



10049932330

IN THE MATTER OF the *Charitable Trusts Act 1957*

AND

IN THE MATTER OF Te Runanga O Whaingaroa
Incorporated

I **PATRICIA JANE TAUROA** of Kaero, Consultant, do solemnly and sincerely declare as follows: –

- 1 **THAT** on Wednesday the 7th day of September 2005 I was the Chairperson of Te Runanga O Whaingaroa Incorporated; and
- 2 **THAT** the existing Trust Deed of Te Runanga O Whaingaroa Incorporated has been repealed and replaced with the Deed marked “A” annexed hereto in accordance with the rules of Te Runanga O Whaingaroa Incorporated.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths & Declarations Act 1957*.

DECLARED at *Kaero*
this *1st* day of *November* 2005

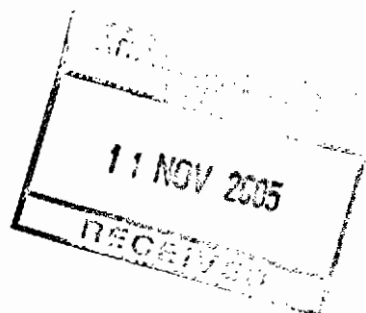
before me

P. H. Chua
A Justice of the Peace of New Zealand



P# 13

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“A”

TRUST DEED

TE RUNANGA O WHAINGAROA INCORPORATED



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DEED OF TRUST made on the 7th day of September 2005

PARTIES **ISABELLA HANNAH KAREKO** of Kaeo, Consultant, **DAVE HENARE** of Kaeo, Caretaker, **ANI TANIWHA** of Kaeo, Mother, **JULIANA THOMPSON** of Kaeo, Retired, **SANDRA HEI HEI** of Mangonui, Contractor, **ORIWA OLIVE HEKE** of Kaeo, Retired, **RON POTI** of Kerikeri, Beneficiary, **ERIC ALBERT** of Kaeo, Contractor, **IVY WILLIAMS** of Kaeo, Wairere Consultant, **FRANCIS HOGG** of Kaikohe, Coordinator, **CHARLENE ADAMS** of Kaeo, Mother, **MEREANA TUA** of Kaeo, Kaiawhina, **RAIHA FREDRICSEN** of Kaeo, Shop Owner, **MARY VERONICA HAPE** of Moerewa, Retired, **ROGER KINGI** of Kaeo, Builder (“the Trustees”)

INTRODUCTION

The Trust was originally constituted under a deed of trust on or about the 8th day of August 1991 (“the original Trust Deed”).

The original Trust Deed was repealed and a replacement Trust Deed issued on or about the 13th day of August 2001 (“the first replacement Trust Deed”).

The Trustees wish to repeal the first replacement Trust Deed and replace it with this Deed, with the intent that this Deed, upon being executed, is to replace the first replacement Trust Deed and the entire Trust Fund is to be thereafter held by the Trustees upon the trusts and with and subject to the powers and discretions set out in this Deed.

It is anticipated that further property may, from time to time, be acquired by the Trustees for the purposes of the Trust and such property is to be held subject to this Deed.

NOW THIS DEED WITNESSETH –

1 NAME OF TRUST

The name of the Trust is Te Runanga O Whaingaroa Incorporated.

2 OFFICE

The office of the Trust is to be located at such a place as the Board may determine but pending such determination the office is to be located at Waikare Avenue, Kaeo.

3 INTERPRETATION

3.1 Unless the context requires otherwise, the following words and phrases are to have the extended meanings as set out below:

- (a) The phrase “purposes beneficial to the community” is to be deemed to include every purpose within the spirit and intendment to the statute 3 Eliz 1, C 4 1601 and interpreted by the courts and extended by statute;
- (b) Every “charitable purpose” within the meaning of that term as defined by Section 38 of the *Charitable Trusts Act 1957* which are charitable under general law;
- (c) References in this Deed to:
 - (i) one gender includes the other gender;
 - (ii) singular numbers includes references to the plural and vice versa;
 - (iii) any enactment includes any re-enactment or consolidation of the enactment from time to time; and
 - (iv) clauses and sub-clauses are references to clauses and sub-clauses in this Deed.
- (d) Headings and sub-headings are for ease of reference only and must be ignored when interpreting this Deed.
- (e) Definitions in this Deed to:
 - (i) “Act” means the *Maori Fisheries Act 2004* as amended or modified from time to time;
 - (ii) “Alternative Board Member” means an alternate or substitute Board Member appointed in accordance with clause 9.9;
 - (iii) “Board” means the board of Trustees of the Trust;
 - (iv) “Board Members” means those Marae Members elected by their Marae to represent their Marae on the Board. A Board Member may be an employee of the Trust provided that Board Member does not take part in any way whatsoever in any matters pertaining to that Board Member’s employment, nor use his or her position as a Board Member in any matters relevant to his or her employment;
 - (v) “Corporate Entity” includes the Fisheries Asset Holding Company and any Subsidiary of it, the Fishing Enterprise and any Subsidiary

of it, and any other company or trust wholly owned or controlled directly or indirectly by the Trust;

- (vi) "Executive Officer" means the person appointed to that position by the Board from time to time;
- (vii) "Fisheries Asset Holding Company" means a company established by the Trust and which for the time being would be a company which meets the requirements for a company defined in the Act as an asset-holding company and includes any subsidiaries of that company;
- (viii) "Fishing Enterprise" means a fishing operation established by the Trust under clause 19.2 to utilize the annual catch entitlement from its Settlement Quota;
- (ix) "Income Shares" means an income share within the meaning of the Act that is allocated and transferred to the Fisheries Asset Holding Company on behalf of the Trust (in accordance with the terms of the Act) by Te Ohu Kai Moana Trustee Limited;
- (x) "Iwi" means Ngati Kahu Ki Whangaroa and/or Ngapuhi Ki Whangaroa;
- (xi) "Iwi Aquaculture Organisation" has the meaning given to it in the *Maori Commercial Aquaculture Claims Settlement Act 2004*;
- (xii) "Iwi Member" means any person who can whakapapa to a primary ancestor of the Iwi and who are entitled under the objects of this Trust to be considered by the Board as beneficiaries of the Trust irrespective of where those persons ordinarily reside. In the interests of clarity, Iwi Member includes Marae Members and Whakahekenga;
- (xiii) "Mandated Iwi Organisation" has the meaning given to it in the Act;
- (xiv) "Marae" means the Marae set out in clause 8.3.2 which are located in Te Rohe O Whangaroa and any additional Marae added in accordance with clause 8.3.4;
- (xv) "Marae Committee" means the committee elected by the Marae Members in their Marae from time to time according to their own kaupapa;

- (xvi) “Marae Members” means Iwi Members that are registered members of a Marae who whakapapa to the Iwi irrespective of where those members ordinarily reside and whose details are recorded on the Register of Members;
- (xvii) “Marae Members who are entitled to vote” means a Marae Member who is over 18 years of age and is listed in the Register of Members;
- (xviii) “Membership Committee” means the committee appointed under clause 16.2(b);
- (xix) “Purposes beneficial to Te Runanga O Whaingaroa” means undertaking actions to:
 - (aa) promote and develop the social and economic advancement of individuals of Whangaroa Whanau;
 - (bb) promote and develop the health of individuals of Whangaroa Whanau;
 - (cc) promote and provide education of whatsoever nature and suited to the particular needs of individuals of Whangaroa Whanau; and
 - (dd) revive, preserve and maintain the Te Whare Wananga O Nga Tikanga O Whangaroa;
- (xx) “Quota” means quota shares within the meaning of the *Fisheries Act 1996*;
- (xxi) “Register of Members” means the register set out in clause 9.3;
- (xxii) “Settlement Assets” has the same meaning as that term in the *Maori Commercial Aquaculture Claims Settlement Act 2004*;
- (xxiii) “Settlement Quota” means the quota shares within the meaning of the Act that are allocated and transferred to the Fisheries Asset Holding Company on behalf of the Trust (in accordance with the terms of the Act) by Te Ohu Kai Moana Trustee Limited;
- (xxiv) “Subsidiary” means any subsidiary (as defined by section 5 of the *Companies Act 1993*) of a Corporate Entity and includes any person or persons (other than a Subsidiary as so defined) that is controlled by a Corporate Entity;

- (xxv) "Te Rohe O Whangaroa" means the historical or traditional boundary that has been described and defined in court records and other documents. The boundaries of the Trust are bounded by a line commencing at the river mouth of the Oruaiti River in the north and moving in a southerly direction encompassing the Puketi Forest, then moving in a north-easterly direction to the Takou River area. The coastal boundary commencing at the Oruaiti River mouth following the eastern side of the Mangonui Harbour out to the entrance of the Mangonui Harbour then directly out to sea moving in a south-easterly direction along the coast to Te Ruapurapura (Needles) off Pureura and including the Whangaroa Harbour, its rivers, estuaries and islands within the boundaries previously described. This includes all wahi tapu and other areas sacred to nga hapu me nga whanau o Whangaroa;
- (xxvi) "Trust" means Te Runanga O Whaingaroa Incorporated;
- (xxvii) "Trustee" means a Board Member;
- (xxviii) "Trust Fund" means the sum of \$10.00 referred to in the original Trust Deed, together with all other property that has been acquired by the Trustees from time to time representing that sum, and any further property which may, in the future, be acquired by the Trustees from any source whatever for the purposes of the Trust, the moneys and investments from time to time representing such property and, unless inconsistent with the context, the income received from such property;
- (xxix) "Whakahekenga" means an Iwi Member who is not a registered Marae Member but can whakapapa to the Iwi and whose details are recorded on the Register of Members irrespective of where that person ordinarily resides;
- (xxx) "Whakahekenga who are entitled to vote" means a Whakahekenga who is over 18 years of age and is listed in the Register of Members;
- (xxxi) "Whangai" means those persons who do not affiliate to the Iwi by descent from a primary ancestor of the Iwi but who are adopted by a member of the Iwi in accordance with the tikanga of the Iwi;
- (xxxii) "Whangaroa Whanau" means the Iwi Members as the prime beneficiaries under this Deed and all other people residing in Te Rohe O Whangaroa; and

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

4 DECLARATION OF TRUST

The Trustees declare and acknowledge that the Trustees hold the Trust Fund upon the trusts, and subject to the powers and discretions contained or implied in this Deed.

5 OBJECTS

- 5.1 The objects of the Trust are to establish, support, administer, advance or promote such schemes, projects or trusts as may be or have been established for purposes beneficial to the community or Purposes beneficial to Te Runanga O Whaingaroa, including but not limited to:
- (a) promoting and providing schemes, services and facilitates for the promotion of the educational welfare of Te Runanga O Whaingaroa;
 - (b) supporting, donating moneys to, and providing resources for schools, marae, senior citizens, children, solo parents, intellectually handicapped persons, ex-servicemen, any other needy people, charitable institutions or charities in Te Rohe O Whangaroa;
 - (c) advancing and promoting education in connection with the Maori language and culture and/or to provide education by any means whatsoever to whomsoever may be interested;
 - (d) organising education opportunities and providing support for educational institutions suited to the particular needs of Te Runanga O Whaingaroa;
 - (e) providing scholarships and other financial assistance for the people of Te Runanga O Whaingaroa to attend schools, universities, technical institutes and such other educational and training institutes as the Board in their absolute discretion thinks fit;
 - (f) providing sustenance and means of obtaining sustenance to any employee or ex-employee of the Trust and/or their families;
 - (g) supporting in such manner as the Board in their absolute discretion think fit, including loans and resources for the upgrading of existing housing and the provision of new housing and public amenities, including roads and

other similar facilities for Te Runanga O Whaingaroa provided they are in furtherance of the objects;

- (h) encouraging, supporting, donating moneys and providing resources for the setting up of work, trusts or other enterprises within New Zealand;
- (i) promoting and providing education and educational projects regarding the historical, cultural and archaeological Tikanga Taonga O Te Runanga O Whaingaroa;
- (j) supporting such charities and charitable purposes in New Zealand as the Board in their absolute discretion from time to time think fit;
- (k) making representations to government departments, local bodies, community or statutory bodies of whatever kind or nature relating to the advancement of the objects of the Trust;
- (l) promoting and articulating the needs and concerns of whatsoever nature of Te Runanga O Whaingaroa and in the promotion of the objects of the Trust to seek just and proper representation on local body authorities, committees, bodies, institutions and iwi authorities either statutory or otherwise;
- (m) engaging in such joint ventures or participating in such schemes as may be operated through or by government departments, local bodies, community or statutory bodies or private bodies as may be designated to secure or advance the objects of the Trust or any of them;
- (n) seeking, accepting and receiving donations, subsidies, grants, endowments, gifts, legacies, loans and bequests either in money or kind or partly in money and partly in kind for all or any of the objects of the Trust and to carry out any specified directions relating to donations, subsidies, grants, endowments, gifts, legacies, loans and bequests made to the Trust for the benefit of the general purposes of the Trust or specified in particular cases by the donors or lenders for the same;
- (o) carrying on any other object which may be capable of being conveniently carried out in connection with the above objects or calculated directly or indirectly to advance the objects of the Trust or any of them;
- (p) the Trust acting in the role of the Mandated Iwi Organisation for the purposes of the Act; and
- (q) the Trust acting in the role of the Iwi Aquaculture Organisation for the purposes of the *Maori Commercial Aquaculture Claims Settlement Act 2004*.

- 5.2 The objects and purposes of this Trust are charitable and do not include or extend to any matter or thing which is, or is held or determined to be, non-charitable and the objects and powers of the Trust and the Board are restricted accordingly and limited to New Zealand.
- 5.3 In carrying out the objects, the Trust will have regard to the Te Tiriti o Waitangi/Treaty of Waitangi which recognizes and guarantees te tino rangatiratanga o nga tangata whenua over the material cultural and spiritual resources of the Maori people.

6 POWERS

- 6.1 To achieve the objects of the Trust the Board has, in the administration, management and investment of the Trust Fund, all the rights, powers and privileges of a natural person, and subject always to the Trust imposed by this Deed. The Board may deal with the Trust Fund as if the Board were the absolute owners of and beneficially entitled to the Trust Fund, and accordingly, in addition to any specific powers vested in the Board by law, in dealing with the Trust Fund or acting as the Board of the Trust, the Board may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including without limitation, exercising unrestricted powers to borrow and raise money, and to give securities, guarantees and indemnities.
- 6.2 Except as otherwise expressly provided in this Deed, the Board may exercise all the powers and discretions vested in the Board by this Deed at the absolute and uncontrolled discretion of the Board, at such time or times, upon such terms and conditions, and in such manner as the Board deems reasonable and proper.
- 6.3 The Board may, in any year:
- (a) use or apply, or decide not to use or apply, all or any of the income of the Trust Fund for all or any purposes of the Trust;
 - (b) use all or apply any capital of the Trust Fund for all or any of the purposes of the Trust without using or applying the whole or any portion of the income of the Trust Fund for that year; and/or
 - (c) set aside reserves or accumulations for future use or applications; provided always that all Trust funds applied must be applied solely towards the attainment of the charitable purposes of the Trust.
- 6.4 The Board must not lend money nor lease property or assets at less than current commercial rates, having regard to the nature and terms of the loan and lease, to any associated person (as defined in the *Income Tax Act 1994*) and includes any person:

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

6.5 In so far as the Trust operates subject to the provisions of the Act, the Trust must exercise strategic governance over:

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

but not in such a manner that results in the Trust or any of the Trustees being deemed to be a director of that or those companies under the *Companies Act 1993*. The provisions of this clause 6.5, or any other provision of this Deed, does not prevent the Trust or any Subsidiary of the Trust from entering into such arrangements with another company or trust as the Trustees consider necessary or desirable to efficiently and effectively administer, manage or hold its assets or operations, consistently with the Purposes beneficial to Te Runanga O Whaingaroa and the purposes in clause 5.

7 NO PRIVATE PECUNIARY PROFIT FOR ANY INDIVIDUAL

7.1 No private pecuniary profit is to be made by any person involved in the Trust, except that:

- (a) any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;
- (b) the Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
- (c) any Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust; and
- (d) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

7.2 The Board, in determining all reimbursements, remuneration and charges payable in the terms of this clause, must ensure that the restrictions imposed by clause 7.1 are strictly observed.

7.3 Notwithstanding anything contained or implied in this Deed, any person who is:

- (a) a settlor or Trustee of the Trust; or
- (b) a shareholder or director of any company carrying on any business of the Trust; or
- (c) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
- (d) an associated person (as defined by the *Income Tax Act 1994*) of any such settlor, trustee, shareholder or director;

must not by virtue of the capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

7.4 A person who in the course of and as part of the carrying on of his or her business of a professional public practice does not, by reason only of his or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, act in breach of the terms of clause 7.3.

- 7.5 Any Trustee of the Trust who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any way concerned or involved, must disclose the nature and extent of that Trustee's interest, and must not take any part whatever in any deliberations of the Trustees concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust.

8 CONSTITUTION OF THE BOARD

8.1 STRUCTURE OF THE TRUST

The Trust is to be administered by the Board who are accountable to the Iwi Members.

8.2 NAME OF THE BOARD

The name of the Board is "Te Runanga O Whaingaroa Board".

8.3 MEMBERS OF THE BOARD

- 8.3.1 The signatories to this Deed are to be the first Board Members under the terms of this Deed and subsequently the Board Members must be elected in accordance with clause 9.

- 8.3.2 Subject to clause 8.4, the Board must at all times comprise one member, appointed to represent each of the following Marae:

- (a) Taemaro;
- (b) Mangawhero;
- (c) Waihapa;
- (d) Tahaawai;
- (e) Te Huia;
- (f) Patunga;
- (g) Mangaiti;
- (h) Karangahape;
- (i) Ngati Ruamahue;

- (j) Ngaitupango;
- (k) Takou;
- (l) Whakaari;
- (m) Mangatowai;
- (n) Waitaruke; and
- (o) Te Tangata.

8.3.3 Board Members must be elected by their Marae to the extent that each Marae is entitled to elect one Board Member to the Board in accordance with clause 9.

8.3.4 Further Marae may be added at an annual general meeting and the number of Board Members increased accordingly following the passing of a resolution to that effect by a 75% majority of votes cast by Marae Members who are entitled to vote and Whakahekenga who are entitled to vote in accordance with clause 15.

8.4 RESIGNATION OF MARAE

8.4.1 Any Marae may at any time resign from the Trust by written notice from that Marae's Marae Committee to the Chairperson or Secretary of the Board.

8.4.2 The rights of Marae Members as Iwi Members under this Deed will not be affected where those members' Marae resigns in accordance with clause 8.4.1. The following provisions apply in respect of Marae Members' voting rights for Board Members when a Marae resigns from the Trust:

- (a) Marae Members will no longer be able to vote in accordance with the provisions of clause 9.2 for Board Members from the Marae that has resigned from the Trust; however,
- (b) Marae Members may still exercise their vote for a Board Member in accordance with the provisions of clause 9.2 by voting for a Board Member from another Marae that the Marae Member is affiliated to, provided that Marae is still part of the Trust.

8.4.3 Any of the rights of the Marae hereunder cease on the day that written notice is delivered in accordance with clause 8.4.1 to the Chairperson or Secretary.

8.5 WHANGAI

It is for the Trust to decide, after appropriate consultation with the relevant Marae or Maraes, whether Whangai are to be considered as Iwi Members in terms of this Deed.

9 MARAE

9.1 BOARD MEMBERS

9.1.1 Each Marae can elect one of its members to the Board as a Board Member together with an Alternative Board Member (clause 9.9). These members are to hold office for three years from the date of their election subject to clause 9.1.2.

9.1.2 A Board Member or an Alternative Board Member must immediately cease to be a Board Member or Alternative Board Member (as the case may be) upon the happening of any of the following events:

- (a) if he or she resigns from office by notice in writing addressed to that person's Marae Committee;
- (b) if he or she dies or becomes of unsound mind;
- (c) from a motion of at least two thirds of that person's Marae Committee expressed by a formal resolution at a meeting of the Marae Committee of which due notice has been given to all Marae Members of that Marae Committee. If it is determined that:
 - (i) he or she is reasonably unable or unfit to carry his or her duties as a Board Member or Alternative Board Member (as the case may be); or
 - (ii) he or she has failed to generally and sincerely endorse the aims and objects of the Marae Committee.

9.1.3 Board Members or Alternative Board Members must resign following their three year tenure or in accordance with clause 9.1.2 but may offer themselves for re-election.

9.2 ELECTION OF BOARD MEMBERS FROM EACH MARAE

9.2.1 Each Marae Committee must, two months prior to the Annual General Meeting of the Board in any year that an election of Board Members is required, give to all Marae Members who are entitled to vote notice of the election of Board Members. This notice must be published in the New Zealand Herald and one other paper

circulating in Te Rohe O Whangaroa. The notice must call for nominations to the Board and include the time and place of the election ("the Election Day Notice").

- 9.2.2 Nominations to the Board must be in writing signed by two Marae Members with the consent of the nominee endorsed thereon and must be delivered to the Marae Committee no later than 35 days prior to the Annual General Meeting of the Board.
- 9.2.3 If there is only one nomination to the Board, then the Marae Committee must call for further nominations, until there are at least two candidates nominated.
- 9.2.4 When more than one nomination to the Board has been received then voting for the Board Member must be carried out in accordance with clause 9.5.
- 9.2.5 The candidate who receives the highest number of votes becomes the elected Board Member. The candidate receiving the second highest number of votes is to be the Alternative Board Member (clause 9.9).
- 9.2.6 If by reason of any equality of votes given for two or more candidates then the election is not complete and the person chairing the Marae Committee must decide in such manner as he or she may determine which of such candidates is to be elected and thereby complete the election.
- 9.2.7 The elected member must take office at the next Annual General Meeting following the date of his or her election.

9.3 REGISTER OF MEMBERS

- 9.3.1 Each Marae may keep a register of Marae Members recording the name, date of birth and postal address of each member.
- 9.3.2 The Trustees must ensure that the name, date of birth and postal address of all Marae Iwi Members that have applied for registration are recorded separately from each Marae's register by the Secretary of the Board. These separate records are to form part of the Register of Members for the purposes of the Trust. Ongoing efforts must be made to register all Iwi Members. The Register of Members may be amended and corrected by the Secretary as necessary.
- 9.3.3 The Trustees must ensure that the Register of Members:
 - (a) is maintained and in a current state;
 - (b) is available for inspection by Iwi Members who can view their own registration details;

- (c) is available for inspection by a parent or legal guardian who may view the registration details of any child, ward or other dependant under 18 years of age; and
 - (d) has a member registration number allocated to each Iwi Member entered in that register.
- 9.3.4 An application to be entered in the Register of Members may be made to the Trust by:
 - (a) Iwi Members and Whangai (subject to the provisions of clause 8.5) aged 18 years and over on their own behalf; and
 - (b) Iwi Members and Whangai (subject to the provisions of clause 8.5) under the age of 18 years by their parent or legal guardian; and

in each case the application must be completed on the appropriate registration application form available from the Trust office. For the avoidance of doubt, persons under the age of 18 years who can whakapapa to the Iwi can be registered on the Register of Members despite the fact that their guardians do not whakapapa to the Iwi.
- 9.3.5 At the time of, or at any time after, registering on the Register of Members, Iwi Members are able to request in writing that they wish to receive a private notice for general meetings and postal ballot papers in accordance with clause 13.3(f)(i).
- 9.3.6 Subject to clause 9, the Trustees must enter into the Register of Members any person:
 - (a) by or on behalf of whom an application has been made in accordance with clause 9.3.4; and
 - (b) who in the reasonable opinion of the Trustees affiliates to the Iwi.
- 9.3.7 An Iwi Member changing his or her address should notify the Secretary of his or her new address as soon as practicable.
- 9.3.8 If the Trustees consider that any information about a person received under clause 9.3.4 is not accurate or complete, or that the existing information on the Register of Members is not accurate or complete such that in either case the person concerned does not meet the qualifications required by this Deed for entry of that person in the Register of Members, the Trustees may decline to register, or remove that person from the register, as the case may be.
- 9.3.9 When an application for registration is declined, or any decision is made by the Trustees to remove any person from the register, the person concerned may dispute that decision of the Trustees, and the provisions of clause 16.2 apply.

- 9.3.10 It is not necessary in order to be considered an Iwi Member under this Deed for a member of the Iwi to be registered in accordance with this clause 9.3.
- 9.3.11 A person recorded on the Register of Members may, at any time, request in writing that his or her registration be removed or terminated. His or her registration will be deemed removed at the date on which the written request is received at the registered office of the Trust.
- 9.3.12 For the avoidance of doubt, Iwi Members not recorded on the Register of Members may still exercise their voting rights pursuant to clauses 9.5, 12 and 15, as long as at the same time they register with the Trust pursuant to this clause 9.3

9.4 ELECTION DAY

- 9.4.1 The election day must be no later than 7 days prior to the Annual General Meeting of the Board in any year that an election of Board Members is required.
- 9.4.2 It is for each Marae to decide whether or not nominees to the Board should be present at the Marae's marae on the election day.

9.5 METHOD OF VOTING FOR THE ELECTION OF THE BOARD

- 9.5.1 Marae Members may vote in person or by casting a postal vote. A vote in person must be conducted in accordance with clause 9.6, a postal vote must be conducted in accordance with clause 9.7.
- 9.5.2 Every Marae Member who wishes to exercise a postal vote must advise the Marae Committee in writing at least 14 days prior to the election day meeting that they wish to exercise a postal vote.

9.6 VOTES IN PERSON

- 9.6.1 The Election Day Notice must give a time and place for the election day meeting. At that election day meeting each Marae Member is entitled to one vote.
- 9.6.2 The method of voting at the election day meeting is to be by ballot.
- 9.6.3 The Marae Committee must appoint as scrutineers no fewer than two Marae Members who are not candidates to count the votes cast by Marae Members.
- 9.6.4 After the count is completed the person chairing the Marae Committee must add the votes cast in person to the postal votes cast in accordance with clause 9.7 and declare the results at the election day meeting in accordance with clause 9.2.5.

9.7 POSTAL VOTES

- 9.7.1 The Marae Committee must, within two Working Days after the date on which they receive notice from a Marae Member who wishes to cast his or her vote by postal vote, send to that Marae Member, at the address appearing in the Register of Members, a voting paper.
- 9.7.2 Every voting paper must contain, in alphabetical order, a list of the names of all the duly nominated candidates together with directions for voting. Any Marae Member who satisfies the Marae Committee that he or she has not received or has lost or spoilt his or her voting paper is entitled to receive a replacement and complete it in the required manner at any time before the closing of the ballot. The voting paper must be delivered to the Marae Committee no later than 12.01pm on the election day. The Marae Committee is to be the sole judge of time. The voting paper must be in the form from time to time prescribed by the Marae Committee. Each voting paper must be included in a separate envelope. On the back of the envelope must appear the following:
- (a) the name of the voter, legibly printed; and
 - (b) the signature of the voter.
- 9.7.3 The Marae Committee must appoint as scrutineers no fewer than two Marae Members who are not candidates in accordance with clause 9.6.3.
- 9.7.4 All voting papers received after the time specified for the closing of the ballot are to be treated as informal and not counted.
- 9.7.5 Voting papers must also be treated as informal and not counted if one of the following occurs:
- (a) the scrutineers consider that the name of the voter does not appear signed and printed legibly on the outside of the flap of the envelope; or
 - (b) the voter has failed to strike out sufficient names.
- 9.7.6 The scrutineers, after determining the formality of voting papers, must count the votes recorded for each candidate.
- 9.7.7 After the count is completed, the scrutineers must deliver a certificate of the results, showing the number of valid votes cast for each candidate, to the person chairing the Marae Committee, who must add to the postal votes the votes cast in person then declare the results in accordance with clause 9.6.4.

9.8 MINUTES

The Marae Committee must keep minutes of all proceedings which must be made available for inspection by Marae Members at reasonable times.

9.9 ALTERNATIVE BOARD MEMBER

9.9.1 A Marae Committee may appoint, in the absence of their elected Board Member, an Alternative Board Member.

9.9.2 The Alternative Board Member must be the person who obtained the second highest number of votes at the election of Board Members (clause 9.2).

9.9.3 The Alternative Board Member, while he or she holds office as an Alternative Board Member, is entitled to notice of meetings of the Board and to attend and vote at the meetings as a Board Member in the absence of the Board Member from such meeting.

9.9.4 Any appointment so made may be cancelled at any time by the Marae Committee and any appointment or cancellation under this clause must be effected by notice in writing to be delivered to the Board.

10 PROCEEDINGS OF THE BOARD

10.1 MEETINGS

10.1.1 The Board is to meet at such times and places as it determines, and must elect a Chairperson from amongst its members at its first meeting following each Annual General Meeting.

10.1.2 Following the election of a Chairperson, the Marae that the Chairperson represents ("the Chairperson's Marae"), must appoint a new Board Member. The new Board Member must be the Alternative Board Member, with the person who obtained the third highest number of votes at the Chairperson Marae's annual election of Board Members being the new Alternative Board Member.

10.1.3 Where the Chairperson's Marae did not have sufficient nominations to fill the vacancies provided in clause 10.1.2, that Marae's Marae Committee must call for new nominations for the vacant positions and a new election must be held in accordance with clauses 9.2 and 9.4 except as hereinafter varied.

10.1.4 The date on which nominations close must be five Working Days after the date that they have been called for, and the election day must be held 14 days after the Marae Committee have given notice to Marae Members in accordance with clause 9.4.

10.1.5 The new Board Member or Alternative Board Member must take office at the next meeting of the Board or in the case of the Alternative Board Member must take office at the next meeting of the Board or in the case of the Alternative Board Member when required in accordance with clause 9.9.

10.2 APPOINTMENT OF OFFICE HOLDERS

10.2.1 The Board must appoint the offices of Secretary and Treasurer at each Annual General Meeting. These offices may be combined. The Secretary and Treasurer need not be Board Members.

10.2.2 The Secretary must:

- (a) notify each person (whose membership requires acceptance under these rules) being accepted of his or her acceptance to membership;
- (b) notify each person being elected of his or her election to office;
- (c) notify Board Members of each meeting of the Board and Marae Committees of any relevant meetings pertaining to them, and give all such notices as are required by this Deed;
- (d) keep a Register of Members as described in clause 9.3 and ensure that each Marae hold an updated register of their own Marae Members;
- (e) keep a record of all proceedings and meetings of the Trust;
- (f) keep a record of the number of Board Members voting and the result of such voting;
- (g) facilitate the access provisions relating to this Deed and constitutional documents as outlined in clause 22; and
- (h) do such other acts in relation to the affairs of the Trust as from time to time the Board or the Chairperson of the meeting may require.

10.2.3 The Treasurer must:

- (a) bank or cause to bank to the name of the Trust all monies received;
- (b) ensure disbursement of the funds of the Trust as may be approved by the Board;

(c) keep the Trust's books of account and prepare the necessary financial accounts and statements; and

(d) do such other acts as the Board may from time to time require.

10.3 CHAIRPERSON

10.3.1 The Chairperson must preside at all meetings of the Board at which he or she is present.

10.3.2 The Board may also elect one Board Member to act as deputy chair either as the need arises or from year to year or for such term of years as the Board may decide. In the absence of the Chairperson the deputy chair is to exercise all the powers of, and perform all the duties of, the Chairperson.

10.3.3 The Chairperson only has a casting vote at meetings of the Board.

10.3.4 Subject to a resolution by the Board, the Chairperson has the power to engage and dismiss the Executive Officer of the Trust.

10.3.5 The Chairperson must ensure safe custody of the Trust's books, papers and documents.

10.3.6 The Chairperson must draft, for consideration by the Board, an Annual Report of the years work and activities for presentation at the Annual General Meeting.

10.4 QUORUM

At any meeting of the Board 60% of Board Members present will constitute a quorum and no business is to be transacted unless a quorum is present.

10.5 VOTING

All questions before the Board must be decided by consensus. However, where a consensus decision cannot be reached on a question, it must, unless otherwise specified in this Deed, be put as a motion to be decided by a majority of votes. If the voting is tied, the Chairperson has the casting vote.

10.6 MINUTES

The Secretary must keep minutes of all Board meetings which are to be made available for inspection by all Iwi Members.

10.7 PROXIES

Proxies are not allowed.

10.8 DELEGATION OF POWERS

- 10.8.1 The Board may from time to time appoint any committee and may delegate in writing any of its powers and duties to any such committee or to any person, and the committee or person as the case may be may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.
- 10.8.2 Any committee or person to whom the Board has delegated powers or duties is bound by the charitable terms of the Trust.
- 10.8.3 Every such delegation is revocable at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.
- 10.8.4 It is not necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Board.

10.9 COMMON SEAL

The Board may have a common seal which must be kept in the custody of the Secretary, or such officer appointed by the Board and must be used only as directed by the Board. The common seal must only be affixed to documents in the presence of, and accompanied by the signatures of, the Chairperson, Secretary and two Board Members.

11 GENERAL MEETINGS AND REPORTING

11.1 REPORTING RESPONSIBILITIES

Without derogating from its duties under any enactment or at law, the Trust has reporting responsibilities in accordance with this clause 11 in relation to:

- (a) its own performance;

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

11.2 ANNUAL GENERAL MEETING

The Annual General Meeting of the Board must be held no later than the last day of October in each year or such other time as the Board deems practicable in the circumstances (but in any event within six months following the end of the Trust's financial year) at such place as the Board may from time to time determine where the following business must be transacted:

- (a) **Minutes:** confirm the minutes of the last Annual General Meeting;
- (b) **Annual Report:** receive and consider the Annual Report for the previous financial year, made available not less than 20 Working Days before the meeting. Amongst other matters, the Annual Report should report against objectives set out in the annual plan for the previous year including:
 - (i) information on the steps taken by the Trust to increase the number of Iwi Members recorded in the Register of Members;
 - (ii) a comparison of the Trust's performance against the objectives set out in the annual plan, including:
 - (aa) changes in the value of the Trust's assets;
 - (bb) profit distribution;
 - (iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets: and
 - (iv) a report giving information of the sales and exchanges of Settlement Quota in the previous year, including:

- (aa) the quantity of Settlement Quota held by the Fisheries Asset Holding Company of the Trust at the beginning of that year; and
 - (bb) the value of Settlement Quota sold or exchanged in that year; and
 - (cc) the identity of the purchaser or other party to the exchange; and
 - (dd) any transaction with Settlement Quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and
 - (ee) the Settlement Quota interests that have been registered against the quota shares of the Trust; and
 - (ff) the value of Income Shares sold, exchanged, or acquired; and
 - (v) a report on the interactions of the Trust in fisheries matters:
 - (aa) with other entities within the Iwi; and
 - (bb) with other Mandated Iwi Organisations; and
 - (cc) with Te Ohu Kai Moana Trustee Limited; and
 - (vi) any changes made under section 18 of the Act to this Deed or the constitutional documents of the Fisheries Asset Holding Companies or any Subsidiaries of the Fisheries Asset Holding Companies;
- (c) **Annual Plan:** receive and consider the annual plan for the next financial year that must include:
- (i) the objectives of the annual plan; and
 - (ii) the policy of the Trust in respect of the sales and exchanges of Settlement Quota; and
 - (iii) any changes in that policy for the previous year; and
 - (iv) any proposal to change the constitutional documents of any fishing company owned by the Trust;

- (d) **Fisheries Asset Holding Company Annual Report:** in relation to every Fisheries Asset Holding Company of the Trust or any subsidiary of a Fisheries Asset Holding Company that receives settlement assets, and in relation to any enterprise established by the Trust under clause 19.2 to conduct fishing operations utilising annual catch entitled from the Trust's Settlement Quota, to harvest, process or market fish, or be involved in any joint venture for those purposes, (each referred to in this clause 11.2 as an "enterprise") an annual report on:
- (i) the performance of that enterprise; and
 - (ii) the investment of money of that enterprise; and
 - (iii) the annual plan of that enterprise, including:
 - (aa) the key strategies for the use and development of the fisheries assets of the Iwi;
 - (bb) the expected financial return on those assets;
 - (cc) any programme to:
 - manage the sale of annual catch entitlements derived from the Settlement Quota; or
 - reorganize the Settlement Quota held by that enterprise by buying or selling quota in accordance with the Act;
- (e) any proposal to change the constitutional documents of any Fisheries Asset Holding Company, or any of their Subsidiaries;
- (f) receive and consider and adopt the annual accounts of the Board including the income and expenditure account and balance sheet;
- (g) confirm the appointment of the Board Members by their Marae; and
- (h) to appoint an auditor.

Information referred to in the above clause 11.2 must be made available in writing on request by an Iwi Member.

12 SPECIAL GENERAL MEETING

- 12.1 A Special General Meeting may be called at any time by notice in writing to the Secretary of the Trust, any such meeting must be called and held within 28 days of receipt by the Secretary of a requisition signed by:

- (a) two Board Members; or
- (b) ten Iwi Members.

Such requisition must be accompanied by a copy of the resolution to be proposed. No other business other than that arising out of the matters set forth in the notice of the meeting are to be transacted at such a meeting.

12.2 In so far as it relates to matters provided for under the Act, a resolution must be passed at a Special General Meeting as follows:

- (a) except in the case of resolutions described in clause 12.2(b) and clause 19.3a(ii), by more than 50% of the Marae Members who are entitled to vote and Whakahekenga who are entitled to vote, and who actually cast a vote, in accordance with clause 15; and
- (b) in the case of a resolution for:
 - (i) ratification of, or changes to, this Deed in accordance with the requirements of sections 17 and 18, as the case may be, of the Act;
 - (ii) disposal of Income Shares in accordance with section 70 of the Act;
 - (iii) Quota to be treated as Settlement Quota in accordance with section 159 of the Act;
 - (iv) disposal of Settlement Quota in accordance with section 162 of the Act; and
 - (v) a request for rationalization of Settlement Quota under section 172 of the Act,

by not less than a 75% majority of votes cast by Marae Members who are entitled to vote and Whakahekenga who are entitled to vote, and who actually cast a vote, in accordance with clause 15. No such resolutions can be passed unless notice in respect of those resolutions has been given in accordance with clauses 13.1 to 13.4.

13 NOTICES

13.1 To the extent that it relates to matters provided for under the Act, notice of the Annual, Special or General Meeting of the Board must be published at least once 21 Working Days prior to the meeting in the New Zealand Herald and one other paper circulating in Te Rohe O Whangaroa. The notice is to include the following information:

- (a) the date and time of the meeting;
- (b) the venue for the meeting;
- (c) the agenda for the meeting;
- (d) where any relevant explanatory documents may be viewed or obtained;
and
- (e) any other information specified by or under the Act.

13.2 In the case of a General Meeting required by section 17(2) of the Act (ratification of this Deed), the meeting must be notified by both a public notice and private notice in the following manner:

- (a) the public notice must include the information outlined in clause 13.1 and specify that a vote is to be taken to ratify this Deed;
- (b) the private notice is to be sent to all Marae Members who are entitled to vote and all Whakahekenga who are entitled to vote that gives the information required by clause 13.2(a) and:
 - (i) a copy of the ballot paper for the vote to be taken at the meeting;
and
 - (ii) specify the address to which, and the date by which, the completed ballot paper must be returned.

13.3 In the case of a General Meeting required by the following provisions of the Act:

- (a) kaupapa 2 of schedule 7 (relating to elections);
- (b) section 18 (relating to changes to this Deed or the constitutional documents of any Fisheries Asset Holding Company or Subsidiary of any Fisheries Asset Holding Company);
- (c) section 70 (relating to the disposal of Income Shares; or
- (d) sections 159 or 162 (which relate to the conversion and disposal of Settlement Quota);

the meeting must be notified by both a public notice and private notice in the following manner:

- (e) the public notice must include the information outlined in clauses 13.1(a) and 13.1(b) and outline the matter or issues on which the vote is to be taken; and
- (f) the private notice is to be sent to all Marae Members who are entitled to vote and all Whakahekenga who are entitled to vote that includes the information required by clause 13.2(b) if:
 - (i) that Marae Member or Whakahekenga has made a written request at the time of registering on the Register of Members to be sent a private notice and postal ballot papers for every meeting relating to matters contained in any of clauses 13.3(a) to 13.3(d); or
 - (ii) that Iwi Member makes a written request for a private notice in respect of a particular meeting whether or not that Iwi Member is on the Register of Members.

13.4 It is not necessary for the Trust to provide the private notice to a Marae Member or Whakahekenga required by clauses 13.2(b) and/or 13.3(f) where the Trustees believe (on reasonable grounds) that the particular contact details are not current.

13.5 In the event that clauses 13.1, 13.2 and 13.3 do not apply, then notice of the Annual, Special or General Meeting is deemed to have been given if such notice is also posted to the last known registered address of each Marae's Marae Committee not less than 21 Working Days prior to the date of the meeting.

14 MEETING OF IWI MEMBERS (HUI A IWI)

The Board must call meetings of the Iwi Members (hui a Iwi) from time to time and at least once every year and, unless the Board so determines otherwise, the general meeting of the Iwi Members (hui a Iwi) may be held in conjunction with the Annual General Meeting of the Trust.

15 VOTING AT THE ANNUAL AND SPECIAL GENERAL MEETINGS

15.1 Where voting by Marae Members and Whakahekenga is required in accordance with the provisions contained in this Deed and/or, when appropriate, in accordance with the provisions contained under the Act and/or the provisions contained under the *Maori Commercial Aquaculture Claims Settlement Act 2004*, as the case may be, the method of voting by Marae Members who are entitled to vote and Whakahekenga who are entitled to vote is as follows:

- (a) Marae Members and Whakahekenga may vote either in person or by casting a postal vote. A vote in person must be conducted in accordance with clause 15.2 whilst postal votes must be conducted in accordance with clause 15.3. Proxies are not allowed.
 - (b) every Marae Member or Whakahekenga who wishes to exercise a postal vote must advise the Secretary in writing at least 14 days prior to the Annual or Special General Meeting as the case may be that they wish to exercise a postal vote.
- 15.2 The method of voting at the meeting must be by ballot and by postal ballot.
- 15.3 The method of voting by postal ballot must be as follows, the Secretary must, within two Working Days after the date on which he or she received notice from a Marae Member or Whakahekenga that he or she wishes to cast their vote by postal vote, send to that Marae Member or Whakahekenga, at the address appearing in the Register of Members, a voting paper.
- 15.4 Every voting paper must contain the list of the proposed additions or alterations to this Deed or the Marae that are to be added to the Board as the case may be together with directions for voting. Any Marae Member or Whakahekenga who satisfies the Secretary that he or she has received or has lost or spoilt his or her voting paper is entitled to receive a replacement and complete it in the required manner at any time before the closing of the ballot. The voting papers must be delivered to the Board no later than 12.01pm on the day of the meeting. The Chairperson of the Board being the sole judge of time.
- 15.5 The voting paper must be in the form from time to time prescribed by the Board. Each voting paper must be included in a separate envelope. On the back of the envelope must appear the following:
 - (a) the name of the voter legibly printed; and
 - (b) the signature of the voter.
- 15.6 The Chairperson of the Board must appoint as scrutineers no more than three Board Members.
- 15.7 All voting papers received after the time specified for the closing of the ballot are to be treated as informal and not counted. Voting papers must also be treated as informal and not counted if any of the following occur:
 - (a) the scrutineers consider the name of the voter does not appear signed and printed legibly on the outside of the envelope; or
 - (b) the voter has failed to strike out sufficient names.

The scrutineers, after determining the formality of voting papers, must count the votes recorded for each resolution.

- 15.8 After the vote is completed the scrutineers must deliver a certificate of the results, showing the number of valid votes cast for each resolution, to the Chairperson of the Board who must add the votes cast in person in accordance with clause 15.2 and declare the result at the meeting.

16 DISPUTE RESOLUTION

16.1 GENERAL

All disputes between Board Members are to be resolved as follows:

- (a) **Good faith:** In the event of any dispute arising between any Board Members of Te Runanga O Whaingaroa, all reasonable efforts in good faith must be made to resolve any dispute which arises between them in connection with this Deed ("Dispute"), provided that a Board Member's disagreement with the outcome of any vote by the Board Members on any matter, and/or the existence of a deadlock, does not constitute a Dispute to which this clause applies.
- (b) **Notice of Dispute:** A party must, as soon as reasonably practicable, give the other Board Members notice of any Dispute in connection with this Deed.
- (c) **Mediation:** If the Board Members fail to resolve the Dispute within 10 Working Days of the notice, then the Board Members must try to settle their Dispute by mediation before resorting to arbitration. Either party may initiate mediation by giving written notice to the other party. The Mediator should be agreed by the Board Members, but if the Board Members cannot agree on one within five Working Days after the mediation has been initiated, then the Mediator must be selected by the Registrar of the Maori Land Court or its successor, with the emphasis being on the selection of trained mediators.
- (d) **Not arbitration:** This clause provides for a form of alternative Dispute resolution and references to resolution within it are not references to arbitration.
- (e) **Court proceedings:** No formal proceedings for resolving any Dispute by court proceedings may be commenced until the Dispute has gone through the process under this clause.

- (f) Venue: any internal Dispute resolution, mediation or court procedures must be held in Kaikohe, New Zealand, or the closest appropriate Court.

16.2 DISPUTES RELATING TO MATTERS ARISING UNDER THE ACT

- (a) If any dispute arises between any Iwi Member and the Trust, (other than a dispute provided for in the latter part of this clause 16.2), and the parties are unable within a reasonable time to resolve the dispute, they must, acting in good faith, endeavour to agree on a process for resolving the dispute. Failing resolution of the dispute, that dispute must be determined in accordance with Part 5 of the Act. The provisions of this clause do not derogate from the rights or obligations of the Trust or any Iwi Member pursuant to the *Trustees Act 1956* or any other Act or provisions of law or equity.
- (b) If a dispute arises as a result of the Trustees deciding under clause 9.3 to not register a person, or to remove a person from the Register of Members, they must:
- (i) refer the matter to a Membership Committee, appointed by the Trustees under this clause and comprising three Iwi Kaumatua whom the Trustees consider are mature persons or elders knowledgeable in the whakapapa of the Iwi and recognized as such by members of the Iwi;
 - (ii) request the Membership Committee to make a recommendation to the Trustees in accordance with clause 16.2(c) on what action they consider to be appropriate in the circumstances;
 - (iii) consider the recommendation of the Membership Committee; and
 - (iv) notify the person concerned of their decision, and, if requested by that person, of the principal reasons for that decision.

If the person concerned disputes that decision, that person may exercise their rights under section 180(1)(m) of the Act.

- (c) When making a recommendation to the Trustees in relation to clause 16.2(b), the Membership Committee must apply the provisions of the Act relating to the registration of members of the Iwi. The Membership Committee must provide the person concerned, and any representative that person appoints the opportunity to attend a meeting of the Membership Committee and present their account of why they should be registered or remain, on the Register of Members, as the case may be. Each member of the Membership Committee has the discretion to take into account their own knowledge and such other matters as the Membership Committee

considers will assist it in making a determination. The Membership Committee must also inform the person concerned of those matters and take into account any submissions or information by that person on those matters.

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

17 LIABILITY AND INDEMNITY OF TRUSTEES

- 17.1 No Trustee is liable for any loss to the Trust Fund not attributable to that Trustee's own dishonesty or for the wilful commission or omission by that Trustee of any act known by that Trustee to be a breach of trust. No Trustee is bound to take any proceedings against a co-trustee for any breach or alleged breach of trust committed by such co-trustee.
- 17.2 Each Trustee is entitled to a full and complete indemnity from the Trust Fund for any personal liability which the Trustee may incur in any way arising from or in connection with that Trustee acting or purporting to act as a Trustee of the Trust, provided such liability is not attributable to the Trustees own dishonesty or the wilful commission or omission by that Trustee of any act known by the Trustee to a breach of trust.

18 FUNDS AND PROPERTIES

- 18.1 The funds and properties vested in the Board must be administered by the Board in accordance with this Deed.
- 18.2 All moneys received must be paid to the credit of the Trust at such trading bank or savings bank as the Board appoints from time to time. Cheques on the bank account and other negotiable instruments must be signed by the Chairperson and two Board Members or the Chairperson and Secretary. Endorsements of cheques and other negotiable instruments in favour of the Board must be made by the Chairperson and the Secretary or the Chairperson and the Treasurer or such other person as may be appointed by the Board from time to time.
- 18.3 The Board must cause true accounts for each year to be kept in such manner as the Board may decide of all receipts, credits, payment, assets and liabilities of the Trust Fund and all such other matters necessary for showing the true state and condition of the Trust. The accounts of the Trust must be audited at least once in each year by a chartered accountant (not being a trustee) appointed in that capacity by the Board.

19 FISHERIES ASSET HOLDING COMPANY AND FISHING ENTERPRISE

19.1 TRUST MUST EXCLUSIVELY HOLD A FISHERIES ASSET HOLDING COMPANY

For so long as the Trust operates subject to the provisions of the Act, the Trust must ensure that it has at least one Fisheries Asset Holding Company and that, to the extent and for so long as required by the Act, that Fisheries Asset Holding Company is wholly owned by the Trust and performs the functions and complies with the requirements set out in sections 16 and 17 of the Act, which at the date of this Deed are that the Fisheries Asset Holding Company:

- (a) must be and remain wholly owned and controlled by the Trust;
- (b) must not have more than 40% of its directors who are also Trustees elected, or officeholders appointed, in accordance with this Deed;
- (c) must have constitutional documents that have been approved by a simple majority of the Trustees, as complying with the requirements of the Act;
- (d) must have constitutional documents that have been ratified by a resolution passed by a majority of not less than 75% of the Trustees, whether or not present at the meeting at which that resolution is proposed;
- (e) must receive and hold, on behalf of the Trust, for so long as they are to be retained, all Settlement Quota and Income Shares allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by the Trust pursuant to the terms of the Act;
- (f) must provide dividends solely to the Trust;
- (g) must not undertake fishing or hold a fishing permit;
- (h) must not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust has complied with its obligations under this Deed and sections 69 to 72 of the Act;
- (i) must not enter into any transactions relating to or affecting the Settlement Quota it holds unless the Trust has complied with its obligations under this Deed and sections 161 to 176 of the Act;

- (j) in its function of receiving and holding Settlement Quota and Income Shares is bound by all the requirements specified for Mandated Iwi Organisations in relation to those matters in the Act;
- (k) may establish one or more Subsidiaries to be its Subsidiary Fisheries Asset Holding Companies;
- (l) may transfer to a Subsidiary some or all of the assets received under clause 19.1(e);
- (m) any Subsidiary established by the Fisheries Asset Holding Company:
 - (i) must be and remain wholly owned by the Fisheries Asset Holding Company that established it;
 - (ii) must receive and hold, on behalf of the Fisheries Asset Holding Company, Settlement Quota and Income Shares transferred to it by the Fisheries Asset Holding Company under clause 19.1(l);
 - (iii) must provide dividends solely (albeit indirectly) to the Trust;
 - (iv) must not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust has complied with its obligations under sections 69 to 72 of the Act;
 - (v) in its functions of receiving and holding Settlement Quota and Income Shares is bound by all the requirements specified for Mandated Iwi Organisations in relation to those matters in the Act;
 - (vi) must not undertake fishing or hold a fishing permit; and
 - (vii) may establish one or more Subsidiaries to be its Subsidiary Fisheries Asset Holding Companies which it must ensure complies with the obligations imposed on it in this clause 19.1,

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

19.2 ESTABLISHMENT OF FISHING ENTERPRISE

If the Trust determines it prudent to establish its own fishing operation, utilising the annual catch entitlement from its Settlement Quota, to harvest, process or market fish, or to be involved in a joint venture for those purposes, it must establish an enterprise which is separate from, but responsible to, the Trust to undertake those operations, which must not

be the Fisheries Asset Holding Company or a Subsidiary that receives the Settlement Quota.

19.3 COMMERCIAL AQUACULTURE ACTIVITIES

- (a) In the event that the Trust becomes an Iwi Aquaculture Organisation, it must:
 - (i) not undertake commercial aquaculture activities as that term is used in section 32(3) of the *Maori Commercial Aquaculture Claims Settlement Act 2004* except through a separate commercial enterprise that is responsible to the Trust;
 - (ii) ensure resolutions are passed at a General Meeting in accordance with clause 19.3(b) for matters relating to:
 - (A) transfer of authorisations or coastal permits that are Settlement Assets (except where the proposed transfer is to a Corporate Entity); and
 - (B) a request that Te Ohu Kai Moana Trustee Limited transfer authorizations or coastal permits that are Settlement Assets (except where the proposed transfer is to a Corporate Entity).
- (b) For the purposes of clause 19.3(a)(ii):
 - (i) the passing of a resolution must be by a 75% majority of votes cast by Marae Members who are entitled to vote and Whakahekenga who are entitled to vote in accordance with clause 15; and
 - (ii) notice of the meeting must be given in accordance with the provisions of the *Maori Commercial Aquaculture Claims Settlement Act 2004*.
- (c) If the Trust wishes to undertake commercial aquaculture activities (as that term is used in the *Maori Commercial Aquaculture Claims Settlement Act 2004*), it must establish an enterprise which is separate from, but responsible to, the Trust to undertake those activities. This separate enterprise may be the Fisheries Asset Holding Company that receives the Settlement Quota and Income Shares.

19.4 CONSTITUTIONAL REQUIREMENTS

The constitution of every Fisheries Asset Holding Company or Fishing Enterprise or a Subsidiary of any of them must require that company to:

- (a) hold its assets and all accretions to those assets whether of a capital or revenue nature on trust for the benefit of the charitable purposes of the Trust, such purposes to be promoted by the payment of dividends or other revenue or capital distributions directly or indirectly to the Trust;
- (b) present an annual plan and statement or corporate intent to the Trust;
- (c) report annually to the Trust; and
- (d) have its accounts audited,

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

20 ALTERATION OF TRUST DEED

20.1 GENERAL ALTERATIONS TO THE TRUST DEED

The Board may at an Annual General Meeting or Special General Meeting following the passing of a resolution by a 75% majority of votes cast by Marae Members who are entitled to vote and Whakahekenga who are entitled to vote in accordance with clause 15, make alterations or additions to the terms and provisions of this Deed provided that no such alteration or addition:

- (a) detracts from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
- (b) where such alteration or addition in respect of or affects clauses 7 or 20 unless it is first approved by the Department of Inland Revenue.

20.2 ALTERATIONS TO THE TRUST DEED RELATING TO MATTERS PROVIDED FOR BY THE ACT

- (a) In so far as it relates to purposes of the Act, adult Iwi Members may also put forward in writing proposals for changes to this Deed for the consideration of the Trustees.

- (b) To the extent that any proposed amendment relates to matters provided for by or under the provisions of the Act, a proposal to change the Trust Deed:
 - (i) must not be inconsistent with the Act;
 - (ii) unless the change is required as a consequence of a rule made or amended under section 25 of the Act:
 - (aa) must not be made earlier than 2 years after the date on which the Trust is recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for the Iwi; and
 - (bb) an amendment may only be promoted if a resolution that the amendment is a resolution for the collective benefit of all Iwi Members of the Iwi is put and passed at a General Meeting in accordance with clause 15.

21 ALTERATION OF COMPANY CONSTITUTIONS

Any proposed amendment of the constitutional documents of the Fisheries Asset Holding Company or any Fisheries Enterprise related to a matter provided for by the Act:

- (a) must not be inconsistent with the Act unless the change is required as a consequence of a rule made or amended under section 25 of the Act
- (b) must not be made earlier than 2 years after the date on which the Trust is recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for the Iwi; and
- (c) must not amend the requirement in clause 20.1(a) in a manner which would jeopardize the charitable status of the Corporate Entity.

22 ACCESS TO TRUST DEED AND CONSTITUTIONAL DOCUMENTS

- (a) If an Iwi Member wishes to have access to this Deed or any constitutional document of the Fisheries Asset Holding Company or any Fisheries Enterprise (or any of their Subsidiaries) that Iwi Member is entitled to make a reasonable request to any of the Trustees or Secretary of the Trust for such access.
- (b) Following a request for access referred to in clause 22(a), the relevant Trustee or Secretary of the Trust must, as soon as reasonably practicable,

make arrangements for that Iwi Member to have reasonable access to the requested document or documents at such time and place as may be determined by the particular Trustee or Secretary of the Trust as the case may be.

- (c) A copy of this Deed or any constitutional document of the Fisheries Asset Holding Company or any Fisheries Enterprise (or any of their Subsidiaries) should be made available to an Iwi Member who has made a reasonable request for a copy of the particular document.
- (d) The Trust is entitled to charge reasonable expenses before providing copies of any of the documents referred to in clause 22(c).

23 DISPOSITION OF SURPLUS ASSETS

The Trust may at any time be wound up by the passing of a resolution by a 75% majority of votes cast by Marae Members who are entitled to vote and Whakahekenga who are entitled to vote in accordance with clause 15 at any Annual or Special General Meeting of the Trust provided this winding-up resolution is confirmed at a subsequent General Meeting called for that purpose. In the event of the Trust being wound-up the surplus assets of the Trust must, after payment of its debts and liabilities and the costs and expenses of the winding-up, be given to such exclusively charitable organisation or organisations within New Zealand of a similar nature to the Trust as the Board decides, to be used for exclusively charitable purposes or, if the Board is unable to make such section 27 of the *Charitable Trusts Act 1957*.

IN WITNESS WHEREOF this Deed was executed this 7th day of September 2005.

SIGNED by ORIWA OLIVE HEKE

As Trustee in the

presence of *Judy Steele*

) *O. O. Heke*
)
) *J. Steele*

SIGNED by RON POTI

As Trustee in the

presence of *Glenn Lovell*

) *R. Poti*
)
) *G. Lovell*

SIGNED by ISABELLA HANNAH KAREKO

As Trustee in the

presence of *Glenn Lovell*

) *I. H. Kareko*
)
) *G. Lovell*

SIGNED by FRANCIS HOGG

As Trustee in the

presence of *Glenn Lovell*

) *F. Hogg*
)
) *G. Lovell*

SIGNED by CHARLENE ADAMS

As Trustee in the

presence of *Glenn Lovell*

) *Charlene Adams*
)
) *G. Lovell*

SIGNED by MEREANA TUA

As Trustee in the

presence of *Glenn Lovell*

) *M. T. Tua*
)
) *G. Lovell*

SIGNED by RAIHA FREDRICKSEN

As Trustee in the

presence of *Glenn Lovell*

) *R. Fredricksen*
)
) *G. Lovell*

SIGNED by ROGER KINGI

As Trustee in the

presence of *Glenn Lovell*

) *R. Kingi*
)
) *G. Lovell*

SIGNED by ERIC ALBERT

As Trustee in the

presence of *Glenn Lovell*

) *E. Albert*
)
) *G. Lovell*

SIGNED by IVY WILLIAMS

As Trustee in the

presence of *Glenn Lovell*

) *I. Williams*
)
) *G. Lovell*

SIGNED by DAVE HENARE

As Trustee in the

presence of *Glenn Lovell*

) *D. Henare*
)
) *G. Lovell*

SIGNED by ANI TANIWHA
As Trustee in the
presence of *Glenn Lovell*

) *A Taniwha*
) *Glenn Lovell*

SIGNED by JULIANA THOMPSON
As Trustee in the
presence of *Glenn Lovell*

) *J. Thompson*
) *Glenn Lovell*

SIGNED by MARY VERONIC HAPE
As Trustee in the
presence of *Glenn Lovell*

) *Mary Veronic Hape*
) *Glenn Lovell*

SIGNED by SANDRA HEI HEI
As Trustee in the
presence of *Glenn Lovell*

) *Sandra Hei Hei*
) *Glenn Lovell*