

NGATI TUWHARETOA FISHERIES
CHARITABLE TRUST

AMENDED AND RESTATED TRUST DEED

As adopted on [] in replacement of the original deed of trust dated 2007 incorporating subsequent amendments made [to confirm whether subsequent amendments have been made]

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DEED dated 2023

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PARTIES

- Karilyn Sharlene Kataraina Te Riini
- Tangonui Te Taonga Manaaki Te Iwi Kingi
- Shaneen Tumanako Simpson-Almond
- Tuirirangi Te Heuheu
- Heemi James Biddle
- Judy Ngapera Harris

("Trustees")

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INTRODUCTION

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- A. Te Ariki Te Heuheu Tukino VII Tumu (the Settlor) as settlor established the Ngāti Tuwharetoa Fisheries Charitable Trust to act, amongst other things, as the Mandated Iwi Organisation of Ngāti Tuwharetoa for the purpose of the Māori Fisheries Act 2004 and to act as the Iwi Aquaculture Organisation for the purpose of the Māori Commercial Aquaculture Claims Settlement Act 2004.
- B. At the time of settlement, Te Ariki has settled the sum of \$100 to be held by the Trustees upon the trusts, and with and subject to the powers and discretions, set out in the original version of this Deed.
- C. It has been agreed, by resolution passed at a General Meeting and by the Trustees, to amend the terms of this Deed for a number of reasons, in particular to ensure best governance practice and consistency with legislative reform, including (but not limited to) the Trusts Act.
- D. This amended and restated version of the Deed sets out the functions and purposes, and provides for the control, governance and operation of the Ngāti Tuwharetoa Fisheries Charitable Trust.

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Moved up [3]: INTRODUCTION

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Deleted: ")¶
Te Kanawa Pitiroi¶
Dean Stebbing¶
Arapiu Seymour¶
Howard Kahura¶
Emily Rameka¶
Anthony Olsen

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Te Ariki

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1. INTERPRETATION

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Definitions

1.1 In this Deed, unless the context otherwise requires:

Act means Māori Fisheries Act 2004.

Adult Member means a Member of Ngāti Tuwharetoa who is over the age of 18 years.

Adult Registered Members means Adult Members who are registered on the Members' Register.

Aquaculture Agreement has the meaning given to it in section 186ZD of the Fisheries Act 1996.

Deleted: **Appointment Certificate** means a certificate in the form or substantially in the form of the certificate set out in Schedule 7.¶

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.

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Balance Date means [] or any other date adopted by the Trustees by written resolution as the date up to which accounts are to be made in each year.

Deleted: **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, benefits the community of Ngāti Tuwharetoa or any other object or purpose that is charitable within the laws of New Zealand.3

Chairperson means a Trustee elected in accordance with clause 9.15 of this Deed to be chairperson of the Trust.

Charitable Purposes means the purposes set out at clause 3 of this Deed.

Confidential Information means any information held or controlled by the Trust 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 Ngāti Tuwharetoa.

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.

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Deputy Chairperson means a Trustee elected in accordance with clause 9.15 of this Deed to be deputy chairperson of the Trust.

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

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Financial Report means the report prepared pursuant to clause 1(a)(i)(iii) of this Deed.

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Financial Year means the period of twelve consecutive months ending on the Balance Date or such other date as the Trustees adopt by resolution.

Fishing Enterprise means a fishing operation established by the Trust under clause 13.2 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 12.

Hapu means any one or more (as the context requires) of the Hapu listed in Schedule 2 to this Deed (as that list of Hapu is amended in accordance with clause 17.1(d)).

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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 Ngāti Tuwharetoa by Te Ohu Kai Moana Trustee Limited.

Deleted: **Hapu Representative** means the representative of a Hapu appointed in accordance with Schedule 5 to this Deed.

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

Iwi means Ngāti Tuwharetoa.

Iwi Aquaculture Organisation has the meaning given to it in the Māori Commercial Aquaculture Claims Settlement Act 2004.

Kaumatia Committee means the committee appointed under clause 15.7.

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; or
- (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) Ngāti Tuwharetoa or the Trust being disentitled for a period of more than 5 years to:
 - A. the income from the Income Shares; or
 - B. the income from the annual catch entitlement arising from the Settlement Quota; or
 - C. the control or use of the annual catch entitlement arising from the Settlement Quota,

but does not include:

- (f) any assets (including Income Shares, settlement asset money and Settlement Quota) transferred by Te Ohu Kai Moana Trustee Limited pursuant to its duties under the Act; or
- (g) any Settlement Assets transferred by Te Ohu Kai Moana Trustee Limited pursuant to its duties under the Māori Commercial Aquaculture Claims Settlement Act 2004; or
- (h) 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
- (i) 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
- (j) 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:

- (k) 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
- (l) 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.

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

Members of Ngāti Tuwharetoa means persons, wherever they may reside, who whakapapa to Tuwharetoa I te Aupouri (confirmation of whakapapa shall be determined pursuant to clause 10 or, if necessary, pursuant to clause 15) but does not include Whāngai who do not whakapapa to Tuwharetoa I te Aupouri.

Deleted: Marae means the marae nominated pursuant to clause 5 of Schedule 1.¶

Members' Register means the register of Members of Ngāti Tuwharetoa held and maintained by the Trust in accordance with clause 10.

Ngāti Tuwharetoa means the collective of the Members of Ngāti Tuwharetoa, wherever they may reside.

Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust means the Trust established in accordance with clause 2.1 of the Deed of Settlement dated 6 June 2003 signed by the Minister in Charge of Treaty of Waitangi Negotiations, the Honourable Margaret Wilson, for the Crown, and by Rae Beverley Adlam, the Reverend Canon Robert David Schuster, Tai Tukiwaho Te Riini, and Ani Te Waikaretu Wickliffe for Ngāti Tuwharetoa (Bay of Plenty).

Nomination Certificate means a certificate in the form as agreed to by resolution of the Trustees.

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Private Notice has the meaning given to it in the Act.

Public Notice has the meaning given to it in the Act.

Registration Form means the form to be used to apply for registration in accordance with clause 10, in a form as agreed by the Trustees, which complies with any restrictions imposed for such form under the Act.

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Registered Member means any Member of Ngāti Tuwharetoa 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 9.17 to perform general secretarial and administrative functions for the Trust.

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 the 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 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 Ariki means the Ariki for the time being of Ngāti Tuwharetoa.

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 Ngāti Tuwharetoa.

Trust means Ngāti Tuwharetoa Fisheries Charitable Trust established by this Deed and, where the context requires, includes the Trustees.

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.

Trustees means the persons elected or appointed under clause 4.

Trusts Act means the Trusts Act 2019.

Tuwharetoa Māori Trust Board means the body corporate constituted by section 16 of the Māori Land Amendment and Māori Land Claims Adjustment Act 1926 under the name of the Tuwharetoa Māori Trust Board.

Voting Form means a voting form (including any electronic voting form) 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 Form attached to and forming part of that Voting Form and that complies with any restrictions imposed for such form under the Act.

Wards mean any one or more of the groups listed in Schedule 3 to this Deed, and respectively known for the purposes of this Deed as:

- (a) Tuwharetoa Bay of Plenty;
- (b) Northern Lake Taupo;
- (c) Southern Lake Taupo; and
- (d) Tuwharetoa Southern.

Whāngai means those persons who do not whakapapa to Tuwharetoa I te Aupouri but who are adopted by a Member of Ngāti Tuwharetoa in accordance with the Tikanga of Ngāti Tuwharetoa.

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

Interpretation

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;
- (b) a reference to a paragraph is a reference to a paragraph of that schedule;
- (c) 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.
- (d) references in the Deed to:

Deleted: , who at the date of this Deed is Te Heuheu Tukino VIII Tumu (Tumu Te Heuheu), the settlor of this Trust

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→ Reference

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References

- (i) 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);
 - (ii) one gender includes every other gender;
 - (iii) the singular includes the plural and vice versa;
 - (iv) "month" or "monthly" will mean, respectively, calendar month or calendar monthly;
 - (v) clauses and sub-clauses are references to clauses and sub-clauses in this Deed; and
 - (vi) the Deed includes its Background and Schedules; and
- (e) headings are for ease of reference only and must be ignored in interpreting the Deed.

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→ Headings

2. THE TRUST

Acknowledgement of Trust

- 2.1 The Trustees acknowledge and declare that they hold the Trust Fund upon the trusts and with the powers and for the Charitable Purposes set out in this Deed.
- 2.2 The name of the Trust established by this Deed is the Ngāti Tuwharetoa Fisheries Charitable Trust, or such other name as the Trustees may determine by resolution from time to time.

Registration under the Charities Act 2005 and the Charitable Trusts Act 1957

- 2.3 If any while so registered as a charitable entity under the Charities Act 2005 and/or as an incorporated charitable trust board under the Charitable Trusts Act 1957, the Trustees shall comply with the requirements of those Acts.

3. KAUPAPA/PURPOSES

Purposes

- 3.1 The purposes for which the Trust is established are to receive, hold, manage and administer the Trust Fund for every Charitable Purpose benefiting Ngāti Tuwharetoa including:
- (a) the protection and enhancement of the mana and rangatiratanga of Ngāti Tuwharetoa, its taonga, its Arikitunga and its members;
 - (b) the promotion of the educational, spiritual, economic, social and cultural advancement and well-being of Ngāti Tuwharetoa and its Hapu;
 - (c) the maintenance and establishment of places of cultural or spiritual significance to Ngāti Tuwharetoa;
 - (d) the promotion within Ngāti Tuwharetoa of health and well-being and relief of the aged; and
 - (e) for any other purposes within Aotearoa New Zealand, whether relating to the advancement of education, the relief of poverty, or any other matter beneficial to the community of Ngāti Tuwharetoa and all the Members of Ngāti Tuwharetoa.

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Te Ariki as settlor settles the said sum of \$100 on the Trustees upon the trusts set out in this Deed.

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 Ngāti Tuwharetoa on the trusts set out in this Deed, settlement assets allocated and grants made to Ngāti Tuwharetoa 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 this Deed 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:
 - A. harbour quota under section 143 of the Act; and
 - B. 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 set out in this Deed;
- (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 clause 3.2(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 set out in this Deed;

- (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 Ngāti Tuwharetoa 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;

- (h) act on behalf of Ngāti Tuwharetoa 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:
 - (i) directly receive and hold, on behalf of Ngāti Tuwharetoa, Settlement Assets allocated to Ngāti Tuwharetoa by Te Ohu Kai Moana Trustee Limited in accordance with the Māori Commercial Aquaculture Claims Settlement Act 2004; and
 - (ii) enter into agreements with other iwi aquaculture organisations in relation to the allocation of Settlement Assets;
- (i) if Ngāti Tuwharetoa determine, directly receive and hold, on behalf of Ngāti Tuwharetoa, on the trusts set out in this Deed, any other Treaty of Waitangi settlement assets; and
- (j) 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 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 the Ngāti Tuwharetoa Fisheries Charitable Trust as provided in clause 13.4.

Strategic governance

3.4 The Trust must exercise strategic governance over:

- (a) its Corporate Entities; and
 - (i) the process to examine and approve annual plans that set out:
 - (ii) the key strategies for the use and development of fisheries assets of Ngāti Tuwharetoa;
 - (iii) the expected financial return on those assets;
 - (iv) any programme to:
 - A. manage the sale of annual catch entitlements derived from the Settlement Quota held by the Trust's Asset Holding Companies or their Subsidiaries; and
 - B. 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 Corporate Entity 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 17.1(c) or 18, the Trust shall be restricted accordingly and limited to New Zealand.

4. APPOINTMENT OF TRUSTEES

Number of Trustees

4.1 The Trust shall have a minimum of three (3) Trustees and a maximum of six (6) Trustees at any one time who must be elected by the Adult Members of Ngāti Tuwharetoa in accordance with the provisions of this Deed.

4.2 Retiring Trustees shall be eligible for re-election.

Cessation of office of Trustee

4.3 Subject to the provisions of clause 4.4 relating to notification of cessation of office 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 of absence granted by the other Trustees, 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) commits an act of bankruptcy or is an undischarged bankrupt; or
- (f) is or has ever been convicted of a crime 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; or

(h) refuses to act; or

(i) ceases to qualify as an officer of a charitable entity under section 16 of the Charities Act 2005; or

(j) in the opinion of the other Trustees, expressed in a resolution, is for any other reason unfit to carry out the duties of a Trustee.

4.4 The Trustee concerned shall cease to hold office:

- (a) in a case where clause 4.3(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 clause 4.3(b) applies from the date the notice of resignation shall have been delivered to the Trust;
- (c) in the case where clause 4.3(c) applies from the date of the first meeting of Trustees after that Trustee's third consecutive absence without leave;

Moved down [4]: MANAGEMENT OF THE TRUST

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Deleted: , except that the first Trustees shall be those persons who have signed this Deed as Trustees, and those first Trustees shall remain in office until the later of...

Deleted: <#>the date one year after the date of this Deed; and
the date one month after the date upon which the recognition of the Trust as the Mandated Iwi Organisation of Ngāti Tuwharetoa is recorded under section 13(1)(b) of the Act.

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(d) in cases where clauses 4.3(d) to 4.3(i) 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; ~~and~~

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~~(e) in a case where clause 4.3(j) applies, from the date that the resolution of Trustees is passed.~~

4.5 Should a vacancy pursuant to clauses 4.3(a) to 4.3(j) result in the number of Trustees being fewer than ~~three (3)~~, all vacancies shall thereupon be filled in accordance with the process set out in Schedule 1 as soon as practicable after such vacancy occurring. In all such cases the candidates shall be nominated for election by:

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- (a) the same Wards, or
- (b) the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust; or
- (c) the Tuwharetoa Māori Trust Board,

as the case may be, as the Trustee whose vacancy is being filled. In the case of any vacancy, the remaining Trustees (which shall include any Trustee who shall cease to be a Trustee under clause 4.4(a)) shall continue to act until those vacancies have been filled.

Record of Changes of Trustees

4.6 The Trustees must record every appointment, re-appointment, retirement and cessation of office of any Trustee in the Trust's minute book (whether physical or electronic), and ensure that any statutory requirements as to the vesting of the Trust Fund in the Trustees are satisfied.

Trustees Nomination

4.7 One Trustee shall be elected from amongst the persons nominated respectively by:

- (a) each Ward;
- (b) the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust; and
- (c) the Tuwharetoa Māori Trust Board,
- (d) in accordance with the nomination processes set out in Schedule 1.

Trustees must act for all Ngāti Tuwharetoa

4.8 Notwithstanding that such nominations shall be made by those Wards, that Trust and that ~~Tuwharetoa Māori Trust~~ Board, any person elected as a Trustee in accordance with the provisions of this Deed must act in the interests of all Hapu and all Members of Ngāti Tuwharetoa.

5. POWERS OF TRUSTEES

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To

Subject to any restrictions set out in this Deed or at law, in order 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 4.8;
- (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.

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6. TRUSTEE DUTIES

6.1 The Trustees must comply with the following mandatory duties, as prescribed by sections 23 – 27 of the Trusts Act:

- (a) the duty to know the terms of the Trust;
- (b) the duty to act in accordance with the terms of the Trust;
- (c) the duty to act honestly and in good faith;
- (d) the duty to act in furtherance of the Charitable Purposes in accordance with the terms of this Deed; and
- (e) the duty to exercise the Trustees' powers for a proper purpose.

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~~6.2 In addition to the duties set out at clause 6.1, the Trustees must also comply with the duties set out in clauses 6.3 - 6.11 below, which repeat, and in some cases modify, the default duties set out in sections 28 – 39 of the Trusts Act.~~

~~6.3 In administering the Trust (other than when exercising a discretion to distribute all or part of the Trust Fund), a Trustee must exercise the care and skill that is reasonable in the circumstances, having regard, in particular:~~

~~(a) to any special knowledge or experience that the Trustee has or that the Trustee holds out as having; and~~

~~(b) if the person acts as a Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business and profession.~~

~~6.4 Other than where Trustees decide to make investments or distributions in furtherance of the Charitable Purposes, when exercising any power to invest the Trust Fund, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others. This clause expressly modifies the application of the default duty at section 30 of the Trusts Act.~~

~~6.5 A Trustee must not exercise a power of a Trustee directly or indirectly for their own benefit.~~

~~6.6 A Trustee must consider actively and regularly whether the Trustee should be exercising one or more of the Trustee's powers.~~

~~6.7 A Trustee must not bind or commit the Trustees to a future exercise or non-exercise of a discretion.~~

~~6.8 A Trustee may have conflicts between their interests and the interests of the Owners, provided that they declare those interests in accordance with clause 9.25 and the procedure prescribed by that clause is followed in respect of that Trustee's interest. This clause expressly modifies the application of the default duty at section 34 of the Trusts Act.~~

~~6.9 Other than as allowed by section 81 of the Trusts Act 2019, or the provisions of this Deed, a Trustee must not make a profit from, or take any reward for, their trusteeship of the Trust. This clause expressly modifies the application of the default duties at sections 36 and 37 of the Trusts Act.~~

~~6.10 Other than where otherwise required at law or in this Deed, the Trustees may act by majority in accordance with clause 9.8.~~

~~6.11 The Trustees must act, at all times, in accordance with the Deed, as well as any code of conduct or other policy adopted by the Trustees from time to time.~~

7. TRUSTEE LIABILITY

Restriction on limitation of liability

~~7.1 To the extent allowed by law, no Trustee (including any former Trustee) will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee or any of the Trustees unless the loss or liability arises from any breach of trust arising from a Trustee's dishonesty, wilful misconduct or gross negligence.~~

Proceedings against Trustees

~~7.2 No Trustee will be bound to take, or liable for failure to take, any proceedings against any other Trustee (including any former Trustee) for any breach or alleged breach of trust~~

committed by that other Trustee.

8. TRUSTEE INDEMNITY

Indemnification

8.1 Subject to clause 8.2 and to the extent allowed by law, each Trustee (including any former Trustee) is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together referred to as **Liabilities**) suffered or incurred by that Trustee in connection with the Trust.

Indemnification restriction

8.2 The indemnification provided under clause 8.1 will not apply to any Trustee (including any former Trustee) for any Liability for any breach of trust arising from that Trustee's dishonesty, wilful misconduct or gross negligence.

9. MANAGEMENT OF THE TRUST

Management of the Trust - General

- 9.1 The Trustees shall have the absolute management and entire control of the Trust Fund.
- 9.2 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 Trust.
- 9.3 Any individual may be appointed as an officer or employee of the Trust but no Trustee may be appointed as an employee.
- 9.4 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 9.25) in support of that appointment on those terms.
- 9.5 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 Ngāti Tuwharetoa and in any website, letterhead, formal written contract or printed publications of the Trust.
- 9.6 The Trustees must do all things practicable and expedient to ensure that the Trust remains eligible for the benefit of any tax concession benefitting charitable entities for which it would otherwise be eligible (including exemption of the Trust's income from income tax and tax concessions in respect of contributions to the Trust), unless the Trustees determine that eligibility for the concession is not necessary for the advancement of the Charitable Purposes. This includes complying with all relevant obligations under the Inland Revenue Acts.

Meetings of Trustees

- 9.7 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.

Moved (insertion) [4]

9.8 Except as expressly provided otherwise by this Deed any matter requiring decision and resolutions at a meeting of the Trustees shall be decided by a simple majority of the Trustees personally present and voting on the matter.

9.9 In the event of an equality of votes the Chairperson shall not have a second or casting vote.

9.10 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 electronic means as shall be determined by the Trustees from time to time shall be deemed to have been duly signed by that Trustee.

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9.11 Any Trustee may at any time give notice convening a meeting of the Trustees. Such notice shall be given by:

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(a) email to each Trustee at the last email address (if any); or

(b) letter posted to each Trustee at the last address (if any)

notified in writing to the Trust by that Trustee at least 10 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.

9.12 The quorum for a meeting of Trustees shall be a majority of the Trustees who, for the time being, hold office under clause 4. No business shall be transacted at any meeting unless a quorum is present.

9.13 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 clauses 9.7 - 9.14 as to meetings of the Trustees shall apply to such meetings provided the following conditions are met:

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- (a) each Trustee shall be entitled to notice of such a meeting and to be linked by electronic means for the purposes of the meeting;
- (b) 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;
- (c) at the commencement and conclusion of the meeting the Chairperson must call upon each Trustee to acknowledge their attendance;
- (d) 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; and
- (e) 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.

9.14 Minutes of the proceedings of all meetings and resolutions of the Trustees shall be recorded in a minute book (whether physical or electronic) 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.

Chairperson, Deputy Chairperson and Secretary

- 9.15 The Trustees shall elect one Trustee to act as Chairperson from year to year. The Chairperson will act as the chair of any meeting of the Trustees.
- 9.16 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, and shall perform all the duties, of the Chairperson.
- 9.17 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.

Appointment to carry out Trustee powers and functions

- 9.18 The Trustees may, from time to time as they see fit, appoint one or more persons (whether it is a committee, employee, contractor or otherwise) to carry out powers and perform functions of Trustees to the extent allowed by section 67 of the Trusts Act, provided that:
 - (a) the terms of this Deed will bind any committee or person that is appointed in accordance with this clause 9.18;
 - (b) every appointment by the Trustees will be revocable at will and no such appointment will prevent the exercise of any power or performance of any duty by the Trustees;
 - (c) If the Trustees make an appointment under this clause 9.18:
 - (i) the Trustees must keep the appointment and the terms of the appointment under review; and
 - (ii) if the circumstances are appropriate, the Trustees must consider whether they should exercise any powers to intervene, including (without limitation) giving directions to the appointee, amending the terms of their appointment or replacing the appointee; and
 - (iii) the terms of appointment to any appointee under this clause 9.18, must be in writing and must specify that the Responsible Trustees can amend those terms or revoke the appointment at any time with or without reason.

Accounts and Audit

- 9.19 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;
- 9.20 The Trustees shall cause true accounts for each Financial Year to be prepared and 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;
- 9.21 The Trustees must comply with current reporting standards and requirements of a charitable entity with their level of expenditure (including preparing such financial statements and other records, and filing such records with Charities Services, if required at law); and

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 In addition to any General Meetings that may be held by the Trust from time to time the Trustees shall meet with the Hapu Representatives at least twice in each year and otherwise as the Trustees consider necessary.
 The purpose of the meetings with Hapu Representatives shall be to:
 receive comment from Hapu Representatives in respect to reports relating to the Trust and its Corporate Entities provided at General Meetings (including annual reports, financial and performance statements and annual and 5 yearly plans);
 receive Hapu members' feedback from Hapu Representatives on the use and management of the Trust Fund by the Trust and the Corporate Entities.
 All meetings with the Hapu Representatives shall be called with a minimum of 7 days notice given in the same manner as is required of meetings of Trustees.
 The Chairperson of the meeting shall be the Chairperson for the time being of the Trust appointed in accordance with clause 4.12. 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 also not present, then the Trustees present shall elect one of their number to substitute as Chairperson for that meeting.
 There shall be no quorum for a meeting with Hapu Representatives and no vote need be taken at the meeting. However, the Trustees will give consideration to, (but without imposing any obligation to take or omit to take any action with respect to) the views of the Hapu Representatives as conveyed at those meetings as a guide to setting future policies and plans in respect of the Trust Fund and otherwise carrying out the Charitable ... [1]

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9.22 Nothing in this clauses 9.19 to 9.21 shall derogate from any other obligations of the Trustees in respect of accounts and audits.

Reliance on Advice

9.23 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 the 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) a committee of Trustees appointed and acting in accordance with clause 9.18.

9.24 Clause 4.15 applies only if the Trustee, subject to restrictions on Trustee limits on liability in accordance with clause 7:

- (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

9.25 Any Trustee who is or may be in any other capacity, 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. For the avoidance of doubt, that interested Trustee may attend the Trustee meeting and be involved in deliberations and vote on all other items of business at that Trustee Meeting, other than that in which they are an interested Trustee.

Definition of Interested Trustee

9.26 For the purposes of clause 9.25, 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 Corporate Entity;
- (d) is the parent, child, spouse or de facto partner of, or in a civil union with, 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.

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Interests in common with Iwi/Hapu/Whanau

9.27 Notwithstanding clauses 9.25 and 9.26, no Trustee shall be considered to be interested in a matter where that Trustee is a member of the Iwi or a Hapu referred to in Schedules 3, 4 and 5 and where his or her interest is not different in kind from the interests of other members of the Iwi or that Hapu.

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Interests in common with Tuwharetoa Maori Trust Board or Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust

9.28 Notwithstanding clauses 9.25 and 9.26, no Trustee shall be considered to be interested in a matter where that Trustee is nominated by the Tuwharetoa Māori Trust Board or the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust and where his or her interest is not different in kind from the interests of either the Tuwharetoa Māori Trust Board or Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust, as the case may be, which nominated them.

Recording of Interest

9.29 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

9.30 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:

(e) the value of any payment made in accordance with this clause 9.30 is reasonable and no more than that which would be paid in an arms' length transaction between two willing parties;

- (f) 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 5(d) the provisions of that clause have been complied with;

- (g) the Trustees must disclose in their annual report referred to in clause 12.2 next published after payment of that reimbursement, remuneration or charge, in respect of all such reimbursements, remuneration or charges:
- (i) the amount thereof received by each Trustee or any such firm or entity;
 - (ii) the nature of the reimbursement and the nature and extent of the services rendered or time expended;
 - (iii) the method of calculation of the reimbursement, remuneration or charge; and
- (h) in the case of an appointment referred to in clause 5(d), the full written terms and conditions thereof have been made available for inspection at the office of the Trust, by any Registered Member who makes written request for the same.

Business income restriction

9.31 If income is derived from any business carried on by, for, or for the benefit of the Trust, the Trustees must ensure that, within the ambit and scope of clauses 9.32 to 9.34, 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).

9.32 For the purpose of clause 9.31, 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 9.32 and 1.1(a) above.

9.33 For the purpose of clause 9.31, 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.

9.34 For the purpose of clause 9.31, a person described in clause 9.32 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 9.32 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) the nature or extent of any benefit, advantage or income described in clause 9.33; or

Deleted: <#>Subject to clause 4.22, 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 Trustee;¶

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→¶ 9.32 to 9.349.319.34

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~~(b) the circumstances in which any benefit, advantage or income described in clause 9.33, is, or is to be, given or received.~~

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~~9.35 The Trustees shall require that language to the same effect as clauses 9.31 to 9.34 of this Deed be included in the constitution of every Asset Holding Company or Fishing Enterprise or any Subsidiary of any of them.~~

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Appointment and removal of Custodian Trustee

9.36 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 ~~67(1)~~ of the ~~Trusts Act 2019~~, and the Trustees may at any time by deed revoke any such appointment.

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Incorporation

9.37 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.

9.38 **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.

9.39 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.

10. REGISTER OF MEMBERS OF NGĀTI TUWHARETOA

Members' Register of Ngāti Tuwharetoa

10.1 The Trustees must have, and maintain in a current state, a register of Members of Ngāti Tuwharetoa

- (a) that includes the name, date of birth, and contact details of every Member of Ngāti Tuwharetoa who is entered into that register in accordance with this Deed;
- (b) that is available for inspection by Registered Members who can view their own registration details and that is available for inspection by a parent, or guardian or other person standing in the stead of a parent, who may view the registration details of any child, ward or dependent under 18 years of age who was registered by such persons, whichever the case may be; and
- (c) that allocates a member registration number to each Member of Ngāti Tuwharetoa entered in that register and may if the member nominates in the Registration Form (or unique identifier) allocate the member to the Hapu through which they will participate in the Trust, such Hapu to be determined in accordance with this clause 10); and
- (d) make ongoing efforts to register all Members of Ngāti Tuwharetoa on the Members' Register.

10.2 An application to be entered in the Members' Register may be made by:

- (a) Adult Members, on their own behalf or by their legal guardian; and

Deleted: ~~<#>APPOINTMENT OF HAPU REPRESENTATIVES~~

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Deleted: ~~Hapu Representatives shall be appointed and hold office in accordance with the provisions set out in Schedule 5 of this Deed.~~

- (b) other Members of Ngāti Tuwharetoa, who are not Adult Members of the Iwi, by their parent or legal guardian on their behalf; and
- (c) other Members of Ngāti Tuwharetoa by an Adult Member on their behalf who, in the opinion of the Kaumatua Committee, stands in the stead of a parent of that person; and

in each case that application must be completed on the Registration Form.

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10.3 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 Forms 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 Ngāti Tuwharetoa

10.4 Subject to clauses 10.6 and 10.7, the Trustees must enter in the Members' Register, any person who:

- (a) has made an application or has had an application made on their behalf in accordance with either clause 10.2(b) or 10.2(c) by undertaking the process in clause 10.2 and lodged with the office of the Trust or on a Voting Form stating their name, date of birth and such details as are required by the Trustees to enable the Trustees to contact that person); or
- (b) whose information the Trustees have received from the Tuwharetoa Māori Trust Board, or Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust, such information having been the result of an application by that person to either the Tuwharetoa Māori Trust Board, or the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust,

and who in the reasonable opinion of the Trustees whakapapa to Tuwharetoa I te Aupouri.

10.5 Any person registered in accordance with clause 10.4 must be allocated a registration number or other unique identifier and (where nominated by that person) have their hapu affiliation recorded in the Members' Register.

10.6 The Trustees:

- (a) may require any person seeking registration as a Member of Ngāti Tuwharetoa to provide evidence verifying his or her whakapapa to Tuwharetoa I te Aupouri or of any other matter referred to in clause 10.4 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 whakapapa to Tuwharetoa I te Aupouri and any other matter referred to in clause 10.4;

- (c) may consult with the Kaumatua Committee in relation to any application for registration, or continued registration, as a Member of Ngāti Tuwharetoa and participation in the Trust through any particular Hapu; and
- (d) without limiting the foregoing, may request the Kaumatua Committee to:
 - (i) verify the evidence of whakapapa to Tuwharetoa I te Aupouri provided by a person seeking registration as a Member of Ngāti Tuwharetoa;
 - (ii) determine the Tikanga of Ngāti Tuwharetoa by which Whāngai are to whakapapa to Tuwharetoa I te Aupouri; and
 - (iii) determine the Tikanga of Ngāti Tuwharetoa by which Members of Ngāti Tuwharetoa most appropriately affiliate to a Hapu of Ngāti Tuwharetoa

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

10.7 If the Trustees consider that any information about a person received under clause 10.4(a) or clause 10.6 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 and participation through a particular Hapu, the Trustees may decline to register, or remove that person from the register or in the case of participation through a particular Hapu the Trustees may allocate that persons participation to another Hapu in accordance with the Tikanga of Ngāti Tuwharetoa, as the case may be.

Process when registration declined or removed

10.8 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 15.7 shall apply.

Registration not necessary

10.9 To avoid doubt, it shall not be necessary, in order to be considered a Member of Ngāti Tuwharetoa for the purposes of clause 3.1, for a Member of Ngāti Tuwharetoa to be registered in accordance with this clause 10.1. However only Registered Members of Ngāti Tuwharetoa shall be eligible to:

- (a) nominate a candidate for election as a Trustee; and
- (b) be nominated as a candidate for election as a Trustee under a Ward.

De-registration by Member of Ngāti Tuwharetoa

10.10 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 office of the Trust.

Whangai not of Ngāti Tuwharetoa descent not eligible

10.11 No person adopted by the process of Whangai by a Member of Ngāti Tuwharetoa who is not themselves able to whakapapa to Tuwharetoa I te Aupouri shall be recognised as a Member of Ngāti Tuwharetoa for the purposes of this Deed. Such a person shall be ineligible to participate in the processes and governance structures provided for in this Deed.

Notice not necessary

10.12 It shall not be necessary for the Trust to provide Private Notice to Members of Ngāti Tuwharetoa where the Trustees believe on reasonable grounds (and have evidence supporting that belief), that the Members' contact details are not current.

11. VOTING PROCEDURE

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.

12. GENERAL MEETINGS OF IWI AND REPORTING

Reporting Responsibilities

12.1 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
 - (i) the performance of:
 - (ii) the Asset Holding Company;
 - (iii) the Fishing Enterprise;
 - (iv) any joint venture or other entity that conducts business using the Settlement Quota or Income Shares;
 - (v) any Corporate Entity,

in accordance with the provisions of this clause 12.

Trust to hold an Annual General Meeting

12.2 Each year, the Trust must hold a General Meeting at which it provides an opportunity for the Members of Ngāti Tuwharetoa 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 Registered Members of Ngāti Tuwharetoa; and
 - (ii) a comparison of the Trust's performance against the objectives set out in the annual plan, including:
 - A. changes in the value of the Trust's assets; and
 - B. 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:
 - A. the quantity of Settlement Quota held by the Asset Holding Company

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- of the Trust at the beginning of that year; and
 - B. the value of Settlement Quota sold or exchanged in that year; and
 - C. the identity of the purchaser or other party to the exchange; and
 - D. any transaction with Settlement Quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and
 - E. the Settlement Quota interests that have been registered against the quota shares of the Trust; and
 - F. the value of Income Shares sold, exchanged, or acquired; and
- (v) a report on the interactions of the Trust in fisheries matters:
- A. with other entities within Ngāti Tuwharetoa; and
 - B. with other Mandated Organisations; and
 - C. 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 Fishing Enterprise established by the Trust under clause 13.2 to conduct fishing operations utilising annual catch entitlement from the Trusts Settlement Quota, to harvest, process or market fish, or to be involved in any joint venture for those purposes, (each referred to in this clause 12.2as 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:
 - A. the key strategies for the use and development of Ngāti Tuwhaertoa's fisheries assets;
 - B. the expected financial return on those assets;
 - C. any programme to:

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- I. manage the sale of annual catch entitlements derived from the Settlement Quota; or
 - II. reorganise the Settlement Quota held by the 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,

12.3 General Meetings of Members of Ngāti Tuwharetoa

- (a) **Annual General Meeting:** Each General Meeting must be 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 50% of the Trustees; or
 - (iii) not less than 10% of the Adult Registered Members of Ngāti Tuwharetoa,

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 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;
- (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 Ngāti Tuwharetoa 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 12.2, or any meeting at which any of the

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in the case of the first General Meeting, held before the date referred to in clause 4.1(b); and¶

matters in paragraphs (iv) to (vii) of clause 12.3(b) or changes to, this Deed in accordance with the requirements of section 18 of the Act, 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) 50% or more of the Trustees; and
 - (ii) a minimum of 40 of the Adult Registered Members of Ngāti Tuwharetoa, (which may include the Trustees).
- (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 12.3(d) the Trustees and Members of Ngāti Tuwharetoa present 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 12.3(g)(ii) and (iii), by more than 50% of the Adult Members of Ngāti Tuwharetoa who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 11;
 - (ii) in the case of a resolution for:
 - A. changes to this Deed in accordance with the requirements of section 18, of the Act and the provisions of this Deed;
 - B. disposal of Income Shares in accordance with section 70 of the Act;
 - C. Quota to be treated as Settlement Quota in accordance with section 159 of the Act;
 - D. disposal of Settlement Quota in accordance with section 162 of the Act;
 - E. a request for rationalisation of Settlement Quota under section 172 of the Act; and
 - F. a proposal to wind up the Trust and the terms for that proposal pursuant to clause 16 of this Deed,

by not less than 75% of the Members of Ngāti Tuwharetoa who are entitled to vote and actually cast a vote in accordance with the voting procedures

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established in accordance with clause 11, but no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Act;

(iii) in the case of a resolution for:

- A. 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
- B. 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 Ngāti Tuwharetoa who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 11, but no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Māori Commercial Aquaculture Claims Settlement Act 2004.

Information must be made available in writing

- 12.4 Information referred to in clause 12.1 must be made available on request in writing by any Member of Ngāti Tuwharetoa.
- 12.5 Any Adult Registered Member 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

- 12.6 Clause 12 shall not derogate from the provisions of clause 3.5.

13. ASSET HOLDING COMPANY AND FISHING ENTERPRISE

Trust must hold an Asset Holding Company

- 13.1 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 8.3 and the provisions of clause 12.3(g)(ii)(B.) and clause 12.3(g)(ii)(D.), 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, Ngāti Tuwharetoa 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 12.3, 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 12.3, 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 13.1(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 13.1(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 obligations 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 13.1; 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

- 13.2 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 ("Fishing 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

- 13.3 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 corporate 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 of that Asset Holding 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 Asset Holding Company or Fishing Enterprise.

Commercial Aquaculture Activities

- 13.4 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.

14. MAJOR TRANSACTIONS

- 14.1 The Trust must not enter into a Major Transaction unless that Major Transaction:
- (a) has been approved by a majority of 75% of those persons who actually vote at an Annual General Meeting or Special General Meeting for which notice has been properly given under clause 12.3(c); or
 - (b) is contingent upon approval by a majority of 75% of those persons who actually vote 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 12.3(c); and
 - (c) otherwise complies with the requirements of the Act.
- 14.2 The Trust must not enter into a Major Transaction that involves the creation of a mortgage or other charge or security interest in any Settlement Quota.
- 14.3 The Trust must not enter into a Major Transaction within the meaning of paragraph (d) of the definition of that term [in clause 1.1](#) 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.
- 14.4 If approval is obtained in accordance with clause 14.1 for a Major Transaction within the

meaning of paragraph (d) of the definition of that term 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.

- 14.5 Approval may not be obtained for a Major Transaction within the meaning of paragraph (d) of the definition of that term 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 Ngāti Tuwharetoa

- 14.6 At least 20 Working Days before any Annual General Meeting or Special General Meeting at which a resolution is proposed in accordance with clause 12.3(c), the Trust must give Public Notice of:
- (a) the fact that the Trustees propose a Major Transaction;
 - (b) the availability of Voting Forms for Registered Members unable to attend the Annual General Meeting or Special General Meeting and the date by which and address to which completed Voting Forms 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 Ngāti Tuwharetoa;
 - (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 Trustee Limited in accordance with the Act.

Income Shares and Settlement Quota

- 14.7 If a resolution proposed in accordance with clause 12.3(c) relates to a Major Transaction within the meaning of paragraphs (d) or (e) of the definition of that term involving Income Shares, then the Trust must in addition to the matters requiring notice under clause 12.3(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 Ngāti Tuwharetoa 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.
- 14.8 If a Special Resolution proposed in accordance with clause 12.3(c) relates to a Major Transaction within the meaning of paragraphs (d) or (e) of the definition of that term involving Settlement Quota, then the Trust must in addition to the matters requiring notice under clause 12.3(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:
 - (viii) 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

- (ix) 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 Private Notice, where required, to every Registered Member specifying the amount of Settlement Quota affected by the Major Transaction and a reasonable estimate of the likely market value of such Settlement Quota.

15. DISPUTES PROCEDURE

Disputes under the Act

- 15.1 If any dispute shall arise between Members of Ngāti Tuwharetoa and the Trust, (other than a dispute provided for in clauses 15.2 or 15.3), and the parties are unable, within a reasonable time, to resolve the dispute, they must, acting in good faith, endeavour to agree on a process for resolving the dispute. Should the parties fail to reach agreement on the process to resolve a dispute relating to matters arising under the Act, that dispute shall be determined in accordance with Part 5 of the Act.

General Disputes

- 15.2 Any dispute of a general nature, being a dispute not covered by Part 5 of the Act ("General Dispute"), shall be referred to arbitration in accordance with the Arbitration Act 1996. If there is any dispute as to whether a General Dispute relates to Tikanga, that dispute shall be referred to the Kaumatua Committee to determine. If the General Dispute does relate to Tikanga, it shall thereafter be referred to the arbitration of the Kaumatua Committee.
- 15.3 The arbitration shall be commenced by any Adult Member of Ngāti Tuwharetoa or Trustee serving written notice on the other party or parties stating the subject matter and details of the General Dispute and requiring the General Dispute to be referred to arbitration. The arbitration shall be conducted as soon as possible at the Trust's office or such other place as the parties agree to meet in accordance with the Tikanga of Ngāti Tuwharetoa (in the case of a General Dispute which relates to Tikanga) or, in all other cases, the provisions of the Arbitration Act 1996.
- 15.4 Subject to clause 15.6 the determination of the arbitrator shall be final and binding on all parties to the General Dispute.
- 15.5 The parties to a General Dispute will not commence Court proceedings with respect to all or part of the General Dispute until the process provided under clause 15.2 to 15.4 above has been undertaken.
- 15.6 The provisions of clauses 15.1 to 15.5 above shall not derogate from the rights or obligations of the Trust or any Member of Ngāti Tuwharetoa pursuant to the ~~Trusts Act~~, or any other Act or provision of law or equity.

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Registration Disputes

- 15.7 If the Trustees shall take a decision under clause 10.7 to not register a person, or to remove a person from the Members' Register, they must:
- (a) refer the matter to a Kaumatua Committee, appointed by the Trustees under this clause 15.7(a). The Kaumatua Committee shall comprise five Ngāti Tuwharetoa kaumatua whom the Trustees consider are mature persons or elders knowledgeable in Ngāti Tuwharetoa whakapapa, kawa and Tikanga, and who are in their opinion

recognised as kaumatua by the Members of Ngāti Tuwharetoa. Te Arika shall be consulted on the selection of each person as a member of the Kaumatua Committee;

- (b) consider the recommendation of the Kaumatua Committee in respect of the acceptance or not of the relevant person's application for registration and any determination of the Kaumatua Committee made pursuant to a request under clause 10.6(d); and
- (c) notify the person concerned of their decision, and, if requested by that person, of the principal reasons for that decision.

Proceedings of the Kaumatua Committee

15.8 When making a recommendation to the Trustees in relation to clause 15.7, the Kaumatua Committee must apply the applicable provisions of the Act relating to registration of Members of Ngāti Tuwharetoa. The Kaumatua Committee shall provide the person concerned, and any representative that person appoints the opportunity to attend a meeting of the Kaumatua Committee and present their account of why they should be registered, or remain, on the Members' Register, as the case may be. The Kaumatua Committee shall have the discretion to take into account the Kaumatua Committee Member's own knowledge and such other matters as the Kaumatua Committee considers will assist it in making a determination. The Kaumatua 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

15.9 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.

16. WINDING UP OF TRUST

16.1 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 [similar Charitable Purposes to the Trust](#) 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 12.3(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.

17. ALTERATION OF TERMS OF DEED

Changes to the Deed

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

- (a) no amendment may be inconsistent with the Act;
- (b) to the extent any proposal for amendment relates to matters provided for by or

under the Act that amendment must only be promoted if a resolution that the amendment is for the collective benefit of all Members of Ngāti Tuwharetoa is put and passed at a General Meeting in accordance with whatever sub-clause of clause 12.3(g) applies to the substance of the amendment being promoted;

- (c) 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 2004 in respect of income derived by it. Prior to any resolution to amend this Deed being placed before Members of Ngāti Tuwharetoa, 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;
- (d) should a proposal for amendment include the addition or removal of a Hapu within Schedules 3 and 4 of the Deed the Trustees must:
 - (x) confirm that they have received a proposal in accordance with clause 13.6; and
 - (xi) where an additional Hapu is proposed, seek recommendations from the Kaumatua Committee as to the appropriateness of the addition of the Hapu, the affiliation of that Hapu to the current Hapu of Ngāti Tuwharetoa, the whakapapa of its members to Tuwharetoa I te Aupouri and the Ward within which that Hapu would be placed were the Deed to be amended; or
 - (xii) where a proposal seeks to remove a Hapu, seek recommendations from the Kaumatua Committee as to the appropriateness of the removal; and
 - (xiii) notify the proposal as one to be voted upon at the next General Meeting of Members of Ngāti Tuwharetoa; and
 - (xiv) table the recommendations of the Kaumatua Committee at that the General Meeting of Members of Ngāti Tuwharetoa prior to the vote on the proposal; and
 - (xv) if the proposal is passed by a majority, which (notwithstanding any other provision of this Deed shall consist of more than 50% of the Registered Members who actually vote) amend the Deed to add or remove the Hapu as resolved by the Members.

Deleted: 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 Ngāti Tuwharetoa unless that amendment is a consequence of a rule made or amended under section 25 of the Act. Such amendment may

17.2 Except as expressly provided in clauses 13.1(a) to (d) above, the Trustees may make such amendments as they consider necessary for the administration of the Trust. In such instances the Trustees must resolve by majority to accept such amendments and the resolution and approved amendments shall be recorded in the minute book.

17.3 Upon approval of amendments pursuant to either clause 13.1 or clause 13.2 the Trustees must ensure that a copy of the amended Deed is filed and registered in accordance with the provisions of the Charities Act 2005 [and the Charitable Trusts Act 1957](#).

Changes to constitutions of Corporate Entities

17.4 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, that amendment:

- (a) must not be inconsistent with the Act;
- (b) may only be promoted if the amendment is put and passed at a General Meeting in accordance with whichever sub-clause of clause 8.3(g) applies to the substance of the amendment being promoted; and
- (b) and must not amend the requirement in clause 9.3(a) in a manner which would jeopardise the charitable status of a Corporate Entity.

Deleted: <#>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 Ngāti Tuwharetoa unless that amendment is a consequence of a rule made or amended under section 25 of the Act.¶

Amendment proposals

- 17.5 Any Adult Member of the Iwi (including a Trustee) may put forward in writing a proposal 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 10.4, the person is a Member of Ngāti Tuwharetoa.
- 17.6 Notwithstanding 17.5, any proposal for the addition or removal of a Hapu within Schedules 3 and 4 must be made in writing and be signed by not less than 20 Registered Members. That proposal must be delivered to the Office of the Trust not less than 40 days before either a duly notified General meeting or the expiration of the 12 month period from the last General Meeting of the Trust.

Notification to Members of Ngāti Tuwharetoa

- 17.7 Any amendment or proposal under clauses 16, 17 or 18 must be notified to Members of Ngāti Tuwharetoa in the Trustees' next communication to them.

18. RESETTLEMENT

Power to resettle

- 18.1 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 Ngāti Tuwharetoa, 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 Ngāti Tuwharetoa;
 - (c) the resettlement may only be promoted if a resolution supporting it is put and passed at a General Meeting in accordance with whichever sub-clause of clause 12.3(g) shall apply to the assets being settled or re-settled; and
 - (d) the resettlement is upon trusts for Charitable Purposes.

19. GOVERNING LAW AND JURISDICTION

- 19.1 This Deed is governed by New Zealand Law, and the Trustees submit to the non-exclusive jurisdiction of the courts of New Zealand.

Deleted: Perpetuities¶ Any settlement or resettlement under clause 14.1 must not transgress the rule against perpetuities as it applies to the Trust.¶

EXECUTION

Executed as an amended and restated deed by the Trustees:

Karilyn Sharlene Kataraina Te Riini by:

and witnessed by: _____
Signature

Signature of witness

Occupation

City/town of residence

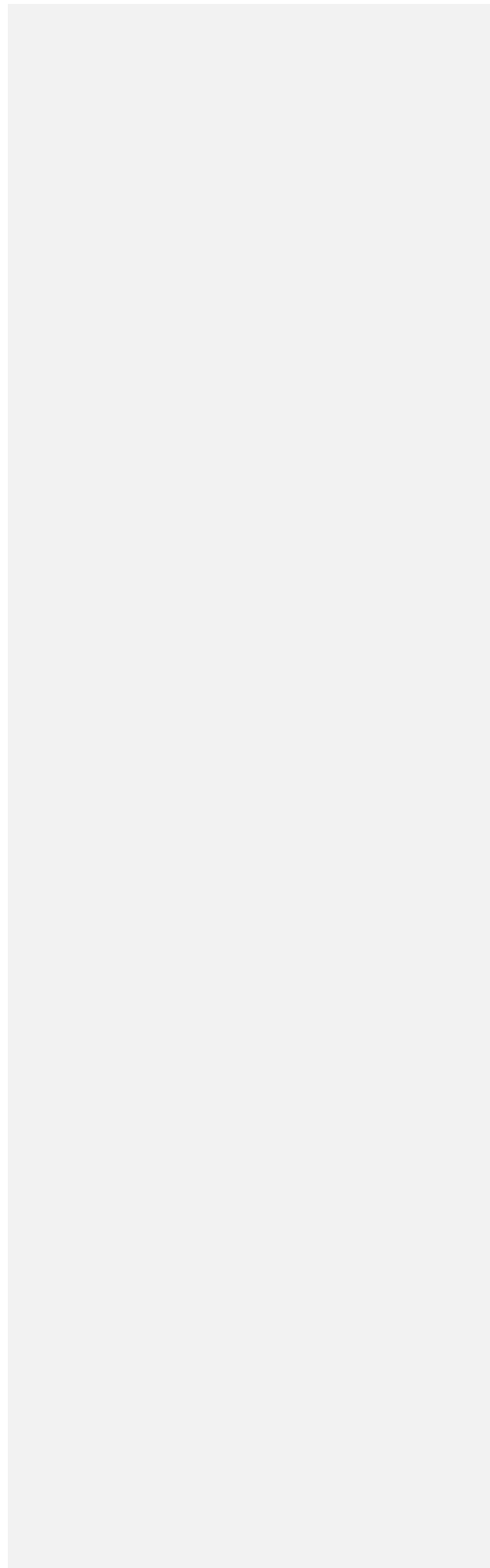
Tangonui Te Taonga Manaaki Te Iwi Kingi by:

and witnessed by: _____
Signature

Signature of witness

Occupation

City/town of residence



Shaneen Tumanako Simpson Almond
by:

Signature

and witnessed by:

Signature of witness

Occupation

City/town of residence

Tuirangi Te Heuheu by:

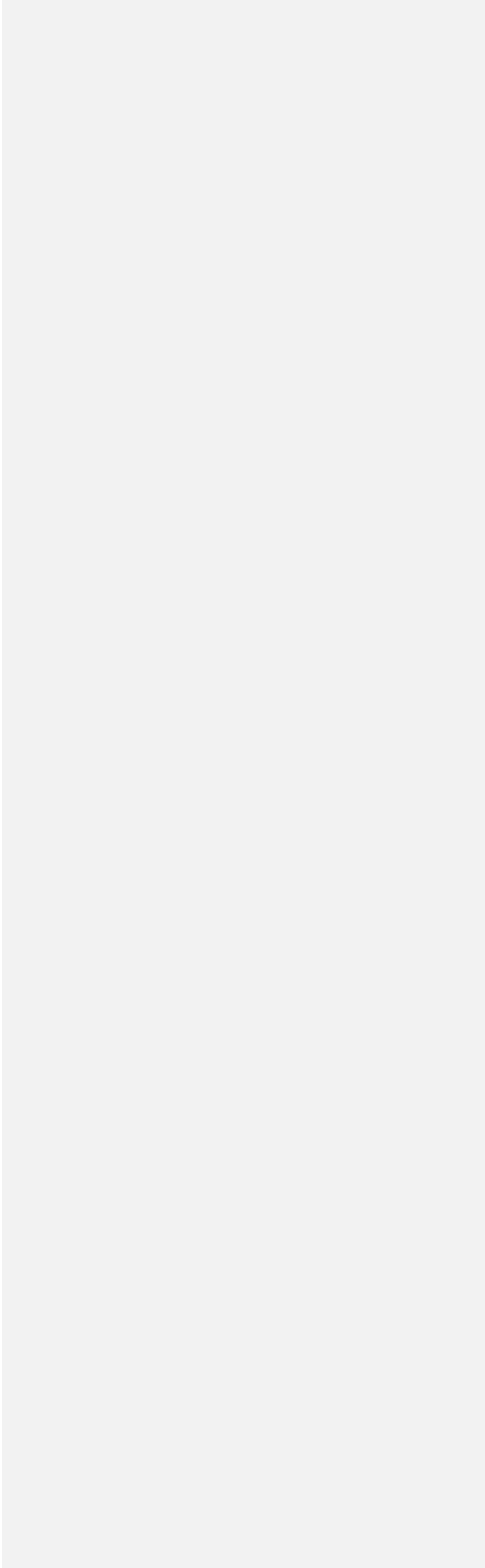
Signature

and witnessed by:

Signature of witness

Occupation

City/town of residence



Heemi James Biddle by:

and witnessed by:

Signature

Signature of witness

Occupation

City/town of residence

Judy Napera Harris by:

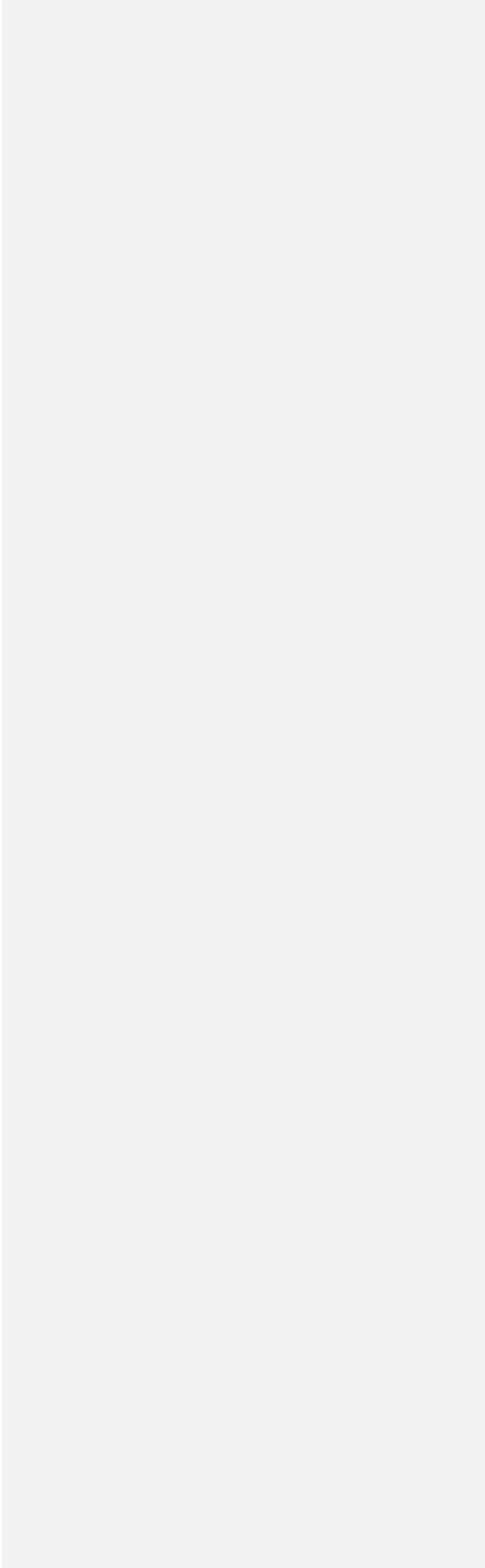
and witnessed by:

Signature

Signature of witness

Occupation

City/town of residence



SCHEDULE 1 - Voting Processes

Election Procedures

1. A person may be elected as a Trustee in accordance with the following procedures or pursuant to any relevant rules made or amended by Te Ohu Kai Moana Trustee Limited under s 54 of the Act.

Electoral System to be used

2. The electoral system to be used shall be by means of a first past the post representational system as is determined by the Trustees (subject to such modifications to that electoral system as the Trustees shall consider necessary or desirable in the circumstances).

Time of Elections

3. The Trustees must arrange and conduct an election of Trustees in accordance with the electoral provisions set out in this Schedule 1 at such times as shall ensure that ~~no person who is an elected Trustee shall hold office for a period longer than 3 years without facing re-election.~~

Eligible voters

4. All Adult Members shall be eligible to vote on the election of Trustees and any votes cast for the election may be cast as the Trustees determine from time to time, including a determination as to whether votes shall be cast:
 - (a) by personal vote (not proxy) at a General Meeting;
 - (b) by postal ballot received before 5pm not less than 5 Working Days before the General Meeting; or
 - (c) by electronic voting provided the electronic voting facilities may be used only if every Adult Member of Ngāti Tuwharetoa has the right to vote by electronic means, and electronic means must not be the only means by which a member may vote; or
 - (d) by a combination of any one or more of those methods.

Notice calling for Nominations for Trustees

5. The Trust must, no later than 45 Working Days prior to the date on which the election of Trustees will be held, publicly notify Members of Ngāti Tuwharetoa that nominations for the position of Trustee of the Trust may be lodged.

Ward Nomination Procedure

6. Any person may nominate a candidate for election as a Trustee, but every nomination must specify the Ward for which that candidate is nominated. Each nomination must include evidence reasonably acceptable to the Trustees that the nominee can whakapapa to Hapu within the Ward for which the nominee is nominated.

Trust Treatment of Nominations

7. All nominations must be submitted in writing to the Trust and must include:
 - (a) confirmation that the candidate is an Adult Registered Member;
 - (b) details of the nominee's full name, address and contact number;
 - (c) specification of the Ward for which the candidate is nominated and the principal Hapu within that Ward to which the candidate affiliates to by whakapapa; and

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As**

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Deleted: soon as possible following the execution of this Deed and no later than 6 months after execution of this Deed each Hapu shall call a Hui-a-Hapu and shall appoint a Marae that shall on behalf of that Hapu nominate candidates for election as Trustees in accordance with this Deed.¶
Following a Hui-a-Hapu the Chairperson of the Hui-a-Hapu shall advise the Trust in writing of the Marae appointed under clause 5. The Trust shall publicly notify the names of each Marae so advised for each Hapu promptly after being notified by all Hapu of their respective Marae. If a Hapu shall require a change to any such Marae, it may call a Hui-a-Hapu to appoint a new Marae. Following such Hui-a-Hapu, the Chairperson of the Hui-a-Hapu shall advise the Trust in writing of the new Marae so appointed. The Trust shall publicly notify the name of any such new Marae promptly after receiving such advice.¶

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Deleted: <#>Each Marae may call a Hui-a-Marae convened for the purpose of nominating a candidate or candidates. The nomination process shall be at the discretion of the Hui-a-Marae however the process adopted must give all the members of the Hapu a fair and reasonable opportunity to participate in the nomination of that candidate or candidates.¶

- (d) a Nomination Certificate from such person or persons as the Trustees determine shall be required as evidence from the nominee or such other source as is reasonably acceptable to the Trustees that the nominee can whakapapa to the Hapu;
- (e) a declaration signed by the nominee 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 4.3 of the Deed; and
- (f) a brief statement containing details of the candidate's experience and objectives relevant to the position of Trustee.

Once received by the Trust a nomination cannot be withdrawn.

Deleted: evidence; from a representative of the Marae that the candidate has been nominated under paragraph 9 to stand as a candidate for Trustee for that Hapu and certifying that the process for determining the nomination was fair and reasonable and in compliance with this Deed; or if the nomination is not made by a Marae under paragraph 9, from

- 8. The Trust may from time to time consult with the Kaumatua Committee in relation to any nomination made and, without limiting the foregoing, may request the Kaumatua Committee to review the nomination of a candidate to a particular Hapu in which case, after such consultation the Trustees decision as to the nomination of the candidate shall be final.
- 9. There is no limit to the number of nominations which may be made for candidates to stand in respect of each of the Ward seats.

Nominations for Trustees by the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust and the Tuwharetoa Māori Trust Board

- 10. The Trust must, no later than 45 Working Days prior to the date on which the election of Trustees will be held, notify the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust and the Tuwharetoa Māori Trust Board that nominations for the position of Trustee of the Trust may be lodged. The Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust and the Tuwharetoa Māori Trust Board shall each nominate not fewer than two candidates and each such nomination must:
 - (a) contain details of the full name, address and contact number of each of those candidates;
 - (b) include a declaration signed by the nominee 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 4.3 of the Deed; and
 - (c) be accompanied by a brief statement containing details of the candidate's experience and objectives relevant to the position of Trustee.

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All candidates nominated for the position of Trustee under this paragraph must have previous commercial experience and sound business skills. However, such candidates do not need to whakapapa to Tuwharetoa I te Aupouri.

- 11. Where in any case there is only one candidate nominated by the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust or the Tuwharetoa Māori Trust Board, as the case may be, the Trustees shall following consultation with the Kaumatua Committee, nominate a further candidate for election. That further candidate must comply with the criteria for selection provided at paragraph 13 of this Schedule 1. For the avoidance of doubt that candidate shall be deemed to be a nominee of the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust or the Tuwharetoa Māori Trust Board, as the case may be, for the purposes of this Deed, as if that Board or Boards had selected him or her in accordance with paragraph 13 above.

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Time for Nominations

- 12. Nominations for the position of Trustee must be received at the office of the Trust no later than 25 Working Days before the date on which the election of Trustees is to be held.

12A. This paragraph applies where there is only one candidate nominated for election for a Ward. In such cases, provided that the candidate's nomination complies with paragraph 7

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of this Schedule, no election shall be necessary and the person nominated shall be deemed to have been duly elected.

Notice of Voting and General Meeting

13. 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 Ngāti Tuwharetoa, 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) In the case of ratifying the constitution, a Private Notice sent to every Adult Member on the Members' Register, that gives:
 - (i) the information in paragraph 16(a) of this Schedule;
 - (ii) a copy of the Voting Form; and
 - (iii) the address and return date for the Voting Form.
 - (c) In the case of a proposal to amend the constitution, a Private Notice sent to every Adult Registered Member who has requested such from the Trust in writing, that gives:
 - (i) the information in paragraph 16(a) of this Schedule;
 - (ii) a copy of the Voting Form; and
 - (iii) the address and return date for the Voting Form.

Valid votes

14. The conduct of a vote of Members of Ngāti Tuwharetoa 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 on the Members' Register, record the member registration number or other unique identifier on the Voting Form; or
 - (ii) where the person is not registered on the Members' Register 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 Form;
 - (b) no vote shall be finally counted unless the details provided on the Voting Form (except the ancillary information) are correct and the affiliation of the voter to Ngāti Tuwharetoa 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 10.4 of the Deed,

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

15. 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 Forms are destroyed by the returning officer after the date of completion of the final count under paragraph 17(b), plus a period of one month thereafter.

Number of votes

16. Each Adult Member of Ngāti Tuwharetoa shall be entitled to cast votes in any election of Trustees as follows:
- (a) the same number of votes as the number of vacancies arising in relation to the four Wards, excluding any vacancy or vacancies which may be filled by virtue of paragraph 12A, to be cast for one each of the candidates nominated in accordance with this Schedule 1 (being candidates who whakapapa to Tuwharetoa I te Aupouri and are standing as nominees of a Ward); and
 - (b) one vote to be cast for one of the candidates nominated in accordance with this Schedule 1 by the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust; and
 - (c) one vote to be cast for one of the candidates nominated in accordance with this Schedule 1 by the Tuwharetoa Māori Trust Board.

Election of Trustees

17. ~~All~~ Trustees shall be elected as follows:
- (a) one Trustee to be elected from the candidates nominated in accordance with this Schedule 1 in respect of each of the four Wards (being a total of four Trustees);
 - (b) one Trustee to be elected from two candidates nominated in accordance with this Schedule 1 by the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust; and
 - (c) one Trustee to be elected from two candidates nominated in accordance with this Schedule 1 by the Tuwharetoa Māori Trust Board.
18. The Trustees elected under this Schedule 1 shall be:
- (a) except where paragraph 12A applies, the highest polling candidate amongst those nominated in respect of each of the four Wards;
 - (b) the highest polling candidate of the two candidates nominated by the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust; and
 - (c) the highest polling of the two candidates nominated by the Tuwharetoa Māori Trust Board.
19. Where in any case there is an equality of votes between:
- (a) two or more candidates nominated in respect of a Ward; or

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- (b) the two candidates nominated by the Ngāti Tuwharetoa (Bay of Plenty) Settlement Trust; or
 - (c) the two candidates nominated by the Tuwharetoa Māori Trust Board,
- and the addition of one vote would entitle one of those candidates to be elected as a Trustee, the determination of which of those candidates is to be elected as a Trustee shall be made by lot.

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SCHEDULE 3 - Wards

Part A;

Tuwharetoa Bay of Plenty
Ngāti Manuwhare
Ngāti Pou
Ngāti Peehi
Ngai Tamarangi
Ngai Te Aotahi
Ngāti Umutah
Ngāti Iramoko
Ngāti Kaikino
Ngāti Rakaimaoa
Ngāti Kuiarangi

Part B:

Northern Lake Taupo
Ngāti Rauhoto
Ngāti Te Urunga
Ngāti Ruingarangi
Ngāti Te Kapa o to Rangiiita (Te Kapawa)
Ngāti Tutemohuta
Ngāti Tutetawha
Ngāti Hinerau
Ngāti Hineure
Ngāti Te Kohere
Ngāti Tarakaiahi
Ngāti Haa
Ngāti Te Maunga
Ngāti Moekino

Part C:

Southern Lake Taupo
Ngāti Rangiiita ki Waitetoko
Ngāti Hine
Ngāti Rongomai
Ngāti Turangitukua
Ngāti Kurauia
Ngāti Hikairo
Ngāti Manunui
Ngāti Hinemihi
Ngāti Parekawa
Ngāti Turumakina

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Part D: Tuwharetoa Southern
Ngāti Tama Whiti
Ngāti Pīkiahūwāwae

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1. → APPOINTMENT OF HAPU REPRESENTATIVES

1.1 → **Hapu Representative:** Marae nominated in accordance with clause 5 of Schedule 1 shall be entitled to appoint one Hapu Representative and only that Hapu Representative may exercise the rights and responsibilities of the Hapu Representative for that Hapu, which are provided for in this Deed.

1.2 → **Initial Appointment of Hapu Representatives:** As soon as possible following the execution of this Deed and no later than 8 months after execution of this Deed each nominated Marae shall appoint one Hapu Representative each.

1.3 → **Term of appointments:** Appointments of Hapu Representatives shall be for a term of three years. Each Hapu Representative shall hold office from the date of his or her appointment until the expiration of three years, unless he or she is removed from office earlier under paragraph 2 of this Schedule 4. Where a Hapu Representative is removed the nominated Marae may appoint a replacement. No one person may act as the representative of more than one Hapu. The maximum number of Hapu Representatives shall be the same as the number of Hapu defined in Schedule 3 of this Deed.

1.4 → **Appointment process:** Each Marae shall call a Hui-a-Marae convened for the purpose of appointing a Hapu Representative, the appointment process adopted by the Marae must give all the members of the Hapu a fair and reasonable opportunity to participate in the appointment of that representative.

1.5 → Upon appointment by the Marae of the Hapu Representative pursuant to clause 1.4 above, a representative of the Marae must provide the Trust with an Appointment Certificate setting out the name of the Hapu representative appointed by the Marae and certifying that the appointment process adopted by the Marae to appoint that representative was in accordance with clause 1.4 of this Schedule 5.

1.6 → **Removal Process:** A Hapu Representative shall be removed from office if:
The Trust and or the Marae receive a request to remove the Hapu Representative signed by 10 Adult Registered Member who are also members of the Hapu whom the Hapu Representative represents; and

At a Hui-a-Marae convened for the purpose of considering that request a resolution is approved by a majority of Adult Registered Members in attendance to remove the Hapu Representative.

1.7 → Where a Hapu representative is removed or not re-appointed the Marae shall appoint a replacement Hapu Representative in accordance with clause 1.4 of this Schedule 5.

1.8 → In the case of any dispute or failure or alleged failure of a Marae to follow any process in this Schedule, the Trustees shall consult with the Kaumatua Committee, and following such consultation support or remove, as the case may be, the Hapu Representative.

2. → TERMINATION OF OFFICE OF HAPU REPRESENTATIVES

2.1 → A Hapu Representative shall cease to hold office if he or she:

Is removed by the Marae that appointed him or her (in accordance with the process determined in accordance with paragraph 1.6 of this Schedule 5); or
retires from office by giving written notice to the Trust;

or
completes his or her term of office and is not

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