

TRUST ALLIANCE NZ INCORPORATED

Constitution

Table of Contents

1.	DEFINITIONS AND INTERPRETATION	4
1.1	Definitions	4
1.2	Interpretation	5
2.	NAME, SEAL AND REGISTERED OFFICE	6
2.1	Name of Society	6
2.2	Common seal of Society	6
2.3	Registered office	6
3.	OBJECTIVES AND POWERS	6
3.1	Objectives	6
3.2	Powers	7
4.	NETWORK OPERATOR	7
4.1	Appointment	7
4.2	Functions of Network Operator	7
5.	MEMBERSHIP AND SUBSCRIPTION	7
5.1	Membership	7
5.2	Eligibility	8
5.3	Process for membership	8
5.4	Admission by Board	8
5.5	Classes	8
5.6	Compliance with Constitution and Society Rules	8
5.7	Termination of Membership	8
5.8	Members Register	9
5.9	Access to Members Register	9
5.10	Subscriptions and levies	9
5.11	Appointment of Representative	9
6.	THE BOARD	10
6.1	Initial Board Members	10
6.2	Composition of Board	10
6.3	Election and Rotation of Board Members	10
6.4	Nomination	11
6.5	Powers and Functions of the Board	11
6.6	Duties of the Board and Board Members	11
6.7	Removal and vacation from office	11
6.8	Alternates	12
6.9	Casual vacancy	12
6.10	Power to co-opt	12
6.11	Sub-committees	12
6.12	Observers	12
6.13	Rules	12
7.	CONTACT OFFICER	12
7.1	Contact Officer	12
8.	MEETINGS OF THE BOARD	13
8.1	Meetings	13
8.2	Board Member may convene meeting	13
8.3	Waiver of notice irregularity	13
8.4	Chairperson and Deputy Chairperson	13
8.5	Quorum	13
8.6	Lack of quorum	13
8.7	Voting	14
8.8	Resolution in writing	14
8.9	Minutes	14
9.	EXECUTIVE OFFICER	14
9.1	Executive Officer	14
9.2	Appointment	14
10.	TREASURER	14
10.1	Treasurer	14
10.2	Appointment	15
11.	CONFLICTS OF INTEREST	15

11.1	Interested Party	15
11.2	Consequences of being interested	15
11.3	Part of quorum	15
11.4	Requirement for General Meeting	15
11.5	Financial Interest definition	15
11.6	Exclusions from Financial Interest	15
11.7	Interests register	16
12.	NOTICE TO MEMBERS AND THE SOCIETY	16
12.1	Notice to Members	16
12.2	Notice to the Society	16
13.	GENERAL MEETINGS	16
13.1	Attendance	16
13.2	Notice of General Meetings	16
13.3	Chairperson	17
13.4	Voting	17
13.5	Quorum	17
13.6	Appointment of Representative	17
13.7	Minutes	17
13.8	Resolution in writing	17
14.	ANNUAL GENERAL MEETINGS	18
14.1	Timing	18
14.2	Business	18
15.	SPECIAL GENERAL MEETINGS	18
16.	INFORMATION	18
16.1	Application for information	18
16.2	Fee	18
17.	MANAGEMENT OF FINANCES AND AUDITOR	19
17.1	Society Funds	19
17.2	Payments	19
17.3	Auditor	19
18.	PROCEDURES FOR RESOLVING DISPUTES BETWEEN MEMBERS AND BETWEEN MEMBERS AND THE SOCIETY	19
18.1	Complaints about a Member	19
18.2	A Member's grievance against the Society or another Member	19
18.3	Investigating and determining complaint or grievance	19
18.4	Board may decide not to progress complaint or grievance	19
18.5	Board may refer complaint to subcommittee or other investigator	20
18.6	Decision makers	20
19.	CONSTITUTION	20
19.1	Alteration	20
19.2	Filing with Registrar	20
19.3	Interpretation	20
19.4	Inspection	20
20.	RESTRICTIONS ON MAKING PAYMENTS AND PROVIDING BENEFITS	21
20.1	No Pecuniary Profits by Members	21
21.	INDEMNITY AND INSURANCE	21
21.1	Indemnity for costs	21
21.2	Indemnity for liability	21
21.3	Insurance	21
22.	INTELLECTUAL PROPERTY AND DATA	22
22.1	Ownership of Intellectual Property	22
22.2	Co-operation of Members	22
22.3	Access to information	22
22.4	Co-operation of related parties	22
22.5	Data	22
23.	CONFIDENTIALITY	23
24.	WINDING UP	23
24.1	Voting on resolutions	23
24.2	Liquidator	23
24.3	Distribution of surplus assets	23

**CONSTITUTION OF
TRUST ALLIANCE NZ INCORPORATED**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution, unless the context requires otherwise:

Act means the Incorporated Societies Act 1908, and any amendment to, or replacement of, this legislation and includes any regulations made thereunder.

Annual General Meeting is an Annual General Meeting of Members as set out in clause 14.

Approved Signatories means no less than two signatories from the signatories authorised as signatories by the Board pursuant to clause 17.2.

Board means the governing body of the Society as established and set out in clause 6.

Board Member means a current member of the Board.

Board Meeting means a meeting of the Board.

Chairperson means the chairperson of the Board for the time being elected pursuant to clause 8.4 and where the context requires, includes any deputy chairperson or other person who is acting for the time being as chairperson of the Board or as chairperson at any General Meeting.

Consortium Agreement means the Consortium Agreement dated 12 December 2019 which established the consortium Trust Alliance NZ.

Deputy Chairperson means the deputy chairperson of the Board for the time being elected pursuant to clause 8.4.

Executive Officer means the person or persons appointed by the Board to carry out the administrative and secretarial functions of the Society pursuant to clause 9.

Financial Interest has the meaning provided in clauses 11.5 and 11.6.

Financial Member means a Member who is not in arrears by more than 3 months in paying on the due date any annual subscription, levy or other payments payable to the Society.

Financial Statements means the annual financial statements of the Society prepared in accordance with the Act and other relevant legislation.

Financial Year means 1 April to 31 March or such other period as the Board may determine.

General Meeting means the Annual General Meeting or any Special General Meeting.

Intellectual Property means all intellectual proprietary rights (whether registered or unregistered and whether protected by statute or not) produced, owned or used by a Member or the Network Operator in the conduct of the Society including:

- (a) the copyright existing in all drawings, sketches and written and other material;
- (b) trade marks, service marks and logos;
- (c) rights to software, hardware, processes, algorithms, user interfaces and other tangible and intangible technical information or material;

- (d) all confidential information, trade secrets, know-how;
- (e) clients and suppliers' lists (including mailing lists); and
- (f) all intellectual property and proprietary rights (whether registered or unregistered and whether protected by statute or not) of a Member, or the Network Operator, which are made available to or used for the purposes of the Society.

Member means a person who becomes or is a current member of the Society pursuant to the terms of this Constitution, or one or more of those persons as the context requires.

Members Register means the register of Members of the Society to be kept pursuant to clause 5.8.

Network means the summed set of Network Nodes running compatible technologies that enable the Members to store data in a manner enabling provable trust.

Network Node means block chain software compatible with the Network enabling participation in the consensus process of storing data in a provable manner.

Network Operator means the person who is the operator of the Network in accordance with clause 4.

Objectives means the Objectives of the Society specified in clause 3.1.

Observer means a person with the rights described in clause 6.13.

Registrar means the Registrar of Incorporated Societies under the Act.

Representative means the representative of a Member pursuant to clauses 5.11 and 6.1 (a).

Rules means rules issued by the Board pursuant to clause 6.12.

Society means this society, Trust Alliance NZ Incorporated.

Society Intellectual Property means Intellectual Property created or acquired pursuant to the activities or business of the Society.

Special Board Resolution means a resolution approved by a majority of 75% of the votes of the Board Members entitled to vote and voting on the question.

Special General Meeting is a Special General Meeting of Members as set out in clause 15.

Subscription means the Society's subscription fee for membership as provided in clause 5.10.

Technology means the various software components including proprietary and open source software used by the Society or the Network Operator (or third parties) to enable the Network.

Working Day means a day other than Saturday and Sunday upon which registered banks are open for business in Auckland.

1.2 Interpretation

In the Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and are not to affect the construction of the Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses are to clauses of the Constitution;

- (c) a reference to any statute, statutory regulation or other statutory instrument includes the statute, statutory regulation or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words “written” and “writing” include electronic communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word “person” includes an individual, any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (g) the words “day” and “days” mean calendar days; and
- (h) words or expressions defined in the Act have the same meaning where they are used in the Constitution.

2. NAME, SEAL AND REGISTERED OFFICE

2.1 Name of Society

The name of the Society is Trust Alliance NZ Incorporated. The name of the Society may be changed by a resolution passed by at least a two thirds majority of Members present and entitled to vote at a General Meeting.

2.2 Common seal of Society

The common seal of the Society shall be under the control of and only used by the authority of the Board.

2.3 Registered office

The registered office of the Society is at the address appointed from time to time by the Board and notified to the Registrar.

3. OBJECTIVES AND POWERS

3.1 Objectives

The Objectives of the Society are:

- (a) to investigate, develop, share in and use the Network and the Technology with a view to:
 - (i) preserving and enhancing the global and domestic competitiveness of New Zealand’s primary and other industries;
 - (ii) ensuring consumers understand and are assured of the provenance of their food so as to protect and enhance New Zealand’s produce, recognising that consumers globally are mindful of the ethical, sustainable and environmental impacts of their purchases;
- (b) to achieve the following primary benefits sought by New Zealand producers and trade organisations:
 - (i) protecting the value of products from New Zealand and then enhancing that value;
 - (ii) ensuring neutrality and collaboration (so that the Network can be widely used and trusted);

- (iii) solving industry issues so as to reduce costs and friction in the market and ensuring value to all participants; and
- (iv) providing the primary and related industries with a digital identity framework enabling data sovereignty for the Members and contributing parties;

by carrying out the following:

- (aa) setting the standards for membership of the Society;
- (bb) providing governance around common data types and how data will be permissioned;
- (cc) providing a sustainable technology base that enables all Members to innovate and add value (both individually and together);
- (dd) maintaining privacy and the digital rights of those Members who require it;
- (ee) advocating for, implementing and promoting awareness of policies, measures and activities which will support or advance the Objectives set out in or adopted pursuant to this clause 3.1;
- (ff) acknowledging the principles of the Treaty of Waitangi and the bicultural foundations of Aotearoa New Zealand; and
- (gg) supporting the four pillars of sustainability: economic, social, human and environmental;

and

- (c) such other objectives as are adopted by Special Board Resolution from time to time.

3.2 Powers

Subject to the Act, the Society shall have all the rights, powers (including the power to borrow money) and privileges of a natural person.

4. NETWORK OPERATOR

4.1 Appointment

The Board shall have the power to appoint the Network Operator for such term and on such terms and conditions as shall be agreed.

4.2 Functions of Network Operator

The Network Operator shall provide Network and administration services pursuant to a contract to be entered into with the Society (which will include reasonable charges to be paid by the Society), shall be accountable directly to the Board, and shall be entitled to appoint a representative to attend Board Meetings.

5. MEMBERSHIP AND SUBSCRIPTION

5.1 Membership

Membership of the Society consists of:

- (a) the initial Members on the date of incorporation of the Society being the Founding Members and the Affiliate Members as at that date in the Trust Alliance NZ consortium established by the Consortium Agreement who in each case give a written consent to be Members; and

- (b) new Members who shall be any person who meets the criteria and process for membership and whose application is accepted by the Board.

5.2 Eligibility

In addition to clause 5.1 above, to be eligible to be a Member, a person must:

- (a) be supportive of the Objectives;
- (b) be of good standing;
- (c) complete an application in accordance with clause 5.3; and
- (d) pay the Subscription (if any).

5.3 Process for membership

A person who is eligible to be a Member may apply for membership by an application in writing in the form approved by the Board which shall include:

- (a) the name of the applicant;
- (b) the nature of the business of the applicant;
- (c) in the case of a corporate body, the names of the persons who are authorised to represent that applicant;
- (d) such other information as may be required by the Board; and
- (e) agreement, if the application is accepted by the Board, to be bound by this Constitution and by the Rules or other regulations or bylaws of the Board that are in force from time to time.

5.4 Admission by Board

An applicant will become a Member, upon being approved for Society membership by the Board. The Board shall notify the applicant of its decision. The Board may decide whether or not to admit a person as a Member in its sole discretion and it is not required to give reasons for its refusal to approve an applicant for membership.

5.5 Classes

The Board may create such different classes of membership as it shall think fit and define subscriptions and any special privileges which shall attach to any particular class of membership.

5.6 Compliance with Constitution and Society Rules

Every applicant accepted as a Member acknowledges and agrees that:

- (a) the Constitution constitutes a contract between each Member and the Society and they are bound by this Constitution;
- (b) they shall comply with and observe the Constitution and any determination, resolution or policy which may be made or passed by the Board or at a General Meeting; and
- (c) they shall be bound by the Rules and any regulations or bylaws of the Board that are in force from time to time.

5.7 Termination of Membership

Membership of the Society shall be terminated as follows:

- (a) by the resignation of the Member by notice in writing to the Society;
- (b) by resolution of the Board, after compliance with clause 18 if it is applicable, on the grounds that the Member has failed to comply with this Constitution or the Rules or any of the other duties as a Member, or has mis-used the Network or that the conduct of the Member is considered by the Board to be injurious to the character, interests or objectives of the Society. Unless otherwise specified in the resolution, termination is effective as at the date of the resolution; or
- (c) by resolution of the Board on account of default in payment by the Member of any payments due to the Society. Before such termination can occur, the Board shall give the Member notice specifying the payment due and demanding payment by a due date, being not less than 30 days from the date of the notice.

5.8 Members Register

- (a) The Executive Officer shall keep a register of Members recording each Member's name, the date the person became a Member and the Member's principal method of contact which includes one or more of the Member's postal address, email address, telephone number or any such other method of communication in common usage being appropriate for the sending and receiving of any notice required herein.
- (b) If a Member's name or principal method of contact changes, then the Member must give the Executive Officer the updated information. The Executive Officer must then update the Members Register as soon as practicable.

5.9 Access to Members Register

- (a) A Board Member may access the Members Register if access is necessary for the performance of the Board Member's functions or the exercise of the Board Member's powers.
- (b) A Member may make a request to the Executive Officer for access to the Members Register. The Executive Officer will provide access to the extent that Members have consented to access being granted to information about themselves on the Register.

5.10 Subscriptions and levies

- (a) Members shall pay an annual subscription to the Society of such amount as determined by the Board. The Board has the power to:
 - (i) set a different level of subscription for each class of membership;
 - (ii) waive or reduce the subscription payable by a Member in circumstances where in the opinion of the Board that Member is making a special contribution to the Society;
 - (iii) set a date or dates by which the subscription must be paid;
 - (iv) grant a rebate in respect of subscriptions paid by a date determined by the Board.
- (b) The Board may, with the authority of a resolution passed by the Members in General Meeting, impose a levy or fee on the Members of such amount per Member and payable at such time or times as is authorised by that resolution. The amount of such levy shall not exceed the amount of the annual subscription payable by that Member in that year.

5.11 Appointment of Representative

Each Member which is a body corporate or other association of persons whether corporate or unincorporate or a state or government or agency or trust, shall by resolution of its governing persons, appoint such individual person as it thinks fit as its Representative at any meeting of the

Society or to be a Board Member or otherwise, and shall give written notice to the Society of such appointment and of any revocation of the appointment.

6. THE BOARD

6.1 Initial Board Members

- (a) As from the date of incorporation of the Society until the expiry of the first Annual General Meeting, the first Board Members shall be the following:

Chris Claridge representing Potatoes New Zealand Incorporated;

Louise Wood representing Sanford Limited;

Peter Stevens representing GS1 New Zealand Incorporated;

Mazen Kassis representing Foodstuffs North Island Limited;

Bruno Garcia representing SGS New Zealand Limited;

James Booth representing Reynolds Group Limited;

Johnny Chan representing The University of Auckland;

Duane Eagle representing Eagle Technology Group Limited; and

one Representative from each of two fully paid up Affiliate Members under the Consortium Agreement as elected by the Board Members listed above.

- (b) The Board Members to take office from the expiry of the first Annual General Meeting shall be those persons elected in accordance with the following provisions of this clause 6.

6.2 Composition of Board

Subject to clause 6.1, the Board shall consist of one Representative of each of no fewer than four and no more than seven Financial Members who are not precluded by any relevant legislation from being a Board Member.

6.3 Election and Rotation of Board Members

- (a) In accordance with clauses 6.1(b), 6.2 and 6.4, at the first Annual General Meeting, the Members present and entitled to vote shall elect duly nominated persons to take office as Board Members from the expiry of that Meeting.
- (b) At the Annual General Meeting in each year (except for the first Annual General Meeting) one third of the Board Members for the time being, or if their number is not 3 or a multiple of 3 then a number nearest to one third, shall retire from office.
- (c) The Board Members to retire in each year shall be those who have been longest in office since they were last elected or deemed elected. As between 2 or more who have been in office an equal length of time the Board Member or Board Members to retire shall in default of agreement between them be determined by lot. A retiring Board Member shall be eligible for re-election for additional terms (up to a maximum continuous period in office of 9 years unless there are exceptional circumstances for a longer period approved by the Board). A retiring Board Member shall act as a Board Member throughout the meeting at which that person retires.
- (d) The Members at any meeting at which any Board Members retire (except for the first Annual General Meeting) may fill up the vacated offices by electing a like number of persons to be Board Members and may elect additional Board Members subject to clauses 6.2 and 6.4.

6.4 Nomination

- (a) No Representative of a Member (with the exception of a Board Member retiring at an Annual General Meeting, other than the first Annual General Meeting) may be elected as a Board Member at the Annual General Meeting unless that Representative has been nominated in writing to the Executive Officer by two Members who will be entitled to attend and vote at the Annual General Meeting, and that nominated Representative has given his or her consent to such nomination.
- (b) The closing date for nominations is seven clear days prior to the Annual General Meeting.
- (c) If nominations received, and retiring Board Members seeking re-election, do not exceed the vacancies for Board members, the Representatives so nominated and such retiring Board Members shall be declared elected at the Annual General Meeting.

6.5 Powers and Functions of the Board

- (a) Other than the powers required to be exercised by the Society at a General Meeting, the Board may exercise all the powers of the Society and the power is given to it to do anything it considers necessary, desirable or conducive to the attainment of the Objectives.
- (b) Pursuant to those powers, the Board shall manage, direct and supervise the operation and affairs of the Society, and the Board has all the powers necessary to do this.

6.6 Duties of the Board and Board Members

Subject as may be provided in the Act, the Board and each Board Member (and such other persons as the Act may provide) shall owe the following duties to the Society:

- (a) to act in good faith and in the best interests of the Society and use their powers for proper purposes;
- (b) to comply with the Act and to comply with the Constitution except where the Constitution contradicts the Act;
- (c) to exercise the degree of care and diligence that a reasonable person with the same responsibilities within the Society would exercise in the circumstances applying at the time;
- (d) to not agree to, cause or allow the activities of the Society to be carried on recklessly or in a manner that is likely to create a substantial risk of serious loss to the Society or its creditors; and
- (e) to not agree to the Society incurring obligations which it is not reasonable to believe can be performed.

6.7 Removal and vacation from office

- (a) Any Board Member may be removed by a majority resolution of the Members passed at a General Meeting. Not less than fourteen days' notice must be given to the Executive Officer of the intention to move a resolution for the removal of a Board Member.
- (b) If any Board Member is absent from three consecutive meetings without leave of absence the Chairperson may declare that the person is no longer a Board Member.
- (c) The Chairperson must declare that a Board Member is no longer a Board Member if the Board Member is disqualified under the Act or any other applicable legislation and the disqualifying factor has not been waived by the Registrar.

- (d) A Board Member who ceases to be a Representative of a Financial Member for any reason including by reason of the Member who appointed him or her ceasing to be a Financial Member or revoking the appointment of that Board Member, shall cease to be a Board Member with immediate effect and another person may be appointed to hold the vacated position as provided in clause 6.9.

6.8 Alternates

A Board Member may at any time by written notice to all other Board Members appoint a person who is not already a Board Member and who is approved by a majority of the other Board Members (the **Alternate**) to act as an Alternate for that Board Member. The appointment may at any time be revoked by the Board Member in whose place the Alternate acts by notice to all other Board Members and is automatically revoked when the Board Member in whose place the Alternate acts vacates office. Unless otherwise provided by the terms of the appointment, the Alternate:

- (a) has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of the Board); and
- (b) shall discharge all of the duties and obligations, of the Board Member in whose place he or she acts.

6.9 Casual vacancy

Where a Board Member resigns before the end of their term, or is removed in accordance with clause 6.7, or otherwise ceases to be a Board Member, then the Board Members, may, by majority resolution appoint another person to be a Board Member to hold the vacated position until expiry of the next Annual General Meeting.

6.10 Power to co-opt

The Board may co-opt up to three more persons to be advisory Board Members for specific projects. Co-opted Board Members do not have the right to vote at Board meetings. The persons so co-opted shall retire at the next Annual General Meeting.

6.11 Sub-committees

The Board may appoint sub-committees of Board Members or other persons to assist the Board in the conduct of the Society's affairs. Membership of a subcommittee does not confer voting rights upon any person who is not a Board Member.

6.12 Observers

The Board may permit any person it considers appropriate, and who is supportive of the Objectives, to be, or to appoint its representative to be, an observer at such meetings of the Board or of the Members and on such terms and conditions as the Board shall determine and the Observer shall agree to in writing.

6.13 Rules

The Board may from time to time issue and amend Rules applicable to Members that are not inconsistent with the Act or this Constitution. Rules are binding unless they are expressly stated as being for guidance purposes only.

7. CONTACT OFFICER

7.1 Contact Officer

- (a) If the Act requires the appointment of a Contact Officer, then the Board shall from time to time appoint a person to the position of Contact Officer and ensure that the Society has a Contact Officer at all times.

- (b) The office of Contact Officer may be held separately or in conjunction with any other office in the Society or by any Board Member.
- (c) The Contact Officer shall be the officer of the Society whom the Registrar can contact when needed.

8. MEETINGS OF THE BOARD

8.1 Meetings

There shall be no fewer than four meetings of the Board annually, which shall be called by the Chairperson or Executive Officer. The Chairperson or Executive Officer shall at the same time distribute an agenda. Meetings may be held in person or by teleconference or by other means by which those participating may hear each other simultaneously.

8.2 Board Member may convene meeting

Without limiting the provisions of clause 8.1, a Board Member has the right at any time to convene a meeting of the Board at the place where or in the manner in which meetings of the Board for the time being are customarily held, by giving not less than 5 Working Days' written notice to each of the other Board Members stating the date, time and place or method of the meeting and the matters to be discussed.

8.3 Waiver of notice irregularity

An irregularity in giving a notice of meeting is waived if each of the Board Members either attends the meeting without protest as to the irregularity or agrees (whether before, during or after the meeting) to the waiver.

8.4 Chairperson and Deputy Chairperson

At the commencement of the first Board Meeting following incorporation of the Society, and in each year at the commencement of the first Board Meeting after the Annual General Meeting the Board Members shall elect one of their number as Chairperson of the Board, and may elect one of their number as Deputy Chairperson, to hold office until commencement of the first Board Meeting after the next Annual General Meeting. The previous Chairperson, or Deputy Chairperson as the case may be, shall be eligible for re-election if they are still Board Members (up to a maximum continuous period in office of 9 years). The Chairperson or Deputy Chairperson may be removed from office and replaced by Special Board Resolution passed at a meeting of the Board the notice of which has expressly set out the intention to move a resolution to remove the Chairperson or Deputy Chairperson from office. If no chairperson is elected or, at the meeting of the Board, the Chairperson or Deputy Chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Board Members present may choose one of their number to be chairperson of the meeting. A chairperson does not have a casting vote.

8.5 Quorum

A quorum of the Board shall be a majority of the members of the Board.

8.6 Lack of quorum

If within 30 minutes after the time appointed for a meeting of the Board a quorum is not present, the meeting is adjourned for five Working Days to the same time and place unless otherwise agreed by all Board Members. At least two Working Days' notice of the adjourned meeting must be given, and the notice must include a statement that it is given pursuant to this clause. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the meeting will be cancelled.

8.7 Voting

Resolutions at meetings of the Board will be passed by a simple majority except where a Special Board Resolution is required by this Constitution.

8.8 Resolution in writing

A resolution in writing agreed to by not less than 75% of the Board Members for the time being entitled to receive notice of a meeting of the Board shall become a valid and effectual resolution as if it had been passed at a meeting of the Board properly convened and held, provided that prior written notice of the proposed resolution has been given to all Board Members. Any such resolution may consist of:

- (a) several documents in similar form each signed by one or more Board Members; or
- (b) several emails or equivalent form of commonly used electronic communications in similar form each sent or transmitted by a separate Board Member.

8.9 Minutes

The Executive Officer must ensure that minutes are taken of all meetings of the Executive Committee.

9. EXECUTIVE OFFICER

9.1 Executive Officer

The Society shall have an Executive Officer who shall have the following powers and responsibilities:

- (a) the administration of the affairs of the Society as directed and supervised by the Board including the secretarial functions and any matters as are delegated in writing by the Society or the Board;
- (b) implementing decisions of the Society or the Board as requested;
- (c) receiving notices of motion for General Meetings, sending out notices of General Meetings, taking the minutes of Board Meetings and General Meetings, and such other services and functions as provided in this Constitution.

9.2 Appointment

The Executive Officer will be appointed by the Board.

10. TREASURER

10.1 Treasurer

The Society shall have a Treasurer who shall:

- (a) be responsible for keeping proper accounting records;
- (b) prepare, or cause to be prepared, the Financial Statements and present them to the Society at each Annual General Meeting ;
- (c) provide financial information (Including the Financial Statements) to the Board and as appropriate the Members upon request;
- (d) be responsible for the receipt and deposit of funds; and
- (e) be responsible for the payment of bills of the Society.

10.2 Appointment

The Treasurer will be appointed by the Board for such period and on such terms as determined by the Board. The Treasurer may also be a Board Member or the Executive Officer.

11. CONFLICTS OF INTEREST

11.1 Interested Party

If any Board Member, or the Executive Officer, or the Treasurer, has a Financial Interest (**Interested Party**) in a matter being considered by or affecting the Society that person must, as soon as practicably possible after he or she becomes aware of his or her Financial Interest in the matter, disclose the nature and extent of his or her Financial Interest to the Board.

11.2 Consequences of being interested

An Interested Party:

- (a) must not vote or take part in the decision of the Board relating to the matter; and
- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; but
- (c) may take part in any discussion of the Board relating to the matter and be present at the time of the decision of the Board (unless the Board decides otherwise);

provided that, if the Act permits, the provisions in paragraphs (a) and (b) of this clause 11.2 may be suspended in a given case with the consent of all Board Members who are not Interested Parties.

11.3 Part of quorum

An Interested Party who is prevented from voting on a matter because he or she has a Financial Interest in that matter may continue to be counted as part of the quorum.

11.4 Requirement for General Meeting

Where 50 per cent or more of the Board Members who would form a quorum are prevented from voting on the matter because they have disclosed a Financial Interest, then the Board Members must call a General Meeting to determine the matter.

11.5 Financial Interest definition

A Board Member or the Executive Officer or Treasurer has a Financial Interest in a matter if he or she:

- (a) may derive a financial benefit from the matter;
- (b) is the spouse, partner, child, or parent of a person who may derive a financial benefit from the matter;
- (c) may have a financial interest in a person to whom the matter relates; or
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates.

11.6 Exclusions from Financial Interest

The following interests are excluded from the definition of Financial Interest:

- (a) remote or insignificant interests of a nature that could not reasonably be regarded as likely to influence the Board Member in carrying out their responsibilities;
- (b) an interest that the Board Member has in common with other Members as a result of Membership; and
- (c) receipt of an indemnity, insurance cover, remuneration, or other benefits authorised by the Act.

11.7 Interests register

The Executive Officer will maintain a register of disclosures made by Board Members and the Executive Officer and Treasurer of Financial Interests in matters that are being considered by or affect the Society (**Interest Register**). The Board must present a summary at each Annual General Meeting of the nature and extent of any disclosures recorded during the year (such summary does not need to disclose the identity of the Interested Party nor the details of the interest disclosed). The Interests Register will be made available for inspection by Board Members but not by other Members or any other person.

12. NOTICE TO MEMBERS AND THE SOCIETY

12.1 Notice to Members

- (a) Any notice required to be given or publication required to be made to Members by or on behalf of the Society will be effected by:
 - (i) sending to Members via their email address or other method of contact then appearing in the register of the Society; and/or
 - (ii) publishing on the Society's website and/or other forms of communication then used from time to time by the Society.
- (b) If the Board or Executive Officer in good faith has made reasonable efforts to publish any notice to Members, any meeting or other business will not be invalidated because one or more Members do not receive or see the notice.

12.2 Notice to the Society

Any notice or other communication to the Society will be effected by:

- (a) sending to the Society at its registered office by hand delivery or by pre-paid post; or
- (b) sending to the Society by facsimile or electronic mail at the number or address notified or published by the Society.

13. GENERAL MEETINGS

13.1 Attendance

A General Meeting may be held by a meeting of Members together at the time and place appointed by the Board or by means of audio, audio and visual or any other form of communication permitted by the Board. A Member participating in a General Meeting by any of these methods shall be deemed to be present and in attendance.

13.2 Notice of General Meetings

- (a) The Executive Officer will give at least 14 days' notice to Members informing them of the date, time and place of a General Meeting and the business to be conducted including an agenda.

- (b) All reports, information and notices which are pertinent to the business to be conducted shall be published at least 7 days before the date of the General Meeting.

13.3 Chairperson

- (a) If the Chairperson elected by the Board Members is present at the General Meeting, he or she must chair the General Meeting. If the Chairperson is not present, the Deputy Chairperson (if one) shall be entitled to take the chair.
- (b) If there is no Chairperson or Deputy Chairperson present or if at any meeting such person is not present within 15 minutes after the appointed time for holding the General Meeting or is unwilling to act, the Board Members present may choose a chairperson from one of their number.
- (c) If no chairperson has been elected by the Board Members at any General Meeting, the Members present may choose one of their number to chair the meeting.

13.4 Voting

Except where otherwise provided in the Constitution, the majority of all votes cast by Financial Members at a General Meeting shall decide all resolutions. Only Financial Members are entitled to vote. In the case of an equality of votes, the Chairperson shall not have a casting vote. Every Member entitled to vote and attending at a meeting shall have one vote. Every motion submitted to any General Meeting shall be decided in the first instance on the voices, or by show of hands, or by electronic voting, or by direction of the Chairperson, or on the request of any three Members entitled to vote, by a poll. At any General Meeting a declaration by the Chairperson that the resolution has been carried shall be conclusive. An entry to that effect in the book of proceedings of the Society shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

13.5 Quorum

No business shall be conducted at a General Meeting unless a quorum is present. A quorum is no fewer than 6 Members who are entitled to vote at the meeting and who are present. If within half an hour of the time appointed for the meeting a quorum is not present the meeting shall be adjourned to the same day the following week at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the Financial Members present shall be a quorum.

13.6 Appointment of Representative

The Representative of a Member appointed pursuant to clause 5.11 shall be deemed to be the Member for the purpose of calculating a quorum, and being entitled to vote and exercise all other powers and rights of the Member at the General Meeting.

13.7 Minutes

The Executive Officer must ensure that minutes are taken of all General Meetings.

13.8 Resolution in writing

A resolution in writing signed or assented to by not less than 75% of the Financial Members is as valid and effective as if passed at a General Meeting provided that prior written notice of the proposed resolution has been given to all Members. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Members.

14. ANNUAL GENERAL MEETINGS

14.1 Timing

Subject to the Act, the Annual General Meeting shall be held as soon as is practical but no later than 6 months after the end of the Financial Year, and no later than 15 months after the previous Annual General Meeting.

14.2 Business

The business of the Annual General Meeting shall include:

- (a) the election of the Board as provided in clauses 6.2 and 6.3;
- (b) the consideration of the report of the Chairperson;
- (c) the consideration and approval of the Annual Financial Statements, presented by the Treasurer;
- (d) the presentation by the Executive Officer of the Interests Register;
- (e) the appointment of the Auditor if required under clause 17;
- (f) deciding on any resolution which may be duly submitted to the meeting which is either put forward by the Board or of which notice in writing has been lodged by any Member with the Executive Officer not less than 7 days before the date of the meeting;
- (g) any other business or matter which the Board decides to bring before the Members.

15. SPECIAL GENERAL MEETINGS

- (a) The Board may, whenever it thinks necessary or desirable, or shall within 21 days of receiving the written request of at least 5 Financial Members to the Executive Officer, give notice of a Special General Meeting of Members.
- (b) No business other than that stated in the notice of Special General Meeting shall be transacted or considered at the meeting.

16. INFORMATION

16.1 Application for information

Subject to the provisions of the Act, a Member may request, by application in writing to the Executive Officer:

- (a) to receive a copy of the minutes of previous General Meetings; and
- (b) to inspect the Members Register subject always to clause 5.9;
- (c) to inspect the Financial Statements; and
- (d) to receive such other information to which they are entitled by the Act.

16.2 Fee

The Board may, at its sole discretion, require the Member to pay a fee to cover the cost of providing the Member with the information.

17. MANAGEMENT OF FINANCES AND AUDITOR

17.1 Society Funds

The funds of the Society must be used to further the Objectives as the Board decides.

17.2 Payments

Any payment made by the Society must be made or approved by the Approved Signatories.

17.3 Auditor

If the Board or the Society in General Meeting so resolves, an Auditor shall be appointed by the Board at an Annual General Meeting, and shall audit the accounts of the Society once in a year or more often if required by the Board or the Society in General Meeting. The Auditor shall have access at all times to all books, vouchers, minutes etc connected with the Society.

18. PROCEDURES FOR RESOLVING DISPUTES BETWEEN MEMBERS AND BETWEEN MEMBERS AND THE SOCIETY

18.1 Complaints about a Member

- (a) The Board must consider a complaint, or institute a disciplinary procedure, regarding alleged misconduct of a Member.
- (b) An oral hearing of a complaint will be held if the Board decides that an oral hearing is needed to ensure an adequate hearing, or is otherwise desirable.
- (c) The Member has a right to be heard before the complaint or procedure is resolved or any outcome is determined.
- (d) The Member will be fairly advised of all allegations concerning the Member, with sufficient details and time given to enable the Member to prepare a response.
- (e) The Member will be given a reasonable opportunity to be heard in writing or at an oral hearing (if one is held).
- (f) The Member's written statement or submissions will be considered by the Board.

18.2 A Member's grievance against the Society or another Member

- (a) A Member can raise with the Board an allegation of damage (caused by the Society, or a Member) to a Member's rights or interests (as a Member) or to Members' rights or interests generally.
- (b) An oral hearing of the grievance will be held if the Board decides that an oral hearing is needed to ensure an adequate hearing, or is otherwise desirable.
- (c) The Member will be heard before the grievance is resolved or any outcome is determined.

18.3 Investigating and determining complaint or grievance

The Board must, as soon as is reasonably practicable after receiving a complaint or grievance, investigate and determine the complaint or grievance.

18.4 Board may decide not to progress complaint or grievance

Despite clause 18.3, the Board may decide not to proceed with a matter further if the Board determines that:

- (a) the matter is trivial;

- (b) the complaint or grievance does not appear to disclose:
 - (i) in the case of a complaint, any material misconduct; or
 - (ii) in the case of grievance, any material damage to a member's rights or interests;
- (c) the complaint or grievance appears to be without foundation or there is no apparent evidence to support it;
- (d) the person who makes the complaint or brings the grievance has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue has already been investigated and dealt with by or on behalf of the Society.

18.5 Board may refer complaint to subcommittee or other investigator

The Board may refer a complaint or grievance to:

- (a) a subcommittee or an external person to investigate and report; or
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision, and in particular the complaint or grievance made by settled by arbitration in accordance with the New Zealand Arbitration Act 1996 and its amendments and the AMINZ Arbitration Rules current at the time arbitration is commenced.

18.6 Decision makers

A person may not act as a decision maker in relation to a complaint or grievance if two or more members of the Board or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not:

- (a) be impartial; or
- (b) be able to consider the matter without a predetermined view.

19. CONSTITUTION

19.1 Alteration

The Constitution may only be altered, amended, revoked or replaced by a resolution passed by at least a two-thirds majority of Members present and entitled to vote at a General Meeting provided that no alteration or revocation of clauses 20 (restrictions on making payments and providing benefits) or clause 24 (winding up) shall be made.

19.2 Filing with Registrar

If any such resolution is passed, then the Executive Officer shall file, or cause to be filed, the amendment with the Registrar in accordance with the Act.

19.3 Interpretation

Any doubt or difficulty arising as to the interpretation of the Constitution shall be determined by the Board whose decision shall be final, but subject to review by any Court of competent jurisdiction, or by an independent arbitrator nominated by the President for the time being of the New Zealand Law Society.

19.4 Inspection

A copy of the Constitution shall be published by the Society and made available for inspection at the registered office of the Society by any Member at any time during ordinary business hours.

20. RESTRICTIONS ON MAKING PAYMENTS AND PROVIDING BENEFITS

20.1 No Pecuniary Profits by Members

- (a) No private pecuniary profit or financial gain may be made from the Society by any Member, except that:
 - (i) A Member may receive full reimbursement for all costs, charges and expenses properly incurred by the Member in connection with the affairs of the Society;
 - (ii) The Society may pay reasonable and proper fees or other remuneration to any person or entity in return for services provided to the Society, including acting as a Board Member;
 - (iii) A Member may be paid all usual professional, business or trade charges for services provided, time spent and acts done in connection with the affairs of the Society by the Member, or by any entity of which the Member is a member, employee or associate; and
 - (iv) A Member may retain any remuneration properly payable to the Member by any entity with which the Society may be in any way concerned or involved and for which the Member has acted in any capacity whatever. This applies even if the Member's connection with that entity is in some way attributable to the Member's connection with the Society.

21. INDEMNITY AND INSURANCE

21.1 Indemnity for costs

The Society shall indemnify the Board Members and its employees for any costs incurred by any of them in any proceeding:

- (a) that relates to the liability for any act or omission in his or her capacity as a Board Member or employee; and
- (b) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

21.2 Indemnity for liability

The Society shall indemnify each Board Member and its employees in respect of:

- (a) liability to any person other than the Society for any act or omission in their capacity as a Board Member or employee, not being criminal liability, or a liability that arises out of a failure to act in good faith and in the best interests of the Society when acting in the capacity as a Board Member or employee;
- (b) costs incurred by that Board Member or employee in defending or settling any claim or proceeding relating to any such liability.

21.3 Insurance

The Society shall, with the prior approval of the Board, effect insurance for each Board Member and its employees in respect of:

- (a) liability not being criminal liability for any act or omission in his or her capacity as a Board Member or employee;
- (b) costs incurred by that Board Member or employee in defending or settling any claim or proceeding relating to any such liability; and

- (c) costs incurred by that Board Member or employee in defending any criminal proceedings:
 - (i) that have been bought against the Board Member or employee in relation to any act or omission in his or her capacity as a Board Member or employee; and
 - (ii) in which he or she is acquitted.

22. INTELLECTUAL PROPERTY AND DATA

22.1 Ownership of Intellectual Property

All Intellectual Property which originates from or is developed by a Member, or the Network Operator or is owned by or licensed to that person, will remain in the ownership or entitlement of that person and in particular:

- (a) the proprietary software of the Network Operator used for the purposes of setting up the Network will remain in the ownership or entitlement of the Network Operator;
- (b) the Intellectual Property which originates from a Member to enable it to access the Network shall remain in the ownership or entitlement of that Consortium Member;
- (c) all Society Intellectual Property shall comprise property of the Society;
- (d) where Intellectual Property has been developed by a person for the purposes of another person or the Society exercising, observing or performing rights or obligations under this Constitution, then subject to any other arrangement to the contrary, the other person or the Society will have a non-exclusive, royalty free licence to use such Intellectual Property for the purposes of the exercise, observance or performance of its rights and obligations under this Society, during or after the Term.

22.2 Co-operation of Members

Each Member shall co-operate with the other Members and shall promptly do all acts and things and execute all documents which may be necessary for the purpose of protecting the Intellectual Property, and ensuring that the Intellectual Property is held by the Society as contemplated by clause 22.1.

22.3 Access to information

Each Member shall promptly respond to a request from the Board to provide information in its possession regarding Intellectual Property which has been developed, is in the process of being developed or is being considered for development.

22.4 Co-operation of related parties

Each Member shall use its best endeavours to ensure that its employees, agents, sub-contractors or other persons participating in the activities or business of the Society:

- (a) shall identify Intellectual Property generated or developed by them;
- (b) shall promptly notify details of it to the Member who shall report it to the Board; and
- (c) shall promptly do all acts and things and execute all documents which may be necessary for the purpose of ensuring that the Intellectual Property is held as contemplated by clause 22.1.

22.5 Data

Data which is private to a Member will be identified as such by the Member and will not be stored on the Network.

23. CONFIDENTIALITY

- (a) In respect of the following information, each of the Members covenants with the other Members that both during the Term and after its termination they will keep strictly confidential and will not, without the prior written consent of all other Members,

and the Network Operator, disclose to any third party (other than their professional advisers) nor use other than for the purposes of the Society:

- (i) any information acquired as a result of this Constitution or during the relationship evidenced by this Constitution about the business or activities of any other Members; or
- (ii) any details concerning the Society or its operations otherwise than as required for the proper conduct of the Society's ordinary course of business,

unless required pursuant to any applicable law or the information is already in the public domain (other than through the default of a Member).

- (b) Each of the Members undertakes within 10 Working Days of receipt of a written request from any other Members or winding up of the Society:
- (i) to return (or procure the return of) all documents and other material in its possession, custody or control (or in any of its partners' or shareholders' possession, custody or control as the case may be) that bear or incorporate that other Member's confidential information (including soft copies of such information); and/or
 - (ii) to destroy by shredding or incineration all documents and other material in its possession, custody or control which bear or incorporate any of another Member's confidential information (including soft copies of such information);

and to certify to the other Member that the obligations under this clause have been complied with.

24. WINDING UP

24.1 Voting on resolutions

Any resolution to wind up the Society must be carried by at least a two-thirds majority of Members present at a General Meeting the special business of which is to consider the matter.

24.2 Liquidator

The resolution to wind up the Society must also include the appointment of a liquidator to conduct the winding up process.

24.3 Distribution of surplus assets

On winding up, any available funds or assets after settlement of all liabilities shall be distributed to one or more not-for-profit organisations, approved by the Members at a General Meeting, which have as their objectives one or more of the Objectives.