

DEED OF TRUST ESTABLISHING
NGAATI WHANAUNGA RUUNANGA TRUST



CONTENTS

1.	TRUST AND OBJECTS	2
2.	APPOINTMENT, POWERS AND MEETINGS OF TRUSTEES	4
3.	TAUMATA COUNCIL	6
4.	CHIEF EXECUTIVE AND OTHER EMPLOYEES	6
5.	TRUSTEES MAY ESTABLISH SUBSIDIARIES	6
6.	APPOINTMENT OF DIRECTORS	7
7.	APPLICATION OF INCOME AND CAPITAL	7
8.	PLANS	8
9.	ANNUAL REPORTS, ACCOUNTS AND AUDITOR	9
10.	SUBSIDIARIES TO PREPARE PLANS AND REPORTS	10
11.	DISCLOSURE OF PLANS, REPORTS AND MINUTES	11
12.	NO DISCLOSURE OF SENSITIVE INFORMATION	11
13.	GENERAL MEETINGS.....	12
14.	DISCLOSURE OF INTERESTS	15
15.	DEALINGS WITH "INTERESTED" TRUSTEES	15
16.	PROHIBITION OF BENEFIT OR ADVANTAGE	16
17.	DISCLOSURE OF TRUSTEE REMUNERATION ETC	16
18.	ADVICE TO TRUSTEES	16
19.	LIABILITY OF TRUSTEES	16
20.	INDEMNITY AND INSURANCE	16
21.	NGAATI WHANAUNGA NOT TO BE BROUGHT INTO DISREPUTE.....	17
22.	GIFTS OR DONATIONS	18
23.	RECEIPTS FOR PAYMENTS	18
24.	AMENDMENTS TO TRUST DEED	18
25.	RESETTLEMENT	19
26.	TERMINATION OF TRUST	19
27.	ARCHIVING OF RECORDS.....	20
28.	DISPUTE RESOLUTION.....	20
29.	FISHERIES	21
30.	VESTING DAY	25
31.	PERPETUITIES	25
32.	REVIEW OF TRUST DEED.....	25
33.	CUSTODIAN TRUSTEE.....	25
34.	DEFINITIONS AND INTERPRETATIONS	26
	FIRST SCHEDULE	35
	SECOND SCHEDULE	40
	THIRD SCHEDULE.....	49
	FOURTH SCHEDULE.....	53



Nгаа Kaupapa

Ki te Whakarite
Te Taha Tinana
Te Taha Hinengaro
Te Taha Wairua
Te Taha Whaanau
Ki te Ao Turoa
Ka tino whai Mana te Mauri



DEED dated [] 2017

BACKGROUND

- A.** Ngaati Whanaunga Incorporated Society is the mandated Iwi entity for Ngaati Whanaunga for Treaty Settlement purposes. Mandate was achieved in May 2011.
- B.** In order to meet the requirements prescribed by the Crown the Ngaati Whanaunga Incorporated Society and negotiators are proposing that Ngaati Whanaunga adopt a private Trust as an appropriate post settlement governance vehicle to receive and administer the settlement assets received as part of Ngaati Whanaunga's historical Treaty of Waitangi settlement to be agreed with the Crown.

1. TRUST AND OBJECTS

- 1.1 Trust Established:** The Trustees acknowledge and declare that the Trust hereby created shall be known as the **Ngaati Whanaunga Ruunanga Trust**. The initial Trustees further acknowledge that they hold the Trust's Assets upon the trusts and with the powers set out in this Trust Deed.
- 1.2 Objects and Purposes of the Trust:** The purpose for which the Trust is established is to receive, manage, hold and administer the Trust's Assets on behalf of and for the benefit of the present and future Members of Ngaati Whanaunga and as the Trustees may in their absolute discretion determine, make available at such time and in such manner, whether by way of distribution, advance, resettlement, or other use, the income and/or capital of the Trust to such present and future Members of Ngaati Whanaunga in accordance with this Deed.

Without limiting in any way the generality of the foregoing, the Trustees may:

- (a) educate and otherwise heighten the awareness of Ngaati Whanaunga in respect of the cultural heritage of Ngaati Whanaunga;
- (b) enhance the cultural, social, and educational advancement of Ngaati Whanaunga;
- (c) assist Ngaati Whanaunga to obtain, maintain and improve their vocational, educational and entrepreneurial skills, knowledge and expertise;
- (d) promote commerce and industry within Ngaati Whanaunga;
- (e) alleviate poverty by promoting economic growth/ development by way of waananga and seeking relevant skill based person/s, appropriate training and resources to help identify the future growth areas for persons within Ngaati Whanaunga;
- (f) foster, develop and represent the interests of Ngaati Whanaunga;

100269630/5694018.1



- (g) maintain and establish areas and places of spiritual, ancestral, cultural, customary and historical significance to Ngaati Whanaunga;
- (h) tautoko the whaanau and hapuu of Ngaati Whanaunga as kaitiaki in the management of ancestral lands, water, sites, waahi tapu, resources, taonga species and other taonga;
- (i) represent Ngaati Whanaunga in dealings with other parties including central and local government, in matters of interest or affecting Ngaati Whanaunga;
- (j) represent Ngaati Whanaunga in any proceedings involving Te Tiriti o Waitangi or taonga tuku iho;
- (k) to receive, manage and administer any land, property, natural or physical resources or other taonga transferred to Ngaati Whanaunga;
- (l) to support, encourage, promote and conduct any Ngaati Whanaunga initiatives or any other activities consistent with the spirit of the foregoing objects;
- (m) to receive, manage and administer the Trust's Assets on behalf of and for the benefit of the present and future Members of Ngaati Whanaunga in accordance with this Trust Deed;
- (n) to be the Iwi authority for Ngaati Whanaunga for the purposes of the Resource Management Act 1991 and the Crown Minerals Act 1991;
- (o) to act as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for Ngaati Whanaunga in the event that Ngaati Whanaunga decides to withdraw from the Pare Hauraki Fishing Trust in accordance with the provisions of the Māori Fisheries Act 2004;
- (p) any other purpose that is considered by the Trustees from time to time to be beneficial to Ngaati Whanaunga.

1.3 **Trust Administration:** The Trust shall be governed and administered by and in accordance with this Trust Deed.

1.4 **Powers of Trust:** The Trustees continue to have all the powers of a natural person and may exercise those powers in accordance with the terms of this Trust. Without limiting in any way the generality of the foregoing, the Trustees shall have to powers:

- (a) to receive or accept, or to make any disposition of, any real property, including any interest of any type in real property;
- (b) to receive or accept, or to make any disposition of, any personal property (whether chattels, chose in action, intellectual property, and otherwise howsoever), including any interest of any type in personal property;
- (c) to receive or grant any security, including any mortgage, pledge, charge, security interest, or otherwise howsoever, in relation to all, or any part of, the Property;

100269630/5694018.1



- (d) to contract, to grant a release, to grant a power of attorney, to appoint an agent, a receiver, or a stakeholder, to settle property on, or declare, a trust;
- (e) to issue or take any debt or equity security;
- (f) to borrow or to lend money;
- (g) to advance or gift funds;
- (h) to apply income or capital;
- (i) to incorporate Subsidiaries including companies, limited partnerships, establish trusts and invest in share capital; and to undertake commercial activities to support the Trust's Purposes;
- (j) To undertake the purchase of shares on behalf of Ngaati Whanaunga;
- (k) to insure, lease and buy property.

1.5 **Restriction on Major Transactions:** Notwithstanding clause 1.4, the Trustees must not enter into a Major Transaction; and must ensure that any Subsidiaries are established on terms which provide that such Subsidiaries must not enter into a Major Transaction unless that Major Transaction:

- (a) is approved by way of Special Resolution in accordance with the Fourth Schedule; or
- (b) is contingent upon approval by way of Special Resolution.

2. APPOINTMENT, POWERS AND MEETINGS OF TRUSTEES

2.1 **Initial Trustees:** Pending election and appointment of Trustees in accordance with the Second Schedule, the Initial Trustees shall be:

- (a) [Trustee name]
- (b) [Trustee name]
- (c) [Trustee name]
- (d) [Trustee name]
- (e) [Trustee name]

[Initial Trustees to be elected in the PSGE ratification process]

2.2 **Appointment in accordance with Second Schedule:** Subject to clause 2.1 the Trustees from time to time of the Trust shall be appointed to office in accordance with the rules set out in the Second Schedule.

2.3 **Trustees to manage Trust affairs:** Subject to any requirements imposed by this Trust Deed, the Deed of Settlement, the Settlement Act and in accordance with law the Trustees shall control and supervise the business and affairs of the Trust in such a manner as they, in their sole discretion, see fit. Without limiting the generality of the foregoing, the Trustees may:

100269630/5694018.1



- (a) purchase, lease, hire or otherwise acquire any real or personal property, privileges or rights;
 - (b) sell, exchange, transfer, bail, lease or otherwise dispose of any real or personal property, privileges or rights;
 - (c) borrow or otherwise raise money by the issue of debentures, bonds, mortgages or other security (if any) given over all, or part, of the property of Ngaati Whanaunga;
 - (d) lend or otherwise invest any funds of Ngaati Whanaunga upon such securities (if any) as may be determined; and
 - (e) appoint persons to be employed by the trust.
- 2.4 **Proceedings of Trustees:** Except as otherwise provided in the Trust Deed the meetings of the Trustees and such other proceedings of the Trustees as are expressly referred to in the Third Schedule shall be conducted in accordance with the rules set out in the Third Schedule.
- 2.5 **Trustees Remuneration:** Trustees' remuneration must:
- (a) be authorised by a resolution of Adult Registered Members of Ngaati Whanaunga in accordance with clause 13.2. In recommending trustee remuneration levels the Trustees must first seek professional advice in that regard; but
 - (b) in respect of the Initial Trustees in clause 2.1, who will be appointed before the first annual general meeting, be set by them for the period they hold office as initial Trustees, on the basis of professional advice they must seek.
- 2.6 **Trustee Expenses:** Trustees will be entitled to be reimbursed reasonable expenses incurred in relation to their acting as Trustees.
- 2.7 **Appointment and removal of Advisory Trustee:** The Trustees may appoint an Advisory Trustee or Advisory Trustees and on any such appointment or incorporation the following provisions shall have effect:
- (a) The sole function of the Advisory Trustee(s) shall be to attend meetings and advise the Trustees on any matters requested by the Trustees;
 - (b) The Advisory Trustee(s) shall not have any proprietary rights to the assets of the Trust nor any voting rights at meetings of Trustees, his or her role is solely as an advisor to the Trust;
 - (c) The Advisory Trustee(s) may be remunerated from the Trust for his, her or their services;

The Advisory Trustee(s) shall not be liable for any act or default on the part of any of the Trustees, provided the Advisory Trustee(s) is not knowingly a participant in any willful breach of trust by such Trustee(s).



- 2.8 **Professional Trustees:** Notwithstanding clause 2.5 any Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust in a professional capacity as distinct from the services performed by them in their role as Trustee without obtaining authorisation in accordance with clause 2.5.

3. TAUMATA COUNCIL

2. ***Appointment of Taumata Council: The Trustees may from time to time appoint a Taumata Council on such terms of appointment, and subject to such rules and regulations, meeting procedures and processes, as may be prescribed by the Trustees from time to time. The Trustees shall when making appointments take into consideration the desirability of the Taumata Council being broadly representative of Ngaati Whanaunga.***

- 2.1 **Role of Taumata Council:** On request from the Trustees, the Taumata Council will be responsible for advising the Trustees on matters relating to the tikanga, reo, kawa, koorero and whakapapa of Ngaati Whanaunga provided that nothing in this Deed shall be deemed or construed so as to make the seeking or following of advice obtained from the Taumata Council as binding upon the Trustees.

- 2.2 **Trustees not to be members:** A Trustee may not contemporaneously with his or her holding office as Trustee be appointed to or remain part of the Taumata Council.

4 CHIEF EXECUTIVE AND OTHER EMPLOYEES

- 4.1 **Trust to appoint Chief Executive:** The Trustees may (on such terms as the Trustees may determine) appoint a Chief Executive to manage the day to day administration of the Trust, including without limitation the implementation of the Trustees' planning, reporting and monitoring obligations under this Trust Deed.

- 4.2 **Trustee Role:** A Trustee may not hold the position of Chief Executive nor be an employee of, or contractor to, and entity or trust in the Ngaati Whanaunga Group.

5. TRUSTEES MAY ESTABLISH SUBSIDIARIES

- 5.1 **Establishment of Subsidiaries:** In receiving, controlling, and supervising the use of the Trust's Assets on behalf of Ngaati Whanaunga, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, the Trustees may establish and oversee the operations of any Subsidiaries.

- 5.2 **Ownership and Control of Subsidiaries:** The Trustees shall ensure that any Subsidiary is established on terms which require the Subsidiary to manage any assets it owns or holds solely for the benefit of Members of Ngaati Whanaunga. The Trustees shall ensure that they have and retain all the power to appoint and remove the trustees and directors or any responsible bodies of any Subsidiary.

- 5.6 **Trustees to monitor:** In giving effect to the Trust's Purposes the Trustees shall be responsible for monitoring and otherwise overseeing the activities of any Subsidiary. The

100269630/5694018.1



Trust shall exercise its control in any Subsidiaries in such a way as to ensure any Subsidiary carries out their activities in a manner which is consistent with the Trusts Purposes.

- 5.7 **Assets held for Ngaati Whanaunga:** All assets held and income derived by any member of the Ngaati Whanaunga Group shall be applied in a manner which is consistent with the Trust's Purposes.
- 5.8 **Directors responsible for governance:** For the avoidance of doubt, and except as expressly provided by this Trust Deed, all other entities or trusts within the Ngaati Whanaunga Group shall be governed by their respective boards and the role of the Trustees in respect of those companies and other entities shall be limited to the exercise of the rights conferred on the Trustees as shareholders, or (as applicable) appointer, and beneficiary of the relevant entity.
- 5.9 **Remuneration of directors and other trustees:** The Trustees shall ensure that Subsidiaries are established on terms which give the Trustees the power to determine the remuneration payable to any director or trustee or controlling body of any Subsidiary.
- 5.10 **No influence in determining remuneration:** No Trustee receiving any remuneration referred to in clause 5.9 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall the Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

6. APPOINTMENT OF DIRECTORS

- 6.1 **Appointment and removal of directors and trustees:** The Trustees shall ensure that Subsidiaries are established on terms which ensure that the directors and trustees or other controlling body of the Subsidiary shall be appointed and removed by the Trustees.
- 6.2 **Trustees as directors and trustees of Subsidiaries:** No more than 40% of the Trustees then in office may be appointed as directors or trustees of any individual Subsidiary.
- 6.3 **Appointments with regard to skills and expertise:** A director and a trustee or controlling body of any Subsidiary shall only be appointed if that person has the particular skills and expertise that are required of a member of the board to which the appointment relates and bearing in mind the activities that the board undertakes or is likely to undertake in the future and the mix of skills and expertise that is required on the relevant board.
- 6.4 **Independent:** The Trustees may appoint directors and trustees to any Subsidiary who are not Members of Ngaati Whanaunga.

7. APPLICATION OF INCOME AND CAPITAL

- 7.1 **Trustees may apply income and capital:** During the Trust Period, and subject to any other requirements in this Trust Deed, the Trustees may:
- (a) provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income in any Income Year to or for the benefit of any of the Beneficiaries;

100269630/5694018.1



(b) use or apply any capital of the Trust's Assets to or for the benefit of any of the Beneficiaries for the Trust's Purpose without first using or applying the whole or any portion of the income of the Trust's Assets for that year; or

(c) set aside reserves or accumulations for future use or application by the Trustees,

as the Trustees in their sole discretion think fit for or towards the Trust's Purpose.

7.2 **Payments out of income:** The Trustees may in making any decisions about the application of income in any Income Year, decide to have set aside, deducted from, or paid out of income such amounts as the Trustees in its discretion thinks fit, including:

(a) as a reserve against losses and contingencies, and the Trustees may write off losses from time to time or resort to any reserve fund in mitigation of losses or for any other purpose; or

(b) as a reserve to meet fluctuations of income in future years and other contingencies.

7.3 **Matters to consider in applying income:** In making any decision as to the application of the income in any Income Year, the Trustees shall, in exercising its discretion:

(a) determine how much of the income should cease to be income and be added to and form part of the capital of the Trustees' Assets, provided that the Trustees may not in the Income Year convert the entire income of the Trust into capital; and

(b) endeavour to act fairly in considering the present and future needs and interests of all members of Ngaati Whanaunga.

7.4 **Accumulation of six months where income not applied:** Any income from any Income Year that is not paid or applied in accordance with this clause 7 during or within the six (6) months from the end of that Income Year, or the earlier of the date on which the Trustees file a tax return, or must file a tax return for that Income Year, shall be accumulated and any income so accumulated shall be added to and form part of the capital of the Trust's Assets and shall be subject to the trusts and powers herein declared in respect of the capital of the Trust's Assets.

8. PLANS

8.1 **Trust to prepare annual plan:** In addition to the requirement in clause 8.3, the Trustees shall prepare no later than one (1) month before the commencement of each Income Year after Settlement Date an annual plan which specifies in respect of that Income Year information including:

(a) the annual objectives of the Trust consistent with the longer term vision of the Ngaati Whanaunga Group as identified in the Five Year Plan;

(b) the nature and scope of the activities proposed by the Trust for the Ngaati Whanaunga Group in the performance of the Trust's purposes;



- (c) the ratio of capital to total assets;
- (d) the performance targets and measurements by which performance of the Ngaati Whanaunga Group may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with;
- (f) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Members of Ngaati Whanaunga; and
- (g) any other information as the Trustees in their discretion consider necessary or appropriate.

8.2 **Trustees to prepare Five Year Plan:** In addition to the requirement in clause 8.1, the Trustees shall also produce within eighteen (18) months following Settlement Date, and update not less than every two (3) years, a Five Year Plan. Such a plan shall set out the longer term vision of the Trust in respect of the matters referred to in clause 8.1(a) to 8.1(f) and shall include a statement by the Trustees of the commercial, management and distribution policies that the Trustees intends to follow in respect of the Trust Assets.

8.3 **Initial Annual Plan and Five Year Plan:** In addition to the requirements in clauses 8.1 and 8.2 the Trust shall, within one (3) months of establishment of the Trust prepare and produce an Annual Plan and Five Year Plan that comply with the matters in clauses 8.1 and 8.2. Those plans shall have effect until such time as they are replaced by new plans as required in clauses 8.1 and 8.2.

8.4 Existing plans and statements of intent will continue in operation pending completion of any review and subsequent approval of any revised plans or statement of intent.

9. ANNUAL REPORTS, ACCOUNTS AND AUDITOR

9.1 **Preparation of annual report:** The Trustees must, within five (5) months after the end of each Income Year after Settlement Date, and no later than 20 Business Days prior to an annual general meeting, cause to be prepared an annual report on the affairs of the Ngaati Whanaunga Group covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan, and the Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Ngaati Whanaunga Group for that Income Year. The Consolidated Financial Statements shall include as a separate item details of any remuneration or fees paid to any Trustee or any Trustee's firm (including without limitation any such payment to any Trustee as a director of the company or as a director or trustee of any other member of the Ngaati Whanaunga Group) and details of any premiums paid in respect of Trustees' indemnity insurance (or any indemnity payments made by an insurer).

9.2 **Audit of financial statements:** The Trustees must also ensure that the Consolidated Financial Statements for each Income Year after Settlement Date are audited by a chartered accountant in public practice prior to the date for giving notice of the annual general meeting of the Trust for the Income Year immediately following the Income Year to which the financial statements relate.

100269630/5694018.1



9.3 **Appointment of auditor:** The auditor shall be appointed by the Trustees prior to the end of the Income Year after Settlement Date to which the audit relates and, where possible, the fee of the auditor shall also be fixed at that time. No Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the Trust's accountant shall not be appointed as the auditor.

10. SUBSIDIARIES TO PREPARE PLANS AND REPORTS

10.1 **Subsidiary to prepare Plans and Statements of Intent:** The Trustees shall procure that any Subsidiaries will:

- (a) within three (3) months of the establishment of the Subsidiary, prepare a Statement of Intent that is consistent with the Trust's Five Year Plan;
- (b) as required by the Trustees, 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 its Subsidiaries;
- (c) no later than one (1) month following the completion of the Statement of Intent referred to in paragraph (a) of this clause, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its Statement of Intent; and
- (e) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year send to the Trustees 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 Trustees may require from time to time).

10.2 **Trustee approval required:** Prior to being implemented all Statements of Intent and annual plans must be approved by the Trustees. Such approval shall be given in light of the Trust's overall, plans and policies in respect of the Trust's Assets. However, nothing in this clause shall allow the Trustees to give directions beyond approving or not approving any plan or Statement of Intent or otherwise exercising its powers as shareholder, appointor, beneficiary or similar, with the intention that the directors, trustees or other controlling body of the Subsidiaries shall otherwise retain full discretion in respect of the implementation of the plans and Statements of Intent.

10.3 **Reports to comply with Companies Act 1993:** The Trustees shall procure that all annual reports by any Subsidiary that is a company comply in all respects with the requirements of the Companies Act 1993, including without limitation:

- (a) the description required by section 211(1)(a) of the Companies Act 1993 of the nature of the business of any Subsidiary or any of its subsidiaries, or the classes of business in which the Subsidiary has an interest, whether as a shareholder of another company or otherwise;
- (b) the financial statements (or as appropriate group financial statements) for that Income Year completed and signed in accordance with the Financial Reporting Act 2013; and

100269630/5694018.1



- (c) the auditor's report of the financial statements (or group financial statements) of the Subsidiary for that Income Year.
- 10.4 **Subsidiaries to meet Companies Act standard:** All reports of any Subsidiary that is not a company need to comply with the generally accepted reporting standard applicable to that entity.
- 10.5 **Report to include comparison against plans:** In addition to the matters set out in clauses 10.3 and 10.4, the Trustees shall procure that all reports by any Subsidiary include a comparison of their performance against both their respective annual plans for that Income Year and their Statements of Intent.
- 10.6 **Protection of sensitive Information:** For the avoidance of doubt, nothing in this clause 10 limits or affects the rights of the Trustees, as shareholder in any Subsidiary, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual report of any Subsidiary.

11. DISCLOSURE OF PLANS, REPORTS AND MINUTES

- 11.1 **Documents to be available for inspection:** The Trustees shall hold at their offices and make available for inspection by any Member of Ngaati Whanaunga during normal business hours on any Business Day:
- (a) the Annual Report for each of the preceding three Income Years;
 - (b) the Consolidated Financial Statements for the preceding three Income Years;
 - (c) the Annual Plan;
 - (d) the Five Year Plan;
 - (e) the Statements of Intent;
 - (f) the minute book kept in accordance with clause 13.15 of all decisions taken and business transacted at every annual general meeting and special general meeting;
 - (g) their own personal details on the Ngaati Whanaunga Tribal Register;
 - (h) the current Trust Deed and any amendment to the Trust Deed; and
 - (i) the current constitution and trust deed of any Subsidiary.
- 11.2 **Costs of copying:** Any Member of Ngaati Whanaunga shall be entitled to obtain copies of the information referred to in clause 11.1. However the Trustees shall also be entitled to recover at their discretion all reasonable copying or postage costs (if any).

12. NO DISCLOSURE OF SENSITIVE INFORMATION

- 12.1 For the avoidance of doubt, but subject to the Trustees' reporting obligations in clauses 9.1, 11.1(a), 11.1(b), 11.1(f), 13.1(a) and 13.1(b), the Trustees may at their sole discretion limit disclosure of any information about the activities or proposed activities of the Trust and the

100269630/5694018.1



Ngaati Whanaunga Group which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive, confidential, or subject to obligations of privacy.

13. GENERAL MEETINGS

13.1 **Trustees to hold annual general meeting:** The Trustees shall, no later than six (6) calendar months after the end of each Income Year after Settlement Date, and in any event no more than 15 months after the date of the last annual general meeting of the Trust, hold a general meeting for the Members of Ngaati Whanaunga, to be called its annual general meeting, and shall at that meeting:

- (a) report on the operations of the Ngaati Whanaunga Group during the preceding Income Year;
- (b) present the Annual Report (which must have been made available no later than 20 working days prior to the annual general meeting) and duly audited Consolidated Financial Statements;
- (c) present the proposed Annual Plan;
- (d) announce the names of all newly appointed Trustees;
- (e) approve the appointment of the auditor for the next Income Year;
- (f) approve the Trustees' remuneration;
- (g) undertake all other notified business; and
- (h) at the discretion of the Chairperson and as approved in accordance with clause 13.5, undertake any other general business raised at that meeting.

13.2 Approval of Trustees' remuneration and appointment of auditor:

- (a) No remuneration will be paid to a Trustee in his or her capacity as a Trustee unless that remuneration has been authorised by a resolution of the Adult Registered Members of Ngaati Whanaunga present at the annual general meeting. Each such resolution will express the remuneration to be paid to the Trustees as a monetary sum per annum payable either to all Trustees taken together or to any person who from time to time holds office as a Trustee. This clause does not apply to any remuneration paid to any initial Trustee prior to the Trust's first annual general meeting or Trustee in his or her capacity as a contractor, employee or a director or trustee of any other member of the Ngaati Whanaunga Group.
- (b) The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Registered Members of Ngaati Whanaunga present at the annual general meeting.

13.3 **Notice of general meeting:** The Trustees shall give not less than twenty-one (21) days' notice of the holding of the annual general meeting, such notice to be posted (including, by electronic form where available) to all Adult Registered Members of Ngaati Whanaunga at the last address shown for each such Adult Registered Member of Ngaati Whanaunga on the Ngaati Whanaunga Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent to the last known physical address. Notice of the meeting shall also be inserted prominently in appropriate major

100269630/5694018.1



metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngaati Whanaunga reside. All such notices shall contain:

- (a) the date, time and place of the meeting;
- (b) an agenda of matters to be discussed at the meeting; and
- (d) details of where copies of any information to be laid before the meeting may be inspected.

13.4 **Notice of special general meetings:** In addition to the annual general meeting of the Trust, the Trustees shall convene a special general meeting of the Trust for the Members of Ngaati Whanaunga on the requisition of:

- (a) the Chairperson for the time being of the Trust;
- (b) the majority of the Trustees then in office; or
- (c) 5% of Adult Registered Members of Ngaati Whanaunga.

Notice of such a meeting shall be given in the same manner as for a notice of the annual general meeting and those requisitioning the meeting shall be required to provide a statement to the Trustees setting out the purposes for which the meeting has been requisitioned and the specific agenda items proposed for such a meeting. The Trustees shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

13.5 **Annual general meeting not limited to notified business:** Any general business raised at the designated time for general business at any annual general meeting may be transacted in addition to the business expressly referred to in the notice calling that meeting, subject to the approval of a majority of attending Adult Registered Members of Ngaati Whanaunga prior to that business being transacted.

13.6 **Special meeting limited to notified business:** No business shall be transacted at any special general meeting other than the business expressly referred to in the notice calling that meeting.

13.7 **Invalidation:** The accidental omission to give notice to, or a failure to receive notice of an annual or special general meeting by, a Member of Ngaati Whanaunga does not invalidate the proceedings at that meeting.

13.8 **Deficiency of notice:** Subject to clause 13.6, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if:

- (a) the deficiency or irregularity is not material; and
- (b) the Adult Registered Members of Ngaati Whanaunga who attend the meeting agree to waive the deficiency or irregularity.

13.9 **Quorum:** The quorum required for any annual or special general meeting of the Trust shall be fifteen (15) Adult Registered Members of Ngaati Whanaunga present in person, and the greater of three (3) Trustees or the majority of Trustees then in office present in person. For the avoidance of doubt, if a Trustee is an Adult Registered Member of Ngaati Whanaunga

100269630/5694018.1



they are entitled to vote and their presence will be counted towards the required number of both Adult Registered Members and Trustees necessary to form a quorum.

- 13.10 **Chairing of meetings:** The Chairperson for the time being of the Trust will be the chairperson of any annual or special general meeting and will preside over and have control over the meeting. If the Chairperson is not present at the time appointed for holding a meeting, then the Deputy Chairperson shall be the chair. If the Deputy Chairperson is also not present, then the Trustees present shall elect one of their number to substitute as the chairperson for that meeting.
- 13.11 **Voting:** To the extent that a vote is sought or required at any annual or special general meeting every Adult Registered Member of Ngaati Whanaunga present shall have one (1) vote.
- 13.12 **Special Resolutions:** All resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members of Ngaati Whanaunga who validly cast a vote. Voting may be by voice or on a show of hands. The chairperson of the meeting may also demand a poll on a resolution either before or after any vote, which among other things, requires the Adult Registered Members to verify their eligibility by a process directed by the chairperson of the meeting. However, except as provided in clauses 1.5, 13.1(e), 13.1(f), 13.2, 24.1, 25 and 26 and where Special Resolutions have been passed in accordance with the Fourth Schedule the Trustees shall not be bound by a resolution passed at any annual or special general meeting, but will only be required to give consideration to any such resolution in administering the Trust's Assets and carrying out the Trust's Purposes. The latest version of the Ngaati Whanaunga register will be present at any annual or special general meeting. The Trustees shall report back at the next annual general meeting to Adult Registered Members where, to what extent, and for what reason, the Trustees have not followed a resolution.
- 13.13 **Adjourned meetings:** If after one hour of the time appointed for an annual or special general meeting, a quorum is not present, the meeting will stand adjourned to be re-convened 7 days after the date of the meeting. On that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting. If a quorum is not present after one hour from the time appointed for that adjourned meeting, the Adult Registered Members of Ngaati Whanaunga present will constitute a quorum.
- 13.14 **Unruly meetings:** If any general meeting becomes so unruly or disorderly that in the opinion of the chairperson of the meeting the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the chairperson becomes unduly protracted, the chairperson may, and without giving any reason, adjourn the meeting or may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote by a poll, without further discussion and the meeting will be considered closed.
- 13.15 **Minutes:** The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every annual general meeting and special general meeting.
- 13.16 **Minutes to be evidence of proceedings:** Any minute of the proceedings at an annual general meeting or a special general meeting which is purported to be signed by the chairperson of that meeting shall be evidence of those proceedings. The minutes will be signed as soon as practicable after the meeting.

100269630/5694018.1



13.17 **Minutes to be evidence of proper conduct:** Where minutes of an annual general meeting or a special general meeting have been made in accordance with this clause then, until the contrary is proven, the meeting shall be deemed to have been properly convened and its proceedings to have been conducted properly.

14. DISCLOSURE OF INTERESTS

14.1 **Definition of interested Trustee:** 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, or in the case of a trust controlled, by the Trust or any other member of the Ngaati Whanaunga Group;
- (d) is the parent, child or spouse, de facto or civil union partner 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.

14.2 **Interest in common with Members of Ngaati Whanaunga:** Notwithstanding clause 14.1, no Trustee will be interested in a matter where his or her interest is not different in kind from the interests of other Members of Ngaati Whanaunga.

14.3 Disclosure of interest to other Trustees

A Trustee must forthwith, after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trustees, disclose to his or her co-Trustees at a meeting of the Trustees:

- (a) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of that Trustee's interest cannot be quantified, the nature and extent of that interest.

14.4 Trustees shall, where they believe another Trustee has an actual or potential conflict of interest and has failed to disclose that interest, raise the matter at the next meeting of Trustees.

14.5 Recording of Interest

A disclosure of interest by a Trustee (and the nature and the extent or monetary value of that interest) shall be recorded in the minute book and the interest register of the Trust.

15. DEALINGS WITH "INTERESTED" TRUSTEES



- 15.1 An interested Trustee shall not take part in any deliberation or vote in respect of any matter in which that Trustee is interested, nor shall the Trustee be counted for the purposes of forming a quorum in any meeting to consider such a matter.

16. PROHIBITION OF BENEFIT OR ADVANTAGE

- 16.1 In the carrying on of any business by any member of the Ngaati Whanaunga Group under this Trust Deed, and in the exercise of any power authorising the remuneration of the Trustees, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity as a Related Person, is able by virtue of that capacity in any way (whether directly or indirectly) to determine, or to materially influence the determination of the nature or amount of that benefit, advantage or income, or the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

17. DISCLOSURE OF TRUSTEE REMUNERATION ETC

- 17.1 The Trustees shall, in accordance with clause 9.1, show the amount of any remuneration paid to any Trustee and the amount of any premiums paid out of the Trust's Assets for any Trustee indemnity or insurance separately in the financial statements including any payments made pursuant to clause 20.

18. ADVICE TO TRUSTEES

- 18.1 **Trustees may rely on advice:** The Trustees may, when exercising its powers or performing its duties, rely on reports, statements and 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; and
 - (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.
- 18.2 **Trustees may obtain solicitor's opinion:** If the Trustees are in doubt of any matter relating to the management and administration of the Trust's Assets, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a solicitor and barrister of the High Court of New Zealand of at least seven (7) years standing. This right to obtain and act upon a solicitor's opinion, however, will not restrict any right on the part of the Trustees to apply to the High Court of New Zealand for directions.

19. LIABILITY OF TRUSTEES

- 19.1 A Trustee shall only be liable for losses attributable to his or her dishonesty or to his or her willful commission or omission of an act which he or she knows or should have known to be a breach of this Trust Deed. In particular, no Trustee shall be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for any such breach or alleged breach.

20. INDEMNITY AND INSURANCE

100269630/5694018.1



- 20.1 **Indemnity and insurance for Trustees:** Any Trustee, officer or employee of the Trust or of any other member of the Ngaati Whanaunga Group may be indemnified or have their insurance costs met out of the Trust's Assets against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust or the Ngaati Whanaunga Group, where:
- (a) those proceedings do not arise out of any failure by the Trustee, officer or employee; and
 - (b) he or she was acting in good faith in a manner that he or she believed to be in the best interests of the Trust or any member of the Ngaati Whanaunga Group with the object of fulfilling the Trust's Purposes.
- 20.2 **Indemnity and insurance costs to be just and equitable:** All indemnities and insurance costs may only be provided to the extent that the Trustees in their discretion think just and equitable.
- 20.3 **Indemnity and insurance in regard to specific trusts:** If any assets are held by the Trustees on any separate specific trust, then any Trustee, officer or employee of the Trust may in respect of proceedings brought in relation to that separate specific trust only be indemnified or have their insurance costs met out of those assets.
- 20.4 **Record of decisions:** All decisions made under this clause to give or approve indemnities or meet or approve any insurance costs shall be recorded in the minutes of the meeting at which such a decision was made together with the reasons why, such indemnities or insurance costs were thought by them to be just and equitable.

21. NGAATI WHANAUNGA NOT TO BE BROUGHT INTO DISREPUTE

- 21.1 **Trustees not to bring into disrepute:** No Trustee shall act in a manner which brings or is likely to bring the Trust or any member of the Ngaati Whanaunga Group into disrepute.
- 21.2 **Directors not to bring into disrepute:** The Trustees shall also ensure that Subsidiaries are established on terms which provide that the directors or trustees of any such Subsidiary are not to act in a manner which brings or is likely to bring the Trust or any member of the Ngaati Whanaunga Group into disrepute.
- 21.3 **Trustee may be censured or removed:** Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust or any member of the Ngaati Whanaunga Group may, by a resolution passed by a majority of not less than 75% of the other Trustees, be formally censured or removed from office.
- 21.4 **Censure or removal to be notified:** The censure or removal of a Trustee in accordance with this clause shall, together with reasons, be reported to the Members of Ngaati Whanaunga within 21 days through appropriate media and at the next annual general meeting of the Trust following such censure or removal.
- 21.5 **Effect of Removal:** A Trustee removed from office in accordance with clause 21.3 shall cease to hold office as a Trustee forthwith and shall not be entitled to be re-elected as a Trustee for a period of not less than three (3) years following his or her removal. Each of the Trustees grants a power of attorney in favour of the other Trustees to convey the Trust's

100269630/5694018.1



Assets to the other Trustees and any replacement trustee in the event that the Trustee is removed from office under clause 21.3.

- 21.6 **Replacement of Trustee:** The removal of a Trustee in accordance with clause 21.3 shall give rise to a casual vacancy which shall be filled in accordance with rule 4.6 of the Second Schedule. The election process must take place within three (3) months of any removal of a Trustee in accordance with this clause.

22. GIFTS OR DONATIONS

- 22.1 **Trustees may accept specific trusts:** Notwithstanding any other provision in this Trust Deed, the Trustees may accept or otherwise deal with any property upon trust for the purposes of the Trust or for any specific purpose that comes within the Trust's Objects and Purposes. Such a trust may include any trust for the benefit of the Members of Ngaati Whanaunga or any of them. Any property held by the Trustees pursuant to this clause shall be dealt with in accordance with the terms of the trust and shall not constitute part of the Trust Assets.

- 22.2 **Specific trusts to be separate:** If the Trustees accept a trust for any specific purposes as outlined in clause 22.1 above it must keep the property subject to such trust and any income derived from it separate from the Trust's Assets, and administer that property and income as a separate specific trust in terms of the trust under which it was accepted.

- 22.3 **Use of specific trust assets:** The Trustees shall not use the assets of any separate specific trust to make good any deficit, loss damage or breach of trust relating to any other assets that the Trust may hold, and the Trustees shall also not use the Trust's Assets to make good any deficit, loss, damage or breach of trust relating to any specific trust.

- 22.4 **Expenses of specific trusts:** Each separate specific trust shall bear its own administration expenses plus a fair proportion (determined by the Trustees) of the administration expenses applicable to the Trust.

23. RECEIPTS FOR PAYMENTS

- 23.1 The receipt of payments by the Trustees signed by any person or persons authorised to give receipts on behalf of the Trustees, shall be a complete discharge from the Trustees for that payment.

24. AMENDMENTS TO TRUST DEED

- 24.1 **Special Resolution required:** Subject to clause 24.2 and clause 24.3, all amendments to the Trust Deed shall only be made with the approval of a Special Resolution passed in accordance with the Fourth Schedule.

- 24.2 **Limitations on Amendment:** No amendment shall be made to the Trust Deed which:

- (a) changes the Trusts Objects and Purposes so that the Trust is no longer required to act for the collective benefit of the present and future Members of Ngaati Whanaunga;
- (b) changes this clause 24.2;

100269630/5694018.1



- (c) changes clause 26;
- (d) changes the finally agreed definition of Member of Ngaati Whanaunga, Ngaati Whanaunga Ancestor, Ngaati Whanaunga Area of Interest, or Ngaati Whanaunga Claims after settlement legislation has been passed;
- (e) changes the requirement for a Special Resolution (as defined from time to time) in clause 24.1;
- (f) changes the membership and beneficiary of the Trust; and
- (g) changes rule 3.1 of the Fourth Schedule relating to the voting threshold of 75% of the Adult Members of Ngaati Whanaunga.

24.3 Amendment to make definitions consistent with Deed of Settlement and Settlement Legislation: Notwithstanding any other provision in this Trust Deed to the contrary, this Trust Deed must be amended by the Trustees to make the definition of Members of Ngaati Whanaunga, Ngaati Whanaunga, or Ngaati Whanaunga Claims the same as that set out in the final Deed of Settlement and the Settlement Legislation. If the Trust Deed is amended due to operation of this sub-clause a Special Resolution passed in accordance with the Fourth Schedule is not required.

24.4 Consideration of proposals: Every Adult Registered Member of Ngaati Whanaunga may put forward for consideration by the Trustees proposals for amendments to the Trust Deed. Any proposal put forward under this clause 24.4 must be in writing and addressed to the Chairperson at the registered office of the Trust. Any proposal put forward under this clause 24.4 must be considered by the Trustees at their next available meeting. If the Trustees do not discard the proposal in accordance with clause 24.5 they may, in their discretion, discuss this at the next annual general meeting.

24.5 Proposals to be discarded: Where a proposal for amendments to the Trust Deed does not comply with clauses 24.2 and 24.4, the Trustees may in their discretion discard the proposal and the Trustees will not be required to call a special general meeting in accordance with the Fourth Schedule.

25. RESETTLEMENT

25.1 The Trustees have the power at any time or times by deed to settle or resettle any or all of the Trust's assets upon trust in any manner which in the opinion of the Trustees is for the advancement or benefit of the Members of Ngaati Whanaunga, provided that the resettlement is in accordance with the other provisions of this Trust Deed.

26. TERMINATION OF TRUST

26.1 Subject to clause 24.2:

- (a) The Trust established by this Deed shall only be terminated or dissolved if the Adult Registered Members of Ngaati Whanaunga have, by Special Resolution, resolved



that it has become impossible, impracticable or inexpedient to carry out the Trust's Purposes; and

- (b) On the termination or dissolution of this Trust under this clause, the Trust's Assets after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of Ngaati Whanaunga as long as such payment does not offend against the rule against perpetuities to the extent such rule applies to this Trust.

27. ARCHIVING OF RECORDS

- 27.1 **Records to be held for seven years:** All minutes and other records of any proceedings of the Trustees and any companies and other entities in the Ngaati Whanaunga Group shall be held by the Trust and those companies and other entities for a period of seven (7) years.
- 27.2 **Records to be archived:** At the expiry of seven (7) years the Trustees shall archive the records of the Trust and the companies and other entities in the Ngaati Whanaunga Group for such period as the Trustees consider necessary.
- 27.3 **Records may be retained for longer:** Notwithstanding clauses 27.1 and 27.2 the Trustees and any of the companies and other entities within the Ngaati Whanaunga Group may hold on to any records for a period exceeding seven (7) years if in their discretion such records contain information that is commercially or otherwise sensitive or is still required by the Trust or entity to which the information relates.

28. DISPUTE RESOLUTION

- 28.1 **Disputes:** In the event that a dispute arises between:

- (a) any Members of Ngaati Whanaunga;
- (b) the Trustees and any Members of Ngaati Whanaunga;
- (c) the Trustees,

regarding membership or otherwise in connection with the tikanga, reo, kawa, whakapapa and koorero of Ngaati Whanaunga or regarding the suspension or removal of a Trustee, then that dispute shall be referred to the Trustees, provided that the individual referring the dispute to the Trustees has made all reasonable efforts in good faith to resolve the dispute before referring the dispute to the Trustees.

- 28.2 **Notice of Dispute:** All disputes referred to the Trustees in accordance with clause 28.1 shall be submitted to the Trustees by notice in writing and the Trustees shall acknowledge receipt in writing within ten (10) Business Days of the date of receipt of the notice.
- 28.3 **Reference of Dispute:** If a dispute is not settled within thirty (30) days of the receipt by the Trustees of written notice of the dispute in accordance with clause 28.2 then it shall be referred to a Disputes Committee constituted in accordance with clauses 28.4 and 28.5.
- 28.4 **Dispute Committee to be appointed as required:** There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed on a case by case basis, having regard

100269630/5694018.1



to the precise subject matter of the dispute, in question, and only after the expiry of the 30 day period referred to in clause 28.3.

28.5 Appointment and composition of Disputes Committee: A Disputes Committee shall comprise of three (3) members who shall be appointed by the Trustees. The Trustees shall ensure the appointees to the committee are persons who would be regarded amongst Ngaati Whanaunga and Maaori generally as being of good reputation and standing in the community and who hold some or all of the following skills and attributes:

- (a) proven experience in mediation and alternative dispute resolution; and
- (b) expertise in te reo Maaori me ngaa tikanga a Ngaati Whanaunga,

provided that the Trustees shall ensure that no appointee has any conflict of interest in the particular question or dispute to be referred to the Dispute Committee.

28.6 Role of Disputes Committee: The role of a Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it.

28.7 Deliberations of Disputes Committee: In dealing with any dispute a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with. The findings and decisions of a Disputes Committee shall be final and binding on the parties subject to clause 30.16 of the Trust Deed.

28.8 Disputes Committee may convene hui: In facilitating the resolution of any dispute a Disputes Committee may convene a general meeting of Ngaati Whanaunga in order to discuss the matters that are in dispute.

28.9 Hui to meet notice requirements: Any general meeting called by a Disputes Committee in order to try to settle any disputes shall be called in accordance with the requirements as to notice and meeting procedure that apply in respect of general meetings of Ngaati Whanaunga as set out in this Trust Deed.

28.10 Notification of Outcome: A Disputes Committee shall give its findings and decision, together with the reasons therefore, in writing to the Trustees and any other party to the dispute.

29. FISHERIES

29.1 For the purposes of this clause 29:

"**Annual Catch Entitlement**" has the meaning given to it in section (1) of the Fisheries Act 1996;

"**Aquaculture Activity**" has the meaning given to it in section 2(1) of the Resource Management Act 1991;

"**Aquaculture Settlement Assets**" means "Settlement Assets" under the Māori Commercial Aquaculture Claims Settlement Act 2004;

"**Asset Holding Company**" means:

100269630/5694018.1



- (a) a Subsidiary;
- (b) a company, which for the time being meets the requirements for an Asset Holding Company under the Māori Fisheries Act 2004 including but without limitation, the requirement that the Asset Holding Company pay all dividends solely to the Trust;
- (c) a company that holds the Fisheries Settlement Assets on behalf of the Trust; and
- (d) includes any subsidiary of the Asset Holding Company;

"Commercial Aquaculture Activities" means any Aquaculture Activity undertaken for the purpose of sale;

"Fishing Enterprise" means:

- (a) a Subsidiary established for the purpose of utilizing the Annual Catch Entitlement from the Settlement Quota; and
- (b) includes any subsidiary of the Fishing Enterprise;

"Fisheries Settlement Assets" means Income Shares, Settlement Quota and Aquaculture Settlement Assets received by the Trust from either Te Ohu Kai Moana Trustee Limited or as otherwise acquired under the Legislation;

"Income Shares" means income shares within the meaning of the Māori Fisheries Act 2004 that is held by the Asset Holding Company on behalf of Ngaati Whanaunga;

"Hauraki Iwi" has the same meaning given to it in the Pare Hauraki Fishing Trust Deed;

"Legislation" means the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004;

"Pare Hauraki Fishing Trust Deed" means the deed of trust establishing the Pare Hauraki Fishing Trust circa 2006; and

"Settlement Quota" has the meaning given to it by the Māori Fisheries Act 2004.

29.2 **Māori Fisheries Act 2004:** Pursuant to the Legislation, Fisheries Settlement Assets of Ngaati Whanaunga are beneficially held and managed by the Pare Hauraki Fishing Trust. These assets are held by the Pare Hauraki Fishing Trust as part of the collective fisheries assets of the Hauraki Iwi. The Legislation contemplates and the Pare Hauraki Fishing Trust Deed provides, for Ngaati Whanaunga to withdraw its Fisheries Settlement Assets and transfer these assets to its own Mandated Iwi Organisation. In the event that Ngaati Whanaunga chooses to withdraw it is intended that this Trust will become the Mandated Iwi Organisation for Ngaati Whanaunga.

29.3 **Withdrawal from the Pare Hauraki Fishing Trust:** If Ngaati Whanaunga chooses to withdraw from the Pare Hauraki Fishing Trust in accordance with the provisions of the Māori Fisheries Act 2004 upon completion of the withdrawing process (and if necessary once this process has commenced) the provisions of this clause 30 shall apply.

100269630/5694018.1



- 29.4 **Mandated Iwi Organisation:** The Trust shall act as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for Ngaati Whanaunga for the purposes of the Legislation.
- 29.5 **Asset Holding Company:** The Trust shall have an Asset Holding Company, which shall hold on behalf of the Trust, the Fisheries Settlement Assets. The Asset Holding Company will be a Subsidiary and will in addition to this clause 30 comply with the provisions of this Deed as they relate to Subsidiaries.
- 29.6 **Strategic Governance:** The trust must, to the extent that is practically possible, exercise strategic governance over any Asset Holding Company, any Fishing Enterprises and any joint venture that involves Fisheries Settlement Assets.
- 29.7 **Subsidiaries of Asset Holding Company:** The Asset Holding Company may establish one or more subsidiaries to be a subsidiary asset holding company and transfer to that subsidiary some or all of the Fisheries Settlement Assets the Asset Holding Company receives. Any such subsidiary must be wholly owned and controlled by the Asset Holding Company and provide any dividends solely to the Asset Holding Company.
- 29.8 **Fishing Enterprise:** If the Trust wishes to have its own fishing operation, utilizing Annual Catch Entitlement from its Settlement Quota to harvest, process, or market fish, or to be involved in a joint venture for these purposes, the Trust must establish a fishing enterprise separate from, but responsible to the Trust to undertake these operations. The Fishing Enterprise must be a separate entity from any Asset Holding Company.
- 29.9 **Directors and Trustees of Fishing Enterprise and Asset Holding Company:** No more than 40% of the directors or trustees of any Fishing Enterprise or Asset Holding Company can be the Trustees then in office.
- 29.10 **Disposal of Fisheries Settlement Assets:** Any proposal in relation to the disposal of Income Shares pursuant to section 70 of the Māori Fisheries Act 2004 or in relation to the disposal of Settlement Quota pursuant to sections 159, 162, or 172 of the Māori Fisheries Act 2004 or in relation to the disposal of authorizations or costal permits pursuant to section 50 of the Māori Commercial Aquaculture Claims Settlement Act 2004, may only proceed if a Special Resolution has been passed in accordance with the Fourth Schedule.
- 29.11 **Undertaking Commercial Aquaculture Activities:** The Trust must not undertake Commercial Aquaculture Activities except through a separate enterprise that is responsible to the Trust.
- 29.12 **Annual General Meeting:** At the annual general meeting the trustees will, present any proposed amendments to the constitution of any Asset Holding Company.
- 29.13 **Annual Report of Trust:** Any annual report prepared by the Trust must include:
- (a) a report giving information of the sales and exchanges of Settlement Quota in the previous year including:
 - (i) the quantity of Settlement Quota held by the Asset Holding Company;
 - (ii) the value of the Settlement Quota sold or exchanged;

100269630/5694018.1



- (iii) the identity of the purchaser or other party to the exchange;
 - (iv) any transaction with Settlement Quota that has resulted in a registered interest by way of a caveat or mortgage placed over the Settlement Quota;
 - (v) the Settlement Quota interests that have been registered against the Settlement Quota shares; and
 - (vi) the value of any Income Shares sold, exchanged or otherwise acquired;
- (b) a report on the interactions of the Trust in fisheries matters with:
- (i) other entities within the Ngaati Whanaunga Group;
 - (ii) other mandated iwi organisations; and
 - (iii) Te Ohu Kai Moana Trustee Limited; and
- (c) a report on any changes to the Trust Deed or the constitution of any Asset Holding Company.
- (d) Information on the steps taken by the Trust to increase the number of Registered Members of Ngaati Whanaunga.

29.14 **Annual Plan of Trust:** Any annual plan prepared by the Trust must include:

- (a) the Trust's policy in respect of sales and exchanges of Settlement Quota; and
- (b) any proposed changes to the constitutional documents of any Asset Holding Company.

29.15 **Annual Report of Asset Holding Company:** Any annual report of any Asset Holding Company must include:

- (a) the investment of money of that Asset Holding Company or any of its subsidiaries;
- (b) the key strategies for the use and development of the Settlement Quota and Income Shares;
- (c) the expected financial return on the Settlement Quota and Income Shares; and
- (d) any programme to:
 - (i) manage the sale of Annual Catch Entitlements; and
 - (ii) reorganize the Settlement Quota as by buying and selling settlement quota in accordance with the Māori Fisheries Act 2004.

29.16 **Dispute Resolution:** If a dispute arises as defined in section 180(1)(m) of the Māori Fisheries Act 2004 or as defined in section 52(7) of the Māori Commercial Aquaculture Claims Settlement Act 2004 the dispute will be determined in accordance with the Legislation. For the purposes of the Legislation, the disputes procedure contained in clause 28 shall be deemed to constitute the process for resolving the dispute that is required

100269630/5694018.1



pursuant to section 181(1) of the Māori Fisheries Act 2004 and that is required pursuant to section 53 of the Māori Commercial Aquaculture Claims Settlement Act 2004.

- 29.17 **Amendments to provisions required by the Māori Fisheries Act 2004:** Any amendment to this Trust Deed must not be inconsistent with the Māori Fisheries Act 2004 and no amendment may be made to this Trust Deed until two years has passed since the Trust was recognized by Te Ohu Kai Moana Trustee Limited.
- 29.18 **Resettlement:** Any resettlement of any of the Fisheries Settlement Assets must be done in accordance with the Legislation.

30. VESTING DAY

- 30.1 Subject to clause 31.1, the Vesting Day for the Trust is the day that is eighty years less one (1) day after the date of this Deed, that date being within the perpetuities period permitted by section 6 of the Perpetuities Act 1964 and the perpetuities period applicable to the Trust is hereby specified accordingly. Where the Perpetuities Act 1964 is amended or repealed and the perpetuity period applicable to trusts is extended by law, the Vesting Day for the Trust is immediately extended to be the day that is one day less than the maximum possible statutory perpetuity period. On the Vesting Day, the Trustees shall hold the remaining capital and income of the Trust's Assets on trust for the Members of Ngaati Whanaunga then living as tenants in common in equal shares.

31. PERPETUITIES

- 31.1 If the Settlement Act provides that the rule against perpetuities, and the other rules of law regulated by the Perpetuities Act 1964 (or any successor legislation that amends or replaces the Perpetuities Act 1964 and/or the rule against perpetuities in respect of the maximum duration of trusts), are not to apply to the Trust, clause 30.1 shall be void.

32. REVIEW OF TRUST DEED

32.1 Review of trust deed

The Trustees shall, within four (4) years of the Settlement Date, initiate a review of the terms and operation of this Deed and, in particular, shall review the arrangements relating to the election of Trustees and all other aspects of the representation of Ngaati Whanaunga by the Trust.

32.2 Deed review process

In conducting this review the Trustees shall engage and consult with Ngaati Whanaunga in order to seek the views of Ngaati Whanaunga on the terms and operation of this Deed and, in particular, the arrangements relating to the election of Trustees and all other aspects of the representation of Ngaati Whanaunga by the Trust and shall have regard to the tikanga of Ngaati Whanaunga.

32.3 Review to be independently facilitated

The process of engagement and consultation required by clause 33.2 shall be undertaken by an independent facilitator appointed by the Trustees. The role of independent facilitator shall be to:



- (a) liaise with the Trustees in the preparation of any discussion materials to be distributed to Ngaati Whanaunga;
- (b) facilitate any hui;
- (c) receive, compile and review any written submissions received from Ngaati Whanaunga; and
- (d) make recommendations to the Trustees as to the amendments that should be made to the Deed as a consequence of the information received from the process of engagement and consultation.

32.4 **Outcome of review**

Following the completion of the review and consideration by the Trustees of the report made by the independent facilitator in accordance with clause 33.3, the Trustees shall recommend amendments (if any) to this Deed and seek the approval of those amendments by Special Resolution in accordance with the Fourth Schedule.

33. **CUSTODIAN TRUSTEE**

33.1 The Trustees may appoint or incorporate a Custodian Trustee and on any such appointment or incorporation the following provisions shall have effect:

- (a) The Trustees shall require the Custodian Trustee to sign this Deed agreeing to be bound by its terms;
- (b) The Trust's Assets may be vested in the Custodian Trustee as if the Custodian Trustee were sole Trustee;
- (c) The Custodian Trustee holds the title so vested in him or her or it on trust for the Trustees;
- (d) The management of the Trust's Assets and the exercise of all powers and discretions exercisable by the Trustees under this Deed shall remain vested in the Trustees as fully and effectively as if there were no Custodian Trustee;
- (e) The sole function of the Custodian Trustee shall be to hold the Trust's Assets property, invest its funds and dispose of the assets in accordance with any direction in writing by the Trustees for which purpose the Custodian Trustee shall execute all such documents and perform all such acts as the Trustees in writing direct;
- (f) The Custodian Trustee shall not be liable for acting on any such direction provided that if the Custodian Trustee is of the opinion that any such direction conflicts with the trusts or the law or exposes the Custodian Trustee to any liability or is otherwise objectionable the Custodian Trustee may apply to the Court for directions and any order giving any such directions shall bind both the Custodian Trustee and the Trustees providing the Trustees are made parties to the proceeding;
- (g) The Custodian Trustee shall not be liable for any act or default on the part of any of the Trustees, provided the Custodian Trustee is not knowingly a participant in any willful breach of trust by such Trustee(s);



- (h) All actions and proceedings touching or concerning the Trust's Assets may be brought or defended in the name of the Custodian Trustee at the written direction of the Trustees and, as between the Trustees and the Custodian Trustee, the Custodian Trustee shall not be liable for the costs and the Trustees shall indemnify the Custodian Trustee for such proceedings; and
- (i) No person dealing with the Custodian Trustee shall be concerned to enquire as to the concurrence or otherwise of the Trustees or be affected by notice of the fact that the Trustees have not concurred.

34. DEFINITIONS AND INTERPRETATIONS

34.1 **Defined Terms:** In this Trust Deed, unless the context otherwise requires:

"Adult Member of Ngaati Whanaunga" means a Member of Ngaati Whanaunga who is 18 years of age or older;

"Adult Registered Member of Ngaati Whanaunga" means a Member of Ngaati Whanaunga identified on the Ngaati Whanaunga Tribal Register as being eighteen (18) years of age or older;

"Annual Plan" means the annual plan of the Trust which is prepared in accordance with clause 8.1;

"Annual Report" means the annual report of the Ngaati Whanaunga Group which is prepared by the Trustees in accordance with clause 9.1;

"Balance Date" means 30 June or any other date that the Trustees by resolution adopt as the date up to which the Trust's financial statements are to be made in each year;

"Business Day" means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour day or any other day which subsequently becomes a statutory holiday;
- (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
- (c) the day observed as the anniversary of the Waikato province.

A business day shall be deemed to commence at 9.00am and to terminate at 5.00pm;

"Chairperson" means the chairperson from time to time of the Trust appointed by the Trustees in accordance with rule 4 of the Third Schedule;

"Chief Executive" means the Chief Executive of the Trust appointed in accordance with clause 4.1;

100269630/5694018.1



"**Chief Returning Officer**" means as the context requires:

- (a) the person appointed from time to time as chief returning officer for the purposes of Trustee elections in accordance with rule 10 of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with rule 7.1 of the Fourth Schedule;

"**Consolidated Financial Statements**" means the consolidated financial statements of the Ngaati Whanaunga Group prepared by the Trustees in accordance with clause 9.1;

"**Customary rights**" means rights according to tikanga a Ngaati Whanaunga, including

- (a) rights to occupy land; and
- (b) rights in relation to the use of land or other natural or physical resources;

"**Deed of Settlement**" means the deed or deeds that will be entered into between representatives of Ngaati Whanaunga and the Crown recording the settlement of the Ngaati Whanaunga Claims;

"**Deputy Chairperson**" means the deputy chairperson from time to time of the Trust if one (1) is appointed in accordance of rule 4 of the Third Schedule;

A person is "**descended**" from another person if the first person is descended from the other by:

- (a) birth; or
- (b) legal adoption; or
- (c) Maaori customary adoption in accordance with Ngaati Whanaunga's tikanga (Whaangai);

"**Disputes Committee**" means a committee formed in accordance with clauses 28.4 and 28.5;

"**Electoral Review Officer**" means the person appointed to act as electoral review officer in accordance with rule 13.2 of the Second Schedule;

"**Five Year Plan**" means the five year plan of the Trust prepared in accordance with clause 8.2;

"**Income Year**" means any year or accounting period beginning 1 July of one calendar year and ending 30 June of the following calendar year or any other period that the Trustees by resolution adopt;

"**Initial Trustees**" means the Trustees identified in clause 2.1;

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



"Mandated Iwi Organisation" has the meaning given to it in the Māori Fisheries Act 2004;

"Major Transaction" in relation to any member of the Ngaati Whanaunga Group means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by that member the value of which is more than half the value of the Trust's Assets before the acquisition;
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by that member the value of which is more than half the value of the Trust's Assets before disposition; or
- (c) a transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the Trust's Assets before the transaction,

but does not include:

- d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust's Assets (whether the Assets are held by the Trust or any other member of the Ngaati Whanaunga Group);
- (e) any acquisition or disposition of Property by that member from or to any other wholly owned member of the Ngaati Whanaunga Group;
- (f) any disposition of Property by a member of the Ngaati Whanaunga Group to any other member of the Ngaati Whanaunga Group;
- (g) the receipt of settlement redress in accordance with the Deed of Settlement and the Settlement Act or the receipt of any payment on-account of such redress.

Nothing in paragraph (c) of this definition applies by reason only of that member giving, or entering into an agreement to give, a charge secured over assets of the member the value of which is more than one half of the value of the Trust's Assets for the purpose of securing the repayment of money or the performance of an obligation.

For the purposes of paragraphs (a) to (c) of this definition of the value of the Trust's Assets shall be calculated based on the value of the gross assets of the Ngaati Whanaunga Group.

"Membership Validation Committee" means the committee appointed in accordance with rule 4 of the First Schedule;

"Member of Ngaati Whanaunga" means -

- (a) an individual referred to in paragraph (a) of the definition of Ngaati Whanaunga

"Ngaati Whanaunga" means:



- a) the collective group of individuals who descend from one or more of Ngaati Whanaunga's ancestor's; and
- b) every whaanau, hapuu or group to the extent that it is composed of individuals referred to in paragraph (a), including the following groups;

- I. Te Mateawa
- II. Ngaati Karaua
- III. Ngaati Kotinga
- IV. Ngaati Pakira
- V. Ngaati Ngaropapa
- VI. Ngaati Rangiaohia
- VII. Ngaati Ramuri
- VIII. Ngaati Tauaiwi
- IX. Te Rapupo
- X. Ngaati Piri
- XI. Ngaati Hinerangi
- XII. Ngaati Ngaupokopoko
- XIII. Ngaati Puku
- XIV. Ngaati Matau
- XV. Ngaati Rangiura
- XVI. Ngaati Koheru
- XVII. Ngaati Wharo
- XVIII. Ngaati Hauauru
- XIX. Ngaati Umuhau; and

- c) every individual referred to in paragraph (a)

"Ngaati Whanaunga Area of Interest" means the Area of Interest of Ngaati Whanaunga as identified and defined in the Deed of Settlement;

"Ngaati Whanaunga Claims" means Ngaati Whanaunga historical claims against the Crown in respect of the Crown's breaches of its obligations to Ngaati Whanaunga under the Treaty of Waitangi, as identified in the Deed of Settlement;

"Ngaati Whanaunga Group" means the Trust and any Subsidiaries (if any);

"Ngaati Whanaunga Tribal Register" means the register of Members of Ngaati Whanaunga that is to be maintained by the Trustees in accordance with the First Schedule to this Trust Deed;

100269630/5694018.1



“Ngaati Whanaunga Ancestor” means an individual who exercised customary rights by virtue of being descended from:

- (a) Whanaunga; and
- (b) who exercised the customary rights predominantly in relation to the Ngaati Whanaunga Area of Interest at any time after 6 February 1840.

"Pare Hauraki Fishing Trust" means the Hauraki Māori Trust Board acting in its capacity as trustee of Pare Hauraki Fishing Trust as the joint mandated iwi organisation (as defined in the Māori Fisheries Act 2004) that was recognised by Te Ohu Kai Moana Trustee Limited as such in March 2009;

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

"Provisional Vote" means a vote cast pursuant to rule 11.3 of the Second Schedule or rule 8.3 of the Fourth Schedule, as the case may be;

"Related Person" has the same meaning as provided in the Income Tax Act 2007;

"Settlement Act" means such Act or Acts of Parliament that may be passed so as to give effect to the Deed of Settlement and the premises contained therein;

"Settlement Date" means the date defined as the Settlement Date in the Deed of Settlement or Settlement Act;

"Special Resolution" means a resolution that:

- (a) where required by the Māori Fisheries Act 2004 or the Māori Commercial Aquaculture Claims Settlement Act 2004 a resolution by not less than 75% of the Adult Members of Ngaati Whanaunga voting in accordance with the Fourth Schedule; and
- (b) in all other cases a resolution by not less than 75% of the Adult Registered Members of Ngaati Whanaunga who validly cast a vote in accordance with the process set out in the Fourth Schedule;

"Statements of Intent" means the statements of intent prepared by any Subsidiary in accordance with clause 10;

"Subsidiaries" or **"Subsidiary"** means any entity that is:

- (a) wholly owned;
- (b) controlled directly; or
- (c) controlled indirectly by the Trust,



and includes any entity that is a subsidiary of any Subsidiary.

"**Trustees**" means the trustees appointed from time to time in accordance with clause 2.1 and the Second Schedule of this Trust Deed to represent Ngaati Whanaunga and to act as the trustees for the time being, of the Trust and "**Trustee**" shall mean any one (1) of those persons;

"**Trust**" means the trust created by this Trust Deed which is to be called the Ngaati Whanaunga Ruunanga Trust;

"**Trust Deed**" means this deed of trust and includes the recitals and the schedules to this deed;

"**Trust's Assets**" means the trust fund of the Trust and shall include all assets received or otherwise owned or acquired from time to time by the Trustees, including without limitation all assets received pursuant to the Deed of Settlement and Settlement Act, and any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees;

"**Trust Period**" means the period from the date of this Deed until the Vesting Day;

"**Trust's Purposes**" means the objects and purposes set out in clause 1.2;

"**Vesting Day**" has the meaning set out in clause 30; and

"**Waahi Pooti**" means the place or places nominated by the Trustees for the purposes of allowing the Adult Members of Ngaati Whanaunga to cast in person their vote on the election of a Trustee elected in accordance with the Second Schedule.

34.2 **Interpretation:** In this Trust Deed, 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) references to a clause, recital or a schedule shall be to a clause, recital or a schedule to this Trust Deed;
- (f) the schedules to this Trust Deed shall form part of this Trust Deed;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Trust Deed;

100269630/5694018.1



- (h) references to a company are references to a company incorporated pursuant to the Companies Act 1993; and
- (i) references to a subsidiary or subsidiaries shall be references to a subsidiary or subsidiaries as defined by the Companies Act 1993.



SIGNED AS A DEED

SIGNED by [name] as an Initial Trustee in the presence of:

_____ [name]

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by [name] as an Initial Trustee in the presence of:

_____ [name]

Signature of witness

Name of witness

Occupation

City/town of residence



SIGNED by [name] as an Initial Trustee in the presence of:

_____ [name]

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by [name] as an Initial Trustee in the presence of:

_____ [name]

Signature of witness

Name of witness

Occupation

City/town of residence





FIRST SCHEDULE

Ngaati Whanaunga Tribal Membership Register

1. TRUST TO KEEP REGISTER

- 1.1 **Trustees to maintain register:** The Trustees shall administer and maintain the Ngaati Whanaunga Tribal Register which is a register of the Members of Ngaati Whanaunga.
- 1.2 **Register to comply with this Schedule:** The Ngaati Whanaunga Tribal Register shall be maintained in accordance with the rules and procedures set out in this Schedule.

2. CONTENTS OF REGISTER

- 2.1 **Register to contain Members' details:** The Ngaati Whanaunga Tribal Register shall record in it the full names, dates of birth, postal addresses and, where applicable, email addresses of the Members of Ngaati Whanaunga.
- 2.2 **Beneficiary Registration Number:** The Trustees will allocate a beneficiary identification number to each Adult Registered Member of Ngaati Whanaunga on the Register. The Trustees will immediately after allocation, notify the relevant Adult Registered Member of Ngaati Whanaunga of his or her beneficiary identification number.

3. APPLICATIONS FOR REGISTRATION

- 3.1 **Form of applications:** All applications for registration as a Member of Ngaati Whanaunga must be made in writing to the Trustees in the application form approved from time to time by the Trustees. The application must contain:
- (a) the full name, date of birth and postal address of the applicant;
 - (b) details of the applicants Ngaati Whanaunga hapuu affiliations;
 - (c) the whakapapa (genealogical connections) through which the applicant claims affiliation to Ngaati Whanaunga; and
 - (d) such evidence as the Trustees may from time to time require as to that applicant's status as a Member of Ngaati Whanaunga;
- 3.2 **Application to be made by:** An application for registration as a Member of Ngaati Whanaunga may be made by:
- (a) Members of Ngaati Whanaunga who are 18 years of age or older, on their own behalf or by their legal guardian;
 - (b) other Members of Ngaati Whanaunga who are under the age of 18 years, by their parent or legal guardian on their behalf.

100269630/5694018.1



4. DECISIONS AS TO MEMBERSHIP

- 4.1 **Membership Validation Committee to be established:** The Trustees shall establish a Membership Validation Committee to make decisions on all applications made pursuant to rule 3.1 of this Schedule by any person for the recording in the Ngaati Whanaunga Tribal Register of that person's membership of Ngaati Whanaunga.
- 4.2 **Composition of Membership Validation Committee:** The Membership Validation Committee shall comprise no more than three (3) members of Ngaati Whanaunga, appointed by the Trustees from time to time, with the expertise and knowledge of Ngaati Whanaunga whakapapa necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Ngaati Whanaunga whakapapa may be appointed to the Membership Validation Committee.
- 4.3 **Consideration of applications:** All applications for membership pursuant to rule 3.1 of this Schedule together with any supporting evidence shall be forwarded by the Trustees to the Membership Validation Committee.
- 4.4 **Decisions to be made on applications:** Upon receipt of an application for membership in accordance with rule 3.1 of this Schedule the Membership Validation Committee shall consider the application and shall make a decision (by majority vote) as to whether or not the applicant should be accepted as a Member of Ngaati Whanaunga.
- 4.5 **Successful applications to be notified and registered:** In the event that the Membership Validation Committee decides that the application should be accepted then such decision shall be notified in writing to the Trustees, which shall in turn notify the applicant and enter the applicant's name and other relevant details (including beneficiary identification number in accordance with rule 2.2 of this Schedule) in the appropriate part of the Ngaati Whanaunga Tribal Register.
- 4.6 **Notification of unsuccessful applicants:** In the event that the Membership Validation Committee decides to decline the application then such decision shall be conveyed in writing to the Trustees together with the reasons for the decision. The Trustees shall then notify the applicant in writing of the decision together with the reasons given for the decision.
- 4.7 **Unsuccessful applicant may reapply:** Any applicant whose application has been declined may at any time seek to have his or her application reconsidered by the Membership Validation Committee provided that such application for reconsideration may only be made on the basis of new information (being information that was not submitted or considered as part of the initial or, if more than one (1), any previous application) as to the applicant's status as a Member of Ngaati Whanaunga.

5. MAINTENANCE OF REGISTER

- 5.1 **Trustees to establish policies:** The Trustees shall take such steps and institute such policies as are necessary to ensure that the Ngaati Whanaunga Tribal Register is maintained in a condition that is as up to date, accurate and complete as possible in recording the Members of Ngaati Whanaunga.



- 5.2 **Assistance in identifying membership:** In maintaining the Ngaati Whanaunga Tribal Register the Trustees shall include in the policies that it develops, policies for assisting in the identification and registration of those Members of Ngaati Whanaunga that are not for the time being on the Ngaati Whanaunga Tribal Register. Such policies shall include policies as to the nature of the assistance that the Trustees will provide to those persons that believe that they are Members of Ngaati Whanaunga but for whatever reason are not able to establish such membership.
- 5.3 **Responsibility of Members of Ngaati Whanaunga:** Notwithstanding rule 1.1 of this Schedule it shall be the responsibility of each person who is a Member of Ngaati Whanaunga (or in the case of those persons under eighteen (18) years of age, the parent or guardian of that person) to ensure that his or her name is included in the Ngaati Whanaunga Register and that his or her full postal address for the time being is provided and updated. Any Member of Ngaati Whanaunga may choose to terminate their registration of membership of Ngaati Whanaunga, by notifying the Trustees in writing.
- 5.4 **Consequences of registration:** Registration of any person on the Ngaati Whanaunga Tribal Register shall be conclusive evidence of that person's status as a Member of Ngaati Whanaunga.



SECOND SCHEDULE

Elections of Trustees

1. PROCEDURE

- 1.1 **This Schedule to apply:** The Trustees shall be appointed in accordance with the rules and procedures set out in this Schedule.

2. ELIGIBILITY FOR APPOINTMENT

- 2.1 **Nominee to be registered:** To be elected a Trustee a nominee must, as at the closing date for nominations, be recorded in the Ngaati Whanaunga Register as an Adult Registered Member of Ngaati Whanaunga, and be eligible in accordance with rule 6.7.
- 2.2 **Trustees Roles:** A Trustee may not hold the position of Chief Executive of any entity or trust in the Ngaati Whanaunga Group.
- 2.3 **Number of Trustees to be limited:** Except for the Initial Trustees there shall be no less than five (5) Trustees and no more than seven (7) Trustees.
- 2.4 **Trustees may be directors or trustees:** Subject to clause 6.2, a trustee may be a director or trustee of a Subsidiary.

3. ELECTION OF TRUSTEE

- 3.1. **Election of Trustees:** The Adult Members of Ngaati Whanaunga shall be entitled to elect the Trustees in accordance with the rules for elections as set out in this Schedule.

4. TERM OF OFFICE

- 4.1 **Term of Office:** Subject to rule 4.2 of this Schedule the Trustees from time to time shall hold office for a term of three (3) years.
- 4.2 **Retirement and rotation of Initial Trustees:** The Initial Trustees (five in total) shall retire from office with elections having been held for their respective positions as Trustee as follows:
- (a) as at the date of the annual general meeting of the Trust in the first Income Year following the Settlement Date, two (2) of the Initial Trustees shall retire and an election shall be held for two (2) Trustee positions. The Trustees elected at this election will hold office for a term of two years; and
 - (b) as at the date of the annual general meeting of the Trust in the second Income Year following the Settlement Date, the remaining Initial Trustees (3) shall retire and an election shall be held for (3) Trustee positions. The Trustees elected at this election will hold office for a term of three years

100269630/5694018.1



4.3 **Order of retirement of initial Trustees:** The order of retirement of the Initial Trustees under rule 4.2 of this Schedule shall be determined by agreement failing which the determination shall be made by lot.

4.4 **Review of Trustee Election Process:** If because of a review of the election of a Trustee's replacement under rule 13 of this Schedule the appointment of that Trustee's replacement has not been completed as at the expiry of the Trustee's term, then that Trustee shall continue to hold office by virtue of his or her previous appointment until the review process is completed. For the purposes of calculating the term of the replacement Trustee, that replacement Trustee shall, once he or she takes office, be deemed to have taken office on the date upon which the term of office of the previous Trustee expired, being the date of the relevant annual general meeting.

4.5 **Eligibility of retiring Trustees:** Retiring Trustees shall be eligible for re-election.

4.6 **Casual vacancies:** Should:

- (a) there be no person elected to replace a Trustee following that Trustee's retirement; or
- (b) any casual vacancy arise prior to the expiry of any Trustee's term of office; and
- (c) the term to run for that vacant position in either 4.6(a) and 4.6(b) exceeds six (6) months;

then that vacancy shall be filled by the holding of a further election in accordance with this Schedule.

4.7 **Term of casual appointments:** In the case of an appointment made pursuant to rule 4.6 of this Schedule the Trustee thereby appointed shall, as the case may be, hold office:

- (a) in the case of a Trustee appointed pursuant to rule 4.6(a), for the same term as that Trustee would have been appointed had he or she been appointed, immediately following the retirement of the previous Trustee, under rule 4.4 of this Schedule; or
- (b) in the case of a Trustee appointed pursuant to rule 4.6(b), for the balance of the term of office of the Trustee that he or she has replaced.

5. TIMING OF ELECTIONS

5.1 The elections for Trustees in any given Income Year must, except in the case of elections to fill casual vacancies under rule 4.6 or to the extent that any review under rule 13 of this Schedule has been sought in respect of an election, be concluded by the time of the annual general meeting of the Trust in that Income Year.

6. MAKING OF NOMINATIONS

6.1 **Calling for nominations:** The Trustees shall give notice calling for nominations for those Trustee positions for which elections are required at least three (3) months before the annual general meeting of the Trust for that Income Year, and in any event in sufficient time for the election to be concluded in accordance with rule 5 of this Schedule. Such notice shall specify the method of making nominations, the requirement in rule 2.1 of this Schedule in terms of

100269630/5694018.1



Trustee eligibility and the latest date by which nominations must be made and lodged with the Trustees or such other person as the notice directs.

6.2 **Timing for nominations:** All nominations must be lodged with the Trustees no later than twenty-one (21) days following the date upon which the notice calling for nominations is first given.

6.3 **Form of notice:** All notices given under this rule shall be given in the following manner:

(a) By post (or by electronic form where available) to each Member of Ngaati Whanaunga shown on the Ngaati Whanaunga Tribal Register as entitled to vote at the election of trustee (being an Adult Registered Member of Ngaati Whanaunga who is recorded on the Ngaati Whanaunga Tribal Register) and to any other Member of Ngaati Whanaunga eighteen (18) years of age or older who has made a written request for a notice. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent to the last known physical address;

(b) by newspaper advertisement in appropriate major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngaati Whanaunga reside; and

(c) by such other means as the Trustees may determine.

6.4 **Inclusion of invitation to register:** Any such notice shall also invite applications from qualified persons for inclusion of their names in the Ngaati Whanaunga Tribal Register, and shall set out the date upon which a registration must be received for the applicant, if successful, to be eligible to vote in the notified election, being the date voting closes for the trustee elections.

6.5 **Nomination to be in writing:** The nomination of a candidate for election as a Trustee shall be in writing and shall be signed by an Adult Registered Member.

6.6 **Consent of nominee:** The consent of each candidate to his or her nomination shall be endorsed on the nomination paper, provided that a candidate may at any time, by notice to the Trustees, withdraw his or her nomination.

6.7 **Eligibility for nomination:** Notwithstanding the forgoing rules of this Schedule, an Adult Registered Member of Ngaati Whanaunga shall not be eligible for nomination as a candidate for election as a Trustee if he or she:

(a) is or has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);

(b) is bankrupt or has made any composition or arrangement with his or her creditors;

(c) has been convicted of an indictable offence unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);

100269630/5694018.1



- (d) is subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992, or becomes subject to a care and protection order under the Protection of Personal and Property Rights Act 1988; or
- (e) does not reside in New Zealand.

7. HOLDING OF ELECTIONS

- 7.1 **Mode of Voting at Elections:** Subject to rule 7.3 of this Schedule voting at all elections shall be by way of secret ballot. Voting forms may be completed by an Adult Member of Ngaati Whanaunga either by delivering their voting form to the Chief Returning Officer by post or by electronic form where available or at a Waahi Pooti. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. Where there are an equal number of votes for the last trustee position the decision as to the successful candidate shall be made by the drawing of lots.
- 7.2 **Waahi Pooti to be held:** Subject to rule 7.4 of this Schedule, a Waahi Pooti shall be advertised in the newspapers circulating in the area where the Waahi Pooti is to be held. Such an advertisement must be run at least twenty (20) Business Days prior to the date of the Waahi Pooti. The Waahi Pooti shall be held on the closing date for the election.
- 7.3 **No elections where nominees equal vacancies:** In the event that the total number of nominations of Trustees is equal to the total number of vacancies, no election shall be necessary, the person or persons nominated shall be deemed to have been duly appointed and the Adult Members will be notified that no election is required (such notification to be given in a manner reasonably determined by the Trustees, with notification at the next annual general meeting being sufficient for this purpose).
- 7.4 **Adult Members to vote in elections:** Each Adult Member of Ngaati Whanaunga is eligible to vote in an election, provided that:
- (a) each such Adult Member of Ngaati Whanaunga will only be eligible to cast one (1) vote in an election listing their preferred Trustees up to the number of Trustee positions to be filled in an election; and
 - (b) each such Adult Member of Ngaati Whanaunga is, at the date voting closes, either recorded in the Ngaati Whanaunga Tribal Register as an Adult Registered Member of Ngaati Whanaunga or has completed and sent with their voting form an application form for registration which complies with rule 3.1 of the First Schedule.

8. NOTICE OF ELECTIONS

- 8.1 **Notice to be given:** Immediately after the closing date for nominations, the Trustees shall, where an election is required:
- (a) fix a closing date for the election (being the last day upon which a vote may be validly cast in the election); and

100269630/5694018.1



- (b) subject to rules 7.2 and 8.2, set a date and venue for the Waahi Pooti.
- 8.2 **Period of notice:** The Trustees shall give not less than twenty-eight (28) days notice of the closing date for the elections and the method by which votes may be cast as set out in rule 7.1 of this Schedule.
- 8.3 **Method of giving notice:** Notice under rule 8.2 of this Schedule shall be given by:
- (a) posting notice (including, by electronic form where available) to each Adult Registered Member of Ngaati Whanaunga at the last address shown for such Adult Registered Member of Ngaati Whanaunga on the of Ngaati Whanaunga Tribal Register and any other Adult Member of Ngaati Whanaunga who has made a written request to receive such notice. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent to the last known physical address;
 - (b) inserting an advertisement in appropriate major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngaati Whanaunga reside; and
 - (c) posting on the Trust website, if it has one.
- 8.4 **General content of notices:** Every notice given in accordance with rule 8.3(a) and (b) of this Schedule shall contain:
- (a) a list of the candidates for election as Trustees;
 - (b) the date, time and place of the Waahi Pooti; and
 - (b) the mode by which votes may be cast as set out in rule 7.1 of this Schedule.
- 8.5 **Additional content of notice:** Each notice given in accordance with rule 8.3(a) of this Schedule shall also contain:
- (a) a voting form that complies with rule 9.1; and
 - (b) details of the procedure to be followed in making a vote by post or by electronic form, including the date by which the voting form must be received by the Chief Returning Officer; and
 - (c) a statement that voting forms may be either posted or delivered to the Chief Returning Officer at a Waahi Pooti.
- 8.6 **Additional information in other notices:** Each notice given in accordance with rule 8.3(b) and (c) of this Schedule shall also give details about how voting forms may be obtained.

9. VOTING

- 9.1 **Other details to accompany vote:** Each voting form must contain information that is sufficient to identify the voter and the voting documents issued to that voter.

100269630/5694018.1



9.2 **Timing of votes:** Votes must be made no later than the closing date for the election of the Trustees to which the postal vote relates. Votes otherwise validly cast are valid and able to be counted if they are received by the Chief Returning Officer no later than 3 days after the closing date for the election, but only if the envelope containing the voting form is date stamped on or before the closing date for the election.

10. APPOINTMENT OF CHIEF RETURNING OFFICER

10.1 **Appointment of Chief Returning Officer:** For the purposes of elections the Trustees shall appoint as required a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the provisions of this Deed setting out the powers and duties of the Chief Returning Officer. The Chief Returning Officer shall be responsible for coordinating Trustee elections.

10.2 **Chief Returning Officer to receive voting forms:** All voting forms must be addressed to the Chief Returning Officer.

10.3 **Chief Returning Officer to be present at Waahi Pooti:** The Chief Returning Officer or his or her nominee must be present at all times at the Waahi Pooti. The Chief Returning Officer or his or her nominee will be available to collect any completed voting forms at the Waahi Pooti. The Chief Returning Officer or his or her nominee shall also ensure that additional voting forms are available at Waahi Pooti.

10.4 **Only one vote to be cast:** The Chief Returning Officer shall ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each Adult Registered Member of Ngaati Whanaunga.

10.5 **Validity of Provisional votes:** Where an applicant for registration as a Registered Member of Ngaati Whanaunga has cast a vote in accordance with rule 7.4(b), the vote is a Provisional Vote until the application for registration is approved by the Membership Validation Committee as set out in the First Schedule, and where the application is unsuccessful, the vote is invalid.

10.6 **Recording of votes:** A record shall be kept by the Chief Returning Officer of all votes received.

11. COUNTING OF VOTES

11.1 **All votes to be counted:** Upon the expiry of the date for the receipt of postal votes, the Chief Returning Officer shall record and count all votes validly cast.

11.2 **Certification and notifying election result:** Once all votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Trust. The Trustees shall thereafter advise the candidates of the result and give notice of the same at the annual general meeting of the Trustees in accordance with clause 13.1(d). The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees.



- 11.3 **Provisional Votes:** Where, in respect of any election, one (1) or more Provisional Votes has been cast:
- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the election, the Chief Returning Officer may not certify the result of the election until the validity of the Provisional Votes has been confirmed pursuant to rule 10.5 of this Schedule and any valid Provisional Vote has been counted;
 - (b) if the validity or otherwise of the Provisional Votes will not affect the result of the election, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional Votes has not been confirmed pursuant to rule 10.5 of this Schedule and the Provisional Votes have not been counted.

12. RETENTION OF ELECTION RECORDS

- 12.1 **Compiling and sealing voting records:** The Chief Returning Officer shall, as soon as practicable after he or she has certified the result of the election, place all voting forms and other voting records into a sealed packet. The Chief Returning Officer shall endorse upon the sealed packet a description of the contents of that packet together with the final date for voting in that election. The Chief Returning Officer shall then sign the endorsement and forward the sealed packet to the Trust.
- 12.2 **Retention and disposal of packets:** Subject to rule 14.1(b) the sealed packets received from the Chief Returning Officer shall be safely kept unopened by the Trustees for a period of one (1) year from the closing date for making votes in the election to which the packet relates. At the expiry of that one (1) year period the packets shall be destroyed unopened.

13. REVIEW OF ELECTION RESULTS

- 13.1 **Candidates may seek review:** Any candidate may, within fourteen (14) days after the certification of the election result and the giving of notice by the Trustees in respect of that election, seek a review of that election.
- 13.2 **Appointment of Electoral Review Officer:** For the purposes of carrying out reviews in respect of any election the Trustees shall ensure that an Electoral Review Officer is appointed. The Election Review Officer shall be the person nominated from time to time by the President of the Auckland District Law Society or his or her nominee.
- 13.3 **Electoral Review Officer to conduct reviews:** All reviews shall be carried out by the Electoral Review Officer from time to time.
- 13.4 **Form of request for review:** All applications for a review shall be submitted to the Trustees and:
- (a) shall be in writing;
 - (b) shall set out the grounds for the review, which grounds shall be set out with sufficient particularity to enable the Electoral Review Officer to ascertain precisely the basis upon which the review is being sought; and



- (c) shall be accompanied by any evidence that the applicant for review has to substantiate the grounds given in the application.
- 13.5 **Service of application on other candidates:** The application for review and any accompanying evidence shall also be served by the candidate in rule 13.1 upon all other candidates in the election to which the review relates, either at the same time, or as close thereto as is possible, as the review application is lodged with the Trustees.
- 13.6 **Costs:**
Upon making an application for review the applicant shall also lodge with the Trustees the sum of \$500 in lieu of the costs of undertaking the review. That sum shall be held by the Trustees pending the outcome of the review application. If the application is successful, then the \$500 shall be refunded to the applicant, otherwise it shall be used to off-set the costs of the review.
- 14. CONDUCT OF REVIEW**
- 14.1 **Notification of Electoral Review Officer:** Upon the receipt of an application for review the Trustees shall notify the Electoral Review Officer and provide to him or her:
- (a) a copy of the application and any accompanying evidence; and
 - (b) the sealed packet of voting forms and other voting documents received from the Chief Returning Officer for that election.
- 14.2 **Electoral Review Officer to exercise wide powers:** Subject to compliance by the Electoral Review Officer with the rules of natural justice the Electoral Review Officer shall have the power to inquire into and decide upon any matter relating to a review in such manner as he or she thinks fit and may in particular seek such further evidence or reports as he or she deems necessary including any reports or evidence from the Chief Returning Officer for the relevant election.
- 14.3 **Electoral Review Officer to be guided by substantial merits:** In reaching his or her conclusion on any review the Electoral Review Officer shall be guided by the substantial merits of the application without regard to legal forms or technicalities, including any technical defect in complying with the requirements of this Trust Deed, the intention being that no election shall be declared invalid by reason of such technical defect if the Electoral Review Officer is satisfied that the election was so conducted as to be substantially in compliance with the requirements of this Trust Deed and that such defect did not materially affect the result of the election.
- 14.4 **Certification of result of review:** At the conclusion of the Electoral Review Officer's consideration of the review he or she shall determine whether the successful candidate, or any other candidate, was duly elected, or whether the election was void and should be conducted again, and shall forthwith certify his or her decision with reasons to the Trustees. The Trustees shall then give notice of the result of the review and advise the candidates of the outcome.
- 14.5 **Decision to be final:** All decisions of the Electoral Review Officer shall be final (noting that the right to seek judicial review in the High Court is always available).



15. TERMINATION OF OFFICE OF TRUSTEES

15.1 **Termination of office of Trustees:** Notwithstanding the foregoing rules of this Schedule, a Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to the Trustees or dies;
- (b) completes his or her term of office and is not reappointed;
- (c) refuses to act;
- (d) is, absent-without leave from three (3) consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (e) is 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);
- (f) is bankrupt or makes any composition or arrangement with his or her creditors;
- (g) is convicted of an indictable offence; or
- (h) becomes subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or becomes subject to a care and protection order under the Protection of Personal and Property Rights Act 1988.

16. RECORD OF CHANGES OF TRUSTEES

16.1 **Record of changes of Trustees:** Upon the notification of every appointment, retirement, re-appointment or termination of office of any Trustee, the Trustees will ensure that an entry is made in the minute book of the Trust to that effect.



THIRD SCHEDULE Proceedings of Trustee Meetings

1. TRUSTEES TO REGULATE MEETINGS

- 1.1 The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Any three (3) Trustees may at any time by notice in writing to the Trustees summon a meeting of the Trustees and the Trustees shall take such steps as are necessary to convene such meeting.

2. NOTICE OF MEETING

- 2.1 **Notice to Trustees:** Written notice of every meeting shall be either hand-delivered, posted or sent by facsimile or by electronic form to each Trustee at least seven (7) days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of Trustees to any Trustees for the time being absent from New Zealand unless that Trustee has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.
- 2.2 **Content of notice:** Every notice of a meeting shall state the place, day and time of the meeting, and the agenda of the meeting.
- 2.3 **Waiver of notice:** The requirement for notice of a meeting may be waived if all the Trustees who are at the time entitled to receive notice of the meeting give their written consent to such a waiver prior to or at the meeting.
- 2.4 **Meeting limited to notified business:** Subject to rule 2.3 of this Schedule, no business shall be transacted at any meeting of Trustees other than the business expressly referred to in the notice calling the meeting.
- 2.5 **Deficiency of notice:** No deficiency in the giving of notice for any meeting of Trustees shall otherwise invalidate such meeting or the proceedings at such meeting.

3. QUORUM

- 3.1 The greater of three (3) Trustees or the majority of Trustees then in office shall constitute a quorum at meetings of the Trustees.

4. CHAIRPERSON AND DEPUTY CHAIRPERSON

- 4.1 **Trustees to appoint:** At the first meeting of the Trustees following an election the Trustees shall appoint one (1) of their number to be Chairperson, and (at their discretion) one (1) to be Deputy Chairperson.
- 4.2 **Voting on appointment:** Where there is more than one (1) candidate for Chairperson (or as the case may be Deputy Chairperson) then a vote will be taken and the person receiving the

100269630/5694018.1



most votes in favour of his or her appointment will become Chairperson (or Deputy Chairperson).

- 4.3 **Termination of office:** The Chairperson (or Deputy Chairperson) will cease to hold office after an election of Trustees, in the event that he or she resigns from that office, ceases to be a Trustee or is removed from office by the Trustees passing a resolution of no confidence in him or her. In the event that the Chairperson (or Deputy Chairperson) ceases to hold that office then a further appointment in accordance with rule 4.1 shall be held for the position.

5. PROCEEDINGS AT MEETINGS

- 5.1 **Decisions by majority vote:** Unless stated otherwise in this Trust Deed, questions arising at any meeting of Trustees shall be decided by a majority of votes of Trustees present at a validly called meeting.
- 5.2 **Chairperson:** The Chairperson shall take the chair at all meetings of the Trustees. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the Chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Trustees present shall elect one (1) of their number to be Chairperson of the meeting.
- 5.3 **Vacancies:** The Trustees may act notwithstanding rule 2.3 of the Second Schedule and any vacancy or vacancies in their body, but if and so long as their number is reduced below three (3) Trustees, the continuing Trustees may act only for the purpose of advising of the vacancy or vacancies and taking the steps necessary to procure the election of new Trustees to fill any vacancy or vacancies, and for no other purpose.
- 5.4 **Defects of appointment:** All acts done by any meeting of the Trustees or of any committee appointed under rule 6.1 of this Schedule shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Trustee or person co-opted to any committee, or that they were disqualified, be valid as if every such person had been duly appointed and was qualified to act.
- 5.5 **Unruly meetings:** If any meeting of Trustees becomes so unruly or disorderly that in the opinion of the Chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the Chairperson becomes unduly protracted, the Chairperson may, and without giving any reason, adjourn the meeting and may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote without discussion.

6. DELEGATION TO COMMITTEES BY TRUSTEES

- 6.1 **Trustees may appoint committees:** The Trustees may from time to time as they think expedient appoint one (1) or more Trustees to be a committee for making any inquiry on such terms as the Trustees may by resolution direct and any committee so appointed may co-opt, for the purposes of consultation and advice, persons who are not Trustees, provided that a Trustee shall chair any such committee.
- 6.2 **Committees to report to Trustees:** All committees appointed under rule 6.1 of this Schedule shall report to the Trustees in respect of their activities and such reports shall, unless a direction is made to the contrary by the Trustees:

100269630/5694018.1



- (a) be provided on a monthly basis; and
- (b) contain details of the activities of the committee since the last such report.

6.3 **Regulation of procedure by committees:** Subject to these rules and the provisions of this Trust Deed, any committee established by the Trustees may regulate its procedure as it sees fit provided that the committee must notify the Trustees of all persons co-opted to the committee.

7. WRITTEN RESOLUTIONS

7.1 A written resolution signed by all the Trustees shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees. Such a resolution may comprise several duplicated documents, each signed by one (1) or more of the Trustees.

8. MINUTES

8.1 **Minutes to be kept:** The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.

8.2 **Minutes to be evidence of proceedings:** Any minute of the proceedings at a meeting which is purported to be signed by the Chairperson of that meeting shall be evidence of those proceedings.

8.3 **Minutes to be evidence of proper conduct:** Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

9. TELECONFERENCE MEETINGS

9.1 For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:

- (a) all of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;
- (b) throughout the Teleconference Meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the Teleconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's

100269630/5694018.1



express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the Teleconference Meeting unless he or she leaves the meeting with the chairperson's express consent; and

- (e) a minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting.

10. FORMS OF CONTRACTS

- 10.1 **Contracts by deed:** Any contract which, if made between private persons, must be by deed, shall, if made by the Trust, be in writing signed under the name of the Trust by any three (3) Trustees, on behalf of or by direction of the Trustees.
- 10.2 **Contracts in writing:** Any contract which, if made between private persons, must be in writing signed by the parties to be bound by the contract shall, if made by the Trust, be in writing signed under the name of the Trust by a person acting with the express or implied authority of the Trustees on behalf of or by direction of the Trustees.
- 10.3 **Oral contracts:** Any contract which, if made between private persons, may be made orally, may be made in the same manner by or on behalf of the Trust by any Trustee or the Chief Executive, in either case acting by direction of the Trustees.
- 10.4 **Contracts pursuant to resolution:** Notwithstanding anything to the contrary in this rule, no contract made by or on behalf of the Trust shall be invalid by reason only that it was not made in the manner provided by this rule if it was made pursuant to a resolution of the Trustees.



FOURTH SCHEDULE Procedure for Passing Special Resolution

1. THIS SCHEDULE TO APPLY

1.1 A Special Resolution to:

- (a) approve a Major Transaction in accordance with clause 1.5;
- (b) amend this Trust Deed in accordance with clause 24;
- (c) approve a resettlement in accordance with clause 25;
- (d) terminate the Trust in accordance with clause 26; and
- (e) approve the disposal of Fisheries Settlement Assets in accordance with clause 29,

shall only be passed as set out in this Schedule.

2. POSTAL VOTING AND AT GENERAL MEETINGS

- 2.1 Voting on a Special Resolution shall occur either by placing voting forms into a ballot box in person at the annual or special general meeting where the Special Resolution is considered, or by post or e-voting.

3. VOTING

- 3.1 In order for a Special Resolution to be passed it must receive the approval of not less than 75% of those Adult Members of Ngaati Whanaunga who validly cast a vote in favor of the proposed Special Resolution in accordance with this Schedule.

4. SPECIAL GENERAL MEETING REQUIRED

- 4.1 A special general meeting must be called for the purposes of considering one or more Special Resolutions. No other business may be transacted at such special general meeting.

5. NOTICE

- 5.1 **Notice of an annual or special general meeting:** Subject to rule 5.2 of this Fourth Schedule, where a Special Resolution is to be considered at an annual or special general meeting, notice of that meeting must be given in accordance with clause 13.3 of this Deed and shall contain:

- (a) details of the proposed Special Resolution;
- (b) details of the reasons for the proposed Special Resolution and the effect that the Special Resolution will have;

100269630/5694018.1



- (c) details of the procedure to be followed in making a postal vote or a vote by electronic means where available, including the date voting closes;
- (d) a statement that postal votes may either be delivered to the Chief Returning Officer at the special general meeting, or posted or by electronic means (and if e-voting is being used for the Special Resolution that members can vote by way of e-voting); and
- (e) a voting form (or if voting can be done by way of e-voting sufficient details setting out how members can vote using e-voting). The voting form can be sent via postal voting and electronic means. If the voting form is sent via electronic means the voting form must also contain sufficient information to verify the voter and the voting documents issued to that voter pursuant to rule 6.1 of this Schedule.

5.2 **Content of advertisement:** Any advertisement that gives notice of an annual or general meeting where a Special Resolution is to be considered is not required to contain the matters referred in rule 5.1(c) to (e) of this Schedule, so long as the advertisement provides details of how and where further information in relating to the voting procedure for the Special Resolution can be obtained.

6. VOTING

6.1 **Other details to accompany vote:** Each voting form must contain sufficient information to identify the voter and the voting documents issued to that voter.

6.2 **Timing of Votes:** Votes must be cast no later than the closing date for voting. Votes otherwise validly cast are valid and able to be counted if they are received by the Chief Returning Officer no later than three (3) days after the closing date, but only if the envelope containing the voting form is date stamped on or before the date for voting closes.

6.3 **Postal Votes may be received at the annual or special general meeting:** Voting forms may be delivered to the Chief Returning Officer at the relevant annual or special general meeting where the Special Resolution is being deliberated rather than being posted or sent by electronic means.

7. APPOINTMENT OF CHIEF RETURNING OFFICER

7.1 **Appointment of Chief Returning Officer:** For the purposes of the Special Resolution, the Trustees shall appoint a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the powers and duties of the Chief Returning Officer as set out in this Deed, including, to avoid doubt, rules 7.2 to 8.3 of this Schedule.

7.2 **Chief Returning Officer to receive voting forms:** Voting forms must be addressed to the Chief Returning Officer.

7.3 **Chief Returning Officer to be present at special general meeting:** The Chief Returning Officer must be present at the special general meeting. The Chief Returning Officer will be available to collect any completed voting forms at the special general meeting. The Chief Returning Officer shall also ensure that additional voting forms are available at the special general meeting.

100269630/5694018.1



7.4 **Eligibility to Vote:** Those eligible to vote on a Special Resolution are:

- (a) those Adult Members of Ngaati Whanaunga recorded in the Ngaati Whanaunga Tribal Register as an Adult Registered Member of Ngaati Whanaunga on the closing day for voting; and
- (b) subject to rule 7.5(b) of this Schedule, any other Adult Member of Ngaati Whanaunga who has on or before the closing date for voting provided to the Chief Returning Officer an application form for registration which complies with rule 3.1 of the First Schedule.

7.5 **Only one vote to be cast:** The Chief Returning Officer must:

- (a) ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each adult Registered Member of Ngaati Whanaunga; and
- (b) where any Provisional Vote is cast pursuant to rule 7.4(b) of this Schedule, before counting that Provisional Vote, consult with the Membership Validation Committee to ensure that the person casting the vote is eligible to be registered on the Ngaati Whanaunga Register as an Adult Registered Member.

7.6 **Recording votes:** A record shall be kept by the Chief Returning Officer of all votes received.

8. COUNTING OF VOTES

8.1 **All votes to be counted:** Upon the expiry of the date for the receipt of votes, the Chief Returning Officer shall record and count all votes validly cast.

8.2 **Certification and notifying result:** Once all votes have been counted and the result of the Special Resolution determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the Special Resolution and communicate the result to the Trustees.

8.3 **Provisional Votes:** Where, in respect of any Special Resolution, one (1) or more Provisional Votes has been cast:

- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the Special Resolution, the Chief Returning Officer may not certify the result of the Special Resolution until the validity of the Provisional Votes has been confirmed pursuant to rule 7.5(b) of this Schedule and any valid Provisional Vote has been counted; or
- (d) if the validity or otherwise of the Provisional Votes will not affect the result of the Special Resolution, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional votes has not been confirmed pursuant to rule 7.5(b) of this Schedule and the Provisional Votes have not been counted.

9. PROCEEDINGS AT SPECIAL GENERAL MEETING

9.1 Except as otherwise set out in this Schedule, the provisions of clause 13 of the Deed shall apply to the holding of any special general meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.

100269630/5694018.1

