

**TRUST DEMOCRACY INCORPORATED: CONSTITUTION**

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## PART 1 – STRUCTURE

### 1. Name

The name of the Society is Trust Democracy Incorporated, which is for brevity abbreviated in this constitution, at times, as "the Society."

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### 2. Effect of Constitution

- 2.1 This Constitution has no effect to the extent that it contravenes, or is inconsistent with, the Act.
- 2.2 Subject to the Act, this Constitution is binding, in accordance with its terms, as between
- (a) the Society and each Member; and
  - (b) each Member.

### 3. Interpretation

3.1 In this constitution, unless the context otherwise requires:

*Act* means the Incorporated Societies Act 2022;

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*Advisory Committee* has the meaning given by rule 30 (Advisory Committee);

*Annual General Meeting* means an annual general meeting of Members convened pursuant to rule 35 (Annual General Meetings);

*Annual Report* means a report, prepared by or on behalf of the Chairperson, on the affairs of the Society during the most recently-completed accounting period, progress on the plan for the current year, and on any other relevant matters;

*Associated*, and other expressions indicating the association of persons with each other, have the meanings given by section YA 1 of the Tax Act;

*Balance Date* means 31 March, or any other date adopted by the Committee by resolution as the date to which accounts are to be made in each year;

*Bylaw* means a bylaw of Trust Democracy Incorporated promulgated under rule 59 (Bylaws);

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*Chairperson* means the person who holds office as the chairperson of the Society for the time being in accordance with rule 27 (Chairperson);

*Charities Act* means the Charities Act 2005;

*Committee* means the committee established under rule 22 (Committee composition and membership) comprising at least 3 natural persons, appointed or elected under this Constitution, responsible for managing the operation and affairs of the Society;

*Committee Member* means a person serving on the Committee of the Society;

*Constitution* means this constitution, as it may be altered from time to time in accordance with its terms and with the Act;

Moved up [1]: *Bylaw* means a bylaw of Trust Democracy Incorporated promulgated under rule 59 (Bylaws);  
*Chairperson* means the person who holds office as the chairperson of the Society for the time being in accordance with rule 27 (Chairperson);  
*Charities Act* means the Charities Act 2005;

*Contact Officer* means the person who has been elected or appointed, in accordance with this Constitution, as the main point of contact for the Registrar;

Electronic has the meaning given by section 209 of the Contract and Commercial Law Act 2017;

Electronic Communication means a communication by Electronic means;

Electronic Mail means a written communication sent by Electronic means;

*Financial Year* means any year or other accounting period ending on a Balance Date;

*General Manager* means the staff member employed under rule 31 (General Manager), whose title may be chief executive, chief operating officer, or such other title as may be decided by the Committee;

*General Meeting* means either an Annual General Meeting or a Special General Meeting;

Hybrid Meeting means a meeting where some of the participants are physically in the same location as each other, and some of the participants are contemporaneously linked by telephone, or Electronic Communication, or some other means of instant audio, or audio and visual, communication, whereby all participants can simultaneously hear each other throughout the meeting;

*Intellectual Property* means all rights and/or goodwill in any copyright works, business names, names, trademarks (or signs), logos, designs, patents, or service marks, of or relating to the Society or any event promoted or administered by the Society;

A person is *Interested* in a Matter if the person:

- (a) may derive a material financial benefit from the Matter;
- (b) is the parent, child, or spouse of a person who may derive a material financial benefit from the Matter; or
- (c) may have a material financial interest in a person to whom the Matter relates;
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the Matter relates, or
- (e) is otherwise directly or indirectly interested in the Matter,

provided that a person is not Interested in a Matter:

- (f) merely because they receive an indemnity, insurance cover, remuneration, or other benefits authorised by the Act; or
- (g) if their interest is the same or substantially the same as the benefit or interest of all or most other Members of the Society due to their Membership; or
- (h) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under the Act or this Constitution;

*Interests Register* means the register of disclosures required to be kept under rule 9 of schedule 1 (Interests Register);

*Interim Vacancy* has the meaning given by rule 25 (Interim Vacancy);

*Matter* means —

- (a) the performance of the Society's activities or the exercise of its powers; or

- (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Society;

*Member* means a member of Trust Democracy Incorporated as specified in Part 3 (Membership);

*Membership Fee* means a subscription, or other amount, payable by a Member to Trust Democracy Incorporated as specified in rule 16 (Membership Fees);

*Membership Form* means the prescribed Trust Democracy Incorporated application for membership form (if any) for the relevant category of Membership, or any other form which the Society agrees is suitable for collection of information from persons seeking to be Members of the Society;

*Notice* or written notice means communication that may be in Electronic Mail form;

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*Officer* means a Committee Member and any other person deemed by law to be an officer of the Society;

*Ordinary Resolution* means a resolution passed by a majority of the votes properly cast by those Members present and entitled to vote at the General Meeting at which the vote is occurring;

*Privacy Act* means the Privacy Act 2020;

*Proxy* means a Member, who must be entitled to vote, and who has been appointed by another Member, who must also be entitled to vote but who is not able to attend the General Meeting in respect of which the Proxy has been appointed in person, provided that the Proxy has been duly appointed in writing in accordance with rule 41 (Voting at General Meetings);

*Purposes* means the purposes of the Society as set out in rule 8 (Purposes);

*Registered Office* has the meaning given by rule 5 (Registered Office);

*Qualified Auditor* has the meaning given to that term by section 42D of the Charities Act;

*Register of Members* means the register of Members described in rule 18 (Register of Members);

*Registrar* means the Registrar of Incorporated Societies, as defined in section 240 of the Act;

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*Related Person* for the purposes of rule 10 (No private pecuniary profit), and in relation to any business to which section CW 42 of the Tax Act applies, means a person specified in paragraphs (i) to (iv) of subsection 5(b) of that section, the persons currently specified being:

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- (a) a settlor or trustee of the trust by which the business is carried on; or
- (b) a shareholder or director of the company by which the business is carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) a person Associated with a settlor, trustee, shareholder or director already mentioned in this definition;

*Society* means Trust Democracy Incorporated;

*Special General Meeting* means a special general meeting of Members convened pursuant to rule 36 (Special General Meetings);

*Special Resolution* means a resolution passed by at least 2/3 of the votes properly cast by those members present and entitled to vote at the General Meeting at which the vote is occurring;

*Tax Act* means the Income Tax Act 2007;

*Teleconference Meeting* means a meeting where all of the participants are contemporaneously linked by telephone, Electronic Communication, or some other means of instant audio, or audio and visual, communication, whereby all participants can simultaneously hear each other throughout the meeting; and

*Website* means any Internet site maintained by, or on behalf of, the Society for the publication of information.

**3.2** Subject to rule 3.1, expressions which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act.

#### 4. Construction

In the construction of this Constitution, unless the context otherwise requires:

- (i) *charitable purpose* has the meaning given to that term in the Charities Act;
- (ii) *contents page and headings*: the contents page and the headings appear as a matter of convenience only and are to be ignored in construing this Constitution;
- (iii) *defined terms*: words or phrases appearing in this Constitution with capitalised initial letters are defined terms and have the meanings given to them in this Constitution. If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (iv) *documents*: a reference to any document, including this Constitution, includes a reference to that document as amended or replaced from time to time;
- (v) *inclusion*: words such as including and for example are not, and should not be interpreted to be, words of limitation, unless otherwise explicitly stated;
- (vi) *legislation*: a reference to any legislation is a reference to that legislation as from time to time amended, substituted, or re-enacted and, unless the context otherwise requires, includes any statutory instruments issued under that legislation;
- (vii) *person*: references to persons include natural persons, firms, bodies corporate, corporations, unincorporated associations, and authorities, and firm includes partnership. A reference to a person includes the legal personal representatives, successors, and permitted assigns of that person;
- (viii) *rules, parts, schedules and sections*: a reference to a rule, a part, or a schedule is to a rule, part, or schedule of this Constitution, unless otherwise stated. The schedule to this Constitution forms part of this Constitution. A reference to a section is to a section of the Act unless otherwise stated;

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- (ix) *singular, plural and gender*, the singular includes the plural and vice versa, and words denoting any gender include all genders; and
- (x) *spouses*: a reference to a spouse includes a civil union partner or a de facto partner.

## 5. Registered Office

The Registered Office of the Society shall be at 3b Cromarty Place, Papakowhai, Porirua 5024, New Zealand, or such other place in New Zealand as the Committee may determine by resolution from time to time. The Electronic Mail address of the Society is that which is published on the Website of the Society.

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## 6. Powers

6.1 Subject to this Constitution, the Act, any other enactment and the general law, Trust Democracy Incorporated has —

- (a) full capacity to carry on or undertake any activity, or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

6.2 Notwithstanding rule 6.1, Trust Democracy Incorporated may not:

- (a) enter into long term (that is, 5 years or more) financial commitments, such as the purchase of real estate, or entry into a lease agreement; or
  - (b) borrow money in circumstances where total borrowing would exceed 10% of the previous year's gross income,
- unless approval to do so has first been granted by Special Resolution.

## 7. Charitable registration

Trust Democracy Incorporated may seek registration as a charitable entity under the Charities Act. If and while so registered, Trust Democracy Incorporated and all its officers will comply with the requirements of the Charities Act.

## PART 2 – PURPOSES

### 8. Purposes

8.1 **Holding and application of income and assets etc for charitable purposes:** the assets and income of, and any benefit or advantage obtained by, the Society shall be held and applied solely for charitable purposes, and not for the private pecuniary profit of any individual or the financial gain of any Member. Without limiting the generality of the foregoing, the Society may act in furtherance of the purposes set out in rule 8.2 (*Charitable purposes*), to the extent to which they are charitable according to the law of New Zealand.

8.2 **Charitable purposes:** the charitable purposes of the Society are to advance education; to advance citizenship and community development; to recognise and advance human, civic, and social rights; to promote civic responsibility, the voluntary



sector and the effectiveness and efficiency of charities; and generally to contribute to liberal democracy, including by:

- (a) to promote, carry out and disseminate the findings of research, discussion and proposals on matters of deliberative democracy, and social, civic and community interest, predominantly within New Zealand, that addresses the question: "What does it take to make democracy work as it should?" (Kettering Foundation);
- (b) to facilitate attendance by New Zealanders at any course, seminar or training under the auspices of the Kettering Foundation or any other institution which has similar purposes;
- (c) to support networking among people who have attended such a course, seminar or training, and other persons who support the principles espoused by the Society, and valuing personal and community networks that support well-being;
- (d) to honour and continue the work initiated by the New Zealand Social and Civic Policy Institute (#863329);
- (e) to support and educate New Zealanders about the Declarations, Conventions, Covenants and Resolutions of the United Nations and the UN Human Rights Council regarding the freedoms of assembly and association, and the freedom to form associations to support shared aspirations;
- (f) to critically support normative regimes and jurisdictions that seek to maintain equity; and
- (g) to maintain relationships with organisations with similar aims in New Zealand and overseas.

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**8.3 Means of furthering purposes:** in furtherance of its charitable purposes, and without limiting any of its powers under this Constitution or generally, the Society may:

- (a) raise funds and seek volunteer support as needed to advance the Society's charitable purposes;
- (b) submit quotes or tenders for, and enter into, contracts of research and consultancy or for services, and generally to enter into any arrangement with any government, company, authority, corporation or any other body;
- (c) support personal and group projects, including colloquia, symposia, seminars, scholarships, fellowships and other similar ventures;
- (d) make the aims and activities of the Society known through any form of publicity or contact with the media;
- (e) produce and sell any printed material, films or videos;
- (f) make charges for admission to or use of any property held by the Society;
- (g) make available and provide for scholarships, including financial scholarships and in-kind opportunities to advance the aims of the Society through collaborative relationships, such as with the Kettering Foundation;

- (h) cooperate or join with any other organisation, whether in New Zealand or overseas, with similar purposes to those of the Society;
- (i) invest the Society's funds in any type of investment that conforms with the principles of a prudent trustee investment under New Zealand law;
- (j) make Bylaws, in accordance with this Constitution, to advance the attainment of the Purposes;
- (k) pay the expenses incurred in the establishment of the Society and in carrying out the Society's charitable purposes;
- (l) undertake such other lawful activities as may from time to time seem to the Society to be necessary or desirable to enable the Society to achieve or advance its charitable purposes.

**8.4 Severance of any non-charitable purpose:** all of the Society's purposes are strictly charitable according to New Zealand law, and any purposes which do not qualify as charitable shall be deemed to have been deleted from this Constitution.

**8.5 Prohibition on financial gain:** the Society must not be carried on for the financial gain of any of its Members.

**8.6 Political restriction:** the Society may not participate in, or intervene in (including by way of publishing or distributing any statements), any political campaign on behalf of or in opposition to any candidate for public office.

## 9. Guiding Principles

This Constitution is to be interpreted in accordance with certain guiding principles that the Committee may establish in consultation with the members.

## 10. No private pecuniary profit

**10.1 No private pecuniary profit:** no private pecuniary profit shall be made by any person from the Society, except that (but subject to rule 10.2):

- (a) payments may be made to an Officer or to a Member, or to a person Associated with an Officer or a Member, for goods and services provided to the Society, provided that those goods or services advance the charitable purposes of the Society and the payment is reasonable and commensurate with payments that would be made between unrelated parties; and
- (b) an Officer may be reimbursed, on production of receipts, for reasonable expenses properly incurred by that Officer in the course of performing duties or exercising powers as an Officer of the Society; and
- (c) a Member may be reimbursed, on production of receipts, for reasonable expenses properly incurred by that Member in connection with the affairs of the Society.

**10.2 No influencing income, benefit or advantage:** notwithstanding anything to the contrary in this Constitution, no Related Person shall derive any income, benefit or advantage from the Society where they can, directly or indirectly, materially influence

the payment of the income, benefit or advantage, except where that income, benefit or advantage is derived from:

- (a) professional services to the Society, rendered in the course of business charged at no greater than current market rates; or
- (b) interest on money lent charged at no greater rate than current market rates.

## **PART 3 – MEMBERSHIP**

### **11. Members**

Any person who has taken part in a seminar, forum, trading or research project of the Kettering Foundation or similar institution that relates to the primary question "What does it take to make democracy work as it should?", or who otherwise has a strong interest in activities that relate to this core question, or related questions that spring from research and discussion of the primary question, is eligible to become a Member of the Society.

### **12. Eligibility for Membership**

To become a Member of Trust Democracy Incorporated, an applicant must:

- (a) complete a Membership Form and forward it to the Secretary;
- (b) supply such further information as may be required by the Secretary;
- (c) pay any applicable Membership Fee as determined under rule 16 (Membership Fees);
- (d) agree to be bound by this Constitution, and any Bylaws;
- (e) have had their attention drawn to rule 18.3 (Privacy);
- (f) be admitted into Membership by the Committee;
- (g) expressly consent to become a Member; and
- (h) satisfy such other Membership criteria as the Committee may reasonably determine from time to time.

### **13. Applications for membership**

**13.1** The Committee shall consider each application for Membership. In considering the application, the Committee may:

- (a) interview the applicant, or representatives of the applicant; and
- (b) consult with existing Members.

**13.2** The Committee has absolute discretion as to whether to accept, decline, or defer an application for Membership, provided that the Committee shall not accept an application for Membership unless the Committee is satisfied that the applicant:

- (a) meets the criteria for Membership set out in this Constitution;
- (b) has otherwise satisfied the requirements of rule 12 (Eligibility for Membership); and

- (c) has not acted in a manner which the Committee considers could bring the Society into disrepute.

**13.3** The Committee must advise the applicant of its decision, and may, but is not required to provide reasons for that decision.

**13.4** Upon the applicant becoming a Member, the Committee shall ensure the Register of Members is updated accordingly.

#### **14. Member obligations**

In addition to any specific rights and obligations set out in this Constitution and the Act, all Members acknowledge and agree that:

- (a) this Constitution, and any Bylaws, constitute a contract between each of them and the Society, and they are bound by this Constitution and any Bylaws;
- (b) they shall comply with and observe the Constitution, any Bylaws, and any applicable determination, resolution or policy which may be made or passed by the Committee;
- (c) they shall promote and support the Purposes; and
- (d) they shall provide and keep up to date the information required by rule 18 (Register of Members);
- (e) they shall pay any Membership Fees as determined in accordance with rule 16 (Membership Fees).

#### **15. Member entitlements**

**15.1** All Members are entitled to:

- (a) receive notice of, attend, speak, and vote at General Meetings in accordance with Part 5 (General Meetings), subject to any provision of this Constitution which affects voting rights in any particular case;
- (b) receive all general Trust Democracy Incorporated communications; and
- (c) hold themselves out as being a Member of Trust Democracy Incorporated.

**15.2** Membership of Trust Democracy Incorporated does not confer upon any Member any right, title or interest, either legal or equitable, in the property of Trust Democracy Incorporated.

#### **16. Membership Fees**

**16.1 Annual fee:** all Members shall pay an annual fee to the Society at the rate fixed in advance by Annual General Meeting. For the avoidance of doubt, the Annual General Meeting may fix differential rates, based on reasonable criteria. The Annual Meeting may also decide to fix no fee.

**16.2 Consequences of non-payment:** subject to rule 16.3, any Member failing to pay any Membership Fee, or any other payment due to the Society, within 3 calendar months of the date the same was due shall be considered unfinancial and shall not be entitled to vote at General Meetings until all arrears are paid.

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**16.3** The Committee may, in its complete discretion:

- (a) extend the time for payment of a Membership Fee; and/or
- (b) waive the requirement to pay some or all of a Membership Fee, by a Member in any case it thinks appropriate.

**17. Member liability**

**17.1** Subject to this rule 17, a Member is not liable for an obligation of the Society by reason only of being a Member.

**17.2** Subject to rule 17.3, the liability of a Member to the Society is limited to the amount of any unpaid Membership Fee.

**17.3** Nothing in this rule 17 affects the liability of a Member to the Society under a contract, or for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the Member.

**18. Register of Members**

**18.1 Register:** the Committee shall maintain a Register of Members, recording:

- (a) each Member's:
  - (i) name; and
  - (ii) contact details;
- (b) the date on which the Member's Membership commenced;
- ~~(c) the date on which the Member's Membership ceased;~~ and
- (d) any other required details.

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**18.2 Changes:** if a Member's name or contact details change, the Member must give written notice of the change to the Committee as soon as reasonably practicable after the change occurring. The Committee must then ensure the Register of Members is updated accordingly as soon as practicable.

**18.3 Privacy:** for the purposes of the Privacy Act, the use or disclosure of personal information contained in rule 18.1 (Register) shall, subject to rule 18.4 (Exemptions), be a use or disclosure of information authorised by the person concerned, or a use or disclosure connected with or directly related to the purpose for which the information was obtained. For the purposes of compliance with the Privacy Act, the Society shall draw the attention of prospective new Members to this rule 18.

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**18.4 Exemptions:** notwithstanding rule 18.3 (Privacy), in the event that any Member objects, for good reason, to the use or disclosure of personal information in the manner prescribed in rule 18.3, the person may apply to the Society's privacy officer (normally the Secretary) for exemption in whole or in part from the said requirements. The application shall state fully the grounds upon which the person relies. The privacy officer, having regard to the privacy principles of the Privacy Act, may in their absolute discretion grant or refuse to grant such application. Any person dissatisfied with the decision of the privacy officer under this rule 18.4 may appeal the decision to the Committee for determination.

**18.5 Retention of information:** The information collected by the Society in rule 18.1 shall be retained for a period of seven years after that person ceases to be a Member.

## **19. Access to the Register of Members**

**19.1 Access by Officers:** an Officer of the Society may access the Register of Members, if access is necessary for the performance of the Officer's functions, or the exercise of the Officer's powers.

**19.2 Access by Members:** a Member may make a request to the Committee for access to the Register of Members. The Committee will provide the access requested unless the Committee considers on reasonable grounds, including privacy grounds, that the request should be declined.

## **20. Access to other information by Members**

**20.1** A Member may at any time make a written request to the Committee for information held by the Society

**20.2** The request must specify the information sought in sufficient detail to enable it to be identified.

**20.3** If the request relates to the minutes of, or the financial statements of the Society that were presented at, the most recent Annual General Meeting, the Society must, within a reasonable period after receiving the request and without charge, provide the requested information to the Member.

**20.4** If the request relates to any other information, the Society must, within a reasonable time after receiving a request, —

- (a) provide the information; or
- (b) agree to provide the information within a specified period; or
- (c) agree to provide the information within a specified period if the Member pays a reasonable charge to the Society (which must be specified and explained) to meet the cost of providing the information; or
- (d) refuse to provide the information, specifying the reasons for the refusal.

## **21. Ceasing to be a Member**

**21.1 Resignation of Membership:** a Member may cease to be a Member by giving written notice to the Committee. Unless the notice provides otherwise, the resignation will take effect from the date the notice is received. The resignation shall not release the Member from any monetary or other obligation to the Society incurred during the Member's Membership. Once resignation has taken effect, rule 21.7 (Consequences of termination of membership) applies.

**21.2 Default in payments:** a Member that is considered unfinancial under rule 16.2 (Consequences of non-payment) for default in payment of any Membership Fee is liable to have their membership terminated if such arrears remain unpaid 12 months after the date the amount became due. Before such termination can occur, the Committee must give the Member written notice specifying the outstanding moneys

owed, and demanding payment by a due date, being a date not less than 7 days from the date of the demand. If payment is not received by the said due date, the Committee may terminate the Member's Membership by giving written notice of such termination to the Member concerned.

- 21.3 Automatic cessation:** a non-individual Member's Membership will automatically cease if the Member is wound up, liquidated, dissolved or otherwise ceases to exist.
- 21.4 Termination for cause:** if a Member refuses or neglects to comply with this Constitution, or engages in any conduct which, in the opinion of the Committee, is prejudicial to the interests of the Society or may otherwise bring the Society into disrepute, the Committee may terminate the Member's Membership if, after a grievance or complaints procedure under Part 7 has been undertaken, the Committee considers that termination is appropriate. The termination will take immediate effect.
- 21.5 Appeal to Special General Meeting:** any Member whose membership is terminated under rule 21.2 (Default in payments) or rule 21.4 (Termination for cause) may, within 30 days of being advised in writing of such action, appeal the decision to a Special General Meeting called for that purpose. The appeal shall be allowed if a Special Resolution is passed in favour of such appeal.
- 21.6 Reinstatement:** Membership which has been terminated under this Constitution may be reinstated, following reapplication in accordance with rule 13 (Applications for membership), at the discretion of the Committee.
- 21.7 Consequences of termination of membership:** Where any Member ceases, for whatever reason, to be a Member of the Society:
- (a) the Committee shall ensure the Register of Members is updated accordingly;
  - (b) the former Member shall cease to hold themselves out as being a Member of the Society, and shall cease to use any Intellectual Property;
  - (c) the Member must forthwith return any other Society property, and
  - (d) all Membership Fees and other amounts due up to the date of termination shall remain due and payable, and no Membership Fee, or other amount, that has already been paid by the Member to the Society, shall be refundable, unless the Committee considers that special circumstances apply that justify otherwise in any particular case.

## PART 4 – GOVERNANCE

### 22. Committee composition and membership

- 22.1 Number of Committee members:** the Society shall have a Committee which shall comprise at least 4 and no more than 8 persons, who shall be elected at an Annual General Meeting under rule 23 (Election of Committee Members) or, in the case of an Interim Vacancy, may be appointed by the Committee under rule 25 (Interim Vacancy).

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- 22.2 Qualification for membership of Committee:** subject to rule 22.3 (Disqualification from membership of Committee), any natural person who is a financial Member is eligible to be a Committee Member
- 22.3 Disqualification from membership of Committee:** the following persons are not eligible for election, appointment, or to remain in office as a Committee Member:
- (a) a staff member employed by the Society;
  - (b) a person who is under the age of 16 years;
  - (c) a person who is an undischarged bankrupt;
  - (d) a person who is disqualified from being an officer of an incorporated society under the Act;
  - (e) a person who is disqualified from being an officer of a charitable entity under the Charities Act;
  - (f) a person who is not a Member;
  - (g) a Member who is considered unfinancial under rule 16.2 (Consequences of non-payment).
- 22.4 Composition of the Committee:** in nominating, electing, and appointing Committee Members, consideration shall be given to reflecting the diversity, and the geographic spread, of New Zealand's communities, as well as the requirement for governance skills and knowledge.
- 23. Election of Committee Members**
- 23.1 Call for nominations:** at least 28 days before each Annual General Meeting, the Committee will:
- (a) advise all Members of the number of elected Committee Member positions that are vacant or that, due to the expiry of a Committee Member's term of office, are about to become vacant; and
  - (b) call for nominations.
- 23.2 Nominations:** candidates for election as a Committee Member under rule 23.1 must be nominated in writing. Written nominations must be duly signed and endorsed and must be received at the Registered Office of the Society, [either by post or by Electronic Mail](#), together with any accompanying background information, at least 14 days prior to the Annual General Meeting.
- 23.3 Voting papers:** a list of candidates for election together with any accompanying background information shall be circulated to all Members at least 7 days prior to the Annual General Meeting, along with instructions for voting. If there are insufficient valid nominations received under rule 23.2, but not otherwise, further nominations may be accepted from the floor of the Annual General Meeting.
- 23.4 Voting:** voting for Committee Members shall be conducted on the basis that the nominee(s) with the greatest number of votes will be elected to the vacancy (or vacancies). Each Member who is eligible to vote shall have one vote per vacancy.



Voting shall be by written ballot unless otherwise decided by the Annual General Meeting.

- 23.5 Scrutineers:** two Members (who are not Committee Members or nominees), designated by the chairperson of the Annual General Meeting, shall act as scrutineers for the counting of the votes and subsequent destruction of all voting papers.

#### **24. Term of office**

- 24.1 Term of office:** subject to rule 24.2 (Schedule of rotation) and rule 25 (Interim Vacancy), the term of office for all elected Committee Members shall be 2 years, commencing at the conclusion of the General Meeting at which they are elected, and expiring at the conclusion of the 2nd Annual General Meeting after their election. Retiring Committee Members shall be eligible for re-election, provided that no Committee Member may serve for more than 3 consecutive terms as an elected Committee Member.

- 24.2 Schedule of rotation:** prior to each Annual General Meeting, the Committee shall determine the schedule of rotation with the intention that at least the 2 longest-serving elected Committee Members stand for re-election annually.

#### **25. Interim Vacancy**

- 25.1** An Interim Vacancy in the Committee arises if:

- (a) a position on the Committee for an elected Committee Member is not filled by the Members at an Annual General Meeting; or
- (b) an elected Committee Member:
  - (i) resigns from office, by notice in writing or by Electronic Mail delivered to the Registered Office, prior to the expiry of their term of office (which notice shall take effect from the date received or such later date as may be specified in the notice);
  - (ii) dies;
  - (iii) becomes disqualified under rule 22.3 (Disqualification for membership of Committee);
  - (iv) is absent from 3 consecutive Committee meetings, without leave of absence having first been granted by the Chairperson, or the Chairperson's nominee, or in the case of the Chairperson, by the Committee as a whole; or
  - (v) is removed from office under rule 33 (Grounds for removal).

- 25.2** Subject to rule 22.1 (Number of Committee Members), if an Interim Vacancy arises, the Committee may, by resolution, appoint a suitable person with the necessary skills and attributes to fill the vacancy until the next Annual General Meeting, at which time such appointee shall retire and an election process to fill the position shall take place under rule 23 (Election of Committee Members). The retiring appointee shall be eligible for election.

## **26. Functions and powers of the Committee**

**26.1** Subject to the Act, this Constitution and any Bylaws, the Committee's functions are to manage, or to direct and supervise the management of, the operation and affairs of the Society between Annual General Meetings. In doing so, the Committee may exercise all powers of the Society that are not required by law or by this Constitution to be exercised by the Society in General Meeting. The Committee is subject to any general directions given to it by Members in General Meeting, and is accountable to Members for the implementation of the policies of the Society as approved by any General Meeting. Without limiting the generality of the foregoing, the Committee's functions include to:

- (a) carry out and further the Society's charitable purposes, using money or other assets of the Society to do that;
- (b) make policies and procedures within any general framework established by General Meeting;
- (c) control and manage the Society's financial affairs;
- (d) ensure that properly-prepared financial statements for the preceding Financial Year are presented to each Annual General Meeting;
- (e) meet the Society's record-keeping and reporting obligations under the Act and the Charities Act;
- (f) employ such staff as considered necessary or desirable for the management of the affairs of the Society;
- (g) delegate powers and duties of the Committee (not being duties imposed on the Committee by law), where considered necessary or desirable;
- (h) unless otherwise provided by this Constitution, decide the time, location and manner of holding General Meetings;
- (i) set the agenda for General Meetings; and
- (j) recommend the level of Membership Fees for approval by an Annual General Meeting.

**26.2** Any resolution of the Committee may be disallowed by the Society in General Meeting, but no resolution or Bylaw made by the Society in General Meeting shall invalidate any prior and otherwise valid act of the Committee.

**26.3** Schedule 1 (Proceedings of the Committee) governs the proceedings at meetings of the Committee, except where otherwise agreed by all Committee Members in relation to a particular meeting.

## **27. Chairperson**

**27.1** The Annual General Meeting shall elect, from among the elected Committee Members, a Chairperson, and such other office holders as the Annual General Meeting shall decide. The elected Chairperson shall hold office for a 2-year term.

**27.2 Role of Chairperson:** the role of the Chairperson is to chair meetings of the Committee, and to represent the Society. The Chairperson, or their nominee, shall

have the right to attend any meeting of any Committee subcommittee. The Chairperson is responsible for ensuring an Annual Report is prepared and presented to each Annual General Meeting.

- 27.3 Acting Chairperson:** subject to rule 25 (Interim Vacancy), if the Chairperson is temporarily unavailable for any reason, the Committee shall, by resolution, appoint another Committee Member to undertake the Chairperson's role during the period of unavailability.
- 27.4 Vacancy:** if the office of Chairperson becomes vacant between Annual General Meetings, the Committee shall appoint another Committee Member to fill the position until the conclusion of the next Annual General Meeting.

## 28. Contact Officer

**28.1 Appointment:** If and while required by the Incorporated Societies Act, the Committee shall by resolution appoint a Contact Officer to be the point of contact for the Registrar. Generally the Contact Officer shall be the Secretary of the Society.

**28.2 Notification:** The name and contact details of the Contact Officer shall be notified to the Registrar in accordance with the Act. If there is a change to who holds the position of the Contact Officer, or to any information that the Registrar has recorded about the contact information for the Contact Officer, the Society shall advise the Registrar of the new information and/or Contact Officer as soon as practicable after the change has been made.

## 29. Subcommittees

- 29.1** The Committee may resolve to:
- establish one or more subcommittees, whether permanent or ad hoc, consisting of such persons as the Committee determines to deal with and report on any matters the Committee considers appropriate;
  - delegate to each such subcommittee, or to any person, such of the Committee's functions or powers as the Committee shall, in its discretion, decide;
  - revoke or vary any or all of the powers delegated to any subcommittee; and
  - change the make-up of a subcommittee at any time or dissolve it altogether.
- 29.2** The chairperson of any such subcommittee must be a Committee Member, unless the Committee decides otherwise in any particular case.
- 29.3** A subcommittee shall be conducted, and shall exercise the powers delegated to it, in accordance with any directions of the Committee which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.
- 29.4** The Committee may continue to exercise all of their powers despite any delegation made under this rule.
- 29.5** The provisions of this Constitution relating to proceedings of the Committee also apply to proceedings of any subcommittee of the Committee, except to the extent that the Committee determines otherwise. All subcommittee decisions shall be approved by the Committee before they become effective and before they are implemented, unless the Committee otherwise directs.

### **30. Advisory Committee**

- 30.1** The Committee may from time to time establish an Advisory Committee whose opinions may be sought as to the best means of advancing the aims of the Society.
- 30.2** The Committee shall determine the membership and terms of office of the Advisory Committee.
- 30.3** The Advisory Committee may be drawn from the network of people engaged in activities aligned to those of the Society. Members of the Advisory Committee will not be agents of the Society.

### **31. General Manager**

- 31.1** Without limiting the generality of rule 26.1(g) (Functions and powers of the Committee), the Committee may employ, contract or designate a volunteer as General Manager of the Society, for such term and on such conditions as the Committee may determine. The title of the General Manager may be chief executive, chief operating officer, coordinator or such other title as may be determined from time to time by the Committee.
- 31.2** Subject to this Constitution and the Act, the Committee may delegate to the General Manager such of its functions and powers, that the Committee is not prohibited from delegating under the Act or under this Constitution, as the Committee considers appropriate and as may be agreed between the Committee and the General Manager.
- 31.3** The General Manager may attend and speak at all Committee meetings and all General Meetings, subject to any decision to the contrary by any meeting of either body, but shall have no voting rights.

### **32. Duties of Officers**

- 32.1** The duties of each Officer of the Society include to:
- (a) act at all times in good faith and in what the Officer believes to be the best interests of the Society;
  - (b) exercise the powers of the Officer for proper purposes;
  - (c) act, and ensure the Society acts, in accordance with the Act, the Charities Act [\(if registered as a charity\)](#), this Constitution and any Bylaws;
  - (d) exercise the care, diligence and skill that a reasonable person with the same responsibilities would exercise in the same circumstances;
  - (e) not agree to, nor cause or allow, the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;
  - (f) not agree to the Society incurring any obligation unless the Officer believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so;
  - (g) disclose any conflict of interest in accordance with rule 10 of schedule 1 (Duty to disclose conflicts of interest);

- (h) not disclose information that the Officer would not otherwise have available but for their capacity as an Officer, to any person, or make use of or act on the information except:
  - (i) as agreed by the Committee for the purposes of the Society;
  - (ii) as required by law; or
  - (iii) in circumstances analogous to those specified in sections 145(2) and (3) of the Companies Act 1993 (Use of company information);
- (i) make reasonable efforts to attend all Committee meetings and General Meetings of the Society;
- (j) use their best efforts to consult with Members and others to keep abreast of the issues facing the Committee, the Society and its Members; and
- (k) participate in any annual review of the Committee's performance.

**32.2** Use of information and advice: subject to rule 32.3, an Officer, when exercising powers or performing duties as an Officer, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the Society whom the Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters that the Officer believes on reasonable grounds to be within the person's professional or expert competence;
- (c) any other Officer or subcommittee of Officers upon which the Officer did not serve in relation to matters within the officer's or subcommittee's designated authority.

**32.3** Rule 32.2 (Use of information and advice) applies to an Officer only if the Officer —

- (a) acts in good faith; and
- (b) makes proper enquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that the reliance is unwarranted.

### **33. Grounds for removal from office**

The Society may, by Special Resolution, remove any Committee Member, before the expiration of their term of office, if that Committee Member:

- (a) is found, after a disputes resolution process (conducted in accordance with Part 7 (Procedures for resolving disputes) as though the matter were a complaint about a "Member"), to have breached any of the duties in rule 32 (Duties of Officers); or
- (b) does not have capacity to competently exercise the powers, authorities and discretions of office. Lack of capacity shall include being mentally incapable within the meaning of the Protection of Personal and Property Rights Act 1988.

### **34. Indemnity and insurance**

**34.1 Indemnities:** the Society may indemnify an Officer, a Member, or an employee, of the Society in respect of:

- (a) liability to any person other than the Society for any act or omission in their capacity as an Officer, Member, or employee (not being a liability specified in rule 34.2); and
- (b) costs incurred by the Officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; and
- (c) costs incurred by the Officer, Member, or employee in defending or settling any proceeding that relates to liability to any person for any act or omission in their capacity as an Officer, Member, or employee, but only if judgment is given in their favour, they are acquitted or the proceeding is discontinued.

**34.2** The liability specified in this rule is —

- (a) criminal liability; or
- (b) a liability that arises out of a failure to act in good faith and in the best interests of the Society when acting in the capacity as an Officer, Member, or employee.

**34.3 Insurance:** the Society may, with the prior approval of the Committee, effect insurance for an Officer, Member, or employee, of the Society in respect of:

- (a) liability (other than criminal liability) to any person for any act or omission in his or her capacity as an Officer, Member, or employee; or
- (b) costs incurred by the Officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; or
- (c) costs incurred by the Officer, Member, or employee in defending any criminal proceedings —
  - (i) that have been brought against the Officer, Member, or employee in relation to any alleged act or omission in their capacity as an Officer, Member, or employee; and
  - (ii) in which they are acquitted.

**34.4** Committee Members may only vote in favour of authorising the insurance under rule 34.3 if they consider that the cost of effecting the insurance is fair to the Society.

**34.5** The power of the Society to indemnify and effect insurance pursuant to this rule may not be exercised if and to the extent that to do so would prejudice the charitable status of the Society.

## **PART 5 – GENERAL MEETINGS**

### **35. Annual General Meetings**

**35.1** An Annual General Meeting of the Society must be held no later than 6 months after Balance Date and no later than 15 months after the previous Annual General Meeting.

**35.2** The Committee shall determine when the Annual General Meeting will be held.

**35.3** The Committee must ensure that minutes of the Annual General Meeting are taken.

**35.4** The business of the Annual General Meeting shall include:

- (a) receiving the minutes of the previous Annual General Meeting, and any Special General Meeting held since the previous Annual General Meeting;
- (b) the presentation of:
  - (i) the Annual Report;
  - (ii) the signed financial statements of the Society for the most recently-completed accounting period, together with the report of any Qualified Auditor appointed under rule 47 (Audit); and
  - (iii) a summary of any disclosures or the types of disclosures made by Committee Members under rule 10.4 of schedule 1 (Duty to disclose conflicts of interest), recorded since the previous Annual General Meeting;
- (c) whether a Qualified Auditor is to be appointed under rule 47 (Audit) and, if so, the appointment of a Qualified Auditor,
- (d) election of Committee Members;
- (e) election of the Chairperson and any other office holders;
- (f) fixing any annual Membership Fee;
- (g) motions to be considered; and
- (h) any general business.

### **36. Special General Meetings**

**36.1** The Committee may call a Special General Meeting at any time.

**36.2** The Committee must call a Special General Meeting:

- (a) if 2 Committee Members request it;
- (b) on receipt of a written request (which must state the purpose for which the Special General Meeting is requested, and include any proposed motion(s)) signed by at least 10 Members;
- (c) if the Committee receives a written request from any Member under rule 21.5 (Appeal to a Special General Meeting).

**36.3** The Committee shall determine when a Special General Meeting will be held, provided that Special General Meetings must be convened within 30 days of receipt of a valid request under rule 36.2.

**36.4** The business to be dealt with at a Special General Meeting is limited to the matters stated in the valid written request and/or the notice of such meeting.

**36.5** A written resolution that has been forwarded to all Members entitled to receive notice of a Special General Meeting, and that has been signed by the requisite majority of Members, is as valid and effective as if it had been passed at a Special General

Meeting duly convened and held. Such resolution may consist of several duplicated documents, and may be provided by Electronic Communication through which each signing Member expressly refers to the resolution and records their specific position on the resolution.

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### 37. Notice of General Meetings

**37.1** The Committee shall ensure that written notice of a General Meeting is given to all Members and all Committee Members, at least 7 days prior to the date of the meeting, provided that in the case of an Annual General Meeting, at least 30 days' notice must be given,

**37.2** The notice of a General Meeting must:

- (a) specify the place, date and time of the meeting, as determined by the Committee;
- (b) if the meeting is to be conducted as a Hybrid Meeting or Teleconference Meeting, provide the instructions for connecting to the meeting;
- (c) include an agenda, or otherwise clearly state why the meeting is being convened and provide as full details as practicable of the nature of the business to be transacted at the meeting; and
- (d) provide:
  - (i) notice of any motions to be considered at the meeting;
  - (ii) any information provided by a Member in support of a Member's motion; and
  - (iii) the Committee's recommendation about any motions.

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**37.3** For an Annual General Meeting, the notice of meeting must also be accompanied by:

- (a) a copy of the Annual Report;
- (b) the financial statements of the Society for that period; and
- (c) a list of all candidates for election to the Committee, and any other information required by rule 23.3 (Voting papers).

**37.4** All written notices shall be deemed to have been properly sent if forwarded by ordinary post or Electronic Mail to the address appearing in the Register of Members. If the Committee has in good faith made reasonable efforts to send written notice to all Members, the General Meeting and its business shall not be invalidated simply because one or more Members inadvertently did not receive the notice.

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**37.5** The Society may, by Ordinary Resolution, deal with any business or proposed resolution at any meeting irrespective of whether prior notice of the same has been given, with the exception of a motion to amend the Constitution, which may not be considered at a General Meeting unless prior written notice of the proposed motion has been given to all Members in accordance with rule 58 (Amendments to Constitution).



### **38. Motions**

- 38.1** Any proposed motions and other items of business that Members and/or the Committee wish to be considered at a General Meeting must be in writing and received at the Registered Office, by post or Electronic Mail, not less than 40 days before the date set for the General Meeting at which they are to be considered.
- 38.2** The Committee must decide whether or not the Society will vote on any motion proposed by a Member. However, if the proposed motion is signed by at least 3 Members, it must be voted on at the meeting.
- 38.3** Any matter of an urgent or extraordinary nature which would normally be required to be the subject of a notice of motion may, if prior written notice is given to the Chairperson, be brought before a General Meeting and determined by it, but only if a majority of Members vote in favour of the motion being tabled without the requisite notice.
- 38.4** A proposed motion to amend the Constitution must be accompanied by the text of the proposed amendment, and a written explanation of the reasons for the proposal.
- 38.5** The Committee may provide a recommendation on any motions and other items of business put forward by a Member for consideration at a General Meeting.

### **39. Meetings generally**

- 39.1** The quorum for a General Meeting is 50% of all Members entitled to vote at the General Meeting under this Constitution, whether in person or by proxy. Committee Members are entitled to attend and speak at General Meetings, but do not have any right to vote in that capacity.
- 39.2** No business may be conducted at a General Meeting unless a quorum is present. If a quorum is not present within half an hour of the appointed time the Members present may transact the business at that meeting as if they constituted a quorum.
- 39.3** A General Meeting may be held by a number of Members constituting a quorum:
- (a) being assembled together at the place and time appointed for the meeting; or
  - (b) participating in the meeting by Teleconference Meeting; or
  - (c) by a combination of the methods described in paragraphs (a) and (b), such that it is a Hybrid Meeting.
- 39.4** In the case of a Teleconference Meeting or a Hybrid Meeting:
- (a) a Member attending by means of Electronic Communication or telephone is considered to be present when their presence is acknowledged by others taking part; and
  - (b) a Member must not leave or disconnect their means of communication without the prior consent of the chairperson of the meeting.
- 39.5** A Member is conclusively deemed to have been present and to have formed part of the quorum at all times during the meeting unless and until they have previously obtained the express consent of the chairperson to leave or disconnect from the meeting.

**39.6** If the Chairperson is present at a General Meeting, the meeting will be chaired by the Chairperson. If the Chairperson is absent within 5 minutes after the time appointed for the meeting, the financial Members present shall elect one of their number to chair the meeting in the Chairperson's absence.

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#### **40. Decisions at General Meetings**

**40.1** All questions before a General Meeting shall, if possible, be decided by consensus.

**40.2** In the event that a consensus cannot be reached, and except where this Constitution otherwise provides, the question shall be put as a motion to be decided. A resolution on that motion will be validly made if it is passed by an Ordinary Resolution, unless this Constitution requires a Special Resolution in any particular case, in which case it will only be validly made if passed by a Special Resolution. If a motion is tied, and the chairperson of the meeting does not exercise a casting vote in favour of the motion, the motion shall be lost.

#### **41. Voting at General Meetings**

**41.1** At each General Meeting, each financial Member entitled to vote under this Constitution shall receive one vote, provided that no Member shall be entitled to vote at any General Meeting if and while any of their Membership Fees are in arrears.

**41.2** Proxies: if a Member who is entitled to vote is unable to be present in person at any particular General Meeting, the Member may appoint a Proxy to act on their behalf at the meeting, provided that the Member has first notified the Committee in writing of the name and contact details of the Proxy at least 24 hours prior to the meeting.

**41.3** Despite rule 41.2, the General Meeting may by Ordinary Resolution accept Proxies notified in writing up to the commencement of a General Meeting.

**41.4** Proxy voting is only permitted for motions on which a Special Resolution is required in accordance with this Constitution.

**41.5** A resolution put to the vote of a General Meeting shall be decided on the voices, unless a poll is immediately demanded by a Member present in person and entitled to vote, in which case, a show of hands shall be taken, unless 5 Members present and entitled to vote immediately demand that the motion be determined by written ballot, in which case the motion shall be determined by written ballot.

**41.6** At a Teleconference Meeting or Hybrid Meeting, Members attending by means of Electronic Communication must vote individually by posting their vote on the host site, unless their vote on a show of hands is visible to all other attendees, for example by means of live video-conference software or similar form of communication.

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**41.7** In the event of an equality of votes upon any proposed resolution at a General Meeting, the person chairing the General Meeting may, but is not required to, exercise a second or casting vote, in addition to any deliberative vote the chairperson may have.

**41.8** A declaration by the person chairing a General Meeting that a resolution has, on the voices or on a show of hands, been carried, or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the minutes, is conclusive

evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **PART 6 – LEGAL AND FINANCIAL MATTERS**

### **42. Method of contracting**

Subject to rule 43 (Common seal), Trust Democracy Incorporated may enter into a contract or other enforceable obligation as follows:

- (a) an obligation that, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Society in writing signed under the name of the Society by —
  - (i) 2 or more Committee Members of the Society; or
  - (ii) one Committee Member, or the General Manager, whose signature must be witnessed; or
  - (iii) an attorney appointed by the Society, by deed, either generally or in relation to the specific matter;
- (b) an obligation that, if entered into by a natural person is, by law, required to be in writing may be entered into on behalf of the Society in writing by a person acting under the Society's express or implied authority;
- (c) an obligation that, if entered into by a natural person is not, by law, required to be in writing may be entered into on behalf of the Society in writing or orally by a person acting under the Society's express or implied authority.

### **43. Common seal**

If, and while, required by the Act, the Society shall have a common seal, which shall be kept in the custody and control of the Committee, and shall be used only as directed by the Committee. The common seal must not be affixed to any document unless the Committee has already authorised its use on that document by resolution. When a document is to be sealed on the prior authority of the Committee, the seal must be affixed to the document in the presence of 2 signatories of the Society, who must sign the document.

### **44. Use of Society name**

The Society must ensure that its name is clearly stated in —

- (a) every written communication sent by, or on behalf of the Society; and
- (b) every document issued or signed by, or on behalf of, the Society that evidences or creates a legal obligation of the society.

### **45. Control and management of finances**

**45.1** The funds of the Society must be used to further the charitable purposes of the Society:

- (a) as the Committee decides; or

(b) as the Society decides by resolution passed at a General Meeting.

- 45.2** The Committee is responsible for the receipt and banking of all monies received by the Society and all sums paid out by the Society.
- 45.3** The Society's bank account(s) shall be kept at such trading bank, and operated with such signatories, as may be determined from time to time by the Committee.
- 45.4** All monies received by or on behalf of the Society shall be paid promptly to the credit of the Society's bank account.
- 45.5** All payments must be signed or otherwise approved by 2 Committee Members or employees of the Society, being persons who have been authorised to do so by the Committee, or otherwise in such manner as the Committee shall decide from time to time.
- 45.6** The Committee shall ensure that all payments by or on behalf of the Society are properly authorised before payment, are promptly paid once authorised, and that generally the funds of the Society are properly accounted for.
- 45.7** The Committee may appoint a financial adviser for the Society.

**46. Accounting records and financial statements**

- 46.1** The Committee is responsible for ensuring that there are kept at all times accounting records that:
- (a) correctly record the financial transactions of the Society;
  - (b) will allow the Society to produce financial statements that comply with the Act; and
  - (c) would enable the financial statements to be readily and properly audited (if required).
- 46.2** The Committee must establish and maintain a satisfactory system of control of the Society's accounting records.
- 46.3** The Committee must ensure that, within 6 months after the end of each Financial Year, financial statements are:
- (a) completed in relation to the Society and that Financial Year; and
  - (b) dated and signed on behalf of the Committee by 2 Committee Members.

**47. Audit**

- 47.1** If the Society is required, or at any time resolves, to appoint an auditor or reviewer, then the Society shall appoint a qualified person to:
- (a) hold office until the conclusion of the next Annual General Meeting; and
  - (b) audit, or review as the case may be, the financial statements of the Society.
- 47.2** The Committee shall ensure that the qualified person so appointed has access to the documentation of the Society, and to such information and explanations as the Qualified Auditor thinks fit for the proper performance of their duties.

## **PART 7 – PROCEDURES FOR RESOLVING DISPUTES**

### **48. Guiding principles**

**48.1** All parties to a complaint or grievance shall endeavour to resolve the matter informally and in the spirit of the following principles:

- (a) fairness: the process should be fair to all parties;
- (b) accountability: the process should determine accountability, provide outcomes and give reasons for decisions.

**48.2** In the event that informal discussions cannot resolve the issue, the procedures in this Part 7 shall apply.

### **49. Complaints about a Member**

**49.1** Any person may make a complaint about the conduct of a Member.

**49.2** Complaints about the conduct of a Member or a Committee Member must be made in writing, directed to the General Manager, and contain sufficient detail to identify the complainant, the subject matter, and the nature of the complaint.

**49.3** Subject to rule 53 (General Manager or Committee may decide not to investigate complaint or grievance), the General Manager must forward the written complaint to the Member complained of within 14 days of receipt.

**49.4** If the General Manager forwards the written complaint under rule 49.3, the Member complained of may, within a further period of 14 days, provide the General Manager with their written response to the complaint. The General Manager must forward the written response to the complainant within 14 days of receipt.

**49.5** The General Manager will consider the matter and, if considered necessary or desirable in order to give both parties a reasonable opportunity to be heard, may convene a face-to-face meeting between the complainant and the Member complained of.

**49.6** Having considered the matter under rule 49.5, the General Manager will make a decision as to how the complaint is to be resolved.

### **50. Escalation to the Committee**

**50.1** If either the complainant, or the Member complained of, is unhappy with a decision of the General Manager made under rule 49 (Complaints about a Member), either party may request that the General Manager escalate the matter to the Committee.

**50.2** If the General Manager receives a request for escalation to the Committee, or if the General Manager otherwise considers that escalation of the matter to the Committee is necessary or desirable, the General Manager shall, within 14 days of the decision, or of receipt of the request, whichever is the later, forward to the Committee a copy of the complaint, the written response and any other documentation considered desirable.

**50.3** The Committee shall consider the matter at a Committee meeting held within 14 days of the escalation, or as soon as practicable thereafter.

**50.4** The Member complained of has a right to be heard before the complaint is resolved or any outcome is determined.

**51. A Member's grievance against the Society or another Member**

**51.1** A Member may raise with the Committee an allegation of damage (caused by the Society, or a Member) to a Member's rights or interests (as a Member) or to Members' rights and interests generally.

**51.2** An oral hearing of the grievance will be held if the Committee decides that for serious or complex cases, after taking into account the potential consequences for a Member if a grievance is upheld or not upheld, an oral hearing is needed to achieve an adequate process, or is otherwise desirable.

**51.3** The Member will be heard before the grievance is resolved or any outcome is determined.

**52. Investigating and determining complaint or grievance**

**52.1** Subject to rule 53 (General Manager or Committee may decide not to investigate complaint or grievance), the Committee must, as soon as is reasonably practicable after receiving a complaint or grievance, investigate and determine the complaint or grievance. In conducting the investigation, the Committee may consult with other parties considered relevant.

**52.2** The Committee will endeavour to resolve the dispute by consensus.

**52.3** In the event that consensus is not possible, or if the Committee decides that, for serious or complex cases, after taking into account the potential consequences for any person if a complaint or grievance is upheld, an oral hearing is needed to achieve an adequate process, or is otherwise desirable, the Committee may call a General Meeting to consider and determine the matter.

**52.4** The written material and any additional submissions by either party will be considered by the Committee. If a General Meeting is convened under rule 52.3, the parties will be given the opportunity to speak at the meeting, and the parties' submissions and/or written statements will be considered by the General Meeting.

**53. General Manager or Committee may decide not to investigate complaint or grievance**

Despite rules 49.3 (Complaints about a Member) and 52 (Investigating and determining complaint or grievance), the General Manager or the Committee may decide not to proceed with a matter further if the General Manager or the Committee, as the case may be, determines that —

- (a) the matter is trivial; or
- (b) the complaint or grievance does not appear to disclose:
  - (i) in the case of a complaint, any material misconduct; or
  - (ii) in the case of a grievance, any material damage to a Member's rights or interests; or

- (c) the complaint or grievance appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the complaint or brings the grievance has an insufficient interest in the matter; or
- (e) the conduct, incident, event, or issue has already been dealt with by or on behalf of the Society.

**54. Committee may refer complaint to subcommittee or other investigator**

The Committee may refer a complaint or grievance to:

- (a) a complaints subcommittee or external person to investigate and report; or
- (b) a complaints subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

**55. Decision-makers**

A person may not act as a decision-maker in relation to a complaint or grievance if 2 or more Committee Members, or a complaints subcommittee, or the Members by resolution at a General Meeting, consider that there are reasonable grounds to believe that the person may not:

- (a) be impartial; or
- (b) be able to consider the matter without a predetermined view.

**56. Decisions**

Having considered all relevant information, and provided a reasonable opportunity to be heard, the decision-maker in relation to a complaint or grievance may make any decision they think fit, including:

- (a) that no further action needs to be taken;
- (b) requiring a Member to take specified corrective action;
- (c) the publication of any corrective letter or statement;
- (d) suspension of the Member for any period of time; and/or
- (e) termination under rule 21.4 (Termination for cause) or removal under rule 33 (Grounds for removal from office).

**PART 8 – ADMINISTRATION**

**57. Patron**

On the recommendation of the Committee, the Society may, by Ordinary Resolution, invite a person to be Patron of Trust Democracy Incorporated. Such invitation, if subsequently accepted, shall be for such term as the General Meeting determines. The patron shall not be a member of the Committee.

## **58. Amendments to Constitution**

- 58.1** This Constitution may only be amended by Special Resolution passed at a properly-convened General Meeting at which prior written notice has been given to all Members in accordance with rule 37 (Notice of General Meetings).
- 58.2** The power of amendment conferred by rule 58.1 may not be exercised to make an amendment:
- (a) inconsistent with the charitable purposes of the Society; or
  - (b) which would prejudice the charitable nature of the Society.
- 58.3** No amendment to the Constitution shall take effect until registered with the Registrar. Any amendment to this Constitution shall also be notified as required by the Charities Act.
- 58.4** No addition to or alteration of the aims, personal benefit clause or the winding up clause shall be made which affect the non-profit body status.
- 58.5** The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

## **59. Bylaws**

- 59.1** The Society may, by Ordinary Resolution, make such Bylaws as it considers desirable, provided that they are not inconsistent with:
- (a) the Act; or
  - (b) this Constitution; or
  - (c) the Purposes; or
  - (d) any directive given at a General Meeting.
- 59.2** All Bylaws are binding on the Society and its Members.
- 59.3** The making, amendment, or replacement of a Bylaw is not an amendment of the Constitution.

## **60. Winding up**

- 60.1** The Society may be voluntarily put into liquidation if:
- (a) a Special Resolution is passed, at a General Meeting that is properly notified and convened in accordance with the Act and Part 5 (General Meetings), to dissolve the Society, or to appoint a liquidator, as the case may be; and
  - (b) if required by the Act, such resolution is confirmed by Ordinary Resolution at a subsequent Special General Meeting called for that purpose and held not later than 30 days after the date on which the first resolution was passed.
- 60.2** the Society may request the Registrar that it be voluntarily dissolved in the circumstances permitted by the Act.
- 60.3** upon winding up or dissolution of the organisation there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid or



distributed among the members of the organisation but shall be given or transferred to some other organisation or body with similar objects to the first organisation or for some other charitable purpose, within New Zealand.

**60.4** in the absence of a decision by the Society in accordance with rule 60.3, the surplus assets of the Society shall be applied to such charitable purposes in New Zealand as a Judge of the High Court of New Zealand directs.

**61. Matters not provided for**

If any matter arises which, in the opinion of the Committee, is not provided for in this Constitution, then the same may be determined by the Committee in such manner as it deems fit, and every such determination shall be binding upon Members unless and until set aside by a resolution of a General Meeting.

## SCHEDULE 1: PROCEEDINGS OF THE COMMITTEE

### 1. Meetings

- 1.1 The Committee Members shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Society, provided that they meet at least 4 times per year.
- 1.2 A meeting may be called at any time on the Chairperson's own motion or if a 2/3 majority of Committee Members request it.
- 1.3 Except where this Constitution otherwise expressly provides, each Committee Member present at a meeting of the Committee is entitled to one vote.

### 2. Notice of meetings

- 2.1 A schedule of meetings shall be communicated by the Chairperson by Electronic Mail, or otherwise in writing, to each of the other Committee Members at the start of each Financial Year, noting the proposed date, time, and place of each meeting. This schedule of meetings shall be updated as required throughout the year.
- 2.2 At least 5 days' notice of any Committee meeting shall be communicated by the Chairperson by Electronic Mail, or otherwise in writing, to each of the other Committee Members. However, all of the Committee Members may agree to shorten or waive the period of notice.
- 2.3 The notice of meeting shall include the date, time and place of the meeting and an indication of the matters to be discussed.
- 2.4 No notice is necessary for the resumption of an adjourned meeting. However, a Committee Member who was not present at the meeting adjourned must be notified of the time and place of the reconvened meeting.
- 2.5 The Chairperson shall use all reasonable endeavours to ensure all notices of meeting have been correctly sent. However, the inadvertent failure of any Committee Member to receive a notice of a meeting of the Committee shall not invalidate such meeting or its proceedings.

### 3. Methods of holding meetings

- 3.1 A meeting of the Committee may be held either:
  - (a) by a number of Committee Members who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
  - (b) by a Hybrid Meeting or Teleconference Meeting at which a quorum of Committee Members participating can simultaneously hear each other throughout the meeting, provided that all Committee Members received notice of the meeting and the requirements of rule 3.2 of this schedule are met.
- 3.2 In the case of a Hybrid Meeting or Teleconference Meeting:
  - (a) at the start of the meeting, each participant must acknowledge their presence to all the others taking part; and

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(b) a Committee Member must not leave or disconnect their means of communication without the prior consent of the chairperson.

3.3 A Committee Member is conclusively presumed to have been present and to have formed part of the quorum at all times during a meeting unless they have previously obtained the express consent of the chairperson to leave or disconnect from the meeting.

#### 4. Quorum

4.1 A quorum for a meeting of the Committee shall be a majority of the Committee Members in office at the time of the meeting.

4.2 A Committee Member who is diagnosed by a registered medical practitioner as having any physical or mental incapacity that means the person is temporarily unable to fulfil the duties and responsibilities of a Committee Member, shall not be treated as a Committee Member for the purposes of rule 4.1 of this schedule.

4.3 At any meeting of the Committee, no business shall be transacted unless a quorum is present.

#### 5. Adjournment

5.1 If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting will stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be dissolved.

5.2 The Chairperson may adjourn any meeting on the adoption of a resolution for its adjournment.

#### 6. Chairperson

6.1 Subject to rule 27 (Chairperson), the Chairperson shall chair all meetings of the Committee.

6.2 The chairperson of a Committee meeting shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

6.3 All Committee appointments shall be recorded in the minutes.

#### 7. Voting on resolutions

7.1 All questions before the Committee shall, if possible, be decided by consensus.

7.2 In the event that a consensus cannot be reached, and except where this Constitution otherwise provides, the question shall be put as a motion to be decided. A resolution on that motion will be validly made if it is passed by a simple majority of votes of those present and entitled to vote at a duly-convened and conducted meeting of the Committee. Subject to this schedule, the method of voting shall be decided by the Committee. Different methods may be adopted for different motions. If the voting is tied, and the Chairperson does not exercise a casting vote under rule 6.2 of this schedule, the motion shall be lost.

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- 7.3** A Committee Member present at a meeting of the Committee is presumed to have agreed to, and to have voted in favour of, a resolution of the Committee unless they expressly dissent from or vote against the resolution at the meeting.
- 7.4** A written resolution signed by all of the Committee Members then entitled to receive notice of a meeting of the Committee is as valid and effective as if it had been passed at a meeting of the Committee duly convened and held. Such a resolution may consist of several duplicated documents, each signed by one or more of the Committee Members, and may be sent by Electronic Communication.
- 7.5** A resolution of the Committee may be rescinded or varied by the Committee in the same manner as it was passed.

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## **8. Minutes**

- 8.1** The Committee must ensure that minutes are taken of every Committee meeting, and are made available to any Committee Member on request. The minutes shall record, for each and every meeting of the Committee:
- (a) the names of those present;
  - (b) all decisions taken; and
  - (c) any other matters discussed at the meeting.
- 8.2** A minute of a Committee meeting which has been signed correct by the chairperson of that meeting, or by the chairperson of the next succeeding meeting, shall be prima facie evidence of the matters referred to in the minute having been approved by the Committee unless they are shown to be inaccurate.
- 8.3** Decisions recorded in the minutes shall be read in conjunction with this Constitution and are binding on all persons connected with the Society.

## **9. Interests Register**

- 9.1** The Committee must keep and maintain an Interests Register, being a register of disclosures made by Officers under rule 10 of this schedule.
- 9.2** The Interests Register must be made available for inspection by the Officers of the Society.
- 9.3** The Interests Register may, subject to the requirements of the Privacy Act and at the Committee's discretion, be made available for inspection by Members.

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## **10. Duty to disclose conflicts of interest**

- 10.1** As soon as an Officer becomes aware of the fact that they are, or may be, in any capacity whatsoever, Interested in a Matter relating to the Society, they must as soon as practicable disclose all relevant details of the interest to the Committee, including:
- (a) the nature and monetary value of that interest (if the monetary value of the Officer's interest is able to be quantified); or
  - (b) if the monetary value of the Officer's interest cannot be quantified, the nature and extent of that interest.

**10.2** After considering the views of the other Committee Members, the chairperson may rule that the affected Officer is not conflicted in relation to a disclosure, where no conflict in fact exists.

**10.3** A disclosure by a Officer, and the chairperson's ruling in respect of that disclosure, must be recorded in the minutes of the Society.

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**10.4** If the Officer is determined to be Interested in the matter, all relevant details of the interest must be recorded in the Interests Register.

### **11. Voting by Interested Officers**

**11.1** An Officer who is Interested in a Matter relating to the Society:

- (a) must not vote or take part in any decision of the Committee relating to the Matter; and
- (b) must not sign any document relating to the Matter, but
- (c) may take part in any discussion of the Committee relating to the Matter and be present at the time of the decision of the Committee (unless the Committee decides otherwise); and
- (d) may be counted for the purposes of determining whether there is a quorum at any meeting at which the Matter is considered.

**11.2** Despite rule 11.1(d) of this schedule, if 50% or more of the Committee Members are prevented from voting on the Matter under rule 11.1(a), a Special General Meeting must be called to consider and determine the matter.

### **12. Consequences of failing to disclose interest**

The Committee must notify the Members of a failure to comply with rules 10 or 11 of this schedule, and of any Matter affected, as soon as practicable after becoming aware of the failure.

### **13. Validity of proceedings**

**13.1** All acts done by any meeting of the Committee, a subcommittee, or by any person acting as a Committee Member shall, notwithstanding that it is afterwards discovered that any of them were not properly appointed, or were disqualified from holding office, shall be as valid as if every such person had been duly appointed and was qualified to be a Committee Member.

**13.2** The Committee Members may continue to act notwithstanding any vacancy in their number, but if the number of Committee Members is reduced below the minimum number as stated in this Constitution, the continuing Committee Member(s) may act for the purpose of increasing the number of Committee Members to that minimum but for no other purpose.

### **14. Committee may regulate other proceedings**

Except as otherwise set out in this Constitution, the Committee may regulate its own procedures in such manner as it sees fit to efficiently govern the Society.