

**[Community Support Services Industry Training Organisation Limited]**

## **Constitution**

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# The Companies Act 1993

## Constitution

of

[Community Support Services Industry Training Organisation Limited]

### 1 Preliminary

- 1.1 **Rights, powers and duties:** The Company, the Board and each Director and Shareholder of the Company has the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified in accordance with the Act by this Constitution.

### 2 Interpretation

- 2.1 The definitions in the Act apply in this Constitution.

- 2.2 **Definitions:** In this Constitution unless the context otherwise requires:

“**Approved Employer**” is a company or an organisation, which in the opinion of the Board, has an appropriate interest in carrying out the Objects and delivering the benefits of the Objects of the Company to the Industry Sectors and Industry Participants;

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

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

“**Charitable Purpose**” has the meaning given to that term in section OB1 of the Income Tax Act 2004, which are consistent with the Objects;

“**Company**” means [Community Support Services Industry Training Organisation Limited];

“**Director**” in relation to the Company has the meaning set out in Section 126 of the Act;

“**Distribution**” has the meaning given to it in the Act;

“**Industry Participants**” means employers, employees, volunteers or others involved in the Industry Sectors including, but not limited to, nurse aides, care workers, registered nurse (aged care), care assistants, mental health support workers, personal care worker, diversional therapists and activities officers;

“**Industry Sectors**” means those sectors involved in the delivery of community support services in New Zealand and in particular, those sectors the Company has gained coverage for as formally published in the Gazette by the Tertiary Education Commission;

“**Interests Register**” means the register kept under Section 189(1)(c) of the Act;

“**Major Transaction**” has the meaning as defined in the Act;

“**New Shares**” means all shares in the Company issued after its registration and excludes any shares in the Company specified in the Company’s application for registration under the Act;

“**Objects**” means the objects of the Company as set out at clause 3.2;

“**Ordinary Resolution**” means a resolution approved or assented to (including by fax or email) by a majority of the votes of those Shareholders entitled to vote on the question;

“**Qualifications Authority**” means the New Zealand Qualifications Authority established by section 248(1) of the Education Act 1989 or any future replacement or equivalent entity;

“**Related Company**” has the meaning given to it in the Act;

“**Relevant Interest**” has the meaning given to it in the Act;

“**Review Committee**” means a committee of two (2) Directors and two (2) independent persons;

“**Section**” means a section of the Act;

“**Shareholder**” means an Approved Employer whose name is entered in the Share Register as the holder for the time being of one share in the Company;

“**Shareholders’ Agreement**” means an agreement entered into by the then Shareholders and the Company on or about the same date this Constitution was adopted by the Company and as may be amended from time to time;

“**Share Register**” means the register to be kept pursuant to the Act and includes any division of such register;

“**Solvency Test**” has the meaning given to it in the Act;

“**Special Resolution**” means a resolution approved or assented to (including by fax or email) by a majority of 75% of the votes of those shareholders entitled to vote and voting on the question;

“**Tertiary Education Commission**” means the entity known as the Tertiary Education Commission established under Section 159C of the Education Act 1989 or any future replacement or equivalent entity; and

“**Trainee**” means an individual with a valid training agreement with the Company.

2.3 **No definition:** Any expression not defined in this Constitution but defined in the Act shall bear the same meaning in this Constitution as in the Act.

2.4 **Singular and plural:** In this Constitution, if not inconsistent with the context:

- a. words importing the singular number only include the plural, and vice versa; and
- b. words importing persons include firms and corporations and firm includes partnership.

- 2.5 **Headings:** Headings shall not affect the interpretation of this Constitution.
- 2.6 **Reference to statutes:** Unless the context otherwise requires, references to a statute include:
- a. amendments to that statute;
  - b. a statute passed in substitution for that statute; and
  - c. regulations passed under that statute or any of its amendments or under a statute passed in substitution for that statute.
- 2.7 **Reference to share:** A reference to a share means a share in the Company.

### 3 **Objects and Powers**

- 3.1 **General:** The Company has been established exclusively to promote Charitable Purposes wholly or principally within New Zealand with the object of providing for the training, education and support of the Industry Participants within or affected by the Industry Sectors.
- 3.2 **Objects:** The objects of the Company shall be:
- a. to provide for the training, education and support of the Industry Participants within or affected by the Industry Sectors;
  - b. to develop arrangements for the delivery of industry training and assessment that will enable Trainees to attain specified standards including arrangements (being arrangements likely to be acceptable to the Qualifications Authority) for –
    - i. the monitoring of training so as to ensure that it enables Trainees to attain the standards;
    - ii. the assessing of Trainees and of the extent to which they have in fact attained the standards;
  - c. to provide leadership within the Industry Sectors on matters relating to skill and training needs by –
    - i. identifying current and future skill needs;
    - ii. developing strategic workforce development training plans to assist the Industry Sectors to meet those needs;
    - iii. promoting training that will meet those needs to employers and employees; and
    - iv. develop arrangements for the collective representation of employees in the governance of the Company;
  - d. without limiting the objects described above, the Company may from time to time, in relation to the Industry Sectors:
    - i. receive recommendations from or make recommendations to any persons or organisations on the development and implementation of training, education,

assessment and support programmes in the areas of work undertaken within the Industry Sectors;

- ii. prepare resources for training and education “on the job” and other materials designed to improve performance within the Industry Sectors;
  - iii. undertake or arrange for the undertaking of research into the collection of information on training and education for the Industry Sectors;
  - iv. undertake, or otherwise assist in, such training and education projects relating to the Industry Sectors as the Company considers desirable;
  - v. undertake training and education programmes within the Industry Sectors if the requirements for training and education cannot otherwise be met;
- e. generally undertaking all acts, matters and things that the Company considers necessary or conducive to further or attain the Objects of the Company as set out above for the benefit of the public in New Zealand.

3.3 **Advancement of Charitable Purpose:** The foregoing activities are to be conducted only so as to facilitate the advancement of or otherwise benefit Charitable Purposes (whether training, educational, supportive or otherwise), and are not to be so construed as to authorise the pursuit of non-Charitable Purposes and in no circumstances may the Company allow any benefit or advantage to be derived in contravention of section CW35(1)(b) of the Income Tax Act 2004.

#### 4 **Issue of Shares**

4.1 **Generally:** Subject to the Act and in particular Section 47 of the Act and this Constitution the Board may issue one (1) share at any time, to any Approved Employer.

4.2 **Maximum Shareholding:** No Shareholder may hold more than one share at any time and the Board shall have the absolute right to refuse to register any share transfer which would result in a breach of this clause.

4.3 **Time of issue:** A share is issued when the name of the Shareholder is entered on the Share Register.

#### 5 **Distributions**

5.1 **Company not to make distributions:** The Company shall not make any distributions to its Shareholders.

#### 6 **Company may acquire its own Shares**

6.1 **Company may acquire its own shares:** The Company is permitted to purchase or otherwise acquire its own shares from one or more Shareholders in any way permitted by the Act for nominal consideration of a \$1.00 per share.

6.2 **Treasury Stock:** Shares acquired by the Company pursuant to clause 6.1 shall not be deemed cancelled if:

- a. the Board resolves that the shares concerned shall not be cancelled on acquisition; and
  - b. the number of shares held by the Company at the time of acquisition does not exceed five (5) percent of the shares issued by the Company excluding shares previously deemed to be cancelled under clause 6.3.
- 6.3 **Cancellation of Shares:** Subject to clause 6.2 shares acquired by the Company pursuant to clause 6.1 will be deemed to be cancelled immediately on acquisition by the Company but any shares so cancelled may be reissued by the Company.

## 7 **Transfer of Shares**

- 7.1 **Shares:** Each Shareholder will hold its share in the Company pursuant to the Shareholders' Agreement.
- 7.2 **Transfer generally:** Subject to clauses 7.5 and 7.6 shares in the Company may not be transferred other than to the Company pursuant to clause 6.
- 7.3 **Form of Transfer:** The form of transfer may be in any form approved by the Board.
- 7.4 **Delivery of form of transfer:** For the purpose of transferring shares, a form of transfer signed by the present holder of the relevant shares or by its representative must be delivered to:
- a. the Company; or
  - b. an agent of the Company who maintains the Share Register.
- 7.5 **Transfer by operation of law:** Shares in the Company may pass by operation of law but any such transfer shall not affect the Board's right to refuse or delay registration of any transfer of shares.
- 7.6 **Compulsory Transfer of Shares**
- a. **No longer an Approved Employer:** If the Board believes that a Shareholder is no longer an Approved Employer (whether by ceasing to be eligible or otherwise), the Board shall send written notice to the Shareholder which shall specify the reasons why the Board believes that the company or the organisation is no longer an Approved Employer and giving the Shareholder thirty (30) days to make written submissions to the Board;
  - b. **Submissions by Shareholder:** If, after receiving the Shareholder's submissions pursuant to clause 7.6a, or if no such submissions are made, then if at the end of the thirty (30) day period, the Board is still of the opinion that the company or the organisation is not an Approved Employer, the Board shall send a further notice ("a Sale Notice") to that Shareholder requiring the Shareholder to transfer its share ("the Sale Share") to the Company;
  - c. **Director to Execute Transfer:** If a Shareholder, after ten (10) working days of receiving a Sale Notice, defaults in transferring the Sale Share, any Director of the Company may execute a transfer of the Sale Share to the Company on behalf of the Shareholder. The Board shall be appointed attorney for the purpose of this transfer.

7.7 **Consideration:** The consideration payable by a transferee of shares or receivable by a transferor of a share must be a nominal consideration of a \$1.00 for the relevant share transferred.

## 8 **Meetings of Shareholders**

### 8.1 **Annual meeting:**

- a. The Board must, in accordance with section 120 of the Act relating to annual meetings of shareholders, call an annual meeting of Shareholders to be held:
  - i. once in each calendar year (other than in the year of its incorporation); and
  - ii. not later than six (6) months after the balance date of the Company; and
  - iii. not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of incorporation.
- b. The Company must hold the annual meeting on the date on which it is called to be held.

### 8.2 **Special meetings:** A special meeting of Shareholders entitled to vote on an issue:

- a. may be called at any time by the Board or a person who is authorised by the Constitution to call the meeting; and
- b. must be called by the Board on the written request of Shareholders holding not less than five (5) percent of the votes entitled to be cast on the issue.

### 8.3 **Resolution in lieu of meeting:**

- a. Subject to clause 8.3b, a resolution in writing signed by not less than 75 percent of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders is as valid as if it had been passed at a meeting of those Shareholders;
- b. Within five (5) working days of a resolution being passed under this clause, the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

## 9 **Proceedings at Meetings of Shareholders**

9.1 **First Schedule:** The first schedule to this Constitution governs the proceedings at meetings of Shareholders.

## 10 **Appointment and Removal of Directors**

10.1 **Number of Directors:** The number of Directors shall be not less than six (6) and not more than ten (10).

10.2 **Management by Board:** The business and affairs of the Company shall be governed by or under the direction or supervision of the Board.



- 10.3 **Board Responsibilities:** Without prejudice to the duties and obligations of the Board under the Act or otherwise at law, the Board is to have regard to the following principles in exercising its powers for governing and directing the management, business and affairs of the Company:
- a. its responsibility to ensure that the Company complies with all legislative requirements for an industry training organisation;
  - b. its responsibility to ensure the Company effectively and efficiently carries out its business as an industry training organisation;
  - c. its responsibility to support strong engagement and influence within the Industry Sectors;
  - d. its obligation to use its best endeavours to enable the Company to enter into new and related business areas if it will further the Company's effectiveness in achieving its Objects;
  - e. its obligation to support the company charter as reviewed from time to time;
  - f. its obligation to support the inclusion of new sectors and stakeholders within the Industry Sectors; and
  - g. its obligation to ensure that all the Company's Objects, powers and duties exercised by the Company through the Board, are exercised for Charitable Purposes.
- 10.4 **Board may delegate:** The Board may delegate its powers in accordance with the Act.
- 10.5 **Term:** The Directors will hold office for a term no longer than three (3) years but may be eligible for reappointment in accordance with clause 10 for a maximum of two terms of three (3) years.
- 10.6 **Rotation of Directors:** At each annual meeting one third of the Directors for the time being or, if their number is not three (3) or a multiple of three (3), then the number nearest one third, shall retire from office. The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 10.7 **Vacancy:** The Directors may act notwithstanding any vacancy in their body, but if and for so long as the number of directors is reduced below six the continuing Directors may act for the purpose of increasing the number of Directors to that number or summoning a meeting of Shareholders, but for no other purpose.
- 10.8 **Appointment to the Board:**
- a. At the adoption of this Constitution the Board shall be Simon O'Dowd, Maurice Burrowes, Donna Mitchell, John Ryall, Helma van der Lans, Adrienne Henderson and Rob Warriner ("the Initial Board"). As soon as reasonably practicable after the adoption of this Constitution the Initial Board shall establish a Review Committee in accordance with clause 10.8 b and call for nominations in accordance with clauses 10.8c and d for the purpose of establishing a new Board. For the avoidance of doubt the Initial Board members may be nominated for a position in the new Board in accordance with clauses 10.8 c and d. The Initial Board shall resign upon the appointment of the new Board.

- b. The Board shall immediately create a Review Committee of two (2) Directors and two (2) independent persons to:
  - i. Assess from time to time the job descriptions as contemplated in the Shareholders Agreement;
  - ii. Determine any amendments to the job descriptions;
  - iii. Consider all applications and nominations of candidates; and
  - iv. Shortlist the appropriate candidates (“Shortlisted Candidates”).

The Review Committee shall in carrying out its tasks have regard to specific Industry Sector skills, knowledge or experience required.

- c. Whether by reason of rotation or in accordance with clause 10.7 or otherwise where a position becomes or positions become vacant on the Board, the Board shall call for nominations to fill such position in accordance with the following procedure:
  - i. The call for nominations shall be made in writing by the Board and sent by normal post to the address of the Shareholders as stated on the Register;
  - ii. The call for nominations shall provide the Shareholders with the opportunity to nominate a representative of the Approved Employer or any other person who can meet the set of skills and knowledge as described in the appropriate job description as amended from time to time;
  - iii. The call for nominations shall be in such format and may set out such background information as the Board considers desirable;
  - iv. The call for nominations shall be deemed to have been received by an Approved Employer two (2) working days after the call for nominations has been posted to the address of the Approved Employer;
  - v. The call for nominations shall specify a date on which nominations must be received by the Board; and
  - vi. The Board may seek other suitable candidates elsewhere as the Board deems appropriate and such candidates shall be deemed to be validly nominated for the purposes of clause 10.8.
- d. All nominations for appointment to the Board must be made by the date specified in the call for nominations on the following terms:
  - i. The nominations must be in writing and addressed to the registered office of the Company;
  - ii. The nominations must include a statement signed by the nominee accepting the nomination and must include full contact details of the nominee and a statement by the nominee as to the nominee’s qualifications and experience relevant to the position on the Board; and
  - iii. The Board may reject any nominations received after the expiration of the specified date.

- e. The Board shall as soon as reasonably practicable notify the Shareholders by post of the Shortlisted Candidates and call for votes to the appointment of Board members by enclosing ballot papers with instructions on voting. A call for votes made pursuant to this clause is deemed to have been received by a Shareholder two (2) working days after the call for votes has been posted to the address of the Shareholder.
- f. A Shareholder must, within fourteen (14) working days after receipt of the call for votes, vote in accordance with the instructions for voting on the following terms:
  - i. All votes must be made on the ballot papers enclosed with the call for votes pursuant to clause 10.8e above and be delivered to the registered office of the Company;
  - ii. The Board may reject any votes received after the expiration of the fourteen (14) working day period after receipt of the call for votes by the Shareholder.
- g. After receipt of all valid votes, the Shortlisted Candidate receiving the most votes for the position shall be appointed to the Board provided they have consented to their appointment to the Board.
- h. Other Terms:
  - i. Although the Board will make all reasonable efforts, it will not take responsibility for the non delivery of a call for nominations or votes pursuant to this clause;
  - ii. It is the responsibility of every Shareholder to ensure that their address on the Register is current;
  - iii. Every Shortlisted Candidate must consent to their appointment in writing for an appointment to the Board to be valid.

**10.9 Disqualification and removal:** A person will be disqualified from holding the office of Director if he or she:

- a. resigns in writing and delivers that resignation to the address for service of the Company; or
- b. becomes or is disqualified from being a Director pursuant to section 151 of the Act; or
- c. is prohibited from being a Director or promoter of or being concerned with or taking part in the management of a Company under section 382, section 383 or section 385 of the Act; or
- d. ceases to be qualified to be an officer of a charitable entity in accordance with section 16(1) of the Charities Act 2005; or
- e. dies; or
- f. becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- g. is under 18 years of age;

- h. is an undischarged bankrupt; or
- i. by Ordinary Resolution passed at a meeting called for the purpose or for purposes that include the removal of the Director. The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the Director.

10.10 **Resignation procedure:** A Director may resign office by signing a written notice of resignation and delivering it to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

## 11 Transactions Involving Self Interest

11.1 **Disclosure of interest:** A Director shall forthwith after becoming aware of the fact that he or she is interested (as defined in Section 139) in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register and disclose to the Board:

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

11.2 **Director may not vote:** Director of a company who is interested in a transaction entered into, or to be entered into, by the company, may not vote on a matter relating to the transaction but shall form part of the quorum.

## 12 Use of Company Information

12.1 **Procedure for disclosure, use etc:** A Director may disclose, make use of, or act on the information if:

- a. particulars of the disclosure, use, or the act in question are entered in the Interests Register;
- b. the Director is first authorised to do so by the Board; and
- c. the disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

## 13 Directors' Duties

13.1 **Best interest of the Company:** The Directors must act in a manner which he or she believes is in the best interests of that Company so long as those actions are consistent with the Objects of the Company.

## 14 Proceedings of Board

14.1 **Proceedings governed by Schedule 2:** The provisions set out in Schedule 2 to this Constitution govern the proceedings of the Board. The Third Schedule to the Act shall not apply to the Company.

## 15 **Remuneration of Directors**

- 15.1 **Power to authorise:** The Board may authorise the payment of remuneration by the Company to a Director for services as a Director if the Board is satisfied that to do so is fair to the Company and the payment has been approved by the shareholders in accordance with the Shareholders' Agreement. The Directors shall not be remunerated for any other services provided to the Company, other than in his or her capacity as a Director.
- 15.2 **Certificate:** Directors who vote in favour of authorising a payment or contract shall sign a certificate that complies with Section 161(4) of the Act.
- 15.3 **Expenses:** Where the Board has approved travel, accommodation and other expenses, a Director may be reimbursed the expenses incurred in the course of performing duties or exercising powers as a Director of the Company, without requiring prior authorisation of shareholders.

## 16 **Method of Contracting**

- 16.1 **Enforceable Obligation:** A contract or other enforceable obligation approved by the Board may be entered into by the Company as follows:
- a. An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
    - i. two or more Directors of the Company;
    - ii. if there is only one Director, by that Director whose signature must be witnessed;
    - iii. a Director or another person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or
    - iv. one or more attorneys appointed by the Company in accordance with section 181 of the Act.
- 16.2 **Obligations in Writing:** An obligation which, if entered into by a natural person, is by law required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority.
- 16.3 **Obligations Not in Writing:** An obligation which, if entered into by a natural person, is not by law required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

## 17 **Indemnity and Insurance**

- 17.1 **Indemnity:** The Company shall indemnify every Director and may indemnify any director or employee of the Company or a Related Company in respect of:
- a. any costs incurred by him or her in any proceeding:
    - i. that relates to liability for any act or omission in his or her capacity as a Director or employee; and

- ii. in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued;
- iii. liability to any person other than the Company or a Related Company for any act or omission in his or her capacity as a Director or employee; and
- iv. costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of a breach, in the case of a Director, of the duty specified in Section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the Company or Related Company.

17.2 **Insurance against liability:** The Company may with the prior approval of the Board and in accordance with Section 162 of the Act effect insurance for a Director or employee of the Company or a Related Company in respect of:

- a. liability, not being criminal liability, for any act or omission in any Director's or employee's capacity as Director or employee; or
- b. costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
- c. costs incurred by that Director or employee in defending any criminal proceedings;
  - i. 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
  - ii. In which he or she is acquitted.

17.3 **Definitions:** For the purposes of this clause 17 the words and expressions "Director", "effect insurance", "employee", "indemnify" and "indemnity" shall each have the meaning given to them by Section 162 (9) of the Act.

## 18 **Company Records**

18.1 **Comply with the Act:** The Company must comply with Section 189 (which relates to Company records), Section 190 (which relates to the form of records) and Section 191 (which relates to inspection by Directors) of the Act.

## 19 **Accounting Records**

19.1 **Accounting Records to be kept:** The Board shall cause accounting records to be kept that comply with Section 194(1) and 194(2) of the Act.

19.2 **Place accounting records to be kept:** The accounting records shall be kept at the registered office of the Company, or subject to Section 195 of the Act, at such other place as the Board thinks fit and shall always be open to inspection by any Director.

## 20 **Liquidation and removal from the Register**

- 20.1 **Liquidation on certain events:** A liquidator of the Company may be appointed by Special Resolution of those Shareholders entitled to vote and voting on the question.
- 20.2 **Shareholders' view:** The Shareholders passing a resolution under clause 20.1 may also set out their views in the resolution, which views (subject to clause 20.3) the liquidator must have regard to under Section 258 of the Act.
- 20.3 **Division of Surplus Assets:** The liquidator shall transfer the whole or any part of the surplus assets of the Company (whether they consist of property of the same kind or not) to any organisation in accordance with the relevant provisions of the Act, provided only that the organisation shall at that time be established exclusively for Charitable Purposes, and if not the liquidator shall transfer such surplus assets to such persons in New Zealand established for Charitable Purposes in New Zealand as shall be selected by the liquidator.
- 20.4 **Removal from register:** Any Director with the prior approval of the Board may request the Registrar of Companies to remove the Company from the New Zealand register of companies under Section 318 of the Act on the grounds that:
- a. the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
  - b. the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under Section 241 of the Act for an order putting the Company into liquidation.

## 21 **Amending and Restructuring Constitution**

- 21.1 **General:** Subject to clause 21.2, this Constitution may be altered or amended in accordance with the Act provided that after such alteration or amendment the Company will continue to carry on its business exclusively for Charitable Purposes.
- 21.2 **Approval from Inland Revenue Department:** Notwithstanding clause 21.1, the Board shall not without prior written approval from the Inland Revenue Department amend any of the following:
- a. Clause 3: Objects and Powers;
  - b. Clause 4: Issue of Shares;
  - c. Clause 20: Liquidation and Removal from Register; and
  - d. this Clause 21: Amending and Restructuring Constitution.

## **Schedule 1: Proceedings at Meetings of Shareholders**

### **1 Chairperson**

- 1.1 The chairperson (if any) of the Board shall preside as chairperson at every general meeting of the Company. If there is no such chairperson or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act the Directors present shall elect one of their number to be chairperson of the meeting.
- 1.2 If no Director is willing to act as chairperson or if no Director is present within 15 minutes after the time appointed for holding the meeting the members present shall choose one of their number to be chairperson of the meeting.

### **2 Notice of Meetings**

- 2.1 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than five (5) working days before the meeting.
- 2.2 The notice must state:
- a. the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it; and
  - b. the text of any Special Resolution to be submitted to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at a meeting.

### **3 Methods of Holding Meetings**

- 3.1 A meeting of Shareholders may be held either:
- a. by a number of Shareholders, 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 Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### **4 Quorum**

- 4.1 Subject to clause 4.3 of this Schedule no business may be transacted at a meeting of Shareholders if a quorum is not present.



- 4.2 A quorum for a meeting of Shareholders is present if Shareholders or their proxies are present or have cast postal votes who are between them able to exercise 40% percent or more of the votes to be cast on the business to be transacted by the Company.
- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- a. in the case of a meeting called under Section 121(b) of the Act (which relates to Shareholder requisition), the meeting shall be dissolved; and
  - b. in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint and, if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

## 5 **Adjournment**

- 5.1 A meeting of Shareholders or any business being considered or remaining to be considered at which a quorum is present may be adjourned if:
- a. the chairperson of the meeting in his or her sole discretion so determines; or
  - b. the chairperson of the meeting is directed by the meeting (in which case the meeting shall be adjourned).
- 5.2 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. If a meeting of Shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.
- 5.3 Without limiting clause 5.1 of this Schedule, a meeting of Shareholders or any business being considered or remaining to be considered may be adjourned indefinitely, if the meeting becomes so disorderly or protracted that in the opinion of the chairperson in his/her sole discretion the business of the meeting cannot be conducted in a proper and orderly manner.
- 5.4 If any meeting is adjourned pursuant to clause 5.1 or 5.3 of this Schedule, then with respect to any unfinished business of such meeting:
- a. a resolution not voted upon concerning the remuneration of the auditors will be deemed to have been withdrawn and a resolution authorising the Board to fix the remuneration of the auditors will be deemed to have been passed; and
  - b. the chairperson may direct that any other item of business uncompleted at the original meeting (of which notice was given in the notice convening the original meeting) be put to the vote on a poll without further discussion.

## 6 **Voting**

- 6.1 In the case of a meeting of Shareholders held under clause 3.1a of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

- a. voting by voice; or
  - b. voting by show of hands.
- 6.2 In the case of a meeting of Shareholders held under clause 3.1b of this Schedule, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 6.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 6.4 of this Schedule.
- 6.4 At a meeting of Shareholders a poll may be demanded by:
- a. not less than five (5) Shareholders having the right to vote at the meeting; or
  - b. the chairperson of the meeting.
- 6.5 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 6.6 If a poll is taken votes must be counted according to the votes attached to the shares of each Shareholder present in person or by proxy and voting.
- 6.7 The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 6.8 For the purposes of clause 7 of this Schedule, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.
- 6.9 The poll shall be taken at the time and in the manner determined by the chairperson of the meeting. Any other business may be proceeded with pending the taking of the poll.
- 6.10 If a poll is taken votes must be counted according to the votes attached to the shares of each Shareholder present in person or by proxy or representative and voting.

## **7 Proxies**

- 7.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 7.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 7.3 A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- 7.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

## 8 **Postal Votes**

- 8.1 Shareholders may not exercise the right to vote at a meeting by casting a postal vote unless the Board has, prior to the giving of notice of the meeting, so determined, in which case the provisions of clause 8 of this Schedule shall apply.
- 8.2 The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.
- 8.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Director is deemed to be so authorised.
- 8.4 A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 8.5 It is the duty of a person authorised to receive and count postal votes at a meeting:
- a. to collect together all postal votes received by him or her or by the Company;
  - b. in relation to each resolution to be voted on at the meeting, to count:
    - i. the number of Shareholders voting in favour of the resolution; and
    - ii. the number of Shareholders voting against the resolution; and
  - c. to sign a certificate that he or she has carried out the duties set out in clauses 8.5a and 8.5b of this Schedule and which sets out the results of the counts required by clause 8.5b of this Schedule; and
  - d. to ensure that the certificate required by clause 8.5c of this Schedule is presented to the chairperson of the meeting.
- 8.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- a. on a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution; and
  - b. on a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.
- 8.7 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands or on a vote by voice.
- 8.8 The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

9 **Minutes**

- 9.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 9.2 Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

10 **Corporations may act by Representatives**

- 10.1 A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.
- 10.2 A representative shall have the same powers that a Shareholder would have if personally present at a meeting of Shareholders and shall be entitled to attend and be heard at that meeting and may exercise that Shareholder's right to vote.

11 **Votes of Joint Holders**

- 11.1 Where two (2) or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

12 **Other Proceedings**

- 12.1 Except as provided in this Schedule the chairperson of a meeting of Shareholders may regulate the procedure at that meeting.

## **Schedule 2: Proceedings of the Board**

### **1 Chairperson**

- 1.1 The chairperson will have the skills required as outlined in the job description and shall be appointed in accordance with clause 10.
- 1.2 The chairperson will hold office for a term no longer than three (3) years but may be eligible for reappointment in accordance with clause 10 for a maximum of two terms.
- 1.3 If no chairperson is confirmed, or if at a meeting of the Board the chairperson is not present within 10 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.

### **2 Notice of Meeting**

- 2.1 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.
- 2.2 Not less than two (2) working days notice of a meeting of the Board must be given to every Director who is in his or her normal country of residence, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 2.3 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 2.4 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- 2.5 It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from his or her normal country of residence.

### **3 Methods of Holding Meeting**

- 3.1 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 telephone communication pursuant to clause 4 of this Schedule.

### **4 Meetings by Telephone**

- 4.1 The contemporaneous linking together by telephone of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors. The following conditions shall be met in relation to a telephone meeting:

- a. all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of any such meeting may be given on the telephone;
- b. if all reasonable efforts are made to contact a Director to give notice of a meeting, including by telephone, and the Director cannot be contacted notice of the meeting shall be deemed to have been given;
- c. each of the Directors taking part in the meeting by telephone must be able to hear each of the other Directors taking part at the commencement of the meeting;
- d. at the commencement of the meeting and at or about the closure of the meeting each Director must acknowledge his presence for the purpose of a meeting of the Directors to all the other Directors taking part;
- e. a Director may not leave the meeting by disconnecting his or her telephone unless he or she has previously obtained the express consent of the chairperson of the meeting. A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he or she has previously obtained the express consent of the chairperson to leave the meeting;
- f. a minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting; and
- g. for the purposes of this clause “telephone” shall include television or any other audio and visual device which permits instantaneous communication.

## 5 **Quorum**

- 5.1 A quorum for a meeting of the Board is a majority of the Directors entitled to receive notice of the meeting.
- 5.2 No business may be transacted at a meeting of Directors if a quorum is not present.
- 5.3 If notice of a meeting of the Board has been properly given under clause 2 of this Schedule and a quorum is not present within 30 minutes after the time appointed for the meeting any Director may by not less than two (2) working days notice to every Director who is in New Zealand convene a further meeting of the Board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director present is a quorum.

## 6 **Voting**

- 6.1 Every Director has one vote. The chairperson will not have a casting vote in the event of an equality of votes.
- 6.2 A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.

6.3 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 he or she expressly dissents from or votes against the resolution at the meeting.

6.4 Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to execute any director's certificates required under the Act.

## **7 Minutes**

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

7.2 Minutes that have been signed as correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.

7.3 A copy of any written resolution under clause 8 of this Schedule shall be entered in the minute book of Board proceedings.

## **8 Unanimous Resolution**

8.1 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

8.2 Subject to clause 8.3 of this Schedule, a resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a Board meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

8.3 If a written resolution is signed or assented to pursuant to clause 8.2 of this Schedule the chairperson or deputy chairperson shall certify on the resolution that all of the Directors entitled to receive notice of a Board meeting were given written notice of the proposed resolution no later than the working day prior to the date the resolution was signed or assented to by the majority of Directors. A document posted or delivered to a document exchange is deemed to be received two (2) working days after it is posted or delivered.

8.4 A resolution in writing for the purposes of clauses 8.1 or 8.2 of this Schedule may consist of one or more documents in like form, each signed by one or more Directors and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by one or more Directors shall be conclusive evidence of the execution of the original document by those Directors.

## **9 Continuing Directors**

9.1 The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors but if their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors will comprise the Board only for the purpose of increasing the number of Directors to the minimum number or for summoning a general meeting of the Company.

10 **Committee**

10.1 The proceedings of committees of Directors shall be governed by this Schedule with all necessary modifications made by the Board.

11 **Other Proceeding**

11.1 Except as provided in this Schedule, the Board may regulate its own procedure.