



**NEW ZEALAND
BUSINESS
EXCELLENCE
FOUNDATION**

**New Zealand National Quality
Awards Foundation
t/a
New Zealand Business
Excellence Foundation
(NZBEF)**

**OBJECTS AND RULES
20 March 2019**

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THE NEW ZEALAND NATIONAL QUALITY AWARDS FOUNDATION

RULES

1. INTERPRETATION

1.1 Except where the context otherwise requires, the following expressions have the following meanings:

“Accounts”	means the statements of financial performance and financial position, accounting policies and notes to the financial statements prepared in accordance with generally accepted accounting practice in NZ.
“Bank”	means a financial institution registered as a Registered Bank pursuant to the Reserve Banks Act 1989 and includes the term “Bankers”
“Board”	means The Board of the Foundation elected in accordance with these Rules.
“Boardmember”	means any person appointed or elected to The Board and includes the term “Trustee”.
“Chairman”	means the Chairman for the time being of the Foundation and includes an Acting Chairman of the Foundation
“Chief Executive”	means the Chief Executive for the time being of the Foundation and includes an Acting Chief Executive of the Foundation. The Chief Executive is the chief executive officer of the Foundation who is also the Secretary/Treasurer of the Foundation.
“Foundation”	means The New Zealand National Quality Awards Foundation (T/A The New Zealand Business Excellence Foundation)
“Intellectual Property”	means all rights to and any interest in any patents, designs, brands, logos, trademarks, copyright, know how, trade secrets and any other proprietary rights (which are capable of protection by registration or not) in respect of any technology, concept, idea, software programme, specification, formula, drawing, design, system, process, style or other matter or thing.

“Member”	means any organisation or person, which is accepted as a Member under any of the categories set out in clause 3.1.
“New Zealand”	has the meaning given to that expression by section 4 of the Acts Interpretation Act 1924 and also includes all other territories which are agreed upon between the Foundation and the Board.
Rules	means these Rules and “Rule” shall have a corresponding meaning.
“Trustee”	means any person appointed or elected to The Board.
“month”	means a calendar month
“in writing” & “written”	include printing, lithography, telex, facsimile and other modes of representing or reproducing words in a visible form.

Words referring only to the singular number include the plural number and vice versa.

Words referring only to the masculine gender include the feminine.

2. **OBJECTS OF THE FOUNDATION**

2.1 Vision & Mission Statement

VISION

“To be recognised as the champion of business excellence in New Zealand”

MISSION

Supporting New Zealand organisations to achieve and sustain proven world class performance and results

The objects and powers of the Foundation are:

- a) To help develop national awareness of the key role which excellence plays in enhancing the performance of New Zealand organisations, public and private, within the New Zealand and global economy;
- b) To promote performance excellence principles and practices as an organisational philosophy in order to focus all efforts of the organisation on meeting or exceeding customer expectations using superior organisational practices;

- c) To encourage commitment to organisation-wide continuous performance improvement through an internationally comparable New Zealand Business Excellence Awards programme, promoting and recognising the highest levels of excellence and leadership in its use;
- d) To provide incentive and motivation across all enterprises in New Zealand from the new entrant to the mature and experienced quality organisation, and also through qualifying industry and sector awards as pre-requisites to the premier New Zealand Business Excellence Awards.
- e) To promote and undertake programmes of education and research and to provide seminars and teaching materials designed to further the understanding and use of the New Zealand Business Excellence Awards criteria and assessment methodologies;
- f) To promote and educate in the use of the New Zealand Business Excellence Awards criteria as a benchmark framework for performance improvement;
- g) To establish, maintain and develop relationships with similar organisations in New Zealand and around the world, and to facilitate national leadership and co-ordination of performance excellence where appropriate;
- h) To do all other things incidental or conducive to the attainment of the objects of the Foundation.

2.2 The Foundation shall have the power to invest money; the power to borrow money and the power to acquire, hold and sell property.

3. **MEMBERSHIP**

3.1 The Members of the Foundation shall comprise the following:

- | | |
|--------------------------|--|
| Patrons | Organisations committed to taking a leadership role and encouraging performance excellence within the wider community of organisations in New Zealand which are also committed to achieving high levels of performance excellence within their own organisation. |
| Partners | Organisations committed to achieving high levels of performance excellence within their organisation with the ultimate goal of attaining “world-class” performance levels. |
| Corporate Members | Organisations committed to achieving high levels of performance excellence within their organisation. |
| Associate Members | Individual people committed to assisting New Zealand organisation(s) to achieve high levels of performance excellence. |

3.2 **Admission, Termination and Suspension of Membership**

The Foundation has power:

- a) to elect and admit organisations as Members of The Foundation and
- b) to elect and admit individual people committed to assisting New Zealand organisations (to achieve high levels of performance excellence) as Associate Members of the Foundation and
- c) to act as a disciplinary committee for the purposes of terminating or suspending Members and Associate Members of the Foundation.

3.3 **Cessation of Membership**

A Member may at any time by giving notice in writing to the Chief Executive resign its membership of the Foundation but shall remain liable for any fees, levies, contributions or subscriptions and all arrears due and unpaid at the date of its resignation and for all other monies due by it to the Foundation. If a Member ceases to hold membership of the Foundation for any reason other than the winding up of the Foundation then the Foundation will not be liable to repay to the Member any portion of that Member's subscriptions or other payments it may have made to the Foundation whether in advance or otherwise.

3.4 **Termination of Membership**

Membership of the Foundation will immediately cease in respect of any Member if that Member:

- (a) dies, becomes bankrupt, or, being a company or incorporated body, is wound up, enters into any form of compromise with its creditors or is put into liquidation or statutory management; or
- (b) resigns in accordance with clause 3.3; or
- (c) is expelled from the Foundation by a disciplinary committee constituted under clause 3.2(c); or
- (d) in the opinion of the Board ceases to meet the qualifying requirements for Members as set out in clause 3.1; or
- (e) fails to pay any subscription which the Board subsequently decides by resolution is properly payable; or
- (f) acts in any way that the Board may determine by a 75% majority is or was detrimental to the interests or reputation of the Foundation.

3.5 **Membership Entitlements Not Transferable**

Any rights, privileges or obligations which a person has by reason of being a Member are not capable of being transferred to another person and terminate upon cessation of the person's membership.

4. **GENERAL MEETINGS OF THE FOUNDATION**

- 4.1 Meetings of Members of the Foundation for the transaction of business and the consideration of matters relating to that direction and management of the affairs of the Foundation must be either annual general meetings or special general meetings.
- 4.2 The annual general meeting must be held in each year within 6 months of the end of the financial year.
- 4.3 The business of the annual general meeting is to receive and consider:
- a) The Report of the Board on the affairs of the Foundation for the past financial year.
 - b) The Report of the Chief Executive of the Foundation on the strategic performance of the Foundation.
 - c) The accounts made up to the previous 31st day of December (which accounts must be signed by the Chairman the Chief Executive and by the auditor).
 - d) The meeting must also appoint an auditor for the ensuing year.
 - e) The Chairman must report the results of the annual election of members of the Board.
- 4.4 A Member wishing to bring any motion before the meeting must give written notice thereof to the Chief Executive of the Foundation 30 days before the date of the meeting and no such motion may come before the meeting unless notice thereof has been so given. No other business can be considered unless it is specified in the notice convening the meeting, except business that is deemed a matter of extreme urgency by a majority of the Members assembled or be expressly authorised by the Rules.
- 4.5 The Board may at any time, and must upon a requisition signed by not less than one quarter of the current Members of the Foundation (or if the number of the Members is not a multiple of 4 then the number nearest to one quarter), within 14 days of the receipt of such requisition, proceed to convene a special general meeting of the Foundation. Every such requisition and the corresponding notice calling the meeting must specify the purpose for which such meeting is requisitioned or called. No other business can be considered at such meeting.

- 4.6 General meetings of the Foundation, whether annual or special, must be held at such times and at such places as The Board must from time to time determine. Not less than 14 days' notice of any general meetings, specifying the day, hour and place of the meetings, and the general nature of the business to be dealt with, must be given to the Members in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Foundation in general meeting, but the non-receipt of such notice by any member will not invalidate the proceedings of any general meeting. In computing the "14 days" the date of posting the notice and the date of holding the meeting are to be excluded.
- 4.7 Minutes must be made of all resolutions and proceedings of general meetings of the Foundation.

5 PROCEEDINGS AT GENERAL MEETINGS OF THE FOUNDATION

- 5.1 At every annual or special general meeting one third of the Members present personally or by proxy (or if the number of the Members is not a multiple of 3 then the number nearest to one third) and entitled to vote shall form a quorum. If at any such meeting a quorum be not present within half an hour of the time appointed for holding the meeting, the meeting, if convened upon the requisition of Members, must be dissolved. In any other case it will stand adjourned to the same day in the next week at the same time and place or to such other day not being more than 14 days after such meeting at such time and place as the chairperson of the meeting may appoint, and if at such adjourned meeting a quorum is not present, those Members who are present will form a quorum and may transact the business for which the meeting was called.
- 5.2 The Chairman by virtue of his or her office or in his or her absence the Acting Chairman must take the chair or in the absence of the Chairman and Acting Chairman or, if no one of them is willing to act, a Board member must be chosen to take the chair at every general meeting of the Foundation and if at any meeting no person entitled to take the chair is present within 15 minutes after the time appointed for holding such meetings or if all such persons decline to take the chair, then Members present personally or by proxy must choose one of their number to be chairperson.
- 5.3 The chairperson of a general meeting of the Foundation may with the consent of the meeting adjourn it from time to time and from place to place, but no business can be transacted at any adjourned meeting other than business unfinished at the meeting at which the adjournment took place.
- 5.4 Each motion submitted to a meeting must be decided in the first instance on the voices, or, if demanded, by a show of hands and in the case of equality of votes the chairperson must both on a show of hands and at a poll have a casting vote in addition to the vote to which he or she may be entitled as a member.

- 5.5 At any time unless a poll is demanded by at least one third of the Members present personally or by proxy (or if the number of Members is not a multiple of 3 then the number nearest to one third) and entitled to vote at the meeting a declaration by the chairperson that a resolution has been carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the books of proceedings of the Foundation will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 5.6 If a poll is demanded as aforesaid it must be taken in such a manner and at such time and place as the chairperson of the meeting directs and either at once or after an adjournment or otherwise and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll will not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded. The demand for a poll may be withdrawn only by consent of the meeting. Any poll duly demanded on the election of a chairperson of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.

6. **VOTES FOR MEMBERS**

- 6.1 Every Member has one (1) vote.
- 6.2 Votes may be given personally or by proxy.
- 6.3 The instrument appointing a proxy must be in writing under the duly authorised hand of the appointor and no organisation can be appointed a proxy who is not a member of the Foundation and qualified to vote. Such instrument of proxy may be available only for the meeting named therein or for any adjournment of such meeting.
- 6.4 Every instrument of proxy must be in the form or to the effect following and with such variations in any particular case as The Board accepts:

We..... of being a member of the New Zealand National Quality Awards Foundation hereby appoint or failing that organisation (each of whom is a member qualified to vote) as our proxy to vote for us and on our behalf at the annual (or special) general meeting to be held on the day of and at any adjournment thereof.

Dated this day of 20

Witness

Signature of Member

Such form of proxy may also be modified to afford Members an opportunity for voting for or against a resolution in which event the above form must be modified in the following manner or in a manner as near thereto as the circumstances admit by the addition of the following:

*This form is to be used *in favour of the Resolution
against

*Unless otherwise instructed, the proxy will vote as he or she thinks fit.

*Strike out whichever is not desired.

- 6.5 The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A vote given in accordance with the terms on an instrument of proxy will be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, if no notice in writing of such death, insanity, or revocation has been received by the Chief Executive at the place referred to in Rule 6.6 before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 6.6 The instrument appointing a proxy must be handed to or forwarded so as to be received by the Chief Executive or be deposited at an office specified by The Board situated in the city where the meeting of the Foundation is to be held not less than 24 hours before the time of holding the meetings or adjourned meeting as the case may be at which the person named in such instrument proposes to vote.
- 6.7 No Member is entitled to be present or vote at any meetings on any question, either personally or by proxy, or as proxy for another member at any meetings, or upon any poll or to be reckoned in a quorum, while it is under any pecuniary liability to the Foundation which has existed for 3 months or longer.
- 6.8 Any Member of the Foundation may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Foundation and the person so authorised shall be entitled to exercise the same powers on behalf of the member which he or she represents as that member has as a member of the Foundation.

7. **MANAGEMENT OF THE FOUNDATION**

7.1 **The Board**

The governance and management of the Foundation shall be vested in The Board.

- a) The Board shall consist of at least six (6) and no more than twelve (12) elected members including the chairman, together with such further members (if any) as The Board may from time to time by simple resolution co-opt up to a maximum of

three additional persons for such term not exceeding 1 year and for such general or special purposes as The Board may see fit.

- b) A co-opted Boardmember, being a representative of a Member, has the same rights, powers and status as any other Boardmember.

7.2 **Election of the Chairman of The Board**

A Chairman is to be elected annually by the members of The Board from among the members of their own body, at a meeting of The Board to be held as soon as practicable after the annual general meeting. The Board may elect a Chairman of The Board on such terms as it may determine at its discretion from time to time. For the purposes of this Rule, a term of office is the period from the date of the election of officers in one year to the date of the election of officers in the following year.

7.3 **Eligibility for Nomination to the Board**

Any Member is eligible to nominate a representative of a Member for election or appointment to The Board provided that such representative is the most senior person within a Member organisation or a member of the senior management team of the Member.

7.4 **Retirement from The Board**

- a) At the first annual general meeting of the Foundation and at all subsequent annual general meetings one third of the members of The Board then in Office or if the number of the members of The Board is not a multiple of three then the number nearest one third shall retire and the meeting shall elect new members of The Board to replace those retiring. A retiring Board member shall be eligible for re-election and shall continue in office until the new Board is elected. The members of The Board to retire in each year shall be those who have been longest in office, but as between those who became members on the same day those to retire shall (unless they otherwise agree among themselves) be determined by ballot.
- b) The Board shall be entitled to approve the payment or reimbursement to any member or members of The Board of expenses, fees and outlays incurred by such Trustees in performance of their obligations, duties and responsibilities as Trustees of the Foundation.

7.5 **Nomination for Election**

A member (not being a retiring Board member) will not be qualified for election as a Board member unless a nomination paper, in the form prescribed by The Board, is lodged with the Chief Executive 30 days before the date for the election. The nomination paper must be signed by 2 Members qualified to vote at such elections.

7.6 **Vacancies on The Board**

- a) Any vacancy occurring on The Board between one annual general meeting of the Foundation and the next and any vacancy left open at an annual election of members of The Board may be filled by The Board. A person appointed to fill such vacancy is subject to retirement at the same time as if he or she had become a Board member on the day on which the member in whose place he or she is appointed was last elected a Board member.
- b) The continuing members of The Board may act notwithstanding any vacancy in their body, provided that not less than five (5) of them have been elected in accordance with the provisions herein.
- c) The office of a Board member must be vacated:
 - i. If the organisation which he or she represents in respect of the Foundation ceases to be a member of the Foundation, unless he or she is co-opted by The Board under Rules 7.1(a) or 7.6(a);
 - ii. If he or she resigns his or her seat on The Board;
 - iii. If he or she is absent from 4 consecutive meetings without the consent of The Board;
 - iv. If he or she or the organisation which he or she represents in respect of the Foundation becomes bankrupt or insolvent or makes any assignment or composition for the benefit of his her or its creditors or takes or attempts to take the benefit of any statutory provision for the liquidation of his her or its affairs and fails to satisfy The Board when required that his her or its inability to pay his her or its debts arose from misfortune and that no discreditable conduct can be imputed to him her or it in connection therewith;
 - v. If he or she becomes of unsound mind;
 - vi. If he or she becomes the Chief Executive of the Foundation;
 - vii. If he or she is convicted by any competent tribunal of an offence which, in the reasonable opinion of The Board, renders him or her unfit to be a Board member.

7.7 **Vacancies**

Any vacancy in the office of Chairman by death, retirement or otherwise before their term of office has expired, is to be filled by The Board and such appointment will hold good until the expiration of the term in which the vacancy had occurred.

7.8. **Special Appointments to the Board**

The Board may from time to time appoint a person or persons to the Board from outside the Foundation's membership where:

- a) it is felt that the individual concerned is able to make a significant contribution to the work of the Foundation; and,
- b) the total number of Board-appointed Board members remains less than the number of elected Board members.

Any such appointee shall, for the term of their appointment:

- c) be afforded the same voting rights as an elected Board member; and
- d) be deemed a Member of the Foundation and subject to the same Rules as any other Member of the Foundation or elected Board member, excepting that:
 - i their appointment is subject to Board approval rather than election; and
 - ii. they may be exempt, at the Board's discretion, from paying a Membership Fee."

8. **POWERS AND DUTIES OF THE BOARD**

8.1 Subject to these Rules the management and control of the Foundation and of the funds under its control must be vested in The Board which in addition to the powers and authorities expressly conferred on it by these Rules may exercise all such powers and do all such acts and things as may be exercised and done by the Foundation and which are not hereby expressly directed or required to be exercised or done by the Foundation in general meeting. The Board must furthermore exercise all such powers and do all such acts and things as may be delegated to it by the Foundation.

8.2 Without prejudice to the general powers conferred by the Rules, The Board has the following powers:

- a) It may establish branches, centres or agencies at such places in New Zealand as it may from time to time determine. It may make, vary and repeal regulations for defining and regulating such branches, centres or agencies. It may from time to time delegate to any duly authorised representative of any Member or Members of the Foundation (not being less than 3) such powers, authorities and discretions as it thinks fit for the purpose of carrying on the business of such branches, centres or agencies, including power to keep a sub-register of Members and it may place on any such sub-register such of the Members of the Foundation as it may think fit and may from time to time remove therefrom such Members or any of them. Any delegation made by The Board may at any time be revoked by it.
- b) It may found prizes or establish scholarships for students with such conditions attached as it may think fit.

- c) It may at its discretion directly or indirectly appoint, remove or suspend such officers, clerks, agents and servants for or from such permanent, temporary or special services as it may from time to time think fit and may determine their duties and fix their salaries or emoluments and may require security in such instances and to such amount as it shall think fit. It may also appoint from time to time the Bankers and legal advisers of the Foundation.
- d) It may purchase, lease, rent, hold and/or furnish any building or premises for the use of Members of the Foundation and may from time to time dispose of some or any part thereof.
- e) It may take cognisance of anything affecting the Foundation and will have power to bring before the Foundation or general meetings of the Foundation any matters which it considers material to the Foundation and may make any recommendation in relation thereto.
- f) It may provide a written code of ethics.
- g) The Foundation may institute, conduct, defend, compound or abandon any legal proceedings by and against the Foundation or its officers or otherwise concerning the affairs of the Foundation and also may compound and allow a time for payments or satisfaction of any debts due or of any claim or demand by or against the Foundation in so far as it may concern the Foundation.
- h) It may make and from time to time amend, enlarge or revoke regulations ancillary to but not inconsistent with these Rules whether the same be expressed among its powers or not and it may from time to time prescribe all forms which it may consider necessary or expedient for the purpose of carrying out its duties.
- i) It may publish or approve and superintend the publication of journals, books and papers and utilise any other means of communication either by the Foundation or by one of its branches and centres.
- j) It shall make and give receipts, releases and other discharges for monies payable to the Foundation and for the claims and demands of the Foundation.
- k) It shall approve accounting and financial policies appropriate to the proper stewardship of Foundation funds.
- l) The Board shall have the powers of investment conferred on trustees by section 13A(1) of the Trustee Act 1956,
- m) In addition but without limitation of the provisions of Clause 8.2(l) hereof, the Board may invest all or any of the funds of The Foundation either alone or in common with other person or persons, in all or any of the following investments:
 - i) the stock, funds or other securities of the New Zealand Government; or
 - ii) interest bearing deposit accounts with any bank operating in New Zealand;

- n) The Board may hold all or any part of the funds of The Foundation not invested in accordance with Rule 8.2(m) for any period or periods (as they see fit).
 - o) Notwithstanding the provisions of Section 13C of the Trustee Act 1956 and the likelihood that the Board will from time to time include persons whose profession, employment or business is or includes acting as a Trustee or investing money on behalf of others, it is hereby declared that the care, diligence and skill to be exercised by the Board in exercising any power of investment shall not be that required of Trustees by the said Section 13C but shall at all times be the care, diligence and skill that a prudent person or business would exercise in managing the affairs of others."
 - p) It may delegate the Chief Executive such of its powers and duties as it thinks proper.
 - q) Insofar as The Board has funds to invest other than by lodgement to an account with a Bank, it may appoint a trustee or trustees either from its own officers, members of The Board and ordinary Members or otherwise and including if it seems fit a corporate body to acquire and hold upon trust for the Foundation at The Board's discretion the securities or other property, real or personal, which The Board may decide should be the subject of investment of such funds.
- 8.3 Between meetings of The Board the Chairman may exercise the powers contained in Rule 8.2c, provided that any action taken by the Chairman under that Rule will be subject to ratification by The Board and must be submitted to The Board by the Chairman at the first available opportunity.
- 8.4 The registered office of the Foundation is to be situated at Level 3, 81 Grafton Road, Grafton, Auckland 1010 or as The Board may from time to time determine.
- 8.5 The Board has the power to make, alter or cancel bylaws as not inconsistent with these Rules for the conduct and behaviour of Members or any other matter related to the affairs of the Foundation. Bylaws will take effect and become binding on all Members 14 days after notice of the bylaws has been given by circular to all Members of the Foundation, unless within that time a written notice of objection signed by 3 Members is received by the Chief Executive, in which case such notice is deemed to be a requisition for the purpose of convening a special general meeting pursuant to Rule 4.6.
- 8.6 The Board may establish a library or libraries for the use of Members and may accept donations of or may purchase books, reports, statistics, accounts, papers, maps, instruments and materials of interest to Members, and may pay for those purchased out of the funds of the Foundation.
9. **PROCEEDINGS OF THE BOARD OF THE FOUNDATION**
- 9.1 The Board may meet, adjourn and otherwise regulate its meetings as it shall think fit provided that it shall meet at least twice each year. Four members (including the Chairman) will form a quorum at any meeting of The Board.

- 9.2 A meeting of The Board must be convened at any time upon request of the Chairman or of such number of the members of The Board as is sufficient to form a quorum.
- 9.3 Questions arising at any meetings of The Board must be decided by the majority of the votes recorded and each Boardmember present personally or by proxy has one (1) vote. In cases of equality of voting the Chairman of the meeting has a second or casting vote.
- 9.4 At all meetings of The Board the Chairman or in his or her absence an Acting Chairman will preside as chairman and in the absence of the Chairman and Acting Chairman a Chairman is to be elected from among the members of The Board.
- 9.5 A meeting of The Board for the time being at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in The Board by any means whatsoever.
- 9.6 The Board may appoint committees from among its Members (or from among other Member organisations of the Foundation who are not Members of The Board) and may fix the quorum thereof, and may delegate any of its powers to any such committees, and may make rules for regulating the proceedings of the committees. The Chairman must be ex officio a member of all committees. Each such committee has the right to co-opt such person or persons as it may think fit to be a Member or Members of such committee and with or without a right to vote as it may decide but so that the majority of Members of such committee must be Members of the Foundation and so also that (unless otherwise sanctioned by The Board) the combined voting power of members of The Board on such committee must exceed the combined voting power of the other members of the committee.
- 9.7 For the purpose of these Rules communication by telephone or by such other electronic data transfer media as may be agreed to by The Board from time to time by one or more Trustees with the Chairman or the Chief Executive during or in connection with a properly convened meeting of The Board and whether or not any one or more of the Trustees is out of New Zealand, shall be deemed to constitute a meeting of The Board and all the provisions in these Rules as to meetings of The Board shall apply provided that all Trustees for the time being entitled to receive notice of a meeting of The Board have received notice of the meeting held in accordance with this Rule.

For the purpose of Rule 9.1 a Trustee or Trustees communicating with a meeting of The Board pursuant to Rule 9.7 shall be presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the Chairman to leave such a meeting.

- 9.8 A resolution in writing signed by 75% of the members of The Board is valid and effectual as if it had been passed at a meeting of The Board duly called and constituted. A copy thereof must however be forthwith forwarded to each Boardmember.
- 9.9 A Boardmember may vote by proxy at any meeting of The Board on condition that such proxy is a Boardmember and has been appointed by writing under the hand of the appointor. The appointment must be for a particular meeting and/or for any adjournment of such meeting.

9.10 Minutes must be kept of meetings of The Board and meetings of Committees.

10. **EXECUTIVE COMMITTEE**

The Board may from time to time delegate such of its powers and functions as may be lawfully delegated to an Executive Committee comprising the Chairman and two other Members of the Board. The Executive Committee shall have a quorum of three and all resolutions of the Executive Committee will be tabled at the next Board Meeting. Any decision taken by the Executive Committee shall be within the approved Board Policy.

11. **CHIEF EXECUTIVE OF THE FOUNDATION**

11.1 The Board may appoint a Chief Executive of The Foundation who shall be employed for such term and on such conditions as The Foundation may determine.

11.2 The Chief Executive of The Foundation shall be under the direction of The Board and shall be responsible for the day to day management of the affairs of The Foundation in accordance with these Rules and within such constraints as may be imposed by the Board.

12. **FUNDS**

12.1 The income and property of the Foundation whence ever derived shall be applied solely towards the promotion of the objects of the Foundation as set forth herein and no portion thereof shall be paid or transferred, directly or indirectly for any other purpose.

12.2 All moneys received on account of the Foundation forthwith after receipt are to be paid into the account of the Foundation with its Bankers. The Board may make and give receipts, releases and discharges for monies payable to the Foundation and for the claims and demands of the Foundation.

12.3 The Board may pay such amounts as it may from time to time determine and generally it may pay or authorise its officers to pay or deal with all funds under its control in such manner in all respects as it may from time to time decide.

12.4

a) All cheques drawn upon the Bankers of the Foundation must be signed in such manner and by such persons as The Board may from time to time determine.

b) Cheques or other negotiable instruments paid or payable to the Bankers of the Foundation for collection requiring the endorsement of the Foundation shall be endorsed by such person or persons as the Board from time to time appoints.

- 12.5 The Chief Executive or a nominated Boardmember must keep, or cause to be kept, a proper account of the income and expenditure of the Foundation, and of the matters in respect of which such income and expenditure arises and takes place respectively and of the property, credits and liabilities of the Foundation, in books to be provided for that purpose, and must produce the account books, properly written up, when required by The Board.
- 12.6 Once at least in every year the accounts will be prepared in compliance with generally accepted accounting practice in New Zealand for the preceding year ended 31 December. An abstract of the accounts is to be printed and issued to every Member, together with the notice of the annual general meeting. Should an auditor be appointed, he or she must be a member of the Institute of Chartered Accountants of New Zealand and hold a public practising certificate. The auditor should not be a member of the Foundation. His or her remuneration may be determined by The Board or by the Chief Executive. The Board has power to fill any casual vacancy in the office of auditor.

13 **NOTICES**

- 13.1 A notice may be served by the Foundation upon any Member either personally or by sending it through the post in a prepaid letter, envelope or wrapper addressed to such a Member at its registered place of address.
- 13.2 Any notice sent by post by The Board or by the Chief Executive or other officer of the Foundation to any Member thereof is deemed to have been served on the day following that on which the letter, envelope or wrapper containing the same is posted and in proving such service it is sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post office. A certificate in writing signed by any Chief Executive or other officer of the Foundation that the letter, envelope or wrapper containing the notice was so addressed and posted is conclusive evidence thereof.

14 **PRIVILEGED COMMUNICATIONS**

- 14.1 All communications, correspondence, reports, minutes and other papers and documents relevant to any application to The Board or to the admission or advancement of Members including the reports of the evaluators or to the suspension or forfeiture of membership of any Member is privileged and confidential and may not be passed out of the custody of the proper officer nor may any of the contents be disclosed outside the Foundation except on the express authority of the Foundation or The Board (as the case may be) as recorded in the minutes.

15 **INDEMNITY**

- 15.1 The members of The Board, auditor and Chief Executive and other officers must be indemnified by the Foundation from all losses and expenses incurred by them in or about the discharge of their respective duties except such as result from their own respective wilful default.

15.2 No Boardmember, auditor, Chief Executive or other officer is liable for the acts or defaults of any other Boardmember, auditor, Chief Executive or other officer, or for any loss or expense happening to the Foundation, unless it happens from his or her own wilful default.

16. **ALTERATION OF RULES**

16.1 These Rules or any of them may be amended, revoked or added to at either a special general meeting or the Annual General meeting of Members of the Foundation by a resolution passed at such meeting by a majority of the Members present and voting thereat either personally or by proxy provided that notice of motion specifying the alteration(s) to be proposed must have been lodged with the Chief Executive and in the case of a special general meeting must first have received the approval of The Board before a special general meeting shall be called.

16.2 Notice of such meeting and of the proposed alteration must be sent by post to the registered address of each Member at least 21 days before the date fixed for the meeting.

16.3 Provided however that no such amendment revocation or variation shall be made if the effect thereof would be to deprive the Foundation of its character as a charitable trust, whether pursuant to the Charitable Trusts Act 1957 or the Income Tax Act 1994, or any statute or regulation enacted in substitution thereof or having a similar effect thereto, or pursuant to any other statute or rule of law.

17. **INTELLECTUAL PROPERTY**

The Foundation will own all rights to and interest in any patents, designs, brands, logos, trademarks, copyright, know how, trade secrets and other proprietary rights (whether capable of protection by registration or not) in respect of any technology, concept, idea, software programme, specification, formula, drawing, design, system, process, style or other matter or thing created by:

- a) The Foundation;
- b) Any employee of The Foundation;
- c) Any Boardmember of The Foundation acting in his or her capacity as a Boardmember of The Foundation;
- d) Any other person whether corporate or not commissioned by The Foundation to create any original work of the type set out above.

18. **INTERESTED TRUSTEE OR BOARD MEMBER**

18.1 Any Trustee or Board member who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any concerned or involved, shall disclose the nature and extent of his/her interest to the other Trustees or Board members and shall not take any part whatever in any deliberations of the Trustees or Board Members concerning any matter in which he/she is or may be interested other than as a Trustee or Board Member of the Trust.

19. **RESTRICTIONS ON BENEFITS TO AND INFLUENCE BY INTERESTED PERSONS**

19.1 Notwithstanding anything contained or implied in this deed, any person who is:

- a) A Settlor, Trustee or Board Member of the Trust;
- b) Shareholder or director of any company carrying on any business of the Trust.
- c) A Settlor, Trustee or Board Member of any trust which is a shareholder of any company carrying on any business of the Trust;
- d) An associated person as defined by the Income Tax Act 1994 (or any statutory amendment or replacement of that Act) of any such Settlor, Board Member, Trustee, Shareholder or Director;

shall not be 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 income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

A person who in the course of and as part of the carrying on of his/her business of a professional public practice shall not by reason only of his/her rendering professional services to the Trust or any company by which any business of the Trust is carried on be in breach of the terms of this clause.

20. **SEAL**

20.1 The Foundation must provide a common seal which will remain in the custody of the Chief Executive or such other person as may be nominated by The Board. The use of the seal can be authorised only by resolution of The Board and its application must be witnessed by any two (2) of the Chairman, the Acting Chairman, a Boardmember, and Chief Executive jointly; provided however, that the Chairman may authorise the use and affixing of the Common Seal provided that details of each document sealed pursuant to this proviso shall be given to The Board meeting next succeeding each such sealing for ratification by The Board.

20.2 Every application of the seal must be recorded in a register kept for that purpose and a copy of every document to which the seal has been affixed must be kept together with the register.

21. **WINDING-UP**

- 21.1 If upon the winding up of the Foundation there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the Members of the Foundation but shall transfer or pass to any such object or purposes within New Zealand which is charitable according to the law of New Zealand.