



Constitution of Medical Technology Association of New Zealand Incorporated

PwC Legal

15 Customs Street West, Private Bag 92162, Auckland 1010, New Zealand
www.pwc.co.nz/legal

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

Act means the Incorporated Societies Act 2022 or any Act which replaces it (including amendments from time to time), and any regulations made under the Act or any Act which replaces it.

Annual General Meeting means a meeting of the Members held in accordance with Rule 15.

Associate Member has the meaning given to that term in Rule 5.2.

Board means the governing body of the Society, elected in accordance with Rule 7.

Board Member means a Member elected to the Board pursuant to Rule 7, and for the avoidance of doubt includes the Chair, Deputy Chair, and Treasurer.

By-Law means any by-law of the Society made under Rule 20.

Chair means the Board Member responsible for, among other things, overseeing the governance and operations of the Society, and chairing General Meetings and meetings of the Board, elected in accordance with Rule 7.4.

Chairperson has the meaning given to that term in Rule 18.1.

Chief Executive Officer means the Chief Executive Officer of the Society appointed by the Board pursuant to Rule 10.

Constitution means this constitution of the Society and all amendments to it from time to time.

Contact Person has the meaning given to that term in Rule 29.2.

Deputy Chair means the Board Member elected from time to time under Rule 7.4 to deputise in the absence of the Chair.

Dispute Notice has the meaning given to that term in Rule 26.5(c).

Financial Year means the financial year for the Society which will run from 1 April to 31 March each year unless otherwise determined by the Board.

First Party has the meaning given to that term in Rule 26.5(c).

General Meeting means an Annual General Meeting and/or a Special General Meeting.

Honorary Life Member has the meaning given to that term in Rule 5.9.

Honorary Auditor means the person appointed pursuant to Rule 12.1(a).

Honorary Officer means an honorary officer of the Society appointed pursuant to Rule 12.

Honorary Solicitor means the person appointed pursuant to Rule 12.1(b).

Incorporated Society means a society incorporated under the Act.

Interested Member means a Board Member who is interested in a Matter for any of the reasons set out in section 62 of the Act.

Interests Register means the register of interests of Board Members, kept under these Rules.

Matter means:

- (a) the Society's performance of its activities or exercise of its powers; or
- (b) an arrangement, agreement, or contract (a transaction) made or entered into, or proposed to be entered into, by the Society.

Member means a person entered on the Register of Members of the Society as a member of the Society who has not ceased to be a member of the Society.

Medical Technology means any product or solution that improves or saves people's lives by diagnosing, treating, or monitoring disease or injury, and includes devices, software, and other such materials.

Other Committee has the meaning given to that term in Rule 11.1.

Other Party has the meaning given to that term in Rule 26.5(c).

Society means the Medical Technology Association of New Zealand Incorporated.

Register means the register of incorporated societies established under section 231 of the Act.

Register of Members means the register of Members maintained under this Constitution.

Registrar means the Registrar of Incorporated Societies appointed in accordance with section 240 of the Act.

Rules means the rules in this Constitution.

Secretary means the individual responsible for, among other things, keeping the Register of Members, the Interests Register, and recording the minutes of General Meetings and meetings of the Board, appointed at meetings of the Board from time to time.

SIG has the meaning given to that term in Rule 13.1.

SAG has the meaning given to that term in Rule 14.1.

Special General Meeting means a meeting of the Members, other than an Annual General Meeting, called for a specific purpose or purposes in accordance with Rule 16.

Treasurer means the Board Member responsible for, among other things, overseeing the finances of the Society, elected from time to time under Rule 7.4.

Working Day means a day on which banks are open for general banking business in Auckland, New Zealand, excluding Saturdays, Sundays or public holidays in Auckland, New Zealand.

1.2 **General**

In interpreting this Constitution the following rules must be applied unless the context otherwise requires:

- (a) headings and boldings are for reference only and are not an aid in interpretation;
- (b) references to clauses, rules or schedules are to clauses or rules in, or schedules to, this Constitution;
- (c) words importing the plural include the singular and vice versa and words importing one gender import all genders;
- (d) references to a statute include references to regulations, orders and notices made under that statute and include references to all amendments to that statute whether by subsequent statute or otherwise;
- (e) “written” and “in writing” includes any means of reproducing words, figures or symbols in a tangible and visible form in any medium; and
- (f) “signature” includes, in relation to a document in electronic form, electronic signature created by a method which identifies the signatory and indicates the signatory’s approval of the information contained in the document.

1.3 **Incorporated Societies Act 2022**

- (a) The provisions of the Act are negated, modified, adopted and extended as provided in this Constitution. Words or phrases defined in the Act have the same meaning in this Constitution unless the context otherwise requires.
- (b) If the Act changes in a way that would, but for this Rule, cause section 29 of the Act to apply to any Rule, then that Rule shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

2. Name and Charitable Status

2.1 Name

The name of the Society is Medical Technology Association of New Zealand Incorporated.

2.2 Charitable status

The Society is not, and does not intend to be, registered as a charitable entity under the Charities Act 2005.

3. Purposes

3.1 The purposes of the Society are to:

- (a) provide assistance and support for suppliers of medical technology products in New Zealand;
- (b) promote knowledge of, interest in, innovation and research into medical technology as may from time to time be available in New Zealand or elsewhere in the world, whether or not such knowledge, interest or research is relevant to New Zealand at any particular time;
- (c) operate as a non-profit making Incorporated Society;
- (d) establish, promote, associate with or assist in establishing and promoting, and subscribe to, or become a member of, any other Incorporated Society within or outside of New Zealand whose purposes are wholly or in part similar to those of the Society, or whose establishment or promotion may be beneficial to the Society, or to the trade, and to form or establish any branch of the Society within or outside New Zealand; and
- (e) carry out any other purpose which may seem to the Society capable of being conveniently carried on in connection with these purposes or calculated to directly or indirectly advance these purposes or any of them.

4. Powers

4.1 The powers of the Society are to:

- (a) enter into any contract or arrangement as, in the opinion of the Board, is conducive to the attainment of the purposes of the Society;
- (b) borrow money for any purpose at such rate of interest and upon such terms as the Board thinks fit;
- (c) enter alone or together with any other person into any guarantee or indemnity;
- (d) give security by way of mortgage, charge, assignment or otherwise over the whole or any part of the Society's property to secure any debt or other obligation on such terms as the Board thinks fit and to renew or vary any such security;

- (e) grant and pay fees, honoraria, expenses, salaries, pensions, gratuities and rewards of all kinds for services rendered to the Society or on its behalf (including reasonable remuneration for services rendered by officers of the Society);
- (f) engage professional experts or advisors;
- (g) accept donations, bequests, endowments and gifts;
- (h) publish, sell and distribute any form of printed or electronic material in order to promote the Society, its purposes and services provided by it;
- (i) co-operate with, support or assist any other person, firm, body corporate or Incorporated Society in achieving the purposes of the Society;
- (j) acquire, collect and disseminate to Members any information which may be of interest or assistance to the Members;
- (k) construct and maintain any building or works necessary or convenient for promoting the purposes of the Society;
- (l) purchase, sell, lease, take on lease or otherwise acquire or dispose of any real or personal property, rights or privileges which the Board may think necessary or convenient for the purpose of achieving any of its purposes;
- (m) insure and/or indemnify any or all of the officers, agents and employees of the Society against all claims and demands made upon them in respect of all acts done by them in good faith purporting to be in pursuance of the purposes of the Society; and
- (n) carry out such other activities as are consistent with and conducive to the attainment of the purposes of the Society.

5. Membership

5.1 Criteria for membership

A person may be admitted as a Member if they are:

- (a) engaged in the trade of importing, exporting, manufacturing and/or supplying surgical and/or diagnostic and/or medical and/or dental products in New Zealand and elsewhere in the world;
- (b) involved in research into and/or development of medical technology; or
- (c) considered by the Society to have sufficient interest in such aforesaid matters.

5.2 Associate Members

The Board may invite firms or companies who, in the Board's view, have a sufficient commonality of interest with Members, to be admitted as an associate Member (an **Associate Member**). Associate Members are Members but will not be entitled to vote or to be elected to the Board.

5.3 Applications

Every application for membership or Associate Membership is to be made to the Board in writing on a form prescribed by the Board, and must be signed by or on behalf of the applicant. Applications for membership must be accompanied by a written nomination by one existing Member. Every applicant shall pay a membership fee, the amount of which shall be fixed by the Board. Provided the applicant is approved by the Board, the applicant's name shall be entered in the Register of Members. The Board shall not be called upon to give any reason for approving or not approving any application submitted to it.

5.4 Consent to become a Member

An applicant will only be admitted as a Member if they have consented in writing to become a Member, it being noted that the Board may treat a signed written application for membership received pursuant to Rule 5.3, as written consent by or on behalf of the relevant applicant to become a Member for the purposes of section 76 of the Act.

5.5 Annual subscription

Every Member will, upon their admission as a Member, will be invoiced for the subscription fee at the beginning of each financial year: payments will be made in accordance with the terms and conditions stated on the invoice. In the case of a new Member admitted after 31st day of March they will pay a pro-rated subscription fee. The Society may increase the subscription fee based on an annual CPI adjustment as agreed by the Board.

5.6 Compliance

All Members are subject to this Constitution and any By-Laws and code of ethics of the Society, and shall pay to the Society all subscriptions, fees, levies and/or charges determined by the Board.

5.7 Register of Members

The Secretary shall keep a Register of all Members, recording the company names contact people, addresses, phone numbers and email addresses of all Members, and the dates at which each Member became and ceased to be a Member. Each Member must promptly notify the Society of any change of its name, address and phone number and email address or registered office (where applicable). The Register shall be open for inspection during normal office hours by any Member.

5.8 No proprietary interest

Membership of the Society shall not confer on any Member any privilege or any estate or proprietary right, interest or share in the funds and property of the Society, nor shall any Member be personally liable for any of the liabilities of the Society.

5.9 Honorary Life Members

From time to time the Society may elect a Member as a patron or honorary life member by reason of outstanding service rendered to the Society (an **Honorary Life Member**). An Honorary Life Member must be nominated by one Member and seconded by another Member, and their nomination must be endorsed by a majority vote at the Annual General Meeting. Only one Member may be selected for recognition as an Honorary Life Member per annum.

6. *Expulsion or Resignation of Members*

6.1 Removal

The Board may expel a Member from membership of the Society by written notice if:

- (a) the Member commits a material breach of any Rule or By-Law; or
- (b) the Member fails to pay any sum due to the Society within three months of the applicable due date;
- (c) the Member fails to comply with any stipulation imposed as a condition of the Member's admission to membership;
- (d) the Member fails to comply with any directive or requirement of a General Meeting within two months after the date on which written notice setting out the directive or requirement, and expressed to be given under this Rule, is given to that Member by the Board;
- (e) the Member dies, or in the case of a body corporate Member, becomes insolvent or is adjudicated bankrupt; or
- (f) the Board has unanimously resolved that any act or conduct of the Member has brought, or may bring, the Society into disrepute;

provided that:

- (g) the Member must be given at least two weeks' notice of the meeting of the Board at which the Board proposes to consider the matter of expulsion of the Member;
- (h) the Member must be given the opportunity of being represented at such Board meeting and a verbal or written explanation of its conduct; and
- (i) any Member expelled from membership of the Society may, within seven days after the decision, lodge an appeal against the decision and such appeal will be adjudicated upon by the nominee of the then president of the New Zealand Law Society.

6.2 Resignation

Any Member wishing to resign from membership of the Society shall tender such resignation in writing to the Secretary.

6.3 Effect of cessation of membership

Neither expulsion nor resignation of a Member will affect the liability of that Member to pay any subscriptions which may be outstanding at the time of their expulsion or resignation. There will be no remuneration payable to Members withdrawing from the Society for whatever reason.

6.4 Return of property

Any Member who has resigned or been expelled pursuant to this Constitution will return to the Secretary any documents papers, pamphlets and advertising material which they may have acquired as

a right of the privilege of membership, as well as any property belonging to the Society in their possession.

7. Board

7.1 Composition of Board

- (a) The Board will comprise of up to nine individuals as elected by the Society by secret ballot at each Annual General Meeting. The Board may agree to increase the number of individuals making up the committee, any proposal to increase the number of individuals will be put to the membership as a resolution to be voted on by the membership during the Annual General Meeting.
- (b) An independent Board Member may be appointed by the unanimous decision of the Board Members of the Board as appointed in accordance with (a) above.

7.2 Eligibility for Board

No person is eligible to hold office as a Board Member unless they:

- (a) are a Member (but not an Associate Member) or is a principal of a firm or a director or an officer of a body corporate which is a Member (but not an Associate Member);
- (b) have consented in writing to be an officer of the Society and provided the Secretary with a certificate certifying that they are not disqualified from being elected, appointed or otherwise holding office as an officer of the Society for any of the reasons set out in section 47(3) of the Act; and
- (c) in the case of an independent Board Member in accordance with Rule 7.1(b), have sufficient technical skillset and knowledge to hold office in the relevant role, in the opinion of the Board.

7.3 Nominations for Board

No person (other than a retiring Board Member offering themselves for re-election) will be eligible for election as a Board Member unless nominated at or before an Annual General Meeting by at least two Members and the nominee has provided the Secretary with his or her written consent and a certificate as required pursuant to Rule 7.2(b). If the number of nominations received is less than the number of vacant positions, those persons correctly nominated will be declared elected. If the number of nominations received exceeds the number of vacant positions, an election will be held to enable the meeting to choose between the candidates nominated.

7.4 Internal election

The internal election of the Board shall be held at the first Board meeting following the Annual General Meeting. At the internal election the Board shall elect, from amongst its Members and for a term of one year, the Chair, Deputy Chair, and Treasurer of the Society and shall from time to time appoint a Chief Executive Officer as a salaried full-time employee (in accordance with Rule 10), together with any other staff members as it considers to be necessary.

7.5 Management and powers

The business and affairs of the Society shall be managed by, and under the direction and supervision of, the Board, and the Board may exercise all powers and discretions and do all things which the Society is, by this Constitution or is otherwise, authorised to do and are not, by this Constitution, required to be exercised or done by the Society at a General Meeting.

7.6 Delegation

The Board may delegate any of its powers (other than its powers under any of Rules 5, 6, 20 and 26), to a committee, subcommittee, working party or employee of the Society on such terms and conditions as it thinks fit.

7.7 Frequency of meetings

Apart from the Annual General Meeting, the Board shall meet a minimum of four times annually to administer the affairs of the Society.

7.8 Power to co-opt

The Board shall have the power to co-opt voting Members and/or appoint special interest groups as provided for in Rule 13, to assist in the management of the Society.

7.9 Removal

A Board Member may be removed by a majority vote at a Special General Meeting called for that purpose. The resultant vacancy on the Board shall be filled by an individual elected by a majority vote at the same Special General Meeting and the individual so elected will, subject to meeting the eligibility criteria set out in Rule 7.2, hold office until the next Annual General Meeting.

7.10 Retirement and rotation

- (a) Three elected Board Members will retire from office at each Annual General Meeting, and subject to Rule 7.10(b) the Members to so retire shall be those who have been longest in office since their election, but as between Members who were elected on the same day, those to so retire will be determined by lot.
- (b) The number of Board Members retiring pursuant to Rule 7.10(a) will be reduced by the number of casual vacancies requiring to be filled at such Annual General Meeting pursuant to Rule 7.12(a) and the number of such reductions will not exceed three.
- (c) Subject to Rule 7.2 Board Members are eligible for re-election at the Annual General Meeting at which they retire.

7.11 Vacation of office

A Board Member will be deemed to have vacated office, and a casual vacancy will be deemed to have occurred, if that Board Member:

- (a) resigns from their position as officer by notice in writing to the Board (such notice to be effective when it is received by the Board or at a later time specified in the notice);

- (b) resigns (or has their position terminated) from the Member body corporate under whose membership they were nominated for the Board;
- (c) is removed from office pursuant to Rule 7.9;
- (d) is absent from two consecutive meetings of the Board without special leave of absence granted by the chairperson of the Board;
- (e) becomes incapable of fully performing the duties of his or her office or becomes the subject of an order under sections 11 or 12 of the Protection of Personal and Property Rights Act 1988;
- (f) becomes bankrupt or makes any arrangement or composition with his or her creditors;
- (g) becomes prohibited from being a director of a company by reason of any order under the Companies Act 1993;
- (h) is disqualified from being a Board Member under section 47(3) of the Act;
- (i) has wilfully and without reasonable justification or excuse acted in a manner which is contrary to the Society's purposes or any of them;
- (j) has been convicted of a criminal offence which is punishable by imprisonment;
- (k) has acted in a manner which the Society or the Board considers has brought him or her into disrepute, as recorded in a resolution passed at a General Meeting or a Board meeting (as applicable);
- (l) dies; or
- (m) in the opinion of all other Board Members (recorded by way of formal resolution) becomes for any reason unfit to carry out his or her duties as a Board Member.

7.12 Procedure upon vacancy

If the office of a Board Member or the office of the Chief Executive Officer becomes vacant, the vacancy will be filled in the manner in which the appointment or election to the vacant office was originally made (and every person so appointed or elected will hold office for the remainder of the term for which his or her predecessor was appointed or elected), provided that:

- (a) if a vacancy in the position of a Board Member occurs between Annual General Meetings, other than as a result of a removal at a Special General Meeting under Rule 7.9, such vacancy shall be filled by a resolution of the Board, provided the replacement individual selected by such resolution meets the eligibility criteria set out in Rule 7.2, and must stand for election at the next Annual General Meeting; and
- (b) if the office of the Chief Executive Officer becomes vacant, the Board may appoint any Board Member to fill a casual vacancy, such appointee to hold office only until a person is appointed to the office of Chief Executive Officer pursuant to Rule 10.

7.13 No effect on powers

The powers of the Society shall not be affected by any vacancy in the membership of the Board.

7.14 Remuneration

Board Members who are not also paid employees of the Society will not be entitled to remuneration for attendances at meetings of the Board, unless the Society in a General Meeting resolves otherwise.

7.15 No liability

Except as otherwise required by law, no Board Members will be liable for any loss, damage, error of judgement or misfortune occurring in the execution of his or her duties as a Board Member or caused by any act, neglect or default of any other Board Member (except where any loss or damage is occasioned by a Board Member's wilful default or dishonesty).

7.16 Validity of acts

All acts done by a Board Member or any person acting as a Member of any committee will be as valid and effectual as if every such person or committee was duly qualified and appointed notwithstanding that it is afterwards discovered that there was some defect in his, her or its qualifications or appointment.

8. *Proceedings of Board*

8.1 General

Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.

8.2 Meeting of the Board

The Chair or any two Board Members may call a meeting of the Board by written notice to the Secretary (or a person appointed by the Board to receive such notices), who must then call a meeting to be held within 14 days of receipt of the notice. Notice of all meetings of the Board must be given to all Board Members.

8.3 Quorum

The quorum for a meeting of the Board is greater than 50% of the Board Members. No business may be transacted at a meeting of the Board unless a quorum is present.

8.4 Voting

Decisions of the Board will be determined by a majority of votes. The chairperson of meetings of the Board for the time being will be entitled to a casting vote. No proxies will be allowed.

8.5 Written resolution

A resolution in writing signed by not less than five of the Board Members will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Board Members. Assents may be evidenced by signature or by e-mail.

9. *Interested Members*

9.1 Contract

An Interested Member and any company or firm in which an Interested Member is interested may contract with the Society provided the following provisions of this Rule 9 are complied with.

9.2 Declaration of interest

An Interested Member having a material interest in a contract or transaction, or a proposed contract or transaction, with the Society must declare the nature of his or her interest at a meeting of the Board as soon as the contract or transaction in question is first considered by the Board. A general notice that a Board Member is a member or director of a specified firm or body corporate will be sufficient disclosure with regards to that Board Member's interest in the contract or transaction in question, and any future contract or transaction with the firm or body corporate in question. All declarations of interest must be recorded in the minutes of the Executive Meeting at which the contract or transaction in question is considered.

9.3 Profit

No Interested Member having a material interest in a Matter will by reason of his or her position as a Board Member be liable to account for profit derived from that Matter.

9.4 Voting and quorum

- (a) An Interested Member may not vote at any meeting of the Board in respect of a Matter in which they are materially interested, but may be counted as part of the quorum at that meeting.
- (b) Except where all non-interested Board Members agree that no Special General Meeting is required, where 50% or more of the Board Members are prevented from voting on a Matter because they have a material interest in that Matter, a Special General Meeting must be called pursuant to Rule 16 to consider and determine the Matter.

9.5 Society resolution

The Society in a General Meeting may resolve to suspend or relax any of the provisions of this Rule 9 in respect of any particular Matter or to ratify any transaction which would otherwise contravene this Rule 9.

9.6 Interest Register

The Board shall keep and maintain an Interests Register.

10. *Chief Executive Officer*

10.1 Appointment

The Board will appoint a Chief Executive Officer of the Society for such term and upon such terms and conditions as it thinks fit, and any Chief Executive Officer so appointed may be suspended or removed by the Board from time to time (subject to any rights that the Chief Executive Officer may have under his or her employment contract with the Society).

10.2 Powers

The Board may vest in the Chief Executive Officer such powers, duties and authorities as it may from time to time determine and the Chief Executive Officer will exercise all such powers, duties and authorities subject at all times to the control of the Board and this Constitution.

11. Other Committees

- 11.1 The Board may, pursuant to Rule 7.6 establish any committee to carry out any functions of the Board and may further establish any sub-committee or working party that it considers necessary or desirable to promote the purposes of the Society (each an **Other Committee**).
- 11.2 The Board may from time to time disband any Other Committee and alter the functions and membership of any Other Committee.
- 11.3 The proceedings of any Other Committee will conform to any regulations made by the Board. Otherwise, the members of Other Committees may meet, adjourn and regulate their meetings as they think fit.

12. Honorary Officers

12.1 Honorary Officers

The Society may elect Honorary Officers to the following positions and any other positions determined by the Board from time to time:

- (a) Honorary Auditor; and
- (b) Honorary Solicitor.

12.2 Term of Honorary Officers

The Honorary Officers elected by the Society at each Annual General Meeting will hold office until the end of the next following Annual General Meeting. The Honorary Officers will be entitled to attend and speak at all General Meetings but will not be entitled to vote.

13. Special Interest Groups

- 13.1 Any group of Members that share an identified interest in common product and are eight or more in number may be recognised by the Board as a special interest group (**SIG**), for the Board to consider and refer to as it deems appropriate.
- 13.2 For the purposes of Rule 13.1:
- (a) a Member shall have an identified interest in common product with another group of Members if it operates in the same industry as that group of Members and it derives more than 25% of its annual gross turnover from products in that industry; and
 - (b) if there is any dispute or difference of opinion as to whether a SIG exists, or whether a Member has an identified interest in common product, then such difference or dispute shall be referred to the Board, whose decision shall be final.

14. Special Advisory Groups

- 14.1 If the Board identifies an area of strategic importance, it may appoint a group of Members to a special advisory group (**SAG**) for the purpose of obtaining appropriate specialist advice in the relevant area, in accordance with the provisions of this Rule 14.
- 14.2 The Board will approve a Terms of Reference for each SAG that must detail the following operational matters:
- (a) the name and purpose of the SAG;
 - (b) how the chair of the SAG will be elected or appointed;
 - (c) arrangements and requirements for meetings of the SAG, including the frequency of meetings, when minutes are required to be kept, and the manner of calling SAG meetings; and
 - (d) any other matters that the Board requires to be included.
- 14.3 At the direction of the Board, the Secretary will call for nominations for SAG representatives from the Members. When determining which nominated Members to appoint to a SAG, the Board will consider the following factors:
- (a) the experience and reputation of the nominated Member;
 - (b) the geographical location of the nominated Member; and
 - (c) the category of products represented by the nominated Member.

15. Annual General Meeting

15.1 Time and place

The Annual General Meeting shall be held within three months of the end of each Financial Year at a time and place to be decided by the Board and in accordance with any requirements in the Act. Members may attend this meeting in-person or virtually, at the discretion of the Board.

15.2 Business

The business of the Annual General Meeting will be to:

- (a) receive and consider the annual report of the Board on the operations and affairs of the Society during the last Financial Year;
- (b) receive and (if thought fit) adopt the accounts of the Society for the last Financial Year;
- (c) consider the budget of income and expenditure for the current Financial Year;
- (d) elect the Board Members for the ensuing Financial Year;
- (e) elect Honorary Officers and Honorary Life Members;

- (f) consider any disclosures, including conflicts of interest, disclosed by the Board Members during the last Financial Year;
- (g) appoint an auditor for the ensuing Financial Year, if any Honorary Auditor not been appointed pursuant to Rule 12.1, or an external auditor is required;
- (h) consider remits from Members and what action (if any) is warranted in regard to matters raised by them;
- (i) consider any matter brought to the meeting by and on behalf of the Board and determine what action (if any) is warranted in relation to such matter; and
- (j) deal with any other business of which requisite notice has been given or which, in the opinion of the Chair, could not for unusual or otherwise sufficient reason have been so notified.

15.3 Remits

Where a Member wishes an Annual General Meeting to consider a proposal or issue, a written remit dealing with the proposal or issue must be delivered to the Society at least 30 days prior to the date of the Annual General Meeting.

16. *Special General Meetings*

The Chief Executive Officer (or in their absence, the Secretary) will at any time on the instruction or authority of the Board, or at the written request of not less than one quarter of the current Members stating their purposes, call a Special General Meeting to be held not later than 14 days from the receipt of such instruction or request. Members may attend this meeting in-person or virtually, at the discretion of the Board.

17. *Notice of General Meetings*

17.1 All meetings

The Board must give at least 14 days' notice to all Members of the time and place of any General Meeting and of the business to be conducted at that General Meeting. The General Meeting and its business will not be invalidated simply because one or more Members do not receive notice of the General Meeting.

17.2 Annual General Meetings

The notice of an Annual General Meeting must include:

- (a) a copy of the annual report prepared by or on behalf of the Board on the operations and affairs of the Society for the last Financial Year;
- (b) a copy of the financial statements of the Society for the last Financial Year;
- (c) a notice of the disclosures of interest, or types of disclosures of interest, made in accordance with Rule 9.2 during the last Financial Year, including a brief summary of the matters, or types of matters, to which those disclosures relate;

- (d) a list of nominations of candidates for the offices of Board Members; and
- (e) a list of remits and notices of motion to be considered at the meeting.

17.3 **Special General Meetings**

A notice of a Special General Meeting must specify the business to be transacted at the meeting and no business other than that specified in the notice may be dealt with at the meeting except with the consent of three quarters of the persons present and entitled to vote.

18. Procedure at General Meetings

18.1 **Chairperson of meeting**

All General Meetings shall be chaired by:

- (a) the Chair; or
- (b) if the Chair is unwilling or unable to act as chairperson, or is not present within 15 minutes of the time appointed for the commencement of the meeting, the Deputy Chair; or
- (c) if both the Chair and Deputy Chair are unwilling or unable to act as chairperson, or are not present within 15 minutes of the time appointed for the commencement of the meeting, a Member chosen by the persons present at the meeting and entitled to vote,

(the **Chair** or **Chairperson**).

18.2 **Quorum**

- (a) The quorum for a General Meeting will be 15 Members (present in person or otherwise in accordance with Rule 18.4), each of whom is either a Board Member or a Member, and must include:
 - (i) either the Chair or the Deputy Chair; and
 - (ii) over 50% of the current Board Members.
- (b) For the purposes of Rule 18.2(a), in the case of a Member that is a body corporate, presence of a representative or representatives will be sufficient for that Member to contribute to quorum.
- (c) If within 30 minutes of the time appointed for a General Meeting a quorum is not present, the meeting, if convened at the request of Members, will be dissolved. In any other case, the meeting will stand adjourned to the same day and time in the next following week at a place to be fixed by the Board and at the adjourned meeting the Members present (present in person or otherwise in accordance with Rule 18.4) will be deemed to be a quorum.

18.3 **Voting**

Decisions of General Meetings will be decided by a majority of votes of Members present in person (or otherwise in accordance with Rule 18.4) and entitled to vote. Every motion or question submitted to a General Meeting will be decided by a show of hands or, if two persons present in person or by proxy and entitled to vote demand a secret ballot to be taken, then a secret ballot must be taken as directed

by the Chairperson. On a show of hands and on a poll, every member of the Board and Member present in person or permitted to vote in accordance with Rule 18.4 will have one vote. The Chairperson will have a casting, as well as a deliberative, vote. For avoidance of doubt, Associate Members are not entitled to vote.

18.4 Proxies and Electronic Voting

- (a) The Board may, at its discretion, permit a Member to:
 - (i) appoint a proxy to attend and vote at any General Meeting; or
 - (ii) vote at a General Meeting by electronic means.
- (b) All proxies must be in the form set out in the Schedule or to like effect and must be signed by the person appointing the proxy. A person may not be a proxy for more than one person. All proxy requests must be lodged with the Board five days before the date of the relevant General Meeting, and approved or denied by the Board not less than two days before the date of the relevant General Meeting.

18.5 Participants at General Meetings

Members will be entitled as of right to attend, participate in, and vote at General Meetings. The following persons may attend General Meetings as guests or observers and on such terms and conditions as the Board or the meeting may determine (but with no right to vote, or participate unless expressly accorded leave to do so by the Board or the meeting):

- (a) Honorary Life Members;
- (b) Honorary Officers;
- (c) any person whom the Board has invited to attend as a guest speaker or observer; and

18.6 Written Resolutions

- (a) A resolution in writing assented to by no less than 75% of Members entitled to vote on a matter (or their proxies) is as valid as if it had been passed at a General Meeting of those Members, provided that the resolution has been circulated to all those Members entitled to vote.
- (b) For the purposes of Rule 18.6(a) above:
 - (i) a resolution is not required to be circulated to a Member if it is impracticable to provide the Member with a copy of the proposed resolution (by reason of their absence overseas, or for any other reason); and
 - (ii) a resolution in writing may consist of more than one document, and assent may be evidenced by signature or by email.

18.7 Minutes

The Secretary will keep minutes of all General Meetings, and shall make a copy of the minutes of the most recent General Meeting available (in hard or electronic copy) to any Member who requests a copy within a reasonable period of receiving such a request.

19. Alteration of Constitution

19.1 Method of alteration

The Society may amend this Constitution at any time, provided the amendment is in writing and is approved at a General Meeting by a resolution passed by a simple majority of Members entitled to vote and voting at the General Meeting or by a written resolution passed in lieu of a meeting in accordance with Rule 18.6. Notice of the proposed alteration or alterations must be given in writing to the Chief Executive Officer of the Society at least ten days before the meeting at which it is intended to propose such alteration, and upon receipt of such notice the Chief Executive Officer shall forthwith notify all voting Members and copies of the proposed alteration(s) shall also be sent to all other non-voting Members by way of information only.

19.2 Notice of alteration to Registrar

When an alteration to this Constitution has been approved in accordance with Rule 19.1, the Registrar shall be notified of the alteration in the form and manner specified in section 33 of the Act, and the alteration shall take effect from the date it is registered on the Register.

20. By-Laws and Code of Ethics

20.1 Power to make

The Board will have the power from time to time to make By-Laws as it considers necessary or desirable to give effect to the purposes of the Society, and will also have power from time to time to establish and revise a code of ethics for the Society as it deems appropriate.

20.2 Amendment and repeal

Notwithstanding Rule 20.1, the Society in a General Meeting may repeal or amend any By-Law in accordance with the procedure in Rule 19 as though the By-Law were a Rule in this Constitution.

20.3 Interpretation

All By-Laws will:

- (a) be subject to this Constitution;
- (b) not be inconsistent with any provision contained in this Constitution; and
- (c) when in force, be binding on all Members bound by this Constitution.

21. Bankers

The bankers of the Society shall be Westpac Banking Corporation, Broadway, Newmarket or such other bank or banks as is decided from time to time by the Board. The Society's funds shall be invested with such bank or with such other person or persons whose receipt of such funds is within the provisions of the Trustee Amendment Act 1988

22. Accounts and Audit

22.1 Accounts

The Board must cause proper accounting and other records to be kept and submit the Society's accounts for audit, in accordance with the provisions of the Act.

22.2 Audit

The Society's accounts will be audited by the Honorary Auditor unless otherwise determined by the Board.

23. Payments

23.1 Payments

All payments made by or on behalf of the Society are to be made by electronic funds transfer drawn on the bank account of the Society.

23.2 Signature

All payments must be signed or authorised by both the Chief Executive Officer and the Society's accountant, unless the Board resolves otherwise generally or in a particular case.

24. Common Seal

The common seal of the Society must be kept in safe custody by the Chief Executive Officer and may be affixed to an instrument only with the authority of a resolution of the Board Members passed at a meeting of the Board (or by a written resolution passed in lieu of a meeting in accordance with Rule 8.5). Every instrument to which the seal is affixed must be signed by a Board Member and must be counter-signed by the Chief Executive Officer or by a second Board Member or some other person appointed by the Board for that purpose.

25. Notices

25.1 Notice to Member

A notice required or authorised to be served, delivered, or sent to any Member will be deemed to have been sufficiently served, delivered or sent if sent by:

- (a) ordinary post addressed to the Member at the address of the Member appearing in the Register of Members; or
- (b) email to the email address of the Member appearing in the Register of Members.

25.2 Notice to Society

A notice required or authorised to be served, delivered, given or sent to the Society will be deemed to have been sufficiently served, delivered or sent if hand delivered or sent by ordinary post to the registered office of the Society.

25.3 **Time of service**

Any notice served under this Rule 25 will be deemed to have been validly given:

- (a) in the case of delivery, when received;
- (b) in the case of posting, on the second Working Day following the date of posting (or the seventh Working Day after the date of posting if posted to or from a place outside New Zealand);
- (c) in the case of email, on the date and time at which it enters the recipient's information system (unless the sender receives a notice from the recipient's email server or internet service provider that the message has not been delivered to the recipient),

provided that any notice personally delivered or sent by email on a day that is not a Working Day or after 5.00pm on any day that is a Working Day will be deemed to have been received on the next Working Day.

- 25.4 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by, any Member entitled to receive notice will not invalidate the proceedings at the meeting.

26. *Resolution of Disputes*

26.1 **Raising disputes**

Any "complaint" (as such term is defined in section 38 of the Act) (a **Dispute**) must be lodged by the complainant (the **Complainant**) with the Board in writing and must provide such details as are necessary to identify the details of the Dispute. All Members, including Board Members, are obliged to resolve Disputes efficiently, fairly, and with minimum disruption to the Society's activities, and in a manner that is consistent with the rules of natural justice.

26.2 **Society may decide not to seek to resolve Dispute**

Notwithstanding the provisions of this Rule 26, the Society may decide not to proceed with a Dispute if:

- (a) the Dispute is considered to be trivial; or
- (b) the Dispute does not appear to disclose or involve any allegation of the following kind:
 - (i) that a Member or an Officer has engaged in material misconduct;
 - (ii) that a Member, an Officer, or the Society has materially breached, or is likely to materially breach, a duty under the Society's Constitution or bylaws or the Act;
 - (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
- (c) the Dispute appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who lodges the Dispute has an insignificant interest in the matter; or

- (e) the conduct, incident, event, or issue giving rise to the Dispute has already been investigated and dealt with under the Constitution; or
- (f) there has been an undue delay in lodging the Dispute.

26.3 Notification to respondent

The Member and/or the Society which is the subject of the Dispute (the **Respondent**) must be:

- (a) advised of all of the details of the Dispute; and
- (b) given an adequate time to prepare a response.

26.4 Opportunity to be heard

Both the Complainant and the Respondent must be given an adequate opportunity to be heard, either in writing or at an oral hearing (if the relevant decision-maker decides that an oral hearing is required), before the Dispute is resolved or any outcome is determined. If the Complainant or the Respondent is the Society, an officer may exercise this right on behalf of the Society.

26.5 Resolving a dispute

A Dispute lodged in accordance with Rule 26.1 will be decided:

- (a) first, by the Board;
- (b) secondly, by the Society in a General Meeting, in the event that any party to the Dispute is not satisfied with the decision of the Board;
- (c) thirdly, in accordance with Rules 26.6 to 26.9, in the event that any party to the Dispute (the **First Party**) notifies the other party (the **Other Party**) in writing that is not satisfied with the decision of the Society (the **Dispute Notice**).

26.6 Continuing Dispute

Where Rule 26.5(c) applies, the parties to the Dispute will make a genuine effort to resolve the Dispute, using the procedures set out in Rules 26.7 to 26.9.

26.7 Representatives for negotiations

The First Party must nominate in the Dispute Notice that it issues pursuant to Rule 26.5(c), its representative for negotiations. The Other Party must then promptly notify the First Party of the name of its representative for negotiations. Each representative nominated will have authority to settle the Dispute on behalf of the party that nominated him or her.

26.8 Alternative dispute resolution

If the parties are unable to resolve the Dispute by discussion and negotiation within 30 days of receipt of the Dispute Notice from the First Party, then within a further 7 days the parties must try to agree a process for resolving the Dispute, such as further negotiations, mediation, independent expert determination or a mini-trial, but not arbitration or litigation. Agreement on a process must include agreement on:

- (a) the procedure and timetable for any exchange of documents and other information relating to the Dispute; and
- (b) procedural rules and a timetable for the conduct of the selected method of proceeding; and
- (c) a procedure for selection and compensation of any neutral person who may be employed by the parties in the Dispute.

26.9 Referral to arbitration

If:

- (a) the parties fail to agree on a Dispute resolution process within the 7 day time limit specified by Rule 26.8; or
- (b) the Dispute remains unresolved 30 days after agreement on a Dispute resolution process,

then either party may refer the Dispute to the arbitration of a single arbitrator agreed upon between the parties or, failing agreement, appointed by the Chair for the time being of the New Zealand Law Society, and the arbitration will be governed by the Arbitration Act 1996. The place of arbitration will be Auckland, New Zealand and the law applicable to the arbitral proceedings and the Dispute will be New Zealand law.

27. Income and Property

27.1 Control and management

The income and property of the Society shall be controlled, invested and disposed of by the Board in accordance with the Rules in this Constitution and having regard to the purposes of the Society.

27.2 Application

The income and property of the Society must be applied solely towards the promotion of the purposes of the Society and no part of the income and property of the Society may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise.

27.3 No influence

No Member or person associated with a Member may derive any income, benefit or advantage from the Society where that Member or person can materially influence the payment of the income, benefit or advantage, except where the income, benefit or advantage is derived under Rule 27.4.

27.4 Authorised payments

Nothing in this Rule 27 will prevent the payment in good faith of remuneration to any officers or employees of the Society or to any Member for goods or services actually rendered to the Society or for goods or services supplied in the ordinary and usual course of a business or profession.

28. Dissolution

28.1 Procedure

The Society may be wound up, liquidated or removed from the Register by a resolution passed by a majority of the valid votes cast by Members present in person or by proxy at a General Meeting.

28.2 Surplus assets

In the event the Society is wound up, liquidated or removed from the Register in accordance with Rule 28.1:

- (a) no distribution may be made to any Member by the Society;
- (b) any surplus assets in the Society after the realisation of all assets and payment of all debts, costs and liabilities shall be vested in [insert name of registered charity] **[Drafting note: MTANZ to advise]** and/or such other “not-for-profit entity/ies” (as such term is defined in section 5(3) of the Act) as approved by the resolution passed pursuant to Rule 28.1 or by the Board, having regard to the aims and purposes of the Society, and in the case of an equality of votes on the distribution of surplus assets such decision shall be vested in the final Chair of the Society.

29. Registered Office and Contact Persons

29.1 Registered office

The registered office of the Society shall be at such place for the time being as may be decided by the Board. Notice of every change of situation of the registered office shall be duly sent to the Registrar.

29.2 Contact persons

The Board will appoint at least one, but no more than three, contact persons whom the Registrar can contact when required (**Contact Person**). Any change in the name or contact details of a Contact Person will be notified to the Registrar within 30 days of that change occurring, or after the Society becomes aware of that change.

Schedule

I,of being a Member of Medical Technology Association of New Zealand (the **Society**) for the purposes of the Constitution of the Society hereby appoint or failing him/her of as my proxy to vote for me on my behalf at the General Meeting of the Society and on adjournment thereof.

Signed: _____

Name: _____

Date: _____

Notes: (Please read carefully)

1. State whether “Annual” or “Special” General Meeting.
2. The proxy will vote as they think fit unless written instructions are endorsed on this form. Use the reverse side if necessary.
3. This proxy must be lodged with the Society not less than five (5) days before the date of the relevant meeting.