

New Zealand Telecommunications Forum Incorporated

Constitution

“the Constitution”

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Constitution of the
New Zealand Telecommunications Forum Incorporated

1 Name

- 1.1 The name of the society is the New Zealand Telecommunications Forum Incorporated (“TCF” or “the Forum”).

2 Registered Office

- 2.1 The Registered Office shall be such place as determined from time to time by the Board. Due notice of any change in Registered Office shall be given to the Registrar of Incorporated Societies.

3 Definitions

- 3.1 In this Constitution, unless the context otherwise requires the following expressions shall have the following meaning:

“75% support” means at least 75% of the persons entitled to vote and voting on a resolution voted in favour of that resolution

“100% support” means 100% of the persons entitled to vote and voting on a resolution voted in favour of that resolution

“Act” means the Telecommunications Act 2001 as amended from time to time.

“Board” means the board of the TCF

“Board Member” means, a member of the Board elected or appointed in accordance with the Constitution and who is an Officer for the purposes of the Incorporated Societies Act

“Chairperson” means the person appointed under clause 13

“Code” means a code of practice intended to apply to Members which is prepared by the TCF

“Commission” means the Commerce Commission

“Conflict Matter” has the meaning given in clause 11

“Customer Care Code” means the Customer Care Code established under the Scheme

“Dispute” has the meaning given in clause 25

“Enforcement Agent”, in relation to a Code, means a person appointed by the Board whose role is to monitor and enforce compliance of the obligations set out in that Code

“Financial Year” means the Forum’s financial year, as set out in clause 7.3

“Forum Administrator” means the administrator appointed under clause 16

“Full Member” has the meaning set out in clause 6.2.1

“General Associate” has the meaning set out in clause 6.2.2

“Handbook” means the operating procedures manual of the Forum, as amended from time to time

“Incorporated Societies Act” means the Incorporated Societies Act 2022

“Members” means, collectively, Full Members, General Associates and Subsidiary Members

“Membership Fees” means those fees set by the Board from time to time in accordance with 10.7.6(e)

“Ministry” means the Ministry of Business Innovation & Development

“Number Portability” means the local and mobile number portability in New Zealand which gives consumers and businesses the ability to keep their existing local or mobile phone number if they change telecommunications providers

“Number Portability Determination” means the Commission’s Determination for the designated multi-network services of ‘local telephone number portability service’ and ‘cellular telephone number portability service’ [2021] NZCC 27” – 02 December 2021

“Number Portability Management Committee” or **“NPMC”** means the committee established in accordance with clause 8.4.14(a)

“Number Portability Network Terms” means the Network Terms for Local and Mobile Number Portability in New Zealand (Attachment C to the Number Portability Determination)

“Purpose” or **“Purposes”** means the purposes of the TCF as set out in clause 4

“Register of Members” means the register of Members to be kept in accordance with clause 6.4, as required by the Incorporated Societies Act

“Regulated Code” means a telecommunications access code drafted by the TCF in accordance with Schedule 2, Part 1 of the Telecommunications Act 2001 and formally approved by the Commerce Commission and endorsed by the TCF in accordance with clause 21.4

“Scheme” means the Telecommunications Dispute Resolution Scheme owned by Telecommunications Dispute Resolution Limited

“Self-regulated Code” means a Code endorsed by the Board in accordance with

clause 21.1 or 21.2.

“Simple Majority Support” means more than 50% of the persons entitled to vote and voting on a resolution voted in favour of that resolution

“Subsidiary” has the meaning set out in the Companies Act 1993

“Subsidiary Member” has the meaning set out in clause 6.3.

“Tier” has the meaning set out in clause 9.1

“Tier Four Member” has the meaning set out in clause 9.1.5

“Tier One Board Member” means a Board Member appointed by a Tier One Member under clause 9.5

“Tier One Member” has the meaning set out in clause 9.1.2

“Tier Representatives” means the representative Members elected by the Tier Two Members and the Tier Three Members in accordance with clause 14.1 and 14.2 respectively

“Tier Three Board Member” means a Board Member appointed by a Tier Three Tier Representative under clause 14.2

“Tier Three Member” has the meaning set out in clause 9.1.4

“Tier Two Board Member” means a Board Member appointed by a Tier Two Tier Representative under clause 14.1

“Tier Two Member” has the meaning set out in clause 9.1.3

“Unanimous Support” means 100% of the persons entitled to vote on a resolution (but excluding any persons abstaining) voting in favour of that resolution.

“Working Party” means a working party set up and operating under the processes and procedures of the Forum

“Working Party Chair” has the meaning set out in clause 12.3.3

- 3.2 Headings in this Constitution are for convenience only and have no legal effect.
- 3.3 The singular includes the plural, and vice versa.
- 3.4 Any reference to legislation or to any provision of any legislation (including regulations or orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 3.5 References to “person” include bodies corporate, unincorporated associations or partnerships.

- 3.6 A reference to “writing” or “notice” shall include information recorded in electronic form if the information is readily accessible so as to be usable for subsequent reference.

4 Purpose

- 4.1 The Forum actively fosters co-operation amongst participants in the telecommunications industry to efficiently resolve regulatory, technical and policy issues.
- 4.2 The Forum provides an expert, informed, and commercially-focused forum to debate problems, and to devise and implement practical, efficient, consensual solutions that enable competition to flourish.
- 4.3 The Forum will:
- 4.3.1 Work with the Members and other bodies, such as the Ministry and the Commission, to efficiently agree the resolution of technical, regulatory or policy issues that affect the industry;
 - 4.3.2 Facilitate creation of Codes, standards, guidelines and policy statements that reflect those agreements;
 - 4.3.3 Represent industry-agreed views to third parties;
 - 4.3.4 Provide a forum for debate and agreement on important cross-industry issues;
 - 4.3.5 Lead the industry work programme to move the industry forward; and
 - 4.3.6 Provide services to Members and non-Members consistent with or incidental to the above.

5 Forum Role

- 5.1 The TCF may invest and deal with its property and borrow or raise or secure the payment of money charged upon all or any of the TCF's property and may purchase, redeem or pay off such securities.
- 5.2 The TCF may appoint, dismiss or retire salaried Officers (as defined in clause 9.2) or other employees or contractors and remunerate any persons (including Members or staff employed or contracted by the TCF) for services rendered or to be rendered and reimburse any persons' reasonable expenses legitimately incurred on behalf of the TCF.
- 5.3 In addition to the express powers set out in this Constitution, the TCF shall have the power to do all things which are incidental or conducive to the attainment of the Purposes of the TCF.
- 5.4 For the avoidance of doubt, the TCF will not operate for the purpose of, or with the effect of:
- 5.4.1 any Member deriving any financial gain from Membership of the TCF, except where the TCF has paid or reimbursed a Member according to clause 5.2;
 - 5.4.2 distributing any gain, profit, surplus or other financial benefit generated by the TCF's operations to Members (in money or in kind); or

- 5.4.3 conferring any kind of right, title or interest in the TCF's property on Members.
- 5.5 Nothing in this Constitution authorises the TCF to do anything that contravenes or is inconsistent with the Incorporated Societies Act.
- 5.6 In fulfilling its role the Forum will observe any restrictions in the Commerce Act and comply with the Act and all other relevant legislation.

6 Membership

- 6.1 The TCF shall have the minimum number of Members required by the Incorporated Societies Act.
- 6.2 Membership of the Forum will consist of:
 - 6.2.1 eligible persons (as defined in the Act) who have joined the Forum ("Full Member");
 - 6.2.2 persons who are not eligible persons, but who have an interest in the activities of the Forum and who are approved by the Board to become General Associates ("General Associate"),

which have paid all fees due to the Forum in full.

- 6.3 Any Subsidiary of a Full Member will be deemed automatically, by virtue of being a Subsidiary, to be a "Subsidiary Member" of the Forum and shall comply with the Constitution.
- 6.4 A register of Registered Members shall contain the name, physical address or email address, contact phone number, membership category / condition of membership and any other details required by the Incorporated Societies Act. Every current Member shall promptly advise the TCF of any change in their contact details. If it is brought to the TCF's attention that a Member's contact details are incorrect, the TCF will endeavour to contact the Member to confirm the contact details and update the Register of Members accordingly.
- 6.5 To the extent that the Board, pursuant to 10.7.7, determines or has determined that any Code will be a mandatory Self-Regulated Code, then, by becoming a Member, all relevant Full Members and Subsidiary Members are deemed to have agreed to be bound by each mandatory Self-Regulated Code.
- 6.6 New Members may join the Forum at any time. To be considered for Membership, all applicants must complete an application form, which shall include the consent of the applicant to becoming a Member, as required by the Incorporated Societies Act, supply any additional information as required at that time, and pay the prescribed membership fee.
- 6.7 Any Member shall cease to be a Member in the event of any of the following:
 - 6.7.1 by resigning in writing, which shall take effect from the beginning of the new

financial year after which such notice was received or such date as is specified in the notice (which may not be less than 10 working days from the date of the notice).

6.7.2 the existing member ceases to qualify under clause 6.2 and 6.3

6.7.3 by failing to pay the prescribed membership fees 2 months after the due date of a valid tax invoice from the Forum, and previously having received a reminder to pay the outstanding amount, without prejudice to the rights of the Forum in respect of such default.

6.7.4 The Member is convicted of an offence which, in the reasonable opinion of the Board, brings the TCF into disrepute.

6.8 Unless specified otherwise, the departing Member will not be entitled to a rebate of any fees paid and will remain liable for its share of any unpaid fees or costs of the Forum it had previously agreed to incur as a Member.

6.9 Members acknowledge that all activities of the Forum are to be conducted pursuant to the Constitution.

7 Forum Fee Structure

7.1 Each Member shall pay the Membership Fees and such other fees as may be determined in accordance with the Constitution. The Membership Fees may be adjusted by the Board from time to time in accordance with the Constitution. The Membership Fees are payable in full immediately on joining and thereafter for each subsequent Financial Year. If a Member joins part way through a Financial Year, the relevant Membership Fee for that Financial Year will be pro-rated based on the balance of the Financial Year remaining at the time the party first advised the Forum that it wishes to join.

7.2 A Full Member's Membership Fee will cover membership of their Subsidiary.

7.3 Unless otherwise agreed by the Board, the Forum's financial year is from 1 April in each calendar year to 31 March of the following calendar year.

7.4 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.

7.5 The manner and mode of payment of fees shall be determined by the Board.

7.6 For the avoidance of doubt all Members, representatives on the Board and participants of Working Parties will bear their own costs and expenses of participation in Forum activities.

8 Powers of the Board

- 8.1 The overall governance and strategic direction of the TCF will be conducted by the Board.
- 8.2 The business and affairs of the TCF will be managed by, or under the direction or supervision of, the Board.
- 8.3 The Board may exercise all the powers of an incorporated society that are not required, either by the Incorporated Societies Act or this Constitution, to be exercised by the Members in order to do all things which are incidental or conducive to the Purposes of the TCF.
- 8.4 Without limiting clause 8.3, the Board will:
 - 8.4.1 appoint a chairperson of the Board (if required), the Chief Executive Officer (CEO), Forum Administrator and Enforcement Agent(s);
 - 8.4.2 in light of the Forum's purpose, decide on the work of the Forum and prioritise such work;
 - 8.4.3 decide on the budget for the Forum and any changes to the Membership Fees, and decide on the budget to effectively meet its obligations under the Number Portability Determination following consultation with all parties to the Number Portability Determination;
 - 8.4.4 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;
 - 8.4.5 approve changes to the Constitution and determine the policies of the TCF;
 - 8.4.6 determine whether to endorse Self-regulated Codes and which Self-Regulated Codes will be mandatory Self-Regulated Codes;
 - 8.4.7 approve General Associate memberships;
 - 8.4.8 Act in good faith, in the furtherance of the Purposes and in the best interests of the TCF;
 - 8.4.9 Exercise powers for proper purposes only;
 - 8.4.10 Comply with the Incorporated Societies Act and this Constitution;
 - 8.4.11 Exercise reasonable care and diligence as appropriate in the circumstances;
 - 8.4.12 Not create a substantial risk of serious loss to creditors;
 - 8.4.13 Not incur an obligation unless a majority of Board Members reasonably believe that the TCF can perform the obligation.

8.4.14 In relation to Number Portability:

- (a) establish a committee (referred to in this Constitution as the "Number Portability Management Committee" or "NPMC") to consider applications received by the Forum for exemptions from the Number Portability Network Terms in accordance with the process set out in the "Process for Exemption from Compliance with Obligations contained in the Network Terms" section of the Number Portability Network Terms;
- (b) select and recommend to the Commission candidate(s) to fill the role of enforcement agency pursuant to the Number Portability Determination;
- (c) undertake such matters so as to operate or facilitate the operation of the telephone number portability service in New Zealand.

8.4.15 in relation to the operation of the Scheme, perform the functions set out in the constitution of Telecommunications Dispute Resolution Limited and, where the TCF appointed shareholder is required to vote on any matter, vote on that matter in accordance with the TCF shareholder policy for the Scheme.

8.5 The Board, in its absolute discretion, may choose to delegate any of its decision rights to the CEO and to place any restrictions it sees fit on the exercise of that delegated authority.

9 Tiers and Board Composition

9.1 Full Members are divided into membership tiers ("Tiers"). For the purposes of this clause and the Constitution:

- 9.1.1** For the purposes of clause 9.1, the terms "financial year" and "liable person" have the meaning set out in the Act.
- 9.1.2** "Tier One Member" means a Full Member which has paid the applicable Tier One Membership Fee.
- 9.1.3** "Tier Two Member" means a Full Member which has paid the Tier Two Membership Fee.
- 9.1.4** "Tier Three Member" means a Full Member which has paid the Tier Three Membership Fee.
- 9.1.5** "Tier Four Member" means a Full Member which has paid the Tier Four Membership Fee.
- 9.1.6** For the purposes of this clause 9, except as contemplated under clause 9.1.7:

- (a) a liable person who has telecommunications revenue greater than

or equal to \$250 million in the preceding financial year will be a Tier One Member;

- (b) a liable person who has telecommunications revenue of less than \$250 million but greater than or equal to \$50 million in the preceding financial year will be a Tier Two Member;
- (c) a liable person who has telecommunications revenue of less than \$50 million but greater than or equal to \$10 million in the preceding financial year will be a Tier Three Member; and
- (d) a liable person who has telecommunications revenue of less than \$10 million in the preceding financial year, and any eligible person who is not a liable person, will be a Tier Four Member.

9.1.7 For the avoidance of doubt and notwithstanding clause 9.1.6:

- (a) a liable person who is a Tier Two, Tier Three or Tier Four Member may elect to pay Membership Fees for a Tier higher than that required by its telecommunications revenue;
- (b) an eligible person who is not a liable person may elect to pay Membership Fees for a higher Tier,

provided that the person must remain in that higher Tier for a minimum of 12 months.

9.1.8 Where a liable person seeks to pay Membership Fees that suggest a level of telecommunications revenue lower than that reasonably expected by the Board, the Board may request the liable person to certify that its telecommunications revenue is commensurate with the Membership Fees that the liable person is seeking to pay. The Board may request a liable person to recertify its telecommunications revenue at any time.

9.1.9 Where the Board (acting reasonably) does not consider that the Membership Fees a liable person is seeking to pay are appropriate, then the Board may request the Commission certify the liable person's telecommunications revenue, such certification to be used to determine the applicable Membership Fee payable by that liable person.

Membership of the Board

9.2 The Board will consist of a minimum of 6 and up to 12 representatives (each an "Officer").

9.3 Officers must be a natural person and must not be disqualified from being appointed or holding office as an Officer for the reasons set out in section 47 of the Incorporated Societies Act.

9.4 The Board will be comprised of the following representatives (each an "Officer"):

- 9.4.1 the Chairperson (who may either be one of the Tier 1 Board members or an independent person appointed by the Board;
- 9.4.2 one representative from each Tier One Member;
- 9.4.3 one representative for each Tier Two Tier Representative. There shall be one Tier Two Tier Representative per two Tier Two Members (provided that where the number of Tier Two Members is not a multiple of two it will be rounded up to the nearest multiple of two for the purposes of this clause 9.4.3). Tier Two Tier Representatives will be determined by the Tier Two Members in accordance with clause 14.1;and
- 9.4.4 one representative for each Tier Three Tier Representative. There shall be one Tier Three Tier Representative per eight Tier Three Members (provided that where the number of Tier Three Members is not a multiple of eight then if the number of Tier Three Members divided by eight results in a fraction greater than 0.5, the number shall be rounded up to the nearest whole number for the purposes of this clause 9.4.4). Tier Three Tier Representatives will be determined by the Tier Three Members in accordance with clause 14.2.

Vacancies and Appointments

- 9.5 Each Tier One Member shall nominate its respective Board Member and may designate an alternative Board Member at any time.
- 9.6 The Tier Two Members and Tier Three Members will elect their Tier Representatives in accordance with clauses 14.1 and 14.2 respectively, and those Tier Representatives will be entitled to appoint individual Board Members and designate alternative Board Members at any time (subject to the provisions of clause 14).
- 9.7 If the number of Tier Two or Tier Three Members changes in the course of a year such that the number of Tier Representatives is required to change, then the respective Tier Two or Tier Three Members shall meet to elect Tier Representatives for the remainder of the annual term and in accordance with clause 14.1 or 14.2 (as the case may be).
- 9.8 Notwithstanding clause 9.4.3 to 9.4.4 and 9.7, there shall be no more than twelve voting members of the Board at any time. If at any time the membership of the Forum changes such that the number of voting members of the Board would exceed twelve, no further Board Members will be added and the Board will consist of twelve voting members.
- 9.9 No person may be a Board Member appointee of more than one Tier One Member or Tier Representative (as appropriate) on the Board, unless elected as the Chairperson or appointed as a proxy for another Board Member.
- 9.10 From time to time the Board may approve the attendance of other Member representatives and external advisors at Board meetings.
- 9.11 For the avoidance of doubt, the appointment of a Board Member by a Member (whether a Tier One Member or a Tier Representative) requires the Member to be a

current, fully paid up Member.

9.12 A Board Member will cease to hold office upon:

- 9.12.1 resigning or retiring by giving written notice to the Board;
- 9.12.2 becoming disqualified from being an Officer for the reasons set out in section 47 of the Incorporated Societies Act;
- 9.12.3 death.

9.13 Any Board Member who:

- a) ceases to work for a Member;
- b) has been suspended or expelled from the TCF;
- c) fails to attend three consecutive Board meetings without having leave of absence or reason considered adequate by the Board.

shall be deemed to have resigned from the Board and be removed as a Board Member.

10 Operation of the Board

- 10.1 The Board shall meet at intervals determined by itself, but no less frequently than four times annually and shall arrange its affairs in such a manner as it sees fit in order to efficiently govern the TCF.
- 10.2 Meetings of the Board shall be convened at such times and places as set by the Board and using any medium that gives the Board as a whole reasonable opportunity to participate.
- 10.3 An ordinary Board meeting may be called by the Chairperson or a quorum of Board Members by giving not less than five (5) working days notice, or shorter period if all Board Members agree.
- 10.4 Six Board Members will be the quorum.
- 10.5 The Board may at any time establish and appoint permanent or ad hoc sub-committees to deal with and report on any matters the Board considers appropriate. The sub-committee shall operate by whatever procedure is determined appropriate by the Board, and members of any subcommittee may comprise any person or persons considered appropriate by the Board.
- 10.6 Any Tier Four Members and General Associates may notify in advance that they wish to attend a Board meeting and may address the meeting with the permission of the Chairperson. Such Members may stay for the whole meeting unless the Chairperson asks the Member to leave.

Board Voting

10.7 Should a vote be required in carrying out its functions, the Board will vote in accordance with the following voting arrangements:

10.7.1 one equal vote per Board Member;

10.7.2 notwithstanding clause 10.7.1, if the Chairperson is an independent party (i.e. not a Board Member appointed as Chairperson pursuant to clause 13.2) then the Chairperson will not have a vote;

10.7.3 Simple Majority Support will be required for any item to be voted on by the Board, except for the items identified in clause 10.7.4, 10.7.6 and 10.7.7;

10.7.4 75% support will be required for:

- (a) approval of project proposals for all matters other than in relation to Regulated Codes (which require Simple Majority Support);
- (b) the continuation of any work stream that is subject to a reporting requirement imposed on a Working Party by the Board;
- (c) appointment of any independent Working Party Chairs;
- (d) removal of any of the parties referred to in clause 10.7.4(c) where a vote of no confidence is required. Such vote shall be subject to any legal and contractual obligations;
- (e) subject to clause 10.7.6(e), 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) approval of Working Party consultation with the public on draft Self-regulated Codes;
- (g) 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 Board Members (or their representative) who indicate a desire to be on the applicable sub-committee from time to time and shall report to the Board.

10.7.5 Clause 10.7.4(g) does not apply to the NPMC referred to in clause 8.4.14(a).

10.7.6 100% support will be required for:

- (a) the endorsement of any Self-regulated Codes;
- (b) changes to the Constitution;

- (c) appointment of the Chairperson, CEO, Forum Administrator, Enforcement Agent(s);
- (d) determining public positions and public statements of the Forum; and,
- (e) altering the Membership Fees and annual budget.

10.7.7 Unanimous Support will be required for the endorsement of any Self-regulated Code as a mandatory code which relevant Full Members must sign and agree to be bound by in accordance with clause 21.2.

10.7.8 Notwithstanding the foregoing paragraphs of clause 10.7, in respect of the Scheme, all Board voting shall be in accordance with the Scheme voting policy approved by the Board from time to time.

10.8 For the avoidance of doubt:

10.8.1 Subject to clause 12.15, in order for a Tier Two or Tier Three Board Member to:

- (a) cast his or her vote in respect of any matter requiring 75 % support under clause 10.7.4, he or she must first, subject to clauses 10.8.2 and 10.8.3, obtain Simple Majority Support of the Full Members of the relevant Tier in accordance with clause 12.2 and, where he or she is unable to do so, must vote against the matter;
- (b) cast his or her vote in respect of any matter requiring 100% support under clause 10.7.6, he or she must first, subject to clauses 10.8.2 and 10.8.3, obtain 75% support of the Full Members of the relevant Tier in accordance with clause 12.2 and, where he or she is unable to do so, must vote against the matter, except where support of more than 50% but less than 75% of the Members is obtained in which case he or she must abstain from voting on that matter;
- (c) cast his or her vote in respect of any matter requiring Unanimous Support under clause 10.7.7, he or she must first, subject to clause 10.8.2, obtain 100% support of the Full Members of the relevant Tier in accordance with clause 12.2 and, where he or she is unable to do so, must vote against the matter.

10.8.2 Where subsequent discussion at the Board meeting results in modifications to the item being voted on, the Tier Two and Three Board Members must either:

- (a) refrain from voting until they have a clear mandate from the Tier Members they represent; or
- (b) cast a vote (either for or against the matter) before the Board, with

such vote being subject to confirmation (to the appropriate voting threshold required) of the Tier Members they represent.

- 10.8.3 A Board Member may cast a conscience vote without seeking the prior approval of the Members of the relevant Tier on matters considered under clauses 10.7.4(f) or 10.7.6(d).
- 10.8.4 The Board will not vote on telecommunications access codes prepared for approval by the Commission under clause 1 of Schedule 2 of the Act.
- 10.8.5 Where the Board is voting on any changes proposed to clauses 12.2 or 14, Tier One Board Members shall abstain from voting on such changes where they relate solely to the voting arrangements for Tier Two Members and/or Tier Three Members.
- 10.8.6 The Board will not vote on any NPMC decision made in accordance with the “Process for Exemption from Compliance with Obligations contained in the Network Terms” section of the Number Portability Network Terms.

11 Conflicts Of Interest

- 11.1 Where an Officer has an interest in a matter for any of the reasons set out in section 62 of the Incorporated Societies Act (Conflict Matter), that Officer (Interested Member), must disclose details of the nature and extent of their interest:

- a) to the Board; and
- b) in the Interests Register (as defined in section 73 of the Incorporated Societies Act),

as soon as practicable after the Interested Member becomes aware of their interest in the Conflict Matter.

- 11.2 An Interested Member:

- a) must not vote or take part in the decision of the Board relating to the Conflict Matter unless all members of the Board who are not interested in the Conflict Matter consent;
- b) must not sign any documents relating to the Conflict Matter unless all members of the Board who are not interested in the Conflict Matter consent; and
- c) may take part in any discussion of the Board relating to the Conflict Matter and be present at the time of the decision of the Board (unless all members of the Board decide otherwise).

- 11.3 An Interested Member who is prevented from voting on a Conflict Matter may still be counted for the purpose of determining whether there is a quorum at the Board meeting at which the Conflict Matter is considered.

12 Other Voting

- 12.1 Voting may be done by direct vote of Members by electronic means, in whatever format the relevant group agrees.

Tier Voting (for Non-Tier One Members)

- 12.2 If a vote of a Tier is required, voting shall be in accordance with the following voting arrangements:

- 12.2.1 one equal vote per Tier Member entitled to vote;
- 12.2.2 any chairperson of the Tier appointed under clause 14.3 does not have a casting vote;
- 12.2.3 unless stated otherwise, Simple Majority Support only will be required.

Working Party Voting

- 12.3 Should a vote be required in carrying out their functions, each Working Party will vote in accordance with the following voting arrangements:

- 12.3.1 Unless specified otherwise in the project scope, there will be one equal vote per Full Member who is an active member on the Working Party. Where a Full Member has more than one representative on a Working Party, the Full Member will only be entitled to one vote and must nominate one representative on that Working Group to cast its vote;
- 12.3.2 Unless specified otherwise in the project scope or permitted under clause 12.6, only Full Members are entitled to vote;
- 12.3.3 Any chairperson of the Working Party ("Working Party Chair"), Project Leader or technical expert does not have a casting vote;
- 12.3.4 If any Working Party Chair, Project Leader or technical expert is an independent party (i.e. not a Full Member appointed as the Working Party Chair) then they will not have a vote;
- 12.3.5 Subject to clause 12.3.6, Simple Majority Support only will be required for all decisions by the Working Party;
- 12.3.6 75% support will be required for:
 - (a) any recommendation to change the project scope;
 - (b) continuation of a workstream where the report referred to in the Handbook is required;
 - (c) a draft Self-regulated Code to be submitted to the Board for public consultation or endorsement;
- 12.3.7 Where a vote is required on the matters set out in clause 12.3.6,

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 clause 12.3.8;

- 12.3.8 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 members 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.

Member Voting

- 12.4 Where voting by Full Members is envisaged under the Act (either as part of a referendum held in respect of a Regulated Code or otherwise), voting shall only be conducted in accordance with Schedule 2 of the Act. For the avoidance of doubt, all Full Members will be entitled to vote in respect of any referendum held in respect of a Regulated Code.

General (applies to all voting)

- 12.5 For the avoidance of doubt, wherever a vote is required (other than for matters requiring Unanimous Support, or for voting under clauses 12.3.8, 12.4 and 12.10), the vote will be passed if the votes of all those Full Members present, entitled to vote and voting meet the voting threshold set out in the Constitution.
- 12.6 General Associates and Subsidiary Members are not entitled to vote on any issue.
- 12.7 Any Member (in respect of any matter on which they are entitled to vote) 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.
- 12.8 Members who have not participated in or not responded to consultation on Working Party outputs must approve the final Working Party output or abstain from voting on that output.
- 12.9 Where Members are voting on a matter recommended by a Working Party, Members who voted in favour of the outputs of that Working Party which are being submitted to the Board for approval or endorsement must vote in the same manner when the matter is being voted on by the Board.
- 12.10 Voting may also be by email to a circulated resolution by the CEO, Forum Administrator, Chairperson, Tier Representative (for decisions by a Tier), the Working Party Chair or 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 have been given not less than 2 further working days' notice to respond, the vote will be passed if the votes of all those Members who have responded within the timeframe

meet the voting threshold set out in the Constitution.

- 12.11 Proxies shall be accepted up to 24 hours before the time of holding the General Meeting. Proxies will be in the form agreed by the Board and may be updated from time to time.
- 12.12 Proxy votes from Members may be held and cast by the Chairperson, CEO, Forum Administrator and any Member entitled to vote on the relevant matter.
- 12.13 Any person holding a proxy shall declare the existence of the proxy prior to casting a proxy vote.
- 12.14 Any proxy vote shall be cast according to the instructions of the Member who provides the proxy.
- 12.15 Except for a Board Member in the circumstances contemplated in clause 10.7.8, a Member shall not be entitled to vote on any matter relating to the Scheme.

13 Chairperson of the Board

- 13.1 The Chairperson of the Board is to be appointed by the Board annually. The Chairperson may be an independent person appointed by the Board.
- 13.2 If the Board is unable to agree the appointment of the Chairperson, the position of Chairperson shall rotate annually amongst the Tier One Board Members (who have not recently held the position of Chairperson), in alphabetical order based on the company name of the Tier One Members which appointed those Board Members.
- 13.3 The chairperson shall:
 - a) preside at all General Meetings, Board meetings, and other meetings when present;
 - b) generally conduct the meetings;
 - c) in the case of an equality of votes, shall not have a casting vote.
- 13.4 Where the Chairperson is not present at a Board meeting or a General Meeting and the Chairperson has not arranged for an alternate to attend on their behalf, the Board Members present shall elect one of their number present to chair the relevant meeting and exercise all the powers of the Chairperson for the duration of the Chairperson's absence.
- 13.5 The Chairperson may, in accordance with the Number Portability Network Terms and the Terms for Local and Mobile Number Portability in New Zealand (LMNP), be required to nominate an independent expert to hear technical disputes between parties to those terms, which the 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 voting representatives of the Board shall elect, at the earliest possible time, another Board Member 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.

14 Tier Two & Three Representatives

- 14.1 To the extent that the Tier Two Members are entitled to appoint Board Members under clause 9.4.3, the Tier Two Members will elect the appropriate number of Tier Two Members as Tier Two Tier Representatives, which election will be held in accordance with clause 12.2 and this clause 14. Each Tier Two Tier Representative will appoint one Tier Two Board Member and may designate an alternative Tier Two Board Member at any time.
- 14.2 To the extent that the Tier Three Members are entitled to appoint Board Members under clause 9.4.4, the Tier Three Members will elect the appropriate number of Tier Three Members as Tier Three Tier Representatives, which election will be held in accordance with clause 12.2 and this clause 14. Each Tier Three Tier Representative will appoint one Tier Three Board Member and may designate an alternative Tier Three Board Member at any time.
- 14.3 In addition to the Tier Representatives, the Tier Two and Three Members may appoint a Tier Member as chairperson for Tier Two and Three meetings on an annual basis.

Nomination & Election of Tier Two & Tier Three Tier Representatives

- 14.4 The Tier Representatives shall ensure that they have Board Members appointed at all times, subject to clauses 9.4.3 and 9.4.4 and the provisions of this clause 14.
- 14.5 The elections for Tier Representatives will take place on an annual basis unless otherwise required to meet the requirements of clause 14.4 or 9.6. Where:
- 14.5.1 a Tier Representative fails to comply with any of the provisions of this clause 14, and the Tier Members who appointed that Tier Representative wish to elect an alternative Tier Representative, a new Tier Representative may be elected and such Tier Representative will appoint a new Board Member to replace the Board Member appointed by the departing Tier Representative;
- 14.5.2 a Board Member fails to comply with any of the provisions of clause 10.8.1 or this clause 14, the Tier Representative who appointed that Board Member will promptly appoint an alternative Board Member. If the Tier Representative does not appoint an alternative Board Member, then the Tier Members who appointed that Tier Representative may elect an alternative Tier Representative and such new Tier Representative will appoint a new Board Member to replace the Board Member appointed by the departing Tier Representative.
- 14.6 Any Tier Member may nominate a prospective Tier Representative from its Tier (including itself) to become a Tier Representative. Prior to a nomination becoming valid, the Tier Member being nominated must give their consent to the nomination.
- 14.7 If the number of Tier Members nominated to fill the positions as Tier Representatives is less than or equal to the number of positions, no vote shall be

required, and provided such nomination is valid, those Members shall be appointed as the Tier Representative for that position.

- 14.8 Notwithstanding that the Tier Representatives are elected on an annual basis, such Tier Representatives may remain for more than a year and until such time as the Tier Members nominate and elect alternative Tier Representatives.

Roles of the Tier Two and Three Board Members

- 14.9 At Board meetings the Tier Two and Three Board Members shall:

14.9.1 represent the views and interests of the Tier Members they have been appointed to represent (and not solely the views of the Tier Representatives who appointed the Board Members); and

14.9.2 subject to clause 10.8.2 and 10.8.3, vote according to the mandates authorised by the Tier Members they have been appointed to represent.

- 14.10 For the avoidance of doubt, all Board Members appointed by Tier Representatives must be senior employees of those Tier Representatives and appropriately qualified and resourced to carry out their duties as Board Members. Where any Board Member appointed by a Tier Representative leaves the employment of that Tier Representative, that Tier Representative will promptly appoint an alternative Board Member.

15 Chief Executive Officer (CEO)

- 15.1 The CEO is appointed by the Board.

- 15.2 The functions of the CEO will be to:

15.2.1 Oversee the progress and operation of the Forum;

15.2.2 Recommend the appointment of the Forum Administrator, Enforcement Agent(s) and any independent Working Party Chairs;

15.2.3 Direct the Forum Administrator in its work;

15.2.4 Temporarily suspend staff, agents or contractors for misconduct, pending a review by the Board;

15.2.5 Approve changes to the Handbook;

15.2.6 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 or her 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;

- 15.2.7 Approve minor changes in existing project scopes, including the deliverables and the project timelines, and members of the Working Party;
 - 15.2.8 Approve Working Party consultation with specified interested parties on draft Self-regulated Codes;
 - 15.2.9 Conduct referenda on draft Regulated Codes (as per Schedule 2, section 4 of the Act);
 - 15.2.10 Submit draft Regulated Codes to the Commission for its approval;
 - 15.2.11 Represent the Forum and the Forum's interests in external fora and act as the Forum's primary spokesperson.
 - 15.2.12 be the Contact Person (referred to in section 5 of the Incorporated Societies Act) for the TCF.
- 15.3 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.

16 Forum Administrator

- 16.1 The Forum will appoint an administrator to facilitate the efficient working of the Forum.

17 Functions of the Number Portability Management Committee

- 17.1 The purpose of the NPMC is to:
 - 17.1.1 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 in the "Process for Exemption from Compliance with Obligations contained in the Network Terms" section of the Number Portability Network Terms; and
 - 17.1.2 make a recommendation to the Commission as to whether each Number Portability Exemption Application should be granted or not.

18 Number Portability Management Committee Membership

- 18.1 For each Number Portability Exemption Application under consideration, the persons entitled to participate on any NPMC consist of:
 - 18.1.1 Any Numbering Party (provided it has been determined by the Commission to be a party to the Number Portability Determination);
 - 18.1.2 Any non-voting representative on the Board; and

18.1.3 A non-voting representative of the Telecommunications Commissioner.

18.2 Applications from Members to participate in the NPMC's consideration of a particular Number Portability Exemption Application received more than 20 working days from the date the Number Portability Exemption Application was received by the Forum Administrator shall require approval of the Board. Applications received within the 20 working day period will be automatically granted by the Board.

19 CEO Forum

19.1 Persons entitled to participate in the CEO Forum consist of:

19.1.1 Any CEO of a Full Member (excluding Tier Four Members) or a General Associate;

19.1.2 The CEO; and

19.1.3 Those experts, interested parties and other parties that have been approved by the Chairperson of the CEO Forum.

19.2 The CEO Forum chairperson shall be the chair of the Board, or if the chairperson of the Board is not present, the CEO.

19.3 The CEO Forum is intended to provide an opportunity for CEOs of Full Members (other than Tier Four Members) to meet periodically to discuss industry matters of mutual interest. It will also be the natural body for high-level industry engagement with stakeholders, such as the Ministry, the Commission and senior officials, experts or interested parties invited by the CEOs.

19.4 The CEO Forum will not have formal Forum governance responsibilities.

19.5 As with the Forum itself, the CEO Forum will ensure its activities are in accordance with the Commerce Act 1986 and other relevant legislation. A protocol on these issues may be developed to guide members in their responsibilities.

20 Working Party Membership

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

20.1.1 Any Full Member, Subsidiary Member and any General Associate; and

20.1.2 Those experts, interested parties and affected parties that have been approved by the CEO.

21 Regulated and Self-regulated Codes

21.1 Any Self-regulated Code endorsed by the Board pursuant to clause 10.7.6(a) is voluntary in nature. It is open for Members to adopt or to not adopt any such code. Subject to the approval of the Board, a non-Member may elect to adopt any such code.

21.2 Any Self-regulated Code endorsed by the Board pursuant to clause 10.7.8 is
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obligatory for relevant Full Members and Subsidiary Members, who must adopt and comply with any such Code. Subject to the approval of the Board, a Member other than a Full Member or Subsidiary Member, or a non-Member, may elect to adopt any such code.

21.3 Any work prepared by the Forum in relation to a possible Self-regulated Code may not be represented by any Member as the Forum's position on that matter unless and until such Self-regulated Code has been formally endorsed by the Board.

21.4 All Regulated Codes will be subject to referenda held under section 4 of Schedule 2 of the Act. The Forum will not endorse Regulated Codes unless they have been approved by the Commission in accordance with Schedule 2 of the Act.

22 General Meetings

22.1 General Meetings may be held in person or by audio-visual means (a "Virtual Conference") or a combination of both ("Combination Meeting"), as determined by the Board. A General Meeting held by a Virtual Conference or as a Combination Meeting will be held in accordance with the following:

22.1.1 the secretariat recording attendance must be able to determine attendance at the General Meeting;

22.1.2 the meeting will be run in a manner that ensures that each Member in attendance is given a fair opportunity to be heard;

22.1.3 each Member must be able to hear the other participating Members when they are speaking to the General Meeting; and

22.1.4 on any vote cast at the General Meeting, a Full Member must be given a fair opportunity to cast their vote.

22.2 If a General Meeting is held as a Virtual Meeting or a Combination Meeting, Members will be given advance instructions on how to connect to the meeting.

22.3 Not less than ten (10) working days before any General meeting a notice of it shall be sent to Full Members at the email address recorded in the Register of Members. 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.

22.4 If within half an hour from the time appointed for a General Meeting, a quorum is not present, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as notified to the Members. If, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the Members present will constitute a quorum.

22.5 Proxies shall be accepted up to 24 hours before the time of holding the General Meeting. Proxies will be in the form agreed by the Board.

- 22.6 **Annual General Meeting:** The Annual General Meeting of Full Members shall be held within six (6) months after the end of each Financial Year and no later than 15 months after the last Annual General Meeting. The time and place of the Annual General Meeting shall be fixed by the Board.
- 22.7 The business of the AGM shall be:
- 22.7.1 To receive and report on balance sheet and statement of accounts for the preceding year. Voting for this may be on the basis of a Simple Majority Support of Full Members.
 - 22.7.2 to decide on any resolution which must have been duly submitted to the Board Secretary in writing not less than 28 days prior to the date of such a meeting.
 - 22.7.3 notice of any disclosures of conflicts of interest made by the Officers during the period from the last Annual General Meeting to the current Annual General Meeting (including a summary of the matters, or types of matters, to which the disclosures relate)
- 22.8 **Special General Meetings:** A Special or extraordinary meeting of Full Members may be called by the Board at any time or at the written request of five Full Members. Such a meeting shall have the same powers as an annual general meeting.
- 22.9 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.
- 22.10 **Tier Member Meetings and CEO Forum Meetings:** A Tier Member or CEO Forum meeting may be called by the CEO or Forum Administrator. Tier Member meetings may also be called by the Tier chairperson appointed under clause 14.3 or a Tier Representative at any time, or by a written request of 30 percent of the Members of the Tier. CEO Forum meetings may also be called by CEO Forum chairperson or by a written request of 30 percent of the CEOs of Full Members (other than Tier Four Members).
- 22.11 Not less than five (5) working days (or shorter period if the Tier Members agree) before any Tier Member meeting a notice of it shall be sent to Tier Members at their last known address by the Tier 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 email or other digital means.
- 22.12 Where the CEO, Forum Administrator, a Tier chairperson or Tier Representative is aware of any issue which requires (or will require) the Tier to provide a mandate to the Board Member(s) which represent that Tier, that party will ensure that all relevant documents are circulated to Tier Members, and that a Tier Member meeting is arranged in accordance with the Constitution.
- 22.13 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 Tier Members within five (5) working days of the meeting.

Written Resolution in Lieu of a General Meeting

- 22.14 Where a matter is to be determined by vote at a General Meeting, the Board may resolve for that matter to be determined by written resolution in lieu of a meeting. Where the Board resolve to do this, then the written resolution will be circulated to Full Members at the email address notified by the Member in the Register of Members. The written resolution will set out the period within which Full Members must respond with their vote. Such period must not be less than two weeks from the date the resolution is circulated to Full Member.
- 22.15 A written resolution will be adopted if normal threshold of Full Members ordinarily required under this Constitution vote in favour of the written resolution. Voting on the written resolution may be done by such means as determined by the Board (including by electronic means).
- 22.16 Where the written resolution does not receive the required support to pass, the Board may call a General Meeting to debate and vote on the matter the subject of that written resolution.

23 Procedure At General Meetings & Group Meetings

- 23.1 At all meetings the Chairperson or chairperson of the Tier (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 and vote shall be entitled to one vote on every motion.
- 23.2 The mode of voting on all questions at all meetings shall be by a show of hands, unless otherwise directed by the relevant chairperson. A representative of a Member 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.
- 23.3 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 Constitution.
- 23.4 At all Annual or Special General meetings 30% of the Full Members shall constitute a quorum.
- 23.5 At all Tier Member meetings, 30% of the Tier Members shall constitute a quorum.
- 23.6 For all 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 (or Board Members as appropriate) 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.

24 Access to Information

24.1 A Member may at any time make a written request to the TCF for information held by the TCF (Information Request).

24.2 The Information Request must sufficiently detail the information that is sought to enable the information to be identified by the TCF.

24.3 The TCF must, within a reasonable timeframe, after receiving a request:

- a) provide the information or advise it does not hold such information;
- b) agree to provide the information within a specified period;
- c) agree to provide the information within a specified period if the Member pays a reasonable charge to the TCF (which must be specified and explained) to meet the cost of providing the information; or
- d) refuse to provide the information, specifying the reasons for such refusal.

24.4 Without limiting the reasons for which the TCF may refuse to provide the information, the TCF can refuse to provide the information if:

- a) withholding the information is necessary to protect a person's privacy;
- b) the disclosure of the information would, or would likely, prejudice the position of the TCF or of any of its Members;
- c) the information is not relevant to the operation or affairs of the TCF;
- d) withholding the information is necessary to comply with applications laws;
- e) the burden to the TCF in responding to the request is substantially disproportionate to any benefit that the Member (or any other person) will or may receive from the disclosure of the information;
- f) The TCF reasonably considers the Information Request is frivolous or vexatious; or
- g) the Information Request seeks information about a dispute or complaint which is or has been the subject of the TCF's disciplinary procedures and the person seeking the information is not party to the disciplinary procedure.

24.5 Nothing in this clause limits an individual's right under the Privacy Act 2020 to access personal information.

25 Dispute Resolution

25.1 If a Dispute (as that term is defined in section 38 of the Incorporated Societies Act) between the TCF and/or the Members arises, then the TCF (acting through an Officer), or a Member, may make a written complaint (Complaint Notice) to the Board that:

- a) states that the TCF or a Member is starting a procedure for resolving the Dispute in accordance with this Constitution; and

- b) sets out the allegation to which the Dispute refers.
- 25.2 The Complaint Notice must be sufficiently detailed to enable the TCF and/or the Member that is the subject of the Complaint Notice to prepare a response.
- 25.3 Both the Member who makes a Complaint Notice and the Member who is the subject of the Complaint Notice have a right to be heard before the complaint is resolved.
- 25.4 If the TCF makes or is the subject of a Complaint Notice:
- a) The TCF has a right to be heard before the complaint is resolved or any outcome is determined; and
 - b) an Officer may exercise that right on behalf of the TCF.
- 25.5 Without limiting the manner in which the TCF or a Member may be given the right to be heard, they will be taken to have been given the right if:
- a) they have a reasonable opportunity to be heard in writing or at an oral hearing in relation to the Complaint Notice (if one is held);
 - b) an oral hearing is held if the complaint decision maker considers that an oral hearing is needed to ensure an adequate hearing;
 - c) an oral hearing (if any) is held before the complaint decision maker; and
 - d) The TCF's or Member's written or verbal statement or submissions (if any) are considered by the complaint decision maker.
- 25.6 The TCF must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint Notice, ensure that the Dispute is investigated and determined. Disputes must be dealt with in a fair, efficient, and effective manner and in accordance with the Incorporated Societies Act.
- 25.7 Unless the Complaint Notice relates to a Member requesting a review of the decision of the Board not to admit (or re-admit, depending on the circumstances) an applicant as a Member, the TCF may decide not to proceed with a Complaint Notice if:
- a) the Complaint Notice is considered to be trivial, or
 - b) the Complaint Notice does not appear to disclose or involve any allegation of the following kind:
 - i. that the TCF, a Member or an Officer has engaged in material misconduct;
 - ii. that the TCF, a Member, or an Officer has materially breached or is likely to materially breach, a duty under this Constitution, any by-laws, policies or codes, or the Incorporated Societies Act;
 - iii. that a Member or an Officer's rights or interests have been materially damaged;
 - c) the Complaint Notice appears to be without foundation or there is no apparent evidence to support it;
 - d) the person who makes the Complaint Notice has an insignificant interest in the matter;

- e) the conduct, incident, event, or issue giving rise to the Complaint Notice has already been investigated and dealt with under the Constitution or by the Board; or
- f) there has been an undue delay in making the Complaint Notice.

25.8 The Member making the Complaint and the Board (or sub-committee as applicable) must consider and discuss whether the Dispute can be resolved through information discussions, mediation or arbitration. If mediation or arbitration is agreed by the Parties, then the parties will sign a suitable mediation or arbitration agreement.

25.9 A person may not act as a decision maker in relation to a Complaint Notice if two or more members of the Board (or a sub-committee as applicable) consider that there are reasonable grounds to believe that the person may not be:

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

26 Indemnification of Officers

- 26.1 Every Officer shall be entitled to a full and complete indemnity from the TCF:
- a) for liability to any person other than the TCF for any act or omission in their capacity as an Officer or member of a sub-committee, including liability for a failure to comply with the Officer's duties under sections 54 to 61 of the Incorporated Societies Act and other duties imposed on the Officer in their capacity as an Officer; or
 - b) in relation to any cost incurred by them in defending any proceedings or claim relating to the liability in clause 26.1(a).
- 26.2 Notwithstanding any provision to the contract, the TCF will not indemnify an Officer or member of a sub-committee for criminal liability.
- 26.3 The TCF may, with the prior approval of the Board, purchase and maintain insurance for the Officers and members of sub-committees against any liability or costs incurred by the Officer or member of the sub-committee of the kind set out in clause 26.1(a) and by virtue of any rule of law would otherwise attach to them in respect of any act or omission on behalf of the TCF.
- 26.4 No Member shall be under any liability in respect of any contract, deed or other obligation made or incurred by the Forum.

27 Alteration To Constitution

27.1 The Constitution may be altered, added to or rescinded at any of the meetings referred in to in clause 22 provided that such changes are in accordance with the requirements of the Incorporated Societies Act (or any statutory re-enactment thereof) and are agreed by the Board in accordance with clause 10.7.6(b) , and notice in writing setting out such proposed alternation, addition or rescission has been sent to the Board with the notice of the General meeting not less than ten (10) working days prior to the meeting or a shorter period if all the Board Members agree.

- 27.2 No alteration, amendment or rescission of this Constitution may be made:
- a) if it would enable the income or other funds of the TCF to be used for or be available for the private pecuniary profit of any Member or in any other way would affect the non-profit status of the TCF; or
 - b) that in any way detracts from the non-profit status of the TCF.
- 27.3 Any alteration, amendment or rescission of this Constitution shall forthwith be registered with the Registrar of Incorporated Societies.

28 Winding up and Liquidation

- 28.1 **Liquidation of the Forum.** The Full Members may resolve to wind up or put the Forum into liquidation if at a Special General Meeting of the Full Members called for the purpose of a resolution to wind up or liquidate the TCF such resolution is passed by a 75% support of the votes of Full Members present, and the resolution is confirmed by Simple Majority Support at a subsequent Special General Meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution to windup or liquidate was passed.
- 28.2 **Disposal of Surplus Funds:** If at any time the TCF shall go into liquidation or be wound up or dissolved, the person or persons appointed as liquidator or to manage such winding up or dissolution shall hold the net proceeds arising from the sale and realisation of the property of the TCF, after payment of the debts, liabilities and engagements of the TCF and of the Board and all costs, charges and expenses connected with such realisation, liquidation, winding up and dissolution, (**Actual Net Proceeds**) upon trust to dispose of the same to that not for profit entity or those not for profit entities as the person or persons appointed may select provided that the entity or those entities have as a principal purpose activity consistent with the Purpose of the TCF.

29 Finance

- 29.1 **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.
- 29.2 **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.
- 29.3 **Account Books:** The Chairperson 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.

- 29.4 **Filing requirements:** The TCF 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 the Incorporated Societies Act 2022.

30 Funds And Properties

- 30.1 The funds, properties and assets of the Forum shall be under the control of the Board.
- 30.2 Any money of the Forum may be invested by the Forum in such manner as the Board may from time to time determine.
- 30.3 Any income benefit or advantage shall be applied to the purpose of the Forum. No Member 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.

31 Intellectual Property

- 31.1 Unless the Members unanimously agree otherwise,
- 31.1.1 all intellectual property which originates from or is developed by a Member, and which is applied or used by the Forum, shall remain in the ownership of that Member;
- 31.1.2 subject to clause 31.1.1, 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.

32 Undertakings

- 32.1 Each Member and Officer undertakes:
- 32.1.1 to duly perform and observe the Constitution;
- 32.1.2 to ensure that it, and any of 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 Constitution;
- 32.1.3 without limiting clause 24, to act in good faith towards the other Members and Board 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

- 32.1.4 not to do anything which prevents the performance of that Member's or Officers' obligations under the Constitution.

33 No Partnership

- 33.1 Nothing in these Constitution 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 or as giving to any Member any of the rights, or subjecting any Member to any of the liabilities, of a partner.

34 Exclusion Of Fiduciary Duties

- 34.1 Without limiting any express obligation in the Constitution to act in good faith, nothing in the Constitution 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.