

New Zealand Telecommunications Forum Incorporated

Rules of Association

“the Rules”

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New Zealand Telecommunications Forum Incorporated

1 Name

- 1.1 The name of the society is the New Zealand Telecommunications 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 Definitions

- 3.1 In these Rules, unless the context otherwise requires:

"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

"Board" means the board of the Forum

"Board Members" means, collectively, the Chairperson and each representative appointed pursuant to Rules 9.2.2 to 9.2.4 inclusive

"Chairperson" means the person appointed under Rule 11

"Code" means a code of practice intended to apply to Members which is prepared by the Forum

"Commission" means the Commerce Commission

"Customer Complaints Code" means the Customer Complaints Code established under the Scheme

"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 Rule 7.2

"Forum Administrator" means the administrator appointed under Rule 14

"Full Member" has the meaning set out in Rule 6.1.1

“General Associate” has the meaning set out in Rule 6.1.2

“Handbook” means the operating procedures manual of the Forum, as amended from time to time and approved by the Board in accordance with Rule 10.1.5(h) from time to time

“IPMS” means the centralised industry system that manages Number Portability

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

“Membership Fees” means those fees set by the Board from time to time in accordance with Rule 10.1.7(e), with the initial fees being those set out in Schedule 1

“Ministry” means the Ministry of Economic Development

“Number Administration Deed” means the deed which establishes a telecommunications industry-based mechanism for the centralised and independent administration of New Zealand’s telecommunication numbering resources

“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’ - Decision 705, 15 December 2010

“Number Portability Management Committee” or **“NPMC”** means the committee established in accordance with Rule 8.1.9(a)

“Number Portability Network Terms” means the Network Terms for Local and Mobile Number Portability in New Zealand

“Numbering Associate” has the meaning set out in Rule 6.1.2

“Numbering Code” means the Code established by the Forum as part of taking over Numbering Management from the Number Administration Deed, as that Code may be amended from time to time in accordance with these Rules

“Numbering Management” means the centralised and independent administration of New Zealand’s telecommunications numbering resources, as undertaken by the Number Administration Deed and, once Numbering Management is formally adopted by the Forum, in accordance with the Numbering Code

“Numbering Member” means a Full Member that has signed up to the Numbering Code and has been determined by the Commission to be a party

to the Number Portability Determination and has signed the Forum's agreement for access to the Industry Portability Management System (IPMS), provided that a Full Member cannot sign up to the Numbering Code (and therefore become a Numbering Member) until Numbering Management has been formally adopted by the Forum

"Numbering Parties" means, collectively, Numbering Associates and Numbering Members

"Regulated Code" means a Code approved by the Commission in accordance with the Act and endorsed by the Forum in accordance with Rule 20.4

"Scheme" means the Telecommunications Dispute Resolution Scheme established by the Forum

"Scheme Agent" means an independent party appointed by the Board to facilitate the efficient working of the Scheme

"Scheme Member" has the meaning set out in Rule 10.1.9(a)

"Scheme TOR" means the Scheme Terms of Reference

"Self-regulated Code" means a Code endorsed by the Board in accordance with Rule 20.1 or 20.2

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

"Tier" has the meaning set out in Rule 9.1

"Tier Four Member" has the meaning set out in Rule 9.1.5

"Tier One Board Member" means a Board Member appointed by a Tier One Member under Rule 9.2.2

"Tier One Member" has the meaning set out in Rule 9.1.2

"Tier Representatives" means the representative Members elected by the Tier Two Members and the Tier Three Members in accordance with Rule 12.1 and 12.2 respectively

"Tier Three Board Member" means a Board Member appointed by a Tier Three Tier Representative under Rule 12.2

"Tier Three Member" has the meaning set out in Rule 9.1.4

"Tier Two Board Member" means a Board Member appointed by a Tier Two Tier Representative under Rule 12.1

"Tier Two Member" has the meaning set out in Rule 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 Rule 10.4.3

- 3.2 Headings in these Rules 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.

5 Forum Role

- 5.1 The Forum will:
 - 5.1.1 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;
 - 5.1.2 Facilitate creation of Codes, standards, guidelines and policy statements that reflect those agreements;
 - 5.1.3 Once Numbering Management is formally adopted by the Forum, manage numbering resources on behalf of the industry in accordance with the agreed rules and pursuant to a delegation from the Ministry;
 - 5.1.4 Represent industry-agreed views to third parties;
 - 5.1.5 Provide a forum for debate and agreement on important cross-industry issues;
 - 5.1.6 Lead the industry work programme to move the industry forward; and
 - 5.1.7 Provide services to Members and non-Members consistent with or incidental to the above.

5.2 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 Membership of the Forum will consist of:

- 6.1.1 eligible persons (as defined in the Act) who have joined the Forum (“Full Member”);
- 6.1.2 persons who are not Full Members but who require access to numbers under the Numbering Code, without participation in any other activities undertaken by the Forum or in Forum governance (“Numbering Associate”); and
- 6.1.3 persons who are not eligible persons and who do not require access to numbers under the Numbering Code, 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.

6.2 To the extent that the Board, pursuant to 10.1.8, determines or has determined that any Code will be an obligatory Self Regulated Code, then, by becoming a Member, all Full Members are deemed to have agreed to be bound by each obligatory Self Regulated Code.

6.3 Additional arrangements relating to Numbering Parties are specified in Schedule 2 of the Handbook.

6.4 New Members may join the Forum at any time. The benefits of:

- 6.4.1 Full Member and General Associate membership commence from the date all fees due to the Forum are fully paid up; and
- 6.4.2 membership for Numbering Associates commence from the date the Member signs up to the Numbering Code and, where applicable, has been determined by the Commission to be a party to the Number Portability Determination and has signed the Forum’s agreement for access to the Industry Portability Management System (IPMS). No party may sign up to the Numbering Code (and therefore become a Numbering Associate) until Numbering Management has been formally adopted by the Forum.

6.5 Subject to Rule 6.6, any Full Member or General Associate 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.

6.6 Any Numbering Party who wishes to cease to be a Numbering Party must follow the procedures set out in the Numbering Code.

6.7 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.

- 6.8 If an existing Member ceases to qualify under Rule 6.1, that party shall cease to be a Member.
- 6.9 Members acknowledge that all activities of the Forum are to be conducted pursuant to the Rules and the Rules are to be read in conjunction with the Handbook.

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 Rules. The Membership Fees may be adjusted by the Board from time to time in accordance with the Rules and, in respect of Numbering Parties, the Number Portability Determination. 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 Unless otherwise agreed by the Board or (in the case of Number Portability, unless otherwise determined by the Commission), the Forum's financial year is from 1 April in each calendar year to 31 March of the following calendar year.
- 7.3 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.
- 7.4 The manner and mode of payment of fees shall be determined by the Board.
- 7.5 For the avoidance of doubt:
 - 7.5.1 all Members, user representatives on the Board and participants of Working Parties will bear their own costs and expenses of participation in Forum activities; and
 - 7.5.2 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 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.

8 Functions Of The Board

- 8.1 The functions of the Board will be to:
 - 8.1.1 appoint a chairperson of the Board, the Chief Executive Officer (CEO), Forum Administrator, Scheme Agent and Enforcement Agent(s);

- 8.1.2 in light of the Forum’s purpose, decide on the work of the Forum and prioritise such work;
- 8.1.3 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;
- 8.1.4 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;
- 8.1.5 approve changes to the Rules and operational procedures of the Forum;
- 8.1.6 determine whether to endorse Self-regulated Codes and which Self Regulated Codes will be mandatory Self Regulated Codes;
- 8.1.7 approve General Associate memberships;
- 8.1.8 meet at least quarterly;
- 8.1.9 in addition to the above, in relation to Number Portability:
 - (a) establish a committee (referred to in these Rules 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 clause 15 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;
- 8.1.10 in relation to the operation of the Scheme:
 - (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 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 appointed under the Scheme TOR if there is a change to the Tier One Members;

- (f) execute 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.

8.2 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 the Rules:

9.1.1 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 Rule 9, except as contemplated under Rule 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 Rule 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.

9.2 The Board will be comprised of:

9.2.1 the Chairperson;

9.2.2 one representative from each Tier One Member;

9.2.3 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 Rule 9.2.3). Tier Two Tier Representatives will be determined by the Tier Two Members in accordance with Rule 12.1;and

9.2.4 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 Rule 9.2.4). Tier Three Tier Representatives will be determined by the Tier Three Members in accordance with Rule 12.2;

For the avoidance of doubt, Tier Four Members, Numbering Associates and General Associates shall have no Board representatives.

- 9.3 In addition to the Board members listed in clause 9.2, the Board may appoint one non-voting representative from an organisation which actively represents the interests of telecommunications end-users, such organisation to be considered by the voting members of the Board on an annual basis. The appointment of a representative organisation will be voted on in accordance with clause 10.1.5(a). Any appointment will be for a one year term.
- 9.4 Each Tier One Member shall nominate its respective Board Member and may designate an alternative Board Member at any time.
- 9.5 The Tier Two Members and Tier Three Members will elect their Tier Representatives in accordance with Rules 12.1 and 12.2 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 Rule 12).
- 9.6 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 Rule 12.1 or 12.2 (as the case may be).
- 9.7 Notwithstanding Rules 9.2.3 to 9.2.4 and 9.6, 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.
- 9.8 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.
- 9.9 From time to time the Board may approve the attendance of other Member representatives and external advisors at Board meetings.
- 9.10 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.

10 Voting

Board Voting

- 10.1 Should a vote be required in carrying out its functions, the Board will vote in accordance with the following voting arrangements:
- 10.1.1 one equal vote per Board Member;
- 10.1.2 the Chairperson will not have a casting vote;

- 10.1.3 notwithstanding Rule 10.1.1, if the Chairperson is an independent party (i.e. not a Board Member appointed as Chairperson pursuant to Rule 11.2) then the Chairperson will not have a vote;
- 10.1.4 Simple Majority Support will be required for any item to be voted on by the Board, except for the items identified in Rules 10.1.5, 10.1.7 and 10.1.8;
- 10.1.5 75% support will be required for:
- (a) inclusion of a non-voting representative on the Board under Rule 9.3 with Simple Majority Support required to appoint such representative's membership on the Board. If the relevant voting threshold cannot be met, then there will not be a non-voting representative on the Board;
 - (b) approval of project scopes for all matters other than in relation to Regulated Codes (which require Simple Majority Support);
 - (c) the continuation of any work stream that is subject to a reporting requirement imposed on a Working Party by the Board under clause 5.1.3 of the Handbook;
 - (d) appointment of any independent Working Party Chairs;
 - (e) removal of any of the parties referred to in Rule 10.1.5(d) where a vote of no confidence is required. Such vote shall be subject to any legal and contractual obligations;
 - (f) subject to Rule 10.1.7(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;
 - (g) approval of Working Party consultation with the public on draft Self-regulated Codes;
 - (h) changes to the Handbook; and
 - (i) 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 who indicate a desire to be on the applicable sub-committee from time to time and shall report to the Board.
- 10.1.6 Rule 10.1.5(i) does not apply to the NPMC referred to in Rule 8.1.9(a).
- 10.1.7 100% support will be required for:
- (a) the endorsement of any Self-regulated Codes;

- (b) changes to the Rules;
- (c) appointment of the Chairperson, CEO, Forum Administrator, Scheme Agent, Enforcement Agent(s);
- (d) determining public positions and public statements of the Forum (subject to Rule 18); and,
- (e) altering the Membership Fees and annual budget.

10.1.8 Unanimous Support will be required for the endorsement of any Self-regulated Code as an obligatory code which Full Members must sign and agree to be bound by in accordance with Rule 20.2.

10.1.9 Notwithstanding the foregoing paragraphs of this Rule 10.1, in respect of the Scheme:

- (a) a Board Member who was not appointed by a Member (whether a Tier One Member or a Tier Representative) which participates in the Scheme (“Scheme Member”) shall not be entitled to vote on any Board resolution relating to the Scheme, except that a Board Member which represents a Tier which includes Scheme Members may vote on any Board resolution relating to the Scheme provided that at all times the number of Board Members representing a Tier that are voting on that Board resolution does not exceed the number of Scheme Members in that Tier;
- (b) subject to Rule 10.1.9(a), Simple Majority Support will be required for any item to be voted on by the Board that relates to the Scheme, except for the items identified in Rule 10.1.9(c) and (d);
- (c) subject to Rule 10.1.9(a), 75% support 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 10.1.9(a), Unanimous Support 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.

10.2 For the avoidance of doubt:

10.2.1 Subject to Rule 10.15, 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 Rule 10.1.5, he or she must first, subject to Rules 10.2.2 and 10.2.3, obtain Simple Majority Support of the Members of the relevant Tier in accordance with Rule 10.3 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 Rule 10.1.7, he or she must first, subject to Rules 10.2.2 and 10.2.3, obtain 75% support of the Members of the relevant Tier in accordance with Rule 10.3 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 Rule 10.1.8, he or she must first, subject to Rule 10.2.2, obtain 100% support of the Members of the relevant Tier in accordance with Rule 10.3 and, where he or she is unable to do so, must vote against the matter.

10.2.2 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.

10.2.3 A Board Member may cast a conscience vote without seeking the prior approval of the Members of the relevant Tier on matters considered under Rules 10.1.5(g) or 10.1.7(d), including any submission or other policy statement created by the committee created by Rule 18.

10.2.4 The Board will not vote on telecommunications access codes prepared for approval by the Commission under clause 1 of Schedule 2 of the Act.

10.2.5 Where the Board is voting on any changes proposed to Rules 10.3 or 12, 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.

10.2.6 The Board will not vote on any NPMC decision made in accordance with clause 15 of the Number Portability Network Terms.

Tier Voting (for Non-Tier One Members)

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

- 10.3.1 one equal vote per Tier Member entitled to vote;
- 10.3.2 any chairperson of the Tier appointed under Rule 12.3 does not have a casting vote;

10.3.3 unless stated otherwise, Simple Majority Support only will be required.

Working Party Voting

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

10.4.1 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;

10.4.2 Unless specified otherwise in the project scope or permitted under Rule 10.7, only Full Members are entitled to vote;

10.4.3 Any chairperson of the Working Party (“Working Party Chair”), Project Leader or technical expert does not have a casting vote;

10.4.4 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;

10.4.5 Subject to Rule 10.4.6, Simple Majority Support only will be required for all decisions by the Working Party;

10.4.6 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 clause 6.1.3 of the Handbook is required;
- (c) a draft Self-regulated Code to be submitted to the Board for public consultation or endorsement;

10.4.7 Where a vote is required on the matters set out in Rule 10.4.6, 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 10.4.8;

10.4.8 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

- 10.5 Where voting by 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)

- 10.6 For the avoidance of doubt, wherever a vote is required (other than for matters requiring Unanimous Support, or for voting under Rules 10.4.8, 10.5 and 10.11), the vote will be passed if the votes of all those Members present, entitled to vote and voting meet the voting threshold set out in the Rules and the Handbook.
- 10.7 General Associates are not entitled to vote on any issue. Numbering Associates are not entitled to vote on any matter unless the matter is solely in relation to the Numbering Code or the NPMC, and they have been determined by the Commission to be a party to the Number Portability Determination.
- 10.8 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.
- 10.9 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.
- 10.10 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.
- 10.11 Voting may also be by email or fax response 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 Rules and the Handbook.
- 10.12 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.
- 10.13 Any Member holding a proxy shall declare the existence of the proxy prior to casting a proxy vote.
- 10.14 Any proxy vote shall be cast according to the instructions of the Member

who provides the proxy.

- 10.15 Except for a Board Member in the circumstances contemplated in rule 10.1.9(a) a Member shall not be entitled to vote on any matter relating to the Scheme unless that Member is a Scheme Member.

11 Chairperson of the Board

- 11.1 The Chairperson of the Board is to be appointed by the Board annually. The Chairperson should be an independent person appointed by the Board.
- 11.2 If the Board is unable to agree the appointment of the Chairperson, the position of Chairperson shall rotate amongst the Tier One Board Members (who have not previously held the position of Chairperson), in alphabetical order based on the company name of the Tier One Members which appointed those Board Members.
- 11.3 Where the Chairperson is not present at a Board meeting, the Tier One Board Members present at the meeting shall elect one of their number present to chair the relevant meeting.
- 11.4 In accordance with clause 16.2.5 of the Number Portability Network Terms and clause 7.2.5 of the Terms for Local and Mobile Number Portability in New Zealand (LMNP), the Chairperson may 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.

12 Tier Two & Three Representatives

- 12.1 To the extent that the Tier Two Members are entitled to appoint Board Members under Rule 9.2.3, 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 Rule 10.3 and this Rule 12. Each Tier Two Tier Representative will appoint one Tier Two Board Member and may designate an alternative Tier Two Board Member at any time.
- 12.2 To the extent that the Tier Three Members are entitled to appoint Board Members under Rule 9.2.4, 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 Rule 10.3 and this Rule 12. Each Tier Three Tier Representative will appoint one Tier Three Board Member and may designate an alternative Tier Three Board Member at any time.
- 12.3 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

- 12.4 The Tier Representatives shall ensure that they have Board Members appointed at all times, subject to Rules 9.2.3 and 9.2.4 and the provisions of this Rule 12.
- 12.5 The elections for Tier Representatives will take place on an annual basis unless otherwise required to meet the requirements of Rule 12.4 or 9.5. Where:
- 12.5.1 a Tier Representative fails to comply with any of the provisions of this Rule 12, 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;
- 12.5.2 a Board Member fails to comply with any of the provisions of Rule 10.2.1 or this Rule 12, 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.
- 12.6 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.
- 12.7 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.
- 12.8 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

- 12.9 At Board meetings the Tier Two and Three Board Members shall:
- 12.9.1 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
- 12.9.2 subject to Rule 10.2.2 and 10.2.3, vote according to the mandates authorised by the Tier Members they have been appointed to represent.

12.10 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.

13 Chief Executive Officer (CEO)

13.1 The CEO is appointed by the Board.

13.2 The functions of the CEO will be to:

13.2.1 Oversee the progress and operation of the Forum;

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

13.2.3 Direct the Forum Administrator in its work;

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

13.2.5 Recommend changes to the Handbook;

13.2.6 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;

13.2.7 Approve minor changes in existing project scopes, including the deliverables and the project timelines, and members of the Working Party;

13.2.8 Approve Working Party consultation with specified interested parties on draft Self-regulated Codes;

13.2.9 Advise the Commission of the Forum's decision in response to an invitation by the Commission to prepare a Regulated Code (as per Schedule 2, section 1 of the Act);

13.2.10 Conduct referenda on draft Regulated Codes (as per Schedule 2, section 4 of the Act);

13.2.11 Submit draft Regulated Codes to the Commission for its approval;

13.2.12 Represent the Forum and the Forum's interests in external fora and act as the Forum's primary spokesperson.

13.3 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.

14 Forum Administrator

14.1 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.

15 Functions Of The Number Portability Management Committee

15.1 The purpose of the NPMC is to:

15.1.1 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

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

16 Number Portability Management Committee Membership

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

16.1.1 Any Numbering Party (provided it has been determined by the Commission to be a party to the Number Portability Determination);

16.1.2 the non-voting representative on the Board (as per Rule 9.3); and

16.1.3 A non-voting representative of the Telecommunications Commissioner.

16.2 Applications from Members or the non-voting representative 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 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.

17 CEO Forum

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

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

- 17.1.2 The CEO; and
- 17.1.3 Those experts, interested parties and other parties that have been approved by the Chairperson of the CEO Forum.
- 17.2 The CEO Forum may appoint the CEO or the CEO of a Full Member (other than a Tier Four Member) as chairperson for the CEO Forum meetings on an annual basis, or on such other basis as the CEO Forum determines.
- 17.3 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.
- 17.4 The CEO Forum will not have formal Forum governance responsibilities.
- 17.5 As with the Forum itself, the CEO Forum will ensure its activities are in accordance with the Commerce Act and other relevant legislation. A protocol on these issues may be developed to guide members in their responsibilities.

18 Policy Committee

- 18.1 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.
- 18.2 The Policy Committee shall comprise the CEO and Board Members (or any duly authorised senior member of the Member or Tier Representative which appointed such Board Members).
- 18.3 All members of the Policy Committee are entitled to participate in meetings of the Policy Committee and preparation of the voting materials.
- 18.4 Should a vote be required, it will be held in accordance with the voting requirements set out in Rule 10.

19 Working Party Membership

- 19.1 Persons entitled to participate on any Working Party consist of:
 - 19.1.1 Any Full Member and any General Associate;
 - 19.1.2 The non-voting representative on the Board (as per Rule 9.3); and
 - 19.1.3 Those experts, interested parties and affected parties that have been approved by the CEO.

20 Regulated and Self-regulated Codes

- 20.1 Any Self-regulated Code endorsed by the Board pursuant to Rule 10.1.7(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.

- 20.2 Any Self-regulated Code endorsed by the Board pursuant to Rule 10.1.8 is obligatory for Full 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 a non-Member, may elect to adopt any such code.
- 20.3 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.
- 20.4 All Regulated Codes will be subject to referenda held under section 4 of Schedule 2 of the Act (as per the Handbook). The Forum will not endorse Regulated Codes unless they have been approved by the Commission in accordance with Schedule 2 of the Act.

21 Meetings

- 21.1 **Annual General Meeting:** The Annual General meeting of Full Members shall be held each year at a time and place fixed by the Board for the following purposes:
 - 21.1.1 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 Support of Full Members.
 - 21.1.2 To discuss any business notified under Rule 5 - in accordance with voting arrangements set out for the various issues in the Rules and the Handbook.
- 21.2 **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.
- 21.3 Not less than ten (10) working days before any Annual or Special General meeting a notice of it shall be sent to Full 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.
- 21.4 **Ordinary Board Meetings:** The Board will meet no less frequently than quarterly. An Ordinary Board meeting may be called by the Chairperson or a quorum of Board Members (being 4 Board Members) 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.
- 21.5 Any Tier Four Members, General Associates and Numbering 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.

- 21.6 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.
- 21.7 **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 Rule 12.3 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 appointed under Rule 17.2 or by a written request of 30 percent of the CEOs of Full Members (other than Tier Four Members).
- 21.8 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 way of email, fax or post.
- 21.9 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 Rules and the Handbook.
- 21.10 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 Tier Members within five (5) working days of the meeting.

22 Procedure At Annual, Special And Ordinary General Meetings & Group Meetings

- 22.1 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.
- 22.2 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.
- 22.3 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.

- 22.4 At all Annual or Special General meetings 30% of the Full Members shall constitute a quorum. At Ordinary Board meetings, four (4) Board Members constitute a quorum.
- 22.5 At all Tier Member meetings, 30% of the Tier Members shall constitute a quorum.
- 22.6 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.

23 Alteration To Rules & Handbook

- 23.1 The Rules and the Handbook may be altered, added to or rescinded at any of the meetings referred in to in Rule 21 provided that such changes are agreed by the Board in accordance with Rule 10.1.5(h) in the case of changes to the Handbook and Rule 10.1.7(b) in the case of changes to the Rules, 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.
- 23.2 No addition to or alteration of the non-profit aims, personal benefit Rules or the winding up Rules shall be approved without the approval of the Inland Revenue Department. The provisions and effect of this Rule 23.2 shall not be removed from this document and shall be included and implied into any document replacing this document.

24 Common Seal

- 24.1 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 plus one other Board Member.

25 Liquidation

- 25.1 **Liquidation of the Forum.** The Full Members may resolve to put the Forum into liquidation if at a Special General Meeting of the Full Members called for the purpose of a resolution to liquidate the Forum 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 liquidate was passed.

25.2 **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 in accordance with the proportion of Membership Fees they have paid to the Forum in the preceding Financial Year.

26 Liability

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

27 Indemnity

27.1 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 the 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 Board Member is liable for any loss or expense of the Forum, or any Member, unless it occurs as a result of wilful default by that Board Member.

28 Finance

28.1 **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.

28.2 **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.

28.3 **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.

28.4 **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.

28.5 **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.

28.6 **Filing requirements:** The Chairperson 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.

29 Funds And Properties

- 29.1 The funds, properties and assets of the Forum shall be under the control of the Board.
- 29.2 Any money of the Forum may be invested by the Forum in such manner as the Board may from time to time determine.
- 29.3 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.

30 Intellectual Property

- 30.1 Unless the Members unanimously agree otherwise,
 - 30.1.1 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;
 - 30.1.2 subject to Rule 30.1.1, 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.

31 Communication

- 31.1 Subject to Rules 31.2 and 31.3, all the business and records of the Forum shall be available to Members at their request.
- 31.2 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.
- 31.3 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.
- 31.4 All correspondence with the Forum shall be addressed to the registered office of the Forum.

32 Undertakings

- 32.1 Each Member and Board Member undertakes:

- 32.1.1 to duly perform and observe all the Rules and to operate in accordance with the Handbook;
- 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 Rules;
- 32.1.3 without limiting Rule 31, 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 Board Member's obligations under the Rules.

33 No Partnership

- 33.1 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 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 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.

Schedule 1

Membership Fees (All fees shown are exclusive of GST)

Effective FY2024:

1. The Board will set a budget prior to each Financial Year.
2. Unless agreed otherwise by the Board, the annual membership fee for Full Members is:
 - a. Tier 1:
 - i. \$275,000 for Chorus, One New Zealand and Spark;
 - ii. \$137,500 for other Tier One Members.
 - b. Tier 2 - \$55,000
 - c. Tier 3 - \$16,500
 - d. Tier 4 - \$1,100.
3. Unless agreed otherwise by the Board, the annual membership fee for a General Associate member is \$5,500.
4. Any annual surplus from the annual membership fees (i.e. where revenue exceeds expenses) may be allocated amongst the Full Members (excluding Tier Four Members) in proportion to the membership fees paid by those Full Members for the period by way of a discount on the following year's membership fees. Full Members who do not rejoin the Forum in the following year are not entitled to a refund.