otherwise limit the activities that Te Ohu Kai Moana Trustee may undertake to further the purpose of Te Ohu Kai Moana.

9 **General Power**

- 9.1 Te Ohu Kai Moana Trustee has a general power to sell Income Shares and Settlement Quota in accordance with and subject to any limitations in its current annual plan.
- 9.2 The general power referred to in clause 9.1 can only be exercised in any financial year after a Special Resolution has been passed in respect of that year authorising the exercise of the general power. Where a new annual plan is adopted, a further Special Resolution is required.
- 9.3 The Special Resolution approving the exercise of the general power may specify terms and conditions which apply to some or all of the sales made pursuant to the exercise of the general power of sale and may specify different terms and conditions for different individual sales or for different categories of sales, which may include delegation to employees of Te Ohu Kai Moana Trustee of authority to exercise the power, and must not be inconsistent with the current annual plan.

Specific Power

- 9.4 TOKMTL has a specific power to sell Income Shares and Settlement Quota in excess of any restrictions imposed on the general power of sale by the current annual plan or under clause 9.3.
- 9.5 The specific power of sale may only be exercised by Special Resolution specifying the Income Shares or Settlement Quota affected and which may specify terms and conditions which apply to the exercise of the power including delegation of authority to employees of Te Ohu Kai Moana Trustee to give effect to the exercise of the power.

General Power and Specific Power

- 9.6 In the case of the general power of sale and the specific power of sale, each exercise of the power must relate to a sale which:
 - (a) is to be made in accordance with any relevant powers and authorities conferred on Te Ohu Kai Moana Trustee by the Maori Fisheries Act in

relation to the sale of Income Shares or Settlement Quota (as the case may be);

- (b) is subject to any restrictions imposed on Te Ohu Kai Moana Trustee by that Act in relation to the sale of Income Shares or Settlement Quota (as the case may be);
- (c) does not involve any Income Shares or Settlement Quota held on trust for any iwi under section 34(d) or section 67(3)(b) of the Maori Fisheries Act; and
- (d) does not involve any Income Shares held under section 67(3)(a) of the Maori Fisheries Act.

SINGLE SHARE

10 Single Share

Te Ohu Kai Moana Trustee has only one share which must always be held jointly by the Directors for the time being. The joint interest of a Director in the Single Share does not constitute the personal property of that Director.

11 No More Shares

The Board must not issue additional shares or any options, convertible securities or other equity securities.

12 Voting Rights

The Single Share confers on the holders the right to one vote on a poll at a meeting of Te Ohu Kai Moana Trustee on any resolution of the shareholder. The vote must be exercised by the chairperson pursuant to a resolution or Special Resolution of the Board as the case may require.

13 No Distribution Rights

The Single Share does not confer any right to dividends or other distributions whether on the liquidation of Te Ohu Kai Moana Trustee or otherwise.

14 Other Rights Negated

Except as provided in *clause 12*, all of the rights specified in section 36(2) of the Companies Act are hereby negated in relation to the Single Share.

15 No Transfer of Share

Neither the Single Share nor any interest in that share is capable of being sold, transferred, exchanged or otherwise disposed of.

16 Change in Board Membership

A change in membership of the Board does not constitute the sale, transfer, exchange or other disposal of the Single Share or any interest in it. Nor

does any change in Board membership require any share transfer or other notice or (subject to *clause 17.2*) evidence of change in the registered holder of the Single Share.

17 **Share Register**

- 17.1 As required by section 87 of the Companies Act, Te Ohu Kai Moana Trustee must maintain a share register that records the Single Share as the only share issued by the company.
- 17.2 The Board must ensure that that register is promptly updated whenever there is any change in membership of the Board.

GENERAL AND STATUTORY MEETINGS

18 **Te Ohu Kai Moana Trustee Must Hold General Meeting Annually**

- 18.1 In each financial year Te Ohu Kai Moana Trustee must convene a general meeting to be held no later than 8 months after the end of the previous financial year.
- 18.2 Te Ohu Kai Moana Trustee must hold the meeting on the date on which it is called by the Board to be held.
- 18.3 The following may attend and speak at each such general meeting:
- (a) the Directors;
 - (b) each member and alternate member of Te Kawai Taumata;
 - (c) authorised representatives of each Mandated Iwi Organisation and Recognised Iwi Organisation;
 - (d) authorised representatives of each Representative Maori Organisation;
 - (e) the auditors of Te Ohu Kai Moana Trustee; and
 - (f) any other person whom the Board (at its sole discretion) permits to attend and speak at the relevant general meeting. Any decision made by the Board, or the chairperson on behalf of the Board, pursuant to this *paragraph (f)* is conclusive.

19 **Notice of General Meetings**

- 19.1 Te Ohu Kai Moana Trustee must give not less than 20 working days public notice that a general meeting is to be held and the notice must contain the agenda for that meeting.

19.2 In addition, Te Ohu Kai Moana Trustee must give not less than 20 working days written notice that a general meeting is to be held (which notice must contain the agenda for that meeting) to:

- (a) each Mandated Iwi Organisation and Recognised Iwi Organisation;
- (b) each Representative Maori Organisation;
- (c) each member and alternate member of Te Kawai Taumata; and
- (d) the auditors of Te Ohu Kai Moana Trustee and Te Ohu Kai Moana.

20 **Methods of Holding Meetings**

20.1 A general meeting may be held:

- (a) by the persons attending being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of an audio, or audio and visual, communication by which all persons participating can simultaneously hear each other throughout the meeting;

20.2 Te Ohu Kai Moana Trustee is not required to hold general meetings in the manner specified in *clause 20.1(b)*. Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that Te Ohu Kai Moana Trustee should do so.

21 **Non-Binding Resolutions**

21.1 If prior to or during a general meeting there is provided to the Board a written motion which is supported by not less than 20% of the total number of Mandated Iwi Organisations and Recognised Iwi Organisations then the Board must put that written motion to a non-binding vote at that general meeting.

21.2 The Board or the chairperson of a general meeting may request a Mandated Iwi Organisation or Recognised Iwi Organisation that is claimed to support a motion for the purpose of *clause 21.1* to provide written evidence acceptable to the Board or chairperson of the meeting of its support of the motion before the motion is put to a vote.

21.3 Each Mandated Iwi Organisation and Recognised Iwi Organisation represented at the relevant meeting has one vote on each motion put to a general meeting pursuant to *clause 21.1*.

22 **Proceedings at General Meetings**

Schedule 2 governs the proceedings at general meetings.

23 **Companies Act Meetings**

- 23.1 In addition to holding general meetings under *clause 18.1*, Te Ohu Kai Moana Trustee must hold an annual meeting of its shareholder as required by section 120 of the Companies Act, unless the relevant procedures in section 122 of that Act are followed.
- 23.2 No person is authorised to call a special meeting pursuant to section 121(a)(ii) of the Companies Act.

ANNUAL PLANS AND REPORTS

24 **Financial Year**

The financial year of Te Ohu Kai Moana and Te Ohu Kai Moana Trustee is the period of 12 consecutive months commencing on 1 October.

25 **Annual and Strategic Plans**

Te Ohu Kai Moana Trustee must prepare the annual plans and strategic plans required to be prepared by it under the Maori Fisheries Act and the Trust Deed.

26 **Annual Reports**

- (a) Te Ohu Kai Moana Trustee must comply with the reporting obligations imposed on it by the Maori Fisheries Act and the Trust Deed.
- (b) In addition to those requirements, the annual report must include a description of any alterations to this constitution.

27 **Other Reports**

Clause 26 does not limit any reporting obligations of Te Ohu Kai Moana Trustee under the Companies Act. The annual report provided by Te Ohu Kai Moana Trustee under *clause 26* may be separate from, or may incorporate, the annual report required to be provided by Te Ohu Kai Moana Trustee under section 210 of the Companies Act.

BOARD

28 **Number of Directors**

The Board must consist of at least 6, and not more than 7, directors.

29 **First Directors**

- 29.1 The first directors of Te Ohu Kai Moana Trustee must be appointed by the Minister of Maori Affairs pursuant to section 45 of the Maori Fisheries Act.
- 29.2 Each Director appointed by the Minister under *clause 29.1* must, immediately before the Appointed Day, be a member of the Commission.
- 29.3 *Clause 31.2* applies to the first Directors.

30 **Subsequent Appointments**

- 30.1 In accordance with sections 46 to 49 of the Maori Fisheries Act, Te Kawai Taumata must appoint the directors (except the first directors) of Te Ohu Kai Moana Trustee and may remove any director in accordance with those sections and this constitution.
- 30.2 If a Director ceases to be a director before the expiry of his or her term, an appointment may be made by Te Kawai Taumata to fill that vacancy.

31 **Terms of Office of Directors**

- 31.1 Subject to *clauses 31.2 and 31.3*, each Director may be appointed for a term not exceeding 4 years.
- 31.2 Despite *clause 31.1*, three of the Directors appointed by the Minister of Maori Affairs under *clause 29.1* must be appointed for a term not exceeding 2 years, as specified by the Minister.
- 31.3 A Director:
- (a) who has held office for two consecutive full terms (disregarding any appointment to fill a vacancy arising during the term of another Director) is not eligible to be reappointed as a Director within 2 years after holding office. To avoid doubt, the reference to "two consecutive full terms" in this subclause includes the term of appointment of a Director under *clause 31.2*; and
 - (b) whose term of office expires, continues in office until his or her successor is appointed in accordance with the Maori Fisheries Act and this constitution.

32 **Eligibility for Office of Director**

- 32.1 Each Director must be a Maori.
- 32.2 Having regard to the purpose of Te Ohu Kai Moana, the Directors collectively must have commercial expertise and business skills, and be well versed in matters of tikanga Maori.
- 32.3 A person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata is not eligible for appointment as a Director or alternate Director of Te Ohu Kai Moana Trustee or of a subsidiary of Te Ohu Kai Moana Trustee. Accordingly, if a Director becomes a member or alternate member of Te Kawai Taumata then he or she must, within 5 working days, resign as a Director failing which, he or she will be deemed to have resigned as a Director at the end of that 5 working day period.
- 32.4 An employee of any member of Te Ohu Kai Moana Group is not eligible to be a Director.

33 Removal of Directors

- 33.1 Any Director appointed under *clause 29.1* may be removed from office by the Minister of Maori Affairs, without compensation, for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- 33.2 Any Director appointed by Te Kawai Taumata under *clause 30.1* may be removed from office, without compensation, at any time by Te Kawai Taumata in accordance with this constitution and Schedule 8 of the Maori Fisheries Act.

34 Method of Appointment and Removal of Directors

- 34.1 The appointment or removal of a Director pursuant to this constitution and/or the Maori Fisheries Act must be effected by a written notice to Te Ohu Kai Moana Trustee signed by or on behalf of the party effecting the appointment or removal.
- 34.2 Any notice of appointment or removal of a Director takes effect from the time it is served on Te Ohu Kai Moana Trustee, or from such later time as the notice states the appointment or removal is to take effect.

35 Office of Director Vacated in Certain Cases

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

- 35.1 dies; or
- 35.2 is declared bankrupt or otherwise becomes disqualified from being a director pursuant to the Maori Fisheries Act, the Companies Act or this constitution; or
- 35.3 (without limiting *clause 35.2*) is deemed by any clause of this constitution or any Act to have resigned that office; or
- 35.4 resigns that office in accordance with this constitution; or
- 35.5 is removed from office in accordance with this constitution; or
- 35.6 becomes an employee of any member of Te Ohu Kai Moana Group.

36 Directors' Resignation Procedure

A Director may resign office:

- 36.1 by signing a written notice of resignation and delivering it to the address for service of Te Ohu Kai Moana Trustee, the notice being effective when it is received at that address or at a later time specified in the notice; or
- 36.2 in any other manner permitted by the Companies Act.

37 Vacancy Not Affect Powers and Functions

The functions and powers of Te Ohu Kai Moana Trustee are not affected by a vacancy in the membership of the Board.

38 Extraordinary Vacancy Not Cause Breach

An extraordinary vacancy in the office of Director does not create a breach of this constitution, so long as:

38.1 at the time that the Director whose cessation of office caused the vacancy ceased to be a director that Director had an alternate Director who is still acting as a Director in place of the director who has ceased to hold office; and

38.2 a new director is appointed to fill the vacancy within 6 months of the vacancy arising.

CHAIRPERSON AND DEPUTY CHAIRPERSON**39 Appointment and Removal of Chairperson**

39.1 Any Director may be appointed as chairperson or deputy chairperson of the Board by a resolution of a majority of the Board so long as that Director is not also the chairperson or deputy chairperson of Aotearoa Fisheries Limited, Te Putea Whakatupu Trustee Limited or Te Wai Maori Trustee Limited. The candidate for appointment is not entitled to vote on that resolution.

39.2 The term of appointment of chairperson or deputy chairperson shall not exceed 1 year but a chairperson or deputy chairperson whose term of appointment expires shall be eligible for reappointment as chairperson or deputy chairperson for one or more further terms of up to 1 year each.

39.3 The Board may remove a chairperson or deputy chairperson of the Board from that office at any time and with or without reason, by Special Resolution. The chairperson or deputy chairperson concerned is not entitled to vote on that resolution.

39.4 Neither the chairperson nor the deputy chairperson of Te Ohu Kai Moana Trustee may, while holding that office, be the chairperson or deputy chairperson of:

- (a) Aotearoa Fisheries Limited; or
- (b) Te Putea Whakatupu Trustee Limited; or
- (c) Te Wai Maori Trustee Limited.

Accordingly, if the chairperson or deputy chairperson of Te Ohu Kai Moana Trustee becomes the chairperson or deputy chairperson of any of those

other companies then, unless within 5 working days of becoming the chairperson or deputy chairperson of such another company he or she resigns from that other office, he or she is automatically be deemed to have resigned as chairperson or deputy chairperson (as the case may be) of Te Ohu Kai Moana Trustee at the end of that 5 working day period.

40 No Casting Vote

In the case of equality of votes on a resolution of the Board or at a shareholder meeting or at a general meeting then the chairperson of the meeting does not have a casting vote.

ALTERNATE DIRECTORS

41 Directors May Appoint and Remove Alternate Directors

41.1 Every Director may:

(a) subject to *clause 41.2*, appoint any person who:

(i) is eligible for appointment as a Director; and

(ii) is not disqualified by the Companies Act, the Maori Fisheries Act or this constitution from being a Director 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 Te Ohu Kai Moana Trustee

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

(a) give 10 working days' notice to the other Directors of the Director's proposal to appoint an alternate Director unless those other directors waive the period of notice requirement;

(b) provide the other Directors with details of the business experience and skills and personal attributes of the proposed appointee; and

(c) obtain written approval from a majority of the other Directors to the proposed appointment.

41.3 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 are not 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 four Directors;
- (c) an employee of Te Ohu Kai Moana Trustee or of any member of Te Ohu Kai Moana Group;
- (d) a director of Aotearoa Fisheries Limited, unless the proposed appointor is also a director of Aotearoa Fisheries Limited.

41.4 A person may be appointed as the alternate Director for up to four Directors. However, an alternate Director may represent only one of the Directors for which he or she is the alternate 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.

41.5 No person shall hold office as an alternate Director:

- (a) for a continuous period of more than 8 years; or
- (b) for two or more periods which, in the aggregate, equal more than 8 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.

41.6 For the purposes of *clause 41.4* any period during which a person is a Director shall be deemed to be a period during which that person is an alternate Director.

41.7 In considering whether to give approval pursuant to *clause 41.2(c)* to a person becoming an alternate the Directors must take into account the following criteria:

- (a) the requirements of *clause 32.2*;
- (b) whether his or her personal attributes are likely to mean that he or she is generally compatible with the Board.

42 **Alternate Director has Powers of Appointor**

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

42.1 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);

42.2 is also subject to the same terms and conditions of appointment as that Director, subject to clause 42.3;

42.3 may receive reimbursing allowances or actual and reasonable expenses as if he or she were a Director, but is not entitled to the payment of any remuneration pursuant to *clause 59.1(a)* unless the appointor of that alternate Director agrees in writing with Te Ohu Kai Moana Trustee to forgo the amount of remuneration (if any) that Te Ohu Kai Moana Trustee proposes to pay to that alternate Director.

43 **Termination of Appointment of Alternate Director**

43.1 The appointment of an alternate Director terminates if:

- (a) the appointor of that alternate Director removes that alternate Director;
- (b) that alternate Director resigns; or
- (c) that alternate Director ceases to be eligible to hold office as a Director or alternate Director; or
- (d) the Director for which that alternate Director is alternate ceases to hold office as a Director unless such cessation causes an extraordinary vacancy on the Board in which event that alternate Director remains in office for up to 6 months or until Te Kawai Taumata appoints a replacement for that appointor or that vacancy otherwise ceases to exist, whichever happens first.

43.2 Where any of paragraphs (a), (b), or (d) of clause 43.1 applies, the alternate may nevertheless remain as an alternate Director for any other Director who has appointed him or her as an alternate Director.

MANAGEMENT OF TE OHU KAI MOANA TRUSTEE

44 **Board to Manage Te Ohu Kai Moana Trustee**

Te Ohu Kai Moana Trustee's business and affairs must be managed by, or under the direction or supervision of, the Board, except to the extent that the Companies Act or this constitution provides otherwise.

45 **Board has Powers Necessary to Manage Te Ohu Kai Moana**

The Board has all the powers necessary for managing, and for directing and supervising the management of, Te Ohu Kai Moana Trustee's business and affairs, except to the extent that the Companies Act, the Maori Fisheries Act or this constitution provides otherwise.

- 46 **No Exercise of Powers or Functions Until Appointed Day**
As stipulated by section 45(2) of the Maori Fisheries Act, the first directors of Te Ohu Kai Moana Trustee must not exercise any powers or functions as directors or take any other action before the Appointed Day.
- 47 **No Contract for Services**
No Director may undertake any contract for services for Te Ohu Kai Moana Group. This clause does not limit *clause 59.1*.

PROCEEDINGS OF BOARD

- 48 **Meetings of the Board**
Schedule 1 governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Companies Act does not apply to proceedings of the Board.
- 49 **Written Resolutions of Directors Permitted**
A written resolution signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 50 **Written Resolutions may be in Counterparts**
Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

DELEGATION OF POWERS

- 51 **Board's Right to Delegate its Powers**
Subject to the restrictions on delegation in the Companies Act, the Board may delegate any one or more of its powers to a committee of Directors, a Director, an employee of Te Ohu Kai Moana Trustee or any other person.
- 52 **Board Delegates to Comply with Regulations**
In exercising the Board's delegated powers, any committee of Directors, Director, employee or employees of Te Ohu Kai Moana Trustee or any other person must comply with any regulations that the Board may impose.
- 53 **Committee Proceedings**
The provisions of this constitution relating to proceedings of the Board also apply to proceedings of any committee of the Board, except to the extent the Board determines otherwise.

INTERESTED DIRECTORS

54 **Interests of Directors**

54.1 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 interest 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.

54.2 A Director is deemed to be interested in any transaction or proposed transaction which Te Ohu Kai Moana Trustee 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).

54.3 In addition to the disclosure requirement imposed by *clause 54.1*, 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);
- (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.

54.4 Where a Director discloses a potentially relevant conflict of interest pursuant to *clause 54.3(b)* then, for the purposes of *clause 54*, 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.

55 **Failure to Disclose Does Not Affect Validity of Transaction**

Failure to comply with *clause 54* does not affect the validity of a transaction entered into by Te Ohu Kai Moana Trustee, but, if applicable, the transaction may be avoided under *clause 57*.

56 **Interested Director May Not Vote**

56.1 Subject to *clause 56.2*, a Director who is interested (whether under the Companies Act or under *clause 54.1* or *54.2*) in, or pursuant to *clause*

54.3(b) has disclosed a potential conflict of interest (which is treated under *clause 54.3(b)* as being relevant) in respect of, a transaction entered into, or proposed to be entered into, by Te Ohu Kai Moana Trustee must not:

- (a) vote on a matter relating to the transaction;
- (b) attend that part of a meeting of the Board at which a matter relating to the transaction arises nor be included among the Directors present at a meeting for the purposes of a quorum for that matter;
- (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.

56.2 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 Te Ohu Kai Moana Trustee, 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 56.1*, unless the Director receives, or is likely to receive, a benefit from the transaction that is more advantageous than the benefit conferred on the other members of that Director's Iwi.

56.3 Notwithstanding *clause 56.1*, a Director may 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 56.1* 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.

57 **Te Ohu Kai Moana Trustee May Avoid Transaction if Director Interested**

Sections 107(3) and 141 of the Companies Act (relating to transactions in which a Director is interested) applies to Te Ohu Kai Moana Trustee. In addition, a transaction may be avoided by virtue of the 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 54.1, 54.2 and 54.3(a)*; and
- (b) each conflict of interest which is disclosed under *clause 54.3(b)* and which is treated as being relevant under *clause 54.4*.

58 Directors Not to Authorise Benefits for Directors

58.1 The Directors must not authorise:

- (a) the making of loans by Te Ohu Kai Moana Trustee to a Director;
- (b) the giving of guarantees by Te Ohu Kai Moana Trustee for debts incurred by a Director; and
- (c) the entering into of a contract to do any of the things set out in this clause.

BOARD REMUNERATION

59 Remuneration and Expenses

59.1 Te Ohu Kai Moana Trustee may, out of the funds of Te Ohu Kai Moana:

- (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.

59.2 Any payments made under *clause 59.1* must be:

- (a) in accordance with the Trust Deed and annual plan of Te Ohu Kai Moana; and
- (b) separately accounted for by Te Ohu Kai Moana (as a separate item in the financial statements of Te Ohu Kai Moana for the financial year in which the payments are made or incurred); and
- (c) published in the annual report of Te Ohu Kai Moana which reports on that financial year.

59.3 The Directors may authorise payments in respect of any professional services provided to Te Ohu Kai Moana Trustee by any company of which the Director is a director or employee so long as there is no breach of *clause 47*. 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 payment that would be made in an arms-length transaction).

60 No Compensation for Loss of Office

Te Ohu Kai Moana Trustee must not pay to or for the benefit of any Director or alternate Director any compensation by reason of his or her ceasing to be a Director or alternate Director whether by reason of his or her removal from office as a Director or alternate Director or deemed or actual resignation as a Director or alternate Director or the expiry of his or her term of appointment as a Director or alternate Director or otherwise.

INDEMNITY AND INSURANCE**61 Indemnification of Directors and Employees**

Te Ohu Kai Moana Trustee may, out of the funds of Te Ohu Kai Moana, indemnify a Director or alternate Director or employee of Te Ohu Kai Moana Trustee or a related company for any liability or costs for which a Director or alternate Director or employee may be indemnified under the Companies Act. The Board may determine the terms and conditions of any such indemnity.

62 Insurance for Directors and Employees

Te Ohu Kai Moana Trustee may, with the prior approval of the Board, effect insurance out of the funds of Te Ohu Kai Moana for a Director or alternate Director or employee of Te Ohu Kai Moana Trustee or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Companies Act. The Board may determine the amounts and the terms and conditions of any such insurance.

GENERAL**63 Manner of Execution of Deeds**

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of Te Ohu Kai Moana Trustee in writing signed under the name of Te Ohu Kai Moana Trustee by:

63.1 two or more Directors; or

63.2 a Director or any other person authorised by the Directors whose signature must be witnessed; or

63.3 one or more attorneys appointed by Te Ohu Kai Moana Trustee in accordance with *clause 64*.

GENERAL**64 Appointment of Attorneys**

Te Ohu Kai Moana Trustee may, by an instrument in writing executed in accordance with *clause 63.1 or 63.2*, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or

matters. An act of an attorney in accordance with that instrument binds Te Ohu Kai Moana Trustee.

65 Liquidation of Te Ohu Kai Moana Trustee

- 65.1 Te Ohu Kai Moana Trustee may only be put into voluntary liquidation if Te Ohu Kai Moana is terminated. If that occurs the Board must then pass a resolution under section 241(2)(b) of the Companies Act appointing a liquidator of Te Ohu Kai Moana Trustee.
- 65.2 On the liquidation of Te Ohu Kai Moana Trustee any surplus assets of Te Ohu Kai Moana Trustee shall be distributed to the same persons, and in the same proportions, as any surplus assets of Te Ohu Kai Moana are distributed on its termination.

66 Certificate and Signing of Documents

The Board is entitled to rely on, and is not obliged to question or verify the accuracy or authenticity of, any document, certificate or other written material, and any signing process or signature, that is presented to it under this constitution that it has no reasonable evidence to believe is not accurate or authentic. In the absence of reasonable evidence to the contrary, the Board can treat the contents of any such document, certificate or other written material as conclusive evidence of the facts stated therein.

SCHEDULE 1: BOARD MEETING PROCEDURES

1 Construction

In this Schedule, unless stated otherwise, references to paragraphs are references to paragraphs in this Schedule.

2 Director's Power to Convene Meetings

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

3 Notice to be Sent to Director's Address

The notice of meeting must be a written notice delivered to each Director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the Director provides to Te Ohu Kai Moana Trustee for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to Te Ohu Kai Moana Trustee.

4 Notice to Contain Certain Details

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.

5 Period of Notice Required to be Given to Directors

At least five days' notice of a meeting of the Board must be given pursuant to paragraph 3 unless the chairperson of the Board (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hour's notice is given.

6 Directors Absent from New Zealand

If a Director, who is for the time being absent from New Zealand, supplies Te Ohu Kai Moana Trustee with a facsimile number or address or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director at that address. Otherwise notice need not be given to any Director for the time being absent from New Zealand.

7 Directors May Waive Irregularities in Notice

Any irregularity in the notice of a meeting, or failure to comply with *paragraphs 2 to 6*, is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

8 Methods of Holding Meetings

A meeting of the Board may be held either:

- 8.1 by a number of Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- 8.2 by means of audio, or video, communication by which a quorum of Directors participating can simultaneously hear each other throughout the meeting.

9 **Quorum for Board Meeting**

The quorum necessary for the transaction of business at a meeting of the Board is 4 Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

10 **Meeting Adjourned if No Quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

11 **Chairperson to Chair Meetings**

The chairperson of the Board or, in his or her absence, the deputy chairperson will chair all meetings of the Board at which he or she is present. If the offices of chairperson and deputy chairperson of the Board is vacant, or if at a meeting of the Board the chairperson and deputy chairperson of the Board are not present within 60 minutes from the time appointed for the meeting, then the Directors present may elect one of their number to chair the meeting.

12 **Voting on Resolutions**

Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Companies Act.

13 **Chairperson Does Not Have Casting Vote**

As stipulated by *clause 40* of this constitution, in the case of an equality of votes, the chairperson of the Board meeting does not have a casting vote.

14 **Board Must Keep Minutes of Proceedings**

The Board must ensure that minutes are kept of proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

15 **Board May Regulate Other Procedures**

Except as set out in this Schedule, the Board may regulate its own procedure.

SCHEDULE 2: GENERAL MEETING PROCEDURES

1 Construction

In this Schedule:

- 1.1 unless stated otherwise, references to paragraphs are references to paragraphs in this Schedule.
- 1.2 a reference to a Mandated Iwi Organisation or Recognised Iwi Organisation present at a meeting or entitled to vote at a meeting includes a reference to a representative of that Mandated Iwi Organisation or Recognised Iwi Organisation appointed under *paragraph 16*.

2 Chairperson of Board to be Chairperson of Meeting

The chairperson of the Board, if one holds office under *clause 39.1* of this constitution and is present at a meeting of shareholders, will chair the meeting and in his or her absence the deputy chairperson, if one has been appointed under that *clause 39.1* and is present at the meeting, will chair the meeting.

3 Directors May Elect Chairperson if Chairperson of Board Not Available

If no chairperson or deputy chairperson of the Board has been appointed under *clause 39.1* of this constitution or, if at any meeting of shareholders neither the chairperson nor the deputy chairperson of the Board is present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the Directors present may elect one of their number to be chairperson of the meeting.

4 Chairperson's Power to Adjourn Meeting

- 4.1 The chairperson of a meeting may adjourn the meeting for a period of no longer than 5 working days if he or she considers that to be appropriate.
- 4.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- 4.3 This clause 4 does not limit clauses 13 and 14 of this Schedule 2.

5 Voting by Show of Hands or Voice Vote at Meeting

Unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

6 Voting by Voice if Audio-Conference Meeting

In the case of a meeting conducted under *clause 20.1(b)* of this constitution, unless a poll is demanded, voting at the meeting will be by the persons participating signifying individually their assent or dissent by voice or by such other manner as the chairperson may decide.

7 Chairperson not Allowed Casting Vote

As stipulated by *clause 40* of this constitution, in the case of an equality of votes (whether on a show of hands, voice vote or on a poll) the chairperson of the meeting is not entitled to a casting vote.

8 Chairperson's Declaration of Result

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such manner as the chairperson may have decided under *paragraph 6* is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

9 Poll May be Demanded by Chairperson or Mandated Iwi Organisation

A poll may be demanded, either before or after a vote by show of hands or voice vote, by:

9.1 the chairperson, at his or her absolute discretion; or

9.2 at least 5 Mandated Iwi Organisations or Recognised Iwi Organisations attending the meeting.

10 Time at Which Polls to be Taken

A poll demanded on any question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

11 Voting

Each Mandated Iwi Organisation and Recognised Iwi Organisation present and voting shall have one vote on a non-binding resolution and any related poll but shall not have any other voting rights except as provided below in Clause 19.

12 Declaration of Poll Result

The result of a poll:

12.1 may be declared by the chairperson of the meeting either at or after the meeting, and when the outcome of the poll is known, and regardless of whether all votes have been counted;

12.2 declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

13 Chairperson May Dissolve or Adjourn Unruly Meetings

The chairperson of a meeting may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly

manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.

14 Dissolved Meetings - Unfinished Business

If the chairperson proposes to dissolve a meeting pursuant to *paragraph 13*, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

15 Acting by Representative

Each Mandated Iwi Organisation or Recognised Iwi Organisation that wishes to vote at a general meeting must, not later than the commencement of that meeting (or during the meeting, if permitted by the chairperson of the meeting), deliver to the Board or chairperson at the meeting a written notice signed by at least two authorised representatives of that Mandated Iwi Organisation or Recognised Iwi Organisation appointing one person (or, in his or her absence, another person) to vote on its behalf at that meeting and at any adjourned meeting. The representative named in that notice (or in his or her absence the second representative named in that notice) shall be entitled to vote at the meeting and at any adjourned meeting as if the representative were the Mandated Iwi Organisation or Recognised Iwi Organisation.

16 Board Must Keep Minutes of Proceedings

The Board must ensure that minutes are kept of all proceedings at general meetings and that a record is kept of all written resolutions. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

17 Meeting May Regulate Other Proceedings

Except as provided in this Schedule, the chairperson may regulate the procedure of a general meeting.

18 Post Audit Meetings

Where Te Ohu Kai Moana Trustee has received an audit report under section 113, it must, at its next general meeting ensure that section 113(2) of the Maori Fisheries Act is complied with.

19 Post Review Meetings

19.1 Te Ohu Kai Moana Trustee must convene a general meeting within the time specified in section 127(1) of the Maori Fisheries Act and make provision for matters to be on the agenda of that meeting as required by that section.

19.2 At any such meeting, the Mandated Iwi Organisations and Recognised Iwi Organisations have the powers to set out in section 127(2) of the Maori Fisheries

Act, despite any restriction in this constitution as to the matters on which they may vote or make resolutions.

- 19.3 If 75% or more of the Mandated Iwi Organisation and Recognised Iwi Organisations, together representing over 50% of the total notional iwi population support a resolution made under section 127(2) of the Maori Fisheries Act, Te Ohu Kai Moana Trustee must then act as required under section 127(3) of that Act.