

# TE KAIO TRUSTEE COMPANY LIMITED

## CONSTITUTION

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**CONSTITUTION**  
of  
**TE KAIO TRUSTEE COMPANY LIMITED**  
("the Company")

**PURSUANT TO THE COMPANIES ACT 1993**

**A SPECIAL PROVISIONS**

**1 Construction of Special Provisions**

The clauses in this Part A (Special Provisions) are clauses paramount. Whenever these clauses paramount are inconsistent with clauses in the remainder of this Constitution, these clauses paramount prevail, except to the extent to which the other clauses merely reflect provisions that are mandatory.

**2 Company carried on exclusively for charitable purposes**

**2.1 Charitable purpose**

The Company has the capacity to carry on or undertake any business or activity, do any act or enter into any transaction PROVIDED HOWEVER that the Company shall exercise all such powers and privileges and apply all income and/or capital of the Company exclusively for the charitable purposes in New Zealand for the benefit of the Wairewa Papatipu Runanga and communities associated with and connected to the Takiwa of Wairewa as listed below:

- (a) To provide for and assist in providing for the needy, poor, aged or infirm by way of financial assistance, provision of healthcare, provision of housing, provision of food and meals or by any other means whatsoever;
- (b) To advance and assist the needy, poor, aged or infirm with a view to the future by providing workshops, skills based courses, wananga, training programmes and employment opportunities;
- (c) To provide emergency relief in the form of shelter, clothing, food or otherwise to persons in need of such relief;
- (d) To advance and assist Rangitahi and their whanau especially in the cases of disadvantaged, physically or mentally disabled or at risk young persons by any means whatsoever;
- (e) To establish, maintain and support institutions and facilities for the relief of the needy, poor or infirm including but not limited to health clinics, hospitals, family planning centres, counseling and guidance

services, work centres, rest homes, convalescent homes and childcare facilities, some or all of which may be marae based;

- (f) To provide, promote and encourage education and teaching about Tikanga Maori and Taha Maori by way of workshops and wananga on aspects of Maori language and culture, Maori medicine and health, and other issues relevant to Maori Hou Ora;
- (g) To advance, encourage and provide education and learning and the dissemination of such acquired knowledge and learning by way of funding and scholarships, whether for primary, secondary or tertiary schooling levels and to advance, encourage and provide education and learning at a practical level and the dissemination of such acquired knowledge and learning by way of funding for and provision of work, business and planning programmes and other skill-based programmes;
- (h) To encourage, promote and advance awareness and knowledge of Maori spirituality Tikanga Maori, Taha Maori, Maori spiritual teachings and the observance and respect of such spirituality and teachings;
- (i) To provide assistance for the care of the sick and infirm by way of provision of traditional and contemporary health care and medicines or funding for such provision and to provide educational funding for education about general health and welfare issues affecting Maori men and Maori women and including, but not limited to, heart disease, diabetes, drug and alcohol rehabilitation and awareness programmes, family planning, diet and nutritional awareness with a view to promoting and advancing the medical, physical and psychological wellbeing of Maori Hou Ora;
- (j) To promote industry and commerce (including in particular farming and agriculture) by way of funding and facilitating industrial and commercial projects and ventures in a manner that is of particular relevance to and for the advancement and benefit of Maori, Te Waipounamu, including but not limited to, projects and ventures traditional to Maori such as mahinga kai, fishing, farming, marine farming, market gardening, cultivation of forestry, arts and crafts;
- (k) To assist Maori to prepare for the future by encouraging, promoting and funding initiatives for integration and awareness of Tikanga Maori and Taha Maori in the local and international arenas through the promotion of social and cultural programmes, tourism ventures and any other means;
- (l) To keep and maintain existing facilities, buildings, urupa, wahi tapu, wahi taonga, nohoanga, mahinga kai, mataitai, rahui, taiapure and cultural sites for the benefit of the community, and to provide funding for the construction or development of new community facilities;

- (m) To promote and manage environmental and ecological resources to enable their uses in respect by the community and the sustainability of environmental and ecological resources for use and respect by future generations; and
- (n) To carry on other charitable purposes which may seem to be capable of being conveniently carried on in connection with the above charitable purposes or calculated directly or indirectly to advance the charitable purposes of the Trust;

provided that none of these charitable purposes will be deemed subsidiary or ancillary to any other of the charitable purposes and the Trustees may pursue any one or more of these charitable purposes independently and to the exclusion of the other charitable purposes.

## **2.2 Charitable purposes paramount**

Notwithstanding anything else contained within this Constitution no power or reservation expressed or implied in this Constitution shall authorise the directors of the Company to do or suffer any act which does not further the charitable purposes expressed in clause 2.1 of Part A which shall at all times be paramount so as to exclude any act or omission which is not, or may be deemed to not be, in accordance with such charitable purposes.

## **2.3 Company not carried on for private pecuniary profit**

None of the income and/or capital of the Company shall be paid or transferred directly or indirectly by way of dividend, distribution or otherwise for the private pecuniary profit of any individual PROVIDED HOWEVER that nothing in this clause shall prevent:

- (a) The payment of a donation or donations of capital and/or income of the Company to any shareholder of the Company where that shareholder is a trustee of a charitable trust or a society or institution which is exempt from income tax under section CW41 and/or section CW42 of the Income Tax Act 2007 or any amendment thereof, and that shareholder holds that payment in trust exclusively for charitable purposes in New Zealand; or
- (b) The payment in good faith of reasonable remuneration, not exceeding fair market value, to any directors, shareholders, Associated Persons, employees or the secretary of the Company or to any other person for services rendered or goods supplied to the Company; or
- (c) The payment of interest to a person at a rate not exceeding the commercial rate of interest for the time being; or
- (d) The payment of capital and/or income of the Company to further the charitable purposes of the Company expressed in clause 2.1 of Part A

PROVIDED HOWEVER that nothing in clause 2.3(a) to (d) inclusive shall permit or authorise any payment or provision which will result in the Company losing its exemption from income tax under section CW41 and/or section CW42 of the Income Tax Act 2007 or any amendment thereof.

For the purpose of this section “Associated Person” is a person associated with a director or shareholder by virtue of the definition contained in section YB of the Income Tax Act 2007 or any subsequent enactment to similar effect for the time being in force.

#### **2.4 Certain persons not to influence benefits received from Company**

No director, shareholder or Associated Person shall, in the carrying on of the business of the Company, have the ability to determine (whether directly or indirectly) or materially influence in any way the determination of the nature or amount of any benefit or advantage from the business, including those listed in clause 18.1 of Part B of the Constitution or any income of any of the kinds referred to in Part C of the Income Tax Act 2007 or the circumstances in which that benefit, advantage or income is or is to be received, gained, achieved, afforded or derived by that person PROVIDED HOWEVER that subject to that requirement this clause shall not prevent:

- (a) The payment of a donation or donations of capital and/or income of the Company to any shareholder of the Company where that shareholder is a trustee of a charitable trust or a society or institution which is exempt from income tax under section CW41 and/or section CW42 of the Income Tax Act 2007 or any amendment thereof, and that shareholder holds that payment in trust exclusively for charitable purposes within New Zealand; or
- (b) The payment in good faith of reasonable remuneration, not exceeding fair market value, to any directors, shareholders, Associated Person, employees or the secretary of the Company or to any other person for services rendered or goods supplied to the Company; or
- (c) The payment of interest to any person at commercial rates of interest for the time being; or
- (d) The payment of capital and/or income of the Company to further charitable purposes of the Company expressed in clause 2.1

PROVIDED ALSO that except as permitted under clause 18.1 of Part B of the Constitution a director or shareholder receiving the payment or associated with an Associated Person receiving the payment shall exclude themselves from any role in the decision of the directors or shareholders as to the use of their services, acquisition of their goods, borrowing of their moneys or the amounts to be paid for such items and that this exclusion shall be documented by way of minutes.

For the purposes of this section, “Associated Person” is a person associated with a director or shareholder for the purposes of section CW 42 of the Income Tax Act 2007 by virtue of the definition contained in section YB of that Act or any subsequent enactment to similar effect for the time being in force.

## **2.5 Liquidation of Company**

If the Company is liquidated for any reason, the surplus assets of the Company after payment of all costs, debts and liabilities shall not be paid to or distributed to the shareholders of the Company except in their capacity as a trustee of a charitable trust which is exempt from income tax under sections CW41 and/or CW42 of the Income Tax Act 2007, or any amendment thereof PROVIDED HOWEVER that the directors may pay or distribute any such surplus assets towards the charitable purposes of the Company or any charitable purpose in New Zealand consistent with the charitable purposes of the Company or any charitable purposes within New Zealand that the directors consider appropriate. If the directors fail to agree upon appropriate charitable purposes, then any director may apply to the High Court in New Zealand for a determination as to how such surplus assets should be distributed.

## **2.6 Amendments to Constitution**

The Company may amend this Constitution pursuant to the Companies Act 1993, or any amendment thereof, PROVIDED HOWEVER that no amendments to the Constitution, including in particular this Part A (Special Provisions), shall:

- (a) permit the Company to operate, or to distribute its assets on winding up or dissolution, for any purpose that is not exclusively charitable or for private pecuniary profit; or
- (b) be effected if it would result in the Company no longer qualifying for the benefit of any tax concession directly or indirectly benefiting charities (including, without limitation, exemption of the Company's income from income tax and any tax concessions in respect of contributions to the Company).

## **2.7 Vacation of office of director**

In addition to the instances specified in paragraph 15.4 of Part B of this Constitution, a director shall cease to hold office if he/she ceases to be a member of Wairewa Runanga Incorporated PROVIDED THAT this clause shall not apply to independent directors.

## **2.8 No rights to dividend**

The shares held in the Company shall not confer any rights to dividends on the holder.

## **B GENERAL PROVISIONS**

### **1 Definitions**

#### **1.1** In this constitution the following words and expressions have these meanings:

"**Act**" means the Companies Act 1993 together with any statutory provision which amends or replaces it and any subordinate legislation made under it.

"**alternate director**" means a director appointed pursuant to clause 15.06.

"**annual meeting**" means a meeting of shareholders held pursuant to clause 12.1.

"**balance date**" means the date adopted by the company as the end of its financial year for the purpose of its annual financial statements.

"**board**" means the directors numbering not less than the required quorum acting as the board of directors of the company, and where one director is a quorum it means that director so acting alone.

"**call**" means a resolution of the board under clause 8.1 requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares and, where the context requires, means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"**class**" and "**class of shares**" means a class of shares having attached to them identical rights, privileges, limitations, and conditions.

"**chairperson**" means the chairperson of the board, elected under clause 17.1(a) or appointed under clause 17.1(c).

"**company**" means **TE KAIO TRUSTEE COMPANY LIMITED**.

"**Constitution**" means this constitution of the company and all amendments to it from time to time.

"**director**" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"**distribution**", in relation to shares held by a shareholder, means:

- (a) the direct or indirect transfer of money or property, other than shares, by the company to or for the benefit of that shareholder; or
- (b) the incurring of a debt by the company to or for the benefit of a shareholder,

whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

"**dividend**" means a distribution by the company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies.

"**general meeting**" means any meeting of shareholders.

"**independent directors**" means directors of the Company that are not, and never have been, members of the Waiwera Rununga Incorporated.

"**interests register**" means a register kept by the company at its registered office as required by section 189(1)(c) of the Act.

"**major transaction**", in relation to the company, means a transaction in terms of clause 129 of the Act.

"**managing director**" means a director who is appointed under clause 20 as an employee of the company, with the responsibility for the management of the company (together with any other employee).

"**month**" means calendar month.

"**ordinary resolution**" means a resolution approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

"**ordinary share**" means a share which confers on the holder:

- (a) the right to vote at meetings of shareholders and on a poll to cast one vote for each share held;
- (b) subject to the rights of any other class of shares, the right to an equal share in dividends and other distributions made by the company; and
- (c) the right to an equal share in the distribution of the surplus assets of the company on its liquidation.

"**register**" means the register of shares required by clause 5 of this constitution and section 87 of the Act to be kept.

"**Registrar**" means the Registrar of Companies appointed under section 357(1) of the Act.

"**securities**" has the same meaning as in the Securities Act 1978.

"**share**" means a share in the company.

"**Society**" means the **Wairewa Rununga Incorporated**;

"**solvency test**" means that text set out in clause 4 of the Act. For the purpose of this definition "debts" and "liabilities" have the meaning given to those terms in section 52(4) of the Act.

"**special meeting**" means any meeting (other than an annual meeting) of shareholders entitled to vote on an issue, called at any time by the board.

"**special resolution**" means a resolution of shareholders approved by a majority of 75 per cent of the votes of those shareholders entitled to vote and voting on the question.

"**working day**" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

"**writing**" includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine.

- 1.2** Words importing the singular include the plural and vice versa.
- 1.3** A reference to a person includes any firm, company or other body corporate.
- 1.4** Words importing one gender include the other genders.
- 1.5** Subject to this clause, expressions contained in this constitution bear the same meaning as specified in the Act.
- 1.6** A reference to a clause means a clause of Part A or Part B of this constitution, as the context requires.
- 1.7** The clause headings are included for convenience only and do not affect the construction of this constitution.

## **2 Issue of shares**

### **2.1 Board may issue shares.**

- (a) Subject to the Act, this constitution and the terms of issue of any existing shares, the board may with the authority of a Company ordinary resolution issue shares (and rights or options to acquire shares) of any class at any time, to any person and in such numbers as the board thinks fit.
- (b) Unless the terms of issue of any class of shares specifically otherwise provide, the board may issue shares that rank or would rank (as to voting or distribution rights or both) equally with or prior to existing shares without any requirement that the shares be first offered to existing shareholders.

### **2.2 Consideration for issue of shares.**

- (a) Subject to clause 2.2(b), before the board issues shares (other than shares issued upon incorporation), it must:
  - (i) decide the consideration for which the shares will be issued and the terms on which they will be issued;
  - (ii) if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
  - (iii) resolve that, in its opinion, the consideration for the shares and their terms of issue are fair and reasonable to the company and to all existing shareholders; and
  - (iv) if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the shares would be credited as paid up.
- (b) Clause 2.2(a) does not apply to:
  - (i) the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each such shareholder; or
  - (ii) the consolidation or subdivision of shares.
- (c) The consideration for which shares are issued, or for the payment of shares already issued, may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

### **2.3 Directors' certificate on consideration for issue.**

- (a) The directors who vote in favour of a resolution under clause 2.2(a) to issue shares must sign a certificate:
  - (i) stating the consideration for, and the terms of, the issue;
  - (ii) describing the consideration in sufficient detail to identify it;
  - (iii) where a present cash value has been determined in accordance with clause 2.2(a)(ii), stating that value and the basis for assessing it;
  - (iv) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders; and
  - (v) if the shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the shares.
- (b) A copy of the directors' certificate given under clause 2.3(a) must be filed with the Registrar within 10 working days after it is given.

### **2.4 Payment for shares already issued.** Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must:

- (a) determine the reasonable present cash value of the consideration; and
- (b) resolve that, in its opinion, the present cash value of the consideration is:
  - (i) fair and reasonable to the company and all existing shareholders; and
  - (ii) not less than the amount to be credited in respect of the shares.

### **2.5 Directors' certificate on payment for shares already issued.**

- (a) The directors voting in favour of a resolution under clause 2.4 regarding the consideration payable for shares previously issued, must sign a certificate:
  - (i) describing the consideration in sufficient detail to identify it; and
  - (ii) stating:

- the present cash value of the consideration and the basis for assessing it;
- that the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and
- that the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

(b) A copy of the directors' certificate given under clause 2.5 must be filed with the Registrar within 10 working days after it is given.

**2.6 Deemed payment other than for cash** For the purposes of clauses 2.2 and 2.4, shares that are (or are to be) credited as paid up (whether wholly or partly) as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments (whether simultaneously or not), must be treated as paid up other than in cash to the value of the property or services.

**2.7 Amount owing on issue of shares** Where money or other consideration is due at a fixed time to the company on shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the shareholder (or other person liable under the terms of issue) before the company may enforce payment of the amount due.

**2.8 Bonus shares.** The board may authorise the allotment to all shareholders of the same class, shares issued as fully or partly paid up (from the assets of the company) in proportion to the number of shares held by each such shareholder.

**2.9 Company paying up partly paid shares.** Subject to the solvency test being satisfied after the distribution is made, and to clause 2.4, the board may authorise the payment (from the assets of the company) of any amount unpaid on shares already issued by the company.

### **3 Purchase of own shares**

**3.1 Purchase by company of its shares.** The company may purchase or otherwise acquire its shares in accordance with, and subject to, sections 58 to 66, 107 and 110 to 112 of the Act, and may hold the acquired shares in accordance with section 67A of the Act.

## **4 Share register**

### **4.1 Maintain register.**

(a) The company must maintain a register which records all shares issued by the company and which states:

- (i) whether, under this constitution or the terms of issue of any shares, there are any restrictions or limitations on their transfer; and
  - (ii) where any document that contains the restrictions or limitations may be inspected.
- (b) The company may appoint an agent to maintain the register.

**4.2 Contents of register.** The register must state, with respect to each class of shares:

- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a shareholder;
- (b) the number of shares held by each shareholder within the last 10 years; and
- (c) the date of any:
  - (i) issue of shares to;
  - (ii) repurchase or redemption of shares from; or
  - (iii) transfer of shares by or to;

each shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the shares were transferred.

**4.3 Directors' duty to supervise register.** It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 4.5.

**4.4 Register prima facie evidence.** Subject to section 91 of the Act (power of Court to rectify register), the entry of the name of a person in the register as holder of a share is prima facie evidence that the legal title to the share is vested in that person.

**4.5 Register evidence of rights.** The company may treat the registered holder of a share as the only person entitled to:

- (a) exercise the right to vote attaching to the share;
- (b) receive notices in respect of the share;
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

#### **4.6 Trust not to be registered or recognised.**

- (a) No notice of a trust, whether express, implied, or constructive, may be entered on the register.
- (b) Except as required by law, no person will be recognised by the company as holding any share upon trust or holding any interest in a share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the share vested in the registered holder.
- (c) A personal representative of a deceased holder of shares is entitled to be entered in the register as the holder of such shares as a personal representative. The registration of a trustee, executor or administrator as a personal representative of a deceased shareholder does not constitute notice of a trust.

### **5 Share certificates**

**5.1 Application for share certificate.** A shareholder may apply to the company for a certificate relating to some or all of the shareholder's shares.

#### **5.2 Issue of share certificate.**

- (a) The company must, within 20 working days after receiving an application for a share certificate under clause 5.1, send to the shareholder a certificate stating the name of the company, and the class and number of shares to which the certificate relates.
- (b) If the application relates to some but not all of the applicant's shares, the company must separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares.

**5.3 Transfer to be accompanied by share certificate.** Notwithstanding clause 4 of this constitution and section 84 of the Act (transfer of shares), where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board).

**5.4 Surrendered share certificate.** Where shares to which a share certificate relates are transferred, and the share certificate has been sent to the company to enable registration of the transfer, the share certificate will be cancelled and no further share certificate will be issued except at the request of the transferee.

## 6 Transmission of shares

- (a) In the case of the death of a shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was a sole holder) will be the only person recognised by the company as having any title to the deceased's interest in the shares. Nothing contained in this clause 7(a) will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.
- (b) Notwithstanding clause 5.6 (trust not to be registered or recognised), the assignee of the property of a bankrupt shareholder is entitled to be registered as the holder of the shares held by the bankrupt.

## 7 Call on shares

**7.1 Board may make calls.** Subject to the terms of issue of any shares, the board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution will constitute the terms of the obligation to pay the call (including payment by instalments). The call may be revoked or postponed at any time by the board.

### 7.2 Notice of calls.

- (a) Subject to the terms of issue of any class of shares and to clause 7.4, unless all the holders of a class of shares subject to a call unanimously agree, a call (or the postponement or revocation of a call) will apply to all the holders of shares of the class equally.
- (b) Notice of the call must be given to the shareholder at the time of the call or to a subsequent holder of the shares. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.
- (c) Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the second day after it was posted.

### 7.3 Liability for calls

- (a) The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- (b) If a call is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the board determines either at the time of the call or subsequently.

- (c) The liability for a call which has become due and payable attaches to the current shareholder and not a prior shareholder, notwithstanding that at the date of the call (or the date the call fell due for payment) another person was the holder of the shares or that the notice of the call was served on the then shareholder and not the current shareholder.
- (d) Following the registration in the register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

**7.4 Agreement to differentiate between calls.** The board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the holders of the same class as to the amount to be paid on the shares and the times for payment.

## **8 Suspension of right to dividends and lien**

### **8.1 Notice of suspension of right to dividends.**

- (a) If a shareholder fails to pay any call (or instalment of a call) on the day appointed for payment, the board may at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, suspend payment of any dividends or other distributions payable to the shareholder.
- (b) The amount owing under the call for the purposes of clauses 8.1, 8.2 and 8.3 may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder of the amount owing under the call.

**8.2 Application of suspended dividends.** All dividends and other distributions suspended pursuant to clause 8.1(a) may be applied by the company to reduce the amount owing under the call. Dividends so applied will be deemed to have been paid in full.

**8.3 Lifting suspension of right to dividends.** When the total dividends and distributions withheld and applied under clause 8.2 equal the total amount owing under the call, including amounts owing under clause 8.1(b), the suspension of the right to dividends and distribution will be lifted, and all rights to be paid dividends and distributions on the shares will resume.

### **8.4 Lien.**

- (a) The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares. This lien is for:
  - (i) all money payable (whether presently or not) in respect of shares held by the shareholder;

- (ii) all other money presently payable by the shareholder to the company on any account whatever; and
  - (iii) any amount the company may be called upon to pay under any statute or regulation in respect of shares of a deceased shareholder or other shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).
- (b) The lien extends to all dividends from time to time declared in respect of the shares.

### **8.5 Sale on exercise of lien.**

- (a) Subject to this clause, the company may sell in such a manner as the board thinks fit any shares on which the company has a lien. No sale may be made until:
- (i) a sum in respect of which the lien exists is due and payable;
  - (ii) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the share (or the person entitled to that share by reason of the registered holder's death or bankruptcy); and
  - (iii) 14 days have expired since the giving of that notice.
- (b) The net proceeds of the sale of any shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid calls, instalments or any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the shares.
- (c) A certificate signed by a director stating that the power of sale provided in this clause 8.5 has arisen, and is exercisable by the company under this constitution, will be conclusive evidence of the facts stated in the certificate.
- (d) For giving effect to any sale enforcing a lien in purported exercise of the powers given in this constitution, the board may authorise some person to transfer the shares sold to the purchaser. The purchaser will be registered as the holder of the shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the company exclusively. If the certificate for the shares is not delivered up to the company, the board may issue a new certificate

distinguishing it as the board thinks fit from the certificate not delivered up. A sale under this clause is subject to clauses 4.6 to 4.12.

## **9 Distributions**

### **9.1 Solvency test.**

- (a) For the avoidance of doubt, notwithstanding the prohibition on distributions, including dividends, under Part A of this Constitution, the board will treat any payment of the income and/or capital of the Company for charitable purposes as if it were such a distribution and, subject to clause 9.2, the board may, if it is satisfied on reasonable grounds that the company will satisfy the solvency test immediately after the payment, authorise such a payment by the company.
- (b) The directors who vote in favour of the payment must sign a certificate stating that, in their opinion, the company will satisfy the solvency test immediately after the payment. The grounds for that opinion must also be stated in that certificate.

## **10 Statement of shareholder rights**

### **10.1 Issue of statement of rights to shareholder.**

- (a) The company must issue to any shareholder, on request, a statement that sets out:
  - (i) the class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder;
  - (ii) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and
  - (iii) the relationship of the shares held by the shareholder to other classes of shares.
- (b) The company is not obliged to provide a shareholder with a statement under clause 10.1(a), if:
  - (i) a statement that complies with clause 10.1(a)(i) to (iii) has been provided within the previous 6 months;
  - (ii) the shareholder has not acquired or disposed of shares since the previous statement was provided;
  - (iii) the rights attached to the shares have not been altered since the previous statement was provided; and

- (iv) there are no special circumstances which would make it unreasonable for the company to refuse the request.
- (c) A statement issued pursuant to clause 10.1(a) must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

## **11 Exercise of powers reserved to shareholders**

### **11.1 Powers reserved to shareholders.**

- (a) Powers reserved to shareholders of the company by the Act or by this constitution may be exercised:
  - (i) at an annual meeting or a special meeting; or
  - (ii) by a resolution in lieu of a meeting pursuant to clause 12.3.
- (b) Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution.

### **11.2 Special resolutions.** When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:

- (a) an alteration to or revocation of this constitution or the adoption of a new constitution;
- (b) a major transaction;
- (c) an amalgamation;
- (d) the liquidation of the company.

Any decision made by special resolution pursuant to this clause may be rescinded only by a special resolution, provided that a resolution to put the company into liquidation cannot be rescinded.

### **11.3 Management review by shareholders.**

- (a) A shareholder may question, discuss, and comment on the management of the company at a meeting of shareholders.
- (b) A meeting of shareholders may pass a resolution relating to the management of the company.
- (c) Notwithstanding section 128 of the Act (management of company by board) or any other clause of this constitution, a resolution relating to

the management of the company passed at a meeting of shareholders (in accordance with clause 11.3(b)) is not binding on the board.

#### **11.4 Shareholder proposals.**

- (a) A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.
- (b) If the notice is received by the board 20 or more working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must (at the expense of the company) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (c) If the notice is received by the board between 5 and 20 working days (inclusive) before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (d) If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board may, if practicable, give notice (at the expense of the shareholder) of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (e) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- (f) The board is not required to include in or with the notice given by the board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.
- (g) Where the costs of giving notice of the shareholder's proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must (on giving notice to the board) deposit with the company or tender to the company a sum sufficient to meet those costs.

## **13 Meetings of shareholders**

### **12.1 Annual meeting.**

- (a) The board must, in accordance with section 120 of the Act, call an annual meeting of shareholders to be held:
  - (i) once in each calendar year (other than in the year of the company's incorporation);
  - (ii) not later than 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 the first annual meeting not later than 18 months after the date of the company's incorporation.
- (b) The company must hold the annual meeting on the date on which it is called to be held.

### **12.2 Special meetings.** A special meeting:

- (a) may be called at any time by the board; and
- (b) must be called by the board on the written request of shareholders holding not less than 5 per cent of the votes entitled to be cast on the issue.

### **12.3 Resolution in lieu of meeting.**

- (a) Subject to clause 12.3(b), a resolution in writing signed by not less than 75 per cent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who together hold not less than 75 per cent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.
- (b) A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided in clause 12.3(a), provided that the resolution must be signed by all the shareholders entitled to vote on the resolution.
- (c) Within 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.

**12.4 Chairperson of meetings of shareholders.**

- (a) If the directors have elected a chairperson, and that chairperson is present at a meeting of shareholders, he or she must chair the meeting.
- (b) If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the meeting.

**12.5 Shareholders entitled to notice of meeting.**

- (a) The shareholders entitled to receive notice of a meeting of shareholders are those shareholders of the relevant class:
  - (i) if the board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the register on that date; or
  - (ii) if the board does not fix a date for purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the register at the close of business on the day immediately preceding the day on which the notice is given.
- (b) A date fixed by the board under clause 12.5(a)(i) must not precede by more than 30 working days nor less than 10 working days the date on which the meeting is to be held.

**12.6 Notice of meeting.** 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 10 working days before the meeting.

**12.7 Contents of notice.** The notice referred to in clause 12.6 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 judgment in relation to it;
- (b) the text of any special resolution to be submitted to the meeting.

**12.8 Irregularities in notice.**

- (a) An irregularity in a notice of a meeting is waived if all the shareholders entitled to receive notice of the meeting attend the meeting and agree to the waiver.

- (b) The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

**12.9 Method of holding meeting.** 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.

**12.10 Adjournments.** 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.

**12.11 Minutes.**

- (a) The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- (b) Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

**13 Voting at meetings**

**13.1 Quorum.**

- (a) A quorum for a meeting of shareholders is present if those shareholders who are present, or their proxies who are present, are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- (b) Subject to clause 13.1(c), no business may be transacted at a meeting of shareholders if a quorum is not present.
- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
  - (i) in the case of a meeting called pursuant to a requisition of shareholders under clause 12.2(b), the meeting is dissolved:
  - (ii) 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 present or their proxies are a quorum.

### **13.2 Voting.**

- (a) In the case of a meeting of shareholders held under clause 12.9(a), 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:
  - (i) voting by voice; or
  - (ii) voting by show of hands.
- (b) In the case of a meeting of shareholders held under clause 12.9(b), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- (c) 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 13.2(d).
- (d) At a meeting of shareholders, a poll may be demanded by:
  - (i) not less than 5 shareholders having the right to vote at the meeting; or
  - (ii) a shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting; or
  - (iii) a shareholder or shareholders holding shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all shares that confer that right.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) 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.
- (g) The chairperson of a shareholders' meeting is not entitled to a casting vote.

### **13.3 Proxies and representatives.**

- (a) A shareholder may exercise the right to vote either by being present or by proxy.
- (b) A proxy for a shareholder is entitled to attend, be heard, and vote at a meeting of shareholders as if the proxy were the shareholder.
- (c) 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 not exceeding 12 months.
- (d) 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.
- (e) 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.

**13.4 Votes of joint holders.** Where 2 or more persons are recorded in the register as the holder of a share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

**13.5 Unpaid calls.** If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting.

## **14 Appointment and removal**

**14.1 Number of directors.** Subject to clause 17.9 (continuing directors), the number of directors may not be fewer than 3 nor more than 7 of which at least 3 and no more than 5 shall be members of the Society and no more than 2 shall be independent directors.

**14.2 First directors.** The first directors shall be the persons named as the director in the application for registration of the company.

### **14.3 Appointment and removal by notice.**

- (a) Unless otherwise specified in this constitution, each director of the Board shall hold office for an initial term of 5 years or the remainder of a director's term if they are replacing a director who vacated his/her position. A retiring director shall be eligible for reappointment.
- (b) The first directors appointed shall, notwithstanding the provisions of the previous clause, be appointed for a term of 5 years. However, after the first 2 years one director will resign by agreement or, if there is no agreement, the directors shall draw straws as to which director will resign. A further director will resign in the third and every year

following using the same process. All new directors will be appointed for a 5 year term with the director's position becoming available on a rolling basis.

- (c) Subject to clauses 14.2 and 14.4, the directors are the persons appointed from time to time as directors by notice in writing signed by the Executive of the Society, the Society first having carried out the procedures for appointment described in this clause 14.3.
- (d) The Society, in appointing or removing a Trustee pursuant to clause 14.3, shall follow the procedures described in the Society's Constitution registered on 3 August 2001, namely:
  - i. The Board shall inform the Society of the need for appointment of a new director for whatever reason and how many appointments are required as soon as the need for such appointment arises;
  - ii. The Society's Executive shall notify the Society's Members of the need for appointment at the next Society's General Meeting and call for nominations to be made in writing or otherwise.
  - iii. The nominees shall meet the following criteria (except for any independent nominees who may be required to conform to any other criteria as deemed appropriate by the Society):
    - a. Nominees must be registered full Members of the Society;
    - b. Nominees must have demonstrated active participation in the Society for a minimum of one year;
    - c. Nominees must be 18 years of age and over and must have attended at least 75% of the General Meetings in the 12 months prior to the meeting where the need for the appointments were tabled. The Society may make other exceptions;
    - d. Nominees must fulfill any other criteria as the Society deems appropriate;
    - e. A directors election meeting shall be called by the Society's Executive for the purpose of appointing a new director at least one month from when nominations were called for;
    - f. The meeting shall be advertised in according with the Notice provisions of the Society's Constitution;

- g. At this meeting the valid nominations will be tabled and business will be limited to the election of the directors;
- h. All registered Members of the Society will have the right to speak at the directors election meeting;
- i. Voting rights will be bestowed only on registered full Members of the Society in accordance with the Society's Constitution;
- j. In order to be able to vote at any directors election meeting, Members must be 18 years of age and over and must have attended 75% of the meetings in the 12 months prior to the meeting they wish to vote at;
- k. No Member shall be entitled to more than vote;
- l. The method of voting at a directors election meeting shall be by valid papers with names of the candidates listed and the number of candidates needed to be elected, or by any other process that has integrity and is deemed to be appropriate by attendees at the meeting;
- m. An independent scrutineer (non-Member) with no association with the Society, shall be appointed by the Society's Executive to be present at the directors election meeting to count the votes;
- n. Ballot papers shall be presented to the Members at the meeting and collected when completed for the votes to be counted;
- o. An entry in the Society's Minute book at this meeting showing that this vote has occurred will provide conclusive evidence of the fact without proof;
- p. The removal of a director shall follow the same procedure as would otherwise be required for the appointment of a director.

**14.4 Disqualification and removal.** A person will be disqualified from holding the office of director if he or she:

- (a) the Board may by resolution approved by at least two-thirds of its directors terminate the directorship of a director if that person has an ongoing conflict with the other directors of the Board or at least two-thirds of its directors believes that such action is in the best interests of the company;

- (b) resigns in writing and is not reappointed in accordance with this constitution, or
- (c) becomes disqualified from being a director pursuant to section 151 of the Act;
- (d) 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 or section 385 of the Act;
- (e) becomes a protected person under the Protection of Personal and Property Rights Act 1988;
- (f) is an undischarged bankrupt.

**14.5 Shareholding qualification.** A director is not required to hold shares.

**14.6 Alternate directors.**

- (a) Every director may, by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place, either generally, or in respect of a specified meeting or meetings during the director's absence from a meeting.
- (b) At the director's discretion, by notice in writing to the company, the appointing director may remove the director's alternate director.
- (c) An alternate director may, while acting in the place of the appointing director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson and signing board resolutions) of the appointing director. The alternate director is subject in all respects to the same terms and provisions as the appointing director, except as regards remuneration and except as regards the power to appoint an alternate director under this constitution.
- (d) For the purpose of establishing a quorum of the board, an alternate director is deemed to be the director appointing him or her, and if the alternate director is a director he or she can count separately in both capacities.
- (e) An alternate director does not have a right to attend, speak or vote at a meeting of the board while his or her appointing director is present.
- (f) An alternate director's appointment lapses upon his or her appointing director ceasing to be a director.

- (g) The notice of appointment of an alternate director must include an address for service of notice of meetings of the board. Failure to give an address will not invalidate the appointment, but notice of meetings of the board need not be given to the alternate director until an address is provided to the company.
- (h) An alternate director shall not be the agent of his or her appointor, and shall exercise his or her duties as a director independently of his or her appointor.

## **15 Indemnity and insurance**

### **15.1 Indemnity of directors and employees.**

- (a) The board shall cause the company to indemnify a director or employee of the company or a related company for 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.
- (b) The board shall cause the company to indemnify a director or an employee of the company or a related company in respect of:
  - (i) 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; or
  - (ii) costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;
 

not being:

    - (iii) criminal liability; or
    - (iv) liability for the breach of section 131 (director's duty to act in good faith and in the best interests of the company); or
    - (v) liability for breach of any fiduciary duty owed to the company or related company.

## **15.2 Insurance of directors and employees.**

- (a) The board may, subject to section 162 of the Act, cause the company to effect insurance for directors and employees of the company or a related company in respect of:
  - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
  - (ii) costs incurred by such directors or employees in defending or settling any claim or proceeding relating to any such liability; or
  - (iii) costs incurred by a director or employee in defending any criminal proceedings in which he or she is acquitted.
- (b) The directors who vote in favour of authorising the effecting of insurance under clause 15.2(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
- (c) The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company are forthwith entered in the interests register.

**15.3 Definitions.** For the purpose of this clause, "director" includes a former director and "employee" includes a former employee.

## **16 Powers and duties of the board**

### **16.1 Powers of the board.**

- (a) Subject to clause 16.1(b) and any restrictions in the Act or this constitution, the business and affairs of the company must be managed by or under the direction or supervision of the board.
- (b) The board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the company except to the extent that this constitution or the Act expressly requires those powers to be exercised by the shareholders or any other person.

### **16.2 Directors to act in good faith.**

- (a) Subject to this clause, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.

**16.3 Major transactions.** The board may not procure or permit the company to enter into a major transaction unless the transaction is:

- (a) approved by a special resolution; or
- (b) made contingent on approval by a special resolution.

## **17 Proceedings of the board**

### **17.1 Chairperson.**

- (a) The directors may elect one of their number as chairperson of the board.
- (b) The director elected as chairperson holds that office until he or she ceases to be a director or the directors elect a chairperson in his or her place.
- (c) If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 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.

### **17.2 Notice of meeting**

- (a) 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.
- (b) Not less than two (2) days notice of a meeting of the board must be given to every director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.
- (c) Any irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity.
- (e) 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 second day following the day the letter is posted.
- (f) It is not necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this constitution, notice must (subject to clause 14.7(g)) be given to the alternate director.

### **17.3 Method of holding meetings.** A meeting of the board may be held either:

- (a) by a number of directors sufficient to form 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 in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### **17.4 Quorum.**

- (a) A quorum for a meeting of the board is a majority of the directors.
- (b) No business may be transacted at a meeting of directors if a quorum is not present.
- (c) In accordance with clause 14.6, an alternate director present at a meeting may be included for the purpose of establishing a quorum.

#### **17.5 Voting.**

- (a) Every director has one vote.
- (b) The chairperson does not have a casting vote.
- (c) 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 are in favour of it.
- (d) 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.
- (e) A director may vote in respect of any transaction in which the director is interested and if the director does so the director's vote will be counted and the director will be counted in the quorum present at the meeting.
- (f) An alternate director may attend and vote at meetings of the board in accordance with and subject to clause 14.6 if the director that has appointed the alternate director is absent from the meeting.

#### **17.6 Minutes.**

The board must ensure that full and accurate minutes are kept of all proceedings at meetings of the board.

**17.7 Unanimous resolution.**

- (a) 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.
- (b) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- (c) A copy of any such resolution must be entered in the minute book of board proceedings.

**17.8 Other proceedings.** Except as provided in this clause the board may regulate its own procedure.

**17.9 Continuing directors.** The continuing directors will continue to comprise the board notwithstanding any vacancy in the number of directors. 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 summoning a general meeting of the company.

**18 Director Remuneration and Interested directors****18.1 Authority to remunerate directors.**

- (a) The board may authorise:
  - (i) the payment of remuneration (or the provision of other benefits) by the company to a director for his or her services as a director (or in any other capacity), or by way of compensation for loss of office;
  - (ii) the making of loans by the company to a director;
  - (iii) the giving of guarantees by the company for debts incurred by a director;

provided that:

- (iv) the board is satisfied that to do so is fair to the company; and
- (v) the benefit or advantage provided to the director does not exceed what may fairly and reasonably be expected to be provided by the company to the director for their services, determined on an arms-length basis, and does not otherwise contravene any provision of Part A of this Constitution.

- (b) The payment of remuneration (or the giving of any other benefit) to a director in accordance with a contract authorised pursuant to clause 18.1(a) need not be separately authorised by the board.
- (c) The board must ensure that forthwith after authorising any payment, loan, or guarantee under clause 18.1(a), particulars are entered in the interests register.
- (d) The directors who vote in favour of authorising a payment, loan or guarantee under clause 18.1(a) must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, satisfies the requirements set out in clause 18.1(a)(iv) and (v). Grounds for that opinion must also be stated in the certificate.

## **18.2 Other offices with company held by director.**

- (a) Any director may act by himself or herself, or by the director's firm in a professional capacity for the company; and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor for the company.
- (b) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the director's office of director, for such period and on such terms (as to remuneration and otherwise) as the board may determine.
- (c) Other than as provided in clause 18.3, a director is not disqualified by virtue of his or her office from entering into any transaction with the company. Any such transaction will be valid and enforceable to the same extent if he or she were not a director and not in a fiduciary relationship with the company. No such director shall be liable to account to the company for any profit realised by the transaction by reason of the director holding that office or of the fiduciary relationship thereby established.

## **18.3 Notice of interest to be given.**

- (a) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board of the company:
  - (i) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.



**CONSTITUTION**

**of**

**TE KAIO TRUSTEE COMPANY LIMITED**

**PURSUANT TO THE COMPANIES ACT 1993**

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