

CONSTITUTION OF
Whanau Marama Parenting Limited

I, **Elizabeth Cameron** of Glenfield, Auckland being a Director of the applicant for registration of **Whanau Marama Parenting Limited** under Part II of the Companies Act 1993, certify that this constitution signed by me for the purposes of identification is the constitution of that company.

Signed:

A handwritten signature in cursive script, appearing to read "E A Cameron", is written on a light grey rectangular background.

Date: 12 August - 2015

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CONSTITUTION OF WHANAU MARAMA PARENTING LIMITED

1. Preliminary

- 1.1 **Rights, powers and duties:** The Company, the Board, the Shareholders and each Director and Shareholder of the Company has the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified in accordance with the Act by this Constitution.
- 1.2 **Charitable purposes:** The sole object for which the Company is established is to operate for charitable purposes in New Zealand, and to hold the capital and income of the Company as the Directors in their discretion shall think fit for the furtherance of such charitable purposes ("Company's Objects"). Notwithstanding any other provision of this constitution, all distributions of profits, gains and capital sums shall be for charitable purposes in New Zealand.
- 1.3 **Amendment to Constitution:** The Company may alter this Constitution pursuant to section 32 of the Act and clause 17a (i. ii) of this constitution provided however that such an amendment shall not enable the Company to apply any part of its assets or property or undertaking to any purpose which is not charitable according to the law in New Zealand.
- 1.4 **Clauses paramount:** The clauses in this Regulation 1, and in Regulations 7.3 and 56.1 are 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 statutory provisions which are mandatory

2. Definitions

- 2.1 In this constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993 and includes amendments and any Act in substitution.

"amalgamation" means the completed act of the company and another company amalgamating to form a new company in their place. **[Section 219 of the Act]**

"annual meeting" means a meeting of shareholders held pursuant to **section 120 of the Act**

"assets" include property of any kind, whether tangible or intangible.

"balance date" means the close of 31 March or such other date as the board adopts as the company's balance date. **[Section 7 of the Financial Reporting Act 1993]**

"board" means the directors numbering not less than the required quorum acting together as the board of directors of the company, and if the company has only one director, that director. **[Section 127 of the Act]**

"chairperson" means the chairperson of the board elected pursuant to clause 31 of this constitution.

"Charitable Object" means every purpose within New Zealand which in accordance with the law of New Zealand for the time being is Charitable, whether such purpose

involves the advancement of education or any other object or purpose beneficial to the community applies to **[5(1) of the Charities Act 2005]**

"company" means Whanau Marama Parenting Limited.

"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" means:

- a. the direct or indirect transfer of money or property, other than the company's own shares, by the company to or for the benefit of a shareholder; or
- b. the incurring of a debt by the company to or for the benefit of a shareholder

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness or by some other means. **[Section 2(1) of the Act]**

"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**) of the Act applies. **[Section 53 of the Act]**

"general meeting" means any meeting of shareholders, other than a meeting of an interest group.

"Kaupapa" means **"Whanau Marama Parenting Limited's Philosophical and Value Base"** includes:

- a. Treaty of Waitangi. Our policy honouring the treaty of Waitangi
- b. Integrity/Professional Development. Whanau Marama Parenting Limited's policy on Professionalism and Practice
- c. Passion/Inspiration. Whanau Marama Parenting's value of practicing what we teach in our daily lives.
- d. Te Whare Tapa Wha. Whanau Marama Parenting Limited's policy on using the Maori Four Walls / Tapa Wha health model.

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

"major transaction" has the meaning stated in section 129 of the Act

"month" means calendar month.

"objective/purposes" means the company commitment to;

1. Develop and deliver parenting courses that teach effective positive discipline skills and strategies.
2. Provide a supportive learning environment where parents are empowered to discover their inner strength, creativity and positive energy in their parenting role.
3. Work within the framework of principles and concepts developed by the S.K.I.P. (Strategies with Kids Information for Parents) programme which is based on NZ research produced by the Child's Issue Centre, The University of Otago and the Office of the Children's Commissioner. 2004

4. Create and share parenting and family oriented information and resources with other interested community groups, organizations and individuals.

5. Carry out any other such work as the shareholders decides is advantageous to its charitable object.

"office" means the registered office for the time being of the company.

"Opportunity Creators" Registered company and shareholder of Whanau Marama Parenting

"ordinary resolution" Means a resolution approved by a majority of 51 percent of the votes of those shareholders entitled to vote on the question

"ordinary share" means a share which confers on the holder: the right to vote at meetings of shareholders and on a poll to cast one vote for each share held; and

"outcomes" mean Whanau Marama Parenting's Programme Outcomes which are

Short Term

1. Growing awareness of parenting style
2. Enhanced parent – child relationship
3. Tamariki successfully learn what their parents wish to teach them.

Long Term

Tamariki that are effectively and positively disciplined without their parents/ caregivers resorting to punishment strategies.

"register" means the share register required to be kept pursuant to this constitution and in accordance with **section 87 of the Act**.

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

"security" has the same meaning as in the Securities Act 1978.

"share" means a share in the capital of the company the issue of and rights attaching to which are provided for by this constitution.

"shareholder" or "shareholders"

- a. Registered in the register as the holder of one or more shares; and
- b. Until such time as his, her or its name is entered in the register, a person named as a shareholder in the application for registration or the constitution of the company at the time of the incorporation of the company.

"solvency test" means an examination to be applied to the financial state of the company which will be satisfied if:

- a. The company is able to pay its debts as they become due in the normal course of business; and
- b. The value of the company's assets is greater than the value of its liabilities, including contingent liabilities.

For the purpose of the definition of the solvency test regard is to be had to the matters referred to in **section 4 of the Act**.

"special meeting" means a meeting called in accordance with **section 121 of the Act**.

"special resolution" Means a resolution approved by a majority of 75% percent or more when specified of the votes of those shareholders entitled to vote on the question

"subsidiary" has the meaning set out in **section 5 of the Act**.

"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; and
- b. A day in the period commencing on 25 December in any year and ending on 2 January in the following year; and
- c. If the 1st day of January in any year falls on a Friday, the following Monday; and
- d. If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

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

2.3 Words importing the singular number also include the plural number and vice versa.

2.4 A reference to a person includes any firm, company or other body corporate.

2.5 Words importing one gender include the other genders.

2.6 Expressions contained in this constitution bear the same meaning as in the Act at the date on which this constitution becomes binding on the company.

2.7 A reference to a clause means a clause of this constitution.

2.8 Except to the extent modified by this constitution the Act applies to the company.

2.9 Where this constitution makes no provision the Act shall apply.

3. **Charitable Object**

3A.1 The Company's **charitable object** is:

- (a) To teach, guide, encourage and promote the advancement of the education of people in New Zealand with particular focus on child parent relationship so that they may develop parenting skills that parent their children in a positive way without punishment – (Beneficial for the community)
- (b) To assist promote, support and otherwise advance the development of educational resources for indigenous, pacific and peoples of all cultures in New Zealand to advance their knowledge to parent in a positive way without punishment. (Advancement of Education)

3A.2 The company shall operate only within New Zealand.

3A.3 Notwithstanding any other provision in this constitution no alteration shall be made to this constitution which is contrary to or may prejudice or affect the charitable object and purposes of the company or its charitable status with Inland Revenue.

3A.4 No person who is a trustee of the shareholder or a director of the company shall demand, receive or derive from the company any personal benefit by way of price, security, interest, rents, fines, premium or other revenues except to such extent as

may be reasonable having regard to current market prices rates and conditions and no such person holding any office or employment from the company shall demand or receive by way of salary, wage or other remuneration any sum greater than reasonable compensation for the services rendered.

PART II - CAPITAL SHARES AND DIVIDENDS

4. Shares

4.1 **The Issued Shares** of the Company are owned by Opportunity Creators Limited, Whanau Marama Limited, Elizabeth Cameron and Tamati Ihaka.

4.2 **Transfer of Shares** by any shareholder:

4.2a. is permitted only with the unanimous approval of the other shareholders

4.2b. may only occur if the transfer of such shares will not prejudice the charitable status or any other privilege or exemption which the company enjoys.

4.2c. may only be for the original value of the shares.

4.3. **Purchase of Shares by the Company:** In the event that a shareholder wishes to sell his or her shares and can find no purchaser suitable to the other shareholders then the company may buy the shares.

5. Share Capital

a. The share capital of the company shall be 1000 ordinary shares.

6. Right To Issue Shares

a. No shares may be issued unless all the shareholders are satisfied that the issue of such shares will not prejudice the charitable status or any other privilege or exemption which the company enjoys.

7. Distributions to Shareholders

7.1 Restriction on Dividends:

The Board may not authorise a Dividend. Any profits must remain in the company.

7.2 Surplus on Cessation or Liquidation of the Company

Any surplus on cessation or liquidation must be donated to another registered charity within New Zealand.

7.3 **No Personal Control:** Notwithstanding anything contained or implied in this Constitution, any person who is:

a. a shareholder or director of the Company;

b. a settlor or trustee of any trust which is a shareholder of the Company; or

c. an associated person (as defined by the Income Tax Act 2004) of any such settlor, trustee, shareholder or director, shall not by virtue of that capacity in any way (whether directly or indirectly) determine or materially influence in any way the determination of the nature or the amount of any benefit or advantage or the

circumstances in which it is, or is to be, given or received by that person. A person who in the course of and as part of the carrying on of his or her business of a professional practice shall not, by reason only of his or her rendering professional services to the Company, be in breach of the terms of this clause

SHARE REGISTER

8. Maintenance Of Share Register

- a. The company must maintain a share register which records all shares issued by the company and states any restrictions or limitations on their transfer, and where any document that contains the restrictions or limitations may be inspected. **[Section 87(1) of the Act]**
- b. The company may appoint an agent to maintain the share register. **[Section 87(3) of the Act]**

9. Contents Of Register

- a. The share register must state, with respect to each class of shares:
 - i. The names, alphabetically arranged, and the latest known address of each person who is, and each person who has within the last 10 years, been a shareholder; and
 - ii. The number of shares and the class of shares held by each shareholder from the date of the formation of the company 28th July 2011
 - iii. The date of any:
 - (1) Issue of shares to; or
 - (2) Repurchase or redemption of shares from; or
 - (3) 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. **[Section 87(2) of the Act]**

10. Duty To Supervise Register

- a. It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that share transfers are promptly entered in it in accordance with this constitution. **[Section 90 of the Act]**
- b. The directors may in their sole discretion refuse to register any transfer of shares which may endanger or prejudice the charitable status of the company under the Income Tax Act 1994 or any other legislation.

11. Register Prima Facie Evidence

- a. 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. **[Section 89 of the Act]**

12. Register Evidence Of Rights

- a. The company may treat the registered holder of a share as the only person entitled to:
 - i. Exercise the right to vote attaching to the share; and
 - ii. Receive notices in respect of the share; and
 - iii. Exercise the other rights and powers attaching to the share. **[Section 89 of the Act]**

13. Liens

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, for all money (whether presently payable or not) payable in respect of shares held by the shareholder, and for all other money presently payable by the shareholder to the company on any account whatever, and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.

14. Sale On Exercise Of Lien

- a. The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien, but no sale may be made unless a sum in respect of which the lien exists is due and payable, nor until the expiration of 14 days after a notice in writing, which states and demands payment of the amount due and payable in respect of which the lien exists, has been given to the registered shareholder for the time being or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.
- b. The net proceeds of the sale of any shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the shareholder in respect of which the lien existed. The residue, if any, is to be paid to the former shareholder.
- c. A certificate signed by a director stating that the power of sale provided in this constitution has arisen and is exercisable by the company under this constitution will be conclusive evidence of the facts stated in the certificate.
- d. In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under this clause the board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any 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.

PART III – STATEMENT OF SHAREHOLDERS' RIGHTS

15. Issue Of Statement Of Rights To Shareholder

- a. The company must issue to a 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; and
 - 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 pursuant to clause 15.a if:
 - i. A statement has been provided within the previous 6 months; and
 - ii. The shareholder has not acquired or disposed of shares since the previous statement was provided; and
 - iii. The rights attached to shares of the company 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 16.a of this constitution must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it. **[Section 83 of the Act]**

EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

16. 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 22. **[Section 104 of the Act]**
- b. Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution. **[Section 105 of the Act]**

17. Special Resolutions

- a. When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:

- i. An alteration to or the revocation of this constitution or the adoption of a new constitution (Unanimous approval required); or
 - ii. Any changes to matter(s) affecting the company's kaupapa, outcomes, objectives/purposes and charitable object. (Unanimous approval required); or
 - iii. A Major transaction (Unanimous approval required); or
 - iv. An amalgamation (Unanimous approval required); or
 - v. The Liquidation of the company (75% or more approval required)
- b. Any decision made by special resolution pursuant to sub clauses i, ii and iii of this clause may be rescinded only by a special resolution; a decision made by special resolution pursuant to sub clause iv of this clause cannot be rescinded. **[Section 106 of the Act]**

18. Management Review By Shareholders

- a. The chairperson of a meeting of shareholders of the company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.
- b. Notwithstanding anything in the Act or any other clause of this constitution, and subject to clause 18.c of this constitution, a meeting of shareholders may pass a resolution relating to the management of the company.
- c. A resolution relating to the management of the company passed at a meeting of shareholders is not binding on the board. **[Section 109 of the Act]**

MEETING OF SHAREHOLDERS

19. Annual Meeting

- a. The board of directors must, in accordance with section 120 (**Annual meeting of shareholders**) of the Act, call an annual meeting of shareholders to be held:
 - i. In case of an exempt company, if all shareholders of the company agree, not later than 10 months after the balance date of the Company; or
 - ii. In the case of the Company not being a company to which clause 16(a)(i) applies, not later than 6 months after the balance date of the Company; and
- b.
 - i. Not later than 6 months after the balance date of the company; and
 - ii. Not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of registration; and
 - iii. Once in each calendar year other than the year of its registration.

- c. The company must hold the annual meeting on the date on which it is called to be held. **[Section 120 of the Act]**

20. Special Meetings

- a. may be called at any time by:
 - i. the Board;
 - ii. a Director, at any time that there are insufficient Directors appointed or entitled to act to form a quorum of Directors; or
 - iii. if the Company is a wholly-owned subsidiary, a director of the Company's holding company may call at any time a special meeting of shareholders;
- b. may be called at any time by: the Board on the written request of Shareholders holding shares carrying together not less than 5 per cent of the voting rights entitled to be exercised on the issue.

21. Resolution In Lieu Of Meeting

- a. Subject to sections 122(2) and (3) of the Act, a resolution in writing signed by a shareholder is as valid as if it had been passed at a meeting of the shareholders.
- b. A resolution in writing signed by not less than 51 per cent (or such other percentage as this Constitution may require for passing a Special Resolution) of the Shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 7 per cent (or if a higher percentage is required by this Constitution, that higher percentage), 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. For the purposes of this Regulation, a resolution in writing may consist of one or more documents in like form, each signed by one or more Shareholders and a copy, facsimile transmission or other electronic reproduction of any such document signed by one or more Shareholders shall be conclusive evidence of the execution of the original document by those Shareholders.

22. Shareholders Entitled To Notice Of Meetings

- a. The shareholders entitled to receive notice of a meeting of shareholders are the shareholders of the relevant class recorded in the register as registered shareholders:
 - i. Where the board of directors has fixed a date for the purpose of establishing an entitlement to receive notice - on the date so fixed; or
 - ii. If no date has been fixed by the board of directors for that purpose - at the close of business on the day immediately preceding the day on which the notice is given. **[Section 125 of the Act]**
- b. A date fixed by the board of directors under clause 23.a 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. **[Section 125(4) of the Act]**

23. Notice Of Meeting

- a. Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting, and to

every director and an auditor of the company not less than 10 working days before the meeting. **[clause 2(1) of the First Schedule to the Act]**

24. Contents Of Notice

- a. The notice referred to in clause 24 of this constitution must state:
 - i. 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; and
 - ii. The text of any resolution to be submitted to the meeting; and
 - iii. The postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
 - iv. That the postal vote must be received by the person referred to in paragraph c. at least 48 hours prior to the time of the meeting. **[clause 2(2) of the First Schedule to the Act]**

25. Irregularities In Notice

- a. The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceeding of that meeting **[clause 2(3A) of the First Schedule to the Act]**
- b. Notwithstanding clause 24.a, an irregularity in a notice of a meeting required by clause 23 of this constitution is waived if all the shareholders entitled to attend and vote at the meeting, do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. **[clause 2(3) of the First Schedule to the Act]**

26. Quorum and Voting

- a. A quorum for a meeting of shareholders is present if the Chairperson or Deputy Chairperson of the shareholder is present.
- b. 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 this constitution 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. **[clause 4 of the First Schedule to the Act]**
- d. The vote of the shareholder may only be exercised by the Chairperson or the shareholder or if the Chairperson is absent by the Deputy Chairperson of the shareholder.

- e. A declaration by the Chairperson of the meeting that a resolution is carried is conclusive evidence of that fact.

27. **Adjournments**

- a. 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. **[clause 2(4) of the First Schedule to the Act]**

28. **Minutes**

- a. The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- b. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings. **[clause 8 of the First Schedule to the Act]**

PART IV - THE BOARD - POWERS AND DUTIES OF THE BOARD

29. **Consultation**

- a. The board shall not exercise any discretionary powers on matter(s) affecting the company's kaupapa, outcomes, objectives/purposes and charitable object. This clause applies also to the exercise of any delegated powers under clause 31.
- b. The company is a charitable company for the purposes of section CB4(1)(e) of the Income Tax Act 1994 and shall operate and be managed solely and exclusively for charitable purposes.
- c. The Board shall not permit the company to undertake any business or other activity which may prejudice or affect the charitable status and purposes of the company.

30. **Powers Of The Board**

- a. 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, and for 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. **[Section 128 of the Act]**

31. **Delegation By The Board**

- a. The board may delegate to a committee of directors, a director, or an employee of the company, or any other person, any one or more of its powers other than the following powers:
 - i. Section 23(1)(c) (change of company names);

- ii. Section 42 (issue of shares);
- iii. Section 44 (shareholder approval to the issue of shares);
- iv. Section 47 (consideration for the issue of shares);
- v. Section 52 (distributions);
- vi. Section 54 (issue of shares in lieu of dividends);
- vii. Section 55 (shareholder discounts);
- viii. Section 60 (offers to acquire shares);
- ix. Section 61 (special offers to acquire shares);
- x. Section 63 (stock exchange acquisitions subject to prior notice to shareholders);
- xi. Section 65 (stock exchange acquisitions not subject to prior notice to shareholders);
- xii. Section 69 (redemption of shares at the option of a company);

- xiii. Section 71 (special redemption's of shares);
- xiv. Section 76 (provision of financial assistance);
- xv. Section 78 (special financial assistance);
- xvi. Section 80 (financial assistance not exceeding 5 percent of shareholders' funds);
- xvii. Section 84(4) (transfer of shares);
- xviii. Section 187 (change of registered office);
- xix. Section 193 (change of address for service);
- xx. Section 221 (manner of approving an amalgamation proposal);
- xxi. Section 222 (short form amalgamations).

[Section 130 and Second Schedule to the Act]

- b. The board is responsible for the exercise by any delegate of a power delegated under this clause 31 as if the power had been exercised by the board, unless the board:
 - i. Believed on a reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
 - ii. Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate. **[Section 130 of the Act]**

32. Directors To Act In Good Faith

- a. 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.
- b. If the company is incorporated to carry out a joint venture between its shareholders the director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.
[Section 131 of the Act]

33. Major Transactions

- a. The board may not procure or permit the company to enter into a major transaction unless the transaction is:
 - i. Approved by special resolution; or
 - ii. Contingent on approval by special resolution. **[Section 129 of the Act]**

34. Transactions Involving Self Interest

- 34.1 **Interested Director may vote:** A director who is interested in a transaction entered into, or to be entered into by the company, may;
- i. Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum but shall not be authorised to vote on a matter relating to the transaction;
 - ii. Sign a document relating to the transaction on behalf of the company; and
 - iii. Do any other thing in his or her capacity as a director in relation to the transaction,

As if the director were not interested in the transaction.

PROCEEDINGS OF BOARD

35. Chairperson

- a. The directors may elect one of their number as chairperson of the board and determine the period for which the chairperson is to hold office.
- b. The director elected as chairperson holds that office until he or she dies or resigns 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.

36. Notice Of Directors' 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 37.
- b. Not less than 2 days' notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- c. An 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 or if all directors entitled to receive notice of the meeting agree to the waiver.
- d. 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 received by the director the day following the date the letter is posted.

37. Meetings Of Board

- a. A meeting of the board may be held either:
 - i. By a number of directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
 - ii. 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.

38. Meetings by Telephone

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

- a. all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of any such meeting may be given on the telephone;
- b. if all reasonable efforts are made to contact a Director to give notice of a meeting, including by telephone, and the Director cannot be contacted notice of the meeting shall be deemed to have been given;
- c. each of the Directors taking part in the meeting by telephone must be able to hear each of the other Directors taking part at the commencement of the meeting;
- d. at the commencement of the meeting and at or about the closure of the meeting each Director must acknowledge his presence for the purpose of a meeting of the Directors to all the other Directors taking part;
- e. a Director may not leave the meeting by disconnecting his telephone unless he or she has previously obtained the express consent of the chairperson of the meeting. A Director shall be conclusively presumed to have been present

and to have formed part of the quorum at all times during the meeting by telephone unless he or she has previously obtained the express consent of the chairperson to leave the meeting;

- f. a minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting; and
- g. for the purposes of this Clause “**telephone**” shall include television or any other audio and visual device which permits instantaneous communication.

39. **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. An alternate director appointed in accordance with clause 54 of this constitution present at a meeting may be included for the purpose of establishing a quorum.

40. **Voting**

- a. Every director has one vote at a meeting of the board.
- 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 on it 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 not vote in respect of any transaction in which the director has a pecuniary or financial interest but the director will be counted in the quorum present at the meeting.

41. **Minutes**

- a. The board must ensure that full and accurate minutes are kept of all proceedings at meetings of the board.
- b. Minutes of board resolutions shall include a brief statement of the board’s consideration as to whether there has been adequate consultation with the shareholder. This clause also applies to resolutions under clause 41. Where the board decides that consultation is not required this decision shall be recorded in writing as part of the minutes.

42. **Unanimous Resolution**

- a. A resolution in writing, signed or assented to by all directors 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.

43. Notice To Alternate Directors

- a. 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 48.b of this constitution) be given to the alternate director.

44. Continuing Directors

- a. Notwithstanding any vacancy in the number of directors, the board will continue to comprise the continuing directors, but, if their number is reduced below the number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors may act only for the purpose of increasing the number of directors to the minimum number, or for summoning a general meeting of the company.

45. Other Proceedings

- a. Except as provided in this constitution the board may regulate its own procedure.

KAUMATUA

46. Appointment

- a. The board may from time to time appoint a kaumatua either for a fixed term or without any limitation as to the term.
- b. A kaumatua appointed under this clause shall not be a member of the board.

DIRECTORS

47. Number And Term Of Office Of Directors

- a. The company must have at least 1 and not more than 7 directors. **[Section 150 of the Act]**
- b. Subject to clauses 47 and 48 a director holds office until the conclusion of the Annual Meeting of the company next following the date of such director's appointment or the earlier resignation, retirement, disqualification or removal of such director in accordance with this constitution. **[Section 157 of the Act]**

- c. Directors whose appointment is due to terminate at the end of any Annual Meeting shall be eligible for re-appointment and where there is no election of directors held the existing directors shall continue in office.

48. First Directors

- a. The first directors are the persons named as the directors in the application for registration of the company, or if no persons are so named, are the directors first appointed under clauses 47 or 48 of this constitution. **[Section 153 of the Act]**

49. Appointment And Removal By Notice

- a. Subject to clauses 47 and 48 of this constitution each director shall be appointed from year to year by the shareholder by ordinary resolution passed at the Annual Meeting held in accordance with this constitution Provided that before the membership of the board is changed at an Annual Meeting the meeting shall be advised of the length of service of each of the existing directors.

[Section 153 of the Act]

- b. A director may be removed from office at any time by a notice in writing signed under seal by the shareholder.

[Section 156 of the Act]

- c. A notice given under clause 47.b of this constitution takes effect upon receipt at the registered office of the company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by shareholders giving the notice.

50. Appointment And Removal Of Directors By Resolution

- a. In addition to the provisions of clause 49 of this constitution, a director may be appointed or removed from office at any time by an ordinary resolution passed at a special meeting of shareholders held in accordance with clause 17 of this constitution.
- b. A resolution to appoint 2 or more directors may be voted on as one resolution without each appointment being voted individually. **[Section 155 of the Act]**
- c. A notice of a meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of the director. **[Section 156(2) of the Act]**

51. Disqualification

- a. A person will be disqualified from holding the office of director if he or she is removed under clause 48 or 49 of this constitution or he or she:
 - i. Dies; or

- ii. Becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- iii. Is under 18 years of age; or
- iv. Is an undischarged bankrupt; or
- v. Is prohibited by the Companies Act 1955 from being a director or officer or promoter or would be so prohibited but for the repeal of that Act; or
- vi. Is prohibited by the Companies Act 1993 from being a director or officer or promoter or taking part in the management of the company; or
- vii. Resigns in writing.

52. Shareholding Qualification

- a. A director is not required to hold shares.

53. Alternate Directors

- a.
 - i. 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 or inability to act as a director. Every director may, at the director's discretion, by notice in writing to the company, remove that director's alternate director.
 - ii. On any such appointment being made the alternate director may, while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the director appointing the alternate director, and is subject in all respects to the same terms and provisions as that director (except as regards remuneration, and the power to appoint an alternate director under this constitution). For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.
- b. The notice of appointment of alternate director should include an address for service of notice of meetings of directors. 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.

54. Indemnity Of Directors And Employees

- a. The board may cause the company to indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding:
 - i. That relates to liability for any act or omission in his or her capacity as a director or employee; and

- ii. In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

[Section 162(3) of the Act]

- b. The board may 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 subparagraph a. above

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the company or related company.

[Section 162(4) of the Act]

55. Insurance Of Directors And Employees

- a. The board may, subject to section 162 of the Act, cause the company to effect insurance for a director or for an employee 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 that director or employee in defending or settling any claim or proceeding relating to any such liability under subclause a.i; or
 - iii. Costs incurred by that director or employee in defending any criminal proceedings in which he or she was acquitted. **[Section 162(5) of the Act]**
- b. The directors who vote in favour of authorising the effecting of insurance under clause 93.1 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company. **[Section 162(6) of the Act]**
- 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. **[Section 162 of the Act]**
- d. For the purpose of clauses 1A and 50 "director" includes a former director and "employee" includes a former employee.

REMUNERATION OF DIRECTORS

56. Reimbursement of Directors

56.1 Power to Authorise: No payment shall be made, either directly or indirectly, for the private pecuniary benefit of any person, provided that nothing in this clause 56.1 shall prevent the Board authorising the reimbursement of reasonable expenditure properly incurred by any Director or other person on behalf of the Company or the usual professional, business or trade charges to any Director or other person for

services rendered to the Company. The Board, in determining all reimbursements, and charges payable in terms of this clause shall ensure that the restrictions imposed by clause 7.3 are strictly observed.

56.2 Duty to enter in Interests Register: The Board must ensure that forthwith after authorising the making of the payment or the provision of the benefit or the making of the loan or the giving of the guarantee or the entering into of the contract, as the case may be, particulars of the payment or benefit or loan or guarantee or contract are entered in the Interests Register.

56.3 Separate authorisation unnecessary: The payment of remuneration or the giving of any other benefit to a Director in accordance with a contract authorised under Regulation need not be separately authorised under that Regulation.

56.4 Certificate: Directors who vote in favour of authorising a payment, benefit, loan, guarantee or contract under clause (56.1) shall sign a certificate that complies with Section 161(4).

57. 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 to the company.
- b. Other than as provided in clause 61, 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 as if he or she were not a director and not in a fiduciary relationship with the company

INTERESTED DIRECTORS

58. 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.
- b. For the purposes of clause 59a. a general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. **[Section 140 of the Act]**

MISCELLANEOUS

59. Notices

Service

- a. Notice may be served by the company upon any director or shareholder, either personally or by post or by fastpost in a pre-paid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile number of such director or shareholder.

Time of Service by Facsimile

- b. A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

Time of Service by Post

- c. A notice sent by post or delivered to a document exchange is deemed to have been served:
 - i. In the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was posted or delivered in New Zealand; and
 - ii. In the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was posted by fastpost in New Zealand.

Proof of Service

- d. In proving service by post or delivery to a document exchange, it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

Service on Joint Holders

- e. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

Service of Representatives

- f. A notice may be given by the company to a person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address (if any) within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such time an address has been supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

60. Removal From The New Zealand Register

- a. In the event that:
 - i. The company has ceased to carry on business, has discharged in full its liabilities to all known creditors and has distributed its surplus assets in accordance with this constitution and the Act; or
 - ii. The company has no surplus assets after paying its debts in full or in part and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation;

the board of directors may, in the prescribed form, request the Registrar of Companies to remove the company from the New Zealand register.

61. Method Of Contracting

- a. A contract or other enforceable obligation may be entered into by the company as follows:
 - i. An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:
 - (1) two or more directors of the company; or
 - (2) if there is only one director, by that director whose signature must be witnessed; or
 - (3) a director, or other person or class of persons whose signature or signatures must be witnessed, provided that such director or person or class of persons signing on behalf of the company must first be approved by the board;
 - (4) one or more attorneys appointed by the company in accordance with section 181 of the Act.
 - ii. An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority.
 - iii. An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority. **[Section 180 of the Act]**
- b. Clause 59.1 applies to a contract or other obligation:
 - i. whether or not that contract or obligation was entered into in New Zealand; and
 - ii. whether or not the law governing the contract or obligation is the law of New Zealand.

62. Appointment Of Attorney

- a. The company may by instrument in writing executed in accordance with section 180(1)(a) of the Act appoint a person as its attorney either generally

or in relation to a specified matter and the provisions of section 181 of the Act will apply. [Section 181 of the Act]

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