

CONSTITUTION OF ENSPIRAL FOUNDATION LTD

INTERPRETATION

In this constitution:

1.1 The following expressions have the following meanings:

“Charities” means those Charities or charitable objects in New Zealand or otherwise which are accepted by the relevant New Zealand fiscal authority as being for charitable purposes, and which advance any of the following purposes:

- 1.the relief of poverty;
- 2.the advancement of education;
- 3.any other charitable purpose beneficial to the public.

PROVIDED that any charitable institution must advance the above purposes solely and will not be involved in any political activity.

“Charity” and **“Charitable”** have corresponding meanings.

“Charitable Objects” means promoting the following objects:

Education in relation to sustainability, social responsibility, socially responsible and sustainable business practices, methods and business practices to assist in the relief of poverty, open Source software, how to setup entities to run open source, managing open source projects, and promoting anything else that will assist in educating in relation to these matters.

Relief of Poverty: Developing, promoting, assisting with and/or selling management and technological systems (including software) that assist people and/or entities to relieve poverty in New Zealand and internationally, and promoting anything else that will assist in relieving poverty.

Public Benefit : building tools/ supporting people and organisations/ to sustain communities, through online communication, software and advice and expertise to assist community groups to engage with each other, members of groups to engage within the group, and for all members of society to engage over charitable issues.

Building tools/ supporting /investing in/ assisting in any way people and organisations to create, use and promote open source software and open source software tools.

Provided that the Company will not be involved in promoting any political causes, and the Company (and Board) will not be involved in any political activity.

“The Act” means the Companies Act 1993;

“The Board” means the Directors who number at least the required quorum acting together as the board of directors of the Company or, if the Company only has one Director, that Director;

“The Company” means Enspiral Foundation Limited;

“This constitution” means this constitution as it may be altered from time to time in accordance with the Act;

“Director” means a person appointed as a director of the Company in accordance with this constitution;

“Share” means a share in the Company;

“Special Resolution” means a meeting of shareholders in which at least 75% of the votes attaching to all shares vote in favour of the resolution put to the meeting.

RIGHTS AND POWERS OF THE COMPANY

- 2.1** The Company has all the rights and powers of company under the Companies Act 1993 subject to this constitution **PROVIDED** that at all times the Company will carry out the Charitable Objects.
- 2.2** The powers of the Company are restricted to the extent that the Company is trustee upon Trust for the Charitable Objects, however the Company is not obligated to carry out all of the Charitable Objects, and which Charitable Objects will be carried out at any particular time will be determined by resolution of the board.
- 2.3** No property or income of the Company may be transferred or paid, directly or indirectly, by dividend or otherwise to the shareholders unless the shareholders are registered Charities.
- 2.4** Nothing in clause 1.3 will prevent the Company from doing any of the following;
1. Paying remuneration to shareholders or directors at a proper rate that would apply in an arms-length transaction in the relevant market for services actually provided to the Company.
 2. To charge interest at no less than a reasonable commercial rate on any funds lent to shareholders or directors of the Company.
 3. To pay rent at a reasonable market rate on any premises or property owned by any director or shareholder of the Company.
 4. To purchase assets from any director or shareholder of the Company at an arms-length market value.

3. BOARD TO ISSUE SHARES

- 3.1** Section 45 of the Act does not apply to the Company. The Board may issue shares to any person if, and only if, directed to by a Special Resolution of the shareholders.
- 3.2** The Board may not issue more than one share to any person, and may not issue a share to a person who already holds a share at the time of the issue. For the avoidance of doubt, if a person has held a share in the past, but no longer holds a share, the Board may issue a share to that person.

4. SHARE TRANSFERS

Shares in the company are not transferable except where they pass by operation of law.

5. COMPANY MAY ACQUIRE AND HOLD SHARES

- 5.1** The Company may purchase or otherwise acquire Shares and may hold those Shares in accordance with the Act. If the Company intends to transfer any Shares that it has acquired and held, such transfer will be treated as a new issue of Shares and the Board must first comply with the requirements of this constitution for issues of Shares.
- 5.2** With prior shareholder approval by special resolution, the Board may acquire Shares issued by the Company from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.
- 5.3** If the shareholders resolve by special resolution to cancel the Shares of any one or more

shareholders, the Board must cancel those shares.

6. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

The First Schedule to the Act (in this clause, "the Schedule") governs the proceedings at meetings of shareholders, but with the following modifications:

- 6.1** The right to choose a chairperson of the meeting set out in clause 1(2) of the Schedule is vested initially in the Directors present and may only be exercised by the shareholders present if no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting.
- 6.2** Meetings will be held by the method set out in clause 3(b) of the Schedule only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.
- 6.3** A quorum for a meeting of shareholders is present if 60% or more of the total number of shareholders are present in person or by proxy.
- 6.4** No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.
- 6.5** Where:
 - 6.5.1** the shareholder has died or become incapacitated; or
 - 6.5.2** the proxy, or the authority under which the proxy was executed, has been revoked; or
 - 6.5.3** the Share in respect of which the notice of proxy is given has been transferred, and before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.
- 6.6** The representative of a corporate shareholder is entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.
- 6.7** A shareholder may not exercise the right to vote at a meeting by casting a postal vote.
- 6.8** Except as provided in the Schedule, in this clause and in any Shareholders Agreement, a meeting of shareholders may regulate its own procedure through the chairperson.

7. WRITTEN SHAREHOLDERS' RESOLUTION INSTEAD OF HOLDING A MEETING

A shareholders' resolution in writing, which complies with the requirements of the Act, is as valid as if it had been passed at a meeting of shareholders.

8. NUMBER OF DIRECTORS

The minimum number of Directors shall be 5 and the maximum number of Directors

shall be 8. The shareholders may change the minimum and/or the maximum number of Directors by ordinary resolution.

9. APPOINTMENT OF DIRECTORS

Any person who is not disqualified under the Act may be appointed as a director by:

9.1 A written notice to the Company signed by all shareholders; or

9.2 the persons holding office as directors of the Company on adoption of this constitution are deemed to have been appointed as Directors pursuant to this constitution.

10. REMOVAL OF DIRECTORS

Any Director may be removed from office by:

10.1 a written notice to the Company signed by all shareholders; or

10.2 a unanimous resolution passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.

11. NOTICES OF APPOINTMENT OR REMOVAL OF DIRECTORS

Any notice of appointment or removal of a Director may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Act, or from such later time as the notice states that it is to take effect.

12. ELECTION OF CHAIRPERSON OF THE BOARD

The Directors must elect one of their number as chairperson of the Board.

13. CHAIRPERSON TO HOLD OFFICE ON CERTAIN TERMS

The chairperson of the Board holds that office until he or she vacates office or the Directors elect a chairperson in his or her place.

14. MEETINGS OF THE BOARD

The Third Schedule to the Act - with the following exceptions - does apply to proceedings of the Board unless all the Directors present at any board meeting agree that it will not apply to that meeting:

- Clause 4 (1) of the Third Schedule does not apply, and the following is substituted:
"A quorum is 60% of the current number of directors, rounded up to the nearest number."
- Clause 3 of the Third Schedule does not apply, and the following is substituted:
"A meeting may be held by means of audio/visual connection between the Board members, or by use of any software programme via which the shareholders unanimously agree the Board may conduct its business."

15. BOARD DELEGATES TO COMPLY WITH REGULATIONS

In exercising the Board's delegated powers, any committee of Directors, Director, employee or employees of the Company, or any other person must comply with any regulations that the Board may impose.

16. COMMITTEE PROCEEDINGS

The provisions of this constitution relating to proceedings of the Board also apply to proceedings of any committee of Directors, except to the extent the Board determines otherwise.

17. INTERESTED DIRECTOR MUST NOT VOTE

A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company must not vote on a matter relating to the transaction, but otherwise may act in his or her capacity as a Director in relation to the transaction as if he or she were not interested in the transaction.

18. BOARD'S POWER TO AUTHORISE REMUNERATION AND OTHER BENEFITS IS LIMITED

The Board may authorise payments or actions under section 161 of the Act only if the relevant payment or action has been approved by ordinary resolution or with the prior written agreement or concurrence of all entitled persons. This clause does not apply to the payment of remuneration or the provision of other benefits to an executive Director in his or her capacity as an executive or to any other Director in respect of any professional services provided by that Director to the Company.

19. DIRECTORS MAY APPOINT AND REMOVE ALTERNATE DIRECTORS

Every Director may:

19.1 appoint any person who is not disqualified by the Act from being a Director and whose appointment has been approved in writing by a majority of the shareholders by special resolution to act as an alternate Director in his or her place; and

19.2 remove that person from that office, by giving written notice to that effect to the Company.

20. ALTERNATE DIRECTOR

20.1 While acting in the place of the Director who appointed him or her, the alternate Director:

20.1.1 has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, participate in, and vote at a meeting of the Board and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director).

20.1.2 is also subject to the same terms and conditions of appointment as that Director, except in respect of remuneration.

20.2 The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director.

21. COMPANY MAY INDEMNIFY DIRECTORS AND EMPLOYEES FOR CERTAIN LIABILITIES

The Company may indemnify a director or employee of the Company or a related

company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

22. COMPANY MAY EFFECT INSURANCE FOR DIRECTORS AND EMPLOYEES

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

23. MANNER OF EXECUTION OF DEEDS

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- 23.1 two or more Directors; or
- 23.2 if there is only one Director, that Director, whose signature must be witnessed; or
- 23.3 one or more attorneys appointed by the Company in accordance with this constitution;

24. DISTRIBUTION OF SURPLUS ASSETS IN KIND

If the Company is liquidated the liquidator shall, at the direction of shareholders by special resolution, but subject to any other sanction required by the Act:

- 24.1 Disburse any surplus assets to any Charity nominated by the shareholders, or to be divided equally between all the charities nominated by shareholders, if more than one.



Joshua Vial
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