

# **DEED OF RESTATEMENT AND AMENDMENT OF TRUST**

**Relating to  
Te Kotahitanga o Te Arawa Waka Fisheries Trust Board**

**Dated [     ]**

This Trust Deed was amended on [     ] by Special Resolution

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## BACKGROUND

- A. The Trust Board was established by deed of trust made on 19 December 1995 (the **Original Deed**). The Original Deed was amended by deeds of restatement and amendment of trust dated 4 February 2005 and 25 June 2010 (**Second Amended Deed**).
- B. The Representatives have undertaken a review of the Second Amended Deed and wish to make amendments to update the Deed.
- C. This Trust Deed replaces the Second Amended Deed and was approved by Special Resolution on [ ].

## IT IS DECLARED

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The Trust Board acknowledges that it holds the Trust Fund upon the trusts and with the powers set out in this Trust Deed:

### 1. Interpretation

#### 1.1 Definitions

In this Trust Deed:

**Account Date** means such date in each calendar year as may be fixed under sub-clause 18.1 as the date at which the Annual Accounts are to be prepared;

**Adjudicator** means an adjudicator appointed by the Trust Board in accordance with sub-clauses 21.3 and 21.4;

**Adult Registered Member** means a Registered Member eighteen (18) years old or older registered on the Members Register;

**Annual Accounts** means collectively and individually the Trust Board Accounts and the Corporate Entity Accounts, which for the purposes of Fisheries Assets must account separately for settlement cash assets;

**Annual General Meeting** means an annual general meeting to be held in each calendar year in accordance with Schedule 4;

**Annual Plan** means a plan for the Trust Board prepared and adopted by the Trust Board prior to the commencement of each Financial Year which outlines for the purposes of that Financial Year:

- (a) the objectives of the annual plan;
- (b) the nature and scope of the activities proposed by the Trust Board to achieve the objectives of the annual plan;
- (c) the policy of the Trust Board in respect of sales and exchanges of Settlement Quota, including any changes to that policy;
- (d) any changes in that policy from the policy for the previous year;

- (e) any proposal to change the constitutional documents of any Corporate Entity;  
and
- (f) any proposals for the ongoing management of the Trust Board's assets having regard to the interests of all Registered Members.

**Annual Report** means the report approved in accordance with sub-clause 19.2 on the Annual Accounts and the performance of the Trust Board and the Corporate Entities incorporating a summary of any performance audit conducted in respect of the relevant Financial Year and including:

- (a) information on the steps taken by the Trust Board to increase the number of Registered Members;
- (b) a comparison of the performance of the Trust Board against the objectives set out in the Annual Plan including:
  - (i) changes in shareholder or member value since the Annual Report for the previous Financial Year; and
  - (ii) dividend performance or profit distribution during the Financial Year to which the Annual Report relates;
- (c) the annual audited financial report prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets and,
- (d) a report giving information of the sales and exchanges of Settlement Quota in that Financial Year including:
  - (i) the quantity of Settlement Quota held by Asset Holding Companies in that year;
  - (ii) the value of Settlement Quota sold or exchanged;
  - (iii) the identity of the purchaser or other party to any exchange;
  - (iv) any transaction with Settlement Quota that has resulted in a registered interest by way of caveat or mortgage being placed over the Settlement Quota;
  - (v) the Settlement Quota interests that have been registered against quota shares of the Trust Board;
  - (vi) the value of Income Shares sold, exchanged or acquired; and
- (e) a report on the interactions of the Trust Board in fisheries matters, to the extent that those matters relate to or involve Fisheries Assets, with:
  - (i) Asset Holding Companies or their Subsidiaries;
  - (ii) other Corporate Entities;
  - (iii) other entities within Te Arawa;
  - (iv) other organisations recognised by Te Ohu Kai Moana Trustee Limited as mandated iwi organisations;

- (v) Te Ohu Kai Moana Trustee Limited; and
- (f) any changes made in accordance with section 18 of the Māori Fisheries Act 2004 to the Trust Deed or the constitutional documents of an Asset Holding Company or its Subsidiaries;
- (g) a report on the performance of the Trust Board against the Strategic Plan;

**Applicant** means any Adult Registered Member who applies in accordance with clause 21 for an addition to the Te Arawa Iwi;

**Application** means an application made by an Applicant to add a Te Arawa Iwi in accordance with clause 21;

**Aquaculture Assets** has the same meaning as settlement assets as defined in the Maori Commercial Aquaculture Claims Settlement Act 2004;

**Asset Holding Company** means any wholly-owned Subsidiary of the Trust Board that will act as an asset holding company of the Trust Board for the purposes of the Māori Fisheries Act 2004;

**Auditors** means such firm of chartered accountants of national or international standing as may from time to time be appointed under sub-clauses 18.4 and 18.5 as auditors to the Trust Board and the Corporate Entities;

**Ballot** means a vote of Adult Registered Members held in accordance with Schedule 2;

**Ballot Notice** means a notice given under sub-clause 2.2 of Schedule 2 that must include:

- (a) the date by which and the address to which Votes must be received by the Returning Officer;
- (b) where any relevant explanatory documents may be viewed or obtained; and
- (c) the matter or issues on which the Ballot is to be taken;

**Ballot Slip** means a ballot slip prepared by the Trust Board and sent or given to Adult Registered Members by postal or electronic means under sub-clause 2.3 of Schedule 2 on which should be recorded:

- (a) the Registration Number of the Adult Registered Member to whom the ballot slip is sent or given, if applicable;
- (b) the resolution or resolutions, or recommendation or recommendations, in respect of which the Adult Registered Members are required to vote;
- (c) the manner in which votes must be validly cast; and
- (d) the Voting Date;

**Business Day** means any day on which registered banks in Rotorua are open for business;

**Chairperson** means the Representative from time to time elected by the Representatives under clause **Error! Reference source not found.** of Schedule 4 to act as chair of the Representatives;

**Confidential Information** means any information that a majority of the Representatives consider on reasonable grounds is of a commercially or otherwise sensitive nature and the release of which could be detrimental to the interests of Te Arawa;

**Conflict Transaction** has the meaning given to it in sub-clause 6.1 of Schedule 4;

**Conflicted Representative** has the meaning given to it in sub-clause 6.2 of Schedule 4;

**Co-opted Representative** means:

- (a) the Nominee of the relevant Te Arawa Iwi who received the second highest number of votes in the most recent Election for that Te Arawa Iwi; and
- (b) who is co-opted as a Representative for that Te Arawa Iwi pursuant to sub-clause 1.5 of Schedule 1;

**Corporate Entity** means:

- (a) any Fishing Entity;
- (b) any Asset Holding Company; and
- (c) any Asset Holding Company Subsidiary;

**Corporate Entity Accounts** means collectively and individually in respect of each Financial Year:

- (a) the audited consolidated statement of financial position of the Corporate Entities and their Subsidiaries as at the Account Date;
- (b) the audited statement of financial position of each Corporate Entity and its Subsidiaries as at the Account Date;
- (c) the audited consolidated statement of financial performance of the Corporate Entities and their Subsidiaries for the financial period ended on the Account Date;
- (d) the audited statement of financial performance of each Corporate Entity and its Subsidiaries for the financial period ended on the Account Date; and
- (e) the notes, Directors' reports, Auditors' statements and other documents annexed to those statements of financial position and performance;

**Corporate Entity Director** means a director, trustee, or officeholder, for the time being of a Corporate Entity;

**Corporate Entity Plan** means, in respect of each Corporate Entity, the annual plan prepared and submitted by the relevant Corporate Entity Directors in accordance with clause 3 of Schedule 5 on:

- (a) the key strategies for the use and development of the Fisheries Assets held by that Corporate Entity;
- (b) the expected financial return on the Fisheries Assets held by the Corporate Entity; and
- (c) any programme to:
  - (i) manage the sale of annual catch entitlement derived from Settlement Quota by the Corporate Entity; and
  - (ii) reorganise Settlement Quota held by the Corporate Entity, by buying and selling Settlement Quota in accordance with the Māori Fisheries Act 2004;

**Corporate Entity Report** means, in respect of each Corporate Entity, the annual report of that Corporate Entity that reports against the objectives set out in the Corporate Entity Plan for the previous Financial Year and includes an assessment of:

- (a) the performance of the Corporate Entity;
- (b) the investment of money of the Corporate Entity;
- (c) the key strategies for the use and development of the Fisheries Assets held by that Corporate Entity;
- (d) the financial return on the Fisheries Assets held by the Corporate Entity; and
- (e) any programme to:
  - (i) manage the sale of annual catch entitlement derived from Settlement Quota by the Corporate Entity; or
  - (ii) reorganise Settlement Quota held by the Corporate Entity, by buying and selling Settlement Quota in accordance with the Māori Fisheries Act 2004; and
- (f) any proposal to change the constitutional documents of any Asset Holding Company, or any of their Subsidiaries.

**CPI** means the Consumer Price Index (All Groups) as published by the Department of Statistics or by any other governmental agency or body upon which the duties in connection with the CPI devolve;

**Declaration** means:

- (a) a declaration given under sub-clause 3.11(c) of Schedule 1; or
- (b) a declaration given under sub-clause 2.6(c) of Schedule 2;

**Director** has the meaning given to it in the Companies Act 1993;

**Disputing Parties** has the meaning given to it at clause 23.1 of this Trust Deed;

**Elected Term** means the three year period that Representatives hold office, commencing on the day that a Declaration is made and ending on the day a Declaration is made as a result of the next Election;

**Election** means:

- (a) a Standard Election; or
- (b) a Special Election,

for Representatives held in accordance with Schedule 1;

**Election Date** means the Voting Date and shall be no later than three (3) years after the month of the previous Election Date;

**Election Notice** means a notice given under sub-clauses 1.9 or 3.3 of Schedule 1 that must include:

- (a) the Election Date;
- (b) where any relevant explanatory documents may be viewed or obtained;
- (c) a statement regarding the expiration of the Elected Term of the Representatives and the Election of new Representatives; and
- (d) the date by which nominations in writing for all Representative positions are to be received from Adult Registered Members by the Secretary at the Head Office, which shall be no later than ten (10) Business Days after the date of the notice; and
- (e) the date by which new registrations are to be received for election purposes, being the same as the Election Date;

**Election Voting Slip** means a voting slip provided by the Trust Board to Adult Registered Members on which must be recorded:

- (a) the one Te Arawa Iwi that the Eligible Voter has nominated on his or her Registration Form in which he or she wishes to exercise votes;
- (b) the Nominees for election as Representative for the Te Arawa Iwi that the Eligible Voter has nominated on his or her Registration Form;
- (c) the manner in which Adult Registered Members are to vote for the Nominee of their choice;
- (d) the address to which the Election Voting Slip must be returned to be validly cast if it is a Postal Vote or the instructions for submitting the Election Voting Slip by Electronic Vote; and
- (e) the Voting Date;

**Employee** has the meaning given to it in the Employment Relations Act 2000;

**Financial Year** means, in relation to the Corporate Entities and the Trust Board, the period of twelve consecutive calendar months (or such other period as the Representatives may from time to time designate) ending on the Account Date;

**Fisheries Assets** means the Settlement Quota and Income Shares allocated by Te Ohu Kai Moana Trustee Limited to the Trust Board or any Asset Holding Company pursuant to the Māori Fisheries Act 2004;

**Fishing Entity** means an enterprise established pursuant to sub-clause 4.5 that is:

- (a) separate from, but responsible to, the Trust Board; and
- (b) a separate entity from any other Corporate Entity;

**General Meeting** means an Annual General Meeting and Special General Meeting;

**Head Office** means the office as the Representatives may from time to time designate and notify publicly;

**Income Share** has the meaning given to it in the Māori Fisheries Act 2004 to the extent that it relates to income shares held by the Trust Board or any Corporate Entity;

**Iwi Aquaculture Organisation** has the same meaning given to it in the Maori Commercial Aquaculture Claims Settlement Act 2004;

**Joint Secretary** means any person appointed under sub-clause 17.3 to carry out the secretarial functions jointly with the Secretary;

**Koeke** means respected male and female elders of Te Arawa;

**Kaunihera Koeke** means the council of Koeke of Te Arawa convened by the Trust Board from time to time in accordance with clause 11;

**Major Transaction** means:

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, Property by the Trust Board the value of which is more than 50% of the value of the Trust Fund before the acquisition; or
- (b) The disposition of, or an agreement to dispose of, whether contingent or not, Property by the Trust Board the value of which is more than 50% of the value of the Trust Fund before the disposition; or
- (c) A transaction that has or is likely to have the effect of the Trust Board acquiring rights or interests or incurring obligations or liabilities the value of which is more than 50% of the value of the Trust Fund before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust Fund (whether the Property is held by the Trust Board); or
- (e) any acquisition or disposition of Property by Trust Board from or to any company which is wholly owned by the Trust Board; or

provided however that:

- (f) Nothing in paragraph (c) of this definition applies by reason only of the Trust Board giving, or entering into an agreement to give, a charge secured over assets of the Trust Board the value of which is more than 50% of the value of the Trust Fund for the purpose of securing the repayment of money or the performance of an obligation; and
- (g) For the purposes of this definition, the value of the Trust Fund shall be calculated based on the value of the Property of the Trust Board.

**Meeting** means any Trust Board Meeting or General Meeting;

**Members Register** means the register of Adult Registered Members that is established and maintained by the Trust Board in accordance with clause 15.5.

**Nomination Form** means the form developed by the Trust Board from time to time to be used to nominate Representatives for election in accordance with Schedule 1;

**Nominee** means a nominee who must be an Adult Registered Member who signs a Nomination Form and whose name is listed in an Election Voting Slip as a nominee for election to the office of Representative;

**Objects** has the meaning given to it in clause 3;

**Ordinary Resolution** means a resolution of the that has been approved by a majority of not less than 50% of Adult Registered Members who validly cast a vote in accordance with the processes set out in Schedule 3 and Schedule 4 (as applicable);

**Potential Adult Members** means Te Arawa who:

- (a) are eighteen (18) years old or older on the Voting Date;
- (b) are not yet Registered Members;
- (c) have correctly completed the Registration Form (and have nominated one Te Arawa Iwi as the only Te Arawa Iwi in which he or she wishes to vote in accordance with Schedule 1 in an Election for that Te Arawa Iwi).

**Property** means all property (whether real or personal) and includes choses in action, rights, interests and money;

**Rangatahi Representative** means a person appointed by the Trust Board as a Rangatahi Representative pursuant to clause 4.12;

**Recommendations Report** means a report of an Adjudicator provided to the Trust Board pursuant to sub-clauses 21.6(b)(v) and 21.7 recommending whether or not to add a Te Arawa Iwi;

**Registered Member** means a Te Arawa person who:

- (a) has correctly completed the Registration Form or, in the case of Te Arawa under the age of 18 at the time of registration, has had completed the Registration Form on their behalf by their parent or legal guardian;
- (b) is approved under sub-clause 14.3 for registration on the Members Register; and
- (c) whose details are recorded on the Members Register;

**Registration Form** means the form developed by the Trust Board from time to time that:

- (a) a Te Arawa person must use when applying to be registered as a Registered Member; and
- (b) must include provision for that person to state

- (i) whether they wish to receive a private notice, Ballot Slips and Election Voting Slips for the purpose of voting in Elections and Ballots;
  - (ii) the one Te Arawa Iwi in which they wish to participate for Election purposes; and
  - (iii) the Te Arawa Iwi to which the Adult Registered Member or Potential Adult Member affiliates; and
- (c) once completed, shall be returned to the Secretary of the Trust Board;

**Registration Number** means the unique identification number given to each Registered Member upon registration on the Members Register;

**Regular Meeting** means any Trust Board Meeting, other than a Special Meeting which is convened under clause 3 of Schedule 4;

**Representative:**

- (a) means a person elected under sub-clause 7.1 by Adult Registered Members of a Te Arawa Iwi to represent that Te Arawa Iwi;
- (b) includes any Co-opted Representative.

**Trust Board Meeting** means any meeting of the Trust Board;

**Representative Register** means the register maintained by the Trust Board in accordance with sub-clause 15.4 in which are listed the names of the Representatives and their respective addresses for service of notice of Meetings in accordance with clause 5 of Schedule 4;

**Returning Officer** means the independent person appointed as a returning officer in accordance with Schedule 1 or Schedule 2;

**Secretary** means any person appointed under sub-clause 17.2 and includes the Joint Secretary;

**Settlement Quota** has the meaning given to it in the Māori Fisheries Act 2004 to the extent that it relates to quota held by the Trust Board or any Corporate Entity;

**Special Election** means an election held in accordance with sub-clause 1.8 of Schedule 1;

**Special Resolution** means a resolution that has been approved by a majority of not less than 75% of the Adult Registered Members who validly cast a vote in accordance with the processes set out in Schedule 2 and Schedule 4 (as applicable);

**Standard Election** means any election other than a Special Election;

**Strategic Plan** means the strategic plan prepared and adopted by the Trust Board in accordance with clause 19.2.

**Subsidiary** has the meaning given to it in section 5 of the Companies Act 1993;

**Te Arawa** means every individual who is descended from a Te Arawa Ancestor or Ancestors and does not include Whāngai;

**Te Arawa Ancestor** means an individual or individuals who, after 6 February 1840, exercised customary rights from within the Te Arawa rohe by virtue of him or her being descended from any of the ancestors:

- (a) listed in column 2 of Schedule 7; or
- (b) who is identified as an ancestor in accordance with clause 21;

**Te Arawa Iwi** means the iwi within Te Arawa named in column 1 of Schedule 7 or otherwise recognised in accordance with clause 21;

**Te Arawa Waka** means all of the Te Arawa Iwi collectively;

**Trust Board** means the Te Kotahitanga o Te Arawa Waka Fisheries Trust Board, a charitable trust incorporated under the Charitable Trusts Act 1957 on 13 May 1994;

**Trust Board Accounts** means in respect of each Financial Year:

- (a) the audited statement of financial position of the Trust Board as at the Account Date;
- (b) the audited statement of financial performance of the Trust Board for the financial period ended on the Account Date; and
- (c) the notes, Representatives' reports, Auditors' statements and other documents annexed to those statements of financial position and performance;

**Trust Deed** means this deed, including the background and the schedules and includes any amendments made in accordance with this deed;

**Trust Fund** means the Property that is from time to time held by the Representatives on the trusts of this Trust Deed including the income that is from time to time held by the Representatives on the trusts of this Trust Deed;

**Vote** means a vote cast by post or electronically as set out on the Ballot Slip by any Adult Registered Member received no later than the Voting Date;

**Voting Date** means:

- (a) in relation to a vote under Schedule 1, the Election Date;
- (b) in relation to a Ballot under Schedule 2, the date by which Votes must be received as set out on the Ballot Slip;

**Whakapapa Committee** means the committee appointed, from time to time, in accordance with clause 14.1.

**Whāngai** means a person adopted by an Adult Registered Member in accordance with Te Arawa tikanga, but who is not Te Arawa;

## 1.2 Construction of certain references

In these clauses:

**assets** includes the whole or any part of the relevant person's business, undertaking, property, revenue, rights or interest, in each case, present or future, actual,

contingent or prospective and, to avoid any doubt, includes Fisheries Assets and Aquaculture Assets;

**distribution** of an asset includes a sale, gift, transfer or any other kind of disposal, or grant of an option over, a right or interest, whether legal or equitable, in that asset and distribute has a corresponding meaning;

**liabilities** includes all obligations, whether in the nature of debt or otherwise and whether actual or contingent, present or otherwise; and

**person** includes an individual, body corporate, an association of persons (whether corporate or not) and a trust (in each case, whether or not having separate legal personality).

### 1.3 Interpretation of schedules

In the interpretation of each schedule, unless the context otherwise requires:

- (a) terms or expressions have the meanings given to them by the Trust Deed; and
- (b) a reference to a clause is a reference to a clause of that schedule.

### 1.4 Statutes

Reference to a statute or statutory provision includes that statute or provision as amended, modified, re-enacted or replaced from time to time.

### 1.5 General references

References to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and vice versa; and
- (c) this Trust Deed includes its schedules.

### 1.6 Headings

Headings, sub-headings and the index are to be ignored in interpreting the Trust Deed.

## 2. Guiding principles of the Trust Board

- (a) In the conduct of its business and the administration of the Trust Fund, the Trust Board will be guided by the principles embodied in:
  - (i) kotahitanga;
  - (ii) tino rangatiratanga;
  - (iii) tikanga;
  - (iv) kaitiakitanga; and
  - (v) the Treaty of Waitangi.

- (b) In addition to the guiding principles set out above, the Trust Board will consider the following pou:
  - (i) Pou tāngata;
  - (ii) Pou taiao;
  - (iii) Pou tikanga; and
  - (iv) Pou tahua.

### 3. **Objects of the Trust Board**

The Trust Board is a charitable trust that provides, fulfils, protects and encourages training, education and advancement in skill and industry in relation to fisheries (the **Objects**) within New Zealand for the benefit of Te Arawa and the Trust Fund must be applied and used exclusively by the Trust Board for such of the Objects as the Trust Board from time to time decides upon in its absolute discretion, and in particular may be used to:

- (a) negotiate with any appropriate authorities on behalf of Te Arawa Waka for fishing quotas and assets;
- (b) receive fisheries quota and any other assets including the Fisheries Assets;
- (c) establish an effective organisational structure in order that the Trust Board can develop in the business and activities to further the Objects;
- (d) instruct, support, train and educate Te Arawa towards achieving the highest level of skill, industry and thrift in fishing and other skills;
- (e) support the instruction, training and education and advancement of Te Arawa through all Iwi, Rūnanga, Marae and Hapū of Te Arawa Waka including the lake and coastal regions, rural and urban and to preserve and promote the customary and traditional fisheries of Te Arawa Waka;
- (f) promote sound fisheries management and conservation practices and research into Te Arawa Waka fisheries;
- (g) protect Ngā Taonga o Tangaroa;
- (h) develop and maintain effective communication strategies between the Trust Board and the Te Arawa people; and
- (i) enable the educational, spiritual, economic, social and cultural advancement and health and wellbeing of the Te Arawa people.

### 4. **Powers of the Trust Board**

#### 4.1 **Powers of a natural person**

In addition to all the powers, authorities and discretions vested in the Representatives by law or by this Trust Deed, but subject always to the limitations contained in this clause, clause 22, and the duties of the Representatives as set out in this Trust Deed, the Trust Board in fulfilling the functions and purposes, may at all times and from time to time exercise the fullest possible powers and authorities as if

they were the beneficial owners of the Trust Fund. For the avoidance of doubt, the Trust Board shall have all the powers and privileges of a natural person, including, without limitation, the power to invest the Trust Fund, purchase, accept, hold, transfer, lease and sell Property, and to sue and be sued.

#### 4.2 **Selling Fisheries Assets**

- (a) The Trust Board must comply with the relevant provisions of the Māori Fisheries Act 2004 if it proposes to sell or otherwise dispose of Fisheries Assets, including, when required, holding a Ballot in accordance with Schedule 2.
- (b) The Trust Board must ensure that each Asset Holding Company:
  - (i) does not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust Board has complied with its obligations under this Trust Deed and sections 69 to 72 of the Māori Fisheries Act 2004;
  - (ii) does not enter into any transactions relating to or affecting the Settlement Quota it holds unless the Trust Board has complied with its obligations under this Trust Deed and sections 161 to 176 of the Māori Fisheries Act 2004; and
  - (iii) in its function of receiving and holding Settlement Quota and Income Shares, is bound by all the requirements specified for mandated iwi organisations in relation to those matters in the Māori Fisheries Act 2004.

#### 4.3 **Shareholding of Asset Holding Companies**

The Trust Board must:

- (a) establish at least one Asset Holding Company;
- (b) ensure that each Asset Holding Company:
  - (i) does not undertake fishing or hold a fishing permit;
  - (ii) is and remains wholly owned and controlled by the Trust Board; and
  - (iii) provides dividends solely to the Trust Board;
- (c) at all times hold all the shares in any Asset Holding Company;
- (d) not transfer any shares in any Asset Holding Company; and
- (e) always exercise the pre-emptive rights in relation to new shares or equity securities issued by any Asset Holding Company.

#### 4.4 **Trust Board to exercise strategic governance**

The Trust Board must exercise strategic governance over each Corporate Entity.

#### 4.5 **Fishing Entities**

If the Trust Board wishes to have its own fishing operation, utilising annual catch entitlement from any Settlement Quota to harvest, process or market fish, or to be

involved in a joint venture for those purposes, it will establish a Fishing Entity to undertake those operations.

#### **4.6 Other Entities**

Notwithstanding the provisions of this clause 4 regarding Corporate Entities, the Trust Board is authorised to establish, or invest in, any other entity (whether incorporated or unincorporated) or trust that is:

- (a) not a Corporate Entity (as defined in this Deed); or
- (b) not wholly owned or controlled by the Trust Board (ie, where the Trust Board holds less than a 50% interest).

#### **4.7 Extended powers**

Without prejudice to the generality of sub-clause 4.1, the Trust Board may in its discretion exercise any one or more of the powers set out in Schedule 3 in pursuit of the Objects of the Trust Board.

#### **4.8 Application of income or capital**

The Trust Board may at any time, after payment of or provision for all costs, charges and expenses of the Trust Board in respect of the establishment, management and administration of the Trust Board, pay or apply all or any of the income or capital of the Trust Board to or for the furtherance of any one or more of the Objects.

#### **4.9 Representatives have absolute discretion**

Subject to clause 8, all powers and authorities and discretions that the Representatives have, may be exercised by the Representatives in their absolute discretion and from time to time and on such terms and conditions and in such manner and by such means as they think fit.

#### **4.10 Trust Board to act as Iwi Aquaculture Organisation**

The Trust Board shall act on behalf of the Te Arawa Iwi in relation to aquaculture claims and Aquaculture Assets under the Maori Commercial Aquaculture Claims Settlement Act 2004, in respect of which the Trust Board must act for the benefit of Te Arawa Iwi including:

- (a) directly receiving and holding, on behalf of Te Arawa, Aquaculture Assets allocated to Te Arawa by Te Ohu Kai Moana Trustee Limited in accordance with the Maori Commercial Aquaculture Claims Settlement Act 2004; and
- (b) entering into Aquaculture Agreements with other Iwi Aquaculture Organisations in relation to the allocation of Aquaculture Assets.

#### **4.11 Separate Aquaculture Enterprise**

If the Trust Board wishes to undertake commercial aquaculture activities (as that term is used in the Maori Commercial Aquaculture Claims Settlement Act 2004), it must establish an enterprise which is separate from, but responsible to, the Trust Board to undertake those activities, which may be the Asset Holding Company that receives the Settlement Quota and Income Shares.

#### 4.12 Rangatahi Representative

- (a) The Trust Board may appoint any Adult Registered Member to act as a Rangatahi Representative pursuant to any Rangatahi Representative policy approved by the Trust Board from time to time.
- (b) The Rangatahi Representative is not a Representative and is not acting as a trustee for the purposes of the Trustee Act 1956 or the Trust Act 2019 unless that person is elected as a Representative in accordance with Schedule 2.
- (c) The sole purpose of appointing a Rangatahi Representative is to provide development opportunities for Adult Registered Members to gain governance experience from the Trust Board.
- (d) The Trust Board may determine an appropriate fee (if any) to pay to any Rangatahi Representative for attendance at any Trust Board Meetings.
- (e) A Rangatahi Representative has no proprietary rights to the Trust Fund nor any voting rights at Trust Board Meetings.
- (f) The Trust Board may remove a Rangatahi Representative at any time for any reason.

#### 5. Resettlement

##### 5.1 Power to resettle

The Trust Board has the power at any time or times by deed, to settle or resettle upon trust in any manner which in the opinion of the Trust Board is for the furtherance of any one or more of the Objects, the whole or any portion or portions of the capital or income of the Trust Fund provided that the resettlement is approved by Special Resolution.

#### 6. Major Transactions

The Trust Board must not enter into a Major Transaction unless that Major Transaction:

- (a) has been approved by Special Resolution; or
- (b) is contingent upon approval by way of Special Resolution; and
- (c) otherwise complies with the requirements of the Maori Fisheries Act 2004.

#### 7. Representatives

##### 7.1 Representatives

Each Representative must be an Adult Registered Member of the relevant Te Arawa Iwi, to act as a Representative for that Te Arawa Iwi and to attend, speak and vote at Meetings. An Adult Registered Member cannot be elected as a Representative for more than one Te Arawa Iwi at any given time.

## 7.2 **Proceedings of Trust Board Meetings**

The provisions relating to Trust Board Meetings are set out in Schedule 4.

## 8. **General Meetings**

The Trust Board must hold General Meetings in accordance with Schedule 5.

## 9. **Duties of the Representatives**

### 9.1 **Fiduciary obligations**

All the Representatives must always act in accordance with their fiduciary duties and obligations at law.

### 9.2 **Fundamental duty**

The Representatives will administer the Trust Fund and liabilities of the Trust Board as kaitiaki for Te Arawa. In performing those duties each Representative will act honestly and in good faith and in a manner that:

- (a) is in furtherance of the Objects;
- (b) is consistent with tikanga; and
- (c) the Representative believes on reasonable grounds is in the best interests of Te Arawa.

### 9.3 **Collective interest of Te Arawa**

A Representative must not, when exercising powers or performing duties as a Representative, act or agree to act in a manner that unfairly prejudices or unfairly discriminates against any particular Te Arawa Iwi or Adult Registered Member unless that Representative believes on reasonable grounds that the fundamental duty set out in sub-clause 9.2 requires such action and that the action will not breach the Representative's fiduciary duties and obligations.

### 9.4 **Compliance with the Trust Deed**

All Representatives must know the terms of this Trust Deed and must not act, omit to act, or agree to act in a manner that contravenes the Trust Deed.

### 9.5 **Duty to exercise powers for proper purpose**

All Representatives must at all times exercise powers and perform duties as a Representative for a proper purpose.

### 9.6 **General duty of care**

All Representatives must, in their administration and management of the Trust Fund, exercise the care and skill that is reasonable in the circumstances having regard, in particular:

- (a) to any special knowledge or experience that each Representative has or holds out as having; and

- (b) if any of the Representatives acts as a trustee in the course of their business or profession, to any special knowledge or experience that is reasonable to expect of that Representative acting in the course of that kind of business or profession.

#### **9.7 Duty to invest prudently**

When exercising any power to invest the Trust Fund, the Representatives must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others having regard, in particular:

- (a) to any special knowledge or experience that each Representative has or holds out as having; and
- (b) if any of the Representatives acts as a trustee in the course of their business or profession, to any special knowledge or experience that is reasonable to expect of that Representative acting in the course of that kind of business or profession.

#### **9.8 Duty not to exercise power for own benefit, profit or to act for reward**

Subject to the benefits, profits or rewards that the Representative may receive pursuant to clause 8, the Representatives must not:

- (a) exercise any powers as Representatives directly or indirectly for their own benefit, except for those benefits that they may receive as a result of being an Adult Registered Member;
- (b) make any profit from their position as a Representative; or
- (c) take any reward for acting as a Representative.

#### **9.9 Duty to consider exercise of power**

The Representatives must actively and regularly consider whether they should be exercising any of their powers as Representatives under this Trust Deed.

#### **9.10 Duty not to bind or commit Representatives to a future exercise of discretion**

The Representatives must not bind or commit other Representatives to a future exercise or non-exercise of any discretion that they are able to exercise as a Representative under this Trust Deed or at law.

#### **9.11 Duty to avoid conflicts of interest**

The Representatives must take reasonable actions to avoid conflicts between their personal interests and the interests of Te Arawa. If any conflict of interest arises, this must be disclosed in accordance with paragraph 6.2 and the process set out in Schedule 3, paragraph 6 must be followed.

#### **9.12 Use of information and advice**

Every Representative when exercising powers or performing duties as a Representative, may accept as correct information and professional or expert advice given by any of the following persons, to the extent only that the Representative acts honestly and in good faith, after reasonable enquiry when the need for enquiry is

indicated by the circumstances, and without knowledge that would cause such acceptance to be unwarranted:

- (a) any Director, Employee or officeholder of any Corporate Entity, whom the Representative believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) any professional or expert for matters that the Representative believes on reasonable grounds to be within that professional or expert's competence; and
- (c) any other Representative or member of a committee upon which the Representative did not serve at the relevant time, in relation to matters within that other Representative's or committee member's designated authority.

#### 9.13 **Acceptance of liability by the Representatives**

Each Representative accepts the duties, obligations and liabilities attaching to that office under the Trust Deed when he or she signs the Nomination Form.

### 10. **Pecuniary profit and benefits and advantages**

10.1 No private pecuniary profit shall be made by any person from the Trust Fund, except that (but subject to sub-clause **Error! Reference source not found.**):

- (a) each Representative will be entitled to an annual meeting fee in accordance with Schedule 9;
- (b) each Representative may receive full reimbursement for all costs, charges and expenses properly incurred by the Representative in connection with the affairs of the Trust Board;
- (c) the Representatives may pay reasonable and proper remuneration to any person or firm or company (including a Settlor and a Representative) in return for services actually rendered to the Trust Board;
- (d) each Representative may be paid all usual professional, business or trade charges for services rendered, time spent and acts done by the Representative or by any firm or entity of which the Representative is a member, employee or associate in connection with the affairs of the Trust Board; and
- (e) each Representative may retain any remuneration properly payable to the Representative by any company or other body or firm or undertaking with which the Trust Board may be in any way concerned or involved for which the Representative has acted in any capacity whatever, notwithstanding that the Representative's connection with that company or body or firm or undertaking is in any way attributable to the Representative's connection with the Trust Board.

10.2 If income is derived from any business carried on by, for, or for the benefit of the Trust Board, the Representatives must ensure that, within the ambit and scope of clauses 10.3 to 10.5, no person with some control over the business is able to direct or divert, any amount derived from that business to the benefit or advantage of themselves or any other person (so that such income is exempt from income tax under section CW 42 of the Income Tax Act 2007).

- 10.3 For the purpose of clause 10.2, a person who may have some control over the business is a person who is, within the ambit and scope of subsections CW 42(5) to (7) of the Income Tax Act 2007:
- (a) a settlor or trustee of a trust carrying on the business or of a trust that is a shareholder in a company carrying on the business; or
  - (b) a director or shareholder of a company carrying on the business; or
  - (c) a person associated with any person described in clauses 10.3(a) and 10.3(b) above.
- 10.4 For the purpose of clause 10.2, a relevant benefit or advantage arises where:
- (a) a person is given or receives any benefit or advantage, whether or not convertible into money, within the ambit and scope of subsections CW 42(6) to (8) of the Income Tax Act 2007, including any income of a kind specified in and not excluded by those subsections; and
  - (b) the benefit or advantage to the person is not a benefit or advantage that is provided for any Charitable Purpose of the Trust or any other benefit or advantage that may be disregarded under section CW 42(1)(c) in the Income Tax Act 2007 or any other provision of CW 42.
- 10.5 For the purpose of clause 10.2, a person described in clause 10.3 has some control over the business and is able to direct or divert amounts from the business to the benefit of themselves or another person if, by virtue of their position described in clause 10.3 and within the ambit and scope of subsections CW 42(5) to (8) of the Income Tax Act 2007, that person is, in any way, whether directly or indirectly, able to determine or to materially influence in any way the determination of:
- (a) nature or extent of any benefit, advantage or income described in clause 10.4; or
  - (b) circumstances in which any benefit, advantage or income described in clause 10.4 is, or is to be, given or received.

## **11. Kaunihera Koeke**

### **11.1 Appointment of Kaunihera Koeke**

- 11.2 The Trust Board may from time to time convene a Kaunihera Koeke comprising of two koeke (male and female) from each Te Arawa Iwi. Each Representative from the relevant Te Arawa Iwi will be responsible for providing the names of the koeke to the Trust Board as determined by the relevant Te Arawa Iwi. The appointment of the relevant koeke is a matter for the relevant Te Arawa Iwi and not the Trust Board.

### **11.3 Role of Kaunihera Koeke**

The role of Kaunihera Koeke is to advise the Trust Board or the Adjudicator, if requested in writing by the Trust Board or the Adjudicator, on:

- (i) tikanga, cultural, matauranga, whakapapa and te reo issues; and
- (ii) such other matters as the Trust Board or the Adjudicator may determine.

#### **11.4 Status of advice of Kaunihera Koeke**

Any advice that the Kaunihera Koeke gives to the Trust Board or the Adjudicator is not binding on the Trust Board, except that the Recommendations Report is binding on the Trust Board.

### **12. Obligations and powers of Corporate Entities**

#### **12.1 Role of Corporate Entities**

The role of the Corporate Entities is set out in Schedule 6.

#### **12.2 Approval of Corporate Entity Plan**

Each Corporate Entity Plan must be considered and approved by the Trust Board. The approval procedure is set out in sub-clauses 3.2 to 3.4 of Schedule 6.

#### **12.3 Powers of Corporate Entities**

Subject to any limitations expressed in the constitution and/or other governing document(if any), , each Corporate Entity will have the powers necessary to fulfil its role and functions.

### **13. Representative committees**

#### **13.1 Power to appoint committees**

Subject to clause 8, the Trust Board may appoint a committee from time to time, comprising some or all of the Representatives (other than the Chairperson), on such terms of appointment, and subject to such rules, regulations, meeting procedures and processes, as may be prescribed by the Trust Board from time to time and delegate to that committee any executive, administrative or other functions that may properly be conducted by the Trust Board.

### **14. Whakapapa Committee**

#### **14.1 Appointment of the Whakapapa Committee**

The Trust Board will appoint a Whakapapa Committee (previously the Beneficiaries Registration Committee) as and when required comprising 5 members of Te Arawa with the expertise and knowledge of Te Arawa whakapapa to assist the Trust Board to make determinations regarding applications submitted for registration on the Members Register. Representatives and/or members of the Kaunihera Koeke with the requisite expertise and knowledge of Te Arawa whakapapa may be appointed to the Whakapapa Committee.

#### **14.2 Role of the Whakapapa Committee**

The Whakapapa Committee:

- (a) shall consider all applications submitted for registration on the Members Register made on the Registration Form; and
- (b) may consider advice from koeke and/or the Representative from the relevant Te Arawa Iwi as to matters of whakapapa; and

- (c) shall verify, by accepting or declining the application, whether any applicant is eligible to be an Adult Registered Member.

#### 14.3 **Approval of Application for Registration**

Upon approval of the application for registration by the Whakapapa Committee, the Trust Board shall record the applicant's details on the Members Register.

#### 14.4 **Notification and appeal**

Within twenty (20) Business Days of notification by the Whakapapa Committee to the applicant of any decision of the Whakapapa Committee to decline his or her application, such notification to include the reasons for the decision, the applicant may appeal the decision by written application to the Trust Board on the prescribed form.

#### 14.5 **Appeal to Trust Board**

Any appeal lodged in accordance with sub-clause 14.4 shall be heard by the Trust Board, in accordance with the principles of natural justice. If the applicant does not agree with the decision of the Trust Board, clause 23 shall apply.

### 15. **Records**

#### 15.1 **Minutes**

The Trust Board will maintain minutes of all proceedings of its Meetings and all such minutes will be entered or maintained in registers kept for that purpose (**Minute Register**).

#### 15.2 **Signed minute evidence**

Any minute signed by the Chairperson or other person chairing the Meeting is to be evidence of the proceedings of that Meeting.

#### 15.3 **Register of resolutions of the Trust Board**

There is to be kept, at the Head Office, a register of every resolution passed at a Meeting. That copy is to be signed by the Chairperson or other person chairing the Meeting concerned and is to be filed in the register no later than ten (10) Business Days after the Meeting (**Resolutions Register**).

#### 15.4 **Representative Register**

The Representative Register is to be kept at the Head Office, which will have the names, addresses, telephone and email addresses of the Representatives.

#### 15.5 **Members Register**

The Trust Board will:

- (a) establish the Members Register;
- (b) ensure that the Members Register is regularly updated and maintained; and
- (c) make ongoing efforts to register all Te Arawa and keep the Members Register current.

## 15.6 Access to the Members Register

The Members Register is available for inspection by:

- (a) any Registered Member who can view their own registration details; and
- (b) a parent or legal guardian who may view the registration details of any child, ward or other dependant under eighteen (18) years of age who was registered by that parent or legal guardian.

## 15.7 Inspection of records and registers

The following will be available, during normal business hours (subject to sub-clause 15.9 and such reasonable restrictions as the Trust Board may impose) for inspection by any Registered Member:

- (a) Trust Deed;
- (b) Minute Register;
- (c) Resolutions Register; and
- (d) Representatives Register.

## 15.8 Request for copies

Any Registered Member is entitled (subject to sub-clause 15.9 and such reasonable restrictions as the Trust Board may impose pursuant to clause 15.10) to be provided, no later than seven Business Days after receipt by the Head Office of a written request from a Registered Member with:

- (a) a copy of any minute in the Minute Register;
- (b) a copy of any resolution in the Resolutions Register;
- (c) a copy of any entry in the Representative Register;
- (d) a copy of this Trust Deed; or
- (e) copies of any Annual Plan, Strategic Plan, Annual Report or Corporate Entity Report.

upon payment of such reasonable charges as the Representatives may prescribe.

## 15.9 Sensitive information

- (a) Other than as required by law, the Trust Board may at its discretion, limit the disclosure to Registered Members of any Confidential Information.
- (b) The Representatives will not at any time use or disclose to any person (other than as authorised by this Trust Deed) any Confidential Information.
- (c) Nothing in sub-clause 15.9(b) prohibits the disclosure of the Confidential Information:
  - (i) which is or becomes part of the public domain through no act or omission of the Representative;

- (ii) by operation of law provided that a Representative has taken all practicable legal steps to prevent such disclosure;
- (iii) by a Representative with the prior approval in writing of the Trust Board; and
- (iv) a Representative to a Corporate Entity provided that the Representative procures that the Corporate Entity protects that Confidential Information on the same terms as this sub-clause 15.9.

#### **15.10 Reasonable restrictions on information**

The Trust Board may withhold some or all of the information requested under clause 15.8 where they reasonably consider that such information should not be given after consideration of the factors provided under section 53 of the Trusts Act 2019, provided that they carry out the process prescribed under section 54 of that Act

### **16. Liability, indemnity and insurance**

#### **16.1 Limitation of liability**

- (a) A Representative is not liable for any loss sustained or incurred if the Representative acted in his or her capacity as Representative and:
  - (i) properly exercised any of the powers prescribed by the Trust Deed; and
  - (ii) properly performed his or her functions and duties as a Representative and as conferred upon him or her by this Trust Deed or at law.
- (b) For the avoidance of doubt, clause 16.1(a) above does not limit or exclude a Representative's liability for any breach of trust, including any breach of trust arising from the Representative's dishonesty, wilful misconduct or gross negligence.

#### **16.2 Action against Representative**

The Trust Board may indemnify or provide insurance for any person who is a Representative in respect of any costs incurred by that person in any proceedings:

- (a) brought by the Trust Board or any third party against that person in his or her capacity as Representative;
- (b) in which judgement is given in that person's favour, or he or she is acquitted, or relief is granted to him or her by the Court; and
- (c) provided that such costs were not incurred as a result of, or in connection with, any breach of trust, including any breach of trust arising from the dishonesty, gross negligence or wilful misconduct by that Representative.

#### **16.3 Insurance**

The Trust Board must ensure that appropriate indemnity insurance be taken out on behalf of the Representatives.

## 16.4 Past and future

In this clause 16:

- (a) **Representative** includes a former Representative;
- (b) **Secretary** includes a former Secretary;
- (c) **Joint Secretary** includes a former Joint Secretary;
- (d) **indemnity** includes relief or excuse from liability; and
- (e) **proceedings** includes civil, criminal and administrative proceedings.

## 17. Signing and secretary

### 17.1 Signing contracts and deeds

Whenever the Trust Board needs to sign or attest any agreement, contract, or deed that has been approved pursuant to a resolution of the Trust Board, it will be sufficient for that agreement, contract or deed to be signed or attested by any two (2) of the Representatives, provided that one of the signing or attesting parties is the Chairperson or as otherwise required by applicable law.

### 17.2 Secretary

The Trust Board will appoint a person as Secretary to carry out administrative duties for the Trust Board in relation to its activities and those of any committees for such term at such remuneration and upon such conditions as it may from time to time prescribe, and any Secretary may be removed at any time by the Trust Board from that office.

### 17.3 Joint Secretary

The Trust Board may appoint a second person to act as Joint Secretary and to carry out the secretarial functions jointly with the Secretary or in the absence of the Secretary. The duties and obligations of the Joint Secretary will be similar in every respect to those of the Secretary. Any Joint Secretary may be removed at any time by the Trust Board from that office.

## 18. Accounts and audit

### 18.1 Account Date

The Account Date is to be such date as the Trust Board may from time to time designate.

### 18.2 Keeping of accounting records

The Trust Board will cause proper accounting records to be kept and reflected in the Annual Accounts:

- (a) in respect of the business and activities of each Corporate Entity to a standard that accords with that prescribed by section 194 of the Companies Act 1993 and section 455 of the Financial Markets Conduct Act 2013 or such other standards as the Trust Board may from time to time prescribe; and

- (b) in respect of the business and activities of the Trust Board to a standard that, insofar as is practicable, accords with that from time to time prescribed by these clauses for the Corporate Entities.

### **18.3 Statement of service performance**

The Representatives must ensure that statements of service performance are prepared each Financial Year for presentation at the Annual General Meeting, which include information required by relevant financial reporting standards issued pursuant to section 12(a) of the Financial Reporting Act 2013 and any other requirements at law.

### **18.4 Appointment of Corporate Entity Auditors**

The Trust Board will cause the same firm of auditors to be appointed by each Corporate Entity in accordance with Section 196 of the Companies Act 1993 to audit each of the Corporate Entity Accounts.

### **18.5 Appointment of Auditors to the Trust Board**

The Trust Board will cause the same firm of auditors that is appointed as auditors to the Corporate Entities, to be auditors of the Trust Board and to audit the Trust Board Accounts and Statements of Service Performance and will (subject to the agreement of the Auditors) cause them to continue in their appointment as auditors of the Trust Board for so long as the Auditors remain Auditors to the Corporate Entities.

## **19. Reports**

### **19.1 Accountability**

The Trust Board is accountable for its performance to Te Arawa, including Te Arawa not living within its territory, and therefore has reporting responsibilities in relation to:

- (a) its own performance; and
  - (b) the performance of each Corporate Entity,
- in accordance with this clause 19.

### **19.2 Strategic Plan to be approved**

The Trust Board must finalise and approve a strategic plan by no later than 1 January 2021 which sets out the long term (not less than 5 years) vision of the Trust Board and includes:

- (a) the strategic vision of the Trust Board for the benefit of Te Arawa;
- (b) the nature and scope of activities proposed for the purpose of achieving the strategic vision;
- (c) the key performance indicators and measurements by which the performance of the Trust Board will be measured; and
- (d) any other information as the Trust Board considers may be necessary or appropriate.

### **19.3 Annual Report to be approved**

No later than thirty (30) Business Days before each Annual General Meeting, the Trust Board will finalise and approve the Annual Report for the Financial Year immediately preceding the Financial Year in which that Annual General Meeting is held.

#### **19.4 Availability of reports**

Upon written request by an Adult Registered Member, the Trust Board will provide the following documents in respect of the relevant Financial Year:

- (a) the Annual Accounts;
- (b) the Annual Report;
- (c) the Annual Plan;
- (d) the Strategic Plan; and
- (e) each Corporate Entity Report.

#### **19.5 Availability of Annual Report**

The Trust Board will cause the Annual Report for the preceding Financial Year to be made available to the Registered Members on written request at least twenty (20) Business Days before the next Annual General Meeting.

### **20. Review of Trust Board and Corporate Entities**

#### **20.1 Review**

From time to time, the Trust Board will consider the need for a review of the Trust Board and the Corporate Entities.

#### **20.2 Review process**

If the Trust Board considers that a review under sub-clause 20.1 should be undertaken, that review may, unless the Trust Board decides otherwise in its absolute discretion after taking into account the timing, extent and nature of the review:

- (a) consider such matters as the Trust Board considers necessary; and
- (b) include an independent viewpoint.

#### **20.3 Compliance with this Trust Deed**

To the extent that any amendments are required to be made to this Trust Deed as a result of any review they must be made in accordance with clause 22.

### **21. Amending number of Te Arawa Iwi**

#### **21.1 Application to amend number of Te Arawa Iwi**

- (a) An Applicant may make an Application in writing and in the form set out in Schedule 8.
- (b) The Application must:

- (i) comply with sub-clause 21.2;
- (ii) include the signatures of ten percent (10%) or one hundred (100) (whichever is the greater) of the Adult Registered Members who claim affiliation to the group that the Application requests be added as a Te Arawa Iwi; and
- (iii) include any other matters the Applicant considers relevant.

## 21.2 Criteria

The Application must include evidence illustrating the following criteria being met by the group that the Application requests be added:

- (a) an eponymous ancestor who was on the Te Arawa waka or a descendant of one who was;
- (b) a marae;
- (c) hapū;
- (d) a land base;
- (e) the distinction between the Te Arawa Iwi that the Application requests be added and other Te Arawa Iwi; and
- (f) recognition by Te Arawa Iwi as warranting an addition to the number of Te Arawa Iwi that elects Representatives to the Trust Board.

## 21.3 Appointment of Adjudicator

Within thirty (30) Business Days of receiving an Application the Trust Board must:

- (a) appoint the Adjudicator in accordance with sub-clause 21.4; and
- (b) provide the Application to the Adjudicator.

## 21.4 Criteria for the appointment of the Adjudicator

The Adjudicator to be appointed by the Trust Board will be:

- (a) a retired Māori Land Court judge or a practising barrister or solicitor of not less than seven (7) years post-admission experience in dealing with Māori issues;
- (b) have experience in, and an understanding of, tikanga Māori; and
- (c) be independent from the Applicant and the Trust Board.

## 21.5 Appointment of Tikanga Expert

The Trust Board may appoint one (1) or more additional persons who have knowledge of relevant tikanga Māori or other expertise for the purpose of assisting the Adjudicator or providing advice on the Application.

## 21.6 Process of Adjudication

- (a) Within fifteen (15) Business Days of receiving the Application the Adjudicator will give a notice, in the appropriate media, in any area containing significant concentrations of Adult Registered Members of:
  - (i) the existence of the Application;
  - (ii) details of where a copy of the Application can be obtained;
  - (iii) the date by which written submissions on the Application are to be received by the Adjudicator, such date to be no later than ninety (90) Business Days after the date of the notice; and
  - (iv) the opportunity for oral submissions to be heard by the Adjudicator.
- (b) The Adjudicator will:
  - (i) review the Application and any written submissions received pursuant to sub-clause (a)(iii);
  - (ii) set a date for, and hear, any oral submissions on the Application;
  - (iii) if necessary, seek advice from the Kaunihera Koeke on whether or not it is inconsistent with tikanga for the group that the Application relates to be added as a Te Arawa Iwi such advice to be non-binding on the Adjudicator;
  - (iv) assess:
    - A. the estimated costs;
    - B. the perceived benefits; and
    - C. any perceived disadvantages,of adding a group to the list of Te Arawa Iwi; and
  - (v) provide a Recommendations Report to the Trust Board.

#### **21.7 Recommendations Report**

The Recommendations Report must state:

- (a) whether or not the Adjudicator is satisfied that the Application satisfies the criteria set out in sub-clause 21.2;
- (b) the Adjudicator's findings on the matters considered under sub-clause 21.6(b); and
- (c) whether the Adjudicator considers that the group should be added to the Te Arawa Iwi represented on the Trust Board.

#### **21.8 Decisions of the Adjudicator**

A decision of the Adjudicator recorded in the Recommendations Report will be binding on the Trust Board.

#### **21.9 Cost of Application**

The reasonable costs (including legal costs) to the Trust Board of the Application to add to the Te Arawa Iwi that elect Representatives are to be met by the Applicant.

#### 21.10 Indemnity to the Trust Board

The Trust Board must be satisfied, in its absolute discretion, that the Applicant will indemnify the Trust Board or cause the Trust Board to be indemnified in respect of any costs incurred by the Trust Board in any proceedings:

- (a) brought against the Representatives, in relation to the Application; and
- (b) in which judgment is given in the Representatives' favour, or the Representatives are acquitted, or relief is granted to the Representatives by the Court.

### 22. Amendment of Trust Deed

#### 22.1 Clauses that cannot be changed

No resolution, whether purporting to be passed as a Special Resolution or in any other form, is to be of any effect if it is designed to vary or would have the effect of varying any of the provisions of clause 3, sub-clause 5.1, sub-clauses 22.1 to 22.2, clause 24 or any other clause if such variation would enable a payment or application of any part of the Trust Fund in a manner that is inconsistent with the Objects.

#### 22.2 Changes to the Trust Deed

Subject to sub-clauses 22.1 and **Error! Reference source not found.**, after the MIO Date the Trust Board has power to amend, revoke or add to the provisions of the Trust Deed provided that:

- (a) the amendment is not inconsistent with any provision of the Māori Fisheries Act 2004;
- (b) the amendment, revocation or addition will not permit the Trust Board to operate in any manner other than for charitable purposes in New Zealand pursuant to the Charities Act 2005;
- (c) the amendment is presented and considered at a General Meeting;
- (d) the amendment is approved by way of Special Resolution; and
- (e) the Adult Registered Members resolve by Ordinary Resolution that the amendment is for the collective benefit of Te Arawa.

#### 22.3 Changes proposed by Te Arawa

Individuals of Te Arawa may submit to the Trust Board in writing proposals to amend, revoke or add to the provisions of this Trust Deed for the consideration of the Representatives.

### 23. Disputes resolution process

#### 23.1 Dispute determined in accordance with this clause

Unless otherwise specifically provided for in this Trust Deed, any dispute between Adult Registered Members, Potential Adult Members and the Trust Board (the **Disputing Parties**) relating to matters arising as a result of this Trust Deed, will be determined in accordance with this clause 23. For the avoidance of doubt, this clause 23 only applies to disputes between the Trust Board and individual Adult Registered Members and Potential Adult Members.

### 23.2 **Good faith**

The Disputing Parties agree to use the dispute process set out in this clause in good faith.

### 23.3 **Notice of dispute**

A Disputing Party will as soon as reasonably practical give the other Disputing Party notice of any dispute to which this clause relates.

### 23.4 **No resolution within 10 Business Days**

If the dispute is not resolved within 10 Business Days after a notice is given by a Disputing Party under sub-clause 23.3, a Disputing Party may by written notice served on the other Disputing Party require the dispute to be referred to a qualified mediator to be agreed by the Disputing Parties, or failing agreement within ten (10) Business Days, to be appointed by the Registrar of the Māori Land Court or its successor with the Registrar being informed of the requirement in clause 23.5 below.

### 23.5 **Referral to mediation**

In the event of a referral to mediation:

- (a) where practicable and available, a mediator with knowledge of te reo and tikanga of Te Arawa is to be appointed;
- (b) the mediator shall be deemed not to be acting as an expert or as an arbitrator;
- (c) the mediator shall determine the procedure and timetable for the mediation; and
- (d) the cost of the mediation shall be shared equally between the Disputing Parties (unless the mediator holds otherwise).

### 23.6 **Issue proceedings**

No Disputing Party may issue legal proceedings (other than for urgent interlocutory relief) in respect of any dispute to which this clause 23 relates, unless that party has first taken all reasonable steps to comply with this clause 23.

## 24. **Winding up**

The Trust Board may at any time wind up the Trust. On the winding up the Trust Board will pay or apply such of the capital and income of the Trust Fund as then remains towards the furtherance within New Zealand of such of the Objects as the Trust Board determines. If the Representatives cannot agree, the income and capital will be paid or applied to such of the Objects as a judge of the High Court of New Zealand directs.

25. **Governing law**

The Trust will be governed by and construed in accordance with the laws of New Zealand.

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## **Schedule 1: Election and removal of Representatives**

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### **1. Number and term of Representatives**

#### **1.1 Elections**

This schedule applies to the election of Representatives.

#### **1.2 Number of Representatives**

At any point in time there shall be one Representative for each Te Arawa Iwi.

#### **1.3 Term of office**

Subject to sub-clause 1.6 and clause 4, the Representatives for all Te Arawa Iwi shall be elected by the same Election Date and the term of each Representative is for the Elected Term.

#### **1.4 Frequency of Elections**

Elections for Representatives for all Te Arawa Iwi shall be held by the Election Date.

#### **1.5 Early termination of office by Representative**

If a Representative vacates or is otherwise removed from office prior to the expiration of the Elected Term the Trust Board will co-opt as a Co-opted Representative the second highest polling Nominee from the most recent Election for the relevant Te Arawa Iwi. A Co-opted Representative will hold office as a Representative for the balance of the Elected Term.

#### **1.6 Early termination of office by Co-opted Representative**

If a Co-opted Representative vacates or is otherwise removed from office before the expiry of the Elected Term, or the Co-opted Representative is unavailable to take office when called upon, the next highest polling Nominee from the most recent Election for the relevant Te Arawa Iwi will be deemed the Representative until the next Election.

#### **1.7 Requisition of Special Election**

- (a) The Trust Board must on the written requisition of the greater of ten percent (10%) or one hundred (100) Adult Registered Members of a Te Arawa Iwi, conduct a Special Election for that Te Arawa Iwi in accordance with this Schedule.
- (b) The requisition must be delivered to the Head Office by personal delivery or post and may consist of several documents in the same form, each executed on behalf of one (1) or more requisitionists. The requisition will be deemed to be given effectively if delivered in accordance with the provisions of sub-clause 5.7 of Schedule 4 (**Election Requisition Date**).
- (c) If the Trust Board does not, within fifteen (15) Business Days from the Election Requisition Date, proceed to initiate a Special Election, the requisitionists may convene a Special Election, but any Special Election so

convened is not to be held after the expiry of three (3) calendar months from the Election Requisition Date.

- (d) A Special Election convened under this clause 1.7 is to be convened in the same manner, or as close as possible, as that in which Elections are to be convened by the Trust Board.
- (e) Any reasonable expenses incurred by the requisitionists as a result of the failure of the Trust Board to conduct a Special Election that has been properly requisitioned are to be re-paid to the requisitionists by the Trust Board.

## 1.8 **Special Election**

Subject to sub-clause 1.9, the Trust Board must call a Special Election for a Te Arawa Iwi:

- (a) if:
  - (i) both the Representative and the Co-opted Representative for that Te Arawa Iwi are removed from office, or vacate, before the expiry of the Elected Term, or the Co-opted Representative is unavailable to take office when called upon; and
  - (ii) the next highest polling Nominee from the most recent Election for that Te Arawa Iwi is unavailable; or
- (b) if requisitioned in accordance with sub-clause 1.7.

## 1.9 **Notice of Special Election**

The Trust Board must give an Election Notice to notify Adult Registered Members of a Special Election to elect a new Representative for the relevant Te Arawa Iwi within twenty (20) Business Days of the Election Requisition Notice provided that no Special Election shall be held if there is less than six (6) months of an Election Term left to run.

## 1.10 **Term of office if early termination**

Any Representative elected in accordance with sub-clause 1.9 shall hold office for the balance of the Elected Term.

## 2. **Restriction on Representatives**

### 2.1 **Certain persons prohibited from holding office**

No person is permitted to be a Representative if he or she is a person to whom one of sub-clauses 4.1(a) to (i) applies.

### 2.2 **Corporate Entities**

At any one time, no more than forty percent (40%) of the people elected as Representatives may be directors, trustees or officeholders of any Corporate Entity if that appointment would contravene the provisions of the Maori Fisheries Act 2004.

### **3. Election procedure**

#### **3.1 Voting**

Every Election shall be by way of ballot of Adult Registered Members for each Te Arawa Iwi, with votes to be cast by the Voting Date on an Election Voting Slip, which voting may be done by Postal Vote or electronic voting in accordance with the instructions on the Election Voting Slip.

#### **3.2 Number of votes**

Each Eligible Voter is entitled to vote for one (1) Nominee for the Te Arawa Iwi that they have nominated on their Registration Form for voting purposes.

#### **3.3 Notice of Elections**

At least thirty five (35) Business Days before the Voting Date, the Trust Board will give an Election Notice in the appropriate media in any area containing significant concentrations of Adult Registered Members.

#### **3.4 Nomination Form**

Each person who is nominated to the office of Representative must sign a Nomination Form declaring that he or she is:

- (a) not precluded from holding office;
- (b) willing to be a Representative if elected; and
- (c) willing to be a Co-opted Representative if for some reason the relevant Representative vacates or is otherwise removed from office before the expiry of the Elected Term,

before his or her name will be entered on any Election Voting Slip used for any Election.

#### **3.5 One nomination**

If only one (1) Nomination Form is received by the Trust Board for the position of Representative for any particular Te Arawa Iwi, the person nominated in that Nomination Form shall be deemed to be duly elected as the Representative for that Te Arawa Iwi.

#### **3.6 Election Notice and Election Voting Slip**

No less than twenty (20) Business Days prior to the Election Date, the Trust Board shall send an Election Voting Slip and an Election Notice to all Adult Registered Members:

- (a) first, electronically to the email addresses of all Adult Registered Members that have email addresses recorded on the Members Register; and
- (b) if an email address is not kept on the Members Register, or the Trust Board receives a response email indicating that that email address is out of date or no longer in use, to the physical address of that person as recorded in the Members Register.

### 3.7 Exercise of vote

Votes by Adult Registered Members must be validly cast in accordance with the instructions on the Election Voting Slip and must be received by the Returning Officer on or before 5.00pm on the Election Date.

### 3.8 Potential Adult Members' votes

All Registration Forms are to be verified in accordance with clause 14 **Error! Reference source not found.** at least five (5) working days before Election Voting Slips are sent to Adult Registered Members.

### 3.9 Returning Officer

The Returning Officer will be responsible for receiving and counting all votes cast in every Election.

### 3.10 Counting of votes

On completion of the voting in an Election the Returning Officer shall:

- (a) reject as informal:
  - (i) any Election Voting Slip for which there is reasonable cause to believe that it was not prepared by the Trust Board for the purposes of the Election; and
  - (ii) any Election Voting Slip that does not clearly indicate the Nominee for which the voter intended to vote,provided that no Election Voting Slip shall be rejected as informal by reason only of some informality in the manner in which it has been dealt with by the voter if the Election Voting Slip is otherwise regular and if, in the opinion of the Returning Officer, the intention of the voter is clearly indicated;
- (b) then:
  - (i) count the number of votes cast in an Election received by each Nominee; and
  - (ii) count the number of votes rejected as informal;
- (c) then make the Declaration in writing within ten (10) Business Days of the Voting Date stating:
  - (i) the number of Election Voting Slips received, the number of votes received for each Nominee, and the number of Election Voting Slips rejected as informal; and
  - (ii) the Nominee who received the highest number of votes to be the Representative for the respective Te Arawa Iwi and the Nominee who received the second highest number of votes to be eligible to be co-opted as a Co-opted Representative if required; and

- (iii) if the highest number of votes is equal between two or more Nominees, the Returning Office must draw by lot the Nominee who shall be deemed to be the highest polling Nominee; and
- (d) within ten (10) Business Days of the Voting Date, forward the Declaration to the Trust Board.

### 3.11 Notification

Upon receipt by the Trust Board of the Declaration, the Trust Board shall give notice in the appropriate media in any area containing significant concentrations of Adult Registered Members of the result of the Election within fifteen (15) Business Days of the date of the Declaration.

### 3.12 Transitional period

There will be a transitional period from the date the Election Notice is given until the date of the Declaration. During this period the Representatives will continue to act in the ordinary course of business but will not do anything outside of the ordinary course of business.

## 4. Ceasing to be a Representative

### 4.1 Ceasing to act

A person shall cease to be a Representative if the Representative (as the case may be):

- (a) resigns or retires by written notice to the other Representatives;
- (b) dies;
- (c) refuses or is unable to act in his or her capacity as a Representative;
- (d) is a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 299 of the Insolvency Act 2006;
- (e) is a person who has been convicted of any offence punishable by a term of imprisonment of two or more years;
- (f) is a person who is disqualified from being a director of a company under section 199K of the Companies Act 1955 or section 382 of the Companies Act 1993;
- (g) is a person in respect of whom an order has been made under section 199L of the Companies Act 1955 or section 383 of the Companies Act 1993;
- (h) is a person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (i) is a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; or

- (j) has a trustee corporation managing that person's property under section 32 or 33 of the Protection of Personal and Property Rights Act 1988.

#### 4.2 **Failure to attend Meetings**

A Representative will cease to hold office if the Representative fails to attend four (4) consecutive Meetings without reasonable excuse.

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## **Schedule 2: Ballot process**

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### **1. Application of this Schedule**

This Schedule applies to a Ballot held:

- (a) pursuant to clause 5 of the Trust Deed, in relation to resettlement of the whole or any portion or portions of the capital or income of the Trust Fund;
- (b) pursuant to clause 6 of the Trust Deed, in relation to a Major Transaction;
- (c) pursuant to sub-clause 4.2 of the Trust Deed, in relation to the disposal of Fisheries Assets;
- (d) pursuant to clause 22, amendments to this Trust Deed; and
- (e) such other issue for which the Trust Board determines that the vote is to be by Ballot.

### **2. Voting Process**

#### **2.1 Voting**

Every vote to which this Schedule applies shall be held by way of Ballot of all Adult Registered Beneficiaries with votes to be cast by the Voting Date on a Ballot Slip addressed and sent to the Returning Officer.

#### **2.2 Notice of Ballot**

No less than twenty (20) Business Days prior to the Voting Date, the Trust Board will give a Ballot Notice in the appropriate media in any area containing significant concentrations of Adult Registered Members.

#### **2.3 Ballot Slips**

No less than 20 Business Days prior to the Voting Date, the Trust Board shall send a Ballot Slip and a copy of the Ballot Notice to all Adult Registered Members that have requested a Postal Vote.

#### **2.4 Exercise of vote**

Votes by Adult Registered Members must be validly cast in accordance with the instructions on a Ballot Slip and must be received by the Returning Officer on or before 5.00pm on the Voting Date.

#### **2.5 Returning officer**

The Returning Officer will be responsible for receiving and counting all votes cast, in accordance with this Schedule.

#### **2.6 Counting of votes**

On completion of a ballot held in accordance with this Schedule 2 the Returning Officer shall:

- (a) reject as informal:

- (i) any Ballot Slip for which there is reasonable cause to believe that it was not prepared by the Trust Board;
- (ii) any Ballot Slip that does not clearly indicate whether the voter intended to vote for or against any proposed resolution, and

provided that no Ballot Slip shall be rejected as informal by reason only of some informality in the manner in which it has been dealt with by the voter if the Ballot Slip is otherwise regular and if, in the opinion of the Returning Officer, the intention of the voter is clearly indicated;

- (b) then:
  - (i) count the number of votes cast; and
  - (ii) count the number of votes rejected as informal;
- (c) then make the Declaration in writing within ten (10) Business Days of the Voting Date stating:
  - (i) the number of Ballot Slips received, the number of votes received in favour of each proposed resolution, the number of votes received against each proposed resolution, and the number of Ballot Slips rejected as informal; and
  - (ii) whether each proposed resolution has been passed by a sufficient majority of Adult Registered Members; and
- (d) within ten (10) Business Days of the Voting Date, forward the Declaration to the Trust Board.

## 2.7 **Notification**

Upon receipt by the Trust Board of the Declaration, the Trust Board shall give notice in the appropriate media in any area containing significant concentrations of Adult Registered Members of the result of the ballot within fifteen (15) Business Days of the date of the Declaration.

## 2.8 **Potential Adult Members**

No vote cast by any Potential Adult Member shall be valid unless his or her application for registration is approved in accordance with clause 11 of the Trust Deed.

### **Schedule 3: Extended powers of the Trust Board**

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#### **1. Extended powers of the Trust Board**

The Trust Board will have the following powers:

- (a) to purchase and hold Property;
- (b) to lease Property;
- (c) to grant leases of Property;
- (d) to accumulate the income of the Trust Fund;
- (e) to apply or set aside any part of the Trust Fund towards the payment of any liabilities or obligations incurred or suffered by the Trust Board or falling due in future;
- (f) to carry on any business or venture in order to fulfil the functions and purposes of the Trust Board, including;
  - (i) to incorporate or form (whether by themselves or with others) a company or partnership or joint venture to carry on the business or venture;
  - (ii) to hold shares or equity in that company or partnership or joint venture;
  - (iii) to use in the company or partnership or joint venture any Property that is part of the Trust Fund; and
  - (iv) to be directors or partners or parties of or to that company or partnership or joint venture;
- (g) in relation to any company or other body (whether incorporated or unincorporated) or chose in action or fund:
  - (i) to appoint directors or trustees, decision-makers, controllers, officers or employees of it;
  - (ii) to consent to any reorganisation or reconstruction of it or dealing with it and any increase or reduction of the capital of it; and
  - (iii) to provide out of the Trust Fund further capital for it whether by advances, loans, deposits, grants, contributions or otherwise (with or without security) or by taking further securities in it;
- (h) to enter into contracts for the provision of services to fulfil the functions and purposes of the Trust Board;
- (i) to open and maintain a bank account and to decide who will be the signatories to that account;
- (j) in relation to any share or other security that is part of the Trust Board:

- (i) to exercise any voting or controlling or decision-making rights or powers attaching to it; and
  - (ii) to concur in any reconstruction or amalgamation of it or in any modification of the rights of the holders of it or of others interested in it and generally to act in respect of it;
- (k) to obtain incorporation or registration of the Trust Board in accordance with any law from time to time in force relating to charitable trusts;
- (l) to engage or employ any person or company (including any of the Representatives) for any period:
- (i) as an expert or professional person or the Trust Board to advise on or carry out any of the trusts and powers authorised by this Trust Deed; or
  - (ii) as a manager or agent for or on behalf of the Representatives in all or any matters relating to the management and the control of the Trust Board, and any business owned by the Representatives or in which they are concerned; or
  - (iii) as Secretary; or
  - (iv) as an employee of the Representatives in all or any matters relating to the Trust Board;
- (m) to appoint any person to:
- (i) to exercise or perform on behalf of the Representatives, specified powers or functions in relation to the management or administration of Trust Property;
  - (ii) to make specified decisions in relation to Trust Property;
- provided that the Trust Board must not appoint any person to exercise or perform any of the following powers or functions of the Trust Board
- (iii) a function that is, or is related to, the determination of whether, when, or in what way Trust Property should be distributed, used, possessed, or otherwise beneficially enjoyed, including a power of appointment for Representatives;
  - (iv) a power to decide whether any fees or other payment due to be made out of the trust Fund should be made out of income or capital;
  - (v) a power to decide whether payments received by, or payable to, the Trust Board should be appropriated to income or capital;
  - (vi) a power to set or change the date for the distribution or transfer of any of the Trust Fund;
  - (vii) a right to apply to the Court for any directions pursuant to paragraph 1(o) of this Schedule 3;

- (viii) the power to appoint anyone to carry out powers of the Trust Board under sub-paragraphs (m)(i) and (m)(ii) or any other power exercisable only by the Representatives personally under this Deed or at law,

and if any appointments, engagements or employments are made in accordance with this sub-paragraph (m), the Trust Board must:

- (ix) keep under review the terms under which any person is appointed, engaged or employed under this sub-paragraph (m) and any relevant person's compliance with, and ability to give effect to, those terms; and
  - (x) where the circumstances are appropriate to do so, consider whether any of the Representatives should exercise any power to intervene in the business of any person engaged or employed under this sub-paragraph (m) or amend, revoke or replace the terms of their engagement or employment.
- (n) to act upon any opinion or advice or information obtained from a person or the Trust Board referred to in paragraph (l)(i) of this clause;
  - (o) to determine all questions and matters of doubt that may arise in the course of the management, administration, investment, realisation, distribution, liquidation, partition, resettlement or winding up of the Trust Fund or the Trust Board, or to apply for directions from the any Court or other relevant authority for directions where such power is provided at law.
  - (p) generally to do all such other lawful acts and things that are incidental or conducive to fulfilling the functions and purposes of the Trust Board; and
  - (q) to pay from the Trust Fund any reasonable costs or expenses incurred in the course of the Representatives discharging, carrying out or exercising any of their duties and powers.

## Schedule 4: Trust Board Meetings

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### 1. Trust Board Meetings

The Trust Board shall meet together for the dispatch of business, adjourn and otherwise regulate Trust Board Meetings as the Trust Board determines. The Chairperson or a majority of Representatives from time to time may at any time by notice in writing to the Chairperson summon a meeting of the Trust Board and the Trust Board shall take such steps as are necessary to convene such meeting.

### 2. Decisions by majority vote

2.1 Unless otherwise stated in this Deed, questions arising at any Trust Board Meeting shall be decided by a majority of votes of Representatives present at the meeting.

### 3. Notice

3.1 Except where the circumstances require an urgent Trust Board Meeting and in such case five (5) Business Days' notice is required, the Representatives are to receive not less than ten (10) Business Days' notice in writing of the Trust Board Meeting.

3.2 Each notice of a Trust Board Meeting or other communication required under the Trust Deed to be given to a Representative, is to be in writing, to be made by email, personal delivery, or by post to the addressee at the email address or address, and is to be marked for the attention of the person or officeholder (if any), from time to time notified for the purpose to the Head Office and recorded in the Representatives Register.

3.3 Any Trust Board Meeting will, notwithstanding that it is called by shorter notice than that provided in sub-clauses **Error! Reference source not found.** or **Error! Reference source not found.** (as the case may be), be deemed to have been properly convened if, prior to the Trust Board Meeting proceeding to business it is so agreed in writing by a majority in number of the Representatives.

3.4 No notice or other communication will be effective until received. It will, however, be deemed to have been received by the addressee:

- (a) in the case of a facsimile, on the Business Day on which it is transmitted or, if transmitted after 5:00 p.m. on a Business Day or despatched on a non-Business Day, on the next Business Day after the date of dispatch;
- (b) in the case of personal delivery, when delivered; and
- (c) in the case of a letter, on the second Business Day after posting by Fastpost.

### 4. Election of Chairperson

4.1 The Trust Board will elect one of the Representatives to the office of Chairperson. Subject to clause 4.3, a person elected as Chairperson will hold that office until the earlier of:

- (a) ceasing to be a Representative; or
- (b) the third anniversary of appointment as Chairperson.

4.2 A Representative retiring from the office of Chairperson under sub-clause 4.1(b) of this Schedule may stand for re-election as Chairperson.

4.3 The Trust Board may:

- (a) determine the period of appointment of the Chairperson; and
- (b) remove any person as Chairperson at any time.

## 5. **Proceedings at Meetings**

5.1 No business is to be transacted at any Trust Board Meeting unless the required quorum of Representatives is present at the time when the Trust Board Meeting proceeds to business.

5.2 The quorum for a Trust Board Meeting is a majority or more of the Representatives.

5.3 If within one (1) hour of the time appointed for a Trust Board Meeting, a quorum is not present, the Trust Board Meeting is to stand adjourned until the fifth Business Day following that adjournment. On that later day, the Trust Board Meeting will be held at the same time and in the same place as the adjourned Trust Board Meeting. If a quorum is not present within one (1) hour from the time appointed for that adjourned Trust Board Meeting, the Representatives present in person will constitute a quorum.

5.4 The Chairperson will preside over and have control of every Meeting.

5.5 If there is no Chairperson present at the time appointed for holding a Meeting, or if the Chairperson is unwilling to preside over the Meeting, the Representatives present will choose any of their number to substitute as Chairperson for that Meeting.

5.6 At any Trust Board Meeting, a resolution put to the vote of the Trust Board Meeting will be decided by the Chairperson, or other person chairing the Trust Board Meeting by counting the votes cast on a show of hands. The declaration of the Chairperson, or other person chairing the Trust Board Meeting that a resolution has been carried, or lost, by the requisite majority and an entry to that effect specifying the numbers of votes cast for and against (and abstentions) in the book containing the minutes of the proceedings of the Trust Board will be conclusive evidence of the passing of that resolution.

5.7 The only persons entitled to vote at a Trust Board Meeting are the Representatives. In the event of an equality of votes, the Chairperson has a second or casting vote.

5.8 Each Representative is entitled to cast one (1) vote.

5.9 The Trust Board may allow Adult Registered Members to attend Trust Board Meetings.

5.10 Any person who the Trust Board has permitted to attend a Trust Board Meeting must:

- (a) at all times adhere to the Trust Board Meeting procedures set down by the Chairperson, or other person chairing the Trust Board Meeting (as the case may be); and
- (b) leave any Trust Board Meeting at which the Chairperson, or other person chairing the Trust Board Meeting, at their absolute discretion so directs.

- 5.11 Without limiting the generality of clause 5.10(b), but subject to clause 5.12, the Chairperson, or other person chairing the Trust Board Meeting may direct, following a resolution of Representatives, that the Adult Registered Members attending the Trust Board Meeting must leave the Trust Board Meeting because Confidential Information is to be discussed.
- 5.12 In order to determine whether a Trust Board Meeting should be closed in accordance with clause 5.11, the Representatives attending the Trust Board Meeting must vote in favour of closing the Trust Board Meeting to Adult Registered Members.

## 6. Conflicts

6.1 A **Conflict Transaction** exists for a Representative when:

- (a) the Representative is or may be or becomes associated (whether as Director or otherwise in a private capacity or as trustee of another trust) with any company, partnership, organisation, group or trust with which the Representative is transacting or dealing in his or her capacity as Representative; or
- (b) the interests or duty of the Representative in any particular matter conflicts or might conflict with his or her duty to the Trust Board; or
- (c) the Representative is transacting or dealing as Representative with himself or herself in another capacity.

6.2 When a Conflict Transaction exists for a Representative (the **Conflicted Representative**):

- (a) the Conflicted Representative must declare the nature of the conflict or the potential conflict at a Trust Board Meeting; and
- (b) the Conflicted Representative must not take part in any deliberations or proceedings, including voting or other decision-making, or be counted in the quorum present, relating to the Conflict Transaction, and the clauses in this schedule will be deemed to be varied accordingly; and
- (c) if the Conflicted Representative contravenes paragraphs (a) or (b) of this sub-clause 6.2, his or her vote or other decision will not be counted, and neither will the Conflicted Representative be counted in the quorum present at the Trust Board Meeting, and the clauses in this schedule will be deemed to be varied accordingly.

6.3 When a Conflict Transaction exists, the Chairperson, or other person chairing the Trust Board Meeting may require the Conflicted Representative to leave the Trust Board Meeting.

6.4 If the Conflicted Representative does not leave the Trust Board Meeting, the Chairperson, or other person chairing the Trust Board Meeting may adjourn the Trust Board Meeting until the Conflicted Representative does leave.

6.5 Where a Representative makes a declaration under sub-clause 6.2(a), nothing in sub-clauses 6.2(b) or 6.3 will prohibit that Representative from voting on or taking part in the deliberation or decision relating to the Conflict Transaction where the interest declared is not different in kind from the interests of other members of the Te Arawa Iwi of that Representative.

## **7. Telephone and video conference link**

- 7.1 The contemporaneous linking together by telephone, video conference or other means of communication of a number of the Representatives representing not less than a quorum, whether or not any one or more of them is out of New Zealand, will be deemed to constitute a Trust Board Meeting provided that:
- (a) notice is provided in accordance with all the Representatives for the time being entitled to receive notice of a Trust Board Meeting will be entitled to notice of such Trust Board Meeting and to be linked by telephone, video conference or such other means of communication for the purposes of such Trust Board Meeting. Notice of any such Trust Board Meeting may be given by telephone or by other means of communication;
  - (b) each of the Representatives taking part in such a Trust Board Meeting must be able to hear each of the other Representatives taking part at the commencement of the Trust Board Meeting; and
  - (c) at the commencement of such Trust Board Meeting each of the Representatives must acknowledge his or her presence to all the other Representatives taking part in any such Trust Board Meeting.
- 7.2 A Representative may not leave such Trust Board Meeting by disconnecting his or her telephone, video conference connection or other means of communication, unless he or she has previously obtained the express consent of the Chairperson, or other person chairing the Trust Board Meeting. A Representative will be conclusively presumed to have been present and to have formed part of the quorum at all times during the Trust Board Meeting unless he or she has previously obtained the express consent of the Chairperson of the Trust Board Meeting to leave the Trust Board Meeting or has been disconnected and failed to reconnect with the Trust Board Meeting.
- 7.3 A minute of the proceedings at such Trust Board Meeting will be sufficient evidence of such proceedings and of the observance of all necessary formalities if the minute has been certified as a correct minute by the Chairperson of that Trust Board Meeting.

## **8. Resolutions in writing**

- 8.1 A resolution in writing signed by Representatives shall be as effective as if it had been passed at a Trust Board Meeting. Such a resolution may consist of several like documents each signed, or otherwise agreed to, in writing, by one (1) or more of the Representatives and may be sent by post, facsimile or email transmission.

## **Schedule 5: General Meetings**

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### **1. Annual General Meeting**

- 1.1 The Trust Board will in each calendar year hold an Annual General Meeting. No more than fifteen (15) months is to elapse between the dates of an Annual General Meeting.
- 1.2 The purpose of the Annual General Meeting will be:
- (a) to receive the Annual Accounts for the Financial Year just completed;
  - (b) to appoint the Auditors;
  - (c) to consider the Annual Report;
  - (d) to consider the Annual Plan;
  - (e) to consider any Corporate Entity Report;
  - (f) to consider any proposal by the Trust Board or any relevant Corporate Entity to re-organise the Fisheries Assets;
  - (g) to consider any proposal to change the Trust Deed;
  - (h) to constitute the forum in which the Registered Members may raise and debate such other issues as they may wish; and
  - (i) to consider such other matters as the Representatives may deem appropriate.

### **2. Notice of General Meetings**

- 2.1 The Trust Board must give at least ten (10) Business Days' public notice in the appropriate media in any area containing significant concentrations of Registered Members of:
- (a) the date, time, venue and agenda of the General Meeting;
  - (b) where any relevant explanatory documents may be viewed or obtained;
  - (c) any other information required by the Māori Fisheries Act 2004; and
  - (d) the matters or issues on which a vote is to be taken; and
  - (e) a copy of the ballot paper for the vote or votes to be taken at the meeting (if applicable).
- 2.2 The Trust Board must also give private notice with the information required under clause 2.1 to any Adult Registered Member who:
- (a) at the time of applying to be registered on the Members Register, made a written request to be sent a private notice and postal ballot papers for general meetings; or

- (b) whether or not on the Members Register, makes a written request for a private notice in respect of a particular meeting.

3. **Ballot**

A Ballot under Schedule 2 of the Trust Deed may be held at an Annual General Meeting.

4. **Quorum**

- 4.1 The quorum required for any Annual General Meeting or Special General Meeting shall be twenty (20) Adult Registered Members present either in person or electronically.

5. **Chair**

- 5.1 The Chairperson for the time being of the Trust Board will be the chairperson of any Annual General Meeting or Special General Meeting and will preside over and have control over the meeting. If the Chairperson is not present at the time appointed for holding a meeting, then the Deputy Chairperson shall be the chair. If the Deputy Chairperson is not present, then the Trustees shall elect one of their number to substitute as the chairperson of the meeting.

6. **Voting**

- 7. To the extent that a vote is sought or required at any General Meeting, every Adult Registered Member present shall have one vote. Voting may be by voice, show of hands or by Ballot (in accordance with Schedule 2).

## **Schedule 6: Corporate Entities**

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### **1. Role of Corporate Entities**

#### **1.1 Corporate Entities**

The role of each Corporate Entity is to each use prudently on behalf of the Trust Board any assets allocated to it and to administer those assets and any liabilities by operating in accordance with the Corporate Entity Plan approved by the Trust Board.

### **2. Methods of control**

#### **2.1 Appointment and removal of directors of Subsidiaries**

Subject to sub-clause **Error! Reference source not found.** of Schedule 1, the Trust Board will approve the appointment and removal of the Corporate Entity Directors.

#### **2.2 Monitoring**

The Trust Board will monitor the performance, profitability and efficiency of:

- (a) each Corporate Entity against the relevant Corporate Entity Plan and any other criteria or arrangements established for that purpose;
- (b) any other persons owned or controlled by the Trust Board against their respective annual statements of principles and objectives and any other criteria or arrangements established for that purpose.

#### **2.3 Trust Fund allocation policies**

The Trust Board must set policies for the initial and subsequent allocation and re-allocation of the Trust Fund owned by the Trust Board, including the Property derived pursuant to the Māori Fisheries Act 2004.

#### **2.4 Quarterly reports**

The Trust Board will procure that any Corporate Entity, no later than two (2) calendar months after the completion of the first, second and third quarters of each Financial Year, send to the Trust Board reports of its financial position and the position of its Subsidiaries, together with an unaudited summary of financial results as at the end of those quarters, in such form as the Trust Board may from time to time prescribe.

#### **2.5 Other functions**

The Trust Board will:

- (a) procure that each Corporate Entity carries out such other functions as the Trust Board may consider necessary or appropriate to the attainment of the Objects of the Trust Board; and
- (a) set policies for the initial and subsequent allocation and re-allocation of assets owned by the Trust Board in its own right, including those derived pursuant to the Māori Fisheries Act 2004.

### **3. Corporate Entity Plan**

- 3.1 The Corporate Entity Directors for each Corporate Entity will, prior to the start of each Financial Year, settle their respective Corporate Entity Plan for the following Financial Year and the two consecutive following Financial Years (or for any other following period from time to time fixed by the Trust Board).
- 3.2 The Corporate Entity Directors must submit their Corporate Entity Plan to the Trust Board three calendar months (or such other period as the Trust Board may from time to time decide) before the start of each Financial Year.
- 3.3 The Trust Board must consider each Corporate Entity Plan within one (1) calendar month of receipt (or such other period as the Trust Board may from time to time decide) and must:
- (a) approve the Corporate Entity Plan; or
  - (b) refer the Corporate Entity Plan back to the relevant Corporate Entity Directors for reconsideration, with recommended changes.
- 3.4 If the Corporate Entity Plan is referred back to the relevant Corporate Entity Directors for reconsideration, the revised Corporate Entity Plan must be re-submitted to the Trust Board no later than 10 Business Days after the referral under sub-clause 3.3(b) is made.
4. **Corporate Entity Report**
- 4.1 The Trust Board will procure Corporate Entity Directors to provide any Corporate Entity Report as contemplated by this Deed.

## Schedule 7: Te Arawa Iwi and Te Arawa Ancestors

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<b>Te Arawa Iwi</b>	<b>Te Arawa Ancestor</b>
Ngāti Pikiao	Pikiao
Ngāti Rangiteaorere	Rangiwhakaekeau
Ngāti Rangitihī	Rangiaohia
Ngāti Rangiwewehi	Rangiwewehi
Tapuika	Tia
Tarawhai	Tarawhai
Tuhourangi	Tuhourangi
Te Ure o Uenuku-kopako/Ngāti Whakaue	Uenuku-kopako/Whakaue
Waitaha	Hei
Ngāti Tahu/Ngāti Whaoa	Tahu/Whaoa
Ngāti Makino	Hei

## Schedule 8: Application for adding a Te Arawa Iwi

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### Trust Board Application For Adding Te Arawa Iwi

This form is to be used by an Adult Registered Member to notify the Trust Board that a Te Arawa Iwi should be added to the list in Schedule 7 of the Trust Deed for the Trust Board. Please complete this form in its entirety and send this form, once completed, to the Secretary of the Trust Board.

#### 1. Applicant details

*Please write the name, address and details of the Applicant below. Please note that the Applicant must indemnify the Trust Board in accordance with sub-clause 20.10 of the Trust Deed. Please contact the Trust Board to obtain information regarding the terms of that indemnity.*

Name: \_\_\_\_\_ Ph: \_\_\_\_\_ (Hm)  
\_\_\_\_\_ (Wk)  
Address: \_\_\_\_\_ (Mobile)  
Email: \_\_\_\_\_  
Te Arawa Iwi as listed in Schedule 7 of the Trust Deed: \_\_\_\_\_

#### 2. Criteria for adding Te Arawa Iwi

Te Arawa

Ancestor: \_\_\_\_\_

Marae: \_\_\_\_\_

Hapū: \_\_\_\_\_

Details of land base: \_\_\_\_\_

Details of distinction between proposed Te Arawa Iwi and other Te Arawa Iwi:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Evidence of recognition by Te Arawa Iwi as warranting an addition to Te Arawa Iwi

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3. **Other matters**

*Please include any other information you consider relevant.*

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4. **Declaration and signing by Adult Registered Members of the Te Arawa Iwi**

*By signing in the space below, you agree with the statement listed below. Please note that ten percent (10%) or one hundred (100) Adult Registered Members must sign this form for it to be effective and valid.*

We, being Adult Registered Members, declare and confirm that we have read and agree with the contents of this Application.

<b>Name of Adult Registered Members</b>	<b>Signature</b>

**DATE:** \_\_\_\_\_

## **Schedule 9: Remuneration for Representatives**

### **1. Representatives entitled to remuneration**

- 1.1 The Trust Board may, after seeking professional external advice about suitable remuneration, prescribe reasonable remuneration for the Representatives and for the Chairperson to be paid out of the Trust Fund.

### **2. Approval of remuneration**

- 2.1 Unless prescribed by a third party in the terms of any funding contract or authorised under any prior version of the Trust Deed, no remuneration shall be paid to a Representative in his or her capacity as a Representative until that remuneration has been approved by Ordinary Resolution at an Annual General Meeting or Special General Meeting.
- 2.2 Such remuneration may be prescribed and approved in the form of a meeting fee or as a total amount payable per annum.
- 2.3 In addition, any Representative may receive full reimbursement of all expenses properly incurred by that Representative in the conduct of his or her duties as a Representative.

### **3. Corporate Entities**

- 3.1 This clause does not apply to any remuneration paid to any Representative in his or her capacity as a director or trustee of any Corporate Entity.
- 3.2 A Representative who is appointed as a Director or trustee may receive remuneration in accordance with the governing document of the relevant Corporate Entity.