

**Constitution**

**of**

**Muaūpoko Trading Company Limited**

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# Constitution of Muaūpoko Trading Company Limited

## 1. Interpretation

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### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**AFL means** Aotearoa Fisheries Limited

**AFL Share** means a share in Aotearoa Fisheries Limited

**Alternate Director** means a person appointed as an alternate of a Director pursuant to clause 13;

**Annual Catch Entitlement** has the meaning given to it in section 2(1) of the Fisheries Act 1996;

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

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

**Companies Act** means the Companies Act 1993;

**Company** means Muaūpoko Trading Company Limited;

**Constitution** means this constitution, as altered from time to time;

**Director** means a person appointed as a director of the Company by the Shareholder;

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

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

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

**Quota Management Stock** means any stock subject to the quota management system, as established under Part 4 of the Fisheries Act 1996;

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

**Relevant Organisation** means a Mandated Iwi Organisation, Asset-Holding Company, Recognised Iwi Organisation or Representative Māori Organisation;

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

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

**Settlement Quota** means:

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

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

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

**Shareholder** means Muaūpoko Tribal Authority Incorporated; and

**Trust** means the Muaūpoko Tribal Authority Incorporated.

## 1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word **person** includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (g) words or expressions defined in the Companies Act have the same meaning in this Constitution.

## **2. The Companies Act**

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Subject to clause 3, the Company, the Board, each Director and the Shareholder have the rights, powers, duties and obligations set out in the Companies Act except to the extent that they are negated or modified by the Constitution or the Māori Fisheries Act.

## **3. Company to be Asset Holding Company**

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### **3.1 Application of this clause**

Except as otherwise provided in this Constitution, this clause 3 does not limit the rights, powers, duties and obligations of the Company to undertake any activity and to hold, receive and manage any assets.

### **3.2 Company to receive, hold and manage Settlement Quota and AFL Shares**

Subject to clause 5, the Company is to receive, hold and manage for so long as they are to be retained, the Settlement Quota and AFL Shares.

### **3.3 Company must not undertake fishing**

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

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

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

- (a) the exercise of the rights of a Shareholder of the AFL shares
- (b) the disposal of AFL Shares;
- (c) the disposal of Settlement Quota;
- (d) the registration of Settlement Quota Interests;
- (e) the transfer of Settlement Quota;
- (f) the exchange of Settlement Quota;
- (g) entering into a transaction involving an option, security, mortgage or guarantee or a series of transactions that could result in the sale of the Settlement Quota; and

- (h) entering into a transaction involving an option, security, mortgage or guarantee or a series of transactions that could result in the iwi being disentitled to a period of more than 5 years to the income or control or use of the Annual Catch Entitlement.
- (i) Providing an annual plan to the Shareholder for approval setting out:
  - (i) the key strategies for the use and development of Iwi Fisheries Assets;
  - (ii) the expected financial return on the Iwi Fisheries Assets; and
  - (iii) any programme to:
    - (A) manage the sale of annual catch entitlements derived from the Settlement Quota held by the Asset Holding Companies or its subsidiaries; and
    - (B) reorganise the Settlement Quota held by the Asset Holding Company or its subsidiaries, by buying and selling or exchanging Settlement Quota in accordance with the Māori Fisheries Act.

### **3.5 Delegation**

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

## **4. Company to Hold Assets on Trust for Charitable Purposes**

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Notwithstanding any other provision in this Constitution, the Settlement Quota, the AFL Shares and all other assets of the Company whether of a revenue or capital character and all accretions to those assets are to be held by the Company as Trustee for the benefit of the charitable purposes of the Shareholder, such purposes to be promoted by the payment of dividends or other revenue or capital distributions to the Shareholder.

## **5. Asset-Holding Subsidiaries**

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### **5.1 Establishment of, and transfer of assets to, subsidiary**

The Company may:

- (a) establish one or more subsidiaries to receive, hold and manage some or all of the Settlement Quota and AFL Shares or any other assets of the Company; and
- (b) transfer to those subsidiaries some or all of the Settlement Quota and AFL Shares or other assets identified in (a) above.

## 5.2 **Subsidiary to hold assets on trust for charitable purposes**

Any subsidiary established by the Company under sub-clause 5.1 must include within its constitution a clause declaring that the subsidiary will hold all of its Settlement Quota, AFL Shares and all other assets of the subsidiary whether of a revenue or capital character and all accretions to those assets as Trustee for the charitable purposes of the Shareholder, such purposes to be promoted by the payment of dividends or other revenue or capital distributions by the subsidiary to the Company to be held by the Company subject to the Trust in clause 4 of this Constitution.

## 5.3 **Wholly owned and controlled**

Any subsidiary established by the Company under sub-clause 5.1 must be and remain wholly owned and controlled by the Company.

## 5.4 **Obligations of directors in establishing a subsidiary**

If a subsidiary is established by the Company under sub-clause 5.1, the Directors will ensure that:

- (a) prior to its registration, the constitution of the subsidiary is:
  - (i) approved by the Shareholder as complying with the requirements of the Māori Fisheries Act; and
  - (ii) ratified by not less than 75% of the trustees of the Shareholder;
- (b) the subsidiary receives, holds and manages the Settlement Quota and AFL Shares and any other assets transferred to it on behalf of the Company;
- (c) the subsidiary provides dividends solely to the Shareholder;
- (d) the constitution of the subsidiary provides that:
  - (i) the subsidiary, in its function of receiving and holding Settlement Quota and AFL Shares, is bound by all the requirements specified for the Shareholder in relation to those matters in the Māori Fisheries Act and, including those matters outlined in clause 3.4(a) to (g) of this Constitution in respect of the Company, with all necessary modifications;
  - (ii) the subsidiary will not undertake fishing or hold a fishing permit;
  - (iii) the Shareholder must exercise strategic governance over the subsidiary through its strategic governance of the Company including strategic governance over the exercise of shareholder rights in AFL; and
  - (iv) the subsidiary will report to the Company on all matters necessary, and at such times, as to allow the Company to fulfil its reporting requirements to the Shareholder.

## **6. Rights attaching to Shares**

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Each Share confers on the Shareholder the right to:

- (a) vote on any resolution at a meeting of the Shareholder, including any resolution to:
  - (i) appoint or remove a Director or auditor; or
  - (ii) adopt a constitution, subject to clause 23 of this Constitution; or
  - (iii) alter the Company's constitution, subject to the requirements of the Māori Fisheries Act and clause 23 of this Constitution; or
  - (iv) approve a major transaction; or
  - (v) approve an amalgamation of the Company under section 221 of the Companies Act, provided that:
    - (A) the Company is the amalgamated company after the amalgamation is complete and retains this Constitution; or
    - (B) the constitution of the amalgamated company is in substantially the same form as this Constitution; or
  - (vi) put the Company into liquidation;
- (b) the dividends authorised by the Board; and
- (c) the distribution of the surplus assets of the Company.

The Shareholder has the right to receive notice of and attend every Shareholder meeting.

## **7. Issue, consolidation, subdivision and repurchase of Shares**

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### **7.1 Issue of new Shares**

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

### **7.2 Shares in lieu of dividends**

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

## **8. Shares to be and remain with Shareholder**

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

## **9. Dividends**

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

## **10. Exercise of powers of Shareholder**

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

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

- (a) at a meeting of the Shareholder; or
- (b) by a resolution in writing signed by the Shareholder, as provided for in section 122 of the Companies Act.

### **10.2 Powers of the Shareholder**

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

## **11. Meetings of the Shareholder**

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### **11.1 Annual meetings**

The Company must hold an annual meeting not later than:

- (a) six months after the balance date of the Company; and
- (b) fifteen months after the previous annual meeting unless:
  - (i) the Board resolves that an annual meeting is not necessary because there is nothing required to be done at that meeting and that it is in the interests of the

company to rely on s120(5) of the Companies Act 1993 to not have an annual meeting or

- (ii) clause 11.3 (resolution in lieu of meeting) applies.

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

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

## **11.3 Resolution in lieu of annual meeting**

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed by the Shareholder, as provided for in section 122 of the Companies Act.

## **11.4 Special meetings**

All meetings other than annual meetings shall be called special meetings.

## **11.5 Calling of special meetings**

A special meeting:

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

## **11.6 Meeting Procedures**

The provisions of the First Schedule to the Companies Act govern the proceedings of meetings of the Shareholder.

## **11.7 Provision of Annual Report**

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

- (a) complies with each paragraph of section 211(1) of the Companies Act;
- (b) details matters relating to the Company's performance in the previous year, including:
  - (i) the quantity of the Settlement Quota held by the Company at the beginning of the previous year;
  - (ii) the performance of the Company and any of its subsidiaries established under subclause 5.1 in the previous year;

- (iii) the investment of the money of the Company and any of its subsidiaries established under sub-clause 5.1 in the previous year;
  - (iv) the Settlement Quota Interests, if any, that were registered against the Quota Shares of the Company in the previous year;
  - (v) the value of any AFL Shares sold, exchanged or acquired by the Company in the previous year;
  - (vi) the value of any Settlement Quota sold or exchanged by the Company in the previous year;
  - (vii) the identity of the purchaser or other party to any exchange of the Settlement Quota by the Company in the previous year;
  - (viii) any transaction with the Settlement Quota that resulted in a registered interest by way of caveat or mortgage being placed over the Settlement Quota in the previous year;
  - (ix) the interactions of the Company with the Shareholder and any subsidiary of the Company established under sub-clause 5.1 and with other MIOs, Te Ohu Kaimoana Trustee Limited ad AFL in fisheries matters in the previous year; and
  - (x) any changes made to this Constitution or the constitution of any subsidiary of the Company established under sub-clause 5.1 in the previous year;
- (c) details of matters relating to the Company's projected performance in the current year, including:
- (i) the key strategies for the use and development of the Settlement Quota and
  - (ii) AFL Shares and any other assets held by the Company;
  - (iii) any programme to reorganise the Settlement Quota held by the Company or any of its subsidiaries established under sub-clause 5.1 as by buying and selling Settlement Quota in accordance with the Māori Fisheries Act;
  - (iv) any programme to manage the sale of Annual Catch Entitlements derived from the Settlement Quota held by the Company or any of its subsidiaries established under sub-clause 5.1;
  - (v) the expected financial return on the Settlement Quota and AFL Shares and any other assets held by the Company; and
  - (vi) any proposal to change this Constitution or the constitution of any subsidiary of the Company established under sub-clause 5.1.

## **12. Appointment and removal of Directors**

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### **12.1 Number of Directors**

The Company must have no fewer than 3 and not more than 5 Directors.

### **12.2 Shareholder must appoint Directors**

The Shareholder must appoint the Directors of the Company. Accordingly, any person who is not disqualified by the Companies Act, the Māori Fisheries Act or this Constitution from holding office as a Director of the Company may be appointed as a Director, by a written notice to the Company signed on behalf of the Shareholder.

The Shareholder will ensure that:

- (a) The Board includes a mix of financial, legal and marketing skills among the appointed Directors;
- (b) At least one director is a Board Member of the Shareholder;
- (c) There is one director who is independent and not a member of Muaūpoko;
- (d) There is one director who is a member of Muaūpoko but not a Board Member of the Shareholder;
- (e) The Board is otherwise compliant with any requirement under the Māori Fisheries Act 2004

### **12.3 Term of appointment of Directors**

The term of appointment of Directors is as follows:

- (a) No Director can be appointed for a term exceeding 3 years, but may be reappointed;
- (b) Nothing in this clause 12.3 limits any of clauses, 12.5 or 12.6.

### **12.4 No invalidity for breach**

A breach of clause 12.1 does not invalidate an action or decision of the Company.

### **12.5 Removal of Directors**

Any Director may be removed from office by written notice to the Company signed on behalf of the Shareholder at any time with or without reason, including (without limitation) if the Shareholder is satisfied that the relevant Director:

- (a) is not performing satisfactorily the role and/or duties of a Director; or

- (b) without limiting clause 12.6(a), has been absent from 3 or more successive meetings of the Board without the written permission of the Shareholder; or
- (c) is in neglect of his or her duty as a Director, or has committed an act of gross misconduct.

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

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

- (a) dies; or
- (b) is declared bankrupt or otherwise becomes disqualified from being a director pursuant to the Māori Fisheries Act, the Charities Act 2005, the Companies Act or this Constitution; or
- (c) without limiting clause 12.6(b), is deemed (by any clause of this Constitution) to have resigned that office; or
- (d) resigns that office in accordance with this Constitution; or
- (e) is removed from office in accordance with this Constitution.

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

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

## **12.8 Directors' resignation procedure**

A Director may resign office:

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

# **13. Powers of Directors**

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## **13.1 Management of Company**

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

## **13.2 Exercise of powers by Board**

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

## **13.3 Delegation of powers**

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

## **13.4 Appointment of attorney**

The Company may exercise the power conferred by section 181 of the Companies Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## **13.5 Ratification by Shareholder**

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

# **14. Proceedings of the Board**

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## **14.1 Methods of holding meetings**

A meeting of the Board may be held either:

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

## **14.2 Notice of meeting**

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to every Director.

### **14.3 Waiver of irregularity**

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

### **14.4 Quorum**

A quorum for a meeting of the Board may be fixed by all of the Directors, and unless so fixed, is a majority of the Directors at the time.

### **14.5 Chairperson**

At the first meeting after the completion of the previous financial year, the Directors must elect one of their number as chairperson of the Board for a period of one year. If no chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### **14.6 Votes**

Every Director has one vote. In the case of an equality of votes, the chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it, except in those instances where the Companies Act or the Māori Fisheries Act require otherwise. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents from or expressly abstains from voting on, or votes against, the resolution.

### **14.7 Resolutions in writing**

A resolution in writing, signed or assented to by a majority of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including email or other similar means of communication) in like form; each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings. The Company shall within seven days after any resolution is passed in accordance with this clause send a copy of the resolution to each Director who has not signed or assented to the resolution but failure to do so shall not invalidate the resolution.

### **14.8 Minutes**

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

### **14.9 Validity of acts**

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

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

#### **14.10 Other procedures**

Except as set out in this clause 14, the Board may regulate its own procedure. The provisions of the Third Schedule of the Companies Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

### **15. Directors' Interests**

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#### **15.1 Disclosure of interests**

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

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

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

#### **15.2 Director deemed to be interested**

A Director is deemed to be interested in any transaction or proposed transaction that the Company enters into, or proposes to enter into, with that Iwi or Relevant Organisation (irrespective of whether or not the required entry and disclosure has been made).

#### **15.3 Additional requirements for Directors**

In addition to the disclosure requirement imposed by clause 15.1, each Director must:

- (a) comply with the provisions of section 140 of the Companies Act (relating to disclosure of interest of Directors either generally or in relation to a specific transaction or matter); and
- (b) disclose to the Board any other potentially relevant conflict of interest that that Director believes he or she has, or may have, in relation to a specific transaction or matter being considered by the Board.

#### **15.4 Relevance of conflict of interests**

Where a Director discloses a potentially relevant conflict of interest pursuant to clause 15.3(b) then, for the purposes of clause 15.6, that conflict of interest is not to be treated as being relevant to the specific transaction or matter being considered by the Board unless a majority of the other Directors resolve or agree in writing that such conflict of interest is relevant.

#### **15.5 Failure to disclose does not affect validity of transaction**

Failure to comply with clauses 15.1 to 15.4 does not affect the validity of a transaction entered into by the Company, but, if applicable, the transaction may be avoided under clause 15.9.

#### **15.6 Interested Director may not vote**

Subject to clauses 15.7, 15.8 and 16, a Director who is interested (whether under the Companies Act or under clauses 15.1 or 15.2) in, or pursuant to clause 15.3(b) has disclosed a potential conflict of interest (which is treated under clause 15.4 as being relevant) in respect of, a transaction entered into, or proposed to be entered into, by the Company must not, unless the Board otherwise resolves:

- (a) vote on a matter relating to the transaction; or
- (b) attend that part of a meeting of Directors at which a matter relating to the transaction arises or be included among the Directors present at a meeting for the purposes of a quorum; or
- (c) sign a document relating to the transaction on behalf of the Company; or
- (d) do any other thing in his or her capacity as a Director in relation to the transaction.

#### **15.7 Iwi membership**

Where a Director is a member of any Iwi (but not an officeholder of that Iwi or any Relevant Organisation representing that Iwi) and that Iwi benefits or is likely to benefit from the transaction entered into, or to be entered into, by the Company, the Director is not prohibited (by virtue of the Director's membership of that Iwi) from being included among the Directors present at a meeting for the purposes of a quorum or doing any of the matters specified in clause 15.6 unless the Director receives or is likely to receive a benefit that is more advantageous than the benefit conferred on the other members of that Director's Iwi.

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

Notwithstanding clause 15.6, a Director shall be included among the Directors present at a meeting for the purposes of a quorum and permitted to do any of the matters specified in clause 15.6 in relation to:

- (a) remuneration or any other benefit given to a Director in accordance with this Constitution; or

- (b) an indemnity given or insurance provided to the Directors in accordance with this Constitution.

### **15.9 Company may avoid transaction if Director interested**

Sections 107(3) and 141 of the Companies Act (relating to transactions in which a Director is interested) shall apply to the Company. In addition, a transaction may be avoided by virtue of this Constitution as if each of those sections was set out in this Constitution and the meaning of the Companies Act term "interested" was extended so as to include:

- (a) each interest that is required to be disclosed under clauses 15.1, 15.2 and 15.3(a); and
- (b) each conflict of interest that is disclosed under clause 15.3(b) and that is treated as being relevant under clause 15.4.

### **15.10 Benefits for Directors**

The Directors must not authorise:

- (a) the payment by the Company to a Director of compensation for loss of office;
- (b) the making of loans by the Company to a Director;
- (c) the giving of guarantees by the Company for debts incurred by a Director; and
- (d) the entering into of a contract to do any of the things set out in this clause.

### **15.11 Payment for professional services**

The Board may authorise the payment of remuneration to any Director in respect of any professional services provided by that Director, or any firm or company of whom the Director is a partner, director or employee to the Company, other than as a Director. Any such payment must be authorised by the other Directors by majority and certified by the Directors who have authorised such payment as being fair and reasonable (having regard to the level of remuneration that would be paid in an arms-length transaction).

### **15.12 Interests of Shareholder**

Any Director may, when exercising powers or performing duties as a Director, act in a manner that he or she believes is in the best interests of the Shareholder, even though it may not be in the best interests of the Company.

## **16. Company not carried on for Private Pecuniary Profit**

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### **16.1 No Private Pecuniary Profit**

None of the capital or income of the Company shall be paid or transferred directly or indirectly for the private pecuniary profit of any individual, provided that nothing in this clause shall prevent:

- (a) The payment in good faith of reasonable remuneration to any Directors, employees or contractors of the Company or to any other person for services rendered to the Company; or
- (b) The payment of interest to any person at a rate not exceeding the commercial rate of interest for the time being.

provided that nothing in this clause shall permit or authorise any payment or provision which would result in the Company failing to meet the tax exemption requirements of sections CW41(1) and CW42(1) of the Income Tax Act 2007 or any amendment of such Act.

## **17. Directors' remuneration and other benefits**

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### **17.1 Remuneration and expenses**

The Company may:

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

### **17.2 Payments to Directors**

Any payments made under clauses 15.11 or 17.1 to any Director, or to any firm or company of which the Director is a partner, director or an employee must be:

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

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

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

## **18. Indemnity and insurance for Directors and employees**

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### **18.1 Indemnity for Directors**

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

### **18.2 Indemnities and insurance**

In addition to the indemnity set out in clause 18.1, the Company may with the prior written approval of the Shareholder and the Board:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Companies Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Companies Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Companies Act.

### **18.3 Interpretation**

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

## **19. Notices**

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

## **20. Liquidation**

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### **20.1 Distribution of surplus**

Subject to clause 8 and 20.2 of this Constitution, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed to the Shareholder.

### **20.2 Distribution of AFL Shares and Settlement Quota**

Upon liquidation of the Company, any AFL Shares and Settlement Quota held by the Company must be distributed to a wholly-owned company of the Shareholder. The constitution of that wholly-owned company must comply with all of the relevant requirements of the Māori Fisheries Act and the Companies Act and must contain within its Constitution a provision to the same effect as clause 4 of this Constitution before it can receive the AFL Shares and Settlement Quota.

## **21. Audit**

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The Company will cause proper accounting records to be kept and reflected in annual financial statements to a standard that accords with that prescribed by any relevant legislation, and in accordance with generally accepted accounting practice. Financial statements must be audited to the extent required at law, or by the Shareholder, which audit may, where permitted, be limited to an audit of the accounts of the MTA Group as defined in the constitution of the Shareholder. The shareholder will resolve to appoint one auditor for the MTA Group, unless there is a legal impediment to that occurring.

## **22. Method of contracting**

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### **22.1 Deeds**

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

- (a) two or more Directors;
- (b) if there is only one Director, by that Director whose signature must be witnessed;
- (c) one or more attorneys appointed by the Company; or

any Director, or any person authorised by the Board, whose signature must be witnessed.

### **22.2 Other written contracts**

An obligation or contract that is required by law to be in writing, and any other written obligation or contract that is to be entered into by the Company, may be signed on behalf of

the Company by a person acting under the express or implied authority of the Company, subject to the requirements of the Māori Fisheries Act.

### **22.3 Other obligations**

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

## **23. Approval and amendment of constitution**

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### **23.1 Approval by Shareholder required**

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

- (a) approved as complying with the requirements of the Māori Fisheries Act by the Shareholder; and
- (b) ratified by not less than 75% of the Trustees of the Shareholder.

### **23.2 Amendment to Constitution**

- (a) Notwithstanding any provision of the Companies Act 1993, or the terms of this Constitution, no amendment to this Constitution shall be made, and if purported to be made shall be of no legal effect, if the consequence of that amendment is to prejudice in a material manner the Company's entitlement to charitable status under the law of New Zealand, or its entitlement to an income tax exemption under the Income Tax Act 2004 in respect of income derived by it.
- (b) Prior to any resolution to amend this Constitution being placed before Shareholder, the Directors shall ensure that competent advice is obtained and made available to the Shareholder confirming that the proposed amendments will not jeopardise the charitable status of the Company or its entitlement to an income tax exemption on income derived by it.

### **23.3 Amendment must not be inconsistent with Māori Fisheries Act**

Where any amendment to this constitution or the constitution of any subsidiary established by the Company under sub-clause 5.1 is proposed, to the extent that the relevant constitution relates to matters provided for by or under the Māori Fisheries Act, a proposal to change the relevant constitution must not be inconsistent with the Māori Fisheries Act.

### **23.4 Restrictions on amendment**

Unless any amendment, under sub-clause 23.3, to this Constitution or the constitution of any subsidiary established by the Company under sub-clause 5.1 is required as a consequence of further criteria prescribed by Te Ohu Kai Moana Trustee Limited under section 25 of the Māori Fisheries Act, any proposal to amend the relevant constitution may only be promoted if the iwi

resolves at a general meeting of the Shareholder that the change is for the collective benefit of all members of the iwi.

### **23.5 Application of sub-clause 23.1**

Sub-clause 23.1 of this Constitution applies, with the necessary modifications, to amendments proposed to this Constitution or the constitution of any subsidiary established by the Company under sub-clause 5.1 under this clause, including amendments required as a consequence of rules made or amended by Te Ohu Kai Moana Trustee Limited under section 25 of the Māori Fisheries Act.