

CONSTITUTION

OF

WHENUA HAUMI ROROA O TĀMAKI MAKĀURAU GENERAL PARTNER LIMITED

CONTENTS

1. DEFINITIONS AND INTERPRETATION1
2. TERMS OF LIMITED PARTNERSHIP AGREEMENT.....3
3. ACTIVITIES OF THE COMPANY3
4. SHARES3
5. APPOINTMENT AND REMOVAL OF DIRECTORS4
6. INDEMNITY AND INSURANCE.....5
7. POWERS OF DIRECTORS6
8. INTERESTS OF DIRECTORS7
9. PROCEEDINGS OF BOARD8
10. METHOD OF CONTRACTING.....8
11. AUDITOR.....8

CONSTITUTION

OF

WHENUA HAUMI ROROA O TĀMAKI MAKAURAU GENERAL PARTNER LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

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

“**Board**” means Directors who number not less than the required quorum, acting together as a board of Directors.

“**Company**” means Whenua Haumi Roroa o Tāmaki Makaurau General Partner Limited.

“**Constitution**” means this constitution, as altered from time to time.

“**Director**” means a person appointed as a director of the Company in accordance with this Constitution.

“**Interested**”, in relation to a Director, has the meaning set out in section 139 of the Act.

“**Limited Partner**” means any of Marutuahu Ropu Limited Partnership, Ngati Whatua Ropu Limited Partnership and Waiohua Tamaki Ropu Limited Partnership.

“**Limited Partnership**” means the Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership.

“**Limited Partnership Agreement**” means the limited partnership agreement dated **[insert date]**, which establishes the Limited Partnership.

“**LP Interest**” means a partnership interest (as that term is defined in the Limited Partnerships Act 2008) in the Limited Partnership.

“**Marutuahu Ropu Limited Partnership**” means the limited partnership established by the following member iwi of Marutuahu ropu:

- (a) Ngati Maru;
- (b) Ngati Paoa;
- (c) Ngati Tamatera;
- (d) Ngati Whanaunga; and
- (e) Te Patukirikiri.

“**Marutuahu Ropu Director**”, “**Ngati Whatua Ropu Director**”, and “**Waiohua Tamaki Ropu Director**” means a person who has been appointed as a Director by the holder of the Marutuahu Ropu Share, the Ngati Whatua Ropu Share, or the Waiohua Tamaki Ropu Share, respectively.

“**Marutuahu Ropu Share**”, “**Ngati Whatua Ropu Share**”, and “**Waiohua Tamaki Ropu Share**” mean the Shares referred to in clause 4.3(a), clause 4.3(b) or clause 4.3(c), respectively.

“**month**” means calendar month.

“**Ngati Whatua Ropu Limited Partnership**” means the limited partnership established by the following member iwi of Ngati Whatua ropu:

- (a) Ngati Whatua o Kaipara;
- (b) Ngati Whatua Orakei; and
- (c) Te Runanga o Ngati Whatua.

“**person**” includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

“**Records**” means the documents required to be kept by the Company under section 189(1) of the Act.

“**Share**” means a share issued, or to be issued, by the Company, as the case may require.

“**Shareholder**” means a holder of Shares being either the Marutuahu Ropu Share, the Ngati Whatua Ropu Share, or the Waiohua Tamaki Ropu Share, as the case may be.

“**Share Register**” means the share register for the Company kept in accordance with the Act.

“**Waiohua Tamaki Ropu Limited Partnership**” means the limited partnership established by the following member iwi/hapu of Waiohua Tamaki ropu:

- (a) Ngai Tai ki Tamaki.
- (b) Ngati Tamaoho;
- (c) Ngati Te Ata;
- (d) Te Akitai Waiohua; and
- (e) Te Kawerau a Maki.

“**Working Day**” has the meaning set out in section 2 of the Act.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;

- (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) “written” and “in writing” include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act have the same meaning in this Constitution;
- (f) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning;
- (g) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.

1.3 **Constitution to prevail:** Subject to the application of clause 2.1 below, if there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

2. TERMS OF LIMITED PARTNERSHIP AGREEMENT

2.1 **Application of terms of Limited Partnership Agreement:** The terms of the Limited Partnership Agreement that relate to the Company and the Directors apply as if they are included in this Constitution. If there are any terms of the Limited Partnership Agreement which conflict with the terms of the Act or this Constitution, the terms of the Limited Partnership Agreement shall, to the maximum extent permitted by law, prevail.

3. ACTIVITIES OF THE COMPANY

3.1 **Purpose of the Company:** The purpose of the Company is to act as the general partner of the Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership. From time to time, the Company may also act as the general partner of a special purpose limited partnership established to hold particular assets relating to rights of first refusal (“RFR”) or manage any other special purpose entity or other entity established by a Limited Partner in relation to any RFR asset, or offer or opportunity to acquire an RFR asset.

4. SHARES

4.1 **Initial issue of Shares:** The Company shall forthwith after it has been incorporated issue one Share to each of the persons named in the application for registration as shareholders. No consideration is payable to the Company for any of those Shares.

4.2 **Shareholder must hold an LP Interest:** No person may be registered as a holder of a Share unless he, she, it or their Affiliate, is also a holder (or will be a holder) of an LP Interest.

4.3 **Shareholders:** The Shares referred to in clause 4.1 will upon issue be divided in the following manner:

- (a) **Marutuahu Ropu Share** comprising the Share held by the Marutuahu Ropu Limited Partnership which shall be numbered 1;
- (b) **Ngati Whatua Ropu Share** comprising the Share held by the Ngati Whatua Ropu Limited Partnership which shall be numbered 2; and
- (c) **Waiohua Tamaki Ropu Share** comprising the Share held by the Waiohua Tamaki Ropu Limited Partnership which shall be numbered 3.

4.4 **No transfer of Shares:** The Shares shall at all times be held by the relevant Shareholder set out in clause 4.2 above. The Shares shall not be transferred to any other party.

5. APPOINTMENT AND REMOVAL OF DIRECTORS

5.1 **Appointment:** Each Shareholder may at any time by written notice to the Company appoint up to two persons to be Directors.

5.2 **First Directors:** On the registration of the Company:

- (a) **[Insert name of director]** and **[Insert name of director]** are the Directors appointed by the Marutuahu Ropu Limited Partnership;
- (b) **[Insert name of director]** and **[Insert name of director]** are the Directors appointed by the Ngati Whatua Ropu Limited Partnership; and
- (c) **[Insert name of director]** and **[Insert name of director]** are the Directors appointed by the Waiohua Tamaki Ropu Limited Partnership,

and are deemed to have been appointed pursuant to this Constitution.

5.3 **Removal:** Each Shareholder may at any time by written notice to the Company remove from office any Director previously appointed to represent that Shareholder. A Director may not be removed from office by an ordinary resolution of the Shareholders.

5.4 **Alternate Directors:** Each Shareholder may at any time appoint a person who is not already a Director to act as an alternate Director for a Director previously appointed to represent that Shareholder. The following provisions shall apply to an alternate Director:

- (a) The appointment may at any time be revoked by notice to the Company given by the relevant Shareholder and is automatically revoked when the Director in whose place the alternate Director acts vacates office.
- (b) The alternate Director is not entitled in that capacity to any remuneration additional to that of the Director in whose place he or she acts.
- (c) Unless otherwise provided by the terms of the appointment, the alternate Director, while acting in that capacity:
 - (i) has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company; and
 - (ii) shall discharge all the duties and obligations, of the Director in whose place he or she acts.

5.5 **Notice of appointment and removal:** Any notice to the Company pursuant to this clause appointing or removing a Director or alternate Director must:

- (a) be signed, or purport to be signed, on behalf of the relevant Shareholder by any director or other person holding equivalent office of the general partner of the relevant Shareholder; and
- (b) be given to the Company by delivering the notice, or by sending the notice through the post or by facsimile or other electronic means of communication, to its registered office,

and may be comprised in one or more separate notices, each signed or purporting to be signed by one or more persons. A notice shall be effective from the time of receipt of the notice by the Company at its registered office.

5.6 **Vacation of office:** A Director ceases to be a Director if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (c) becomes disqualified from being a Director pursuant to the Act; or
- (d) is removed from office in accordance with clause 5.3; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.

6. INDEMNITY AND INSURANCE

6.1 **Indemnity of Directors:** Subject to clause 6.3 every Director shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a director of a subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

6.2 **Other indemnities:** Subject to clause 6.3 the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, or costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

6.3 **Exceptions:** An indemnity conferred by clause 6.1(b), or given pursuant to clause 6.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act; or
- (d) any other liability in respect of which an indemnity is prohibited by any legislation.

6.4 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

6.5 **Definitions:** In this clause 6:

- (a) “Director” includes a former Director and “director” includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

7. POWERS OF DIRECTORS

7.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

7.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

7.3 **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 Act.

7.4 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the 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.

7.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the 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.

8. INTERESTS OF DIRECTORS

8.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 8.2.

8.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

8.3 **Interested Directors may vote, etc:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

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

as if the Director were not Interested in the transaction.

8.4 **Best interests of the Company:** The Directors shall at all times (when exercising powers or performing duties as a Director), act in a manner which he or she believes is in the best interests of the Company.

9. PROCEEDINGS OF BOARD

9.1 **Procedure:** Proceedings of the Board shall be conducted in accordance with clause 14 of the Limited Partnership Agreement.

10. METHOD OF CONTRACTING

10.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) any two or more Directors; or
- (b) any Director, and any person authorised by the Board, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company.

10.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which 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.

10.3 **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.

11. AUDITOR

11.1 **Appointment of auditor:** Subject to section 196(2) of the Act, (permitting waiver of appointment of an auditor by unanimous resolution) an auditor shall be appointed and the auditor's duties regulated in accordance with the provisions of the Act.