

**Telecommunications Carriers' Forum**  
**Rules of Association**

**“the Rules”**

## Table of Contents

Rule	Page Number
1 Name .....	4
2 Registered Office.....	4
3 Purpose .....	4
4 Forum Role .....	4
5 Membership .....	5
6 Forum Fee Structure .....	5
7 Functions Of The Forum Board.....	6
8 Board Composition.....	8
9 Voting.....	9
10 Chairperson of the Forum Board.....	13
11 Group members shall appoint their two representatives to the Board:	14
12 Chief Executive.....	15
13 Forum Administrator .....	16
14 Functions Of The Number Portability Management Committee.....	16
15 Number Portability Management Committee Membership .....	17
16 Policy Committee .....	17
17 Working Party Membership.....	17
18 Nature Of Forum Endorsed Self Regulated Codes.....	18
19 Meetings .....	18

20	Procedure At Annual, Special And Ordinary General Meetings & Group Meetings .....	19
21	Alteration To Rules & Handbook .....	20
22	Common Seal.....	20
23	Liquidation .....	20
24	Liability .....	21
25	Indemnity.....	21
26	Finance.....	21
27	Funds And Properties .....	22
28	Intellectual Property .....	22
29	Communication.....	22
30	Undertakings .....	22
31	No Partnership.....	23
32	Exclusion Of Fiduciary Duties.....	23
	Schedule 1.....	24

## Telecommunications Carriers' Forum Incorporated

### 1 Name

- 1.1 The name of the society is the Telecommunications Carriers' Forum Incorporated (referred to hereafter as the Forum).

### 2 Registered Office

- 2.1 The Registered Office shall be Building C, Level 1, 14-22 Triton Drive, Albany, Auckland or such one place within New Zealand as the Board determines from time to time. Due notice of any change in Registered Office shall be given to the Registrar of Incorporated Societies. The registered office may be the office of the Forum's accountants, legal or other professional advisors.

### 3 Purpose

- 3.1 The Forum's aim is to assist in the growth and development of a competitive telecommunications sector that can be acknowledged as contributing meaningfully to economic development in New Zealand for the benefit of all New Zealanders.
- 3.2 The Forum plays a vital role in the New Zealand telecommunications industry by working collaboratively on the development of key industry standards and codes of practice that underpin the digital economy. It works with industry participants and government agencies to promote competition and investment in the sector, accelerate the introduction of new generation services, and encourage excellence in customer service.

### 4 Forum Role

- 4.1 The Forum will:
- 4.1.1 Promote competition and investment in the industry for the long-term benefit of end users;
  - 4.1.2 Implement responsible self-regulation;
  - 4.1.3 Work to improve the infrastructure deployment climate;
  - 4.1.4 Promote consumer confidence in the industry;
  - 4.1.5 Provide Industry leadership;
  - 4.1.6 Represent the industry on public issues and policy debates (where there is a mandate to do so);
  - 4.1.7 facilitate the operation of telecommunications access codes approved by the Commerce Commission and self-regulated telecommunications codes approved by the Board, where those codes anticipate or require this;

- 4.1.8 Promote co-operation and collaboration on issues of common interest where appropriate.
- 4.1.9 Provide services to members and non-members consistent with or incidental to the above.
- 4.2 In fulfilling its role the Forum will observe any restrictions in the Commerce Act and comply with all relevant legislation.

## **5 Membership**

- 5.1 Membership of the Forum will consist of:
  - 5.1.1 eligible persons (as defined in the Act) who have joined the Forum (“Full Member”); and
  - 5.1.2 parties to the Number Portability Determination (“Numbering Member”),which have paid all fees due to the Forum in full.
- 5.2 Additional arrangements relating to Numbering Members are specified in Schedule 2 of the Handbook.
- 5.3 New members may join the Forum at any time. The benefits of:
  - 5.3.1 Full Membership commence from the date the fee is fully paid up; and
  - 5.3.2 Numbering Membership commence from the date the member is determined by the Commerce Commission to be a party to the Number Portability Determination and they have signed the Forum’s agreement for access to the Industry portability management system (IPMS).
- 5.4 Any Full Member who wishes to cease to be a member may do so at any time on 10 working days notice in writing to the Forum Administrator. Unless specified otherwise, the departing member will not be entitled to a rebate of any fees paid and will be liable for its share of any unpaid fees or costs of the Forum it had previously agreed to incur as a member of the Forum.
- 5.5 If an existing member ceases to qualify under Rule 5.1, that party shall cease to be a member of the Forum.
- 5.6 Members acknowledge that all activities of the Forum are to be conducted pursuant to the Rules, to be read in conjunction with the Operating Procedures Manual (“Handbook”).

## **6 Forum Fee Structure**

- 6.1 Each member shall pay such membership and other fees as determined by the Board from time to time and in accordance with the Rules. The membership fee for:
  - 6.1.1 Full Members is specified in Schedule 1 and is payable in full

immediately on joining. If a member joins part way through the Forum's financial year, the fee will be prorated based on the balance of year remaining at the time the party first advised the Forum that they wish to join.

- 6.1.2 Numbering Members is determined by the Board in accordance with the Commerce Commission Number Portability Determination and these Rules.
- 6.2 Unless otherwise agreed by the Board or (in the case of Number Portability unless otherwise determined by the Commerce Commission), the fee period is from 1 April to 31 March of the following year.
- 6.3 There may be an administrative fee payable by members for specific projects or activities associated with particular Working Parties, considered on a case-by-case basis by the Board.
- 6.4 The manner and mode of payment shall be determined by the Board.
- 6.5 For the avoidance of doubt:
  - 6.5.1 all members of the Forum, user representatives on the Board and participants of Working Parties will bear their own costs and expenses of participation in Forum activities; and
  - 6.5.2 if a member has not paid any amounts owing within 2 months of the due date of a valid tax invoice from the Forum, and previously having received a reminder to pay the outstanding amount, that member shall cease to be a member of the Forum with effect from the date 2 months following the due date of such invoice without prejudice to the rights of the Forum in respect of such default.

## **7 Functions Of The Forum Board**

- 7.1 The functions of the Board will be to:
  - 7.1.1 appoint a Chairperson of the Board, the Chief Executive Officer (CEO), Forum Administrator and Enforcement Agents;
  - 7.1.2 in light of the Forum's purpose, decide on the work of the Forum and prioritise such work;
  - 7.1.3 decide on the budget and membership fees for the Forum and decide on the budget to effectively meet its obligations under the Number Portability Determination following consultation with all Numbering Members;
  - 7.1.4 select and appoint any external expert resources used by the Forum (including Working Parties) that may be required from time to time subject to budget constraints;
  - 7.1.5 approve changes to the Rules and Operation procedures of the

Forum;

- 7.1.6 determine whether to endorse self-regulated telecommunication codes as Forum codes;
- 7.1.7 meet at least quarterly;
- 7.1.8 In addition to the above, in relation to Numbering Membership:
  - (a) establish a committee to consider applications received by the Forum for exemptions from the Number Portability Network Terms in accordance with the process set out in clause 15 of the Network Terms for Local and Mobile Number Portability in New Zealand (“Number Portability Network Terms”) (referred to as in the Rules as the “Number Portability Management Committee” or “NPMC”);
  - (b) select and recommend to the Commerce Commission candidate(s) to fill the role of enforcement agency pursuant to the Number Portability Final Determination;
  - (c) undertake such matters so as to operate or facilitate the operation of the telephone number portability service in New Zealand;
- 7.1.9 in relation to the operation of the Telecommunications Dispute Resolution Scheme (the “Scheme”) established by the Forum:
  - (a) maintain an oversight role;
  - (b) approve the overall budget for the Scheme;
  - (c) decide on the fees and other levies for the Scheme;
  - (d) approve and authorise payment to consumer representatives determined in accordance with the Scheme terms of reference (“TOR”);
  - (e) in accordance with the Scheme TOR, determine Tier One members entitled to appoint industry representatives pursuant to the Scheme TOR, and review and determine, in accordance with the Scheme TOR, Tier One members' representation on the governing council if there is a change to Tier One membership of the TCF;
  - (f) execute the contracts for the Scheme Agent and any external expert resources recommended by the governing council appointed under the Scheme TOR and authorise payment of the costs so incurred; and
  - (g) alter, add to or rescind the Customer Complaints Code and/or the Scheme TOR in accordance with the Scheme TOR.

7.1.10 The Board, in its absolute discretion, may choose to delegate any of its decision rights to the Chief Executive and to place any restrictions they see fit on the exercise of that delegated authority.

## **8 Board Composition**

8.1 The Board will be comprised of:

8.1.1 a Chairperson;

8.1.2 one representative from each Tier One member (as defined in Rule 8.2.1);

8.1.3 two representatives of all other Forum members collectively, being:

(a) one representative of Tier Two members of the Group (as defined in Rule 8.2.2); and

(b) one representative of Tier Two and Tier Three members of the Group (as defined in Rule 8.2.2),

determined by such members themselves in accordance with Rules 9.3 and 11; and

8.1.4 Up to two individuals as non-voting representatives from organisation(s) which actively represent the interests of telecommunications end-users, such representatives to be determined by the other members of the Board on an annual basis.

8.2 For the purposes of the Forum:

8.2.1 “Tier One members” means Full Members who each fund more than two percent of the Telecommunications Commissioner’s costs (as described in sections 11 and 12 of the Act). Where there are more than four Forum members each funding more than 2 percent of the Telecommunications Commissioner’s costs, only the four largest funders who are also Forum members shall be included in this category of Forum members;

8.2.2 “Group” means all Full Members of the Forum except Tier One members, and consists of Tier Two and Tier Three members, where:

“Tier Two members” means Group members who are liable to pay costs towards a Telecommunications Service Obligation or liable to fund a portion of the Telecommunications Commissioner’s costs.

“Tier Three members” means Group members who are not liable to pay either the costs towards a Telecommunications Service

Obligation or liable to fund the Telecommunications Commissioner's costs.

- 8.2.3 For the avoidance of doubt, any Forum member who funds more than 2 percent of the Telecommunications Commissioners costs, but is not one of the four largest funders who is also a Forum member, shall be a Tier Two member.
- 8.3 Tier One members shall nominate their respective representative(s) and may designate an alternative representative at any time.
- 8.4 The two Forum members elected to represent the Group at Board meetings, will nominate their representatives on the Board and may designate alternative Group Member representative(s) at any time.
- 8.5 No person may be a representative of more than one position on the Board, unless elected as the Chairperson or appointed as a proxy for another Board member.
- 8.6 From time to time the Board may approve the attendance of external advisors at Board meetings.
- 8.7 For the avoidance of doubt, participation on the Board by Forum members requires the Board member's organisation to be a current, fully paid up Full Member of the Forum.

## **9 Voting**

### ***Board Voting***

- 9.1 In carrying out its functions, and should a vote be required, the Board will vote in accordance with the following voting arrangements:
- 9.1.1 one equal vote per Board member entitled to vote;
- 9.1.2 the Chairperson will not have a casting vote;
- 9.1.3 if the Chairperson is an independent then the Chairperson will not have a vote;
- 9.1.4 a simple majority vote will be required, except for the items identified in Rule 9.1.5 and 9.1.7. For the avoidance of doubt, a simple majority is required for initiating a work stream in relation to telecommunications access codes and self-regulated telecommunications codes;
- 9.1.5 A 75% majority will be required for:
- (a) inclusion of a non-voting representative on the Board, with a 50% majority required to annually renew such representatives membership on the Board;
  - (b) the continuation of any work stream that is subject to a reporting requirement imposed on a Working Party by the

Board clause 5.1.3 of the Handbook;

- (c) appointment of any independent Working Party Chairs;
- (d) removal of any of the parties referred to in Rules 9.1.5(c) or 9.1.7(f) where a vote of no confidence is required. Such vote shall be subject to any legal and contractual obligations;
- (e) subject to Rule 9.1.7(b), the use of the Forum's budget for carrying out any studies, consultancies or use of external expert advisors where there is no pre-allocated budget for a working party and such expenditure is beyond the CEO's delegated authority;
- (f) approve Working Party consultation with the public on draft self-regulated telecommunications codes;
- (g) changes to the documented operating procedures ("Hand Book"); and
- (h) establishment of sub-committees of the Board to deal with any particular issue which would normally be dealt with by the Board. Such sub-committees may comprise those members of the Board who indicate a desire to be on the applicable sub-committee from time to time and shall report to the Board.

9.1.6 Rule 9.1.5(h) does not apply to the NPMC referred to in Rule 7.1.8(a).

9.1.7 A unanimous vote will be required for:

- (a) changes to the Rules of Association;
- (b) setting the fees and annual budget;
- (c) approval of project scope's for all matters other than in relation to regulated Codes;
- (d) the endorsement of any self-regulated telecommunications codes;
- (e) Subject to Rule 15.1, determining public positions and public statements of the Forum; and
- (f) appointment of the Board's Chairperson, CEO, Forum Administrator, TDR Scheme Agent and Enforcement Agent(s).

9.1.8 In respect of the Scheme:

- (a) a Board member who is not a representative of a Scheme Member shall not be entitled to vote on any Board resolution

relating to the Scheme, except that a Board representative of a Group which includes Scheme Members may vote on any Board resolution relating to the Scheme;

- (b) subject to Rule 9.1.8 (a), a simple majority vote will be required, except for the items identified in Rule 9.1.5(c);
- (c) subject to Rule 9.1.8(a), a 75% vote will be required for any alterations and/or additions to, or the rescinding of the Customer Complaints Code or the Scheme TOR; and
- (d) subject to Rule 9.1.8(a), a unanimous vote will be required for setting the fees and budget for the Scheme and to authorise the payment of the costs of the Scheme agent and the external expert resources.

9.2 For the avoidance of doubt:

- 9.2.1 the Board will not vote on telecommunications access codes prepared for approval by the Commission, under clause 1 of Schedule 2 of the Act;
- 9.2.2 where the Board is voting on any changes proposed to Rules 9.3 or 11, Tier One members shall abstain from voting on such changes where they relate solely to the voting arrangements for the Group; and
- 9.2.3 the Board will not vote on any NPMC decision made in accordance with clause 15 of the Number Portability Network Terms.

**Group Voting**

9.3 If a vote of the Group is required, voting shall be in accordance with the following voting arrangements:

- 9.3.1 one equal vote per Group member entitled to vote;
- 9.3.2 the chairperson of the Group would not have a casting vote;
- 9.3.3 a 75% majority vote will be required, except for the item identified in Rule 9.3.4; and
- 9.3.4 If more than one member is nominated to fill a position as Group representative, then the Group representative for that position shall be decided by a simple majority vote of Group members entitled to vote.

9.4 For the avoidance of doubt, only the Group members entitled to elect a Group Board representative to a specified position (as set out in Rule 11.4) are entitled to vote on the mandates for that representative at Board meetings.

### ***Working Party Voting***

- 9.5 In carrying out their functions, and should a vote be required, each Working Party will vote in accordance with the following voting arrangements:
- 9.5.1 Unless specified otherwise in the project scope, there will one equal vote per Forum member who is an active member on the Working Party who is entitled to vote. Where a Forum member has more than one representative on a Working Party, the member will only be entitled to one vote;
  - 9.5.2 Unless specified otherwise in the project scope, parties who are not Forum Members are not entitled to vote;
  - 9.5.3 any independent Chair the Project Leader or technical expert does not have a casting vote;
  - 9.5.4 if the Project Leader or technical expert is an independent then they would not have a vote;
  - 9.5.5 Subject to Rule 9.5.6, a simple majority vote will be required for all decisions by the Working Party;
  - 9.5.6 A 75% majority will be required for:
    - (a) any recommendation to change the project scope;
    - (b) the submission of a draft non-regulated telecommunications code for public consultation or endorsement;
    - (c) continuation of a workstream where the report referred to in clause 6.1.3 of the Handbook is required;
    - (d) a draft non-regulated telecommunications code to be submitted to the Board for public consultation or endorsement;
  - 9.5.7 where a vote is required on the matters set out in Rule 9.5.6, members of the Working Party shall be given not less than 3 working days prior notice of the meeting, and decisions can also be made by way of a circulated resolution as set out in Rule 9.5.8.
  - 9.5.8 Unless a shorter timeframe is agreed by the Working Party, where voting is via email in response to a circulated resolution, a response must be received by the Forum Administrator within 3 working days. The Forum Administrator will issue a reminder notice to the Working Party prior to the end of that 3 day period. The Vote will be passed if the votes of those Working Party members who voted within the 3 working day period meet the voting threshold.

### ***Forum Member Voting***

- 9.6 Where voting by Forum members is envisaged under the Act, voting shall only be conducted in accordance with Schedule 2 of the Act.

### ***General (applies to all voting)***

- 9.7 For the avoidance of doubt, wherever a vote is required, the vote will be passed if the votes of all those Forum members present and voting meet the voting threshold set out in the Rules and the Handbook.
- 9.8 Any member may abstain from casting a vote, and such abstention shall not be regarded as a vote either for or against the matter being voted on.
- 9.9 Members who have not participated and/or not responded to consultation on Forum outputs, are expected to approve the final Working Party output or abstain from voting.
- 9.10 Voting may also be by email or fax response to a circulated resolution by the Forum Administrator, Chairperson, Group representative (for decisions by the Group), the Project Leader (for decisions by a Working Party) or the Committee Leader (for decisions by the NPMC or other permanent Committees), to the last known address of the parties entitled to vote. Where no response is received to a circulated resolution within 5 working days of the resolution being sent, and provided those members to whom the resolution is to be circulated and have been given not less than 2 further working days' notice to respond, the vote will be passed if the votes of all those Forum members who have responded within the timeframe meet the voting threshold set out in the Rules and the Handbook.
- 9.11 Proxy votes from Forum members may be held and cast by the Chairperson, CEO, Forum Administrator and any Forum member entitled to vote.
- 9.12 Any member holding a proxy shall declare the existence of the proxy prior to casting a proxy vote.
- 9.13 Any proxy vote shall be cast according to the instructions of the member who provides the proxy.

## **10 Chairperson of the Forum Board**

- 10.1 The Chairperson of the Board is to be appointed by the Board annually. The Chairperson may be a member of the Board, or an independent person, as decided by the Board.
- 10.2 If the Board is unable to agree the appointment of the Chairperson, the position of Chairperson shall rotate amongst the remaining members of the Board who are members of the Forum (and who have not previously held the position of Chair), in alphabetical order based on the Forum members' company name.

- 10.3 Where the Chairperson is not present at a Board meeting, the representatives present at the meeting shall elect one of their number present to chair the relevant meeting.
- 10.4 In accordance with clause 16.2.5 of the Network Terms for Local and Mobile Number Portability (“Number Portability Network Terms”) and clause 7.2.5 of the Terms for Local and Mobile Number Portability in New Zealand (“LMNP Terms”), the Chairperson may be required to nominate an independent expert to hear technical disputes between parties to those terms, which the Commerce Commission must approve. Where the Chairperson is a representative of one of the parties to the dispute, or has a material interest in the dispute, the representatives of the Board shall elect, at the earliest possible time, another member of the Board who does not have a material interest in the dispute, or an independent person, to nominate the independent expert, and that person shall be the Chairperson for the purposes of such technical dispute.

### ***Group Representatives***

- 11 Group members shall appoint their two representatives to the Board:**
- 11.1 One representative shall be drawn from Tier Two members (as defined in Rule 8.2.2) and elected solely by Tier Two members; and
- 11.2 One representative shall be drawn from Tier Two and Tier Three members (as defined in Rule 8.2.2) and elected by Tier Two and Tier Three members.
- 11.3 In addition to the two Group representatives to the Board, the Group may appoint a Group member as chairperson for Group meetings on an annual basis.

### ***Nomination & Election of Group Representatives***

- 11.4 The Group shall ensure it has Group representatives appointed to the Board at all times.
- 11.5 The elections will take place on an annual or 6 monthly basis (to be agreed at the time the Group Member is elected) unless otherwise required to meet the requirements of Rule 11.4. Where a Group representative does not comply with Rules 9.3 and 11, and the Group members entitled to appoint such representative wish to appoint an alternative representative, a new Group Representative may be elected. Provided that representative continues to meet the requirements of Rules 9.3 and 11, such representative shall be appointed for the remainder of the term of the previous representative.
- 11.6 Any Group member may nominate a Group member from the appropriate Tier (including itself) to become a Group representative. Prior to a nomination becoming valid, the Group member being nominated must give their consent to the nomination.
- 11.7 If only one Group member is nominated to fill a position as Group

representative, no vote shall be required, and provided such nomination is valid, that member shall be appointed as the Group representative for that position.

- 11.8 Notwithstanding that the Group's representatives are elected on an annual basis, such Group representatives may remain for more than a year and until such time as the Group members who meet the criteria set out in Rule 11.4, nominate and elect alternative representatives.

#### ***Roles of the Group's Representatives***

- 11.9 At Board meetings the Group's Board representatives shall:
- 11.9.1 represent the views and interests of the Group members the representative has been appointed to represent;
  - 11.9.2 subject to Rules 11.10 and 11.11, vote according to the mandates authorised by the members of the Group the representative has been appointed to represent;
- 11.10 Where the mandate given by the Group members to the two Group Representatives to vote on a matter before the Board is the same for each, and subsequent discussion at the Board meeting results in modifications to the item being voted on, then provided the Group Representatives vote in the same way and they believe such a vote is consistent with the view of the Group members they are elected to represent, they may vote accordingly;
- 11.11 Where the mandate given by the Group members to the Group Representatives to vote on a matter before the Board is different (i.e. one is voting for, and the other against), and subsequent discussion at the Board meeting results in modifications to the item being voted on, the Group Board members must either:
- 11.11.1 abstain from voting until they have a clear mandate by the Group members they represent; or
  - 11.11.2 cast a vote on the matter before the Board, with such vote being subject to confirmation (to the appropriate voting threshold required) of the Group members.
  - 11.11.3 abstain from voting on issues where no initial mandate exists or cast a vote on the matter before the Board, with such vote being subject to confirmation (to the appropriate voting threshold required) of the Group members.

## **12 Chief Executive**

- 12.1 The CEO is appointed by the Board.
- 12.2 The functions of the CEO will be to:
- 12.2.1 Oversee the progress and operation of the Forum;

- 12.2.2 Recommend the appointment of the Forum Administrator and Enforcement Agent(s), TDR Scheme Agent and any independent Working Party Chairs.
  - 12.2.3 Temporarily suspend staff, agents or contractors for misconduct, pending a review by the Board.
  - 12.2.4 Recommend changes to the Handbook.
  - 12.2.5 Approve expenditure within the CEO's delegated authority. In the case of expenditure relating to a Working Party, the CEO may approve expenditure above his delegated authority provided the year end forecast expenditure for that Working Party is not expected to go beyond the amount allocated for that Working Party in the budget approved by the Board;
  - 12.2.6 Approve minor changes in existing project scopes, including the deliverables and the project timelines, and members of the working party;
  - 12.2.7 Approve Working Party consultation with specified interested parties on draft self-regulated telecommunications codes;
  - 12.2.8 Advise the Commissioner of the Forum's decision in response to a request by the Commissioner to prepare a code;
  - 12.2.9 Conduct referenda on draft telecommunications access codes (as per Schedule 2, section 4 of the Act);
  - 12.2.10 Submit draft telecommunications access codes to the Commission for their approval.
  - 12.2.11 Represent the Forum and the Forum's interests in external fora and act as the Forum's primary spokesperson.
- 12.3 In the event the position of CEO is vacant for any reason, unless otherwise agreed by the Board, the role and functions of the CEO will be performed by the Chairperson.

### **13 Forum Administrator**

- 13.1 The Forum will appoint an administrator to facilitate the efficient working of the Forum. The Forum Administrator will perform the functions set out in clause 6 of the Handbook and clause 15 of the Scheme TOR.

### **14 Functions Of The Number Portability Management Committee**

- 14.1 The purpose of the NPMC is to:
  - 14.1.1 consider applications made to it for exemptions from compliance with the obligations contained in the Number Portability Network Terms ("Number Portability Exemption Applications"), in accordance with the process set out in clause 15 of the Number

Portability Network Terms; and

14.1.2 make a recommendation to the Commerce Commission as to whether each Number Portability Exemption Application should be granted or not.

## **15 Number Portability Management Committee Membership**

15.1 For each Number Portability Exemption Application under consideration, the persons entitled to participate on any NPMC consist of:

15.1.1 Any member of the Forum who is also a party to the Number Portability Final Determination;

15.1.2 The non-voting representative of user interests on the Board (if any); and

15.1.3 A non-voting representative of the Telecommunications Commissioner.

15.2 Applications from Forum members of User Representatives on the Board to participate in the NPMC's consideration of a particular Number Portability Exemption Application received more than 20 working days from the date the application was received by the Forum Administrator, require approval of the Board.

## **16 Policy Committee**

16.1 The function of the Policy Committee is to approve and oversee the development of the forum's public positions and media statements (where required), studies and submissions and other matters which form part of the Forum's public policy programme.

16.2 The Policy Committee shall comprise the CEO, voting members of the Board or any duly authorised senior member of their organisation.

16.3 All Members are entitled to participate in meetings of the Policy Committee and preparation of the voting materials.

16.4 Should a vote be required, it will be in accordance with the voting requirements set out in Rule 9.

## **17 Working Party Membership**

17.1 Persons entitled to participate on any Working Party consist of:

17.1.1 Any member of the Forum;

17.1.2 The non-voting representative of user interests on the Board (if any); and

17.1.3 Experts, interested parties and affected parties approved by the CEO.

## **18 Nature Of Forum Endorsed Self Regulated Codes**

18.1 Any self-regulated telecommunication code endorsed by the Board pursuant to Rule 9.1.5 is voluntary in nature. It is open for members of the Forum to adopt or to not adopt any such code.

18.2 Any work prepared by the Forum in relation to a possible self-regulated telecommunications code may not be represented by any member of the Forum as the Forum's position on that matter unless and until such a code has been formally endorsed by the Board as a self-regulated telecommunications code.

18.3 The Forum will not endorse telecommunications access codes unless they have been approved by the Commissioner in accordance with Schedule 2 of the Act.

## **19 Meetings**

19.1 **Annual General Meeting:** The Annual General meeting shall be held each year at a time and place fixed by the Board for the following purposes:

19.1.1 To receive and report on balance sheet and statement of accounts for the preceding year and an estimate of the receipts and expenditure for the ensuing year. Voting for this may be on the basis of a simple majority of Forum members.

19.1.2 To discuss any business notified under Rule 4 - in accordance with voting arrangements set out for the various issues in the Rules and the Handbook.

19.2 **Special General Meetings:** A Special or extraordinary meeting of members may be called by the Board at any time or at the written request of five members of Forum. Such a meeting shall have the same powers as an annual general meeting.

19.3 Not less than ten (10) working days before any Annual or Special General meeting a notice of it shall be sent to members at their last known address. Such notice shall specify the date, time and place of such meeting, the type of meeting and the business to be discussed at the meeting.

19.4 **Ordinary Board Meetings:** The Board will meet no less frequently than quarterly. An Ordinary Board meeting may be called by a Board member or the Forum Administrator by giving not less than five (5) working days notice, or shorter period if all Board members agree. Notice may be by way of email, fax or post as determined by the Board from time to time.

19.5 Any members who are not Board members may notify in advance that they wish to attend a Board meeting and may address the meeting with the permission of the Chair. Members may stay for the whole meeting unless

the Chair asks the member to leave.

- 19.6 Minutes of meetings will be taken to record meeting attendance, action points, key discussion items, the outcome of any voting and the date of the next meeting. The minutes are to be emailed to all Board members within five (5) working days of the meeting.
- 19.7 **Group Meetings:** A Group meeting may be called by the Forum Administrator or a Group representative at any time, or by a written request of four (4) members of the Group.
- 19.8 Not less than five (5) working days (or shorter period if the Group members agree) before any Group meeting a notice of it shall be sent to Group members at their last known address by the Group chairperson or the Forum Administrator. Such notice shall specify the date, time and place of such meeting and the type of business to be discussed at the meeting, and may be sent by way of email, fax or post.
- 19.9 Where the Forum Administrator or a Group Representative is aware of any issue which requires (or will require) the Group to provide a mandate to the Groups Board representatives, that party will ensure that all relevant documents are circulated to Group members, and that a Group meeting is arranged in accordance with the Rules and the Handbook.
- 19.10 Minutes of meetings will be taken to record meeting attendance, action points, key discussion items, the outcome of any voting and the date of the next meeting. The minutes are to be circulated to all Group members within five (5) working days of the meeting.

## **20 Procedure At Annual, Special And Ordinary General Meetings & Group Meetings**

- 20.1 At all meetings the Chairperson of the Board or chairperson of the Group (as the case requires) and in his or her absence any other duly elected person shall take the chair and every member entitled to be present shall be entitled to one vote on every motion.
- 20.2 The mode of voting on all questions at all meetings shall be by a show of hands, unless otherwise directed by the chairperson. A representative of a member organisation attending is deemed to have that organisation's voting authority. If two (2) or more representatives from a member organisation are in attendance, then one of those representatives must be nominated by their organisation as the voting authority for the meeting.
- 20.3 Meetings may be held by audio conference, videoconference, electronically or in person, and decisions can also be made by way of a circulated resolution in accordance with these Rules.
- 20.4 At all Annual or Special General meetings 30% of the members of the Forum shall constitute a quorum. At Ordinary Board meetings, four (4) voting Board members constitute a quorum.

- 20.5 At all Group meetings, four (4) Group members shall constitute a quorum.
- 20.6 For Group meetings, where a quorum is not present that meeting shall be postponed for not less than three (3) working days. If a quorum is not present at the subsequent meeting those members present shall be deemed to comprise a quorum for the purposes of that meeting, provided those members not present at the first meeting have been given not less than three (3) working days' notice of the subsequent meeting.

## **21 Alteration To Rules & Handbook**

- 21.1 The Rules and the Handbook may be altered, added to or rescinded at any of the meetings referred in to in Rule 19 provided that such changes are agreed by the Board in accordance with Rule 9.1.7, and notice in writing setting out such proposed alternation, addition or rescission has been sent to the Board with the notice of the meeting not less than ten (10) working days prior to the meeting or a shorter period if all the Board members agree.
- 21.2 No addition to or alteration of the non-profit aims, personal benefit clause or the winding up clause shall be approved without the approval of the Inland Revenue Department. The provisions and affect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

## **22 Common Seal**

- 22.1 The Forum must provide a common seal which will remain in the custody of the Forum Administrator or such other person as nominated by the Board. The use of the seal can only be authorised by the resolution of the Board (on the same level as is required for the decision to which the use of the seal relates) and its application is to be witnessed by the Chairperson of the Board plus one other member of the Board.

## **23 Liquidation**

- 23.1 **Liquidation of the Forum.** Members may resolve to put the Forum into liquidation if at a Special General meeting of its members, a resolution to liquidate is passed by a simple majority of the votes of members present called for the purpose and the resolution is confirmed by a simple majority, at a subsequent general meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution to liquidate was passed.
- 23.2 **Disposal of Surplus Funds:** If upon the liquidation of the Forum there remains after the satisfaction of all its liabilities any property whatsoever, the same shall be paid or distributed among the members of the organisation, in accordance with the proportion of membership fees they have paid to the Forum.

## 24 Liability

- 24.1 No member of the Forum shall be under any liability in respect of any contract, deed or other obligation made or incurred by the Forum.

## 25 Indemnity

- 25.1 No action in law or other claim may be taken by members, or their executors or administrators, against any other members of the Forum or Board or officer pursuant to the provisions of these Rules, notwithstanding any irregularity or informality occurring in or about the doing or omitting or suffering of any act. No member of the Board is liable for any loss or expense of the Forum, or any other member of the Forum, unless it occurs as a result of wilful default by that member.

## 26 Finance

- 26.1 **Money on account:** All moneys received on account of the Forum shall be paid into the account of the Forum with its bankers and shall be acknowledged by an officer or a paid employee of the Forum.
- 26.2 **Cheques:** All cheques drawn upon the bankers of the Forum shall be signed in such manner and by such persons as the Board shall from time to time determine.
- 26.3 **Financial Arrangements:** The Forum will borrow money, enter into arrangements, including purchase, take on lease or exchange, hire or otherwise acquire any services and any right, title or interest in tangible and intangible property and do all other things as are incidental or conducive to the operation or to facilitate the operation of the Forum.
- 26.4 **Endorsement:** Cheques or other negotiable instruments paid or payable to the Forum's bankers for collection requiring the endorsement of the Forum may be endorsed by such person or persons as the Board shall from time to time appoint.
- 26.5 **Account Books:** The Chairperson of the Board or other such person as nominated by the Board shall keep, or cause to be kept, a proper account of the income and expenditure of the Forum and of the matters in respect of which such income and expenditure arises and takes place respectively and of the property, creditors and liabilities of the Forum in books to be provided for that purpose, and shall produce the account books, properly written up, when required by the Board.
- 26.6 **Financial Year:** The financial year of the Forum shall be from 1 April to 31 March of the next year.
- 26.7 **Filing requirements:** The Chairperson of the Board shall file with the Registrar of Incorporated Societies within seven days after the annual general meeting, the financial statements and such other matters required to be filed under Section 23 of the Incorporated Societies Act 1908.

## **27 Funds And Properties**

- 27.1 The funds, properties and assets of the Forum shall be under the control of the Board.
- 27.2 Any money of the Forum may be invested by the Forum in such manner as the Board may from time to time determine.
- 27.3 Any income benefit or advantage shall be applied to the purpose of the Forum. No member of the Forum or any person associated with a member shall participate in or materially influence any decision made by the Forum in respect of the payment to or on behalf of that member or associated person or any income benefit or advantage whatsoever. Any such income shall be reasonable and relative to that which would be paid within an arms length transaction being open market value.

## **28 Intellectual Property**

- 28.1 Unless the members unanimously agree otherwise,
  - 28.1.1 all Intellectual Property which originates from or is developed by a member, which is applied or used by the Forum shall remain in the ownership of that member;
  - 28.1.2 subject to Rule 28.1.1, all Intellectual Property which is created, developed or acquired after the establishment of the Forum by or on behalf of the Forum shall be owned by the Forum.

## **29 Communication**

- 29.1 Subject to Rules 9.1.7(e), 12.2.7, 29.2 and 29.3, all the business and records of the Forum shall be available to members at their request.
- 29.2 Information which is the subject of a confidentiality provision or agreement, or which has been noted by the Board as not available for general distribution, shall not be made available.
- 29.3 The Forum may charge any non-member the reasonable costs incurred in providing the information requested and shall only be obliged to provide information for the period up to 6 months prior to the date of the request.
- 29.4 All correspondence with the Forum shall be addressed to the registered office of the Forum.

## **30 Undertakings**

- 30.1 Each Forum member and Board Member undertakes to:
  - 30.1.1 to duly perform and observe all the Rules of the Forum and to operate in accordance with the Handbook;
  - 30.1.2 to ensure that its representatives on the Forum, and any Working Parties will use his or her best endeavours to ensure that the Forum performs and carries on its activities so as to give full

effect to the Rules;

30.1.3 without limiting Rule 29, to act in good faith towards the other members in relation to the operation and administration of this Forum, but this obligation shall not in any way limit or restrict any member from making or not making any decision, or taking or not taking any action, on any matter having regard to what it perceives to be its best commercial interests; and

30.1.4 not to do anything which prevents the performance of that members obligations under the Rules.

### **31 No Partnership**

31.1 Nothing in these Rules or in the relationship between the members shall be construed as in any sense creating a partnership between any two or more of the members to this Forum or as giving to any member any of the rights, or subjecting any member to any of the liabilities, of a partner.

### **32 Exclusion Of Fiduciary Duties**

32.1 Without limiting any express obligation in the Rules or the Handbook to act in good faith, nothing in the Rules or the Handbook shall evidence or be deemed to constitute a fiduciary relationship between any or all of the members; accordingly any fiduciary duties which may otherwise be implied are hereby excluded.

## Annual Membership Fee

### Effective FY2009:

1. The Board will set a budget prior to each financial year.
2. Each member will pay the following proportion of the budget as an annual fee:
  - a. Telecom 40%;
  - b. TelstraClear 25%;
  - c. Vodafone 25%;
  - d. Tier 2 and 3 members an equal proportion of the remaining 10%.
3. Any overruns on the annual budget will be distributed among members in accordance with the methodology set out in clause 2 of this Schedule.
4. Notwithstanding clauses 2 and 3 of this Schedule, Tier 2 and 3 members will pay no more than \$5,000 each per annum. Any amount above this will be distributed among Telecom, TelstraClear and Vodafone in accordance with the methodology set out in clause 2 of this Schedule.
5. Any under runs on the annual budget will be credited to the members in accordance with the methodology set out in clause 2 of this Schedule, provided that:
  - a. Tier 2 and 3 members shall not be entitled to any credit if the amount of the annual membership fee paid by the Tier one members was greater than 90% and the amount of any credit would result in the Tier 2 and 3 members paying less than 10%;
  - b. Subject to clause 5(a) of this Schedule, any new member who joins part way through a financial year shall only be entitled to a credit in proportion to the amount they contributed.
6. The Forum Administrator will apply the methodology set out in clause 2 of this Schedule to the annual budget to determine each member's annual fee. The Forum Administrator will send an invoice to each member, which (unless otherwise agreed by the Board) is to be paid in full.
7. In December 2008, the Forum agreed to change its financial year end from 31 December to 31 March. The Fees for 1 January 2009 to 31 December 2009 had already been approved prior to this change. To bring the fees into line with the new financial years:
  - a. one quarter of the budget which the Board approved to apply for that period will apply from 1 January 2009 to 31 March 2009; and
  - b. the balance will apply to 31 December 2009.