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# CONSTITUTION OF NATI GROWTH LIMITED

Dated:

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RAINEY COLLINS  
L A W Y E R S

**NATI GROWTH LIMITED CONSTITUTION  
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# 1. INTERPRETATION

## 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**“Annual Catch Entitlement”** has the meaning given to that term in the Māori Fisheries Act;

**“Annual Plan”** has the meaning given to that term in the Trust Deed;

**“Annual Report”** means the annual report of the Company prepared in accordance with clause 10.6;

**“Asset Holding Company”** has the meaning given to that term in the Māori Fisheries Act;

**“Beneficial Members”** has the meaning given to that term in the Trust Deed;

**“Board”** means Directors who number not less than the required quorum acting together as the board of directors of the Company;

**“Chairperson”** means the chairperson from time to time elected in accordance with clause 11.6;

**“Companies Act”** means the Companies Act 1993;

**“Company”** means Nati Growth Limited;

**“Constitution”** means this document as from time to time altered or varied;

**“Director”** means the directors of the Company appointed by the Shareholder in accordance with clause 11.2;

**“Distribution”** has the meaning given to that term in the Companies Act;

**“Dividend”** has the meaning given to that term in the Companies Act;

**“Elected Representatives”** has the meaning given to that term by the Trust Deed;

**“Five Year Strategic Plan”** has the meaning given to that term in the Trust Deed;

**“Income Year”** has the meaning given to that term in the Trust Deed;

**“Iwi”** has the meaning given to that term in the Māori Fisheries Act;

**“Major Transaction”** has the meaning given to that term in the Trust Deed;

**“Mandated Iwi Organisation”** has the meaning given to that term in the Māori Fisheries Act;

**“Māori Fisheries Act”** means the Māori Fisheries Act 2004;

**“Ngati Porou”** has the meaning given to that term by section 11(1) of the Ngati Porou Claims Settlement Act 2012;

**“Ngati Porou Group”** has the meaning given to that term in the Trust Deed;

**“Ordinary Shares”** has the meaning given to that term in the Māori Fisheries Act;

**“Quota Management Stock”** has the meaning given to that term in the Māori Fisheries Act;

**“Recognised Iwi Organisation”** has the meaning given to that term in the Māori Fisheries Act;

**“Related Person”** means a person specified in paragraphs (i) to (iv) of section CW42(5)(b) of the Income Tax Act 2007, the person specified being:

- (a) A settlor or trustee of the trust by which the business is carried on; or
- (b) A shareholder or director of the company by which the business is carried on; or
- (c) A settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) A person associated with a settlor, trustee, shareholder or director referred to in any of paragraphs (a), (b) or (c) of this definition;

**“Relevant Organisation”** means a Mandated Iwi Organisation, Asset-Holding Company, Recognised Iwi Organisation, Representative Māori Organisation, Aotearoa Fisheries Limited (including any subsidiaries) or Te Ohu Kai Moana Trustee Limited;

**“Representative Māori Organisation”** has the meaning given to that term in the Māori Fisheries Act;

**“Resolution”** means a resolution passed by the Shareholder;

**“Settlement Quota”** means:

- (a) The settlement quota, as that term is defined in the Māori Fisheries Act, allocated and transferred by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by, the Company; and
- (b) Any quota held by the Company against which a Settlement Quota Interest is registered.

**“Settlement Quota Interest”** means an interest registered in respect of quota management stocks under section 152A of the Fisheries Act 1996;

**“Share”** means a share issued, or to be issued, by the Company;

**“Shareholder”** means Te Runanganui o Ngati Porou Trustee Limited, the parent entity, whose name is entered in the share register as the holder for the time being of the shares;

**“Statement of Intent”** has the meaning given to that term in the Trust Deed;

**“Subsidiary”** means any Subsidiary Asset-Holding Company or any other subsidiary of the Company, either established by the Company or transferred to the Company by Te Runanganui o Ngati Porou, in accordance with clauses 6.1 or 6.2;

**“Subsidiary Asset-Holding Company”** means a subsidiary of the Company, either established by the Company or transferred to the Company by Te Runanganui o Ngati Porou, in accordance with clause 6.1.

**“Te Runanganui o Ngati Porou”** means the Trust established by the Trust Deed;

**“Te Runanganui o Ngati Porou’s Purposes”** has the meaning given to that term in the Trust Deed;

**“Te Runanganui o Ngati Porou Trustee Limited”** means the company incorporated under the company number 3179347, in its capacity as the trustee of Te Runanganui o Ngati Porou;

**“Trust Deed”** means the trust deed which establishes Te Runanganui o Ngati Porou, and includes the recitals and the schedules to the Trust Deed and any variations made.

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

- (a) A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Matariki and Labour Day;
- (b) A day in the period commencing with 25 December in a year and ending with 2 January in the following year;
- (c) If 1 January falls on a Friday, the following Monday; and
- (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

## **1.2 Interpretation**

In this Constitution, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing one gender include the other genders;
- (c) References to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;
- (d) References to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
- (e) In the absence of an express indication to the contrary, references to a clause shall be to a clause of this Constitution;
- (f) Headings appear as a matter of convenience only and shall not affect the interpretation of this Constitution; and
- (g) Any term that is not defined in this Constitution and that is defined in the Trust Deed, shall have the meaning given to it in the Trust Deed.

## **2. COMPANIES ACT AND MAORI FISHERIES ACT**

### **2.1 Companies Act**

The provisions of the Companies Act are negated, modified, adopted and extended in the way provided in this Constitution and the Trust Deed to the extent lawfully permitted by the Companies Act.

### **2.2 Terms**

In this Constitution, terms defined in the Companies Act or the Māori Fisheries Act (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by the relevant Act unless otherwise defined in this Constitution or the Trust Deed.

## **3. TERMS OF TRUST DEED**

### **3.1 Application of terms of Trust Deed**

The terms of the Trust Deed that relate to the Company, the Directors and the Shareholder apply as if they are included in this Constitution, subject to the terms of the Companies Act. If there are any conflicting provisions, the terms of the Trust Deed shall prevail.

## **4. COMPANY TO BE ASSET HOLDING COMPANY**

### **4.1 Application of this clause**

Except as otherwise provided in this Constitution, this clause 4 does not limit the rights, powers, duties and obligations of the Company to undertake any activity and to hold, receive and manage any assets.

### **4.2 Company to receive, hold and manage Settlement Quota, Ordinary Shares and other assets**

Subject to clause 6, the Company is to receive, hold and manage for so long as they are to be retained, the Settlement Quota and Ordinary Shares and any other assets transferred by the Shareholder, on a prudent and commercial basis.

### **4.3 Compliance with Māori Fisheries Act required**

In the Company's function of receiving, holding and managing Settlement Quota and Ordinary Shares it is bound by all of the requirements specified for the Shareholder in relation to those matters in the Māori Fisheries Act, including:

- (a) The disposal of Ordinary Shares;
- (b) The disposal of Settlement Quota;
- (c) The registration of Settlement Quota Interests;

- (d) The transfer of Settlement Quota;
- (e) The exchange of Settlement Quota;
- (f) Entering into a transaction involving an option, security, mortgage or guarantee or a series of transactions that could result in the sale of the Settlement Quota; and
- (g) Entering into a transaction involving an option, security, mortgage or guarantee or a series of transactions that could result in Ngati Porou being disentitled for a period of more than 5 years to the income or control or use of the Annual Catch Entitlement.

#### **4.4 Company must not undertake fishing**

The Company must not undertake fishing or hold a fishing permit issued under the Fisheries Act 1996.

#### **4.5 Delegation**

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

### **5. COMPANY TO ACT FOR THE BENEFIT OF NGATI POROU**

The Company will conduct or otherwise undertake all Commercial Activities of the Ngati Porou Group, either through itself or through its Subsidiaries, on behalf of and solely for the benefit of the Beneficial Members in the furtherance of Te Runanganui o Ngati Porou's Purposes.

## **6. SUBSIDIARIES**

### **6.1 Establishment of Subsidiary Asset-Holding Companies**

The Company may:

- (a) Establish one or more Subsidiary Asset-Holding Companies to receive, hold and manage some or all of the Settlement Quota and Ordinary Shares, or any other assets of the Company;
- (b) Take over the shareholding of any existing Asset-Holding Company of Te Runanganui o Ngati Porou that is transferred to the Company by Te Runanganui o Ngati Porou; and
- (c) Transfer to those Subsidiary Asset-Holding Companies some or all of the Settlement Quota and Ordinary Shares, or any other assets of the Company.

### **6.2 Establishment of other subsidiaries**

The Company may:

- (a) Establish one or more Subsidiaries for any purpose which the Directors deem in the best interests of the Company and / or the Shareholder, other than to receive, hold and manage some or all of the Settlement Quota and Ordinary Shares;
- (b) Take over the shareholding of any existing Subsidiaries of Te Runanganui o Ngati Porou that are transferred to the Company by Te Runanganui o Ngati Porou; and
- (c) Transfer to those Subsidiaries some or all of the assets of the Company, other than the Settlement Quota and Ordinary Shares.

For the avoidance of doubt, a Subsidiary referred to in this clause 6.2 may undertake fishing and/or hold a fishing permit.

### **6.3 Subsidiaries to act for the benefit of Ngati Porou**

All property held and income derived by Subsidiaries shall be held and derived for and on behalf of and solely for the benefit of the Beneficial Members in the furtherance of Te Runanganui o Ngati Porou's Purposes.

### **6.4 Wholly owned and controlled**

All Subsidiary Asset-Holding Companies must be and remain wholly owned and controlled by the Company.

### **6.5 Obligations of directors in establishing a Subsidiary Asset-Holding Company**

If a Subsidiary is established by the Company under clause 6.1(a), the Directors will ensure that:

- (a) Prior to its registration, the constitution of the Subsidiary is:
  - (i) Approved by the Mandated Iwi Organisation as complying with the requirements of the Māori Fisheries Act; and
  - (ii) Ratified by not less than 75% of the Elected Representatives of the Mandated Iwi Organisation.
- (b) The Subsidiary receives, holds and manages the Settlement Quota and Ordinary Shares and any other assets transferred to it on behalf of the Company;
- (c) The Subsidiary provides dividends solely to the Shareholder;
- (d) The constitution of the Subsidiary provides that:
  - (i) The Subsidiary, in its function of receiving and holding Settlement Quota and Ordinary Shares, is bound by all the requirements specified for the Shareholder in relation to those matters in the Māori Fisheries Act, including those matters outlined in clause 4.3 of this Constitution, with all necessary modifications;
  - (ii) The Subsidiary will not undertake fishing or hold a fishing permit;

- (iii) The Shareholder must exercise strategic governance over the Subsidiary through its strategic governance of the Company; and
- (iv) The Subsidiary will report to the Company on all matters necessary, and at such times as to allow the Company to fulfil its reporting requirements to the Shareholder.

This clause applies, with the necessary amendments, to a Subsidiary transferred to the Company by Te Runanganui o Ngati Porou in accordance with clause 6.1(b).

## **6.6 Obligations of directors in establishing other subsidiaries**

If a Subsidiary is established by the Company under clause 6.2(a), the Directors will ensure that:

- (a) Prior to its registration, the constitution of the Subsidiary is:
  - (i) Approved by the Mandated Iwi Organisation as complying with the requirements of the Māori Fisheries Act; and
  - (ii) Ratified by not less than 75% of the Elected Representatives of the Mandated Iwi Organisation, and
- (b) The constitution of the Subsidiary complies with the requirements of the Trust Deed.

This clause applies, with the necessary amendments, to a Subsidiary transferred to the Company by Te Runanganui o Ngati Porou in accordance with clause 6.2(b).

## **7. SHARES**

### **7.1 Number of Shares**

At the date of the original certification of this Constitution, 10 shares were issued to the Shareholder, as named in the application for registration of the Company. Shares must always be held in accordance with the Trust Deed.

### **7.2 Shares to remain with Shareholder**

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

### **7.3 Issue of new shares**

Further shares in the Company may only be issued to the Shareholder, with the approval of the Shareholder in writing.

### **7.4 Rights attaching to Shares**

Each Share confers on the Shareholder the right to:

- (a) Receive notice to attend every Shareholder meeting;
- (b) Vote on any resolution at a meeting of the Shareholder, including any resolution to:
  - (i) Appoint or remove a Director or auditor; or
  - (ii) Adopt a constitution, subject to clause 22 of this Constitution; or
  - (iii) Alter this Constitution, subject to the requirements of the Māori Fisheries Act and clause 22 of this Constitution; or
  - (iv) Approve a Major Transaction; or
  - (v) Approve an amalgamation of the Company under section 221 of the Companies Act, provided that:
    - (A) The Company is the amalgamated company after the amalgamation is complete and retains this Constitution; or
    - (B) The constitution of the amalgamated company is in substantially the same form as this Constitution; or
  - (vi) Put the Company into liquidation;
- (c) The dividends authorised by the Board; and
- (d) The distribution of the surplus assets of the Company.

## **7.5 Bonus issues**

The Board may, with the approval of the Shareholder in writing, resolve to apply any amount that is available for distribution to the Shareholder either:

- (a) In paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
  - (i) The Shareholder; and
  - (ii) If applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholder, or at some time later, in accordance with their respective entitlements, subject to the requirements of the Māori Fisheries Act; or
- (b) In paying up any amount that is unpaid on any Shares held by the Shareholder referred to in clause 7.5(a)(i).

Or partly in one way and partly in the other.

## **8. DIVIDENDS**

### **8.1 Payment of dividends**

- (a) The Board shall set a dividend policy that is approved by the Shareholder.
- (b) Subject to clause 8.1(a), the Companies Act and this Constitution, the Board may authorise the payment of dividends by the Company at times, of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends.
- (c) Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.
- (d) Dividends may only be paid to the Shareholder.

### **8.2 Shares in lieu of dividends**

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

## **9. EXERCISE OF POWERS OF SHAREHOLDER**

### **9.1 Exercise of power by meeting or written resolution**

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

- (a) At a meeting of the Shareholder; or
- (b) By a Resolution in writing signed by the Shareholder, as provided for in section 122 of the Companies Act and in accordance with the Trust Deed.

### **9.2 Powers of the Shareholder**

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

## **10. MEETINGS OF THE SHAREHOLDER**

### **10.1 Meeting procedure**

Subject to this clause 10, the provisions of the Third Schedule of the Trust Deed govern the proceedings of meetings of the Shareholder.

## **10.2 Meetings of the Shareholder**

A meeting of the Shareholder, other than an annual meeting held in accordance with clauses 10.4-10.5 of this Constitution:

- (a) May be called by the Board at any time; and
- (b) Must be called by the Board on the written request of the Shareholder.

## **10.3 Quorum**

A quorum for a meeting of the Shareholder is present if the Shareholder is present.

## **10.4 Annual meetings**

The Company must hold an annual meeting not later than:

- (a) Three months after the end of each Income Year; or
- (b) Fifteen months after the previous annual meeting.

## **10.5 Time and place of annual meeting**

Each annual meeting must be held at such time and place as the Board appoints.

## **10.6 Provision of Annual Report**

At or before each annual meeting, and notwithstanding any agreement made by the Shareholder under section 211(3) of the Companies Act, the Board must provide to the Shareholder an annual report that:

- (a) Complies with each paragraph of section 211(1) of the Companies Act;
- (b) Details matters relating to the Company's performance in the previous year, including:
  - (i) The quantity of the Settlement Quota held by the Company at the beginning of the previous year;
  - (ii) The performance of the Company and any Subsidiary in the previous year;
  - (iii) The investment of the money of the Company and any Subsidiary in the previous year;
  - (iv) Any Settlement Quota Interests that were registered against the Quota Shares of the Company in the previous year;
  - (v) The value of any Ordinary Shares sold, exchanged or acquired by the Company in the previous year;
  - (vi) The value of any Settlement Quota sold or exchanged by the Company in the previous year;

- (vii) The identity of the purchaser or other party to any exchange of the Settlement Quota by the Company in the previous year;
  - (viii) Any transaction with the Settlement Quota that resulted in a registered interest by way of caveat or mortgage being placed over the Settlement Quota in the previous year;
  - (ix) The interactions of the Company with the Shareholder and any Subsidiary in fisheries matters in the previous year;
  - (x) A comparison of the Company's performance against both its Annual Plan for that Income Year and any medium and longer term planning objectives (as set out in the Five Year Strategic Plan and Statement of Intent); and
  - (xi) Any changes made to this Constitution or the constitution of any Subsidiary in the previous year.
- (c) Details matters relating to the Company's projected performance in the current year, including:
- (i) The steps to be taken in the relevant Income Year to meet its 5 year planning objectives and fulfil the objectives and principles of its Statement of Intent;
  - (ii) The key strategies for the use and development of the Settlement Quota and Ordinary Shares and any other assets held by the Company;
  - (iii) Any programme to reorganise the Settlement Quota held by the Company or any Subsidiary as by buying and selling Settlement Quota in accordance with the Māori Fisheries Act;
  - (iv) Any programme to manage the sale of Annual Catch Entitlements derived from the Settlement Quota held by the Company or any Subsidiary.
  - (v) The expected financial return on the Settlement Quota and Ordinary Shares and any other assets held by the Company; and
  - (vi) Any proposal to change this Constitution or the constitution of any Subsidiary.

## **11. DIRECTORS**

### **11.1 Number of Directors**

The Company must have not fewer than 5 and not more than 7 Directors appointed in accordance with clause 11.2, who shall each act as a Director of the Company.

### **11.2 Shareholder must appoint Directors**

The Shareholder must appoint the Directors of the Company in accordance with the Seventh Schedule of the Trust Deed. Accordingly, any person who is not disqualified by the Companies Act, the Māori Fisheries Act. The Trust Deed or this Constitution from holding office as a Director

of the Company may be appointed as a Director by a written notice to the Company signed on behalf of the Shareholder.

### **11.3 Eligibility for election**

To be appointed by the Shareholder, a Director must not:

- (a) Be bankrupt, or have within the last 5 years been adjudged bankrupt;
- (b) Have ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
- (c) Be or have ever been disqualified from being a director of a company registered under the Companies Act 1955 or the Companies Act 1993;
- (d) Be or ever have been removed as a trustee of a trust by order of Court on the grounds on breach of trust, lack of competence or failure to carry out the duties of a trustee satisfactorily;
- (e) Be physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Director;
- (f) Be subject to a property order made under section 30 or 31 of the Protection of Personal Property Rights Act 1988;
- (g) Have been convicted in the last 10 years of an offence punishable by more than 3 years imprisonment (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
- (h) Have been removed from the office of Director of any member of the Ngati Porou Group for breach of clause 11.5 or an equivalent clause within the last 3 years.

### **11.4 Directors to have commercial experience**

In appointing the Directors of the Company, the Shareholder must have regard to the particular skills and expertise of the appointees. In addition to the matters listed in the Seventh Schedule of the Trust Deed, the Shareholder must be satisfied that every Director appointed has integrity and proven commercial experience.

### **11.5 Directors not to bring Ngati Porou Group into disrepute**

The Directors must not act in a manner which brings or is likely to bring any member of the Ngati Porou Group into disrepute.

### **11.6 Chairperson**

The Directors shall elect one of their number as Chairperson.

### **11.7 Secretary and treasurer**

The Directors may appoint a secretary and / or a treasurer. The person so appointed is not required to be a Director.

### **11.8 Term of appointment of Directors**

The term of appointment of Directors is as follows:

- (a) No director can be appointed for a term exceeding 3 years;
- (b) At the end of his or her term of appointment, a Director shall be eligible for reappointment, however, no person can hold office as a Director for more than 9 years aggregate;
- (c) Where a person has ceased to be eligible to hold office as a Director under clause 11.8(b), that person will become eligible for re-appointment as Director after 2 years have passed from the date of cessation of eligibility, and a fresh calculation of the 9 year period commences on the date of that re-appointment.

Nothing in this clause limits any of clauses 11.9, 11.11 or 11.12.

### **11.9 Restrictions on eligibility to hold office as Director**

Not more than 40% of the Directors, or the directors of any Subsidiary, may be current Elected Representatives of Te Runanganui o Ngati Porou at any time. Any Director appointed in breach of this provision will be deemed to be disqualified from acting as a Director and must resign within 5 Working Days of the breach occurring as either:

- (a) A Director of the Company; or
- (b) An Elected Representative of Te Runanganui o Ngati Porou.

Any Director appointed in breach of this provision who fails to resign as required by this clause is automatically deemed to have resigned as a Director after those 5 Working Days.

### **11.10 No invalidity for breach**

A breach of any one or more of clauses 11.1 or 11.9 does not:

- (a) Invalidate an action or decision of the Company; or
- (b) In the case of clause 11.1, occur in the case of a casual or extraordinary vacancy in the office of Director if that vacancy is filled within 3 months.

### **11.11 Removal of Directors**

Any Director may be removed from office by written notice to the Company signed on behalf of the Shareholder at any time with or without reason.

### **11.12 Office of Director vacated in certain cases**

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

- (a) Dies; or
- (b) Becomes disqualified from being a director under the Māori Fisheries Act, the Companies Act, the Trust Deed or this Constitution; or
- (c) Resigns that office in accordance with this Constitution; or
- (d) Is deemed by any clause of this Constitution to have resigned that office; or
- (e) Is removed from office in accordance with this Constitution.

### **11.13 Notices of appointment or removal of Directors**

Any notice of appointment or removal of a Director by the Shareholder takes effect from the time it is served on the Company, or from such later time as the notice states it is to take effect.

### **11.14 Directors' resignation procedure**

A Director may resign office:

- (a) By signing a written notice of resignation and delivering it to the address for service of the Company, the notice being effective from the time it is received at that address or at a later time specified in the notice; or
- (b) In any other manner permitted by the Companies Act.

## **12. PLANS AND REPORTS**

### **12.1 Preparation of plans and reports**

In addition to the Annual Report, the Company must:

- (a) Maintain a Statement of Intent setting out its long term objectives and the general principles by which it proposes to operate;
- (b) As required by the Shareholder, update the Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business and the business of any of the Subsidiaries;
- (c) Prepare and maintain a Five Year Strategic Plan, which shall be updated not less than once a year, and which sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent;

- (d) Prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its 5 year planning objectives and fulfil the objectives and principles of the Statement of Intent; and
- (e) Within 2 calendar months after the completion of the first, second and third quarter of each Income Year send to the Shareholder reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form as the Shareholder may require from time to time).

## **12.2 Shareholder approval required**

Prior to being implemented all Statements of Intent, Five Year Strategic Plans and Annual Plans must be approved by the Shareholder. The Board shall otherwise retain full discretion in respect of the implementation of the plans and Statements of Intent.

## **13. POWERS OF DIRECTORS**

### **13.1 Management of Company**

Except as provided in this Constitution, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

### **13.2 Directors to act in the best interests of the Company**

Subject to clause 5, when exercising powers or performing duties, each Director must act in good faith and in what the Director believes to be the best interests of the Company.

Notwithstanding this clause 13.2, each Director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the Shareholder even though it may not be in the best interests of the Company.

### **13.3 Exercise of powers by Board**

Subject to the provisions of this Constitution, the Board may exercise all the powers of the Company that are not required, either by the Companies Act, the Māori Fisheries Act, the Trust Deed or this Constitution, to be exercised by the Shareholder.

### **13.4 Delegation of powers**

The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Companies Act.

### **13.5 Appointment of attorney**

The Company may exercise the power conferred by section 181 of the Companies Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provision for the protection of persons dealing with the

attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **13.6 Ratification by Shareholder**

Subject to section 177 of the Companies Act, the Shareholder, or any other person in whom a power is vested by this Constitution, the Māori Fisheries Act or the Companies Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

## **14. MEETINGS OF THE BOARD**

### **14.1 Calling of Board meetings**

Any Director may convene a meeting of the Board at any time. The Board must hold a minimum of 2 meetings in each Income Year.

### **14.2 Methods of holding meetings**

A meeting of the Board may be held either:

- (a) By a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) By means of audio, or audio and visual, communication by which each Director participating can hear each Director participating and constituting a quorum.

### **14.3 Notice of meeting**

7 Working Days' notice of any meeting, stating the place, day, time, mode and subject-matter of the meeting of the Board, shall be communicated to each of the Directors. However, it shall not be necessary to give notice to any Director for the time being absent from New Zealand unless that Director has provided details of where he or she may be contacted while overseas.

### **14.4 Notice to Elected Representatives**

The Elected Representatives shall have the right to receive the agenda for each meeting of the Board.

### **14.5 Waiver**

The requirement for notice of a meeting of the Board, or an irregularity in such notice, is waived if all Directors who are at the time entitled to receive such notice attend or participate in the meeting without protest, or if all Directors entitled to receive notice of the meeting agree to the waiver.

### **14.6 Quorum**

A majority of the Directors shall constitute a quorum at a meeting of the Board.

## **14.7 Voting**

Each Director shall have one vote. A resolution of the Board shall be decided by a majority of votes, unless the Companies Act, Māori Fisheries Act or Trust Deed requires otherwise. In the case of an equal vote, the Chairperson will have a deciding vote.

## **14.8 Resolutions in writing**

A written resolution signed by all Directors or by all members of a committee of Directors shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Board. Such a resolution may comprise several duplicated documents, each signed by one or more of the Directors or members of the committee of Directors (as the case may be). Any such resolution must be communicated to the Elected Representatives.

## **14.9 Minutes**

The Board shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Board. All such minutes must be communicated to the Elected Representatives.

## **14.10 Validity of acts**

All acts done by any meeting of the Board or of a committee of Directors are valid notwithstanding:

- (a) Any defect in the appointment of any Director or person acting as a Director; or
- (b) That any of the Directors were disqualified; or
- (c) Any irregularity in a notice of meeting.

## **14.11 Other procedures**

Except as set out in this clause 14, the Board may regulate its own procedure, unless the Māori Fisheries Act, the Companies Act or Trust Deed requires otherwise.

# **15. DIRECTORS' INTERESTS**

## **15.1 Disclosure of interests**

Immediately following his or her appointment as a Director, the Director must enter into the interests register and disclose to the Board:

- (a) The name of any Iwi of which he or she is a member; and
- (b) Any Relevant Organisation of which he or she is a director, trustee or officeholder or in respect of which he or she performs another role.

The Director must also, at any time after his or her appointment, enter into the interests register and disclose to the Board the name of any Relevant Organisation of which he or she becomes a director, trustee or officeholder or in respect of which he or she performs another role.

## **15.2 Definition of interested Director**

A Director will be interested in a matter if the Director:

- (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 who will or may derive a material financial benefit from the matter (unless that party is a Subsidiary).
- (d) Is the parent, child, partner or spouse of another party to, or person who will or may derive a material financial benefit from, the matter; or
- (e) Is otherwise directly or indirectly interested in the matter.

## **15.3 Director deemed to be interested**

Subject to clause 15.4, a Director is deemed to be interested in any transaction or proposed transaction that the Company enters into, or proposes to enter into, with any lwi or Relevant Organisation as set out in clause 15.1, whether or not the required entry and disclosure have been made.

## **15.4 lwi membership**

Where a Director is member of any lwi (but not an officeholder of that lwi or any Relevant Organisation representing that lwi) and that lwi benefits or is likely to benefit from the transaction entered into, or to be entered into, by the Company, the Director is not prohibited from being included among the Directors present at a meeting for the purposes of forming a quorum, or from voting in respect of the transaction, unless the Director receives or is likely to receive a benefit that is more advantageous than the benefit conferred on the other members of that Director's lwi.

## **15.5 Additional requirements for Directors**

Each Director must disclose to the Board any other potentially relevant conflict of interest that that Director believes he or she has, or may have, in relation to a specific transaction or matter being considered by the Board.

## **15.6 Relevance of conflict of interests**

Where a Director discloses a potentially relevant conflict of interests in accordance with clause 15.5, that conflict of interest is not to be treated as being relevant to the specific transaction or matter being considered by the Board unless a majority of the other Directors resolve that such conflict of interest is relevant.

## **15.7 Deficiency or irregularity in disclosure of interest**

A deficiency or irregularity in a disclosure or recording of interest will not necessarily invalidate any decision made involving the interested Director. Sections 107(3) and 141 of the Companies Act shall apply.

## **15.8 Interested Director may not vote**

Subject to clause 15.9, an interested Director shall not vote in respect of any matter in which that Director is interested, nor shall the Director be counted for the purposes of forming a quorum in any meeting to consider such a matter. Any interested Director must leave the meeting for the duration of the deliberation and voting on the matter in which that Director is interested and the minutes should record the Director's absence and return.

## **15.9 Interested Director may vote on certain matters**

Notwithstanding clause 15.8, a Director shall be permitted to vote in relation to:

- (a) Remuneration or any other benefit given to a Director in accordance with this Constitution, subject to clause 1.7 of the Trust Deed's Seventh Schedule; or
- (b) An indemnity given or insurance provided to the Directors in accordance with this Constitution.

## **15.10 Benefits for Directors**

No Director may make a private pecuniary profit from any of the Company's assets other than in accordance with clauses 15.11 and 16.1.

## **15.11 Payment for professional services**

The Board may, if determined by the Trust, authorise the payment of remuneration to any Director in respect of any professional services provided to the Company by that Director, or any firm or company of which the Director is a partner, director or employee. Any such payment must be authorised by the other Directors by majority as being for services provided other than as a Director and being fair and reasonable (having regard to the level of remuneration that would be paid in an arms-length transaction). This clause is subject to clause 1.7 of the Trust Deed's Seventh Schedule.

## **15.12 Exercise of Directors' powers**

No amount derived from the business of the Company may be directed or diverted to the benefit or advantage of a Related Person where that Related Person is able, directly or indirectly, to determine or materially influence either the determination of the nature or extent of the relevant benefit or advantage, or the circumstances in which the relevant benefit or advantage is, or is to be, given or received.

## **16. DIRECTORS' REMUNERATION AND OTHER BENEFITS**

### **16.1 Remuneration and expenses**

The Company may:

- (a) If determined by the Trust, remunerate a Director for services as a Director; and
- (b) Reimburse a Director for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director.

### **16.2 Payments to Directors**

Any payments made under clauses 15.11 or 16.1 to any Director, or to any firm or company of which the Director is a partner, director or an employee must be:

- (a) In accordance with a protocol agreed to by all Directors;
- (b) Separately accounted for by the Company (as a separate item in the financial statements of the Company for the year in which the payments are made); and
- (c) Published in the annual report of the Company for the year in which payments are made.

### **16.3 No Compensation for loss of office**

The Company must not pay to, or for the benefit of, any Director any compensation by reason of his or her ceasing to be a Director whether by reason of his or her removal from office as a Director or deemed or actual resignation as a Director or the expiry of his or her term of appointment as a Director or otherwise.

## **17. INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**

### **17.1 Indemnity for Directors**

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Companies Act and any liability or costs referred to in section 162(4) of the Companies Act.

### **17.2 Indemnities and insurance**

In addition to the indemnity set out in clause 17.1, the Company may with the prior written approval of the Shareholder and the Board:

- (a) Indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Companies Act;
- (b) Indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Companies Act; and

- (c) Effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Companies Act.

### **17.3 Interpretation**

Words given extended meanings by section 162(9) of the Companies Act have those extended meanings in this clause 17.

## **18. NOTICES**

All notices, reports, accounts or documents required to be sent a Shareholder shall be sent in the manner set in section 391 of the Companies Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.

## **19. LIQUIDATION**

### **19.1 Distribution of surplus**

Subject to clauses 7.2 and 19.2 of this Constitution, upon the liquidation of the Company any surplus assets of the Company must be distributed to the Shareholder.

### **19.2 Distribution of Ordinary Shares and Settlement Quota**

Upon liquidation of the Company, any Ordinary Shares and Settlement Quota held by the Company must be distributed to a wholly-owned company of the Shareholder. The constitution of that wholly-owned company must comply with all of the relevant requirements of the Māori Fisheries Act, the Trust Deed and the Companies Act.

## **20. METHOD OF CONTRACTING**

### **20.1 Deeds**

A deed that is to be entered into by the Company may be signed on behalf of the Company by:

- (a) Two or more Directors;
- (b) One or more attorneys appointed by the Company; or
- (c) Any person (including a Director) authorised by the Board, whose signature must be witnessed.

### **20.2 Other written contracts**

An obligation or contract that is required by law to be in writing, and any other written obligation or contract that is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

### **20.3 Other obligations**

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

## **21. REVIEW OF CONSTITUTION**

The Shareholder shall undertake a review of this Constitution and the constitution of any Subsidiaries, as well as the operation of each constitution, at the same time as it undertakes a review of the Trust Deed in accordance with clause 10.1 of the Trust Deed. Such review shall include recommendations as to the amendments (if any) that should be made to this Constitution and the constitution of any Subsidiaries.

## **22. APPROVAL AND AMENDMENT OF THE CONSTITUTION**

### **22.1 Approval by Mandated Iwi Organisation required**

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

- (a) Approved as complying with the requirements of the Māori Fisheries Act by the Mandated Iwi Organisation; and
- (b) Ratified as the Asset Holding Company to receive hold and manage the Settlement Quota and Ordinary Shares and any other assets on behalf of the Mandated Iwi Organisation by not less than 75% of the Elected Representatives of the Mandated Iwi Organisation.

### **22.2 Amendment to Constitution**

Subject to clauses 22.3-22.4, clause 22.1 applies, with the necessary modifications, to any amendment proposed to this Constitution or the constitution of any Subsidiary.

### **22.3 Advice as to effect of amendments on tax status**

Prior to any resolution to amend this Constitution being approved by the Shareholder, the Directors shall ensure that competent advice is obtained and made available to the Shareholder confirming the effect, if any, of the proposed amendments on the tax status of the Company.

### **22.4 Amendment must comply with Māori Fisheries Act**

To the extent that a proposed amendment to this Constitution, or the constitution of a Subsidiary, relates to matters provided for by or under the Māori Fisheries Act, the proposed amendment must comply with section 18 of the Māori Fisheries Act.