

DEED
MANDATED IWI ORGANISATION

**DRAFT – SEPTEMBER
2005**

CONTENTS

1.	INTERPRETATION	1
	Definitions	1
	Interpretation of Schedules	3
	Statutes 3	
	General References	3
	Headings	4
2.	ESTABLISHMENT OF TRUST	4
	Acknowledgement of Trust	4
3.	KAUPAPA/PURPOSES	4
	Purposes	4
	Incidental purposes	4
	Strategic governance	6
	No non-charitable objects and purposes	6
4.	APPOINTMENT AND POWERS OF TRUSTEES, AND MANAGEMENT OF THE TRUST	7
	Number of Trustees	7
	Cessation of office of Trustee	7
	Powers of Trustees	8
	Reliance on Advice	11
	Disclosure of Interest	12
	Definition of Interested Trustee	12
	Interests in common with [Iwi/Hapu/Whanau]	12
	Recording of Interest	12
	No private pecuniary profit	12
	Appointment and removal of Custodian Trustee	14
5.	REGISTER OF MEMBERS OF [NAME OF IWI]	14
	Members' Register of [Name of Iwi]	14
	Registration as a Member of [Name of Iwi]	15
	Trustees may decline to register, or remove a person from the Members' Register	16
	Process when registration declined or removed	16
	Registration not necessary	16
	De-registration by Member of [Name of Iwi]	17
	Notice not necessary	17
6.	VOTING PROCEDURE	17
7.	GENERAL MEETINGS OF IWI AND REPORTING	17
	Reporting Responsibilities	17
	Trust to hold an Annual General Meeting	17
	Information must be made available in writing	21
	No derogation from purposes	21
8.	ASSET HOLDING COMPANY AND FISHING ENTERPRISE	22
	Trust must hold an Asset Holding Company	22
	Establishment of Fishing Enterprise	23
	Requirements of constitution	23
	[for IAOs: Commercial Aquaculture Activities	23
9.	DISPUTES PROCEDURE	24
	Disputes relating to matters arising under the Act	24
	Registration Disputes	24
	Proceedings of the Membership Committee	24
	Determination	24
10.	WINDING UP OF TRUST	24

11. ALTERATION OF TERMS OF DEED	25
Changes to the Deed	25
Changes to constitutions of Corporate Entities	25
Notification to Members of [Name of Iwi].....	26
12. RESETTLEMENT	26
Power to resettle	26
Perpetuities	26
SCHEDULE 1	28
PART A: Election Processes.....	28
Electoral Principles: Hapu or Iwi based and FPP/MMP.....	28
Final Form in Deed as Signed.....	28
Time of Elections.....	28
Eligible voters.....	28
Nominations for Trustee.....	28
Time for Nominations.....	29
PART B: All Votes	29
Notice of Voting and General Meeting	29
Valid votes	29
Schedule 2	1
Registration Form and Voting Paper	1
(See next Page)	1
ANNEX A.....	1
Optional Clauses.....	1
Major Transactions.....	2

DEED dated

2005

PARTIES [Names of the first Trustees]

INTRODUCTION

- A. This Deed establishes [Name of Trust] to act, amongst other things, as the Mandated Iwi Organisation of [Name of Iwi] for the purpose of the Māori Fisheries Act 2004. [Optional clause for IAOs: and to act as the Iwi Aquaculture Organisation for the purpose of the Māori Commercial Aquaculture Claims Settlement Act 2004.]
- B. This Deed sets out the functions and purposes, and provides for the control, governance and operation of [Name of Trust].

TRUST TERMS

1. INTERPRETATION

Definitions

- 1.1 In this Deed, unless the context otherwise requires:

Act means Māori Fisheries Act 2004.

Adult Member means a Member of [Name of Iwi] who is over the age of 18 years.

Adult Registered Members means Adult Members who are registered on the Members Register and who can vote at General Meetings.

[for IAOs: **Aquaculture Agreement** has the meaning given to it in section 186ZD of the Fisheries Act 1996.]

Asset Holding Company means a company established by the Trust, in accordance with clause 3.2, and which for the time being would be a company which meets the requirements for a company defined in the Act as an asset-holding company and includes any subsidiary of the asset-holding company

Charitable Purposes means every purpose within New Zealand which in accordance with the laws of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose that is charitable within the laws of New Zealand.

Confidential Information means any information which a majority of the Trustees considers on reasonable grounds is of a commercially or otherwise sensitive nature and the release of which could be detrimental to the interests of [Name of Iwi].

Corporate Entity includes the Asset Holding Company and any Subsidiary of it, the Fishing Enterprise and any Subsidiary of it, and any other company or trust wholly owned or controlled directly or indirectly by the Trust.

Deed means this Deed and includes any amendments to this Deed made in accordance with this Deed.

Directors means directors or trustees as the case may be, of the Corporate Entity.

Fishing Enterprise means a fishing operation established by [Name of Trust] under clause 8.2 to utilise annual catch entitlement from its Settlement Quota.

General Meeting means an annual general meeting or a special general meeting convened and conducted in accordance with clause 7.

Income Share means an income share within the meaning of the Act that is allocated and transferred to the Asset Holding Company on behalf of [Name of Iwi] by Te Ohu Kai Moana Trustee Limited.

Inland Revenue Acts has the meaning given to it in section 3(1) of the Tax Administration Act 1994.

Iwi means [Name of Iwi].

[for IAOs: **Iwi Aquaculture Organisation** has the meaning given to it in the Māori Commercial Aquaculture Claims Settlement Act 2004.]

Mandated Iwi Organisation has the meaning given to it in the Act.

Members of [Name of Iwi] means persons who affiliate to [Name of Iwi] through descent from a primary ancestor of [Name of Iwi], (the identity of such primary ancestor shall be determined pursuant to clause 5 or, if necessary, pursuant to clause 9) [but does/does not include Whāngai who do not descend from a primary ancestor of [Name of Iwi]].

Membership Committee means the committee appointed under clause 9.2.

Members' Register means the register of Members of [Name of Iwi] held and maintained by the Trust in accordance with clause 5.

[Name of Iwi] means the Iwi comprising every person who is descended from a primary ancestor of [Name of Iwi].

Public Notice means a notice that-

- (a) is published in a newspaper generally circulating in the relevant area or areas; and
- (b) may also be published by panui or electronic media, including radio and television; and
- (c) complies with Kaupapa 4 of Schedule 7.

Private Notice means a notice-

- (a) sent by any means that is private to the recipient; and
- (b) complies with Kaupapa 4 of Schedule 7.

Registered Member means any member of [Name of Iwi] who is entered in the Members' Register.

Quota means quota shares within the meaning of the Fisheries Act 1996.

Secretary means any person appointed under clause 4.7 to perform general secretarial and administrative functions for the Trust.

[For IAOs: **Settlement Assets** has the same meaning as that term in the Māori Commercial Aquaculture Claims Settlement Act 2004.]

Settlement Quota means the quota shares within the meaning of the Act that are allocated and transferred to the Asset Holding Company on behalf of [Name of Trust] by Te Ohu Kai Moana Trustee Limited.

Subsidiary means any Subsidiary (as defined by section 5 of the Companies Act 1993) of a Corporate Entity and includes any person or persons (other than a Subsidiary as so defined) that is controlled by a Corporate Entity [for IAOs: and includes a separate enterprise that is responsible to the Mandated Iwi Organisation, as that term is used in section 32(3) of the Māori Commercial Aquaculture Claims Settlement Act 2004].

Te Kawai Taumata means the group of that name established under the Act.

Te Ohu Kai Moana Trustee Limited means the company of that name formed under the Act.

Tikanga means the customary values and practices of [Name of Iwi].

Trust means [Name of Trust] established by this Deed.

Trust Fund means all the assets and liabilities including income that are from time to time held by the Trustees on the trusts of this Deed whether or not received in the manner described in clause 3.2.

Trustees means the persons elected or appointed under clause 4.

Voting Paper means a voting paper (including any electronic voting paper) issued in accordance with Schedule 1 and which shall record the membership number of the voter, or in the case of a voter without a registration number, shall have a duly completed registration application in the form set out in Schedule 2 attached to and forming part of that Voting Paper.

Whāngai means those persons who do not affiliate to [Name of Iwi] by descent from a primary ancestor of [Name of Iwi] but who are adopted by a Member of [Name of Iwi] in accordance with the Tikanga of [Name of Iwi] such Tikanga to be determined in accordance with clause 5 or, if necessary clause 9].

Working Day means the days Monday through Friday exclusive of any public holiday and excluding 24 December to 2 January (inclusive).

Interpretation of Schedules

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

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

Statutes

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

General References

1.4 References in the Deed to:

- (a) a 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);
- (b) one gender includes the other gender;

- (c) the singular includes the plural and vice versa;
- (d) clauses and sub-clauses are references to clauses and sub-clauses in this Deed; and
- (e) the Deed includes its Schedules.

Headings

- 1.5 Headings are for ease of reference only and must be ignored in interpreting the Deed.

2. ESTABLISHMENT OF TRUST

Acknowledgement of Trust

- 2.1 The Trustees acknowledge and declare that they hold the Trust Fund upon the trusts and with the powers set out in this Deed. The name of the Trust established by this Deed is [Name of Trust].

3. KAUPAPA/PURPOSES

Purposes

- 3.1 The purposes for which [Name of Trust] is established are to receive, hold, manage and administer the Trust Fund for every charitable purpose benefiting [Name of Iwi] whether it relates to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community of [Name of Iwi] and all the members of [Name of Iwi] irrespective of where those members reside

[optional:

and for every such charitable purpose benefiting:

- (a) Maori who are not members of the [name of Iwi]; and
- (b) members of the community generally].

Incidental purposes

- 3.2 Incidental to, and to give effect to the purposes in clause 3.1, the Trustees shall:
- (a) directly receive and hold, on behalf of [Name of Iwi] on the trusts set out in clause 3.1, settlement assets allocated and grants made to [Name of Iwi] by Te Ohu Kai Moana Trustee Limited, other than assets referred to in section 16(1)(c) of the Act, which other assets are to be transferred to an Asset Holding Company;
 - (b) receive distributions from Te Putea Whakatupu Trustee Limited and Te Wai Māori Trustee Limited, as provided for under subparts 4 and 5 of Part 2 of the Act and to hold those distributions on the trusts set out in clause 3.1 or on such other trusts as are required in order to ensure that a distribution to the Trust by either of those companies would be within the purposes for which those companies hold their funds and make those distributions but not in a manner that could adversely affect the charitable status of the Trust;

- (c) if relevant, enter into agreements with other Mandated Iwi Organisations in relation to:
- (i) claims under section 11 of the Act;
 - (ii) the allocation of -
 - (aa) harbour quota under section 143 of the Act; and
 - (bb) freshwater quota under section 148 of the Act;
- (d) establish separate companies to undertake fishing and fisheries-related activities, including, but not limited to, any activity related to the seafood industry, including, for the avoidance of doubt, a Fishing Enterprise, and to hold the shares in those companies and any distributions or other benefits resulting from them on the trusts in clause 3.1;
- (e) establish one or more Asset Holding Companies that, in each case:
- (i) is wholly owned by the Trust;
 - (ii) is separate to the companies referred to in sub-paragraph (d);
 - (iii) performs the function and complies with the requirements set out in sections 16 to 18 of the Act; and
 - (iv) performs any other function, but not if doing so would be inconsistent with sections 16 to 18 of the Act,
- and to hold the shares in those companies and any distributions or other benefits resulting from them on the trusts in clause 3.1;
- (f) perform the functions provided for, by or under the Act in respect of a Mandated Iwi Organisation, in a manner consistent with the Act;
- (g) represent [Name of Iwi] by voting at any meeting convened under:
- (i) clause 1 or clause 6 of Schedule 8 to the Act, to appoint or remove a member or alternate member of Te Kawai Taumata;
 - (ii) clause 117 of the Act, implemented in accordance with clause 1 of Schedule 8 to the Act, to appoint a member of a committee of representatives;
- [() act on behalf of [Name of Iwi] in relation to aquaculture claims and settlement assets under the Māori Commercial Aquaculture Claims Settlement Act 2004, in respect of which the Trustees must act for the benefit of all members of the Iwi, irrespective of where those members reside, including:
- (iii) directly receive and hold, on behalf of [Name of Iwi] Settlement Assets allocated to [Name of Iwi] by Te Ohu Kai Moana Trustee Limited in accordance with the Māori Commercial Aquaculture Claims Settlement Act 2004; and
 - (iv) enter into agreements with other iwi aquaculture organisations in relation to the allocation of Settlement Assets;]

- (h) if [Name of Iwi] determine, directly receive and hold, on behalf of [Name of Iwi] on the trusts set out in clause 3.1, any other Treaty of Waitangi settlement assets; and
- (i) perform other functions provided for, by or under the Act or any other enactment or otherwise, but not if doing so would adversely affect the charitable status of the Trust.

3.3 [for IAOs: An iwi aquaculture organisation must not undertake commercial aquaculture activities (as that term is used in section 32(3) of the Māori Commercial Aquaculture Claims Settlement Act 2004) except through a separate commercial enterprise that is responsible to [Name of Trust].]

Strategic governance

3.4 The Trust must exercise strategic governance over:

- (a) its Asset Holding Companies, any Subsidiary of an Asset Holding Company, and any Fishing Enterprise; and
- (b) the process to examine and approve annual plans that set out:
 - (i) the key strategies for the use and development of fisheries assets of [Name of Iwi];
 - (ii) the expected financial return on those assets;
 - (iii) any programme to:
 - (aa) manage the sale of annual catch entitlements derived from the Settlement Quota held by the Trust's Asset Holding Companies or their Subsidiaries; and
 - (bb) reorganise the Settlement Quota held by Asset Holding Companies or their Subsidiaries, in the buying and selling of Settlement Quota in accordance with the Act,

but not in such a manner as shall result in the Trust or any of the Trustees being deemed to be a Director of that or those companies under the Companies Act 1993, and nor shall this clause 3.4 or any other provision of this Deed prevent the Trust or any Subsidiary of the Trust from entering into such arrangements with another company or trust as the Trustees shall consider necessary or desirable to efficiently and effectively administer, manage or hold its assets or operations, consistently with the purposes in clause 3.1.

No non-charitable objects and purposes

3.5 The objects and purposes of the Trust shall not include or extend to any matter or thing which is or shall be held or determined to be non-charitable within the laws of New Zealand and the powers and purposes of the Trustees and, without derogating from clauses 11.1(d) or 12, the Trust shall be restricted accordingly and limited to New Zealand.

4. APPOINTMENT AND POWERS OF TRUSTEES, AND MANAGEMENT OF THE TRUST

Number of Trustees

- 4.1 The Trust must have at least [X] Trustees who must be elected by Adult Members of [Name of Iwi], except that the first Trustees shall be those persons who have signed this Deed as parties, and those first Trustees shall remain in office until the later of:
- (a) the date one year after the date of this Deed; and
 - (b) the date six months after the date upon which the recognition of the Trust as the mandated iwi organisation of [Name of Iwi] is recorded under section 13(1)(b) of the Act.

Retiring Trustees shall be eligible for re-election.

Cessation of office of Trustee

- 4.2 Any person shall cease to be a Trustee if he or she:
- (a) shall have been in office for more than three years since his or her election; or
 - (b) resigns as a Trustee by giving notice in writing to the Trust; or
 - (c) fails or neglects to attend three consecutive meetings of the Trustees without leave or absence, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason for such non-attendance; or
 - (d) becomes of unsound mind, becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made, or otherwise becomes unfit or unable to act as a Trustee; or
 - (e) is or becomes 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
 - (f) is or has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993; or
 - (g) dies.
- 4.3 The Trustee concerned shall cease to hold office:
- (a) in a case where sub-paragraph 4.2(a) applies, from the end of the day three years after the date on which that Trustee was last elected to office;
 - (b) in a case where sub-paragraph 4.2(b) applies from the date the notice of retirement shall have been delivered to the Trust;
 - (c) in the case where sub-paragraph 4.2(c) applies from the date of the first meeting of Trustees after that Trustee's third consecutive absence without leave; and
 - (d) in cases where sub-paragraphs 4.2(d) to 4.2(g) apply, from the date on which the Trust was notified in writing of the relevant fact together with such

evidence as the Trustees may reasonably require. Should a vacancy reduce the number of Trustees below half the number specified in clause 4.1 the vacancy shall be filled as soon as practicable by election in accordance with the terms of this Deed, and the remaining Trustees (which shall include any Trustee who shall cease to be a Trustee under subparagraph (a)) shall continue to act until that vacancy has been filled.

Powers of Trustees

4.4 To achieve the purposes of the Trust:

- (a) the Trustees shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person;
- (b) subject always to the trusts imposed by this Deed, the Trustees may deal with the Trust Fund as if the Trustees were the absolute owners of and beneficially entitled to the Trust Fund including, for the avoidance of doubt, but subject to complying with the applicable provisions of the Act [and the Māori Commercial Aquaculture Claims Settlement Act 2004], the acquisition and disposition of Settlement Quota and Income Shares [and Settlement Assets].
- (c) Accordingly, in addition to any specific powers vested in the Trustees by law, in dealing with the Trust Fund or acting as Trustees of the Trust, the Trustees may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including, without limitation, exercising unrestricted powers to borrow and raise money, and to give securities and guarantees;
- (d) except as otherwise expressly provided by this Deed, the Trustees may exercise all the powers and discretions vested in the Trustees by this Deed in the absolute and uncontrolled discretion of the Trustees, at such time or times, upon such terms and conditions, and in such manner as the Trustees may decide;
- (e) if any dividend or distribution is received which in the opinion of the Trustees has been paid or made out of profits other than trading profits of the financial year in respect of which the dividend or distribution has been paid or made, the Trustees may decide how much of that dividend or distribution ought to be treated as capital and how much as income of the Trust Fund. Such decision shall be made by the Trustees after considering the nature of the profit used to pay or make the dividend or distribution, and the account to which the dividend or distribution has been debited in the books of the person making such payment or distribution. The Trustees shall not be liable to any person in respect of the payment of any moneys in accordance with any decision made by the Trustees under this clause 4.4;
- (f) the Trustees may at any time, after payment of or provision for all reasonable costs, charges and expenses of the Trustees in respect of the establishment, management and administration of the Trust, pay or apply all or any of the income of the Trust for the purpose or purposes contained in clause 3.1;
- (g) if any income of any financial year of the Trust shall not be paid or applied in accordance with clause 3.1 during or within six months from the end of that financial year the Trustees must accumulate that income, and any income so accumulated must be added to and form part of the capital of the Trust Fund and is subject to the trusts and powers declared in this Deed in respect of the capital of the Trust Fund; and

- (h) the Trustees may at any time pay or apply all or any of the capital of the Trust for the purpose or purposes contained in clause 3.1.

4.5 **Management of the Trust - General:**

- (a) The Trustees shall have the absolute management and entire control of the Trust Fund.
- (b) The Trustees may from time to time appoint, remunerate and dismiss officers or employees of the Trust, unless, either generally or in a particular case, they shall have for the time being delegated any one or more of the powers of appointment, remuneration or dismissal, as the case may be, to a person holding the position of Chief Executive of the [Name of Trust].
- (c) Any individual may be appointed as an officer or employee of the Trust but no Trustee may be appointed as an employee.
- (d) The Trustees may appoint an incorporated or unincorporated entity to provide services to the Trust. In any case where the entity directly or indirectly procures, causes, permits or otherwise howsoever makes a Trustee available to carry out management services, the appointment shall be of no effect and neither that entity nor that person shall have any authority on behalf of nor claim against the Trust, unless prior to that appointment the full terms and conditions of the proposed appointment shall have been disclosed in writing to all the Trustees, and the Trustees shall have voted unanimously (subject to clause 4.12) in support of that appointment on those terms.
- (e) The office of the Trust shall be at such place as the Trustees from time to time may notify by such means as the Trustees determine to the Members of [Name of Iwi] and in any website, letterhead, formal written contract or printed publications of the Trust.

4.6 **Meetings of Trustees:**

- (a) The Trustees shall meet to conduct business at such intervals as the Trustees may decide, but not less frequently than [4] times in each year. The Trustees may invite to such meeting whomever the Trustees may decide will assist with their deliberations.
- (b) Except as expressly provided otherwise by this Deed any matter requiring decision at a meeting of the Trustees shall be decided by a simple majority of the Trustees personally present and voting on the matter.
- (c) In the event of an equality of votes the Chairperson shall not have a second or casting vote.
- (d) Except as expressly provided otherwise by this Deed a resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and constituted. Any such resolution may consist of several like documents each signed by one or more Trustees. Any such document sent by a Trustee by facsimile or such other electronic means as shall be determined by the Trustees from time to time shall be deemed to have been duly signed by that Trustee.
- (e) Any Trustee may at any time give notice convening a meeting of the Trustees. Such notice shall be given by letter posted to each Trustee at least 15 Working Days before the date of the proposed meeting. The notice shall state the time

and place of the meeting and, in sufficient terms, the nature of the business to be transacted.

- (f) The quorum for a meeting of Trustees shall be a majority of the Trustees who, for the time being, have been elected or otherwise holding office under clause 4.1.
- (g) The Trustees may act notwithstanding any vacancy in their body, but if and so long as the number of Trustees holding office is less than the number fixed by clause 4.6(f), the continuing Trustees may act only for the purposes of increasing the number of Trustees to that number or calling a General Meeting pursuant to clause 7.
- (h) The contemporaneous linking together of the Trustees by telephone or other electronic means of communication shall constitute a meeting of the Trustees and the provisions of this clause 4.6 as to meetings of the Trustees shall apply to such meetings provided the following conditions are met:
 - (i) each Trustee shall be entitled to notice of such a meeting and to be linked by electronic means for the purposes of the meeting;
 - (ii) each of the Trustees taking part in the meeting must be able to hear each of the other Trustees taking part during the whole of the meeting;
 - (iii) at the commencement and conclusion of the meeting the Chairperson must call upon each Trustee to acknowledge their attendance;
 - (iv) a Trustee may not withdraw from such a meeting unless that Trustee has previously obtained the express consent of the Chairperson of the meeting to do so;
 - (v) a Trustee shall be conclusively presumed to have been present and to have formed part of the quorum of such a meeting at all times during the meeting unless that Trustee has previously obtained the express consent of the Chairperson to withdraw from such a meeting.
- (i) Minutes of the proceedings of all meetings of the Trustees shall be recorded in a book to be kept for that purpose by the Secretary and shall be signed by the Chairperson of the meeting at which the minutes are confirmed. Every such minute purporting to be so signed shall be prima facie evidence of the matters recorded. A minute of the proceedings of any meeting by telephone or other electronic means of communication shall be sufficient evidence of the observance of all necessary formalities if the minute of the meeting signed by the Chairperson of the meeting shall contain a certificate to that effect.

4.7 Chairperson, Deputy Chairperson and Secretary:

- (a) The Trustees shall elect one Trustee to act as Chairperson from year to year.
- (b) The Trustees may also elect one Trustee to act as Deputy Chairperson either as the need arises or from year to year or for such term of years as the Trustees may decide. In the absence of the Chairperson the Deputy Chairperson shall have and may exercise all the powers of, and shall perform all the duties, of the Chairperson.
- (c) The Trustees shall appoint a non-voting Secretary who may be honorary, or may be a full-time or part-time employee of the Trust.

4.8 **Delegation of powers:**

- (a) The Trustees may delegate in writing to any committee of any Trustee, Trustees or employee who is the chief executive of the Trust, such of the powers of the Trustees as the Trustees may decide, provided that:
 - (i) the Trustees may not delegate strategic governance; and
 - (ii) in the case of any entity appointed under clause 4.5(d) make available a Trustee to discharge a chief executive's duties, the delegation shall be personal to the person provided by that entity in that capacity
- (b) Any person or committee acting under delegated power shall act in accordance with the terms of this Deed and, in the absence of proof to the contrary, shall also be presumed to be acting within the terms of the delegation;
- (c) The Trustees may revoke wholly or partly any delegation of the powers of the Trustees at any time;
- (d) Subject to any directions given by the Trustees, any person or committee to which any powers of the Trustees have been delegated may conduct that person's or the committee's affairs as that person or the committee may decide;
- (e) The Trustees must, in delegating the powers of the Trustees, provide restrictions or rules by or within which such delegated powers are to be exercised in accordance with this clause and in each case must require the delegate to report to the Trustees on any action or decision taken as delegate.

4.9 **Accounts and Audit:**

- (a) The Trustees shall keep an account or accounts at such bank or banks as the Trustees may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons (including in all instances at least one Trustee) as the Trustees may decide;
- (b) The Trustees shall cause true accounts for each financial year to be kept in such manner as the Trustees may decide of all receipts, credits, payments, assets and liabilities of the Trust Fund and all such other matters necessary for showing the true state and condition of the Trust. The accounts of the Trust shall be audited at least once in each year by a chartered accountant (not being a Trustee) appointed in that capacity by the Trustees; and
- (c) Nothing in this clause 4.9 shall derogate from any other obligations of the Trustees in respect of accounts and audits.

Reliance on Advice

- 4.10 The Trustees, when exercising powers or performing duties as Trustees, may rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- (a) an employee of [Name of Trust] whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters which the Trustees believe on reasonable grounds to be within the person's professional or expert competence;

(c) committee of Trustees appointed and acting in accordance with clause 4.8.

4.11 Clause 4.10 applies only if the Trustee:

- (a) acts in good faith;
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that such reliance is unwarranted.

Disclosure of Interest

4.12 Any Trustee who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any way concerned or involved shall disclose the nature and extent of that Trustee's interest to the other Trustees, and shall not take part in any deliberations or decision of the Trustees concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust, and shall be disregarded for the purpose of forming a quorum for any such deliberation or decision.

Definition of Interested Trustee

4.13 A Trustee will be interested in a matter if the Trustee:

- (a) is a party to, or will derive a material financial benefit from that matter;
- (b) has a material financial interest in another party to the matter;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the matter, not being a party that is wholly owned by the Trust or any Subsidiary of the Trust;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

Interests in common with [Iwi/Hapu/Whanau]

4.14 Notwithstanding clauses 4.12 and 4.13, no Trustee will be interested in a matter where that Trustee is a member of a [Iwi/Hapu/Whanau] and where his or her interest is not different in kind from the interests of other members of that [Iwi/Hapu/Whanau].

Recording of Interest

4.15 A disclosure of interest by a Trustee shall be recorded in the minute book of the Trust. Immediately following his or her appointment as a Trustee, each Trustee must enter into the minute book and must disclose in writing to the other, the name of any iwi of which he or she is a member, and the Trustee must also, at any time after his or her appointment, enter into the Minute Book and disclose to the next meeting of the Trustees, any interest of which that Trustee becomes aware.

No private pecuniary profit

4.16 No private pecuniary profit may be made by any person from the Trust, except that:

- (a) any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;
- (b) the Trust may pay reasonable remuneration to any Trustee, officer or employee of the Trust in return for services actually rendered to the Trust (including the provision of services as Trustee);
- (c) any Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any entity of which that Trustee is a partner, member, employee or associate in connection with the affairs of the Trust;
- (d) any Trustee may retain any remuneration properly payable to that Trustee by any entity with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that entity is in any way attributable to that Trustee's connection with the Trust;

provided that:

- (i) before any such reimbursement paid to a Trustee may be regarded as properly incurred by that Trustee or any such remuneration paid to a Trustee may be regarded as reasonable or properly payable or any such charges may be regarded as usual, the amount of that reimbursement, remuneration or charge must have been approved as such by a resolution of Trustees and in the case of an appointment referred to in clause 4.5(d), the provisions of that clause have been complied with;
- (ii) the Trustees must disclose in their annual report referred to in clause 7.2 next published after payment of that disbursement, remuneration or charge, in respect of all such reimbursements, remuneration or charges:
 - (aa) the amount thereof received by each Trustee or any such firm or entity;
 - (bb) the nature of the reimbursement and the nature and extent of the services rendered or time expended;
 - (cc) the method of calculation of the reimbursement, remuneration or charge; and
- (iii) in the case of an appointment referred to in clause 4.5(d), the full written terms and conditions thereof have been made available for inspection at the office of the Trust, by any Adult Registered Member who makes written request for the same.

4.17 Subject to clause 4.16, in the exercise of the powers conferred by this Deed, each Trustee in the discharge of any duty or exercise of any discretion as Trustee shall ensure that any person who is:

- (a) a Trustee;
- (b) a shareholder or director of any company by which any business of the Trust is carried on;
- (c) a settlor or a trustee of any trust that is a shareholder of any company by which any business of the Trust is carried on;

- (d) any associated person (as defined in section OD 7 of the Income Tax Act 1994) of either a director, or any person referred to in clauses 4.12 to 4.15,

does not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence the determination of, the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person, and any payment made to any person in or following breach of this clause 4.17 shall be void.

- 4.18 The Trustees shall require that a clause to the same effect as clause 4.12 of this Deed be included in the constitution of every Asset Holding Company or Fishing Enterprise or any subsidiary of any of them.

Appointment and removal of Custodian Trustee

- 4.19 The Trustees may at any time by deed appoint any appropriate corporation to be the custodian trustee of the Trust Fund, or any part of the Trust Fund, upon such terms as the Trustees may decide, or otherwise to act pursuant to the provisions of section 50 of the Trustee Act 1956, and the Trustees may at any time by deed revoke any such appointment.

4.20 Incorporation:

- (a) The Trustees may at any time apply for incorporation under Part II of the Charitable Trusts Act 1957 under such name as the Trustees may decide. Upon incorporation the powers and discretions conferred upon the Trustees by law or by this Deed shall be conferred upon the Trustees as a trust board.
- (b) Upon incorporation under the Charitable Trusts Act 1957 the Trust shall have a common seal which shall be affixed by the authority of the Trustees previously given to any document requiring execution by the Trustees. Every such affixing shall be attested by two Trustees and shall be sufficient evidence of authority to affix the seal.
- (c) No person dealing with the Trustees shall be bound or concerned to see or inquire as to the authority to affix the seal, or to inquire as to the authority under which any document was sealed or in whose presence it was sealed.

5. REGISTER OF MEMBERS OF [NAME OF IWI]

Members' Register of [Name of Iwi]

- 5.1 The Trustees must:

- (a) have, and maintain in a current state, a register of Members of [Name of Iwi]:
- (i) that includes the name, date of birth, and contact details of every Member of [Name of Iwi] who applies for registration;
- (ii) that is available for inspection by Members of [Name of Iwi] who can view their own registration details; and
- (iii) that is available for inspection by a parent, legal guardian or other person standing in the stead of a parent, who may view the registration details of any child, ward or other dependant under 18 years of age who was registered by such persons, whichever the case may be; and

- (iv) that allocates a member registration number to each Member of the [Name of Iwi] entered in that register; and
 - (b) make ongoing efforts to register all Members of [Name of Iwi] on the Members' Register.
- 5.2 The Trustees may enter in the Members' Register any existing member of [name of iwi] whose details are already held by the Trustees where:
- (a) the details held by the Trustees fulfil the requirements of Kaupapa 5 of the Maori Fisheries Act 2004, except that the requirement in clause (b)(iii) of that Kaupapa need not necessarily be fulfilled; and
 - (b) the particulars were acquired by the Trustees as a result of an application on a form (not being Schedule 2 of this deed) made by:
 - (i) Adult members and Whāngai, on their own behalf or by their legal guardian at the time of the application; and
 - (ii) other members of [name of Iwi], who were not Adult Members of the Iwi at the time of the application, by their parent on their behalf, or by their legal guardian at the time; and
 - (iii) other members of [name of iwi] by an Adult Member on their behalf who, in the opinion of the Membership Committee, stood in the stead of a parent of that person at the time of the application].
- 5.3 An application to be entered in the Members' Register may be made by:
- (a) Adult Members and Whāngai, on their own behalf or by their legal guardian; and
 - (b) other Members of [Name of Iwi], who are not Adult Members of the Iwi, by their parent or legal guardian on their behalf; and
 - (c) [other Members of [Name of Iwi] by an Adult Member on their behalf who, in the opinion of the Membership Committee, stands in the stead of a parent of that person; and]
- in each case that application must be completed on the form set out in Schedule 2.
- 5.4 Any Adult Member, at or at any time after the time of, application for registration as a Registered Member may request in writing that they wish to receive Private Notice of any General Meetings and/or Voting Papers relating to:
- (a) the election of Trustees; or
 - (b) any amendment to this Deed or the constitutional documents of any Asset Holding Company or Subsidiary of any Asset Holding Company; or
 - (c) the disposal of Income Shares or Settlement Quota; or
 - (d) the conversion of Quota into Settlement Quota.
- Registration as a Member of [Name of Iwi]**
- 5.5 Subject to clauses 5.6 and 5.7, the Trustees must enter in the Members' Register any person:

- (a) by or on behalf of whom an application has been made (either in accordance with clause 5.3 and lodged with the office of the Trust or on a Voting Paper stating their name, date of birth and such details as are required by the Trustees to enable the Trustees to contact that person); and
- (b) who in the reasonable opinion of the Trustees affiliates to [Name of Iwi] through descent from a primary ancestor of [Name of Iwi].

5.6 The Trustees:

- (a) may require any person seeking registration as a Member of [Name of Iwi] to provide evidence verifying his or her affiliation to [Name of Iwi] through descent from a primary ancestor of [Name of Iwi] or of any other matter referred to in clause 5.5 before that person's registration is entered in the Members' Register together with such other information as the Trustees request and the person making the application for registration agrees (but the omission to provide such other information shall not be a reason for the Trustees to not accept the application for registration); and
- (b) may require any person who is entered in the Members' Register to provide evidence verifying his or her affiliation to [Name of Iwi] through descent from a primary ancestor of [Name of Iwi] and any other matter referred to in clause 5.5;
- (c) may consult with the Membership Committee in relation to any application for registration, or continued registration as a Member of [Name of Iwi]; and
- (d) without limiting the foregoing, may request the Membership Committee to:
 - (i) determine who is the primary ancestor, or are primary ancestors, of [Name of Iwi]; and
 - (ii) determine the Tikanga of [Name of Iwi] by which Whāngai are to affiliate to [Name of Iwi] by descent from a primary ancestor of [Name of Iwi].

Trustees may decline to register, or remove a person from the Members' Register

- 5.7 If the Trustees consider that any information about a person received under clause 5.5(a) or clause 5.6 is not accurate or complete, or that the existing information on the Members' Register is not accurate or complete such that in either case the person concerned does not meet the qualifications required by this Deed for entry of that person in the Members' Register, the Trustees may decline to register, or remove that person from the register, as the case may be.

Process when registration declined or removed

- 5.8 Where an application for registration is declined, or any decision is made by the Trustees to remove any person from the register, the person concerned may dispute that decision of the Trustees, and clause 9 shall apply.

Registration not necessary

- 5.9 To avoid doubt, it shall not be necessary, in order to be considered a Member of [Name of Iwi] for the purposes of clause 3.1, for a Member of [Name of Iwi] to be registered in accordance with this clause 5.

De-registration by Member of [Name of Iwi]

- 5.10 To avoid doubt, a Registered Member may, at any time, request in writing that his or her registration be removed or terminated. His or her registration will be deemed removed at the date on which the written request is received at the registered Trust office.

Notice not necessary

- 5.11 It shall not be necessary for the Trust to provide Private Notice to Members of [Name of Iwi] where the trustees believe on reasonable grounds (and have evidence supporting that belief), that the Members' contact details are not current.

6. VOTING PROCEDURE

- 6.1 The Trustees must determine the procedures which shall govern the conduct of all voting and elections provided for in this Deed. Those procedures must comply with the provisions of Schedule 1.

7. GENERAL MEETINGS OF IWI AND REPORTING

Reporting Responsibilities

- 7.1 Without derogating from its duties under any enactment or at law, the Trust has the reporting responsibilities in relation to:

- (a) its own performance; and
- (b) the performance of:
 - (i) the Asset Holding Company;
 - (ii) the Fishing Enterprise;
 - (iii) any joint venture or other entity that conducts business using the Settlement Quota or Income Shares;
 - (iv) any Corporate Entity,

in accordance with the provisions of this clause 7.

Trust to hold an Annual General Meeting

- 7.2 Each year, the Trust must hold a General Meeting at which it provides an opportunity for the Members of [Name of Iwi] to consider:

- (a) **Annual Report.** the annual report for the previous financial year, made available not less than 20 Working Days before the meeting, that reports against the objectives set out in the annual plan for the previous year, including:
 - (i) information on the steps taken by the Trust to increase the number of Members of [Name of Iwi]; and
 - (ii) a comparison of the Trust's performance against the objectives set out in the annual plan, including:

- (aa) changes in the value of the Trust's assets; and
 - (bb) profit distribution; and
 - (iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets; and
 - (iv) a report giving information of the sales and exchanges of Settlement Quota in the previous year, including:
 - (aa) the quantity of Settlement Quota held by the Asset Holding Company of the Trust at the beginning of that year; and
 - (bb) the value of Settlement Quota sold or exchanged in that year; and
 - (cc) the identity of the purchaser or other party to the exchange; and
 - (dd) any transaction with Settlement Quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and
 - (ee) the Settlement Quota interests that have been registered against the quota shares of the Trust; and
 - (ff) the value of Income Shares sold, exchanged, or acquired; and
 - (v) a report on the interactions of the Trust in fisheries matters:
 - (aa) with other entities within the [Name of Iwi]; and
 - (bb) with other Mandated Iwi Organisations; and
 - (cc) with Te Ohu Kai Moana Trustee Limited; and
 - (vi) any changes made under section 18 of the Act to constitutional documents of the Trust or those of its Asset Holding Companies or any Subsidiaries of the Asset Holding Companies; and
- (b) **Annual Plan:** an annual plan for the next financial year, that must include:
- (i) the objectives of the annual plan; and
 - (ii) the policy of the Trust in respect of the sales and exchanges of Settlement Quota; and
 - (iii) any changes in that policy from the policy for the previous year; and
 - (iv) any proposal to change the constitutional documents of any fishing company owned by the Trust; and
- (c) **Asset Holding Company Annual Report:** in relation to every Asset Holding Company of the Trust or any Subsidiary of an Asset Holding Company that receives settlement assets, and in relation to any enterprise established by the Trust under clause 8.2 to conduct fishing operations utilising annual catch

entitled from the Trust's Settlement Quota, to harvest, process or market fish, or be involved in any joint venture for those purposes, (each referred to in this clause 6.1 as an "enterprise") an annual report on:

- (i) the performance of that enterprise; and
- (ii) the investment of money of that enterprise; and
- (iii) the annual plan of that enterprise, including:
 - (aa) the key strategies for the use and development of [Name of Iwi]'s fisheries assets;
 - (bb) the expected financial return on those assets;
 - (cc) any programme to:
 - manage the sale of annual catch entitlements derived from the Settlement Quota; or
 - reorganise the Settlement Quota held by that enterprise by buying or selling quota in accordance with the Act; and
- (d) any proposal to change the constitutional documents of any Asset Holding Company, or any of their Subsidiaries.

7.3 General Meetings of Members of [Name of Iwi]

- (a) **Annual General Meeting:** Each General Meeting must be:
 - (i) in the case of the first General Meeting, held before the date referred to in clause 4.1(b); and
 - (ii) no more than 18 months apart.
- (b) **Special Meeting:** A General Meeting, called a Special Meeting, must be convened by the Trustees on the written request of:
 - (i) the Chairperson of the Trustees (or the deputy-Chairperson if the Chairperson is indisposed); or
 - (ii) not less than []% of the Trustees; or
 - (iii) not less than []% of the Adult Registered Members of [Name of Iwi],

provided that no meeting may be convened to consider:

 - (iv) disposal of Income Shares in accordance with section 70 of the Act;
 - (v) a request to Te Ohu Kai Moana Trustee Limited to treat Quota as Settlement Quota in accordance with section 159 of the Act;
 - (vi) disposal of Settlement Quota in accordance with section 162 of the Act; and
 - (vii) a request for rationalisation of Settlement Quota under section 172(3) of the Act,

unless the Trustees have resolved to:

- (viii) seek approval of the Adult Members of the Iwi under section 70;
 - (ix) obtain the approval of the Adult Members of the Iwi under section 159;
 - (x) obtain the prior approval of the Adult Members of the Iwi under section 162; or
 - (xi) obtain the prior approval of the Adult Members of the Iwi in accordance with section 172 of the Act,
- as the case may be; and
- (xii) the request must state the objects for which the Special Meeting is required and be signed (including counterparts) by those requesting the Special Meeting; and
 - (xiii) the Special Meeting must be held within 30 Working Days from the date the request was received by the Secretary.
- (c) **Notice of General Meeting:** Members of [Name of Iwi] shall be given not less than 20 Working Days notice of a General Meeting (including, to avoid doubt, a meeting to consider the matters in clause 7.2, or any meeting at which any of the matters in paragraphs (iv) to (vii) of clause 7.3(b), or any ratification of, or changes to, this Deed in accordance with the requirements of sections 17 or 18 of the Act (as the case may be), are to be or are actually considered or voted on), in accordance with this Deed and otherwise in accordance with the requirements of the Act.
- (d) **Quorum:** No business shall be transacted at a General Meeting unless a quorum is present. The quorum at a General Meeting is:
- (i) []% or more of the Trustees; and
 - (ii) [] Adult Registered Members of [Name of Iwi].
- (e) **Adjourned meeting:** If a quorum is not present within one hour of the time appointed for the start of a General Meeting:
- (i) the meeting is to stand adjourned until the same hour at the same place 20 Working Days following the adjournment of that meeting unless the Trustees otherwise determine; and
 - (ii) Notwithstanding clause 7.3(d) the Trustees and Members of [Name of Iwi] shall constitute a quorum.
- (f) **Chairperson:** The Chairperson or, failing him or her, the Deputy-Chairperson, will preside over and have control of every General Meeting. If there is no Chairperson or deputy-Chairperson present at the time appointed for holding a General Meeting, or if either of those persons is unwilling to preside over the meeting, the Trustees present will choose any of their number to substitute as Chairperson for that meeting.
- (g) **Resolution:** A resolution shall be passed at a General Meeting, as follows:
- (i) except in the case of resolutions described in clause 7.3(g)(ii) [and (iii)], by more than 50% of the Adult Members of [Name of Iwi] who are

entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 6.1;

- (ii) in the case of a resolution for:
- (aa) ratification of, or changes to, this Deed in accordance with the requirements of sections 17, and 18 as the case may be, of the Act;
 - (bb) disposal of Income Shares in accordance with section 70 of the Act;
 - (cc) Quota to be treated as Settlement Quota in accordance with section 159 of the Act;
 - (dd) disposal of Settlement Quota in accordance with section 162 of the Act; and
 - (ee) a request for rationalisation of Settlement Quota under section 172 of the Act,

by not less than 75% of the Members of [Name of Iwi] who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 6.1, but no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Act;

(iii) [for IAOs: in the case of a resolution for:

- (aa) transfer of authorisations or coastal permits that are settlement assets (except where the proposed transfer is to a company that is wholly owned by the iwi aquaculture organisation); and
- (bb) a request that Te Ohu Kai Moana Trustee Limited transfer authorisations or coastal permits that are settlement assets (except where the proposed transfer is to a company that is wholly owned by the iwi aquaculture organisation);

by not less than 75% of the Members of [Name of Iwi] who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 6.1, but no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Māori Aquaculture Act;

Information must be made available in writing

- 7.4 Information referred to in clause 7.1 must be made available on request in writing by any Member of [Name of Iwi].
- 7.5 Any Adult Registered Member of [Name of Iwi] may request in writing a copy of the Deed, and a copy will be provided subject to such reasonable charges as the trustees require.

No derogation from purposes

- 7.6 Clause 7 shall not derogate from the provisions of clause 3.5.

8. ASSET HOLDING COMPANY AND FISHING ENTERPRISE

Trust must hold an Asset Holding Company

- 8.1 The Trust must ensure that it has at least one Asset Holding Company and that, to the extent and for so long as required by the Act subject to the proviso in clause 7.3 and the provisions of clause 7.3(g)(ii) [and clause 7.3(g)(iii)], that Asset Holding Company is wholly owned by the Trust and performs the functions and complies with the requirements set out in sections 16 and 17 of the Act, which at the date of this Deed are that the Asset Holding Company:
- (a) must be and remain wholly owned and controlled by the Trust;
 - (b) must not have more than 40% of its Directors who are also Trustees elected in accordance with this Deed;
 - (c) must have constitutional documents that have been approved by a simple majority of the Trustees, as complying with the requirements of the Act;
 - (d) must have constitutional documents that have been ratified by a resolution passed by a majority of not less than 75% of the Trustees, whether or not present at the meeting at which that resolution is proposed;
 - (e) must receive and hold, on behalf of the Trust, for so long as they are to be retained, all Settlement Quota and Income Shares allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by [Name of Iwi] under the Act;
 - (f) must provide dividends solely to the Trust;
 - (g) must not undertake fishing or hold a fishing permit;
 - (h) must not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust has complied with its obligations under this Deed including without limitation clause 7.3, and sections 69 to 72 of the Act;
 - (i) must not enter into any transactions relating to or affecting the Settlement Quota it holds unless the Trust has complied with its obligations under this Deed including without limitation clause 7.3, and sections 161 to 176 of the Act;
 - (j) 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 Act;
 - (k) may establish one or more Subsidiaries to be its Subsidiary Asset Holding Companies;
 - (l) may transfer to that Subsidiary some or all of the assets received under clause 8.1(e);
 - (m) any Subsidiary established under the preceding clause:
 - (i) must be and remain wholly owned by the Asset Holding Company that established it;
 - (ii) must receive and hold, on behalf of the Asset Holding Company, Settlement Quota and Income Shares transferred to it by the Asset Holding Company under clause 8.1(l);

- (iii) must provide dividends solely (but indirectly) to the Trust;
- (iv) must not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust has complied with its obligation under sections 69 to 72 of the Act;
- (v) in its functions 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 Act;
- (vi) may establish one or more Subsidiaries to be its Subsidiary Asset Holding Companies which it shall ensure complies with the obligations imposed on it in this clause 8.1; and
- (vii) must not undertake fishing or hold a fishing permit,

but the Asset Holding Company and its Subsidiaries may undertake any other activity or hold any other assets.

Establishment of Fishing Enterprise

- 8.2 If the Trust wishes to establish its own fishing operation, utilising annual catch entitlement from its Settlement Quota, to harvest, process or market fish, or to be involved in a joint venture for those purposes, it must establish an enterprise which is separate from, but responsible to, the Trust to undertake those operations, which must not be the Asset Holding Company or a Subsidiary that receives the Settlement Quota .

Requirements of constitution

- 8.3 The constitution of every Asset Holding Company or Fishing Enterprise or a subsidiary of any of them must require that company to:
- (a) hold its assets and all accretions to those assets whether of a capital or revenue nature on trust for the benefit of the Charitable Purposes of the Trust, such purposes to be promoted by the payment of dividends or other revenue or capital distributions directly or indirectly to the Trust;
 - (b) present an annual plan and statement of incorporate intent to the Trust;
 - (c) report annually to the Trust; and
 - (d) have its accounts audited;

and may provide for the Trust to appoint up to two Trustees as Directors or trustees, as the case may be as Directors of that Company or Fishing Enterprise, as the case may be, provided however that at no time may the Trustees comprise more than 40% of the total number of Directors or trustees of that Company or Enterprise.

[for IAOs: Commercial Aquaculture Activities

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

9. DISPUTES PROCEDURE

Disputes relating to matters arising under the Act

- 9.1 If any dispute shall arise between Members of [Name of Iwi] and the Trust, other than a dispute provided for in the following provisions of clause 9, that dispute shall be determined in accordance with Part 5 of the Act. The provisions of this clause shall not derogate from the rights or obligations of the Trust or any Member of [Name of Iwi] pursuant to the Trustee Act 1956 or any other Act or provision of law or equity.

Registration Disputes

- 9.2 If the Trustees shall make a decision under clause 5.7 to either not register a person or to remove a person from the register, they must:
- (a) refer the matter for to a Membership Committee, appointed by the Trustees under this clause and comprising three [Name of Iwi] Kaumatua whom the Trustees consider are mature persons or elders knowledgeable in [Name of Iwi] whakapapa and recognised as such by Members of [Name of Iwi];
 - (b) consider the recommendation of the Membership Committee and any determination of the Membership Committee made pursuant to a request under clause 5.6(d); and
 - (c) notify the person concerned of their decision, and, if requested by that person, of the principal reasons for that decision.
- 9.3 If the person concerned disputes that decision, that person may exercise their rights under section 180(1)(m) of the Act.

Proceedings of the Membership Committee

- 9.4 When making a recommendation to the Trustees in relation to clause 9.2, the Membership Committee must apply the provisions of the Act relating to registration of Members of [Name of Iwi]. The Membership Committee shall provide the person concerned, and any representative that person appoints the opportunity to attend a meeting of the Membership Committee and present their account of why they should be registered or remain, on the Members' Register, as the case may be. The Membership Committee shall have the discretion to take into account the Membership Committee Member's own knowledge and such other matters as the Membership Committee considers will assist it in making a determination. The Membership Committee must also inform the person concerned of those other matters and take into account any submissions or information provided by that person on those matters.

Determination

- 9.5 The determination of the Trustees on the registration of the person concerned shall be final and binding on that person and the Trust, subject to the provisions of section 180(1)(m) of the Act.

10. WINDING UP OF TRUST

- 10.1 If at any time the Trustees decide that for any reason it is no longer practicable or desirable to carry out the purposes of the Trust the Trustees may decide to wind up the Trust and to vest the assets of the Trust in such one or more charitable bodies in New Zealand for their Charitable Purposes in such manner, upon such terms, and in such proportions as the Trustees may decide, provided that:

- (a) any such vesting must comply with the Act;
- (b) a resolution supporting the winding up proposal and the terms of it must be put and passed by a majority of 75% at a General Meeting in accordance with clause 7.3(g)(ii); and
- (c) if the Trust is then incorporated under the Charitable Trusts Act 1957 the assets of the Trust shall be disposed of in accordance with the provisions of that Act.

11. ALTERATION OF TERMS OF DEED

Changes to the Deed

11.1 The Trustees have power to amend, revoke or add to the provisions of the Deed provided that:

- (a) no amendment may be inconsistent with the Act;
- (b) no amendment may be made earlier than two years after the date on which the Trust is recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for [Name of Iwi] if the amendment relates to any matter provided for, by or under the Act, unless the amendment is required as a consequence of a rule made or amended under section 25 of the Act;
- (c) an amendment may only be promoted if a resolution that the amendment is a resolution for the collective benefit of all Members of [Name of Iwi] is put and passed at a General Meeting in accordance with clause 7.3(g);
- (d) notwithstanding the terms of this Deed, no amendment to this Deed shall be made, and if purported to be made shall be of no legal effect, if the consequence of that amendment is to prejudice in a material manner the Trust's entitlement to charitable status under the law of New Zealand, or its entitlement to an income tax exemption under the Income Tax Act 1994 in respect of income derived by it. Prior to any resolution to amend this Deed being placed before members of the [Name of Iwi] competent advice shall be obtained by the Trustees confirming that the proposed amendments will not jeopardise the charitable status of the Trust or its entitlement to an income tax exemption on income derived by it.

Changes to constitutions of Corporate Entities

11.2 To the extent any proposal for the amendment of the constitutional documents of the Asset Holding Company or any Fishing Enterprise relates to a matter provided for in the Act:

- (a) must not be made earlier than two years after the date on which the Trust is recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for [Name of Iwi] unless the amendment is required as a consequence of a rule made or amended under section 25 of the Act;
- (b) must be consistent with the Act;
- (c) may only be promoted if the amendment is put and passed at a General Meeting in accordance with clause 7.3(g),

and must not amend the requirement in clause 8.3(a) in a manner which would jeopardise the charitable status of a Corporate Entity.

- 11.3 Any adult member of the iwi (including a Trustee) may put forward in writing proposals for changes to this Deed for consideration by the Trustees and the Trustees shall consider that proposal where they are satisfied that, in accordance with clause 5.5, the person is a member of the [Name of Iwi].

Notification to Members of [Name of Iwi]

- 11.4 Any amendment or proposal under clauses 10, 11 or 12 must be notified to Members of [Name of Iwi] in its next communication to them.

12. RESETTLEMENT

Power to resettle

- 12.1 The Trustees have power at any time or times by deed, to settle or resettle upon trust in any manner which in the opinion of the Trustees is for the advancement and benefit of the Members of [Name of Iwi], the whole or any portion or portions of the capital or income of the Trust Fund provided that:
- (a) any such settlement or resettlement must comply with the Act;
 - (b) the resettlement is upon trust for the benefit of all Members of [Name of Iwi];
 - (c) the resettlement may only be promoted if a resolution supporting it is put and passed at a General Meeting in accordance with clause 7.3(g);
 - (d) the resettlement is upon trusts for Charitable Purposes.

Perpetuities

- 12.2 Any settlement or resettlement under clause 12.1 must not transgress the rule against perpetuities as it applies to the Trust.

SIGNATURE

[Trustee] by:

and witnessed by:

Signature of trustee

Name of trustee

Signature of witness

Occupation

City/town of residence

[Trustee] by:

and witnessed by:

Signature of trustee

Name of trustee

Signature of witness

Occupation

City/town of residence

SCHEDULE 1
PART A: Election Processes

Electoral Principles: Hapu or Iwi based and FPP/MMP

Each Iwi must determine whether it will:

- *Elect Trustees by electoral divisions determined, for example, by reference to Hapu or by reference to the whole Iwi;*
- *Use first past the post or a form of proportional representation;*
- *hold elections for alternate trustees. Options include a requirement that the Trustees may not appoint alternates other than from amongst a group of persons elected for the purpose, with the intent that those persons may be seen as part of a succession plan to allow for orderly retirement and replacement of Trustees over time.*

Final Form in Deed as Signed

The preferred method of election must be provided for in the final Trust Deed, before it is signed. The remaining paragraphs contained in this Schedule should apply regardless of which electoral process you decide to insert here.

Time of Elections

1. The Trustees must arrange and conduct an election of Trustees in accordance with the electoral provisions set out in paragraph 1 of this Schedule 1 at such times as shall ensure that:
 - (a) the first election of Trustees shall have been held at such time and shall ensure that the final result of the first election is declared not later than the date referred to in clause 4.1(b) of the Deed; and
 - (b) no person who is an elected Trustee shall hold office for a period longer than 3 years without facing re-election.

Eligible voters

2. All Adult Members shall be eligible to vote on any resolution required by 7.3(g) of this Deed or the election of Trustees and any votes cast as per this Schedule 1 shall be received:
 - (a) by personal vote (not proxy) at a General Meeting; and
 - (b) by postal ballot and received before 5pm on the day of the General Meeting; or
 - (c) by electronic voting.

Nominations for Trustee

3. The Trust must, no later than 35 working days prior to the general meeting at which the election of Trustees will be held, publicly notify members of the [name of Iwi] that nominations for the position of Trustee of the Trust may be lodged. Any such

nomination must include the written signature of both the candidate and the nominator and may not be withdrawn after it has been received. The nomination must:

- (a) contain details of the nominee's full name, address and contact number;
- (b) include a declaration signed by the nominee that declares that the nominee is not a person who is precluded from holding office as a Trustee on the basis of one or other of these matters specified in clause 4.2 of the Deed;
- (c) be accompanied by a brief statement containing details of experience and objectives relevant to the position of Trustee.

Time for Nominations

- 4. Nominations for the position of Trustee may only be made by Adult Registered Members and must be received at the office of the Trust no later than 25 Working Days before the General Meeting at which the election of Trustees is to be held.

PART B: All Votes

Notice of Voting and General Meeting

- 5. The procedure determined by the Trustees in respect of any vote, must be publicly notified not less than 20 Working Days before the date of the vote and, if the vote is to be at a General Meeting of the [Name of Iwi], the notice procedures must comply with those specified in the Act, which at the date of this Deed are:
 - (a) Public Notice that includes:
 - (i) the date, time, venue and agenda of the General Meeting, the place where explanatory documents may be viewed or obtained, and any other information specified in the Act;
 - (ii) advice that a vote is to be taken to ratify or amend the constitutional documents of the Mandated Iwi Organisation;
 - (iii) advice on the method by which the vote will be counted, and
 - (b) Private Notice to every Adult Registered Member who has requested such from the Trust in writing, that gives:
 - (i) the information in the preceding sub-paragraph of this Schedule;
 - (ii) a copy of the Voting Paper; and
 - (iii) the address and return date for the Voting Paper.
 - (c) Private Notice to every Adult Registered Member if there is to be a vote taken to ratify the constitutional documents of the Mandated Iwi Organisation that gives the information in sub paragraphs 5(a)(i) to (iii). **[amend numbering to make sure it refers to sub-para (a) of THIS clause]**

Valid votes

- 6. The conduct of a vote of Members of the [Name of Iwi] at every General Meeting must provide that:
 - (a) in order for a vote to be validly cast, the person casting it must:

- (i) where the person is already registered as an lwi member, record the membership number on the Voting Paper; or
 - (ii) where the person is not registered at the time of the vote, also complete a registration application in the form set out in Schedule 2 which shall be attached to and form part of the Voting Paper;
- (b) No vote cast under either paragraph 2 or paragraph 6(a) of this Schedule 1 shall be finally counted unless the details provided on the Voting Paper (except the ancillary information) are correct and the affiliation of the voter to [Name of lwi] has been confirmed either:
- (i) because that person is an Adult Registered Member at the time they cast their vote; or
 - (ii) if that person has applied at the time that their vote was cast, to become an Adult Registered Member, because their registration was accepted in accordance with clause 5.6.

except that a provisional result, disclosing the number of such persons and counting their votes for provisional purposes only may be declared at any time.

Secret Ballots

7. All Votes shall be conducted so as to ensure that:
- (a) the manner in which a vote is cast shall be known to the returning officer or persons assisting the returning officer, but not to others;
 - (b) that the returning officer and those persons shall undertake to keep that information confidential; and
 - (c) that the Voting Papers are destroyed by the returning officer after the date of completion of the final count under clause 6(b), plus a period of one month thereafter.

**Schedule 2
Registration Form
(See next Page)**

**[INSERT IWI ORG. LOGO HERE]
REGISTRATION APPLICATION**

Applicant Details

Member Registration No: (Office use only) _____

Please Tick the box if you are Whangai

Last Name: _____

First Names: _____ M/F

Address: _____

Maiden Names: _____

Date of Birth: _____

Email: _____

Phone (HM): _____ (WRK): _____

No. of Children: _____

Occupation: _____

Please complete this form and return to:

[insert iwi org. name]

[insert iwi org. address]

[insert iwi org. contact details]

[insert iwi website address if applicable]

Whanau Registration Details
 All whanau over the age of 18 years must fill in a separate registration application form.

First Name	Last Name	DoB	M/F	Relationship to Applicant	Membership Registration No: <i>(office use only)</i>

Please continue on a separate sheet if required.

Private Notice Option
 Tick the box if you wish to receive private notice relating to general meetings and postal ballot papers so that you may vote on elections, constitutional amendments, conversion or disposal of settlement quota. The notice will be sent to the address provided on this form.

Declaration
I HEREBY DECLARE THAT THE INFORMATION IN THIS APPLICATION IS TRUE AND CORRECT
 Signature: _____

Privacy
[insert iwi org. name] will in accordance with the provisions of the Privacy Act 1993, make available to you upon request the personal information it holds about you and will make any appropriate corrections to that information to ensure that the information held is accurate.

FILLING OUT THIS FORM

Please complete all sections of this registration form to the best of your knowledge.

All applications will be validated by a membership committee. Confirmation of your membership will be sent to you, with your *[insert iwi name]* member registration number.

Where an application for registration is declined, the applicant may dispute that decision.

WHO CAN REGISTER?

- Adult members of the iwi who are descendents of a *[insert iwi name]* tupuna.
- Whangai on their own behalf or by their legal guardian.
- Non-adult members of the iwi by their by their parent or their legal guardian.

WHY REGISTER?

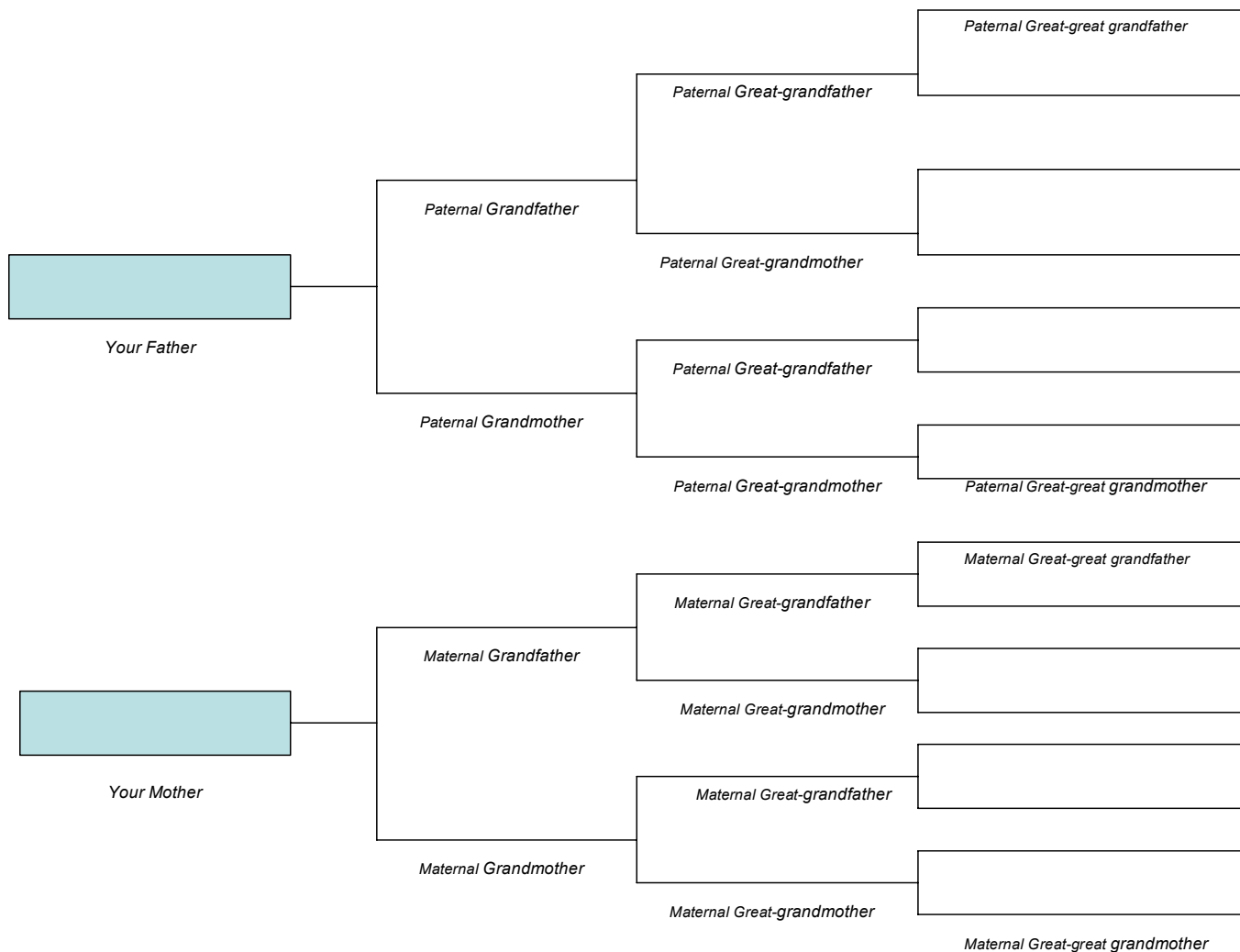
- To be notified of important issues and decisions effecting you.
- To receive benefits that you may be entitled to e.g. education grants or scholarships.

[insert iwi org. name] is the representative body of *[inset iwi name]*.

***[INSERT IWI ORG. NAME]* WHAKAPAPA**

YOUR PRIMARY MARAE:

YOUR HAPU:



ANNEX A Optional Clauses

1. MAJOR TRANSACTIONS

Definitions

1.1 **Assets** means Trust property of any kind, whether tangible, but excluding Settlement Quota and Income Shares **and Settlement Assets**.

1.2 **Major Transaction** means:

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, Assets by the Trust 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, Assets by the Trust 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 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;
- (d) The disposition of, or an agreement to dispose of, whether contingent or not, Income Shares or Settlement Quota by the Trust to Te Ohu Kai Moana Trustee Limited or an entity within the Te Ohu Kai Moana Group or another Mandated Iwi Organisation under the Act; or
- (e) A transaction or series of transactions, or an agreement to transact, whether contingent or not, with a person not entitled to hold Income Shares or Settlement Quota under the Act, including an option, security, mortgage, or guarantee, that could result in:
 - (i) the sale of Income Shares or Settlement Quota by the Trust; or
 - (ii) [Name of Iwi] or the Trust being disentitled for a period of more than 5 years to:
 - (aa) the income from the Income Shares; or
 - (bb) the income from the ACE arising from the Settlement Quota; or
 - (cc) the control or use of the ACE arising from the Settlement Quota,

but does not include:

- (f) Any transaction, not being a transaction involving Income Shares or Settlement Quota, entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust Fund; or
- (g) Any acquisition or disposition of Assets or Income Shares or Settlement Quota by the Trust from or to any company which is wholly owned by the Trust; or

- (h) Any exchange of Settlement Quota for Quota of the same market value that is carried out in accordance with the requirements of the Act and in compliance with any policy of the Trust on quota exchanges that is notified in the Trust's annual plan;

provided however that:

- (i) Nothing in paragraph (c) of this definition applies by reason only of the Trust giving, or entering into an agreement to give, a charge secured over assets of the Trust 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
- (j) For the purposes of this definition, the value of the Trust Fund must be calculated based on the value of the Assets of the Trust and all its Corporate Entities.

Major Transactions

- 1.3 The Trust must not enter into a Major Transaction unless that Major Transaction:
- (a) has been approved by [a majority of 75%] at an Annual General Meeting or Special General Meeting for which notice has been properly given under clause 7.3(c); or
- (b) is contingent upon approval by [a majority of 75%] at an Annual General Meeting or Special General Meeting and the Major Transaction is subsequently approved by Special Resolution at an Annual General Meeting or Special General Meeting for which notice has been properly given under clause 7.3(c); and
- (c) otherwise complies with the requirements of the Act.
- 1.4 The Trust must not enter into a Major Transaction that involves the mortgage or use as collateral of any Settlement Quota.
- 1.5 The Trust must not enter into a Major Transaction within the meaning of paragraph (d) of that definition involving Income Shares or Settlement Quota within two years after the date on which the Income Shares or the first transfer of Settlement Quota, as the case may be, are transferred to the Trust by Te Ohu Kai Moana Trustee Limited.
- 1.6 If approval is obtained in accordance with clause [1.3] for a Major Transaction within the meaning of paragraph 1.2 of that definition involving Income Shares or Settlement Quota, the Trust must comply with the provisions of the Act regarding the offer and sale of the Income Shares or Settlement Quota.
- 1.7 Approval may not be obtained for a Major Transaction within the meaning of paragraph (d) of that definition involving unspecified Settlement Quota unless the approval to sell unspecified Settlement Quota is given up to a specified limit that must not exceed 10% of the total value of the Settlement Quota held by the Trust.

Notice to Members of [Name of Iwi]

- 1.8 At least 20 Working Days before any Annual General Meeting or Special General Meeting at which a resolution is proposed in accordance with clause 7.3(g) the Trust must give Public Notice of:

- (a) the fact that the Trustees want to enter a Major Transaction;
- (b) the availability of Voting Papers for Members of [Name of Iwi] unable to attend the Annual General Meeting or Special General Meeting and the date by which and address to which completed Voting Papers must be sent in order to be validly cast;
- (c) the date, time and venue of the Annual General Meeting or Special General Meeting at which the resolution will be put before the Members of [Name of Iwi];
- (d) the availability, on written request to the Trust, of full particulars (excluding any Confidential Information) regarding the Major Transaction; and
- (e) any further information prescribed by Te Ohu Kai Moana Limited in accordance with the Act.

Income Shares and Settlement Quota

1.9 If a resolution proposed in accordance with clause 7.3(g)7.3(c) relates to a Major Transaction within the meaning of paragraphs (d) or (e) of that definition involving Income Shares, then the Trust must in addition to the matters requiring notice under clause 7.3(c):

- (a) give Public Notice specifying the approximate proportion of the total value of the Income Shares of the Trust that are affected by the Major Transaction; and
- (b) give written notice, where required, to every Adult Member of [Name of Iwi] specifying the number of Income Shares affected by the Major Transaction and a reasonable estimate of the net present value or likely sale price of such Income Shares.

1.10 If a Special Resolution proposed in accordance with clause 7.3(g)7.3(c) relates to a Major Transaction within the meaning of paragraphs (d) or (e) of that definition involving Settlement Quota, then the Trust must in addition to the matters requiring notice under clause 7.3(c):

- (a) give Public Notice specifying the approximate proportion of the total value of the Settlement Quota of the Trust that is affected by the Major Transaction provided however that:
 - (i) an approval to sell specified Settlement Quota or Settlement Quota approved for sale in accordance with a programme is notified in the Trust's annual plan may be valid for not more than 15 months from the date on which the approval is given; and
 - (ii) an approval to sell Settlement Quota generally up to a specified limit that must not exceed 10% of the total value of the Settlement Quota held by the Trust may be valid for not more than 12 months from the date on which the approval is given;
- (b) give written notice, where required, to every Adult Member of [Name of Iwi] specifying the amount of Settlement Quota affected by the Major Transaction and a reasonable estimate of the likely market value of such Settlement Quota.