

Constitution and Rules

relating to

The New Zealand Health IT Cluster Incorporated

Date 23 NOVEMBER 2017

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The Constitution and Rules of The New Zealand Health IT Cluster Incorporated

1. Interpretation

- 1.1 In these rules, unless the context requires otherwise:
- (a) “Academic Member” has the meaning set out in rule 5.2(c)
 - (b) “Annual General Meeting” means the Annual General Meeting referred to in rule 13.2;
 - (c) “Board” means the board of NZHITC as described in rule 9;
 - (d) “Chair” means the chair of the Board as set out in rule 9;
 - (e) “Chief Executive” has the meaning set out in rule 10.
 - (f) “Extraordinary General Meeting” means an extraordinary general meeting as more particularly described in rule 13.3;
 - (g) “Financial year” means the year ending on August 31 each year, to which date the accounts will be balanced;
 - (h) “General Meeting” means an Annual General Meeting or any Extraordinary General Meeting;
 - (i) “Health IT Company Member” has the meaning set out in rule 5.2(a);
 - (j) “Healthcare Provider Member” has the meaning set out in rule 5.2(d);
 - (k) “Member” means a Health IT Company Member, Supporting Member, Academic Member, Healthcare Provider Member, or Individual Member of NZHITC;
 - (l) “Individual Member” has the meaning set out in rule 5.2(e);
 - (m) “NZHITC” means The New Zealand Health IT Cluster Incorporated;
 - (n) “Objectives” means the objectives of NZHITC as more particularly described in rule 4.1;
 - (o) “Representative” means a person who is authorised to act on behalf of the Member on NZHITC matters;
 - (p) “Supporting Member” has the meaning set out in rule 5.2(b);
 - (q) “Year” means the financial year of NZHITC as defined in this rule 1.1.
- 1.2 The decision of the Board on the construction or interpretation of any rule is conclusive and binding on all Members unless set aside or varied at a specially convened General Meeting held within 30 days from the date of the decision.

1.3 When the Rules are silent, the ruling of the Board will stand.

2. Name and Office

2.1 The name of the association is "The New Zealand Health IT Cluster Incorporated".

2.2 The registered office of NZHITC will be the address approved from time to time by the Board.

3. Vision

3.1 For New Zealand to be recognised as a global leader in the provision of smart solutions for better health through the development and implementation of innovative and evidence-based health services enabled by e-health technologies.

4. Objectives

4.1 The objectives of NZHITC are:

- (a) To build collaborative relationships with and amongst NZHITC Members and the wider health sector representative associations.
- (b) To work collaboratively on e-health and other New Zealand Health Sector initiatives and projects.
- (c) To enhance the business and professional development opportunities and capabilities of NZHITC Members.
- (d) To promote and advocate for health as a strategic area for Government investment and resourcing, and to seek funding for initiatives and projects where applicable to NZHITC Members.
- (e) The promotion of NZHITC Member's ability to positively contribute to health outcomes both nationally and internationally.
- (f) To advocate the views of NZHITC Members to National fora, working parties, political and industry bodies and other interested organisations.
- (g) To communicate and facilitate the identification and exploitation of opportunities for NZHITC Members to establish and grow their offshore presence.
- (h) To be a financially sustainable organisation.

5. Membership

5.1 Membership of NZHITC will consist of membership by Health IT Company Members, Supporting Members, Healthcare Provider Members, Academic Members, and Individual members.

- 5.2 Members shall be classified in accordance with their self-characterisation at the time membership fees are due. In the case of conflict or challenge, the Board shall appropriately assign the classification. The classes are as follows:
- (a) *Health IT Company Member*: A Member who supplies technology products or services to the Healthcare sector represents an organisation that shall be classified as a Health IT Company Member.
 - (b) *Supporting Member*: A Member who provides advice, support, or consultative services and who does not sell Healthcare Technologies shall be classified as a Supporting Member. This group may include (but is not limited to) the Ministry of Health, New Zealand Trade and Enterprise, Accident Compensation Corporation, NZHPL, and private health insurers.
 - (c) *Academic Member*: A Member who is not a Health IT Company, or Supporting Member who provides educational and research related services in relation to Healthcare, such as (but not limited to) a university or innovation hub, shall be classified as an Academic Member.
 - (d) *Healthcare Provider Member*: A Member who provides Healthcare services and does not meet the criteria set out in clause 5.2 (a) shall be classified as a Healthcare Provider Member. The Healthcare Provider Member category may include (but is not limited to) healthcare service providers (private, NGO and similar), DHB's, hospitals, PHO's, physician practices and physician group practices.
 - (e) *Individual Member*: Other members not falling into the above categories are classified as Individual Members.
- 5.3 All entities classified as Health IT Company, Supporting, Academic or Healthcare Provider members are governed in accordance with the following:
- (a) To become a Member an entity must fall within the classes set out in rule 5.2(a-d).
 - (b) Each will select at least one Representative who will act for the Member in regards to NZHITC matters.
 - (c) All Representatives of the Member must be authorised to act on behalf of the Member.
- 5.4 Individual Membership is governed in accordance with the following:
- (a) To become an Individual Member a person or entity must not qualify to become a Health IT Company Member, Supporting Member, Academic Member or Healthcare Provider Member;
- 5.5 The Board may from time to time set down further qualifications and criteria for valid membership.
- 5.6 The Board will accept member applications from organisations or individuals whom have a physical presence in New Zealand, are registered with the New Zealand Companies Office or have some formal partnership and/or contractual arrangement with a New Zealand-based company or organisation. The Board retains ultimate discretion to agree admission to membership of the NZHITC.

6. Membership Fees

- 6.1 On applying to join the NZHITC, Members will pay a fee according to the schedule determined by the Board and approved by resolution of NZHITC in a General Meeting.
- 6.2 Membership Fees fall due on 1 September of each year. If a member determines not to renew their membership they must notify NZHITC in writing by 1 December of that financial year or remain liable for all fees and debts due.
- 6.3 The Board may, at its discretion, waive any subscription or levy otherwise payable by a Member under this rule 6.

7. Suspension and Resignation

- 7.1 Membership may be withdrawn, suspended or terminated following a resolution passed by a 75% majority of votes cast at a meeting of the Board, if the Member:
- (a) is convicted of an indictable offence;
 - (b) fails to comply with any provision of this Constitution; or
 - (c) acts in a manner considered to be injurious or prejudicial to the character or interests of NZHITC.
- 7.2 Before the sanctions set out in rule 7.1 are imposed:
- (a) the Member must be given an opportunity of replying to the charge or charges brought; and
 - (b) the charge or charges must be put in writing and a copy sent to the Member at least 48 hours before he or she is required to reply.
- 7.3 Any Member may resign from membership of NZHITC by giving the Board notice in writing to that effect. A Member who resigns is not entitled to a refund of any Membership subscription fees paid already.

8. Elections

- 8.1 NZHITC shall call for nominations in writing for a new Board each year at least one month before the Annual General Meeting. Nominations will only be accepted for nominees that meet the requirements set out in rule 9.
- 8.2 If, after the closing date for the receipt of nominations, there are not sufficient Members nominated to fill the Board positions, then the Board or any member of the Board may nominate further candidates.
- 8.3 Voting to elect Board Members may be carried out by such means as determined by the Board, which may be by electronic means using a ballot form. The ballot form shall be sent to Voting Members at their email address notified by them to NZHITC. The ballot form shall set out the period within which the Members must respond with their vote. Such period must not be less than two weeks.

- 8.4 The successful candidates for each position on the Board will be appointed on the basis of obtaining the largest number of votes polled.
- 8.5 If any candidate after election declines to accept office the candidate with the next highest number of votes at the poll will be deemed an elected officer of NZHITC. In the event of two or more candidates obtaining an equal number of votes their position must be decided by another vote.

9. The Board

- 9.1 (a) The Board is responsible for carrying out the objectives and powers of NZHITC.
- (b) Members of the Board will hold their posts for a term of two years.
- (c) Each member of the Board has one vote, except co-opted members under Rule 9.2(b) who have no voting rights on the Board.
- (d) Should any member of the Board cease to be an employee or agent of a Member entity, he or she shall immediately cease to be a member of the Board. The remaining members of the Board shall have the ultimate discretion to determine whether or not to replace that person on the Board, co-opt a new employee or agent of that Member entity, or any other person whom it deems appropriate until the next Annual General Meeting.
- 9.2 (a) The Board shall consist of a Chair, the Chief Executive, and five other Representatives of Members. The Chief Executive is a Member of the Board by rights of being the Chief Executive. There will be no more than one Representative of the same single Member elected to the Board at any time.
- (b) The Board may co-opt up to four further Representatives to serve on the Board for a period that it shall specify but not exceeding 12 months, who may be representatives from the Ministry of Health, District Health Boards, ACC, academic organisations, government industry development organisations, or such other organisations or individuals as the Board may determine. Representatives co-opted by the Board under this Rule 9.2(b) have no voting rights on the Board.
- (c) The Chairperson will chair every Board meeting at which he or she is present. In the absence of the Chair, the Board will nominate a Chairperson.
- 9.3 If any Member of the Board fails to attend three consecutive meetings of the Board without leave of absence he or she ceases to be a Member of the Board but is eligible for re-appointment by the Board.
- 9.4 The Board has, and may exercise, all the powers given to it by these rules and may do anything it considers proper and advantageous for accomplishing the Objectives. In particular it must:
- (a) endeavour continuously to promote the Objectives;
- (b) ensure the Chief Executive transacts the routine business of NZHITC, enters into all contracts in line with agreed financial delegations, controls finances and investments, supervises the collection of revenue from all sources and authorises payment of all accounts properly due and owing by NZHITC;

- (c) ensure the Chief Executive arranges for the regular audit of accounts and for the submissions to NZHITC Annual General Meetings of audited statements of receipts, payments and an audited balance sheet;
 - (d) present to the Annual General Meeting a report of the year's work together with an audited statement of income and expenditure for the previous year and a balance sheet showing the financial position of NZHITC; and
 - (e) as it considers appropriate, establish communication with, collaborate and form strategic alliances with kindred associations.
- 9.5 The Board may, without the sanction of a General Meeting, if and when necessary adopt, ratify and confirm on behalf of NZHITC:
- (a) any mortgage or other security given; or
 - (b) any purchase or conveyance made or taken; or
 - (c) any contract entered into by the Board or otherwise by or on behalf of NZHITC and subsisting at the date of the making of this rule.
- 9.6
- (a) The Board will meet on a regular basis to carry out its functions.
 - (b) A meeting of the Board may be called at any time by the Chair. A meeting of the Board must be convened and due notice must be given to all members of the Board upon a request in writing stating the business to be brought before the meeting.
 - (c) A meeting of three voting Members on the Board shall constitute a quorum.
- 9.7
- (a) Each Board Member shall hold office for a term of two (2) years commencing from the end of the Annual General Meeting at which they were elected. Notwithstanding the foregoing, at the first Board meeting following the 2014 Annual General Meeting, the Board Members shall select three (3) of their number to retire at the end of the next Annual General Meeting and those selected Board Members shall be deemed to retire at such time.
 - (b) All members of the Board (excluding the Chief Executive) retire at the end of their term. Retiring members are eligible for immediate re-election and if re-elected will begin a new term.

10. The Chief Executive

- 10.1 The Board has the power to appoint a Chief Executive to manage the affairs of the NZHITC.
- 10.2 The duties of the Chief Executive will be determined by the Board and detailed in a position description and other appropriate instruments as determined by the Board.
- 10.3 A minimum requirement is for the Chief Executive to ensure the Board and NZHITC fulfils all obligations under these rules and relevant statutory provisions.

11. Breaches of Duty

- 11.1 The Board may at any time by a majority pass a resolution calling upon any member of the Board to resign his or her office or position for any breach or neglect of his or her duty.
- 11.2 The Board must give the member of the Board seven days' notice of the intention to propose the resolution described in 11.1 above.
- 11.3 If the member of the Board refuses to resign within seven days from the passing of the resolution, his or her position will become vacant and the Board may appoint a person to act in his or her place.
- 11.4 The Board may at any time by a majority pass a resolution calling upon any member of the Board to resign his or her office or position for any breach or neglect of his or her duty.

12. Sub-Committees

The Board has the power to appoint Sub-Committees for any particular purpose in the conduct of the affairs of NZHITC so as to further the Objectives.

13 General Meetings

- 13.1 The Chair shall be the chair of General Meetings. In extraordinary circumstances he or she may appoint another Representative serving on the Board to act as Chair.
- 13.2 An Annual General Meeting shall be held each year as soon as practicable, but no later than three months, after the end of each financial year; to:
- (a) announce the results of the elections for the Board for the coming year if conducted by email or to undertake such election procedure if not previously conducted by email.
 - (b) to receive reports on the previous year's activities; and
 - (c) to transact any other business.

The new Board will commence holding office at the conclusion of the Annual General Meeting.

- 13.3 An Extraordinary General Meeting shall be convened at any time by the Chair on the instructions of the Board or on receipt of a written request signed by at least four Representatives, stating the business to be transacted. At any Extraordinary General Meeting, only the business mentioned in the notice calling the meeting, or that in the opinion of two-thirds of the Members present directly arises, may be transacted.
- 13.4
- (a) Every question not carried unanimously must be decided by a majority of votes.
 - (b) Voting shall be by show of hands or a ballot.
 - (c) In the event of an equality of votes the Chair of the meeting does not have a casting vote.

- (d) A Representative may nominate another Representative to vote on his or her behalf at General Meetings providing that he or she has the written permission of the Member they represent.

13.5 At Annual General Meetings and General Meetings, at least 25% of the Members must have at least one Representative attending the meeting for a quorum to be constituted. The meeting shall be adjourned if a quorum is not available and the Board will arrange a new meeting within a reasonable time.

14 Notices

14.1 Every Member must be notified in writing of any General Meeting at least 30 days before the meeting.

14.2 Any letter or notice relating to any matter concerning NZHITC that is:

14.3 Sent by or on behalf of NZHITC to any Member by post addressed to the Member by name as appearing on the record of NZHITC; or

14.4 Sent by or on behalf of NZHITC to any Member by email addressed to the Member at the email address as appearing on the record of NZHITC, is sufficient notice of the contents of that letter or notice.

14.5 Notices of General Meetings or meetings of the Board may also be given in any other manner that NZHITC or the Board deems advisable.

15 Administration

15.1 All resolutions passed at any meeting of NZHITC or Board are conclusive and binding on all Members whether present at such meeting or not provided that the meeting is held in conformity with the rules.

15.2 Standing by-laws and regulations may be drawn up annually by the Board upon their entering into office. They may be put into force during the Board's term of office and upon the expiration of the term they automatically cease to be binding.

15.3 The Common Seal of NZHITC bears the words, "The New Zealand Health IT Cluster Incorporated".

15.4 The Board alone has power to direct the use of the Common Seal, which may only be affixed to a document by a resolution of the Board. The execution of any sealed document must be attested by the Chair and the Chief Executive or any two members of the Board. The Common Seal is kept in the custody of the Chief Executive.

15.5 The books of NZHITC must be balanced and audited as at the balance date in each year, but the Board may arrange an audit at any time. The NZHITC in General Meeting may by resolution determine or alter its balance date.

15.6 A statement containing the income and expenditure of NZHITC during the last financial year, the assets and liabilities at the close of that year, and any mortgages charges and securities affecting any property of NZHITC must annually be approved by the members at a General Meeting and delivered to the Registrar in accordance with the Incorporated Societies Act 1908.

16 Control of Funds

- 16.1 The NZHITC bank accounts shall be operated in line with Board approved financial delegations and two approved signatories including the Chair, up to two Board members, the Chief Executive and approved from NZHITC by any Member or Representative and approved NZHITC office staff members.
- 16.2 The Chief Executive will manage the finances of the NZHITC in accordance with Board approved financial delegation and the relevant secondary approvals and appropriate financial good practice.
- 16.3 As a general principle it is expected that the costs associated with fulfilling duties of the Board, such as travel, accommodation and time expended in attending Board meetings are met by the Member entity or the individual themselves. However, where individual circumstances preclude this, the Board may agree, subject to financial constraints, appropriate reimbursement of reasonable costs so as not to preclude the participation of the organisation, entity or individual in the business of the Board. This shall be determined on a case by case basis at the first Board meeting following the Annual General Meeting.

17 No Pecuniary Profits by Members or Representatives

- 17.1 No private pecuniary profit may be made
- 17.1.1 a Member or Representative may receive full reimbursement for all costs, charges and expenses properly incurred by the Member or Representative in connection with the affairs of NZHITC, as approved by the Board from time to time;
- 17.1.2 NZHITC may pay reasonable and proper remuneration to any person or entity in return for services provided to NZHITC, as approved by the Board from time to time;
- 17.1.3 a Member or Representative may be paid all usual professional, business or trade charges for services provided, time spent and acts done in connection with the affairs of NZHITC by the Member or Representative, as approved by the Board from time to time; and
- 17.1.4 a Member or Representative may retain any remuneration properly payable to the Member or Representative by any entity with which NZHITC may be in any way concerned or involved and for which the Member or Representative has acted in any capacity whatever. This applies even if the Member's or Representative's connection with that entity is in some way attributable to the Member's or Representative's connection with NZHITC;
- Provided always NZHITC shall not lend money or lease property or assets at less than current commercial rates, having regard to the nature and terms of the loan and lease to any person (as defined in the Income Tax Act 1994):
- 17.1.4 (a) who is a Member or Representative;
- 17.1.4. (b) who is a shareholder or director of any company by which any business of NZHITC is carried on; or

17.1.4 (c) who is a settlor or a trustee of a Trust that is a shareholder of any company by which any business of NZHITC is carried on; or

17.1.4 (d) if that person or that company and the settlor or trustee or shareholder or director referred to in any one of the foregoing paragraphs of this proviso are associated persons as that term is defined in the Income Tax Act 1994.

17.1.5 the members of the Board in determining all reimbursements, remuneration and charges payable in terms of this rule, shall ensure that the restrictions imposed by the above rules are strictly observed.

18 Interested Members of the Board

18.1 Where any member of the Board or officer of NZHITC:

18.1.1 is or may be or becomes associated (whether as member or officer or otherwise in a private capacity) with any company, partnership, organisation, group or trust with which that member or officer is transacting or dealing in his or her capacity as member of the Board; or

18.1.2 is in a position where the interests or duty of that member or officer in any particular matter conflicts or might conflict with his or her duty to NZHITC; or

18.1.3 is transacting or dealing as member of the Board with him or herself in another capacity,

then that member must declare the nature of the conflict or the potential conflict at a meeting of the Board, and must not take part in any deliberations or proceedings (including voting or other decision-making) relating to the relevant matter or transaction

18.2 If a Representative contravenes rule 18.1, that vote or other decision will not be counted, and he or she will not be counted in the quorum present at any meeting at which the relevant matter or transaction is considered.

18.3 Where because of rule 18.1 there are no members of the Board who are permitted to vote or decide on a particular matter or transaction, NZHITC may still action the matter or enter into the transaction if the Board has obtained a written confirmation from a lawyer, accountant or other reputable professional person of independent status that the matter or transaction is proper and in order for NZHITC to action or enter into.

19 Confidentiality and Intellectual Property

19.1 Each Member undertakes that:

(a) any intellectual property created by or for NZHITC cannot be used except to further the interests of NZHITC, except as otherwise permitted by NZHITC;

(b) it cannot use information received in connection with its membership to disadvantage either NZHITC or the other Members of NZHITC;

(c) it will keep confidential all information obtained from the other Member(s) which is marked confidential or is by its nature clearly confidential and will not divulge the same to a third party without the written consent of the disclosing Member;

- (d) the obligations of the Member to ensure non-disclosure and confidentiality under this rule 18 will survive termination of the Member's membership of NZHITC.

19.2 The obligations set out in rules 17.1(b) to (d) shall not apply where such information is obtained by a Member independently of its association with NZHITC without breach by that Member or any other person of any obligation of confidentiality owed to any other person.

20 Powers of NZHITC

20.1 All the property of NZHITC real and personal, is vested in NZHITC in its incorporated name. It is controlled by the Board which will hold it in trust for NZHITC subject to the direction in writing of a quorum of the Board present at a meeting, signed by the Chair. Anything directed is obligatory upon the members of the Board and the Board, and validates anything done by them in pursuance of that direction.

20.2 NZHITC has the power in its own name to purchase, lease, or otherwise acquire, obtain or hold property real or personal, without any Member becoming liable.

20.3 NZHITC has the power to contract with third parties for services, and to establish subsidiary organisations.

20.4 NZHITC shall not have the power to:

20.4.1 borrow money from any bank or from any other body or person, except for a normal bank overdraft facility; or

20.4.2 give security over any property real or personal now or in the future belonging to the NZHITC.

21 Alteration to Rules

21.1 Alterations, deletions or additions to these Rules shall be adopted only at a General Meeting of NZHITC. Any proposed changes shall be set out in full in the notice calling a General Meeting. Such changes shall be approved only if supported by the votes of two-thirds of the voting Members present.

21.2 Notwithstanding rule 14.1, every member of NZHITC must be given at least 14 days' notice in writing of the date and place of the General Meeting to be called for the purposes of this rule 21. Particulars of the proposed change, addition, alteration, amendment, revision or rescission must for that period of 14 days be lodged for inspection at the registered office of NZHITC.

22 Dissolution

22.1 NZHITC shall be wound up in accordance with the Incorporated Societies Act 1908 or any Act amending or replacing the same.

22.2 Upon winding up the assets of NZHITC remaining after payment of all NZHITC liabilities shall be disposed of in such manner as passed by resolution at the General Meeting convened for the purpose of winding up NZHITC.

22.3 No Member or person associated with a Member of NZHITC shall participate in any surplus arising on winding up. Any person wishing to appeal against any such resolution must do so to the High Court.

SCHEDULE 1: MEMBERSHIP CATEGORIES AND FEES

Membership Category	Annual Subscription
<u>Health IT Companies</u>	
Revenue >\$100 million	\$30,187
\$50 million - \$100 million	\$24,150
\$25 million - \$50 million	\$18,112
\$10 million - \$25 million	\$9,660
\$5 million - \$10 million	\$4,830
\$2 million - \$5 million	\$3,019
\$1 million - \$2 million	\$1,811
<\$1 million	\$725
New Member Pre-Revenue	\$1,811
<u>Supporting Members</u>	
State Sector	\$6,038
Consulting, Legal and Other	\$2,415
Local Government & Economic Development Agencies	\$2,415
<u>Academic Member</u>	\$4,830
<u>Healthcare Providers</u>	
Revenue >\$25 million	\$3,019
\$15 million - \$25 million	\$2,100
<\$15 million	\$903
Pre-Revenue	\$1,811
<u>Individual Member</u>	\$420

Based on revenue derived from New Zealand health related activities (fees above exclude GST)

Fee schedule as ratified by members at the NZHIT AGM, 23 November 2017