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Rules

of MITO New Zealand Incorporated

26 April 2018

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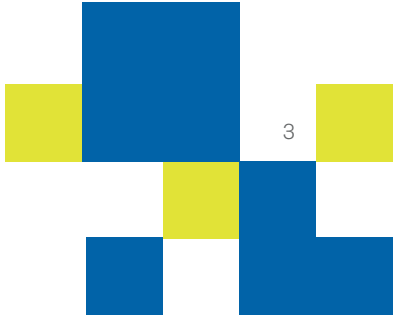
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SECTION ONE: Core Provisions

1. Name and Office

- 1.1 The name of the Society is “MITO New Zealand Incorporated” trading as “MITO”.
- 1.2 The Registered Office of MITO is at a place determined by the Board from time to time.

2. Definitions and Interpretation

- 2.1 In these Rules:

Associate Member means an individual, company, professional body, sole trader or training provider as set out in Rule 4.3.2;

Board means the Board of Directors of MITO;

Chair means the Chair of the Board or the elected Chair for a Meeting (as the context requires);

Councillor means a Member Representative;

Chief Executive means the Chief Executive of MITO;

Deputy Chair means the Deputy Chair of the Board;

Director means a member of the Board;

Director Appointment Panel means the committee of the Industry Council responsible for recommending candidates for appointment as Director as set out in Rule 10.3;

Financial Year means 1 January to 31 December in each year or such other period set by the Board from time to time;

Full Member means an industry association, qualifying corporate entity, unions of workers or a recognised employee representative as set out in Rule 4.3.1;

Industry means any industry recognised by notice in the New Zealand Gazette as being represented by MITO for the purposes of industry training and industries has a corresponding meaning;

Industry Council means the forum of the Member Representatives;

Interests Register means an interests register kept by the Board in the same manner as required of a company under the Companies Act 1993;

Members means the Members of MITO as set out in Rule 4 and **Membership** has a corresponding meaning;

Member Meeting means a meeting of Members which is either an **Annual General Meeting (AGM)** or **Special General Meeting (SGM)**;

Members Register means the register of all current Members;

Member Representative means the individual appointed under Rule 4.5 who is authorised to represent a Full Member;

Minimum Number means five (5) Directors;

Objects means the objects of MITO as set out in Rule 3.1;

Ordinary Resolution means a resolution passed by a simple majority of votes cast;

Qualifying Corporate Entity means those companies that are eligible to be a Full Member (refer Rule 4.3.1);

Required Director means a Director that will collectively represent employees in the governance of MITO as determined by the Director Appointment Panel and contemplated by section 11B(1)(d) of the Industry Training and Apprenticeships Act 1992;

Rules means the Rules of MITO New Zealand Incorporated unless otherwise specified;

Special Resolution means a resolution passed by a seventy five per cent (75%) majority of votes cast.

2.2 In these Rules:

- a. the plural includes the singular and vice versa and words of the masculine gender include the feminine and vice versa;
- b. any reference to any Act, regulation, by-law, policy, deed, charter, procedure or document includes any amendment to it and any replacement passed in substitution for it;
- c. references to a person include an individual, incorporated body, partnership,

- joint venture, association, trust, national and local government and territorial authority and any other unincorporated group or entity;
- d. where headings or examples are used they are used to assist understanding, and unless otherwise stated the range is not restricted to those examples;
 - e. except as otherwise stated a reference to any approval, decision, requirement or action by MITO refers to an approval, decision, requirement or action of the Board (and/or as appropriate to such persons to whom the Board has delegated the authority to exercise such power).

3. Objects and Powers

- 3.1 The charitable objectives of MITO, for the benefit of both the public of New Zealand and participants in the Industries, are to:
 - a. identify and strive to meet the educational and vocational training needs for persons entering the Industries and for those already engaged within the Industries;
 - b. be a leader in education and training by developing and providing an infrastructure for quality management of education and vocational training;
 - c. support the provision within New Zealand of a well-educated, highly skilled and adaptable workforce in the Industries;
 - d. ensure that MITO is a capable organisation that is well governed and effectively managed;
 - e. secure funds to enable MITO to fulfil its goals and objectives; and
 - f. do all such other acts and undertake such other functions as are incidental or conducive to the implementation of the above Objects, including carrying out the functions of Industry Training Organisations under the Industry Training and Apprenticeships Act 1992.
- 3.2 If any of the Objects in Rule 3.1 are not charitable, such Objects are secondary and are only undertaken to pursue those that are charitable. MITO will operate as a charitable body expending its revenue in pursuit of the Objects and shall not do anything that prejudices in any way the charitable nature of the Objects or the requirement that the primary application of the funds of MITO must be for the benefit of the Industry within New Zealand.
- 3.3 MITO has full powers, jurisdiction and authority and (except as restricted by these Rules), may do all and any things to carry out its Objects. By way of example of some specific powers, but not by limitation, MITO has power to:

- a. acquire or receive any property and deal with property in any way;
- b. establish, acquire or have interests in incorporated entities, trusts or other entities and to utilise the assets of MITO in, through or with them;
- c. control, receive and raise money or other property, including borrow, invest, loan, grant or advance monies and other property and secure any obligations and the payment of money by way of security obtained over property or given over its property and give or receive the benefit of guarantees;
- d. determine, raise and receive funds by subscriptions, donations, fees, levies, grants, bequests, entry or user charges, sponsorship, government funding, community funding or otherwise;
- e. produce, develop, create, license and otherwise use and protect intellectual property;
- f. determine who are its Members and their benefits, and withdraw, suspend, terminate or otherwise restrict Membership and other benefits on any terms;
- g. determine the methods and structures to deliver national, regional and local benefits consistent with the objects of MITO;
- h. make, alter, rescind and enforce by-laws, regulations, policies and procedures for the governance, management and operation of the affairs of MITO and those involved (or seeking to be involved) in it;
- i. determine, implement and enforce disciplinary, disputes and appeal procedures, including making decisions, conducting hearings and imposing sanctions and penalties;
- j. engage and dismiss employees and contractors and put in place agreements with them, including with the Chief Executive;
- k. delegate powers of MITO to any person, committee or sub-committees (the composition of which is not limited to Members) and for that purpose to establish, fund and set the terms of reference and structure;
- l. contract, engage or otherwise establish and maintain any arrangements and relationships with any person to fulfil the Objects of MITO;

- m. communicate with, liaise with and engage with participants in Industries;
 - n. be a member of or affiliate to and/or be associated in any way with any person which has objects which are similar in whole or in part to the Objects in New Zealand and/or internationally;
 - o. agree to and effect the merger (whether by transfer of assets and liabilities, consolidation or otherwise) of MITO with one or more Industry Training Organisations in New Zealand provided that the Rules of the merged entity provide for charitable purposes including the advancement of education and training, and include provisions normally required for charitable status in New Zealand; and
 - p. do any other acts or undertake such functions which are incidental to or conducive to the attainment of the Objects.
- 3.4 The powers of MITO must never be exercised in a manner which is contrary to the MITO Rules.

SECTION TWO: Members and Others Involved in MITO

4. Members

- 4.1 Membership of MITO is available to those organisations which, and those individuals who, participate in or have an interest in the industries represented by MITO.
- 4.2 All applications to be a Member must be in writing to the Industry Council (c/o MITO) which shall, at its sole discretion, accept or reject the application and advise the applicant of its decision. If accepted as a Member by the Industry Council, the Chief Executive shall enter the name of the successful applicant in the Members Register, at which time the applicant will become a Member.
- 4.3 There shall be two (2) categories of membership:
- 4.3.1 Full Membership: Full Membership shall be available to industry associations, qualifying corporate entities, unions of workers or recognised employee representative groups that represent in whole or part the interests of the Industries in New Zealand. Qualifying corporate entities are those companies who have a weighted rolling average of more than 40 learners across the three years preceding the membership year (for eligibility criteria and calculation refer Appendix 1). Full Members are entitled to vote.

- 4.3.2 Associate Membership: Associate Membership shall be available to any individual, company, professional body, sole trader and training provider which have an interest in an Industry. Associate Members are not entitled to vote.
- 4.4 All Members must, and must ensure that their Member Representative:
- a. recognise MITO as the governing body for work-based vocational education and training for the Industry;
 - b. comply with these Rules and all regulations, bylaws, policies, procedures and decisions of MITO (including payment of Membership and other fees set by MITO); and
 - c. only make or receive any pecuniary gain under or by the activities of MITO as are permitted and authorised and not prohibited for an incorporated society under the Incorporated Societies Act 1908 and the Charities Act 2005.
- 4.5 On becoming a Full Member each Full Member shall appoint a Member Representative who becomes a Councillor and is authorised to exercise all the rights and powers of the Full Member under these Rules.
- 4.6 Any Member may appoint a new Member Representative at any time by written notification to the Chief Executive which shall take effect no later than five working days from the date of receipt of the notification by the Chief Executive.
- 4.7 At any time the Chief Executive may request written confirmation of a Member's Member Representative and any written notification by a Member may be relied on by MITO without the need for further enquiry.
- 4.8 If a Member Representative is unable to attend any Member Meeting then the Member may appoint an alternate to attend, participate in and vote (if permitted by these Rules) at such Member Meeting provided written notification of the appointment is received by MITO no later than five working days prior to the Member Meeting.
- 4.9 A Member is deemed to have ceased Membership in the event of one of the following:

- a. the Member gives 21 days' notice in writing to MITO;
 - b. the Member no longer meets the criteria for Membership;
 - c. the Member is put into liquidation or ceases to operate;
 - d. an individual Associate Member dies or is an undischarged bankrupt or is convicted of an offence for which they have been sentenced to imprisonment for a term of two years or more;
 - e. the Industry Council considers that the conduct of the Member has brought or may bring MITO into disrepute and by Special Resolution of Members at a Member Meeting it is resolved to cease the Membership, provided that before any such resolution is made, the Member concerned must be given at least 21 days' notice in writing and shall have the special right to make submissions in writing or to be heard at the Member Meeting at which the resolution is proposed;
 - f. if any membership fees payable to MITO are not paid, provided that before such cessation occurs, the Member concerned is given notice in writing that payment is due and that Membership will cease on and unless paid by, a set date; or
 - g. the Industry in which the Member participates ceases to be an Industry as defined in Rule 2.1.
- 4.10 MITO must keep at the Registered Office and make available for inspection to any Member, a register of all current Members.

5. Role of Members

- 5.1 The role of all Members is to:
- a. receive notices, attend and speak at Member Meetings; and
 - b. receive audited accounts.
- 5.2 Full Members may nominate a candidate(s) for appointment as Director(s) by notice in writing to the Chief Executive.

SECTION THREE: Member Meetings and Industry Council Meetings

6. Voting

- 6.1 At Member Meetings all Members may attend and speak provided that the Member is not in default of obligations to MITO and is not subject to a Board imposed restriction from so doing (e.g. suppression from Membership benefits).
- 6.2 At Industry Council Meetings all Full Members, represented by their Member Representative may attend and speak provided that the Full Member is not in default of obligations to MITO and is not subject to a Board imposed restriction from so doing (e.g. suppression from Membership benefits).
- 6.3 Only Full Members, represented by their Member Representative (or validly appointed alternate) can vote at any Member Meeting.
- 6.4 Each Member Representative has one vote.
- 6.5 At meetings proxy votes are permitted. Proxy votes are permitted on such terms as provided for in the notice of the meeting.
- 6.6 Postal voting or ballots by Member Representatives are permitted on such terms as set by the Board.
- 6.7 At all meetings every question shall be decided on the voices or at the discretion of the Chair by a show of hands.
- 6.8 The Chair has a deliberative and casting vote.
- 6.9 A declaration by the Chair that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll by show of hands is demanded by any Member Representative present at the meeting.
- 6.10 A poll by show of hands may be demanded either before or immediately after the vote is taken on the voices.

7. Annual General Meeting (AGM)

7.1 An AGM shall be held within six months of the close of the Financial Year.

7.2 The business of the AGM is to:

- a. receive from the Board:
 - i. a statement of the Annual Accounts as per Rule 17;
 - ii. a report on its proceedings and operations for the preceding year;
- b. receive from the auditor a report on the financial statements;
- c. consider and approve any recommendation in relation to Director Fees put forward for approval at the AGM by the Board under Rule 10.2;
- d. appoint or reappoint an auditor;
- e. consider and vote on Rule changes; and
- f. deal with any other items included in the Notice of AGM as items of business.

8. Special General Meeting (SGM)

8.1 A SGM shall be convened either:

- a. pursuant to a resolution passed by the Board. Such resolution shall detail the time and place for such a meeting in accordance with Rule 9.1. The Chief Executive shall prepare an agenda for the meeting which shall be notified to Members and Directors with the notice of meeting; or
- b. where written notice of request signed by at least 30% of the Full Members is notified to the Chief Executive. A draft agenda shall accompany such notice. Within seven days of receipt of notice the Chief Executive shall give notice of the date and time of the SGM and the business to be transacted in accordance with Rule 9. Such SGM shall be convened within 21 days of giving such notice.

9. Procedures for Member Meetings and Industry Council Meetings

9.1 Notice of the time and place of the meeting shall be notified by MITO at least 21 days before the meeting.

- 9.2 The notice of meeting shall state:
- a. the nature of the business to be transacted at the meeting in sufficient detail to enable the recipient to form a reasoned judgment in relation to it; and
 - b. the text of any resolution to be submitted to the meeting.
- 9.3 Any irregularity in a notice of a meeting or failure to meet the time period is waived if the Chair considers it appropriate to do so and a motion to proceed is put to the meeting and is approved by Special Resolution.
- 9.4 A meeting may be held by such Member Representatives as to form a quorum assembled together at the place, date and time appointed for the meeting. No business may be transacted at a meeting if a quorum is not present.
- 9.5 A quorum for a Member Meeting is 50% of the Full Members being present in person or by the contemporaneous linking together by telephone or other means of communication or by proxy and which in each case have paid all amounts due under Rule 16.
- 9.6 A quorum for an Industry Council Meeting is 50% of the Member Representatives being present in person or by the contemporaneous linking together by telephone or other means of communication or by proxy and which in each case have paid all amounts due under Rule 16.
- 9.7 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting shall be adjourned to the same day the following week at the same time and place, or to such other date, time and place as the Chair may appoint, and if at the resumed meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Members present are a quorum.
- 9.8 If a meeting is adjourned with its business not completed and to a date not yet known, written notice in terms of Rule 9.1 shall be given before the meeting is reconvened.
- 9.9 Member Meetings shall be chaired by the Chair of the Board or if unable to do so then the Deputy Chair and if neither person is available, by someone appointed by the Board.

- 9.10 Industry Council Meetings shall be chaired by the Meeting Chair appointed under Rule 13.3, or if unable to do so, by someone appointed by the Industry Council.
- 9.11 Secretariat support for all meetings is provided through the Chief Executive.
- 9.12 Full and accurate minutes shall be kept of all proceedings of meetings.
- 9.13 Minutes signed correct by the Chair of the meeting are final.
- 9.14 Any other questions of procedure that may arise at or in relation to a meeting shall be decided by the Chair at the meeting.
- 9.15 The cost of a Councillor's attendance at an Industry Council Meeting shall be met by the respective Full Member.

SECTION FOUR: Governance

10. Role and Composition of the Board

- 10.1 A Board shall be appointed to govern the business of MITO. The Board may exercise all powers of MITO and do anything that can be done by MITO, unless it is required to be done in a Member Meeting or is contrary to law.
- 10.2 Without limiting Rule 10.1, the role of the Board is to provide good governance including:
 - a. exercise its powers and functions to achieve the Objects;
 - b. receive and consider advice from the Industry Council, MITO Members and the Industries that MITO represents;
 - c. represent the interests of MITO, and keep the Industries informed of any major issues facing MITO and the industry sectors they cover;
 - d. facilitate consultation with groups that have a particular interest in the business of MITO and generally ensure there is communication, liaison and relationship building with interested parties;
 - e. establish strong financial controls including preparation of an annual budget, an annual

investment plan and a long term strategic plan and monitor the performance of MITO against these plans, address the ongoing viability and sustainability of MITO, approval of significant new business initiatives and capital expenditure and monitoring of regulatory compliance;

- f. maintain an Interests Register;
 - g. establish and maintain an organisation of committed and empowered employees;
 - h. appoint and dismiss the Chief Executive and evaluate their performance;
 - i. operate audit and control systems to safeguard assets and to ensure accuracy and transparency of information;
 - j. fix the date and venue for the Member Meetings; and
 - k. fix the appropriate remuneration levels for Directors' Fees after obtaining independent professional advice. Any proposed changes to Directors Fees must be approved by Members at an AGM.
- 10.3 The Board comprises up to seven Directors, appointed by the Industry Council from candidates who in the opinion of the Director Appointment Panel are qualified to be Directors having regard to the criteria established by the Director Appointment Panel, including a Required Director.
- 10.4 The number of Directors must not be less than the Minimum Number of five (5) Directors.
- 10.5 Except in the case of a Director appointed to satisfy the Minimum Number, the term of office for a Director commences at the conclusion of the AGM at which their appointment is announced and shall be no longer than three years measured from one AGM to the next. A Director may be reappointed or re-elected for one further term of three years. A Director may not serve more than six consecutive years on the Board. Any Director period filling a vacancy for a part year is rounded up to a whole year for this assessment.
- 10.6 The term of office for the Board Chair is one year. Any time on the Board as the Chair does not count as service under Rule 10.5. The maximum time a person

may serve as Board Chair is nine years continuous service.

- 10.7 The maximum length of service as either a Director or Board Chair can be set aside for exceptional performance or other reasons as determined by the Director Appointment Panel. Any waiver needs to be ratified by Members at the Annual General Meeting.
- 10.8 A Director who has served six consecutive years on the Board must vacate office for a minimum of a year before being eligible to be nominated again.
- 10.9 A Director or any person serving on a committee of the Board ceases to hold office in the following circumstances:
- a. dying;
 - b. being declared of unsound mind or being the subject of an order under the Protection of Personal and Property Rights Act 1988;
 - c. resigning or their term of election or appointment expiring;
 - d. being convicted of an offence for which they have been sentenced to imprisonment for a term of two years or more;
 - e. becoming bankrupt;
 - f. engaging in conduct which is determined by a Special Resolution of Directors at a Board Meeting or by a Special Resolution of Members at a General Meeting to have acted in a manner that:
 - i. is detrimental to interests of MITO; and
 - ii. should result in removal of office, and provided that in each case the person has the opportunity to either make written submissions to or to address the relevant meeting;
 - g. if following an externally facilitated independent Board evaluation, their performance is found to be less than satisfactory and cannot be remedied with training. Such evaluations will be conducted at least every three years;
 - h. experiencing a change of circumstances which the Board determines by Ordinary Resolution that it is no longer practical for the Director to perform the role as Director.
- 10.10 At each AGM, a minimum of two Directors shall retire from office. The Directors to retire shall be

those whose terms are due to expire. If the number of Directors whose terms are due to expire is insufficient to meet the minimum number required, then retirement shall be determined in the following order:

- a. those who wish to retire shall retire first; and then
- b. the Director or Directors who have served longest on the Board (determined by reference to their most recent appointment to the Board), provided that if Directors were appointed on the same day and such Directors do not agree between themselves as to who will retire, then a retiring Director shall be decided by lot between them.

10.11 Subject to Rule 10.4, if any Director ceases to hold office as set out in Rule 10.9 leaving a vacancy, then the Director Appointment Panel will consider whether to recommend to the Industry Council that the vacancy is filled immediately or wait until the next Annual General Meeting, using the process outlined in Rules 10 and 15.

10.12 The Chief Executive is responsible for ensuring that Board procedures and applicable rules and regulations have been complied with by advising the Board through the Chair on corporate governance matters.

11. Director Duties

11.1 Directors must at all times act in the best interests of MITO.

11.2 Any Director must disclose to the Board and have entered in the Interests Register any transaction, relationship or circumstances that they have an interest in that affects MITO. A conflicted Director may not take part in the decision making nor do they form part of the quorum on any matter they have an interest in.

12. Board Meetings

12.1 The Directors shall appoint or reappoint a Chair and Deputy Chair annually from among the Directors.

- 12.2 At meetings of the Board each Director is entitled to one vote. The Director must be present under Rule 12.9 in order to vote.
- 12.3 The Chair has a casting vote as well as a deliberative vote at Board meetings.
- 12.4 At every meeting of the Board the Chair shall take the chair and in his or her absence the Deputy Chair shall take the chair, but if there is no such person or if he or she is also absent then the Board shall choose from amongst its number a person to chair the meeting.
- 12.5 The Board must ensure that minutes are taken of Board Meetings.
- 12.6 The Chair, Deputy Chair or any four Directors may convene a Board meeting by giving not less than seven days written notice of a Board meeting to all Directors and to MITO provided that it shall be validly convened on less than seven days' notice if all Directors agree to such lesser period of notice.
- 12.7 The quorum for meetings of the Board shall be four Directors.
- 12.8 A resolution signed or assented to in writing and communicated by letter, facsimile, email or other form of electronic or other communication by all the Directors for the time being entitled to receive notice of meetings of the Board shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted. A resolution assented to in this manner may consist of several documents in like form, each signing or purporting to have been despatched by one or more Directors.
- 12.9 The Board may meet in person or by teleconference or by other means by which those participating may hear each other simultaneously.
- 12.10 The Board may:
- a. establish committees of the Board and may determine the roles and terms of operation and may allow such persons to be involved as it thinks fit. Such committees shall in the exercise of their roles conform to any terms of operation as required by the Board; and
 - b. co-opt to committees of the Board for such term and on such terms and conditions as the Board thinks fit any person or persons whose qualifications or experience may be of assistance to the Board.

- 12.11 The Rules relating to the meetings and proceedings of the Board shall, insofar as they are applicable, apply also to the meetings and proceedings of any committee.
- 12.12 Any item of Board process not covered by these Rules shall be dealt with as required by the Board.

13. Role and Composition of the Industry Council

- 13.1 Every Member Representative shall be deemed a Councillor and entitled to serve on the Industry Council.
- 13.2 The Industry Council shall have the following functions:
- a. appointment of Directors to the MITO Board;
 - b. approve applications for Full and Associate Membership;
 - c. champion understanding of the training needs of all industries under MITO's gazetted coverage;
 - d. influence and inform the MITO Board's strategic planning process;
 - e. carry out periodic reviews of the MITO Rules, in collaboration with the MITO Board.
- 13.3 The Councillors shall appoint or reappoint an Industry Council Meeting Chair for a twelve-month period. The Meeting Chair is not a spokesperson for MITO and this role will not carry a public profile.

14. Councillor Duties

- 14.1 Councillors must act in the best interests of MITO when performing the role of Councillor.
- 14.2 Any Councillor must disclose to the Board and have entered in the Interests Register any transaction, relationship or circumstance that they have an interest in that affects MITO. Councillors are expected to regularly update the Interests Register with any new interests to ensure full and transparent disclosure.

14.3 Councillors are not spokespeople for MITO. Their role is to communicate to the Board the industry's requirements of MITO.

15. Director Appointment Panel

15.1 The Industry Council shall appoint up to five people to the Director Appointment Panel, who:

- a. are not required to be Councillors;
- b. must not be a candidate for directorship.

15.2 The role of the Director Appointment Panel shall be to make recommendations to the Industry Council on the appointment of Directors pursuant to Rule 10.3.

15.3 MITO will call for nominations at the time of any vacancy or prior to the expiration of the term of a current Director pursuant to Rule 10.3 and send all nominations to the Director Appointment Panel for consideration.

15.4 Full Members are entitled to nominate a candidate (candidates) for appointment as Director (Directors) or alternatively to support a Director (Directors) seeking re-election. Candidates for appointment do not need to be Members or associated with any Industry.

15.5 The Director Appointment Panel may invite external advice as required with the approval of the Board if costs to MITO are to be incurred.

15.6 The Director Appointment Panel will publish a list of criteria that will be used to evaluate the candidates which will include (but not be limited to):

- a. the ability and willingness of a candidate to make a substantial commitment and contribution to the governance of MITO;
- b. the commercial experience and any relevant background of the candidate to be a Director;
- c. the composition of the Board will satisfy any statutory requirements;
- d. recognising the importance of employee representation which has traditionally been provided by a trade union;
- e. that the proposed Director will enjoy the confidence of the Members;
- f. ensuring that people with an appropriate mix of skills are on the Board;

- g. be mindful of succession planning, balance, diversity and industry;
- h. ensure that no person or block of persons are able to dominate the Board's decision making;
- i. new Directors are prepared to complete induction training and to do further training in corporate governance at MITO's expense, if required; and
- j. complete appointment processes to enable the Board for the ensuing year to be announced at the AGM.

SECTION FIVE: Other

16. Levies, Subscriptions and Other Charges

- 16.1 Subject to rule 16.3, the Board may fix subscriptions, levies and other charges including but not limited to those for payment by Members of each Membership category.
- 16.2 Any amounts fixed under Rule 16.1 must be paid by due date as a condition of the Member accessing benefits under these Rules.
- 16.3 Any change in the subscription level for Members is to be approved by Members at an Annual General Meeting.

17. Annual Accounts

- 17.1 The Board shall ensure that accurate accounts are kept of the assets and liabilities of MITO and of its annual income and expenditure in each Financial Year.

18. Audit

- 18.1 The Board shall ensure the auditor undertakes an annual audit of the books and accounts of MITO.
- 18.2 The auditor shall have access to all books, papers, and accounts of MITO and shall be given any information and assistance required.

19. Interpretation of Rules and Changes to Rules

- 19.1 Any question arising as to the interpretation of these Rules or any question arising on any subject within the scope of MITO's authority not otherwise provided for shall be determined by the Board and the Board's decision shall be final and binding.
- 19.2 These Rules cannot be changed except by a Special Resolution passed at a Member Meeting. Notices of any Rule changes to be considered at an AGM may be given to the Chief Executive by the Board or by not less than 50% of the total number of Member Representatives. For Rule changes to be considered at a SGM the requirements of Rule 8 must be met.
- 19.3 No change to the Rules relating to Charitable Objects (Rule 3), winding up (Rule 22), or prohibition of personal benefits (Rule 24) shall be approved if it would have the effect of causing MITO to cease to hold charitable status according to New Zealand Law.

20. Insurance and Indemnity

- 20.1 The Board may cause MITO to effect insurance in relation to a Director, committee member or employee of MITO for costs incurred by such person in any proceeding:
 - a. that relates to liability for any act or omission in his or her capacity as a Director, committee member or employee; and
 - b. in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- 20.2 The Board may cause MITO to indemnify a Director, committee member or an employee of MITO in respect of:
 - a. liability to any person other than MITO for any act or omission in his or her capacity as a Director, committee member or employee; or
 - b. costs incurred by the Director, committee member or employee in defending or settling any claim or proceeding relating to or any liability under Rule 20.1a. above not being a criminal liability (unless the Director, committee member or employee is acquitted in any criminal prosecution or the prosecution is discontinued) or liability in respect of a breach, in the case of a Director, of a duty of good faith and to act in the best interests of MITO or, in the case of any employee or committee member, of any fiduciary duty owed to MITO.

- 20.3 For the purposes of this Rule “Director”, “committee member” and “employee” include a former Director, former committee member and former employee.
- 20.4 Any Director is entitled to take independent professional advice at MITO’s expense where they judge it necessary to discharge their duties. The Director must inform the Chair in advance and follow any Board approved procedure. Any advice so obtained is to be shared with the Board.

21. Notices

- 21.1 All Notices and information to be given in accordance with these Rules shall be in writing and may be given by post, facsimile, in person, by electronic communication or by any other method as the Board directs.
- 21.2 Notices shall be deemed to be received two working days after being given or being sent (regardless of the method of delivery).

22. Winding Up

- 22.1 MITO may be wound up pursuant to section 24 of the Incorporated Societies Act 1908.
- 22.2 In the event of the winding up of MITO, the surplus assets of MITO shall be distributed to one or more organisations as determined by the Full Members for charitable purposes relating to education and training in the Industries and otherwise in conformity with the Charities Act 2005.

23. Disputes

- 23.1 In the event of a dispute between Members or Member Representatives which is deemed in the Board’s discretion to be a serious dispute of significance to the activities or functioning of MITO, the Board may intervene to promote a resolution between the parties.
- 23.2 The Board may (if requested by one or more of the parties to a dispute referred to in Rule 23.1) intervene in such manner as it so determines (but without any

obligation to do so) to promote a resolution between the parties.

24. Personal Pecuniary Profit

- 24.1 Any income, benefit or advantage shall only be applied to the charitable purposes of MITO.
- 24.2 Subject to Rule 24.3 no Director, Member or any person associated with any Director or Member, shall participate in or materially influence any decision made by MITO in respect of the payment to or on behalf of that Director, Member or associated person of any income, benefit or advantage whatsoever.
- 24.3 Any income paid to a person or entity or group referred to in Rule 24.2 is permitted if it is reasonable and relative to that which would be paid in an arms length transaction (being the open market value). In addition in the case of remuneration of Directors such remuneration must be approved in accordance with these Rules.
- 24.4 Directors are entitled to be reimbursed for expenses incurred in performing their duties. A Director can be remunerated for services other than normal services as a Director, if the Board deem it appropriate.

25. Common Seal

- 25.1 MITO must have a common seal which is kept in the custody of the Chief Executive or such other person as appointed by the Board. The common seal shall only be used as directed by the Board and if affixed to documents this shall occur only in the presence of and accompanied by the signature of the Chair and the Chief Executive or if either is not available then by the remaining person and another Director.

APPENDIX 1: ELIGIBILITY CRITERIA AND CALCULATION FOR QUALIFYING CORPORATE ENTITIES

1. Companies are defined by the highest parent company, as recorded in MITO's Customer Relationship Management system.
2. Training Agreements must be Tertiary Education Commission registered.
3. Learner's enrolment with the company must have been valid for at least three months' funding.
4. Engagement is measured on a rolling average over three years, putting more weight on engagement in the most recent year (i.e. 20% weighting on year n-3; 30% on year n-2; 50% on year n-1).
5. Companies must have a rolling average of more than 40 Training Agreements in the three calendar years preceding year n in order to be eligible for membership in year n.