



HITO

Constitution

Incorporated Society No. 1120966

Adopted at the Annual General Meeting
on **19 March** 2012

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HITO Constitution

PART I – OBJECTS AND POWERS

1. Name

- 1.1 The name of the incorporated society is the New Zealand Hairdressing Industry Training Organisation Incorporated, also known as HITO, or any other name as determined by the Board.

2. Status

- 2.1 HITO is, for the time being, recognised under the Industry Training Act 1992 as an Industry Training Organisation (“ITO”).

3. Registered Office

- 3.1 The registered office of HITO shall be at such place in New Zealand as determined by the Board from time to time.

4. Objects

- 4.1 The objects of HITO are to develop, promote and manage training and education of the Industries for the protection and benefit of the New Zealand public and those involved in the Industries in accordance with the Industry Training Act 1992, and in particular to:
- a. set national skill standards for the Industries;
 - b. develop arrangements for the delivery of training (both on and off-job training) for the Industries, including, but not limited to, developing training packages for employers;
 - c. arrange the monitoring of training for the Industries;
 - d. arrange for the assessment of those participating in training in the Industries;
 - e. provide leadership within the Industries on matters relating to skill and training needs by:
 - i. identifying current and future skill needs;
 - ii. developing strategic training plans to assist the Industries to meet those needs; and
 - iii. promoting training that will meet those needs to employers and employees; and

- f. liaise with the Tertiary Education Commission, the New Zealand Qualifications Authority, the Education and Training Support Agency, and other ITOs.

5. Powers

- 5.1 Subject to this Constitution, the powers of HITO are to:
- a. make, alter, rescind or enforce this Constitution, and any Regulations, rules, policies or procedures for the governance, management and operation of HITO;
 - b. establish a Board, commissions, committees, forums, and other groups, including consultative groups, and to delegate its powers and functions to such groups;
 - c. enter into, manage, and terminate contracts or other arrangements with employees, Members, and other persons and organisations;
 - d. purchase, lease, hire or otherwise acquire, hold, manage, maintain, insure, sell, or otherwise deal with property and other rights, privileges and licences;
 - e. control and raise money including borrow, invest, loan or advance monies and to secure the payment of such money by way of mortgage or charge over all or part of any of its property and enter into guarantees;
 - f. sell, lease, mortgage, charge or otherwise dispose of any property of HITO and grant such rights and privileges over such property as it considers appropriate;
 - g. determine, raise and receive money by subscriptions, fees, levies, donations, government funding, or otherwise;
 - h. produce, develop, create, own, licence and otherwise exploit, use and protect Intellectual Property;
 - i. conduct reviews of training in the Industries and the delivery of such training;
 - j. undertake research of and about the Industries and related matters to fulfil the Objects of HITO;
 - k. establish, maintain and have an interest in corporate or other entities to carry on and conduct all or any part of the affairs of HITO and for that purpose, to utilise any of the assets of or held on behalf of HITO;
 - l. print and publish any newspapers, periodicals, books or leaflets and develop and implement any computer systems or software packages that HITO may consider desirable for the promotion of its Objects;
 - m. communicate with Members and stakeholders in any medium HITO considers appropriate;
 - n. purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more companies, institutions, incorporated societies or organisations

whose activities or objects are similar to those of HITO, or with which HITO is authorised to amalgamate or generally for any purpose designed to benefit HITO;

- o. be a member of, affiliate or be associated in any other way with, any organisation which has objects which are similar, in whole or in part, to the Objects of HITO; and
- p. do any other acts or things which further the Objects of HITO, provided that the above powers shall not limit the rights and powers of HITO as both an incorporated society under the Incorporated Societies Act 1908 and an ITO under the Industry Training Act 1992.

PART II - MEMBERSHIP

6. Categories of Members

- 6.1 Subject to Rule 34 (Transitional Arrangements), the Members of HITO shall be:
- a. **Employer Members:** as described in Rule 7.
 - b. **Association Members:** as described in Rule 8.
 - c. **Other Members:** as described in Rule 9.
- 6.2 For the avoidance of doubt, a person, Organisation (including other organisations) or Sole Business Operator shall only be entitled to be a Member of HITO in one membership category at any one time.
- 6.3 The Board shall consider each application for membership and accept or decline it in its absolute discretion. In so doing, the Board shall be satisfied that the applicant:
- a. meets the criteria for membership for the category of membership in which the application is made, as set out in this Constitution;
 - b. promotes and supports the Objects of HITO; and
 - c. has not acted in a manner which the Board considers could (if the applicant had been a Member) have been regarded as unbecoming of a Member, or which may be prejudicial to the Objects and interests of HITO, and/or any of the Industries, or which could have brought HITO or an Industry or the Industries into disrepute.

7. Employer Members

- 7.1 **Criteria:** An Employer is either:
- a. an Organisation that employs or contracts one or more persons to provide Retail Services in an Industry or the Industries; or
 - b. a person who is a Sole Business Operator (who may or may not employ or contract other people) and provides Retail Services in an Industry or the Industries;

and in either Rule 7.1a or Rule 7.1b is registered with the Inland Revenue Department.

7.2 **Process for Application:** An Employer that wishes to be an Employer Member of HITO shall either:

- a. enter into a HITO Training Agreement, which shall include agreement to be a Member of HITO; or
- b. apply to the Board, in the manner prescribed by the Board;

and such agreement or application is approved by the Board in accordance with the criteria in Rule 7.1 (Criteria).

7.3 **Multiple Salons:** For the avoidance of doubt, where an Organisation or a Sole Business Owner owns more than one Salon that Organisation or Sole Business Owner shall only be entitled to one membership of HITO.

7.4 **Employer Member Obligations:** In addition to the rights and obligations as a Member under Rule 11 (Member Rights & Obligations), each Employer Member shall:

- a. promote and support the Objects of HITO;
- b. satisfy and maintain the criteria in Rule 7.1 (Criteria) to be an Organisation or Sole Business Owner;
- c. provide membership information to HITO as requested by it;
- d. pay any membership or other fees as determined by the Board in accordance with Rule 12 (Membership & Other Fees);
- e. do all that is reasonably necessary to enable the Objects of HITO to be achieved;
- f. use best endeavours to use and protect the Intellectual Property of HITO in accordance with this Constitution and any agreement with HITO;
- g. act in good faith and with loyalty to HITO to ensure the maintenance and enhancement of HITO and its reputation, and to do so for the collective and mutual benefit of the Members and the Industries; and
- h. operate with, and promote, mutual trust and confidence between HITO and the Members.

7.5 **Employer Member Entitlements:** Employer Members are entitled to:

- a. attend, speak and vote at General Meetings of HITO in accordance with Rule 23 (Voting at General Meetings);
- b. be a proxy for another Employer Member if appointed in accordance with Rule 23.4 (Proxy Voting);
- c. attend meetings of any relevant advisory, consultative group(s) and/or forums established by the Board in accordance with Rule 21 (Advisory Groups, Consultative Groups and Forums); and

- d. receive all general HITO communications and the specific Industry communications relevant to Employer Members.

8. Association Members

- 8.1 **Criteria:** Subject to Rule 34 (Transitional Arrangements), any incorporated not-for-profit, organisation that represents people or organisations in or the interests of, an Industry, or the Industries, may upon application to the Board become an Association Member of HITO.
- 8.2 **Process for Application:** An organisation that wishes to be an Association Member shall apply to the Board, in the manner prescribed by the Board. The application shall be considered and approved by the Board in accordance with the criteria in Rule 8.1 (Criteria).
- 8.3 **Association Member Obligations:** Subject to Rule 34 (Transitional Arrangements) in addition to their rights and obligations as Members as set out in Rule 11 (Member Rights & Obligations), each Association Member shall:
 - a. promote and support the Objects of HITO, this Constitution and any Regulations;
 - b. satisfy and maintain the criteria in Rule 8.1 (Criteria) to be an organisation;
 - c. provide membership information to HITO as requested by it;
 - d. pay any membership or other fees as determined by the Board in accordance with Rule 12 (Membership & Other Fees);
 - e. have a constitution which is not inconsistent with this Constitution as determined by the Board;
 - f. do all that is reasonably necessary to enable the Objects of HITO and the objects of the Association Member to be achieved;
 - g. act in good faith and with loyalty to HITO to ensure the maintenance and enhancement of HITO and the Industries, and its reputation, and to do so for the collective and mutual benefit of the Members and the Industries; and
 - h. operate with, and promote, mutual trust and confidence between HITO and its Members.
- 8.4 **Association Member Entitlements:** Association Members are entitled to:
 - a. appoint a Representative, in accordance with Rule 22.17 (Representatives), to attend and speak at General Meetings but shall have no right to vote;
 - b. be a proxy for one or more Employer Members if appointed in accordance with Rule 23.4 (Proxy Voting);
 - c. attend meetings of any relevant advisory, consultative group(s) and/or forums established by the Board in accordance with Rule 21 (Advisory Groups, Consultative Groups and Forums); and

- d. receive all general HITO communications and the specific Industry communications relevant to Association Members.

8.5 **Merger:** Any Association Member that wishes to merge or otherwise amalgamate with another Association Member shall notify and consult with the Board prior to such merger or amalgamation.

8.6 **Association Member Constitution:** Each Association Member shall, if requested, provide to the Board a copy of its constitution and all amendments to its constitution. The Board may require an Association Member to amend its constitution if it, or any rule within it, is inconsistent with this Constitution.

9. Other Members

9.1 **Other Members:** Subject to Rule 9.2 (Process for Membership), the Other Members of HITO shall be as follows:

- a. **Employee Members:** An Employee Member is an individual who is either employed by or contracted to an employer who provides Retail Services in an Industry or the Industries (whether or not that employer is an Employer Member), and who wishes to be a Member of HITO.
- b. **Trainee Members:** A Trainee Member is an individual who has entered into a HITO Training Agreement with HITO, and who wishes to be a Member of HITO.
- c. **Student Members:** A Student Member is an individual who is enrolled in a Secondary Institution and/or a Tertiary Institution, is not yet employed in an Industry, and who wishes to be a Member of HITO.
- d. **Education Members:** An Education Member is a Secondary Institution, a Tertiary Institution or any other education or training provider accredited by the relevant authority (as determined by the Board), that supplies education and training products or services to the Industry or Industries, and who wishes to be a Member of HITO.
- e. **Corporate Members:** A Corporate Member is an Organisation that supplies and/or manufactures products or services to an Industry, or the Industries, and who wishes to be a Member of HITO.
- f. **Individual Members:** An Individual Member is any individual who has an interest in an Industry, or the Industries, and who wishes to be a Member of HITO.

9.2 **Process for Membership:** A person described in Rule 9.1 shall become:

- a. an Employee Member, Student Member, Education Member, Corporate Member or Individual Member by completing the HITO membership form as prescribed and determined by the Board, and paying any membership or other fees due to HITO; or
- b. a Trainee Member by entering into a HITO Training Agreement, including agreement to be a Member of HITO.

- 9.3 **Obligations of Other Members:** In addition to their rights and obligations as Members as set out in Rule 11 (Member Rights & Obligations), each Other Member shall:
- a. provide membership information to HITO as requested by it;
 - b. if applicable, pay any membership or other fees as determined by the Board in accordance with Rule 12 (Membership & Other Fees);
 - c. do all that is reasonably necessary to enable the Objects of HITO and the objects of the Other Member to be achieved;
 - d. act in good faith and with loyalty to HITO to ensure the maintenance and enhancement of HITO and the Industries, and its reputation, and to do so for the collective and mutual benefit of the Members and the Industries; and
 - e. operate with, and promote, mutual trust and confidence between HITO and its Members.
- 9.4 **Entitlements of Other Members:** In addition to their rights and obligations as Members as set out in Rule 11 (Member Rights & Obligations), Other Members are entitled to:
- a. attend and speak at General Meetings but have no right to vote;
 - b. attend meetings of any relevant advisory, consultative group(s) and/or forums established by the Board in accordance with Rule 21 (Advisory Groups, Consultative Groups and Forums); and
 - c. receive all general HITO communications and any specific Industry communications relevant to Other Members.
- 9.5 **Additional Entitlement of Employee Members and Trainee Members:** In addition to their entitlements as Other Members as set out in Rule 9.4 (Entitlements of Other Members), in accordance with the Industry Training Act 1992, Employee Members and Trainee Members are entitled to elect the Employee Representative on the Board, in accordance with this Constitution.
- 9.6 **Additional Entitlement of Education Members:** In addition to their entitlements as Other Members as set out in Rule 9.4 (Entitlements of Other Members), Education Members are entitled to appoint a Representative, in accordance with Rule 22.17 (Representatives) to attend and speak at General Meetings (at their cost) but shall have no right to vote.
- 9.7 **Additional Entitlement of Corporate Members:** In addition to their entitlements as Other Members as set out in Rule 9.4 (Entitlements of Other Members), Corporate Members are entitled to appoint a Representative, in accordance with Rule 22.17 (Representatives) to attend and speak at General Meetings (at their cost) but shall have no right to vote.

10. **Duration of Membership**

- 10.1 Subject Rule 14 (Resignation & Termination of Membership), the duration of membership for all Members is annual from 1 January to 31 December.

11. Member Rights & Obligations

- 11.1 Members acknowledge and agree that:
- a. this Constitution constitutes a contract between each of them and HITO and they are bound by this Constitution and the Regulations;
 - b. they shall comply with and observe this Constitution and the Regulations and any reasonable determination, resolution or policy, including (but not limited to) any codes regulations or rules of ethics, which may be made or passed by the Board;
 - c. they are subject to the jurisdiction of HITO;
 - d. this Constitution and Regulations are necessary and reasonable for promoting the Objects of HITO;
 - e. this Constitution and Regulations are made in the pursuit of a common object, namely the mutual and collective benefit of HITO, its Members and the Industries; and
 - f. they are entitled to all rights, entitlements, and privileges of membership conferred by this Constitution.

12. Membership & Other Fees

- 12.1 **Membership Fees:** The Board may propose the nature and amount of any membership fee or fees payable by Members to HITO, including the due date for payment and the method(s) for payment of such fees. The Board may also, in its discretion, waive any membership fee or fees payable by Employer Members, Trainee Members and/or Student Members.
- 12.2 **Differing Fees:** For the purposes of determining membership fees, the Board may determine fees for different categories of Members.
- 12.3 **Other Fees:** The Board may determine any other fees or payments in addition to those specified in Rule 12.1, that are payable by Members and others receiving products and services from HITO.
- 12.4 **Levies:** In accordance with the Industry Training Act 1992, the Board may determine training and other levies, in addition to those fees specified in Rule 12.1 and Rule 12.3, that are payable by Members.

13. Register of Members

- 13.1 **Register:** The Chief Executive shall keep and maintain a Register in which shall be entered the full name, address, class of membership, the date of entry of each Member and any other details about each Member as agreed.

- 13.2 **Changes:** All Members shall provide written notice of any change to their details in Rule 13.1 to HITO as soon as reasonably practicable after such change occurring.
- 13.3 **Privacy Act:** HITO shall, in collecting personal information from individuals for the Register, seek the consent of the individual concerned and at all times comply with the Privacy Act 1993.
- 13.4 **Inspection:** Any Member's entry on the Register shall be available for inspection by that Member and the HITO staff and Board Members, upon reasonable request and in compliance with the Privacy Act 1993.

14. Resignation & Termination of Membership

- 14.1 **Resignation of Membership:** A Member that is not in default of any payments as specified in Rule 14.2 (Default in Payments), may resign its membership of HITO by giving not less than 30 days' written notice to HITO.
- 14.2 **Default in Payments:** A Member shall have its membership of HITO terminated if any payments to HITO are due and outstanding. Before such termination can occur HITO must give the Member written notice specifying the payment(s) due and demanding payment by a due date, being not less than seven days from the date of the demand. If payment is not received by the due date HITO shall terminate membership by giving notice of such termination to the Member concerned.
- 14.3 **Other Grounds:** In addition to Rule 14.2 (Default in Payments), a Member may be suspended from membership, terminated from membership or liable to such other penalty as reasonably determined by the Board, if the Board, or any sub-committee of the Board, after reasonable enquiry, considers that the Member:
- a. did not, or is unable to, comply with this Constitution, the Regulations or any policy, resolution or determination of the General Meeting or the Board;
 - b. acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of HITO and/or any of the Industries; or
 - c. brought HITO or an Industry or the Industries into disrepute.
- 14.4 **Procedure:** Before any decision under Rule 14.3 (Other Grounds) is made, the Member concerned:
- a. shall be given no less than 3 days written notice by the Board of the proposal to suspend their membership and;
 - b. shall be given 14 days written notice by the Board of the proposal to terminate their membership, or to impose another penalty; and
 - c. have the right to be present, make submissions and be heard at the Board meeting in which the proposal is to be considered.

- 14.5 **Appeal to SGM:** Any Member whose membership is terminated under Rule 14.3 (Other Grounds) may appeal the decision to a SGM called for that purpose. The appeal shall be allowed if a Special Resolution is passed at the SGM in favour of such appeal.
- 14.6 **Reinstatement:** Membership which has been terminated under this Constitution may be reinstated at the discretion of the Members by Special Resolution at a General Meeting.
- 14.7 **Consequences of Termination of Membership:** Where any Member, ceases to be a Member of HITO, that person shall forfeit all rights, in and claims upon HITO and its property including Intellectual Property, and shall not use any HITO property including Intellectual Property. That Member shall also not be entitled to any other rights, entitlements or privileges to which it would otherwise have been entitled. These consequences shall survive the termination of such membership.

PART III – GOVERNANCE

15. Board Composition & Membership

- 15.1 **Role of the Board:** The Board is responsible for governing HITO and, subject to this Constitution, may exercise all the powers of HITO and do all things that are not expressly required to be undertaken at a General Meeting.
- 15.2 **Membership of the Board:** Except for the Inaugural Board (Rule 33.1), the Board shall comprise of:
- a. an independent Chairperson (as described in Rule 15.3) appointed in accordance with Rule 19 (Appointment and Election of Board Members);
 - b. two people appointed in accordance with Rule 19 (Appointment and Election of Board Members);
 - c. three people elected at the AGM, under Rule 19 (Appointment and Election of Board Members) or in the case of a casual vacancy (Rule 15.12) at an SGM; and
 - d. an Employee Representative elected in accordance with the process approved by the Board, which process shall be determined following consultation with the Employee Members, Trainee Members, all other employees in the Industry, and any union representing employees in the Industries.
- 15.3 **Chairperson:** The Chairperson shall be independent of HITO which means he/she cannot while in office have, or in the preceding four years prior to commencement of office have had, any material interest or material involvement in an Industry. The Chairperson shall also not be a Member of HITO. The Board Appointments Panel shall determine if an applicant for the position of Chairperson, or the person holding office as Chairperson, meets the requirements in this Rule. The role of the Chairperson is to chair meetings of the Board and to represent the Board. The Chairperson, or his or her nominee, shall have the right to attend any meeting of any Board subcommittee, advisory or other group (including consultative groups) or forum. Subject to Rule 15.12 (Casual Vacancy), if the Chairperson,

or his or her nominee, is unavailable for any reason another Board Member appointed by the Board shall undertake the Chairperson's role during the period of unavailability.

- 15.4 **Employee Representative:** The Employee Representative shall be elected for the collective representation of employees in the Industry or Industries in accordance with Industry Training Act 1992. The term of office for the Employee Representative shall be two years from the date of election held in accordance with the process described in Rule 15.2d. An Employee Representative shall be eligible to serve a maximum of two consecutive terms of office. The Employee Representative must be an employee in an Industry at all times during their term of office. If there is a casual vacancy in the position of the Employee Representative under Rule 15.12 (Casual Vacancy) it shall be filled in accordance with the process described in Rule 15.2d.
- 15.5 **Eligibility:** Subject to the Chairperson (appointed in accordance with Rule 15.2a) and Rule 15.6 (Ineligibility), a person seeking appointment, election, or to remain in office as a Board Member shall be eligible to do so whether or not they are a Member of HITO.
- 15.6 **Ineligibility:** The following persons shall not be eligible for appointment, election, or to remain in office as a Board Member:
- a. **Other Position:** a person who holds one of the positions specified in Rule 19.2 (Other Positions).
 - b. **Under 18 Years:** a person who is under the age of 18 years.
 - c. **Bankrupt:** a person who is a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or by any order under section 299 of the Insolvency Act 1967.
 - d. **Dishonesty Offences:** a person who has been convicted of a crime involving dishonesty (within the meaning of the Crimes Act 1961) and has been sentenced for that crime within the last seven years.
 - e. **Conviction:** a person who has been convicted of any offence punishable by a term of imprisonment of two or more years (whether or not a term of imprisonment is imposed) unless that person has obtained a pardon or has served the sentence imposed on them.
 - f. **Disqualified Director:** a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or a charitable entity under the Charities Act 2005.
 - g. **Property Order:** a person who is subject to a property order made that the person is lacking in competence to manage their own affairs under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under the Protection of Personal and Property Rights Act 1988.
 - h. **Incapacity:** a person who becomes mentally incapable as defined in the Protection of Personal and Property Rights Act 1988.

- 15.7 **Suspension of Board Member:** If any Board Member is alleged to have been involved in, or is charged with, or is given notice by the relevant authority of a proposal to make an order or finding against that Board Member of, any of the circumstances described in Rule 15.6c to Rule 15.6h (Ineligibility), the remaining Board Members may, after reasonable enquiry and giving the Board Member concerned the right to be heard, suspend the Board Member from the Board pending the determination of such allegation notice or charge.
- 15.8 **Cessation of Office:** If any of the circumstances listed in Rules 15.6b to 15.6h (inclusive) occur or are found to have occurred to an existing Board Member, that Board Member shall be deemed to have vacated his or her office upon the relevant authority (or Board in the case of Rule 15.6b) making an order or finding against that Board Member of any of those circumstances. If a Board Member holds a position in Rule 19.2 (Other Positions), then upon appointment to that position, that Board Member shall be deemed to have vacated his/her office as a Board Member. This Rule does not limit the right to suspend a Board member under Rule 15.7 (Suspension of Board Member).
- 15.9 **Term of Office:** The term of office for all Board Members (excluding the Employee Representative) shall be three years, commencing at the conclusion of the General Meeting at which their appointment or election is made or effective, and expiring at the conclusion of the third AGM after their appointment or election. All Board Members shall be eligible to serve a maximum of three consecutive terms of office. This Rule is subject to Rule 15.4 (Employee Representative), Rule 15.12 (Casual Vacancy), Rule 15.13 (Removal of Board Member), Rule 33 (Inaugural Board), and the schedule of rotation under Rule 15.10.
- 15.10 **Schedule of Rotation:** Prior to each AGM, the Board shall determine the schedule of rotation so that there is a rotation of two Board Members annually (excluding the Employee Representative) and advise the Chief Executive (who will in turn advise the Members) of the schedule of rotation and the vacancies arising in Board Member positions at the AGM.
- 15.11 **Vacancies:** Subject to Rule 15.4 (Employee Representative), if there is a casual vacancy on the Board under Rule 15.12 (Casual Vacancy) it shall be filled in accordance with this Rule for the balance of the term of office of the vacating Board Member:
- a. If the AGM for the year in which the vacancy arises is scheduled for a date being less than six months from the date the vacancy arose, the remaining Board Members may either appoint a person of their choice to fill the vacancy, or leave the vacancy unfilled until the AGM for that year.
 - b. If the AGM for the year in which the vacancy arises is scheduled for a date being six months or longer from the date the vacancy arose, the following process shall apply:
 - i. for a vacancy of an Appointed Board Member's position, it shall be filled by the Board Appointments Panel in accordance with the procedure in Rule 19 (Appointment and Election of Board Members) and the appointment shall take effect immediately upon notification to the Board Member concerned; or
 - ii. for a vacancy of an Elected Board Member's position, it shall be filled in accordance with the procedure in Rule 19 (Appointment and Election of Board Members), with any modifications necessary as to timing as the Board considers appropriate provided that the Board shall notify the Members of any such modification.

15.12 **Casual Vacancy:** A casual vacancy arises if:

- a. a Board Member resigns from office prior to the expiry of their term of office;
- b. a Board Member dies;
- c. a Board Member is suspended under Rule 15.7 (Suspension), ceases office under Rule 15.8 (Cessation of Office), or is removed under Rule 15.13 (Removal of Board Member);
- d. a Board Member is absent from more than two successive meetings unless leave of absence is granted by the Chairperson, or his or her nominee, or in the case of the Chairperson, the Board as a whole;
- e. a position on the Board is not filled by the Board Appointments Panel (in the case of an Appointed Board Member position) or by the Members at a General Meeting (in the case of an Elected Board Member position); or
- f. the Employee Representative ceases to an employee in an Industry.

15.13 **Removal of Board Member:** Either the Board, or the Employer Members at a General Meeting, may remove any Board Member, or the Board as a whole, before the expiration of their term of office if that Board Member, or the Board as a whole, breaches any of the duties in Rule 16 (Duties & Powers of Board Members). The Board Member, or the Board as a whole, (as the case may be) affected by the proposal to remove them from the Board shall be notified in writing of such proposal and given the opportunity, prior to the Board Meeting or General Meeting, to make submissions in writing to the Board or the Employer Members about the proposal.

16. **Duties & Powers of Board Members**

16.1 **Duties of Board Members:** The duties of each Board Member are to:

- a. at all times act in good faith and in the best interests of HITO;
- b. exercise the powers of the Board for proper purposes;
- c. act, and ensure HITO acts, in accordance with this Constitution and any Regulations;
- d. not agree to, nor cause or allow, the activities of HITO to be carried on in a manner likely to create a substantial risk of serious loss to creditors of HITO;
- e. not agree to HITO incurring any obligations unless the Board Member believes at that time on reasonable grounds that HITO will be able to perform the obligations when it is required to do so;
- f. exercise the care, diligence and skill that a reasonable Board Member would exercise in the same circumstances;

- g. disclose to the Board the nature and extent of any interest in a transaction or proposed transaction as soon as the Board Member becomes aware of the fact that s/he has such interest. For the purposes of this Rule, an interest in a transaction or proposed transaction shall have the same meaning as defined in section 139(1) of the Companies Act 1993 (or any equivalent provision under any replacement legislation). Such interest shall also be recorded on the Board's interests register;
- h. take such other steps as determined by the Board in respect of any interest specified in Rule 16.1g, which may include, without limitation, abstaining from deliberations and/or any vote regarding such interest;
- i. not disclose information that the Board Member would not otherwise have available other than in his or her capacity as a Board Member, to any person, or make use of or act on the information except:
 - i. as agreed by the Board for the purposes of HITO;
 - ii. as required by law; or
 - iii. to persons, or for reasons identical to those specified in sections 145(2) and 145(3) of the Companies Act 1993;
- j. make reasonable efforts to attend all Board Meetings and General Meetings of HITO;
- k. use their best efforts to consult widely with Members and others in the Industries to keep abreast of the issues facing them, provided that this Rule shall not waive the duty of confidentiality in respect of information disclosed to them as Board Members under Rule 16.1i; and
- l. participate in an annual review of the Board's performance.

16.2 **Powers of the Board:** The Board shall have all the powers of HITO, including the power to:

- a. develop and implement strategies, policies and procedures for the administration, promotion and development of the Objects of HITO in the Industries in New Zealand;
- b. appoint a Chief Executive and enter into a contract on such terms and conditions as the Board thinks fit, and, if necessary, terminate such appointment;
- c. delegate such powers as it considers appropriate from the Board to the Chief Executive;
- d. establish such other commissions, subcommittees, forums, and groups, including consultative groups, as it considers appropriate to assist it to carry out its responsibilities, including to fill vacancies of any commissions, committees and other groups which are established by it;
- e. develop and implement prudent policies to protect and enhance finances and property of HITO;
- f. control expenditure and raise funds to fulfil the Objects of HITO and the requirements of the Tertiary Education Commission and/or any other funders;

- g. open and operate in the name of HITO such bank accounts as deemed necessary;
- h. determine any membership or other fees it considers appropriate;
- i. make, repeal or amend any Regulations in accordance with Rule 29 (Regulations), and any policies and procedures as it thinks appropriate, provided that such policies and procedures are not inconsistent with this Constitution;
- j. appoint such persons as it considers appropriate to committees, positions and roles within HITO and determine the terms and conditions of such appointment, (except as otherwise specified in this Constitution or the Regulations), and, if necessary, terminate such appointments;
- k. delegate such powers as it considers appropriate to employees, commissions, committees, forums, or other groups, including consultative groups, appointed by it;
- l. engage, contract or otherwise agree to obtain the assistance or advice of any person or organisation for the Board;
- m. discipline Members as specified under Rules 14 (Resignation & Termination of Membership);
- n. resolve and determine any disputes or matters not provided for in this Constitution; and
- o. do all other acts and things which are within the powers and Objects of HITO and which the Board considers are appropriate.

16.3 **Matters Not Provided For:** If any situation arises that, in the opinion of the Board, is not provided for in the Constitution, the Regulations, or the policies or procedures of HITO, the matter will be determined by the Board.

17. Board Meetings & Procedures

17.1 **Board Meetings:** Board meetings may be called at any time by the Chairperson, or his or her nominee, or four Board Members but generally the Board shall meet at regular intervals as agreed by the Board. Except to the extent specified in this Constitution, the Board shall regulate its own procedure.

17.2 **Meetings using Technology:** Any one or more Board Members may participate in any meeting of the Board and vote on any proposed resolution at a meeting of the Board without being physically present. Board Meetings may occur by telephone, through video conference facilities or by other means of electronic communication (other than electronic mail (e-mail) communication) provided that prior notice of the meeting is given to all Board Members and all persons participating in the meeting are able to hear each other effectively and simultaneously. Participation by any one or more Board Members in this manner at a meeting shall constitute the presence of that Board Member at that meeting.

17.3 **Quorum:** The quorum for a Board meeting shall be four Board Members.

- 17.4 **Voting:** Each Board Member shall have one vote at Board meetings. In the event of an equality of votes the Chairperson, or his or her nominee, shall have both a deliberative and a casting vote. Except for resolutions passed outside of a Board meeting under Rule 17.5 (Resolutions), voting at Board meetings shall be by voice, or upon request of any Board Member, by a show of hands or by a ballot. Proxy and postal voting is not allowed at Board meetings.
- 17.5 **Resolutions:** A resolution in writing signed or consented to by email, facsimile or other form of visible or other electronic communication by six or more Board Members shall be valid as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents in the same form each signed by one or more of the Board Members.
- 17.6 **Expenses:** The Board may, by majority vote, reimburse and/or provide an honorarium to its Board Members for their reasonable expenses incurred in the conduct of HITO's business. Prior to doing so the Board must establish a policy to be applied to the reimbursement or honorarium in consideration for any such expenses which must comply with Rule 26 (Application of Income).

18. Board Appointments Panel

- 18.1 **Composition:** Subject to Rule 18.4 (Board Unable to Appoint) and Rule 33.6 (Inaugural Board Appointments Panel), there shall be a Board Appointments Panel convened as required and shall comprise the following three people:
- a. the Chairperson of the Board, or if s/he is seeking reappointment or re-election to the Board, then another Board Member not seeking re-appointment or re-election to the Board as determined by the Board; and
 - b. a person appointed by an independent professional organisation (as determined by the Board) that is experienced and recognised for its experience in governance and appointment processes of directors in New Zealand; and
 - c. a person, not being a Board Member, who is a Member of HITO and who has experience, knowledge and an understanding of an Industry or the Industries, appointed by the Board.
- 18.2 **Eligibility:** No person will be eligible to be a member of the Board Appointments Panel, or to remain on the Board Appointments Panel, if any of the circumstances listed in Rule 15.6a to 15.6h (inclusive) (Ineligibility) have occurred, or occur to that person, as if every reference to a Board Member in that Rule is to a person seeking to be a member of the Board Appointments Panel. In addition, no member of the Board Appointments Panel may seek appointment or election as a Board Member whilst a member of the Board Appointments Panel.
- 18.3 **Establishment:** If the Board Appointments Panel needs to be convened for the purposes set out in this Constitution, the Chairperson (or the person described in Rule 18.1a) shall notify the Board and the independent professional organisation (as described in Rule 18.1b), of this fact, and require them to submit the name(s) of their appointee(s) as specified in Rule 18.1 (Composition). Upon receipt of these names the Chairperson of the Board (or the person described in Rule 18.1a) shall convene the Board Appointments Panel.

- 18.4 **Board Unable to Appoint:** If the Board as a whole has been removed, resigns en masse or does not have a quorum and is therefore unable appoint the persons described in Rule 18.1, those persons shall be appointed by an independent professional organisation as described in Rule 18.1b.
- 18.5 **Convenor:** The convenor of the Board Appointments Panel shall be the person specified in Rule 18.1a.
- 18.6 **Term of Office:** The members of the Board Appointments Panel shall hold office for the period necessary to fulfil their responsibilities in relation to each vacancy of a Board Member for which the Board Appointments Panel was established. There is no limit to the number of occasions a person can be appointed to the Board Appointments Panel.
- 18.7 **Responsibilities:** The Board Appointments Panel shall be independent of the Board and, subject to Rule 33 (Inaugural Board), shall be responsible for:
- a. identifying and inviting suitable candidates to apply for appointment as Appointed Board Members;
 - b. advertising and inviting members of the public to apply for appointment as Appointed Board Members;
 - c. assessing candidates who have made an application for appointment as Appointed Board Members, (including undertaking such enquiries and holding interviews and meetings as it sees fit);
 - d. deciding if a candidate for the position of Chairperson, or a person in office as Chairperson, is independent in accordance with Rule 15.3 (Chairperson);
 - e. deciding the candidates to be appointed as Appointed Board Members;
 - f. receiving and assessing the applications from candidates for election as Elected Board Members at a General Meeting, (including undertaking such enquiries and holding interviews and meetings as it sees fit);
 - g. recommending to the General Meeting at which any vacancy in the position(s) of Elected Board Member arises, the applicants(s) whom the Board Appointments Panel considers would best suit the position(s), for consideration by those Employer Members at a General Meeting; and
 - h. such other related matters as determined by the Board.
- 18.8 **Relevant Factors:** In determining the Appointed Board Members, and recommending persons to be Elected Board Members, the Board Appointments Panel shall comply with this Constitution and appoint Appointed Board Members and recommend applicants for Elected Board Members based on merit and in so doing shall take into account the following factors about the applicants, and the Board as a whole:
- a. prior governance experience including demonstrated achievement in governance roles;

- b. knowledge of, and experience in, an Industry or the Industries as a whole, and/or ITOs or not for profit organisations generally;
 - c. occupational skills, abilities and experience;
 - d. the need for conflicts of interest to be minimised;
 - e. the need for a wide range of skills and experience on the Board including skills in commerce, finance, marketing, law or business generally; and
 - f. the desire to have a Board that represents the diverse interests of HITO and its Members, including but not limited to, gender, geographical spread of Board Members, age diversity and interests in the Industries.
- 18.9 **Meetings:** The Board Appointments Panel shall meet as and when required and in such manner as it thinks fit.
- 18.10 **Quorum:** The quorum for a meeting of the Board Appointments Panel shall be three members.
- 18.11 **Decisions:** All decisions of the Board Appointments Panel on the appointment of Appointed Board Members and the persons to be recommended as Elected Board Members must be unanimous.
- 18.12 **Conflicts and Confidentiality:** All information received by the Board Appointments Panel, and its deliberations, shall be kept confidential except to the extent required by law. Any member of the Board Appointments Panel who considers s/he may have a potential conflict of interest in considering the appointment, election or otherwise of any applicant, shall declare that potential conflict to the convenor and if the convenor considers it appropriate to do so, s/he may require that member to vacate their position on the Board Appointments Panel. If the convenor considers s/he may have a potential conflict of interest, he or she shall notify the Board and if the Board considers it appropriate to do so, it may require that member to vacate their position on the Board Appointments Panel.
- 18.13 **Vacancies:** Any vacancy that arises in the membership of the Board Appointments Panel shall be filled with a replacement member to be appointed by the Board or the organisation or process that appointed the Board Appointments Panel member for whom the vacancy arises (as specified in Rule 18.1 - Composition).
- 18.14 **Removal:** The Board may remove any member of the Board Appointments Panel if the Board considers, in its sole discretion, that:
- a. the Panel member has a conflict of interest which has not been satisfactorily resolved to the Board's satisfaction by the convenor, or
 - b. there are circumstances which may give rise to a question of bias in the Board Appointment Panel's process, or
 - c. the Panel member has been found by the Board to have brought an Industry, the Industries, or HITO (including any employee or Member) into disrepute; or

- d. any of the circumstances listed in Rule 15.6a to 15.6h (Ineligibility) (inclusive) have occurred to the Panel member.

18.15 **Procedure:** Before removing any member from the Board Appointments Panel, the Board must notify the Panel member of its proposal to remove them and give the Panel member and the other members of the Board Appointments Panel the opportunity to make submissions on the proposed removal.

19. Appointment and Election of Board Members

19.1 Subject to Rule 33 (Inaugural Board), the Board Members (excluding the Employee Representative) shall be appointed and elected as follows:

- a. The Board Appointments Panel shall call for applications for any Board Member positions that are to be vacated due to the expiry of their term of office at an AGM, or that have arisen as a result of a casual vacancy arising under Rule 15.12 (Casual Vacancy):
 - i. at least 90 days prior to the AGM; or
 - ii. in the case of a vacancy arising under Rule 15.11b.i (Vacancies – Appointed Board Members) as soon as practicable; or
 - iii. in the case of a vacancy arising under Rule 15.11b.ii (Vacancies – Elected Board Members) at least 20 days prior to calling the proposed SGM.
- b. Applications for Board Member positions shall be made by applicants in the approved form as determined by the Board (indicating whether they seek to be Appointed Board Members (and if so, whether they seek to be the Chairperson) or Elected Board Members or either) and received at the registered office of HITO:
 - i. not less than 60 days before the date set for the AGM; or
 - ii. in the case of a vacancy arising under Rule 15.11b.i (Vacancies – Appointed Board Members), by a date determined by the Board Appointments Panel; or
 - iii. in the case of a vacancy arising under Rule 15.11b.ii (Vacancies – Elected Board Members), not less than 10 days prior to calling the proposed SGM.
- c. Upon receipt of any applications for vacancies for Board Member(s) positions, the Chief Executive shall refer all the applications to the Board Appointments Panel.
- d. The Board Appointments Panel shall undertake its responsibilities as set out in Rule 18.7 (Responsibilities) and notify the Chief Executive of the Appointed Board Member(s) who are to assume office and any recommended applicant or applicants whom it considers would best suit the vacant positions of Elected Board Members, for consideration at the General Meeting:
 - i. in the case of a vacancy arising due to the expiry of term of office at the AGM, by no later than 30 days prior to the AGM; or

- ii. in the case of a casual vacancy arising under Rule 15.11b.i (Vacancies – Appointed Board Members), as soon as practicable; or
 - iii. in the case of a casual vacancy arising under Rule 15.11b.ii (Vacancies – Elected Board Members) by no later than 21 days prior to the SGM.
- e. Upon receipt of the notification from the Board Appointments Panel in Rule 19.1d.i the Chief Executive shall no later than 21 days before the date of the AGM (in the AGM Agenda), notify the Members of the decision of the Board Appointments Panel regarding any Appointed Board Members it has appointed together with any recommendations of applicants it considers would best suit the vacant positions of Elected Board Members, at the General Meeting.
 - f. Upon receipt of the notification from the Board Appointments Panel in Rule 19.1d.ii the Chief Executive shall as soon as practicable, notify the Members of the decision of the Board Appointments Panel regarding the Appointed Board Member(s) it has appointed.
 - g. Upon receipt of the notification from the Board Appointments Panel in Rule 19.1d.iii the Chief Executive shall no later than 21 days before the date of the SGM (in the Notice of SGM), notify the Members of the decision of the Board Appointments Panel regarding its recommendations of applicants it considers would best suit the vacant positions of Elected Board Members, at the SGM.
 - h. Having considered the Board Appointments Panel's recommendations, if any, the Elected Board Members shall be determined by the Employer Members from amongst all the valid applications for Elected Board Member positions received by HITO (including any applications recommended by the Board Appointments Panel), by Ordinary Resolution at the General Meeting at which the vacant position or positions are to be filled.
- 19.2 **Other Positions:** Applicants for positions as Board Members may not hold or continue to hold, a position as an employee of HITO if they are appointed or elected as a Board Member.

20. Chief Executive

- 20.1 **Role:** There shall be a Chief Executive of HITO who shall be employed for such term and on such conditions as the Board may determine. The Chief Executive shall be under the direction of the Board and shall be responsible for the day-to-day management of HITO in accordance with this Constitution, the Regulations, policies, and procedures of HITO and within such authority and limitations as may be imposed by the Board.
- 20.2 **Attendance at Board Meetings:** The Chief Executive shall attend all Board meetings unless otherwise required by the Board, but shall have no voting rights.

21. Advisory Groups, Consultative Groups and Forums

- 21.1 The Board shall appoint an advisory group for each Industry, which shall report to the Chief Executive and provide HITO with input and feedback on matters affecting the Industry. The composition, powers and procedures of such advisory groups shall be determined by the Board.
- 21.2 In addition, the Board may appoint consultative groups and/or hold forums for Members and/or different categories of Members as it sees fit.

Part IV – GENERAL MEETINGS

22. Meetings of Members

- 22.1 **AGM:** HITO must hold an AGM once every calendar year on a date to be determined by the Board in accordance with the Incorporated Societies Act 1908.
- 22.2 **SGMs:** Any other General Meetings of the Members shall be Special General Meetings.
- 22.3 **Method of General Meeting:** A General Meeting may be held either:
- a. by a number of Employer Members (or their Delegates or Proxies) who constitute a quorum as set out in Rule 22.14 (Quorum) being present in person at the place, date and time appointed for the meeting; or
 - b. subject to this Constitution, by means of audio, or audio and visual, communication by which all persons participating and constituting a quorum can simultaneously hear each other throughout the meeting. Participation by a Delegate or Proxy at a General Meeting held in this manner shall constitute the presence of that person at that meeting.
- 22.4 **Notice of AGM:** The Chief Executive must give at least 120 days written notice of an AGM to all Board Members and Members. The notice shall set out:
- a. the date, time and venue and/or the manner in which the AGM is to be held;
 - b. the date and time by which notification of the Delegate(s), any Members attending (including Representatives), proxy forms, and Postal and Electronic Voting forms for the AGM must be received by the Chief Executive;
 - c. the number of vacancies, if any, in any Board Member positions for which applications are sought;
 - d. the closing date(s) for applications for Appointed Board Members and Elected Board Members, proposed motions (including alterations to the Constitution) and other items of business to be submitted to the Chief Executive; and
 - e. the name of the Returning Officer for that meeting.

- 22.5 **Items of AGM Business:** Not less than 28 days before the date set for the AGM, any proposed motions (including alterations to the Constitution) and other items of business, must be received in writing by the Chief Executive from the Employer Members and/or the Board. Applications for Appointed Board Members and Elected Board Members must be received not less than 60 days before the date set for the AGM as specified in Rule 19.1b.
- 22.6 **Business of AGM:** The following business shall be discussed at each AGM:
- a. the receipt from the Board of an audited annual financial report for the preceding financial year in accordance with Rule 25 (Annual Report);
 - b. the election of any vacancies arising in the positions of Elected Board Members;
 - c. the appointment of scrutineers for the meeting;
 - d. any motion(s) proposing to alter this Constitution; and
 - e. any other items of business that have been properly submitted for consideration at the AGM. Unless this Constitution specifies otherwise, such items of business may only be recommendatory to the Board.
- 22.7 **AGM Agenda:** An agenda containing the business to be discussed at an AGM (as set out in Rule 22.6 – Business of AGM) together with the prescribed proxy form and Postal and Electronic Voting form shall be sent by the Chief Executive to the Board and Members by no later than 21 days before the date of the AGM. At the AGM, no additional items of business not listed on the agenda can be voted on but may be discussed by unanimous agreement of the Employer Members at the meeting.
- 22.8 **SGM:** The Chief Executive must call a SGM upon a written request (which must state the purpose for which the SGM is requested including any proposed motion(s)) from:
- a. the Board; or
 - b. subject to Rule 34 (Transitional Arrangements), 25% or more of Employer Members.
- 22.9 **Notice of SGM:** Not less than 21 days written notice must be given by the Chief Executive to the Board and the Members for a SGM, which notice must only deal with the business for which the SGM is requested and shall include:
- a. the date, time and venue and/or the manner in which the meeting is to be held;
 - b. the date and time by which notification of the Delegate(s), any Members attending (including Representatives), proxy forms, and Postal and Electronic Voting forms for the SGM must be received by the Chief Executive;
 - c. the proposed motion or motions that have been properly submitted for consideration; and
 - d. the name of the Returning Officer for that meeting.
- 22.10 **Minutes:** Full minutes shall be kept of all General Meetings and made available upon request by any Member.

- 22.11 **Notices:** Any notices or other communication given pursuant to this Constitution must be in writing and may be served personally or sent by post, facsimile or e-mail or other technological means of communication in writing. They may also be notified via the website of HITO.
- 22.12 **Receipt of Notice:** Any notice given in accordance with Rule 22.11 (Notices) shall be deemed to have been received:
- a. **Personally Delivered:** if personally delivered, when received.
 - b. **Sent:** if sent by post, three days after it was sent.
 - c. **Facsimile:** if sent by facsimile, on receipt by the sender of a transmission report indicating that the facsimile was sent in its entirety to the recipient's facsimile number.
 - d. **Email:** if sent by registered email, on receipt by the sender of an email message indicating that the email has been opened at the recipient's terminal.
- 22.13 **Errors:** Any irregularity, error or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required time frame or the omission to give notice as specified in Rules 22.4 (Notice of AGM), 22.6 (Business of AGM), 22.7 (AGM Agenda) and 22.9 (Notice of SGM) and any other error in the organisation of the meeting shall not invalidate the meeting nor prevent the meeting from considering the business of the meeting provided that:
- a. the Chairperson, or his or her nominee, in his or her discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error or omission; and
 - b. a motion to proceed is put to the meeting and carried by Special Resolution of those Employer Members present.
- 22.14 **Quorum:** No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting is due to commence as set out in the notice of meeting. The quorum for an AGM shall be no less than 5% of Employer Members present via their Delegate or by their Proxy. A quorum for a SGM shall be no less than 10% of Employer Members present via their Delegate or by their Proxy. The quorum must be present at all times during the meeting. If a quorum is not obtained within 30 minutes of the intended commencement time of the General Meeting, then the General Meeting shall be adjourned to such other day, (being not less than seven days following the adjournment), time and place as determined by the Board. If no quorum is obtained at this second General Meeting then the persons present at such second General Meeting are deemed to constitute a valid quorum.
- 22.15 **Chairperson:** The Chairperson of the Board shall chair all General Meetings unless he/she is unavailable for any reason in which case another Board Member appointed by the Board shall undertake the Chairperson's role during the period of unavailability.
- 22.16 **Delegates:** Each Employer Member who wishes to be present in person at a General Meeting shall appoint a Delegate to represent it at General Meetings at its cost. No Board Member may act as a Delegate. The names of the Delegates shall be forwarded in writing to the Chief Executive by a date and time determined by the Board prior to the

commencement of each General Meeting. An Employer Member may cast its vote by means other than through its Delegate as specified in Rule 23.3 (Method of Voting).

22.17 **Representatives:** Each Association Member, Education Member and Corporate Member may appoint one Representative to represent it at General Meetings at its cost. No Board Member may act as a Representative. The names of the Representatives, and who they represent, shall be forwarded in writing to the Chief Executive by a date and time determined by the Board prior to the commencement of each General Meeting.

22.18 **Attendees:** In addition to Board Members, Delegates and Representatives, any Member is entitled to, and may, at their cost, attend and speak at a General Meeting.

23. Voting at General Meetings

23.1 **Voting Entitlement:** Each Employer Member is entitled to one vote. Association Members and Other Members have no entitlement to vote at General Meetings.

23.2 **Casting Vote:** In the event of equality of votes at a General Meeting the Chairperson, or his or her nominee, shall have a casting vote (unless the resolution directly involves the Chairperson in which case the Board shall unanimously agree on a Board Member to have a casting vote).

23.3 **Method of Voting:** Voting at General Meetings may be conducted by voices, show of hands, ballot, or secret ballot if requested by two Delegates representing two different Employer Members present at the meeting. Each Employer Member may exercise its vote in any one of the following ways:

- a. by its Delegate (Rule 22.16); or
- b. by its Proxy (Rule 23.4); or
- c. by Postal or Electronic Voting (Rule 23.5).

23.4 **Proxy Voting:** Where an Employer Member chooses to exercise its vote by appointing a Proxy to attend a General Meeting, the following general principles shall apply together with any specific requirements as determined by the Board:

- a. the Proxy must be appointed by notice in writing on the proxy form, as prescribed by the Board, and signed by the Employer Member;
- b. the proxy form must specify how the Employer Member directs the Proxy to vote, including a specific vote and/or authority to allow the Proxy to decide how it will vote;
- c. the completed proxy form must reach the Returning Officer not less than one hour before the time scheduled for the commencement of the General Meeting;
- d. subject to this Rule 23.4 and Rule 22.16 (Delegates), only the Delegate of an Employer Member or the Representative of an Association Member may hold a Proxy;
- e. a Delegate of an Employer Member may hold up to four Proxies at a General Meeting;

- f. a Representative of an Association Member may only hold Proxies for Employer Members that are current members of that Association Member; and
- g. the Proxy must vote in accordance with the Employer Members' direction in Rule 23.4b.

23.5 **Postal or Electronic Voting:** Where an Employer Member chooses to exercise their vote by casting a Postal or Electronic Vote the following general principles shall apply together with any specific requirements as determined by the Board:

- a. an Employer Member may cast a Postal or Electronic Vote on all or any of the motions to be voted on at the General Meeting by returning the voting form, as prescribed by the Board, to the Returning Officer (Rule 23.6) for that meeting;
- b. the voting form must reach the Returning Officer not less than 48 hours before the time scheduled to commence the General Meeting; and
- c. the Postal or Electronic Votes shall be counted in accordance with Rule 23.6 (Returning Officer) prior to or at the General Meeting.

23.6 **Returning Officer:** For each General Meeting:

- a. The Chief Executive shall appoint a Returning Officer. No Member, Board Member, employee of HITO, Delegate or Representative may be the Returning Officer.
- b. The Returning Officer shall undertake the following duties and may be assisted by any scrutineers appointed at the meeting:
 - i. collect together any Postal and Electronic Votes and proxy forms received in accordance with this Constitution;
 - ii. in relation to each motion to be voted on at the meeting, count the total number of valid votes cast, including those votes cast by Proxy and Postal and Electronic Vote; and
 - iii. determine whether the motion is carried, lost or there is an equality of votes (in accordance with the requisite majority under this Constitution) and inform the Chairperson, or his or her nominee, accordingly.

23.7 **Scrutineers:** Two scrutineers may be appointed by the Members present at each General Meeting to assist the Returning Officer to count the votes. No Member, Board Member, employee of HITO, Delegate or Representative may be a scrutineer.

23.8 **Resolutions:** An Ordinary Resolution at a General Meeting shall be sufficient to pass a resolution except as specified otherwise in this Constitution.

23.9 **Chairperson's Declaration:** Where a vote for a motion is cast by a show of hands (whether or not additional votes are cast by other means), a declaration by the Chairperson, or his or her nominee, of the number of votes cast by show of hands is conclusive evidence of that number, unless a ballot or secret ballot is requested.

- 23.10 **Tally of Votes:** The Chairperson, or his or her nominee, may in his or her discretion state the number or proportion of the votes recorded in favour and against a motion.
- 23.11 **Process for Election of Board Members:** Elections for Elected Board Members at an AGM or a SGM (where a vacancy is being filled under Rule 15.11b.ii) must be undertaken by secret ballot, except to the extent Postal and Electronic Voting is undertaken, within a specified period of the meeting, by Employer Members at the General Meeting. Those applicants for the vacant Elected Board Member positions which have the highest number of votes in their favour will be declared elected. If the number of votes for one or more of the applicants is equal to another applicant, the Chairperson, or his or her nominee, shall have a casting vote. If there are insufficient nominations for positions available then the vacancy shall be filled by the Board in accordance with Rule 15.11a as if the vacancy were one arising under that Rule.

PART V – FINANCIAL MATTERS

24. Financial Year

- 24.1 The financial year of HITO shall commence on 1 January and end on 31 December of that year but may be altered from time to time by the Board.

25. Annual Report

- 25.1 The Board shall prepare an annual report for presentation to the AGM which contains:
- a. the audited annual financial statements as required under the Incorporated Societies Act 1908; and
 - b. an annual report of the year's activities;
- (collectively known as the "Annual Report").
- 25.2 The annual financial statement in Rule 25.1 shall be audited by an auditor appointed by the Board. The auditor shall be a practising chartered accountant.

26. Application of Income

- 26.1 The income and property of HITO shall be applied solely towards the promotion of the Objects.
- 26.2 Except as provided in this Constitution:
- a. no portion of the income or property of HITO shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member or Board Member; and

- b. no remuneration or other benefit in money or money's worth shall be paid or given by HITO to any Member or Board Member.
- 26.3 Nothing in Rule 26.2 shall prevent payment in good faith of, or to any, Member or Board Member for any of the following provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction:
- a. any services actually rendered to HITO whether as an employee or otherwise; or
 - b. products supplied to HITO in the ordinary and usual course of operation; or
 - c. interest on money borrowed from any Member or Board Member; or
 - d. rent for premises demised or let by any Member or Board Member to HITO; or
 - e. any out-of-pocket expenses incurred by the Member or Board Member on behalf of HITO for any other reason.

PART VI – ADMINISTRATIVE

27. Common Seal

- 27.1 HITO shall have a common seal.
- 27.2 The Board shall determine when and by whom the common seal is to be used and make provision for its safe custody, subject to the Incorporated Societies Act 1908.

28. Alteration to the Rules

- 28.1 Subject to Rule 28.2, this Constitution may only be amended, added to or repealed by Special Resolution at a General Meeting.
- 28.2 Notice of an intention to alter this Constitution must be given by an Employer Member or the Board to the Chief Executive no later than 28 days prior to a General Meeting.

29. Regulations

- 29.1 The Board may determine and amend such Regulations as it considers necessary or desirable. Such Regulations must be consistent with the Objects of HITO and any directives given at a General Meeting.
- 29.2 All Regulations shall be binding on HITO and the Members.
- 29.3 All Regulations and any amendments to the Regulations shall be notified to all Members as approved by the Board.

29.4 To the extent of any inconsistency between any Regulations and this Constitution, this Constitution shall prevail.

30. Liquidation

30.1 HITO may voluntarily be put into liquidation if:

- a. a Special Resolution is passed at a General Meeting to appoint a liquidator; and
- b. such resolution is confirmed by Special Resolution in a subsequent Special General Meeting, called for that purpose, and held not earlier than 30 days, after the date on which the resolution was passed.

30.2 Upon appointment of a liquidator the relevant provisions of the Incorporated Societies Act 1908 shall apply to the liquidation of HITO.

30.3 Any surplus assets of HITO, after payment of all costs, debts, and liabilities, shall subject to any trust effecting the same, be disposed of by distributing, giving or transferring them to some charitable body or bodies having objects similar to the Objects.

30.4 The body or bodies in Rule 30.3 must prohibit the distribution of its or their income and property among its or their members to at least the same or greater an extent as is imposed on HITO under this Constitution.

30.5 The body or bodies in Rules 30.3 and 30.4 shall be determined by the Members in a General Meeting at or before the time of liquidation. If the Members are unable to decide the body or bodies shall be determined by the liquidator.

31. Indemnity and Insurance

31.1 HITO shall indemnify its Board Members and its employees for any costs incurred by any of them in any proceeding:

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

31.2 HITO shall indemnify each Board Member or its employees in respect of:

- a. liability to any person other than HITO for any act or omission in their capacity as a Board Member or employee; or
- b. costs incurred by that Board Member or employee in defending or settling any claim or proceeding relating to any such liability; or

- c. liability, not being criminal liability, arising from a breach in the case of a Board Member, of duty (as specified in Rule 16.1 – Duties of Board Members), or in the case of an employee, of any fiduciary duty owed to HITO.
- 31.3 HITO shall, with the prior approval of the Board, effect insurance for each Board Member and its employees in respect of:
- a. Liability not being criminal liability for any act or omission in his or her capacity as a Board Member or employee.
 - b. Costs incurred by that Board Member or employee in defending or settling any claim or proceeding relating to any such liability.
 - c. Costs incurred by that Board Member or employee in defending any criminal proceedings:
 - i. that have been brought against the Board Member or employee in relation to any act or omission in its capacity as a Board member or employee; and
 - ii. in which it is acquitted.

32. Disputes and Matters Not Provided For

- 32.1 Subject to Rule 32.2, if any dispute arises out of the interpretation of this Constitution or the Regulations, or any matter arises which is not provided for in this Constitution or the Regulations, then such dispute or matter shall be referred in writing to the Board, whose decision shall be final and binding.
- 32.2 If the dispute or matter in Rule 32.1 is between the Board and a Member, or between any one or more Board Members, (“the parties”) the dispute or matter shall be resolved by the following process:
- a. by the parties acting in good faith to seek an agreement; or
 - b. failing agreement in Rule 32.2a, by a party or the parties appointing an independent third person to mediate between them; or,
 - c. failing agreement to mediate or agreement at mediation, by arbitration under the Arbitration Act 1996, by giving written notice of such arbitration by a party to the other party and (if not a party) the Board. Such arbitration shall be heard and determined by a single arbitrator to be appointed by the President of the New Zealand Law Society. The procedure for the arbitration shall be determined by the arbitrator. Subject to the Incorporated Societies Act 1908, the decision of the arbitrator shall be final and binding.

33. Inaugural Board

- 33.1 **Inaugural Board:** For the period from the date this Constitution comes into force until the conclusion of an SGM to be held in 2012, or such other date as determined by the Board ("2012 SGM") the Inaugural Board of HITO shall comprise of:
- a. the person who was elected to the Board at the 2011 AGM;
 - b. those people elected to the Board at the 2012 AGM;
 - c. the person co-opted to the Board in 2012 from the beauty Industry;
 - d. the person elected as the Employee Representative in 2011; and
 - e. the person who holds office as the NZARH president on the date this Constitution comes into force or another member of the NZARH Executive, as determined by the NZARH Executive.
- 33.2 **Chairperson and Deputy Chairperson:** Until the conclusion of the 2012 SGM, the Chairperson appointed at the first Board meeting after the 2012 AGM shall continue in office. If either the Chairperson vacates his/her office the Board may appoint a person from amongst the remaining Board Members to fill this position until the conclusion of the 2012 SGM.
- 33.3 **Term of Office:** The term of office of all the Inaugural Board Members (except the Employee Representative) will expire at the conclusion of the 2012 SGM. The term of office of the Employee Representative elected in 2011 will expire at the 2013 AGM.
- 33.4 **Vacancies:** Should any casual vacancies arise in any position on the Inaugural Board, the Board may leave the position vacant until the 2012 SGM, unless such vacancy will prevent a quorum of the Board being satisfied, in which case the Board shall fill such vacancy for the period to the conclusion of the 2012 SGM.
- 33.5 **Application of Rules:** Unless specified otherwise, all Rules in this Constitution applicable to the Board shall apply to the Inaugural Board. In addition, unless specified otherwise and subject to Rule 33.6 (Inaugural Board Appointments Panel), all Rules in this Constitution applicable to the Board Appointments Panel shall apply to the Inaugural Board Appointments Panel.
- 33.6 **Inaugural Board Appointments Panel:** There shall be an Inaugural Board Appointments Panel convened prior to the 2012 SGM and shall comprise the following three people:
- a. the Chairperson of the Board, or if s/he is seeking reappointment or re-election to the Board, then another Board Member not seeking re-appointment or re-election to the Board as determined by the Board; and
 - b. a person appointed from the Institute of Directors, as determined by the Board; and
 - c. a person, not being a Board Member, who is a Member of HITO and who has experience, knowledge and an understanding of an Industry or the Industries, appointed by the Board.

- 33.7 **New Board:** At the 2012 SGM, all the Elected Board Members specified in Rule 15.2c shall be elected in accordance with Rule 19 (Appointment and Election of Board Members). At the conclusion of the 2012 SGM the persons elected as Elected Board Members at that SGM, and the Appointed Board Members specified in Rule 15.2a and Rule 15.2b (appointed by the Board Appointments Panel prior to the 2012 SGM in accordance with Rule 19 – Appointment and Election of Board Members) shall commence their terms of office. For the purposes of determining the term of office of the New Board Members under Rule 15.9 (Term of Office), the period from the conclusion of the 2012 SGM to the conclusion of the 2013 AGM, shall be deemed to be one year.

34. Transitional Arrangements

- 34.1 **Existing Members of HITO:** Each Regional Hairdressers Association Member that is a current financial member of HITO immediately prior to the adoption of this Constitution shall be an Association Member from the date this Constitution comes into force, provided each Regional Hairdressers Association Member complies with the requirements specified in this Constitution, by a date to be determined by the Board.
- 34.2 **The New Zealand Association of Registered Hairdressers Incorporated:** The NZARH shall be a Member as an Association Member from the date this Constitution comes into force, provided it complies with the requirements specified in this Constitution, by a date to be determined by the Board. In particular, NZARH shall amend its constitution to ensure it is not inconsistent with this Constitution by a date, and in a manner, determined by the Board.
- 34.3 **The New Zealand Association of Registered Beauty Therapists Incorporated:** The NZARBT shall be a Member as an Association Member from the date this Constitution comes into force, provided it complies with the requirements specified in this Constitution, by a date to be determined by the Board. In particular, NZARBT shall amend its constitution to ensure it is not inconsistent with this Constitution by a date, and in a manner, determined by the Board.

35. Definitions

- 35.1 The words and phrases used in this Constitution shall mean as follows:
- “**AGM**” means the Annual General Meeting of HITO as described in Rule 22.1.
- “**Annual Report**” means the report described under Rule 25.
- “**Association Member**” means a Member as described in Rule 8.
- “**Appointed Board Member**” means a person appointed by the Board Appointments Panel as a Board Member under Rule 19 and includes the Chairperson of the Board.
- “**Board**” means the Board as defined in Rule 15.
- “**Board Appointments Panel**” means the panel described in Rule 18.

“Board Members” means the people specified in Rule 15.2 and includes members of the Inaugural Board unless specified otherwise.

“Chief Executive” means the Chief Executive of HITO appointed under Rule 16.2b.

“Constitution” means this constitution.

“Corporate Member” means a Member as described in Rule 9.1e.

“Delegate” means a person (who may be a Sole Business Operator) appointed by an Employer Member to represent that Employer Member at a General Meeting under Rule 22.16.

“Education and Training Support Agency” means the Education and Training Support Agency established by the Education Amendment Act 1990.

“Education Member” means a Member as described in Rule 9.1d.

“Elected Board Member” means a person elected as a Board Member under Rule 19.

“Employee Member” means a Member as described in Rule 9.1a.

“Employee Representative” means the Board Member elected in accordance with Rule 15.2d.

“Employer Member” means a Member as described in Rule 7 and for the purposes of voting at any General Meeting means an Employer Member who is a current financial member.

“General Meeting” means an AGM or a SGM of HITO.

“HITO” means the New Zealand Hairdressing Industry Training Organisation Incorporated and includes its officers, employees and Board Members, unless specified otherwise.

“HITO Training Agreement” means the agreement, in the form prescribed by HITO, between an employer and an apprentice (or trainee) for the purposes of the apprentice (or trainee) gaining a National Certificate in an Industry.

“Individual Member” means a Member as described in Rule 9.1f.

“Industry” means an enterprise that provides products and services (including training and education) in hairdressing, beauty, barbering and any other enterprise that provides products and/or services related to personal appearance, well-being, presentation and/or style.

“Industries” means one or more Industry.

“Institute of Directors” means the Institute of Directors in New Zealand Incorporated.

“Intellectual Property” means all rights or goodwill in copyright, names, trade marks (or signs), service marks, devices, logos, designs, patents, processes and confidential information relating to HITO.

“ITO” means an Industry Training Organisation for the time being recognised under the Industry Training Act 1992.

“Members” means the members of HITO as described in Rule 6.

“National Certificate” means a certificate recognised by the New Zealand Qualifications Authority.

“New Zealand Qualifications Authority” means the New Zealand Qualifications Authority established by the Education Act 1989.

“NZARBT” means the New Zealand Association of Registered Beauty Therapists Incorporated.

“NZARH” means the New Zealand Association of Registered Hairdressers Incorporated.

“Objects” means the objects of HITO described under Rule 4.

“Ordinary Resolution” means a resolution passed by a majority of all the votes properly cast by Employer Members, including Postal and Electronic Votes.

“Organisation” means a registered company, incorporated society, trust, partnership (whether limited or not), co-operative, or any other organisation as approved by the Board.

“Other Member” means the Members as described in Rule 9.

“Postal and Electronic Votes” means the methods of voting for General Meetings as described in Rule 23.5. For the avoidance of doubt a **Postal Vote** means a vote made on the voting form prescribed by the Board, in the manner prescribed by the Board and received by the Returning Officer by mail. An **Electronic Vote** means a vote made on the voting form prescribed by the Board, in the manner prescribed by the Board and received by the Returning Officer by email or facsimile.

“Previous Constitution” means the constitution of HITO (dated 19 February 2001) in force immediately prior to the commencement of this Constitution.

“Proxy” means a person who is a Delegate, or a Representative of an Association who has been appointed to act as an agent for an Employer Member at a General Meeting and to exercise that Employer Member’s vote(s) on their behalf, and **“Proxies”** means a person who holds more than one Proxy.

“Regional Hairdressers Association Members” means the existing members of HITO and the NZARH, as defined in the Previous Constitution.

“Register” means the register of Members specified in Rule 13.

“Regulations” means the regulations determined under Rule 29.

“Representative” means a person appointed by an Association Member, Education Member or Corporate Member to represent that Association Member, Education Member or Corporate Member respectively at a General Meeting in accordance with Rule 22.17.

“Retail Services” means the sale of hairdressing, beauty, barbering or other Industry services from a Salon to the public for their use and benefit (and not for resale), and expressly excludes education and training services, other than on-job training.

“Returning Officer” means the person described in Rule 23.6.

“Rule” means a rule of this Constitution.

“Salon” means a salon, clinic, or other premises from which Retail Services are provided in any one or more Industry.

“Secondary Institution” means a secondary school in New Zealand that provides education or training programmes and courses for an Industry.

“SGM” means a Special General Meeting of HITO described in Rule 22.2.

“Sole Business Operator” means any person who is the sole person who owns and operates a business that provides Retail Services in any Industry.

“Special Resolution” means a resolution passed by two-thirds of all the votes properly cast by Employer Members, including Postal and Electronic Votes.

“Student Member” means a Member as described in Rule 9.1c.

“Tertiary Education Commission” means the Crown Entity established by the Education Act 1989 that is responsible for managing the funding of the New Zealand government for tertiary education.

“Tertiary Institution” means a New Zealand university, polytechnic or college that provides education or training programmes and courses for an Industry.

“2012 SGM” means a SGM to be held in 2012 on such date as determined by the Board.

“Trainee Member” means a Member as described in Rule 9.1b.

35.2 **Construction:** In this Constitution:

- a. a gender includes all other genders;
- b. the singular includes the plural and vice-versa;
- c. any reference to legislation includes a modification or re-enactment of, legislation enacted in substitution of, or a regulation, order-in-council or other instrument from time to time issued or made under, that legislation;
- d. any agreement includes that agreement as modified, supplemented, innovated or substituted from time to time;
- e. a reference to persons includes bodies corporate;
- f. a reference to a “day” means any day of the week and is not limited to working days, unless specified otherwise;
- g. a reference to a person includes the legal personal representatives, successors and permitted assigns of that person; and
- h. headings and the contents page are for reference only and are to be ignored in construing this Constitution.