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Foreword to the rulebook

This foreword provides comment on the rules that follow, but does not itself form part of the rulebook.

The rules have been prepared for the purpose of governing the arrangements between members to promote the satisfaction of consumers' electricity requirements in a manner that is least-cost to the economy as a whole and is consistent with sustainable development.

The rules:

- Establish and prescribe the mechanisms by which the rules are specified, agreed, monitored and enforced, and disputes resolved;
- Prescribe rules for trading of wholesale electricity;
- Prescribe rules that underpin a regime designed to allow retail customers to choose their supplier of electricity;
- Prescribe the rules for establishing and maintaining common quality (including security) standards over the integrated transmission system; and
- Prescribe the rules relating to the development and evolution of transmission services, and a transmission pricing methodology.

It is possible that from time to time other arrangements will be added to the rules.

As far as possible, the rules allow members to choose the means by which they engage in activity in the electricity sector. However, all members will be required to comply with some aspect of the rules. This is to ensure that the overall regime is effective where it needs to be for the purposes of the wider public good.

The rules require a Board to govern these arrangements. Through the workings of the Board, industry and wider stakeholders will be able to raise and solve issues and concerns. Interacting with industry and stakeholders the Board will promote an environment which fosters innovation and competition in the electricity industry for the long-term benefit of consumers.

Evolution of the rules will occur after having regard to Government policy for the electricity sector as it is announced from time to time.

The Electricity Act 1992 requires the Board to prepare an annual report to the Minister of Energy on its performance against objectives set out in a Government Policy Statement. The Act requires that performance will be assessed by the Minister after consultation with the Audit Office.

In December 2000 the Government issued a Government Policy Statement setting out its policy objectives for electricity and its expectations concerning industry self-governance.

The Electricity Amendment Act 2001 provides that the Minister of Energy may designate the **Board** as an electricity governance organisation (as defined in that

Act). If the Minister takes this action the Government and Parliament will hold the **Board** accountable for delivery of the outcomes and objectives as set out in the Government Policy Statement. The industry acknowledges that should its arrangements fail to deliver these outcomes the Government may decide to replace the industry arrangements with arrangements of its own.

Part A: Governance

The Guiding Principles

The **Guiding Principles** are that the **rules** should collectively:

1 Foster economic welfare

Foster improvements in economic welfare by establishing market mechanisms and other processes for the supply and use of electricity and all related services that promote:

- The matching of supply to demand in all markets, in the sense that the quantity and quality (including reliability and security) of services in each market that purchasers in aggregate are willing to buy equals the amount that producers in aggregate are willing to sell at the specified price (and other agreed terms and conditions);
- Individual decisions by entities on the purchase and supply of services that may be commercially or technically isolated to individual entities; collective decisions on price, quantity, quality, and other terms and conditions for services where transacting on a common basis would improve economic welfare; and **Board** decisions where this would improve economic welfare;
- The removal of all unjustifiable impediments to entry by new producers and users of services, to users switching between suppliers for services, and to the conduct of transactions between parties; and
- The allocation of controllable risk to those parties with the best abilities to balance off the relevant costs and benefits, and the allocation of residual uncontrollable risk in a manner that spreads risk at least cost overall.

2 Promote efficient use of scarce resources

Promote efficient use of scarce resources in satisfying the electricity requirements of consumers through:

- The allocation of electricity, services related to the supply of electricity and resource inputs to their highest value uses consistent with sustainable development;
- Processes that facilitate prices and charges trending toward the opportunity cost of resources; and
- The use of new technologies, renewable resources, distributed generation, and measures to enhance energy efficiency.

3 Foster competition

Where efficient, establish mechanisms and processes that foster competition in electricity services and services related to the supply of electricity and in particular foster competition:

- In the retail market by ensuring effective mechanisms exist for switching end-user consumers;
- In the wholesale market by ensuring that both buyers and sellers may interact effectively to establish market-clearing prices;
- Between alternative trading arrangements; and
- For the provision of **ancillary services** and other services to the market.

4 Foster levels of performance desired by consumers

Foster levels of performance that the various classes of consumers desire and are prepared to pay for.

5 Favour voluntary membership

Ensure that membership of sections of the rulebook is voluntary except where an improvement to economic welfare can be attained only from mandating membership. In particular, ensure that the scope of any mandatory sections:

- Extends only so far as is necessary to achieve the identified improvements to economic welfare; and
- Are reviewed regularly and evolve in a manner consistent with this Principle.

6 Facilitate decisions on common services

Ensure that appropriate mechanisms and processes relating to common services are established and maintained to:

- Enable collective agreement on the price, quantity, quality of supply, and other terms and conditions for the purchase of common services and the trade-offs between them;
- Ensure that participants in collective decisions are those parties (or their representatives) who bear the costs and risks of such decisions; and
- Reach agreement with suppliers of common services on the terms and conditions consistent with the objectives of users.

7 Facilitate a robust business environment

Ensure **rules** are effective, transparent and commercially practical, in particular that actions are taken and information is made available and transferred in a timely and effective manner.

8 Unbiased and transparent evolution

Ensure the process by which the **rules** evolve is transparent and not biased towards any person or practise, and in particular:

- Limits the potential for any person to amend the **rules** in a manner that introduces unjustifiable bias; and
- Balances the interests of all participants in the markets.

9 Be robust and enforceable

Be robust and enforceable by providing for and maintaining a compliance regime that is neutral, independent and has sufficient authority to monitor and enforce the **rules**.

10 Comply with the law

Comply with all relevant laws, and in particular the Commerce Act 1986, the Electricity Act 1992 and their amendments and successors.

I General Rules

1 The contents of part A

The rules in part A set out the governance and administration arrangements that apply to all persons and activities that come within the scope of the **rules**.

2 Members

Every person who is a **member** of any other part or section of the rulebook is a **member** of part A.

3 Fees

Each **member** will pay to the **clearing manager** on behalf of the **Board**, all fees invoiced in accordance with Schedule A7 of part A and the rules of part H.

4 Changing the rules

4.1 The rules in part A

The rules in this part A (including the **Guiding Principles** and Annexure A) may be changed only by a **resolution** of **members**, voting in accordance with the process, voting rights and requisite majorities set out in schedules A5 and A6.

4.2 The introductory rules in other parts and sections

Any change to:

4.2.1 *Contents*

The description of the contents of any section, part or schedule; or

4.2.2 *Members who may vote*

The **members** who are entitled to vote in respect of any section, part or schedule

may only be made by a **resolution** of the **members** entitled to vote and passed as if it were a change to part A.

5 The guiding principles

The **rules** are to be developed in accordance with, and interpreted consistently with, the **Guiding Principles**.

6 A guide to interpretation

Annexure A entitled “Defined Terms” contains a list of defined terms that are used in the **rules**. Wherever one of those terms is used in the **rules**, it appears in **bold** type. Some general points about the construction of the **rules** are also made in that annexure.

7 Commencement of the rules

The contract constituted by the **rules** and therefore the operation of the **rules** commences as follows:

7.1 Referendum

EGEC will conduct a referendum. No person may become a **participant** unless **EGEC** determines that a substantial majority of voters in the referendum support the **rules** coming into effect.

7.2 Part A

The rules in part A and part I take effect when at least two people have joined as **members**.

7.3 Election of the Board

One month of two people having joined as members under rule 7.2, the **members** at the time must elect a **Board** in accordance with rule 1.9 of section II.

7.4 Effective date for other rules

The remaining rules take effect on a date determined by the **Board** and notified to **participants** after:

7.4.1 *MACQS, MARIA and NZEM substantially terminated*

The **Board** has received written confirmation from the chairs of all three of **MACQS**, **MARIA** and **NZEM** that those arrangements will have been substantially terminated by the date designated in the notice; and

7.4.2 *System operator confirmation*

The **system operator** has provided written confirmation to the **Board** that it is satisfied that the **rules** are binding on sufficient **members** of the electricity

industry for the **system operator** to have confidence in the effectiveness and integrity of the common quality rules.

Provided that the date that the **Board** determines under rule 7.4 must both occur no less than two months and no more than four months after the date of the election of the **Board**.

8 Participants must observe the rules

Each **participant** is bound by and must observe the provisions of the **rules** that apply to that **participant**. Each **participant** must at all times:

8.1 High standards of integrity

Observe high standards of integrity and conduct, having regard to compliance with the **rules**;

8.2 Co-operate with regulators and the Rulings Panel

Co-operate with **regulatory authorities**, the **Board** and the **Rulings Panel** in an open and co-operative manner and keep each such authority promptly informed of anything that might reasonably be expected to be disclosed to it in terms of the **rules**;

8.3 Adequate financial resources

Ensure that it maintains adequate financial resources to meet **business** commitments and to withstand the risks to which its **business** is subject; and

8.4 Organise internal affairs responsibly

Organise and control its internal affairs in a responsible manner, keep proper records, and have adequate arrangements to ensure that any staff that are performing activities related to the **rules** are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures in place.

II The Board

1 Appointment of the Board

1.1 There will be a Board

The **Board** is hereby appointed to carry out the duties of the **Board** provided for in the **rules**. In carrying out its duties the **Board** must:

1.1.1 *Impartiality*

Act impartially; and

1.1.2 *Natural Justice*

Comply with the principles of natural justice; and

1.1.3 *Act through its Board*

Act through its **board of directors**, any duly appointed delegate of the **board of directors**, or an employee or contractor appointed pursuant to rule 1.11.

1.2 Duties of the Board

The **Board's** duties are to:

1.2.1 *Governance*

Be the primary governance body for the **rules**;

1.2.2 *Operation of the rules*

Oversee the general operation of the **rules**, including compliance and enforcement;

1.2.3 *Rule change process*

Facilitate and oversee the rule change process and be responsible for the overall integrity and consistency of the **rules**;

1.2.4 *Security*

Ensure that real time transmission system security services are provided at the standards of quality and security required by **grid** users;

1.2.5 Model arrangements

Develop and maintain model use of system agreements and a model approach to distribution pricing, should **members** wish it to perform that role;

1.2.6 Service Providers

Oversee and facilitate the appointment of **service providers**;

1.2.7 Performance review

Monitor and review the performance of **service providers** and all other parties contracted by the **Board** to perform functions under the **rules**;

1.2.8 Executive powers

Exercise executive powers where required by the **rules** or otherwise required by law;

1.2.9 Specific functions

Carry out the specific functions required of it by the **rules** or by any statute;

1.2.10 Board will maintain a website

Establish and maintain a website through which it will make available the information required by the **rules**.

1.3 Constitution of the Board

Schedule A1 contains a copy of the **Board's** constitution as at the commencement date of the **rules**. The constitution can only be changed by amending schedule A1. For the avoidance of doubt, schedule A1 may be changed only by a **resolution of members**. **Members** are entitled to vote on any **resolution** to amend schedule A1 in accordance with the process and voting rights set out in schedules A5 and A6. The **trustee shareholder** must amend the constitution of the **Board** to reflect changes to schedule A1 so that at all times the constitution of the **Board** and schedule A1 are identical.

1.4 Characteristics of the Board

The **directors** must collectively have the requisite skills and experience to enable the **Board** to carry out the duties to be performed by the **Board** under the **rules**. The requisite skills and experience include:

1.4.1 Governance

Experience at a senior level in commercial governance; and

1.4.2 Technical expertise

Technical expertise in electrical engineering (generation, network management and transmission), economics or law; and

1.4.3 Demand side

Expertise in distributed generation and/or renewables, energy efficiency and demand side management; and

1.4.4 Consumer interests

Expertise or experience of consumer issues including those of domestic consumers, and consumers technical issues; and

1.4.5 Commodity markets

An understanding of commodity markets and their development; and

1.4.6 New Zealand power system

Knowledge of and experience of the New Zealand power system.

1.5 Appointment of directors of the Board

The **Board** will have seven **directors** but if any casual vacancy occurs, the **Board** may continue to discharge its duties under the **rules**. The **directors** will be those persons elected as such in accordance with the procedures in rule 1.8 and 1.9, and the voting entitlements set out in schedule A4.

1.6 Term of appointment of directors

Subject to rule 1.7 and 1.8, each **director** will hold office for a term of three years with effect from the date specified by the **agency** when calling for nominations under rule 1.9.2. Notwithstanding the expiry of three years, the **board of directors** may resolve that a **director** will continue in office until a new **director** is appointed to replace the outgoing **director** (in accordance with the constitution of the **Board**), in which case that person shall remain a **director** until the appointment of his or her replacement. The term of appointment of the **director** will expire when the **trustee shareholder** removes the **director** from office. The **trustee shareholder** shall remove the **director** from office at the expiry of three years, or if the **board of directors** has resolved that the person shall remain a **director** until the appointment of the replacement **director**, upon the appointment of that replacement.

The expiry of a term of appointment to the **Board** will not prevent that person from being re-elected for a further term (to a maximum of three terms) either before or after the expiry of the current term.

1.7 Attendance at meetings

Any **director** who, without the prior leave of the chairman of the **board of directors**, misses two consecutive meetings of the **board of directors** will be deemed to have vacated his or her office and will no longer be a **director** of the **Board** pursuant to clause 11.4(e) of the constitution of the **Board**, and an election will be held in accordance with rule 1.9.

1.8 Initial directors of the Board

1.8.1 Caretaker director

The first **director** of the **Board** will be appointed by **EGEC** to act as a caretaker **director**, and during his term as caretaker **director** shall only make decisions to the minimum extent necessary to ensure the **rules** become operational. The caretaker directorship will expire once the first elected **directors** are appointed as **directors** of the **Board**. Any **rule change** purportedly made by the caretaker **director** while acting as a **director** of the **Board** will be of no effect.

1.8.2 Initial directors

The initial **directors** will be the seven elected in the first elections which will be conducted in accordance with rule 1.9 and will take office upon appointment under rule 1.9.11 by the first **trustee shareholder** elected under rule 1.28, except that references to the **Board** will be references to **EGEC**. Two of those **directors** will hold office for a term of one year; two of those **directors** will hold office for a term of two years and three of those **directors** elected will hold office for a term of three years. Those **directors** will agree between them, and failing agreement, will draw lots to determine which of them will be eligible for those different terms of office. The **directors** must agree in sufficient time to permit election of replacement **directors** in accordance with rule 1.9. This process also applies in the event that the **board of directors** is dissolved and a new **board of directors** is appointed under rule 1.14.

1.8.3 Subsequent directors

If, at any time, there is a vacancy on the **board of directors** of the **Board**, elections shall be held in accordance with rule 1.9 to elect a new **director** or **directors** to the **Board**, which **director** shall be appointed by the **trustee shareholder** as **director** of the **Board** in accordance with the constitution of the **Board**.

1.9 Election of directors

Immediately upon the rules in part A commencing and two entities becoming **members** of part A, and each time thereafter that **directors** are to be appointed, the following procedures will be carried out:

1.9.1 Board selects professional recruitment agency

The **Board** will select a professional recruitment agency to assist with the selection of suitable candidates and in particular to identify those candidates who meet the criteria set out in rule 1.4. The **Board** will notify the **agency** of the number of vacant positions on the **board of directors** of the **Board**. The **Board** will ensure that the **agency** has no conflict of interest in carrying out its role and that it agrees to be bound by the **rules**.

1.9.2 Agency calls for nominations

The **agency** will call for nominations from all **participants** and from the general public by advertising in a variety of media including the major newspapers from throughout New Zealand. The **agency** will also consult with other organisations and people who could be expected to identify suitable candidates. There are no restrictions on who may make nominations or the number of nominations that may be made. Only **independent** persons will be accepted for nomination. In calling for nominations the **agency** will specify the date advised by the **Board** on which the successful nominee or nominees take office. Nominations will close no sooner than 20 **business days** after the date of the last public notice calling for nominations.

1.9.3 Agency identifies suitable candidates

Once the nomination period has closed, the **agency** will identify, from among the nominations received, those candidates who are **independent** and meet the criteria set out in rule 1.4. The **agency** will recommend to the **Board** those candidates who meet that criteria and whom it considers can work effectively with the **board of directors**. In making its recommendation the **agency** will take into account the mix of skills and experience of any other **directors** at the time so as to achieve an overall balance of skills and experience. The **agency** will recommend at least two nominees for each vacant position;

1.9.4 Further calls for nominations if necessary

If, from the nominations received, the **agency** is unable to recommend at least two candidates for each vacant position, the **agency** will repeat the process in rule 1.9.2 and rule 1.9.3;

1.9.5 Board reviews list of candidates

The **Board** will review the list of candidates recommended by the **agency** and may require the **agency** to obtain further information about any candidate or to seek further nominations.

1.9.6 Chairman consults Minister

The chairman of the **board of directors** will consult with the **Minister** on whether, in the **Minister's** opinion, the candidates recommended by the **agency** meet the criteria set out in rule 1.4, and whether the **Board** has

carried out sufficient checks in relation to the nominations received. The chairman will demonstrate to the **Minister** that:

1.9.6.1 Skills and experience identified

The **Board** has explicitly considered whether any sets of skills or experience were lacking on the **board of directors**; and

1.9.6.2 Process followed

The **Board** has ensured that the process described in 1.9.1 to 1.9.5 has been carried out; and

1.9.6.3 Relevant expertise

The **Board** is satisfied that the list of recommended candidates includes people with the expertise and skills set out in rule 1.4 and rule 1.9.3; and

1.9.6.4 Requirements for independence

The **Board** is satisfied that each of the candidates meets the requirements for independence.

1.9.7 *Chairman invites Minister to comment*

The chairman of the **Board** will invite the **Minister** to comment on whether the **Board** has adequately demonstrated the matters set out in rules 1.9.6.1 to 1.9.6.4 inclusive. The chairman will report back to the **Board** on the **Minister's** comments on the matters in 1.9.6.1 to 1.9.6.4 and the **Board** may remove any unsuitable candidate in light of any of those comments. If as a result of removing any unsuitable candidate fewer than two nominees for each vacant position remain, the **Board** will repeat the process in rules 1.9.3 to 1.9.6 until there are at least two nominees for each vacant position.

1.9.8 *Election held*

An election will be held once the provisions in rule 1.9.7 have been complied with and the final number of candidates is at least twice the number of vacant positions. The **Board** will publish on its website a list of the candidates to go forward to election;

1.9.9 *Members can vote for as many persons as there are nominees*

The **Board** will send a ballot paper to each entity that is a **member** of Part A at the time of sending the ballot papers. The ballot paper must identify the nominees and be accompanied by information about the background and expertise of each one. The ballot paper must specify the number of vacant positions, the number of votes the **member** is entitled to cast for each position, the date when voting will begin, the process for returning votes and a valid address for return of votes. Each **member** will be entitled to cast a

number of votes determined in accordance with schedule A4. Any **member** entitled to more than one vote need not cast its total votes across all vacant positions, and may split the votes it casts among any number of nominees;

1.9.10 *Ballot papers must be returned within 10 business days*

Completed ballot papers must be returned to the **board of directors** within ten **business days** of the date that voting begins, as specified in the ballot paper;

1.9.11 *Board will count votes and declare result*

The **Board** will count the votes and notify **participants** of the result of the election. In the event of a tie in an election under this rule 1.9, lots will be drawn to determine the nominee to be appointed. The **Board** will request the **trustee shareholder** to appoint as **director** or **directors** the highest ranked nominee or nominees until all vacancies are filled. The **trustee shareholder** must appoint the highest ranked nominee, unless that person is not eligible to be a **director** under the Companies Act 1993 (and the **Board** must certify to the **trustee shareholder** whether the proposed **director** is so eligible). If the highest ranked nominee is not eligible to be a **director**, the **trustee shareholder** will appoint the next ranked nominee as **director**, until all vacancies are filled. If the vacancies are not all filled, new elections must be held in accordance with this rule 1.9.

1.10 Terms of appointment will be published

As soon as practicable after the **trustee shareholder** makes any appointment under rule 1.9.11, the **Board** will publish the terms of the appointment on its website.

1.11 Administration

The **Board** may from time to time appoint any person as an employee of or contractor to the **Board** to assist it to carry out any of its duties under the **rules**.

1.12 Procedures of the board of directors are set out in schedule A2

The procedures of the directors of the **Board** will be as set out in the appendix to the constitution of the **Board** in which appears as schedule A2.

1.13 Dissolution of the board of directors

Those persons who together hold 25% or more of the votes that may be cast on the election of a **director** (determined in accordance with schedule A4) may cause a vote to be taken on the removal of all the **directors** by giving notice in writing to the **Board**. The persons entitled to vote on any such **resolution** are those who would be entitled to vote on an election of **directors** in accordance with the voting rights set out in Schedule A4. A **resolution** is passed if it receives a majority of 75% of the votes cast.

1.14 Appointment of a new board of directors

If any **resolution** under rule 1.13 is passed, then a new board of **directors** will be appointed in accordance with rules 1.5 to 1.12. The dissolution of the existing board of **directors** will take effect when the **trustee shareholder** removes the **board of directors** in accordance with the constitution of the **Board**. The **trustee shareholder** will remove the existing **board of directors** at the same time as the appointment by the **trustee shareholder** under rule 1.9 of the new **directors** of the **Board** elected in accordance with rule 1.9.

1.15 Limits on the actions of the outgoing board

Any **rule change** purportedly made by the **Board** between the date that a **resolution** is passed under rule 1.13 and the date that a new **Board** is appointed will be of no effect.

1.16 No prohibition on re-election

Existing **directors** are not disqualified from election under rule 1.14.

1.17 Trustee shareholder to act in accordance with notice from the Board

In relation to the **trustee shareholder's** obligation to appoint a **director** under rule 1.8 or rule 1.9.11, remove the **board of directors** under rule 1.14 or amend the constitution under rule 3:

1.17.1 Board to give notice in writing

The **Board** must give notice in writing of the action to be carried out and the **trustee shareholder** will be entitled to rely and act on this notice;

1.17.2 Trustee shareholder entitled to rely on notice

In the absence of actual knowledge to the contrary the **trustee shareholder** is entitled to assume that it is not required to appoint any **director**, remove the **board of directors** or amend the constitution unless it receives such a notice from the **Board**.

1.18 Board to procure directors to act in accordance with rules

The **Board** agrees to procure the **board of directors**, the chairman, and each **director** to act in accordance with the **rules** and to fulfil their obligations under the **rules**.

1.19 Liability of directors

No **director** will be liable to any **participant** in contract, tort or otherwise for any act or omission in relation to the exercise or purported exercise in good faith of any of its powers, authorities, discretions or obligations under the **rules**. Nothing in this rule

1.19 limits the liability of any **director** for any act or omission that is fraudulent or in wilful default. The **Board** may maintain whatever policies of insurance it considers necessary to protect against any liability on the part of the **directors**. This rule is for the benefit of, and is intended to be enforceable by each **director** under the Contracts (Privity) Act 1982.

1.20 Board to be indemnified

The **members** indemnify the **Board** against all costs paid by the **Board** pursuant to the indemnity given in clause 13.1 of the constitution of the **Board**. The costs of this indemnity will be allocated between **members** in the same proportion as voting rights are allocated on a **resolution** to change the **rules** in part A and will be allocated as soon as practicable after the **Rulings Panel** carries out the annual allocation of voting entitlements in accordance with rule 3.7 of schedule A4.

1.21 Board's initial fees, annual business plan and budget

1.21.1 Initial fees

The maximum initial fees for the **Board's** first budget and plan shall be as follows:

1.21.1.1 Chairman

For the chairman of the **board of directors**, an annual payment of \$[] (plus GST if any) and a per diem payment of \$[] (plus GST if any) for each meeting of the **board of directors** of the **Board** attended each year;

1.21.1.2 Directors

For each **director**, an annual payment of \$[] (plus GST if any) and a per diem payment of \$[] (plus GST if any) for each meeting of the **board of directors** of the **Board** attended each year; and

1.21.1.3 Disbursements

The **directors** (including the chairman) will be reimbursed for their reasonable disbursements incurred in attending any meetings each year.

1.21.2 Budget and plan

Upon election, the first elected **board of directors** shall prepare a budget and business plan for the **Board** for the period from election of the **directors** until the end of the **financial year** of the **Board**. Thereafter, as soon as practicable before the end of **Board's financial year** (as determined by the **Board** from time to time) the **Board** must provide an annual budget and business plan. The business plan must include:

1.21.3 Strategic goals

Strategic goals and priorities for the ensuing year; and

1.21.4 Performance Standards

Any performance standards agreed with the government; and

1.21.5 Operational assumptions

An overview of key operational assumptions; and

1.21.6 Forecast of expenditure

A detailed forecast of expenditure in the next 12 months including **directors'** fees (which, for the first budget, will be no more than that set out in rule 1.21.1 pro rata for any part year), the costs of insurance for **directors** under the constitution of the **Board**, and the costs of the **Rulings Panel**.

and the **Board** must present these documents to the **members** for their consideration. The budget and business plan will be deemed to be approved by **members** unless, within 2 months of those documents being presented, **members** holding 25% of the votes that would be capable of being exercised in a **resolution** to approve the budget and plan call for such a **resolution**. In any such **resolution**, **members** will vote in accordance with the voting entitlement set out in schedule A4. If the budget and plan are not accepted by the **members**, then the **Board** will prepare a new budget and business plan and present its priorities for the forthcoming year. Every such budget and plan and any variation to every such budget and plan must be in accordance with this rule.

1.22 Not-for-profit

The **Board** is not entitled to include in its budget any element of profit or to claim any such profit from **members**.

1.23 Board's annual development plan

Following consultation with all relevant stakeholders, the **Board** will prepare and implement an annual plan for the development of common quality and security standards.

1.24 Payment of budgets by members

The **members** will pay the costs of the **Board** and of the **Rulings Panel** in carrying out their functions under the rules in accordance with the annual budget accepted in accordance with rule 1.21.

1.25 Shareholder rights fixed:

The rights, privileges, limitations or conditions attached to any shares issued by the **Board** may not be amended.

1.26 Transfer of shares of Board

The **trustee shareholder** may not transfer any or all of the shares held by it in the **Board** on trust for the **members** unless the transfer is approved by a **resolution of members**. **Members** are entitled to vote on any resolution to transfer the shares in the **Board** in accordance with the process and voting rights set out in schedules A5 and A6.

1.27 Trustee shareholder

1.27.1 First trustee shareholder

The first **trustee shareholder** will be Durham Nominees (Wellington) Limited. When a **trustee shareholder** elected under rule 1.28 is declared to be the **trustee shareholder** it will replace the first **trustee shareholder**, which will cease to hold that position without prejudice to the indemnity given to the current **trustee shareholder** under rule 1.33.

1.27.2 Subsequent trustee shareholders

Subsequent **trustee shareholders**, including the first elected **trustee shareholder**, shall be elected and appointed in accordance with rule 1.28, except that in the first election of a **trustee shareholder** references to the **Board** will be references to **EGEC**.

1.28 Appointment of trustee shareholder

Immediately upon the commencement of the rules in part A, and each time thereafter that a **trustee shareholder** is to be appointed, the following procedures will be carried out:

1.28.1 Board seeks applications to be trustee shareholder

The **Board** will seek applications from interested parties who wish to be the **trustee shareholder** for the **Board** by advertising in a variety of media including the major newspapers throughout New Zealand. Applications will close no sooner than 20 **business days** after the date of the last public notice calling for applications. The **Board** will only accept applications from applicants that have no conflict of interest with the **Board** or any **member** or related party.

1.28.2 Election held

After applications have closed an election will be held. The **Board** will publish on its website a list of the candidates to go forward to election.

1.28.3 Members can vote

The **Board** will send a ballot paper to each **member** of Part A. The ballot paper must identify the applicant and be accompanied by information about the expertise and skills of each one. The ballot paper must specify the

number of votes the **member** is entitled to cast, the date when voting will begin, the process for returning votes and a valid address for return of votes. A **member** will be entitled to cast a number of votes equivalent to the number that the **member** is entitled to when voting on a **resolution** to change the rules under this Part A, as set out in Schedule A4. Any **member** entitled to more than one vote may split the votes it casts among any number of applicants.

1.28.4 *Ballot papers returned within 10 business days*

Completed ballot papers must be returned to the **Board** within 10 **business days** of the date that voting begins, as specified in the ballot paper.

1.28.5 *Board will count the votes and declare results*

The **Board** will count the votes and notify the applicants of the result of the election. The first ranked applicant will be appointed as **trustee shareholder** under rule 1.28.6. In the event of a tie in an election under this rule 1.28, lots will be drawn to determine the applicant to be appointed.

1.28.6 *Terms of appointment published*

The Board will publish on its website the terms of appointment of the successful applicant determined under rule 1.28.5.

1.28.7 *Members will enter trust deed*

The **members**, as beneficiaries, will enter into a trust deed, appointing the successful applicant determined under rule 1.28.5 as **trustee shareholder**, to hold the single share in the **Board** on trust for the **members**.

1.29 Removal of trustee shareholder

Those persons who together hold 25% or more of the votes that may be cast on the election of the **trustee shareholder** (as determined under rule 1.28.3) may cause a vote to be taken on the removal of the **trustee shareholder** by giving notice in writing to the **Board**. The persons entitled to vote on any such **resolution** are those who would be entitled to vote on an election of the **trustee shareholder** in accordance with the voting rights set out in rule 1.28.3. A **resolution** is passed if it receives a simply majority of votes.

1.30 Appointment of a new trustee shareholder

If the **resolution** under rule 1.29 is passed by a simple majority of the votes cast, then a new **trustee shareholder** will be appointed in accordance with rule 1.28. The removal of the existing **trustee shareholder** will take effect when the new trust deed is entered into by the **members** and the new **trustee shareholder**.

1.31 Limits on the actions of the outgoing trustee shareholder

If a **resolution** is passed under rule 1.29 to remove a **trustee shareholder**, that **trustee shareholder** shall not make any substantive decisions in relation to the **Board** during the period after the **resolution** is passed to remove the **trustee shareholder**, and before the **trustee shareholder** is removed. Provided that a **member** may refer a matter for decision by the **trustee shareholder** during this period to the **Rulings Panel**, who will consider whether the **trustee shareholder** should make a decision. The **Rulings Panel** will consider any evidence made available by the **members** and the **Board**, and will make its decision within 10 **business days** of the **member** referring the matter to it. The **Rulings Panel** will notify the **Board** and the **trustee shareholder** of its decision, and if the **Rulings Panel** directs the **trustee shareholder** to make a decision on the matter in issue, then the **trustee shareholder** shall make a decision, and this decision is not subject to review.

1.32 No prohibition on re-election

The existing **trustee shareholder** is not disqualified from election under rule 1.28.

1.33 Trustee shareholder to be indemnified

1.33.1 *Members shall indemnify trustee shareholder*

The **members** shall jointly and severally indemnify and keep indemnified the **trustee shareholder** (including after the resignation or removal of the **trustee shareholder**) from all:

1.33.1.1 Liabilities arising from holding of shares

Obligations, duties, actions, proceedings, claims, demands, liabilities and payments arising from or in connection with the **trustee shareholder** holding the single share in the **Board**, or arising from or in connection with the **rules**, or arising from or in connection with any law; and

1.33.1.2 Costs incurred in connection with trusteeship

costs, charges and expenses which may be met or incurred by the **trustee shareholder** in connection with or incidental to the trusteeship evidenced by the declaration or deed of trust, or in connection with or incidental to the **rules** or any law.

1.33.2 *Members shall pay trustee shareholder*

The **members** shall jointly and severally upon demand by the **trustee shareholder** to the **Board** (whether or not the **trustee shareholder** has then actually made payment, and whether or not the **members** dispute that the **trustee shareholder** is legally obliged to make such payment) pay to the **trustee shareholder** all sums which the **trustee shareholder** may be called upon to pay by virtue of the **trustee shareholder** holding the single share in

the **Board**, or by the trusteeship evidenced by the declaration or deed of trust, or by the **rules** or by any law.

1.33.3 Demand shall be made in writing

Demand shall be made by notice in writing signed by the **trustee shareholder** or the solicitor or any agent of the **trustee shareholder** and delivered to the **Board** personally, or by posting the demand in a registered letter addressed to the **Board** at the **Board's** usual or last known place of business in New Zealand. If so posted, such demand shall be deemed to have been made at the time when the registered letter would in the ordinary course of the post be delivered. The **Board** must immediately notify each **member** of the demand.

1.33.4 No amendment without consent of trustee shareholder

Notwithstanding anything else in the **rules**, this rule 1.33 shall not be amended in a way that will adversely affect the **trustee shareholder** without the written consent of the **trustee shareholder**.

1.33.5 Benefit of trustee shareholder

This rule 1.33 is for the benefit of, and is intended to be enforceable by, the **trustee shareholder** under the Contracts (Privity) Act 1982.

2 Board reports

2.1 Quarterly report

As soon as practicable but not later than one month after the end of each quarter the **Board** will publish on its website a report to **members** on its performance against the last annual budget and business plan that were approved by **members**.

2.2 Annual report

As soon as practicable but no later than two months after the end of each **financial year** the **Board** will publish on its website a report to **members** on its performance against the last annual budget and business plan that were approved by **members**, and including in each such report:

2.2.1 *Functioning of the rules*

The **Board's** view on the functioning of the **rules** including the extent to which the **rules** are inconsistent with the **Guiding Principles** and where appropriate the **Board's** recommendations for addressing those inconsistencies and for better promoting the **Guiding Principles**; and

2.2.2 *Rule changes*

A summary of the **rule changes** made during the **year** including details (from the register maintained under rule 1.2 of section IV) of when **rule changes** were proposed, how they proceeded, whether they were voted on, the outcome of that vote, **rule changes** that are in progress, and any other relevant matters; and

2.2.3 *Market overview*

An overview of the market environment for the year; and

2.2.4 *Key issues*

An outline of key issues for stakeholders; and

2.2.5 *Service provider performance*

A review of performance of **service providers**; and

2.2.6 *Financial Performance*

A summary of the **Board's** financial performance for the year including a set of audited accounts; and

2.2.7 Rulings Panel report

A summary of the quarterly reports provided by the **Rulings Panel** under rule 4.17 of section V and a summary of any performance review of **Rulings Panel**; and

2.2.8 List of members and voting rights

A list of current **members**, and of the most recent allocation of voting entitlements determined in accordance with schedule A4.

2.3 Statutory reports

The **Board** will provide every report that is required of it by statute as and when required.

2.4 Other reports

The **Board** may at any time undertake any review of the **rules** or any aspect of the electricity industry in New Zealand as it thinks fit, and may commission any person to assist it in any such review. The funding for any such review shall be sought in the **Board's** annual budget and business plan approved by **members** under rule 1.20. At the conclusion of every such review the **Board** will prepare a report setting out its findings.

2.5 Publication of reports

All reports required under this rule 2 will be made available on the **Board's** website within 5 **business days** of their release.

III Membership

1 Admission rules

1.1 Applications are written and acknowledge the rules

Subject to rule 1.2 and to rule 6 of section II of part I, every applicant for membership will lodge with the **Board** a written application in the form prescribed by the **Board**, and provide all information requested therein. Every such application will contain an acknowledgment that the applicant is aware of the **rules** and agrees to be bound by them, as amended from time to time, if its application is successful.

1.2 Provide other necessary information

Every applicant for membership as a **generator, purchaser, distributor, grid owner, direct consumer** or **voting customer** will provide such information as the **Board** from time to time requests to enable the **Board** to consider its application. The **Board** will consider every application as soon as practicable after it receives the information requested pursuant to this rule.

1.3 Board to make enquiries

The **Board** will inquire into, and satisfy itself as to, whether a person applying to be admitted is likely to be able to carry out its responsibilities as a member of the class in which the application is made. The **Board** may take into account any information or matter from any source including, without limitation, information relating to the applicant or any business carried on, or to be carried on, by the applicant in conjunction with its **business**.

1.4 Board will decide whether to admit an applicant

After a review of all the information made available to it, if the **Board** is satisfied that the applicant is likely to be able to carry out its responsibilities as a member of the class in which the application is made, it will decide whether to approve an applicant for admission and advise the applicant of its decision. The **Board** may defer making a decision for such period as it reasonably considers necessary to carry out further investigation or allow for the provision of additional information.

1.5 The Board will register the applicant as a member

If the application for admission is approved, the applicant will become a **member** on providing the **Board** with a signed **adopting deed**. Membership will take effect from the date the **Board** approves the application.

1.6 The Board will keep a register of participants

The **Board** will keep a register of **participants** which will contain:

1.6.1 Details of members

The name of each **member**, the date that each of them became a **member** and the telephone number, facsimile number, e-mail address and postal address of each. The **Board** will also record on the register the date any **member** ceases to be a **member**; and

1.6.2 Details about the Board

The telephone number, facsimile number, e-mail address and postal address of the **Board** and the name of each current **director**, together with the date and term of appointment for each **director**, and

1.6.3 Details about the Panel

telephone number, facsimile number, e-mail address and postal address for communication with the **Panel**, the name of each current member of the **Rulings Panel** and the date and term of appointment for each member; and

1.6.4 Working groups

The name of each current **working group** and the names of the members of each such group; and

1.6.5 Details of each service provider

The name, telephone number, facsimile number, e-mail address and postal address of each **service provider** together with the date of appointment and term of appointment of each **service provider**; and

1.6.6 Details of consumer representatives

The name of each consumer or **consumer representative** that has been granted voting rights under schedule A4, and the number of votes allocated to it; and

1.6.7 Details of data administrators and approved test houses

The name of each **data administrator** and **approved test house**, the date that person was appointed and the telephone number, facsimile number, e-mail address and postal address of that person.

1.7 The Board to advise of changes to the register

As soon as practicable after a person has become a **participant**, the **Board** will notify all **participants** of the name, postal address, e-mail address, telephone number and facsimile number of that new **participant**. The **Board** will also notify all **participants** of any person who ceases to be a **participant**.

1.8 Changes to particulars

Every **participant** must notify the **Board** of any change to any of that **participant's** details. On receipt of any such notice the **Board** will amend the register accordingly, will record the date of the change and will advise every other **participant** of the change.

1.9 Publication of the register

The **Board** will maintain an up to date copy of the register and make it available to **participants** at no cost on the **Board's** website. Any **participant** is entitled to a copy of the register upon paying a reasonable fee to the **Board**.

1.10 Entry into the register

Entry into the register is prima facie evidence of a person being bound by the rules as a **participant**.

2 Resignation

2.1 Members may resign

Subject to rule 2.2, any **member** may resign as a **member** by giving to the **Board** notice in writing of its intention to do so and advising the **Board** whether that **member** intends ceasing to participate in the electricity industry in New Zealand, or to continue to participate in that industry after the effective date of that resignation. The **Board** may send notice of the intended resignation to such other **members** as, in the circumstances, the **Board** thinks fit.

2.2 Board determines outstanding matters

Promptly upon receiving a notice of resignation, the **Board** will determine:

2.2.1 *Member under investigation*

Whether the **member** is being investigated or, in the opinion of the **Board**, should be investigated as a preliminary to a decision on the question whether the **member** should be disciplined. In any case in which this rule applies, the **Board** will, as soon as practicable, take all reasonable steps to complete its investigation of, or to investigate, as the case may be, the matter, and until such completion the **Board** will not take any action in relation to the notice.

2.2.2 *Suspension of trading rights*

The **Rulings Panel** considers that it is desirable that a suspension of **trading rights** should be imposed upon the **member** or that any suspension already imposed should continue in force. In any case in which this rule applies, the **Board** will not take any action in relation to the notice until the **Rulings Panel** has determined that it is no longer desirable that a suspension of **trading rights** should be imposed, or continue in force; or

2.2.3 *Outstanding obligations*

Any obligation of the **member** under the **rules**, including any financial obligation, remains outstanding. In any case in which this rule applies, the **Board** will not take any action in relation to the notice while that obligation remains outstanding.

2.3 Member ceasing to participate in electricity industry

If the notice of resignation includes advice that the **member** intends ceasing to participate in the electricity industry in New Zealand, and the **Board** determines that in its independent opinion that **member** will so cease, then, subject to rule 2.2 the **Board** will specify a date, which shall be within 60 **business days** of its determination that rule 2.2 does not apply, or if it does apply, within 60 **business days** of the **Board**

first being required pursuant to that **rule** to act on the resignation process. That date so specified, shall be the effective date for that **member's** resignation.

2.4 Member continuing to participate in electricity industry

If the notice of resignation includes advice that the **member** intends to continue to participate in the electricity industry in New Zealand, and the **Board** determines that in its independent opinion that **member** will so continue, then, subject to compliance with rule 2.2 the **Board** will as soon as practicable consult with the **member** who gave that notice, and such other persons as the **Board** considers appropriate in order to agree the terms upon which the **Board** in its reasonable opinion considers that **member** should receive and provide alternative arrangements in respect of those matters described in rule 2.5.

2.5 Acceptable alternative arrangements

The matters in respect of which acceptable alternative arrangements must be agreed are appropriate mechanisms for enforcement and compliance with any requirements of the former **member's** obligations under the alternative arrangements, and:

2.5.1 Generators

Where the **member** who has given notice of resignation is a **generator**: –

2.5.1.1 Sale of electricity

An appropriate mechanism or mechanisms for the sale of **electricity** that it generates;

2.5.1.2 Dispatch

An appropriate process for dispatch of generation by the **system operator**;

2.5.1.3 Reconciliation

An appropriate process for reconciliation of any quantities of **electricity** generated by that **generator** with the total generated quantities calculated in accordance with the **rules**;

2.5.1.4 Compliance with **asset owner performance obligations** and technical standards

Continued compliance with applicable **asset owner performance obligations** and technical standards as set out in part C;

2.5.1.5 Metering standards

Continued compliance with applicable metering standards as set out in part D; and

2.5.1.6 Transmission services

Appropriate **transmission services** are available to that **generator**.

2.5.2 Purchasers

Where the **member** who has given notice of resignation is a **purchaser**:-

2.5.2.1 Purchase of electricity

Appropriate mechanism or mechanisms for the purchase of electricity that is supplied to it;

2.5.2.2 Notification of demand quantities

Established an appropriate process for notifying demand quantities to the **system operator**;

2.5.2.3 Reconciliation

An appropriate process for reconciliation of any quantities of **electricity** taken by that **purchaser** with the total generated quantities supplied as calculated in accordance with the **rules**;

2.5.2.4 Compliance with **asset owner performance obligations** and technical standards

Continued compliance with applicable **asset owner performance obligations** and technical standards as set out in part C;

2.5.2.5 Metering standards

Continued compliance with applicable metering standards as set out in part D; and

2.5.2.6 Prudential security

That **purchaser** has provided for an appropriate level of prudential security for the benefit of the **members** of the rulebook; and

2.5.2.7 Provision of transmission

Appropriate **transmission services** are available to it.

2.5.3 Distributors

Where the **member** who has given notice of resignation is a **distributor** -

2.5.3.1 Compliance with **asset owner performance obligations** and technical standards

Continued compliance with applicable **asset owner performance obligations** and technical standards as set out in part C;

2.5.3.2 Transmission services

Appropriate transmission services are available to it; and

2.5.3.3 Information for switching

Appropriate mechanisms for the provision of information to facilitate the switching of customers between **retailers** under part E.

2.6 Standards for alternative arrangements

The **Board** shall determine that those terms and conditions for alternative arrangements are reasonable if they provide for:

2.6.1 *Alternative service contracts*

The resigning **member** to undertake to the continuing **members** to keep in force and effect the alternative service contracts for a term [**to be determined**];

2.6.2 *Undertaking by alternative service provider*

The provider of those alternative service contacts to undertake to the continuing **members** and resigning **member** to provide the services, in the same manner as if that alternative service provider were a **service provider** pursuant to the **rules** and to integrate those services with those of the continuing **service providers**. This will require the provider of alternative services to contract with the **Board** in the same manner as existing **service providers**;

2.6.3 *Integration of existing service provider services*

The existing **service providers** undertake with the continuing **members** and resigning **member** to continue to provide services, and to integrate those services with those of the new **service providers**; and

2.6.4 *Conditions of services*

The resigning **member** and the **members** to agree with each other the conditions on which services generally governed by the **rules** will be maintained by that resigning **member**, and if they provide the same functions to all recipients as are necessary for the continue operation of the multi-lateral relations between the members of the industry (both **members** and **non-members**), at least to the standard achieved by the **rules**.

2.7 Effective date

The **Board** will specify the effective day of the resignation of that **member** to which rule 2.4 applies, which shall be not later than 30 **business days** after agreement of all the terms and conditions of the alternative arrangements.

2.8 The Board will remove resigned member from register

Upon the resignation of a **member** becoming effective, the **Board** will remove the name of the **member** from the register maintained under rule 1.6 whereupon the **member** will cease to be a **member** for the purposes of the **rules**, subject always to the provisions of rule 2.6.

2.9 Resigned members remain subject to rules

Notwithstanding the resignation of a **member** becoming effective, the **member** will continue to be subject to the jurisdiction of the **Rulings Panel** and the **Board** for a period of two years from the effective date in relation to:

2.9.1 Acts and omissions

acts and omissions under the **rules** committed or omitted before the effective date; and

2.9.2 Proceedings

any proceedings that are instituted against the **member** before the effective date, or that concerns acts or omissions under the **rules** committed or omitted by the **member** before the effective date; and

2.9.3 Orders

any order relating to the **member**, including any directions or arrangements which may be made for the purpose of giving effect to any order made by the **Rulings Panel** or the **Board** under the **rules**.

3 Automatic suspension of trading

3.1 Trading of electricity can be automatically suspended

If any **generator** or **purchaser**:

3.1.1 *Non-payment of debts*

Suspends payment of its debts; or

3.1.2 *Creditor meeting*

Calls a meeting of its creditors; or

3.1.3 *Bankruptcy*

In the case of an individual or all the members of a partnership, has a bankruptcy order made against him, her or all of them; or

3.1.4 *Manager appointed*

In the case of a company, society or partnership, has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or

3.1.5 *Liquidation*

Enters into liquidation except voluntary liquidation for the purpose of an amalgamation or reconstruction;

All rights to make **bids** or **offers** will, subject to rule 3.2, will be automatically suspended, without any prior decision of the **Board** being required, from the time of the relevant event or from such other time as the **Board** determines.

3.2 Suspension does not affect common quality obligations

Notwithstanding any suspension under rule 3.1, every **generator** and **purchaser** must continue to meet its obligations under part C.

3.3 A termination order may follow a suspension

The **Board** may order that any rights that were suspended under rule 3.1 be reinstated in respect of any **generator** or **purchaser**, or make a termination order subsequent to any such suspension.

3.4 The form and effect of termination and suspension orders

Every termination order made under rule 3.3 must be in writing and will take effect in accordance with its terms.

3.5 Termination does not affect amounts owing

No termination order affect any liability for payment of any moneys under the **rules** prior to the date of the relevant order.

3.6 The effect of a termination order

Upon a termination order being made:

3.6.1 *All rights cease*

All the rights of the **generator** or **purchaser** will immediately terminate and it will cease to be a **member**; and

3.6.2 *Resignation rules apply*

The provisions of rule 2 will apply as if the **generator** or **purchaser** had resigned.

IV The Rule-Making Process

1 Alterations to the rules

1.1 Proposed rule changes to be notified to the Board

If any person wishes to propose a **rule change** it may notify the **Board** in writing of the proposed **rule change**. This notification is, for the purposes of this section of the **rules**, to be known as a “**proposal**”. The **Board** may, of its own motion, put forward a **proposal** under this rule. Every proposal must be accompanied by a short summary of the reason for it. For the avoidance of doubt this process does not apply to any change to any **service provider** contract.

1.2 Board to keep register of proposals and notify members

The **Board** will, within 5 **business days** after it receives any **proposal**:

1.2.1 *Record the proposal*

Record the **proposal** in a register of **proposals** maintained by the **Board** and accessible to **participants** and the public on the **Board’s** website; and

1.2.2 *Notify participant*

Notify each **participant** of the proposal.

1.3 Board will review every proposal

The **Board** will, within 20 **business days** of receiving any **proposal** under rule 1.1 or any decision of the **Rulings Panel** under rule 6.1.11 of section V, review each new **proposal** and:

1.3.1 *Prioritise the proposal*

Assign a priority to any **proposal** that it has not rejected; and

1.3.2 *Record the priority*

Record the priority assigned to the **proposal** in the register maintained under rule 1.2.1; and

1.3.3 *Reject vexatious or trivial proposals*

Reject any **proposal** that is, in its view, vexatious or trivial or inconsistent with the **Guiding Principles** when taken as a whole, or if it has considered a substantially similar **proposal** in the last twelve months which it rejected or was rejected by **members**; and

1.3.4 *Notify any rejected proposal*

Notify each **participant** and the person who put forward the **proposal** that it has rejected the **proposal**, giving reasons for doing so. The person who put forward the **proposal** may ask the **Rulings Panel** to review any decision of the **Board** to reject a **proposal** under this rule.

1.4 Board will refer proposals to working groups

The **Board** will, as soon as it has assigned a priority to a **proposal** under rule 1.3.1:

1.4.1 *Refer to existing working group*

Refer the **proposal** to an existing **working group**; or

1.4.2 *Refer to new working group*

If there is no existing **working group**, or the **proposal** involves an area outside the expertise of any existing **working group**, or if the **Board** consider that the membership of existing **working groups** is inappropriate for the **proposal** to be considered, refer the **proposal** to a new **working group** that it must establish in accordance with the process set out in schedule A3.

1.5 Working group to report to Board

Each **working group** to which the **Board** refers a **proposal** will consider the **proposal** and report to the **Board**, within the time required of it by rule 10 of schedule A3, with a recommendation on whether a **rule change** should be made. The report will address each of the matters set out in rule 13 of schedule A3. Where a **working group** recommends a **rule change**, its report must also include a draft **rule change**.

1.6 Board to consider working group's report

The **Board** will, as soon as reasonably practicable, consider the report of the **working group** and publish the report on the **Board's** website.

1.7 If a rule change is not recommended

If the **working group's** report recommends no change to the **rules** and the **Board** is satisfied that:

1.7.1 *Recommendation reflects the proposal*

The recommendation reflects the **proposal** that the **working group** considered; and

1.7.2 *No new issues raised*

No new issues or information have been raised that require further consideration; and

1.7.3 Recommendation is acceptable to the Board

The recommendation is acceptable to the **Board**

the **Board** will reject the **proposal**, notify its decision to the person who made the **proposal** and publish the decision and the reason for it on its website.

1.8 If a rule change is recommended

If the **working group's** report recommends a change to the **rules** and the **Board** is satisfied that:

1.8.1 Recommendation reflects the proposal

The recommendation reflects the **proposal** that the **working group** considered; and

1.8.2 No new issues raised

No new issues or information have been raised that require further consideration; and

1.8.3 Recommendation is acceptable to the Board

The recommendation is acceptable to the **Board**; and

1.8.4 Board is satisfied that conditions are met

The **Board** is satisfied, on the basis of the **working group's** report, as to all of the matters set out in rule 11 of schedule A3 then the **Board** will either; and

1.8.5 Put the rule change to a vote

Put the **rule change** to a vote conducted in accordance with rule 2.2; or

1.8.6 Accept or reject

Subject to rule 1.11, accept or reject the **rule change**.

1.9 If the Board is not satisfied with a recommendation

If the **Board** considers that any **working group** recommendation:

1.9.1 Proposal not reflected

Does not properly reflect the **proposal** that the **working group** considered; or

1.9.2 *New issues raised*

Raises new issues or information that require further consideration; or

1.9.3 *Recommendation not acceptable*

Is not acceptable to the **Board**

the **Board** will, subject to rule 1.10, refer the matter back to the **working group** with guidance on those aspects of the **proposal** that the **working group** should reconsider.

1.10 Board may appoint alternative working group

If the **Board** considers that any new issue or information has been raised that requires further consideration, or that any **working group** recommendation is not acceptable to it, it may refer the matter to another **working group** established in accordance with the procedures in schedule A3.

1.11 Reasons why a rule change may not proceed

1.11.1 *Material financial disadvantage or controversy*

The **Board** may not accept or reject any **rule change** under rule 1.8.6 unless it is satisfied, on the recommendation of the **working group**, that the **rule change** or the effects of the **rule change** would not materially or disproportionately financially disadvantage any **member**, and is not controversial.

1.11.2 *A member materially and disproportionately affected*

Any **member** who considers they are materially, adversely and disproportionately affected by a decision of the **Board** to accept or reject a proposed **rule change** under rule 1.8.6 or to make a minor rule change under rule 2.7 may give notice to the **Board**. Any notice given under this rule must be in writing and given no later than 10 **business days** after the **Board** records the **rule change** in the register maintained under rule 1.2, and must contain the reasons why the **member** considers they are materially, adversely and disproportionately affected. If any notice is given under this rule 1.11.2 the **Board** will consider the notice and take such action as it believes is reasonable.

1.11.3 *If board of directors dissolved*

A rule change purported to be made by the **Board** between the date that a **resolution** is passed under rule 1.13 of section II and the date that a new **board of directors** is appointed will be of no effect.

1.12 Effect of Board's decision to accept a rule change

Subject to rule 3, the appropriate changes to the **rules** will be made if the **Board** accepts a **rule change** under rule 1.8.6. In that case the **Board** will publish the **working group's** report, notify **participants** and record its decision and the reasons for it in the register of **proposals** maintained under rule 1.2.

1.13 Effect of Board's decision to reject a rule change

No change to the **rules** will be made if the **Board** rejects a proposed **rule change** under rule 1.8.6. In that case the **Board** will publish the **working group's** report, notify **members** and record the rejection and the reasons for it in the register of proposals maintained under rule 1.2, and the proposal will lapse.

1.14 Members with 25% or more of the votes may require a resolution to approve a proposal

Without prejudice to rule 3, **members** may give notice to the **Board** requiring any decision of the **Board** to accept or reject a proposed **rule change** under rule 1.8.6 or to make a minor rule change under rule 2.7, to be confirmed by a **resolution** if they together hold 25% or more of the votes that would be entitled to be cast on the **resolution**.

Any notice given under this rule must be in writing and be given no later than 10 **business days** after the **Board** gives notice in accordance with rule 2.8 of accepting or rejecting the **proposal** under rule 1.8.6. If a notice is given under this rule 1.14 the **Board** will put the proposed **rule change** to a vote in accordance with rule 2 and its decision to accept or reject the **rule change** under rule 1.8.6 will have no effect.

1.15 Regulatory approvals

If any **rule change** requires or may require any regulatory approval the **Board** will obtain that approval before the **rule change** takes effect, and may delay putting the **rule change** to a vote until the approval is obtained.

1.16 The rules are held by the Board

The **Board** will keep a copy of the **rules** and a record of all amendments made to them. The **Board** will make the latest version of the **rules** available to all **participants** on its website and without charge.

1.17 Certified copies of the rules as evidence

A copy of the **rules**, incorporating any amendments made from time to time and a note of the date of commencement of any amendment, certified by the **Board** as a true copy, will be prima facie evidence:

1.17.1 That the rules exist

Of the existence and contents of the **rules**; and

1.17.2 *Of all amendments*

Of all amendments made to the **rules** up to the date of the certificate; and

1.17.3 *Of the effective dates*

That any amendment recorded as coming into force on a specified date, came into force on that date and that such amendment was validly made and was binding as from the date the amendment came into force.

1.18 Right to certified copy

Any person is entitled to a copy of the **rules** certified by the **Board** under rule 1.17 upon paying a reasonable fee to the **Board**.

2 The rule approval process

2.1 Changing preliminary rules

Any change to:

2.1.1 *Contents*

The description of the content of any section, part or schedule, or

2.1.2 *Voting entitlement*

The **members** who are entitled to vote in respect of a section, part or schedule,

may only be changed by a **resolution** of all **members** entitled to vote and passed as if it were a change to the rules in part A.

2.2 Rule changes passed by resolution

Where a **rule change proposal** is put to a **resolution**, in order for it to be passed it must receive the requisite majority of affirmative votes as set out in schedule A6.

2.3 Rule changes not passed by resolution

Where a **rule change proposal** is put to a **resolution** and is not passed, the **proposal** will lapse.

2.4 When a rule change becomes effective

Every **rule change** will, except as provided in rules 2.5, 2.7, 3 and in rule 3 of section V, be effective from the expiry of the period for lodging an appeal as set out in rule 3.3, or 20 **business days** after notice of the **rule change** is entered in the register maintained under rule 1.2, whichever is the later, provided that any **rule change** may have an implementation date which is later than its effective date.

2.5 Effective date may be postponed

Where any proposed **rule change** requires a **resolution** of **members** in relation to more than one section or part of the rulebook, no part of the **rule change** shall take effect unless all the **resolutions** are in favour of the **rule change**.

2.6 Rule changes apply to all future activity

Any **rule change** will apply only to transaction activity that takes place after the date provided for under rule 2.4 whether entered into before or after that date, unless otherwise specified in the **rule change**.

2.7 Board may make minor rule changes

Where the **Board** or any **participant** determines that there is a minor defect, such as a typographical error, in the **rules** that requires correction for the efficient operation of the **rules**, it may recommend to the **Board** that a correction be made. The **Board** will, if it is satisfied as to each of the matters set out in rule 11 of schedule A3, decide whether to correct the **rules** in the manner proposed by that person. For the purposes of this rule a **rule change** is minor if the **Board** can demonstrate that the correction does not financially disadvantage any **member**, is not controversial and there is no reason why it should be put to a vote of **members** or referred to a **working group**. The **Board** will record every such **rule change** in the register maintained under rule 1.2. Any such **rule change** will be effective 10 **business days** after it is entered in the register.

2.8 The Board to notify members of rule changes

The **Board** will notify all **rule changes** and rejected **rule changes** by entering details of them in the register maintained under rule 1.2 and advising all **participants**, but the accidental omission to make an entry into the register or advise any **participant**, will not invalidate that **rule change**.

2.9 Rule change deliberations are transparent

Unless the **Board** determines that a matter should properly be kept confidential, any **participant** may inspect or obtain copies of any written material of the **Board**, any **working group** or any other committee relating to a proposal.

3 Appeal against proposed rule changes

3.1 Inconsistent with Guiding Principles

Any person may appeal to the **Rulings Panel** against the introduction of a proposed **rule change** on the grounds that the **rule change** will be inconsistent with the **Guiding Principles**.

3.2 Member disadvantaged

Any **member** may appeal to the **Rulings Panel** against the introduction of a proposed **rule change** on the grounds that the proposed **rule change** resulted from a decision by the **Board** to accept a proposal under rule 1.8.6 and it has not subsequently been confirmed by **members** in a **resolution** initiated under rule 1.14 and either:

3.2.1 *Appellant materially financially disadvantaged*

The proposed **rule change** was controversial or the introduction of the proposed **rule change** could materially financially disadvantage that **member**; or

3.2.2 *Appellant's rights or obligations affected*

The introduction of the **rule change** would materially affect the rights or obligations of that **member**, but the **member** had no voting rights or consent rights in relation to the section or part of the rulebook that introduced the change.

3.3 Ten days to appeal

Every appeal must be lodged in writing with the **Rulings Panel** no later than ten **business days** after the **Board** gives notice of the **rule change** to **members** in accordance with rule 2.8 and a copy must be provided to the **Board** at the same time. The **Board** will enter details of the appeal in the register maintained under rule 1.2, and will update the information about the status of the appeal as soon as practicable after it receives that information.

3.4 No rule change until appeal is decided

The **Rulings Panel** will rule on every appeal as soon as practicable. The **Board** will record the **Rulings Panel's** ruling in the register of **proposals** maintained under rule 1.2. No **rule change** that is the subject of an appeal in accordance with rule 3.1 or 3.2 will come into effect until the **Rulings Panel** has ruled on the appeal.

3.5 Effect of the Panel finding inconsistency with Guiding Principles

If the **Rulings Panel** determines that a proposed **rule change** will be inconsistent with the **Guiding Principles**, then the proposed **rule change** will not be made and

the **Board** will reconsider the **proposal** from which the proposed **rule change** originated.

3.6 Effect of the Panel finding material financial disadvantage

If the **Rulings Panel** determines that a proposed **rule change** will materially financially disadvantage the **member** who appealed against it and that the **member** would have been entitled to vote on a **resolution** if the proposed **rule change** had been put to the vote, then the **Rulings Panel** will notify the **Board** of its findings. The **Board** will then put the proposed **rule change** to a **resolution**.

3.7 Effect of the Panel finding no grounds for appeal

If the **Rulings Panel** determines that a proposed **rule change** is not inconsistent with the **Guiding Principles** or does not materially financially disadvantage the **member** who appealed against the proposed **rule change**, or that the person who lodged the appeal would not have been entitled to consent to the **rule change** or vote on a **resolution** if the matter had been put to a vote, then the **rule change** will come into effect 10 **business days** after the **Board** has recorded the ruling in the register under rule 1.2.

V Supervision

1 Complaints about participants

1.1 Meaning of participant

In this section of the **rules** the meaning of the word “**participant**” excludes the **Board**.

1.2 Participants are obliged to investigate complaints

Every **participant** will ensure that every complaint made to it in relation to its **business** that might constitute a breach of the **rules** is promptly, thoroughly and fairly investigated by the **participant**, and that appropriate action is taken. Every **participant** against whom a complaint is made will promptly notify the person who made the complaint in writing of the result of the investigation, the action (if any) taken by the **participant**, and of that person’s right to refer the complaint to the **Board** under rule 1.3.1. The **participant** must also send a copy of the notification to the **Board**.

1.3 Reporting breaches of the rules

1.3.1 *Any person may report a breach*

When any person believes on reasonable grounds that a **participant** has breached the **rules**, then that person (the “**complainant**”) may notify the **Board** within two years of the date of the alleged breach. Every such notice will be in writing and will specify the **participant** who is alleged to have breached the **rules**, the rule allegedly breached, the circumstances relating to the alleged breach and the date and time the alleged breach occurred. Nothing in this rule will override any specific obligation to report a breach imposed on any **participant** elsewhere in the **rules**.

1.3.2 *Non-participant complainant*

Any **complainant** under rule 1.3.1 who is not a **participant** must agree in writing to submit to the exclusive jurisdiction of the **rules** and in particular of the **Board** and the **Rulings Panel**. The person must also agree to be bound by any decision of the **Board** or the **Rulings Panel**, including any order the **Rulings Panel** may make against that person under rule 6, as if the person were a **participant**. The **Board** may decline to consider any complaint that has been, or that the **Board** consider it more properly dealt with under any other jurisdiction.

1.3.3 *Participants must report quality and security breaches*

When any **participant** believes on reasonable grounds that it may have breached any rule relating to quality and security in part C or part G, or another **participant** has breached any such rule, then the **participant** must notify the **Board** as soon as practicable from the date that it became aware

of the alleged breach. Every such notice will be in writing and will specify the **participant** who is alleged to have breached the **rules**, the rule allegedly breached, the circumstances relating to the alleged breach and the date and time the alleged breach took place. The obligations in this rule are in addition to any specific obligation to report a breach imposed on any **participant** elsewhere in the **rules**. For the purposes of this section any **participant** who delivers a notice under this rule will be a **complainant**.

1.4 Board may be the complainant

Where the alleged rule breach has come to the **Board's** attention other than by a complaint under rule 1.3, the **Board** will be deemed to be the **complainant** under the **rules**.

1.5 Investigator to be appointed

Where the **Board** receives notice, or becomes aware, of any alleged breach of the **rules**, it will classify the priority of the investigation and appoint a person (the "**investigator**") to investigate the alleged breach according to the priority given.

1.6 Board has certain powers of delegation in fulfilling its functions

Subject to rule 1.5 the **Board** may appoint any person that it thinks has the requisite skills and experience, to carry out any investigation. Every such appointment will be made in writing and may be on a permanent or ad hoc basis.

1.7 Investigator may seek advice from other persons

In carrying out any investigation, any **investigator** may employ, or otherwise seek advice or assistance from any external auditor, technical expert or other persons, as the **investigator** thinks fit.

1.8 Board will avoid conflicts

In appointing any **investigator** or other person under rules 1.5, 1.6 or 1.7, the **Board** and the **investigator** will ensure that any appointed person is free of conflicts of interest in carrying out the investigation.

1.9 Board to keep information confidential

The **Board** and every **investigator** will and will procure that every person appointed by the **Board** or by an **investigator** under rules 1.5, 1.6 or 1.7 will keep confidential all information provided or disclosed to that appointee except to the extent that disclosure is required to enable the **Board** or **investigator** or other person to carry out its obligations and duties under the **rules**, or is required by a **regulatory authority**, or is otherwise compelled by law.

1.10 Party to co-operate with investigations

Every **participant** will co-operate fully with any investigation carried out by the **Board** or any **investigator**:

1.10.1 By providing information

By providing within any reasonable time specified by the **Board** or any **investigator**, all information, papers and documents and recordings concerning the matter (subject always to any claim for legal professional privilege) concerning the matter which are in the possession or under the control of the **participant** and requested for the purpose of any investigation or inspection;

1.10.2 By permitting access to staff

By permitting its officers or other employees to be interviewed (which interview may be recorded) and ensuring as far as possible that they are made available for interview and answer truthfully and fully (subject always to any claim for legal professional privilege) any questions put to them;

1.10.3 By giving access to premises

By giving at all reasonable times full access to any premises (subject to adhering to any safety requirements that apply to visitors to those premises) where the **participant** carries on **business** or maintains records; and

1.10.4 By giving other assistance

By rendering all such other assistance as may be reasonable and necessary to enable the matter to be fully investigated.

1.11 Investigator notifies party allegedly in breach

The **investigator** appointed under rule 1.5 will notify the **participant** alleged to have committed the rule breach of the allegations being investigated. Every such notice will be in writing and will specify the **complainant**, the rule allegedly breached, the circumstances relating to the alleged breach and the date and time the alleged breach occurred. Notwithstanding this rule and rule 1.26, in exceptional circumstances the **Board** may, if it is not the **complainant**, order that the identity of the **complainant** be withheld.

1.12 Party must respond to allegations

Within 10 **business days** of receiving any notice given under rule 1.11 (or such longer period as the **investigator** may stipulate in writing), the recipient will respond in writing to the **investigator**.

1.13 Notice to other participants

At the same time as the **investigator** sends any notice under rule 1.11 the **investigator** will notify all **participants** of the matter under investigation including the content of the notice given under rule 1.11. Within 10 **business days** of receiving any notice under rule, any **participant** may notify the **investigator** that it considers that it is affected by the matter being investigated and wishes to become a party to the investigation.

1.14 Informal resolution process

The **investigator** will endeavour to effect an informal resolution (a "**settlement**") of every matter under investigation by agreement between the **complainant**, the **participant** allegedly in breach, any other **participants** who have joined as parties and the **investigator**. In effecting any such **settlement**, the **investigator** will use such process that the **investigator** thinks fit after consultation with the **complainant**, the **participant** that is the subject of investigation, and the other **participant** who has joined as a party, and that is consistent with any guidelines for **settlements** which the **Board** may issue from time to time. Any such guidelines issued will be an attachment to the **rules**, but will not form part of the **rules**.

1.15 Remedies may form part of settlement

All the remedies available to the **Rulings Panel** under rule 6 may form part of any **settlement**.

1.16 Settlements to be written

Every **settlement** will be written and will specify the details of any breach of the **rules** admitted by any **participant** and record the terms of the **settlement**. The **complainant**, the person alleged to have breached the **rules** and any other **participant** that gave notice under rule 1.13 of being affected by the matter must accept the terms of the **settlement** in writing.

1.17 Board decides whether to approve settlements

The **investigator** must provide a copy of every **settlement** to the **Board**, together with a report containing as much of the information specified in rule 1.27 as the **investigator** reasonably considers relevant in the circumstances of the matter and a recommendation as to whether the **Board** should approve the **settlement**. The **Board** must either:

1.17.1 Approve the settlement

Approve the **settlement** if it is satisfied that the **settlement** is consistent with the guidelines for **settlement**, whereupon, subject to rule 1.20, the **settlement** will be deemed to be final and binding on all **participants**; or

1.17.2 *Reject the settlement*

Reject the **settlement** if it is not satisfied that the **settlement** is consistent with the guidelines for **settlement**.

1.18 Board decides whether complaint is laid

If the **Board** rejects a **settlement** under rule 1.17.2 it must decide whether a **formal complaint** should be laid. If the **Board** decides that:

1.18.1 *No complaint to be laid*

No complaint should be laid, it will either direct the **investigator** to further endeavour to effect a **settlement** under rule 1.14 or to abandon the investigation.

1.18.2 *Complaint to be laid*

A complaint should be laid, it will direct the **investigator** to report to the **Rulings Panel** under rule 1.27.

1.19 Settlements to be published

The **Board** will publish the terms of every **settlement** approved under rule 1.17.1, provided that the **Board** may decide not to require publication of any part, or all, of any particular **settlement**.

1.20 Further complaints about the same matter

Any **participant** that was not a party to a **settlement** may make a further complaint in relation to the same matter if it can demonstrate that it was materially adversely affected by the events or consequences of the events that gave rise to the matter that was settled and that it could not reasonably have been expected to be aware of being affected at the time that the **investigator** gave notice under rule 1.13.

1.21 No admission followed by an investigation

If:

1.21.1 *Out of time*

The **investigator** receives no answer from the **participant** alleged to have breached the **rules** within the time frame specified in accordance with rule 1.12; or

1.21.2 *No settlement*

The **complainant**, the **participant** against whom a breach is alleged and any other **participant** that has joined a party do not enter into a **settlement** within 30 **business days** (or such longer period as the **investigator** agrees in

writing) of the **investigator** giving notice under rule 1.11 or within 10 **business days** of the **investigator** further endeavouring to effect a **settlement** under a direction given under rule 1.18.1.

the **investigator** will conduct an investigation of the facts surrounding the allegations. During the course of any such investigation the **investigator** will subject to any order made under rule 4.12 ensure that all **participants** that are the subject of the investigation have a reasonable opportunity to review and comment on all material collected during the course of the investigation.

1.22 Decision following completion of investigation

As soon as any investigation under rule 1.21 has been completed to the satisfaction of the **investigator**, the **investigator** will report to the **Board** with a recommendation as to whether a **formal complaint** should be laid.

1.23 Board decides whether formal complaint to be laid

The **Board** will decide whether:

1.23.1 *No formal complaint to be laid*

No **formal complaint** should be laid, in which case the **investigator** will inform the **complainant** of the determination. On receiving any notice given under this rule 1.23.1, the **complainant** may, within 10 **business days**, advise in writing that it intends to lay a **formal complaint** itself. The **investigator** will inform the **complainant** of this right at the same time that it informs the **complainant** of the **Board's** decision that no **formal complaint** should be laid.

1.23.2 *Formal complaint to be laid*

A **formal complaint** should be laid against the person allegedly in breach, in which case it will direct the **investigator** to report to the **Rulings Panel** under rule 1.27.

1.24 Frivolous and vexatious allegations

If the **Board** determines under rule 1.18.1 or rule 1.23.1 that no **formal complaint** need be laid because the allegation of breach made was frivolous or vexatious and the **complainant** does not advise that it intends to lay a **formal complaint**, the **Board** may order that the **complainant** pay the reasonable costs of the **investigator**, the **Board** and the reasonable costs of any person who was investigated in connection with the matter.

1.25 Complainant lays formal complaint

Where any **complainant** advises under rule 1.23.1 that it intend to lay a **formal complaint** itself, the **complainant** must follow the process set out in rule 1.27 and rule 1.28 except that:

1.25.1 Complainant replaces investigator

All references to the **investigator** will be references to the **complainant**; and

1.25.2 Costs

Subject to any subsequent order made by the **Rulings Panel** under rule 6.1.9 of section V, the **complainant** will pay all of the reasonable costs associated with the complaint that are incurred after the **complainant** gives notice under rule 1.23.1 that it intends to lay a **formal complaint**.

1.26 Board will publish decisions

The **Board** will publish every decision made under rule 1.18.2 and rule 1.23.2 and give the reason for it.

1.27 Reporting a complaint to the Panel

Where the **Board** decides under rule 1.18.2 or rule 1.23.2 that a **formal complaint** should be laid, or the **complainant** under rule 1.23.1 advise that it will lay a **formal complaint**, the **investigator** will formulate a **formal complaint** and report it to the **Rulings Panel** in accordance with the following process:

1.27.1 Formulate a complaint

The **investigator** will formulate a **formal complaint** by specifying in writing the rule or rules alleged to have been breached, the date and time the alleged breach took place and the key facts alleged to constitute the breach;

1.27.2 Complaint sent to the complainant and party in breach

The **investigator** will forward a copy of the **formal complaint** to each of the **Rulings Panel**, the **complainant**, the **participant** allegedly in breach, and any other **participant** that gave notice under rule 1.13 of being affected by the matter;

1.27.3 Investigator prepares report

The **investigator** will prepare a report as described in rule 1.28 and forward the report to the **Rulings Panel**; and

1.27.4 Panel to set hearing date

Upon receiving the report, the **Rulings Panel** will set a date for hearing the **formal complaint**, and will give to each of the **complainant** and the **participant** allegedly in breach at least 20 **business days** written notice of the place, date and time at which the **Rulings Panel** will hear the **formal complaint**. Every such hearing will be conducted in accordance with rule 5.

1.28 Matters to be contained in a report to the Rulings Panel

Every report prepared under rule 1.27.3 and sent to the **Rulings Panel** will specify or contain:

1.28.1 Rule breached

The rule allegedly breached;

1.28.2 Participant who committed the breach

The **participant** against whom the formal complaint is laid;

1.28.3 When breached

The date and time the breach allegedly occurred;

1.28.4 Relevant issues raised

The relevant issues raised by the **participant** alleged to be in breach in response to the allegations of breach;

1.28.5 Responses to relevant issues raised

The comments made by any other person in response to the relevant issues raised by the **participant** allegedly in breach;

1.28.6 Additional information

Any additional information which the **investigator** considers relevant to the decision of the **Rulings Panel** as to how the matter may be dealt with by the **Rulings Panel**;

1.28.7 Impact on other participants

The **investigator's** assessment of the impact of the conduct alleged to constitute the breach on the other **participants**;

1.28.8 Likelihood of recurrence

The **investigator's** assessment of the likelihood of the alleged breach recurring;

1.28.9 Similar situation

Details of any similar situations previously dealt with by the **Board** or the **Rulings Panel**, including any **settlement** approved by the **Board** under rule 1.17.1 in response to those situations; and

1.28.10 Correspondence

A copy of all correspondence with the **investigator** and **Board** relating to the alleged breach.

1.29 Indicative time frames for investigator

The **investigator** will use reasonable endeavours to give any notice in accordance with rule 1.11 and rule 1.13 within two **business days** of receiving or formulating an allegation (as the case may be), and to give any report under rule 1.27.3 within five **business days** of a decision that a complaint should be reported to the **Rulings Panel**.

1.30 Investigations into the actions of associated persons

Where the operation of the **rules** is, in the opinion of the **Board**, being prejudicially affected by the conduct of any person not associated with the **rules** and any **participant** is associated with or **related** to that person then:

1.30.1 Board will consider the matter

The **Board** will consider the matter; and

1.30.2 Board may call on the party to cease

If the **Board** finds its opinion to be substantiated, it may call upon the **participant** concerned to cause the conduct under consideration to cease, failing which it may suspend, in whole or in part, the rights of the **participant** under the **rules** until the conduct has ceased, but any such suspension will be without prejudice to any other action which may be taken by the **Board** or by the **Rulings Panel** under the **rules**.

2 Complaints about the Board

2.1 Any person may report a breach

When any person believes on reasonable grounds that the **Board** has breached the **rules**, then that person (the “**complainant**”) may notify the **Rulings Panel** within six months of the date of the alleged breach. Every such notice will be in writing and will specify the rule allegedly breached, the circumstances relating to the alleged breach and the date and time the alleged breach occurred.

2.2 Non-Participant complainant

Any **complainant** under rule 2.1 who is not a **participant** must agree in writing to submit to the exclusive jurisdiction of the **rules** and in particular of the **Rulings Panel**. The **complainant** must agree to be bound by any decision on any order of the **Rulings Panel** as if the person were a **participant** and to waive all rights and remedies in relation to the matter complained about except those provided under the **rules**.

2.3 Investigator to be appointed

Where the **Rulings Panel** receives notice of any allegation that the **Board** has breached the **rules**, it must immediately appoint a person whom it thinks has the requisite skills and experience (the “**Board investigator**”) to investigate the alleged breach.

2.4 Investigator may seek advice from other persons

In carrying out any investigation, any **Board investigator** may employ, or otherwise seek advice or assistance from any external auditor, technical experts or other persons as the **investigator** thinks fit.

2.5 Conflicts to be avoided

In appointing any **Board investigator** or other person under rule 2.3 or 2.4, the **Rulings Panel** and the **Board investigator** will ensure that every appointee is free of conflicts of interest in carrying out or assisting the investigation.

2.6 Investigator to keep information confidential

The **Rulings Panel** and the **Board investigator** will and will procure that and every person appointed under rule 2.4 will keep confidential all information provided or disclosed to it during the process of investigation except to the extent that disclosure is required to enable the **Board investigator** or other person to carry out its obligations and duties under the **rules**, or is required by a **regulatory authority**, or is otherwise compelled by law.

2.7 Board to co-operate with investigations

The **Board** will co-operate fully with any investigation carried out under this rule 2 by:

2.7.1 *By providing information*

providing within any reasonable time specified by the **Board investigator** or its agents, all information, papers and documents and recordings concerning the matter (subject always to any claim for legal professional privilege) concerning the matter which are in the possession or under the control of the **Board** and requested for the purpose of any investigation or inspection;

2.7.2 *By permitting access to staff*

permitting its officers or other employees to be interviewed (which interview may be recorded) and ensuring as far as possible that they are made available for interview and answer truthfully and fully (subject to any requirements of legal professional privilege) any questions put to them;

2.7.3 *By giving access to premises*

giving at all reasonable times full access to any premises where the **Board** carries on any **business** or maintains any records subject to adhering to any safety requirements that apply to visitors to those premises; and

2.7.4 *By giving other assistance*

rendering all such other assistance as may be reasonable and necessary to enable the matter to be fully investigated.

2.8 Investigator asks Board for response

The **Board investigator** appointed under rule 2.3 will ask the **Board** to respond to the allegations being investigated. Every such request will be in writing and will specify the **complainant**, the rule allegedly breached, the circumstances relating to the alleged breach and the time the alleged breach occurred.

2.9 Board must respond to allegations

Within 30 **business days** of receiving any request made under rule 2.8 (or such longer period as the **Board investigator** may stipulate in writing), the **Board** will respond in writing to the **Board investigator**.

2.10 Out of time

The **Board investigator** will conduct an investigation of the facts surrounding the allegations. During the course of every such investigation, the **Board investigator** will ensure that the **Board**, the **complainant** and all **participants** have a reasonable opportunity to review and comment on all material collected.

2.11 Decision following completion of investigation

2.12 As soon as any investigation has been completed to the satisfaction of the Board investigator, the Board investigator must report to the Rulings Panel with a recommendation on whether a formal complaint should be laid. Rulings Panel decides whether formal complaint to be laid

The **Rulings Panel** will decide whether:

2.12.1 Formal complaint should be laid

A **formal complaint** should be laid against the **Board** in which case it will direct the **Board investigator** to follow the process set out in rule 2.14.

2.12.2 Formal complaint need not be laid

No **formal complaint** need be laid, in which case the **Board investigator** will inform the **complainant** and the **Board** of the determination.

2.13 Frivolous and vexatious allegations

If the **Board Rulings Panel** determines under rule 2.12.2 that no **formal complaint** need be laid because the allegation of breach made was frivolous or vexatious, the **Rulings Panel** may order that the **complainant** pay the reasonable costs of the **Board investigator** and of the **Board** associated with the matter.

2.14 If complaint proceeds

Where a **formal complaint** is to be laid, the following process will apply:

2.14.1 Formulate a complaint

The **Board investigator** will formulate a **formal complaint** by specifying in writing the rule or rules alleged to have been breached, the date the alleged breach took place and the key facts alleged to constitute the breach;

2.14.2 Complaint sent to the complainant and Board

The **Board investigator** will forward a copy of the **formal complaint** to each of the **Rulings Panel**, the complainant and the **Board**;

2.14.3 Investigator prepares report

The **Board investigator** will prepare a report as described in rule 2.15 and forward the report to the **Rulings Panel**, the **complainant** and the **Board**; and

2.14.4 Panel to set hearing date

Upon receiving the report, the **Rulings Panel** will set a date for hearing the **formal complaint**, and will give to each of the **complainant** and the **Board** allegedly in breach at least 20 **business days** written notice of the place, date and time at which the **Rulings Panel** will hear the **formal complaint**. Every such hearing will be conducted in accordance with rule 5.

2.15 Matters to be contained in a report to the Rulings Panel

Every report prepared under rule 2.14.3 and sent to the **Rulings Panel** will specify or contain:

2.15.1 Rule breached

The rule allegedly breached;

2.15.2 When breached

The date and time the breach allegedly occurred;

2.15.3 Relevant issues raised

The relevant issues raised by the **Board** in response to the allegations of breach;

2.15.4 Responses to relevant issues raised

The comments made by any other person in response to the relevant issues raised by the **Board**;

2.15.5 Additional information

Any additional information which the **Board investigator** considers relevant to the decision of the **Rulings Panel** as to how the matter may be dealt with by the **Rulings Panel**;

2.15.6 Impact on other participants

The **Board investigator's** assessment of the impact of the conduct alleged to constitute the breach on the **participants**;

2.15.7 Likelihood of recurrence

The **Board investigator's** assessment of the likelihood of the alleged breach recurring;

2.15.8 Similar situation

Details of any similar situations previously dealt with by the **Rulings Panel**; and

2.15.9 Correspondence

A copy of all correspondence with the **Board investigator** relating to the alleged breach.

2.16 Indicative time frames for investigator

The **Board investigator** will use reasonable endeavours to contact the **Board** under rule 2.8 within two **business days** of receiving any allegation, and to give any report under rule 2.15 within five **business days** of a decision that a complaint should be reported to the **Rulings Panel**, but failure to comply with these timeframes will not constitute a breach of the **rules**.

3 A regime for dealing with undesirable situations

3.1 The occurrence of an undesirable situation or practice

If the **Board** suspects or anticipates the development or possible development of an **undesirable situation**, the **Board** will investigate the matter.

3.2 Meaning of “undesirable situation”

For the purposes of the **rules**, an “**undesirable situation**” means any contingency or event which threatens or may threaten **trading** on any market, where the consequences of strict enforcement of the **rules** would, or would be likely to, preclude the maintenance of orderly **trading** or proper settlement of **trades** and which in the reasonable opinion of the **Board** cannot satisfactorily be resolved by any other mechanism available under the **rules**. Without affecting the generality of the foregoing, an **undesirable situation** includes;

3.2.1 *Manipulation*

Manipulative or attempted manipulative **trading** activity;

3.2.2 *Unwarranted speculation*

Unwarranted speculation or an undesirable practice;

3.2.3 *Illegality*

Breach of any law; or

3.2.4 *Regulatory action threatening trading or the public interest*

Action or proposed action by a government, government instrumentality, futures exchange or stock exchange or any other body in New Zealand or elsewhere, or any exceptional or unforeseen circumstance, which is at variance with, or which threatens or may threaten, just and equitable principles of trading or the public interest.

3.3 Board may act if directed by a regulatory authority

In the event that any **regulatory authority** has given a direction to the **Board** in respect of any **undesirable situation** the **Board** may take whatever steps it considers necessary to enable compliance with the direction.

3.4 Actions the Board may take to correct an undesirable situation

If the **Board** finds that an **undesirable situation** is developing or has developed, it may take whatever steps it considers appropriate to correct the situation and may give directions to any **participant** accordingly, who will comply with those directions

forthwith. Without affecting the generality of the foregoing, the steps that the **Board** may take include any one or more of the following:

3.4.1 *Suspend, limit or curtail activity*

Suspending or limiting or curtailing any activity generally, or on any market that is within the scope of the **rules**, for any one or more months, or for a specified period;

3.4.2 *Defer completion*

Deferring completion of **trades** for a specified period;

3.4.3 *Direct trades be closed out*

Directing that any **trades** be closed out or settled at a specified price;

3.4.4 *Direct participants to act*

Giving directions to any **participant** to act in such manner as will in its opinion correct or assist in overcoming the **undesirable situation**.

3.4.5 *Notify a regulatory authority*

Notifying any **regulatory authority**.

3.4.6 *Change the rules*

Changing any rule by a vote of the **Board** under rule 3.5.

3.5 When rules are amended

Where the **Board** determines under rule 3.4.6 that a **rule change** is required to resolve an **undesirable situation**, the **Board** may vote to approve the **rule change**. Any such **rule change** will be effective immediately upon the affirmative vote of a majority of the **directors**, but is subject to the provisions of rule 3.6.

3.6 Rule change lapses when situation resolved

Any **rule change** made under rule 3.5 will lapse when the **Board** resolves that the **undesirable situation** that led to the **rule change** has ceased to exist.

3.7 Board to consult with the system operator

Where the **Board** is considering taking any action pursuant to rule 3.4 to correct an **undesirable situation**, then, in circumstances where it is possible that such action may have an effect on system security, the **Board** will consult with the **system operator**. The **system operator** will maintain such procedures as are necessary to

be able to immediately respond to the **Board** should the **Board** seek its advice pursuant to this rule.

3.8 Board will consult with participants

Where the **Board** finds that an **undesirable situation** is developing or has developed it will immediately notify all **participants** of its findings and of any actions that the **Board** intends to take or has taken to rectify the **undesirable situation** and will, unless it is impractical to do so, consult with affected **participants** before taking any such action.

3.9 Members may ratify undesirable situations

The **Board** will attempt to resolve every **undesirable situation** and restore the normal operation of the **rules** as soon as possible. Where the **Board** considers that any **undesirable situation** remains unresolved for a period of 10 **business days** or more it will cause a vote of confidence to be taken as to the steps the **Board** has taken and proposes to take to restore the normal operation of the **rules**.

3.10 If vote passed, Board must reassess

In any vote conducted pursuant to rule 3.9 voting rights will be determined as if it were to change the **rules** in part A as set out in schedule A6. If any such vote of confidence is not passed, the **Board** must urgently reconsider whether an **undesirable situation** exists and if so, its strategy for dealing with the **undesirable situation**.

3.11 Review

3.11.1 Who may apply for review

Any **participant** who is dissatisfied with the whole or any part of any decision or direction or finding or action of the **Board** made under this rule 3 may apply to the **Rulings Panel** for a review of the decision, direction, finding or action as the case may be.

3.11.2 Time for lodging an application

Every application under rule 3.11.1 must be brought within 10 **business days** after the decision, direction, finding or action for which a review is sought was communicated to the applicant.

4 The Rulings Panel

4.1 There will be a Rulings Panel

The **Board** will appoint a standing committee known as the **Rulings Panel**. Each **participant** submits to the jurisdiction of the **Rulings Panel** in respect of the matters described in the **rules**. No **participant** will seek to enforce any duty or obligation arising under the **rules** in any court of law until it has exhausted its remedies under the **rules**.

4.2 Constitution of the Rulings Panel

The **Board** will by written notice appoint five persons with the characteristics described in rule 4.5 to act as the **Rulings Panel**. The appointments made under this rule will be effective from the **business day** following the date of the applicable written notice. Except as provided in rule 4.5, each person appointed will serve for a term of up to five years at which time the **Board** will appoint a new member of the **Rulings Panel**. No member of the **Rulings Panel** who has served a total term of five years may be reappointed within five years of ceasing to be a member of the **Rulings Panel**. No vacancy in, or failure to appoint a member of, the **Rulings Panel** will affect the ability of the **Rulings Panel** to act.

4.3 Chairman of the Panel is the person appointed by the Board

The **Board** will by written notice appoint one of the members of the **Rulings Panel** to act as chairman of the **Rulings Panel** for a term of up to five years, at which time the **Board** will appoint a new chairman.

4.4 Special provisions relating to initial appointments

The initial appointments to the **Rulings Panel** will be as follows:

4.4.1 *Chairman*

The chairman will be appointed for a term of up to five years; and

4.4.2 *Other members*

Each other member of the **Rulings Panel** will be appointed for a term of up to five years except that no member may be appointed for the same term of years as any other member.

4.5 Characteristics of the Rulings Panel

The **Rulings Panel** will be a body whose decisions are, or are likely to be, respected by **participants**. The **Rulings Panel** must be **independent** and multidisciplinary, must have the requisite skills and experience to carry out the functions to be performed by the **Rulings Panel** under the **rules**, and must act impartially in carrying out these functions. Notwithstanding rules 4.2, 4.3 and 4.4, the **Board** must remove

any member of the **Rulings Panel** in the event of that member's criminal conviction, serious misconduct, incapacity or if the member ceases to be **independent**. If the **Board** terminates any appointment under this rule, it will state its reasons for doing so in writing and will appoint another member to the **Rulings Panel** as soon as possible.

4.6 Proceedings of the Rulings Panel

A quorum for **Rulings Panel** meetings shall be more than 50% of the total number of members of the **Rulings Panel** at the time of the meeting. No business may be transacted at a meeting of the **Rulings Panel** if a quorum is not present. The proceedings of the **Rulings Panel** must be transparent and in accordance with the principles of natural justice.

4.7 Rulings Panel may delegate to subcommittees

The **Rulings Panel** may delegate any of its powers to a subcommittee consisting of such member or members of its body as the **Rulings Panel** thinks fit and may, from time to time, revoke any such delegation. Any subcommittee so formed shall, in exercise of the powers delegated to it, conform to any regulation that may, from time to time, be imposed upon it by the chairman of the **Rulings Panel**.

4.8 Recovery of costs of the Rulings Panel

The **Board** will pay the costs of the **Rulings Panel** (other than those costs recovered under rule 6.1.9) and will recover those costs from **members**.

4.9 Functions of the Rulings Panel

The functions of the **Rulings Panel** are to:

4.9.1 *Conduct Hearings*

Conduct hearings on matters referred to it by the **Board** or any **investigator** or **Board investigator** and to make determinations on any allegations that any **participant** or the **Board** has committed a breach of the **rules**;

4.9.2 *Recommend rule changes*

Propose, under rule 1.1 of section IV, to the **Board** any **rule change** that the **Rulings Panel** considers necessary or desirable;

4.9.3 *Review decisions of the Board*

Hear any request made under rule 1.3.3 of section IV for the **Rulings Panel** to review a decision by the **Board** to reject a **proposal** on the grounds that it is trivial or vexatious;

4.9.4 Consider appeals against rule changes

Consider any appeal against any proposed **rule changes** in accordance with rule 3 of section IV;

4.9.5 Determine certain disputes

Determine any dispute relating to any contract for ancillary services that the parties to the contract may refer to the **Rulings Panel** under rule 7;

4.9.6 Review certain decisions of the Board

Consider any application made under rule 3.11 for the **Rulings Panel** to review any decision, direction, finding or action of the **Board** in relation to the **undesirable situations** regime; and

4.9.7 Review certain decisions of the system operator

Consider any application made under rule 8.4 of section III of part C or rule 4.8 of section IV of part C for the **Rulings Panel** to review any decision of the **system operator**.

4.9.8 Exercise other powers

Exercise any other powers conferred on the **Rulings Panel** by the **rules**.

4.10 Panel may make rulings on the interpretation of the rules

The **Rulings Panel** may in its discretion, upon application by any person, make a ruling as to the interpretation or application of the **rules**. The **Rulings Panel** will notify all **participants** of every such application within five **business days** of receiving it. Every **participant** is entitled to be heard and to be represented on any such matter and every ruling will be published and will be binding upon all **participants** and persons claiming through or under those **participants**.

4.11 Panel to keep information confidential

The **Rulings Panel** will keep confidential all information provided or disclosed to it under the **rules** except to the extent that disclosure is required to enable the **Rulings Panel** to carry out its obligations and duties under the **rules**, or is required by a **regulatory authority**, or is otherwise compelled by law.

4.12 Panel may prohibit publication of information

On the application of any **participant** or on its own application, the **Rulings Panel** may prohibit the publication or communication of any information or document which is furnished or given or tendered to, or obtained by, the **Rulings Panel** in the performance of its obligations and duties under the **rules**. The **Rulings Panel** may make this prohibition if it considers such information or document is confidential, commercially sensitive or otherwise unsuited to publication or communication, except to the extent that disclosure is required to enable the **Rulings Panel** to carry out its

obligations under the **rules**, or is required by a **regulatory authority** or is compelled by law.

4.13 Liability of Rulings Panel members

No member of the **Rulings Panel** will be liable to any **participant** in contract, tort or otherwise for any action or omission in relation to the exercise or purported exercise in good faith of any of its powers, authorities, discretions or obligations under the **rules**. Nothing in this rule 4.13 limits the liability of any member of the **Rulings Panel** for any act or omission that is fraudulent or in wilful default.

4.14 Panel members to be indemnified

Members indemnify the members of the **Rulings Panel** against all costs, claims, damages, losses, liabilities and expenses (including legal expenses on a solicitor and client basis) arising directly or indirectly from any act or omission (but excluding any act or omission that is fraudulent or in wilful default) of any member of the **Rulings Panel** or of their officers, employees or agents in relation to the exercise or purported exercise in good faith of any of its powers, authorities, discretions or obligations under the **rules**.

4.15 Agreement does not amount to arbitration

The agreement by the **participants** to refer matters arising under the **rules** to the **Rulings Panel** is not intended to amount to an arbitration agreement under the Arbitration Act 1996 and it is the intention of the **participants** and other persons who agree to be bound by the **rules** that the Arbitration Act 1996 will be of no effect with respect to the internal dispute resolution methods contained in the **rules**.

4.16 Rulings Panel reports monthly on costs

At the beginning of each year the chairman of the **Board** and the chairman of the **Rulings Panel** will agree on a budget for the expenses of anticipated by the **Rulings Panel**, and on any performance objectives for the next 12 months. Each month the **Rulings Panel** will provide the **Board** with a written report on actual costs incurred during the month compared with budgeted costs. If the **Rulings Panel** anticipates incurring expenditure in excess of any budgeted amount it must notify the **Board** and apply for a variation to the agreed budget;

4.17 Rulings Panel reports quarterly on other matters

At the end of each quarter the **Rulings Panel** must provide the **Board** with:

4.17.1 Decisions

A summary of the decisions made by the **Rulings Panel** during that quarter including details of all awards of costs and compensation; and

4.17.2 Workload

A summary of the current workload of the **Rulings Panel**, ability to meet performance objectives, and resources; and

4.17.3 Non-compliance with rules

Information about breaches of the rules and alleged breaches of the rules in part C or part G during that quarter that may affect grid security and **common quality**; and

4.17.4 Other concerns

Any other matters of concern.

4.18 Rulings Panel reports annually

At the end of each **financial year** the **Rulings Panel** must provide the **Board** with an annual report:

4.18.1 Budget

Summarising the performance of the **Rulings Panel** against budget for the year; and

4.18.2 Decisions

Summarising the decisions of the **Rulings Panel** during the year; and

4.18.3 Performance

Summarising the performance of the **Rulings Panel** during the year against agreed performance objectives; and

4.18.4 Rules

Commenting on any area of the **rules** where the **Rulings Panel** considers that a **rule change** is required.

5 Hearings of the Rulings Panel

5.1 Panel to adopt appropriate procedure for hearing

5.1.1 *Panel may regulate own procedures*

The **Rulings Panel** may regulate its own procedures from time to time, except as otherwise provided in the **rules**, and subject to the requirements of natural justice. The **Rulings Panel** will publish its procedures and make them available for inspection by any **participant** upon request.

5.1.2 *Panel will conduct hearings*

Where the **Rulings Panel** considers that it is appropriate for any **participant** to be given an opportunity to be heard, or where any **participant** requests a hearing in respect of any matter being investigated by the **Rulings Panel**, the **Rulings Panel** will set that matter down for a hearing. Hearings will be in private, unless the **Rulings Panel** directs otherwise, and will be recorded verbatim.

5.1.3 *Pre-hearing statements and materials*

Where a matter is set down for a hearing, the **Board** will, ensure that not less than 10 **business days** before the hearing, the **complainant**, the **investigator** and any other **participant** that has declared itself to have an interest in the matter have been provided with a statement of the matter under consideration, and a copy of all relevant material collected or prepared during the course of the investigation of the matter up to the time such information is provided.

5.1.4 *Public hearings may be opposed*

Where the **Rulings Panel** considers that a hearing should be public it will notify the **participants** of its decision and the grounds for that decision. If a **participant** disagrees with this decision, it may make a written submission to the panel setting out the reasons for its disagreement, within five **business days** of receiving the notification referred to in this rule. The **Rulings Panel** will consider the submission and then notify the **participants** of its decision and the grounds for that decision.

5.2 Urgent hearings

5.2.1 *Undesirable situations*

Where the **Rulings Panel** is asked to hear any application to review any decision or direction or finding or action of the **Board** under rule 3.11, it will

arrange for the hearing to take place as soon as practicable after the application for the hearing is made.

5.2.2 Other matters

Where the **Rulings Panel** considers that the subject matter of a hearing involves a significant area of dispute, or a matter of urgency it will arrange for the hearing to take place as soon as practicable after the application for the hearing is made.

5.3 Panel hearings not subject to strict evidentiary requirements

The **Rulings Panel**, in carrying out any hearing, will not be bound by any enactment or rule of law relating to admissibility of evidence before a court of law.

5.4 Rights of persons who are the subject of a Panel hearing

Subject to rule 5.1, any **participant** will, at any hearing of the **Rulings Panel**, be:

5.4.1 Entitled to be represented

Entitled to be represented;

5.4.2 Given opportunity to make representation

Given a reasonable opportunity to make written and oral representations;

5.4.3 Entitled to call witnesses

Entitled to call witnesses and to cross-examine any witness called against it;

5.4.4 Entitled to plea in mitigation

Entitled to make a plea to the **Rulings Panel** in mitigation of penalties; and

5.4.5 Have another person present

Entitled to have any other **participant**, present to give evidence. In such a case, the **Rulings Panel** will order the attendance of that person and that person will attend to give evidence as required.

5.5 Panel may request further information

The **Rulings Panel** may request the **investigator** to obtain any further information that the **Rulings Panel** requests if the **Rulings Panel** considers that, in relation to any matter before it, the **Rulings Panel** does not have sufficient information for it to determine what action to take under rule 6.1. **Participants** will provide any information reasonably requested by the **Rulings Panel** or the **investigator** under this rule 5.5.

5.6 Rulings Panel may seek advice

In carrying out its functions the **Rulings Panel** may employ or otherwise seek advice or assistance from any external auditor, technical expert or other person, as the **Rulings Panel** sees fit.

5.7 Participant may make written submissions

Any **participant** at a hearing before the **Rulings Panel** may make written submissions to the **Rulings Panel** on the subject of any penalty or order the **Rulings Panel** may make in relation to that matter. Any submission under this rule 5.7 must be made no later than five **business days** before the date set down for the hearing by the **Rulings Panel**.

6 Decisions of the Rulings Panel

6.1 Panel may make certain orders

The **Rulings Panel** may, after hearing any matter (except an allegation that the **Board** has breached the **rules**):

6.1.1 *No action*

Decide that no action should be taken;

6.1.2 *Private warning*

Issue a private warning or reprimand;

6.1.3 *Public warning*

Notwithstanding rule 4.12, issue a public warning or reprimand;

6.1.4 *Record keeping or reporting*

Impose additional or more stringent record keeping or reporting requirements under or in connection with any rule;

6.1.5 *Termination or suspension*

Make a termination order or suspension order under rule 6.16 or rule 6.17;

6.1.6 *Fine*

Impose a fine under rule 6.2;

6.1.7 *Compensation*

6.1.7.1 Orders that may be made

Order that any **participant** pay any sum by way of compensation to any other person. All such compensation ordered will be paid by that **participant** to the **Board**, who will forward it to the appropriate person under rule 6.11;

6.1.7.2 Limits on compensation orders

Notwithstanding the provisions of rule 6.1.7.1, the **Rulings Panel** shall not order compensation to be paid to any other person in respect of any breach of the **rules** by a **participant**, where that breach is related to, or connected with, the inputs to or the process

of determining **final prices** and/or compensation sought would but for this rule be determined by reference to recalculated **final prices**.

6.1.8 *Require Compliance*

Order any **participant** that is found not to be complying with the **rules** to take any action that is necessary to restore it to a position of compliance.

6.1.9 *Costs*

Make orders regarding the reasonable costs of any investigations and/or proceedings;

6.1.10 *Rule change*

Propose a **rule change** pursuant to rule 1.1 of section IV;

6.1.11 *Review of a decision*

Where the matter is a review of a decision of the **Board** to reject a **proposal** under rule 1.3.3.1 of section IV, require the **Board** to consider the **proposal**.

6.2 *Rulings Panel may impose fine*

Subject to rules 6.3, 6.4, 6.5 and 6.6, the **Rulings Panel** may impose a fine on any **participant** in any case where that **participant** has contravened any provision of the **rules**. When imposing a fine, the **Rulings Panel** will consider and take account of the level of fines it has imposed in any comparable situations, and will seek to impose a fine that is commensurate the seriousness of the case. In making that assessment, the **Rulings Panel** will have regard to the following matters:

6.2.1 *Severity*

The severity of the breach;

6.2.2 *Impact on other participants*

The impact of the breach on other **participants**;

6.2.3 *Deliberate or otherwise*

The extent to which the breach was inadvertent, negligent, deliberate or otherwise;

6.2.4 *Circumstances*

The circumstances in which the breach occurred;

6.2.5 Previous breach

Any previous breach of the **rules** by the **participant**;

6.2.6 Disclosure to Rulings Panel

Whether the **participant** disclosed the matter to the **Board**;

6.2.7 Period of time unresolved

The length of time the breach remained unresolved;

6.2.8 Actions taken

The **participant's** actions on learning of the breach;

6.2.9 Benefit

Any benefit that the **participant** obtained or expected to obtain as a result of the breach;

6.2.10 Other matters

Such other matters as the **Rulings Panel** thinks fit.

6.3 Rulings Panel may not fine Transpower for metering breaches

The **Rulings Panel** may not impose any fine on **Transpower** for any breach of any obligation that relates to **metering standards** or to the provision of metering information unless the performance of the obligation that has been breached is a requirement of a **service provider** contract for which **Transpower** is entitled to be paid.

6.4 Liability of the system operator in relation to security issues

When the **Rulings Panel** is considering the liability of the **system operator** or the imposition of any penalty against the **system operator** under rule 6.1 or 6.2, resulting from a breach of the **rules** including any order for the payment of fines, compensation or costs, the **Rulings Panel**:

6.4.1 Arrangements the Board has made with the system operator

Must take into account arrangements the **Board** has made with the **system operator**, including the **system operator's service provider** contract (and in particular the provisions relating to the liability of the **system operator** under such deed), the **policy statement**, and the **procurement plan**;

6.4.2 Impact of acts or omissions on the system operator

Must take into account the extent to which the acts or omissions of other persons have impacted on the **system operator's** ability to comply with the **rules**; and

6.4.3 Complexity of real time co-ordination of the rules system

Must take into account the fact that the real time co-ordination of the power system involves a number of complex judgements and inter-related incidents;

6.4.4 Exclude policies under the policy statement

May not impose any penalty against the **system operator** where the matter under consideration involves the adherence by the **system operator** to any of the policies under the **policy statement**.

6.5 Limitation on liability in relation to metering standards

If any **participant** is negligent and breaches any rule relating to metering standards or metering information (including failing to provide accurate information), it will be liable to any other **participant** who suffers financial loss as a result if that loss was reasonably foreseeable, to the extent that it was foreseeable. However, the amount of liability for any one event (including for any fine imposed by the **Rulings Panel** in relation to that event) will not exceed \$200,000.00. Where more than one **participant** suffers financial loss for which another person is liable under this rule and the total loss suffered by all **participants** exceeds \$200,000.00, then the \$200,000 will be allocated pro rata among the persons suffering loss in the proportion that their individual loss bears to the total loss. Where loss is caused by the wilful misconduct of any **participant**, that **participant** will be liable without limitation for the total loss arising from such conduct.

6.6 Limitation of liability of assets owners

Except in the case of any fine imposed under rule 6.1.6, an **asset owner's** total liability to other **participants** in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss or damage of whatever nature arising in connection with Part C (including without limitation, for direct physical loss, or indirect, consequential, special or economic loss or damage), shall be limited to the sum of \$5 million for any event or series of related events, with a maximum total liability of \$15 million in any period of 12 months, irrespective of the number of events or related series of events. Any question as to the apportionment of damages between two or more **participants** shall be determined by the **Rulings Panel**.

6.7 Board to review rules 6.3 and 6.5

Within one year of the date that the rules in part A commence, the **Board** must review the application of rule 6.3 and rule 6.5 to **Transpower**, and determine whether **Transpower's** obligation in relation to the provision of metering information and adherence to metering standards might be more appropriately addressed in a **service provider** contract. If the **Board** determines, at the conclusion of that review that any

rule change is indicated it will put forward a **rule change** proposal in accordance with rule 1.1 of section IV.

6.8 Rulings Panel decisions

The **Rulings Panel** will use reasonable endeavours to make its final decision on each matter under its consideration within 40 **business days** of the date that it has received all written and oral submissions on the matter. As soon as practicable after it has made any final decision the **Rulings Panel** will notify the decision to the **Board**.

6.9 Decisions to be published

The **Rulings Panel** will require the **Board** to publish the terms of every decision made by it under this rule 6, together with the reasons for its decision, on the **Board's** website and within 10 **business days** of receiving the decision from the **Rulings Panel**, provided that the **Rulings Panel** may decide not to require publication of any part, or all, of any such decision.

6.10 Review by Rulings Panel

6.10.1 Decisions

Where the **Rulings Panel** hears any application to review a decision or direction or finding or action of the **Board** it may:

6.10.1.1 Confirm the decision

Confirm the decision, direction, finding or action as the case may require; or

6.10.1.2 Refer the matter back to the Board

Direct the **Board** to reconsider the whole or any part of the matter.

6.10.2 Scope of Rulings Panel review is limited

Nothing in this rule 6.10 gives the **Rulings Panel** power to review any part of any decision, direction, finding or action of the **Board** other than the part appealed against.

6.11 Party to receive compensation

The **Board** will pay the amount of compensation due to any person (pursuant to an order of the **Rulings Panel** made under rule 6.1.7) upon receipt of payment of that compensation by the **participant** that is liable to pay that compensation.

6.12 The Rulings Panel's decision is conclusive and binding

The findings of, and any action taken by, the **Rulings Panel** will be binding under the **rules** upon all **participants** and upon any person which alleged the misconduct or

breach of the **rules** which led to the finding or action. Any **participant** affected by a decision of the **Rulings Panel** may appeal that decision to the High Court on the grounds of lack of jurisdiction.

6.13 Obligations of parties

Every **participant** will comply with every order relating to it, including any direction or arrangement made by the **Rulings Panel** under the **rules** for the purpose of giving effect to the order.

6.14 Party will comply with action or make payment

Every **participant** will comply with any action, or make any payment, directed by the **Rulings Panel** within 10 **business days** of receiving notice of the decision, or such longer period as the **Rulings Panel** will allow.

6.15 Sums to be paid by party will be debt due

Any sum due to be paid by the **participant** under the **rules** will be a debt due to the **Board** and any failure to pay such sum as directed will be a breach of the **rules**. Any such sum that is not paid when due will bear interest at such rate as the **Rulings Panel** will direct.

6.16 Powers of termination and suspension

The **Rulings Panel** may at any time terminate or suspend all or any of a **participant's** rights under the **rules** by making a termination order or a suspension order in any case where, in the opinion of the **Rulings Panel**, that **participant**:

6.16.1 *Guilty of misconduct*

Is guilty of misconduct in carrying on its **business**; or

6.16.2 *Contravened the rules*

Has contravened any provision of the **rules**, or the applicable rules of any other exchange or **regulatory authority**; or

6.16.3 *Provided false information*

Has provided the **Board** or the **Rulings Panel**, or any **regulatory authority** with false, inaccurate or misleading information in purported compliance with any requirement of the **rules**; or

6.16.4 *Failed to comply with an order*

Has failed to abide by any order of the **Board** or **Rulings Panel**.

6.17 Suspension or termination for the protection of others

Even where none of the circumstances described in rule 6.15 applies, the **Rulings Panel** may take termination or suspension action as described in rule 6.16 in respect of any **generator** or **purchaser** where, in the reasonable opinion of the **Rulings Panel**, it is appropriate for the protection of other **participants** or members of the public.

6.18 Committee may modify a suspension order

The **Rulings Panel** may at any time extend, suspend or revoke or modify any conditions of any suspension order made by the **Rulings Panel**, or any suspension arising automatically under the **rules**.

6.19 Board to use fines to defray expenses

The **Board** will retain all fines paid in an interest bearing bank account and may utilise any such amount at any time at its absolute discretion to defray the costs of administration, including the costs of ensuring appropriate consumer representation on **working groups**.

7 Rulings Panel may determine disputes on ancillary service procurement contracts

7.1 Contracts must be part of security and quality framework

The parties to any contract for the provision of **ancillary services** who are in dispute as to any term of that contract and who are unable to resolve that dispute may apply to the **Rulings Panel** to determine the dispute for them.

7.2 Parties must agree to the determination by the Rulings Panel

Every application under rule 7.1 must be in writing, setting out the nature of the dispute and be signed by all the parties to the contract that is disputed.

7.3 Parties must agree to be bound by the rules

If any person who is a party to a disputed contract is not a **participant** then that person must agree in writing to submit to the jurisdiction of the **rules** and in particular to the **Rulings Panel**, and to be bound by any decision of the **Rulings Panel** including any order that the **Rulings Panel** may make against that person as if it was a **participant**.

7.4 Selection of process

The parties to the contract will agree the form of dispute resolution to be utilised or in the absence of agreement the **Rulings Panel** will determine the form of dispute resolution.

7.5 Rulings Panel notifies hearing date

The **Rulings Panel** will notify the parties to the dispute of the dates, times and places at which the dispute resolution process will take place, having regard to the urgency of the matter and the form of dispute resolution process selected under rule 7.6.

7.6 Panel to adopt appropriate procedure for hearings

The **Rulings Panel** may regulate its own procedures in relation to the hearing of disputes, subject to the requirements of natural justice.

7.7 Panel hearings not subject to strict evidentiary requirements

The **Rulings Panel**, in conducting any hearing, will not be bound by any enactment or rule of law relating to admissibility of evidence before a court of law. The **Panel** may do whatever is reasonably necessary and permitted by law to enable the fair, effective and expeditious resolution of any matter before it.

7.8 Meetings and documents

The **Rulings Panel** may meet separately or jointly, or both, with the parties to any dispute. The **Rulings Panel** may require parties to exchange submissions, documents and information.

7.9 Legal representation only if necessary

The **Rulings Panel** may permit the parties to a dispute to be represented by legal counsel if it considers it necessary to meet the requirements of natural justice or for any other reason.

7.10 Completion of the process

The **Rulings Panel** will ensure that the dispute resolution process that it selects is completed within **25 business days** or within such longer period as the parties agree.

7.11 Determinations the Rulings Panel may make

The **Rulings Panel** may make any determination or award in respect of a dispute as the **Rulings Panel** determines is just and reasonable in the circumstances, including:

7.11.1 Direction to act

A direction that one or more parties to the dispute take such action, including the payment of money to any other party, or refrain from taking such action as the **Rulings Panel** prescribes;

7.11.2 Award compensation

Assessing damages against any party and awarding compensation to be paid to any party; and

7.11.3 Other

Make any other determination it thinks fit.

7.12 Rule breaches referred to the Board

Where the **Rulings Panel** finds that during the course of any dispute resolution process that there has been a breach of the **rules** the **Rulings Panel** will report that finding to the **Board**.

7.13 Monies payable under the rules

Where the **Rulings Panel** finds or the parties agree during the course of any dispute resolution process that monies are due and payable under the **rules**, that will create an obligation to pay the amount agreed or determined which will be enforceable under the **rules**.

7.14 Costs

7.14.1 *Own costs*

Each party to a dispute will be responsible for its own costs and legal expenses;

7.14.2 *Costs of the process*

The parties will share equally all other costs and expenses associated with the dispute resolution process, including the costs of the **Rulings Panel**.

7.14.3 *Rulings Panel may make costs allocation*

The **Rulings Panel** may allocate the costs referred to in rule 7.14.2 for payment by one or more parties as the **Panel** determines is just and reasonable.

VI Service providers

1 Board appoints service providers

The **Board** will appoint, to the extent set out more specifically in the **rules**, the following **service providers**:

1.1 System operator

A system operator;

1.2 Registry

A registry;

1.3 Reconciliation manager

A reconciliation manager;

1.4 Pricing manager

A pricing manager;

1.5 Clearing manager

A clearing manager;

1.6 Market administrator

A market administrator; and

1.7 Any other person appointed as service provider

Any other person identified by the **Board** as necessary to provide services to the **Board** as a **service provider** to assist it in carrying out any of its duties.

2 Appointment process

2.1 The Board may appoint an agent

Subject to rule 2 of section II of part I, if for any reason there is a need to appoint or reappoint, or to renegotiate contractual terms with, any **service provider**, then the **Board** may appoint one or more **independent** persons, to be called the **contract agent**, with expertise relevant to the appointment of the **service provider**. Neither the **Board** nor any **director** may act as a **contract agent**.

2.2 Nature of contract agent's mandate

The **contract agent** will agree with the **Board** upon the objectives of the negotiations and the nature of the mandate of the **contract agent**. If there is a need to appoint or reappoint any **service provider**. The **contract agent** will determine a selection process appropriate for the **service provider** and refer it to the **Board** for approval. If the **Board** does not approve the selection process, the **Board** shall be entitled to appoint another **contract agent** for this purpose.

2.3 Contract agent to notify Board of its findings

If there is a need to appoint or reappoint any **service provider** then once the **contract agent** has carried out the approved selection process, it will report to the **Board** with a recommendation as to the appointment of a **service provider** and the contractual terms of appointment agreed between the **contract agent** and the **service provider**. Where the **contract agent** carries out a renegotiation it will report to the **Board** with a recommendation as to new contractual terms.

2.4 Board to consider contract agent's report

The **Board** will consider the report of the **contract agent** and will determine whether to recommend the appointment and/or the contractual terms agreed between the **contract agent** and the **service provider**.

2.5 Board may accept or reject the report

Once the **Board** has completed its consideration of the report of the **contract agent**, it will either:

2.5.1 *Approve the report*

Approve the terms of appointment agreed between the **contract agent** and the **service provider** or

2.5.2 *Reject the report*

Reject the recommendation and contract terms and notify the **contract agent** that the recommendation has been rejected. If this occurs then the process

set out in rules 2.4 and this rule will be repeated until the **Board** approves the report.

2.6 Approval of service provider contracts

If the **Board** approves any report and contract terms under rule 2.5.1, then:

2.6.1 *Service provider and Board to execute a contract*

The **service provider** and the **Board** may then execute a contract in a form acceptable to the **Board** which contains the terms and conditions of the appointment or variation to the appointment; and

2.6.2 *Service provider contract becomes a schedule to the rules*

Every **service provider contract** executed in accordance with rule 2.6.1 will become a schedule to and form part of the **rules** and accordingly any breach of any **service provider contract** will constitute a breach of the **rules**. For the avoidance of doubt every **service provider contract** will be a schedule to part A. If the terms of any **service provider contract** conflict with any rule then the terms of the contract will prevail.

2.7 When an appointment becomes effective

An appointment of a **service provider** which is approved pursuant to rule 2.5.1 will be effective from the date that the contract appointing the **service provider** is executed, unless the contract states otherwise.

2.8 Contract with the system operator

2.8.1 *Transpower is the initial system operator*

The initial **system operator** will be **Transpower**.

2.8.2 *Subsequent system operator*

Following the expiry of the contract appointing **Transpower** as the initial **system operator** every subsequent appointment of a **system operator** will be made in accordance with this rule 2.

2.9 The contract between the system operator and the members

The **Board** will negotiate with the **system operator** for the **system operator** to enter into the **system operator** contract and any related documents that may only be varied with the agreement of the **system operator** and that:

2.9.1 *Set out the role of the system operator and duration of that role*

Set out **system operator's** role and the duration of that role;

2.9.2 Other terms of the appointment

Record any rights and obligations of the **system operator** not already specified in the **rules**; and

3 Board to monitor system operator

3.1 Board to monitor system operator

The **Board** will monitor the performance of the **system operator** on behalf of all **members**. In monitoring the performance of the **system operator**, the **Board** will take into account:

3.1.1 *Terms of the system operator deed*

Terms of the **system operator** contract;

3.1.2 *System operator reports*

Reports from the **system operator** to the **Board**;

3.1.3 *System operator performance*

The performance of the **system operator** over time in meeting the **PPOs**;

3.1.4 *System operator compliance*

The compliance of the **system operator** with the **rules**;

3.1.5 *Impact of acts or omissions on the system operator performance*

The extent to which the acts or omissions of other persons have impacted on the performance of the **system operator** and the nature of the task being monitored;

3.1.6 *Reports and complaints*

Reports or complaints from any person;

3.1.7 *Complexity of real time co-ordination of the power system*

The fact that the real time co-ordination of the power system involves a number of complex judgements and inter-related incidents;

3.1.8 *Disparity of information*

Any disparity of information between the **Board** and the **system operator**;
and

3.1.9 Other matters

Any other matter the **Board** considers relevant to assess the **system operator's** performance.

3.2 Board to publish system operator reports

The **Board** will **publish** all reports received from the **system operator**.

3.3 Annual review

The **Board** will undertake an annual review of the **system operator's** performance and will **publish** a report at the completion of every such review.

4 Service provider reports

4.1 Internal review to be carried out by service providers

Each **service provider** will conduct on a monthly basis an internal review of its performance. This review will concentrate on the **service provider's** compliance with its obligations under the **rules** and the operation of the **rules**.

4.2 Service providers to report to Board

Each **service provider** will, within ten **business days** of the end of each calendar month, provide a written report to the **Board** on the results of the review carried out under rule 4.1. This report will contain details of:

4.2.1 Failure to comply

Any circumstances identified by the **service provider** where it has failed to comply with its obligations under the **rules**; and

4.2.2 Rule change indicated

Any event or series of events which in the **service provider's** view highlight any area where a **rule change** may need to be considered.

5 Review of service providers

5.1 The Board

At the end of each year, the **Board** may review the manner in which each **service provider** has performed its respective duties and obligations under the **rules**.

5.2 Performance standards to be agreed

For the purpose of each review, the **Board** and the relevant **service provider** will at the beginning of each year seek to agree on a set of performance standards with which that **service provider** will endeavour to comply.

VII Information disclosure

1 Availability of information

1.1 Participants must make information available

Except as expressly provided in the **rules** every **participant** will make all information that is supplied to them by any **participant** pursuant to the **rules**, available to any other **participants** on request.

1.2 Circumstances where information may be withheld

Rule 1.1 will not apply to information provided by a **participant** where:

1.2.1 *Request to withhold*

The **participant** who supplied that information advises the **participant** who receives it, at the time the information is sent, that the information is confidential and requests, and the other **participant** agrees, to withhold the information; or

1.2.2 *Disclosure prohibited*

The **participant** is expressly required to keep the information confidential by the **rules** or by a **regulatory authority** or by law.

2 Prohibition on disclosure of misleading or deceptive information

Participants will not disclose to any person, either pursuant to the **rules** or for any other reason whatsoever, any information that, at the time the information was disclosed, is misleading or deceptive or is likely to mislead or deceive when taken in the context of activities pursuant to the **rules**. In assessing whether information, at the time of disclosure, is misleading or deceptive or is likely to mislead or deceive, **participants** will act reasonably and prudently.

3 Correction of incorrect information

In any circumstances where a **participant** discovers that any information previously disclosed by it to any person, pursuant to the **rules** was incorrect, that **participant** will immediately correct that information and disclose the corrected information to the person which originally received the incorrect information.

4 Proof of commercial compromise or commercial disadvantage

Where any **generator, purchaser or service provider** claims that pursuant to rule 5.1.1, it had withheld **relevant information** because the **publication** of that information would have commercially disadvantaged that **generator, purchaser or service provider** in a material manner then that **generator, purchaser or service provider** as the case may be will have the onus of proving that disadvantage was material.

5 Exemption for trading information

5.1 Information that is confidential

For the purposes of rule 1.2.2 and of rule 5.3 **participants** must, subject to rule 5.2, keep the following classes of information confidential:

5.1.1 *Bids and offers*

Information relating to **bids** and **offers**.

5.2 Information to be disclosed at the Board's discretion

The **Board** may, at its discretion, require that the **participants** must disclose any information required to be kept confidential under rule 5.1, provided that no such discretion will be given:

5.2.1 *Prospective bids and offers*

Which would result in the disclosure of any prospective **bid** or **offer** information; or

5.2.2 *Breach of law*

Where disclosure of such information would result in a breach of any legislative or regulatory requirement.

5.3 Supply of information by a member or service provider

Every **generator, purchaser and service provider** will publish **relevant information** at the earliest practical time where:

5.3.1 *Information ceases to commercially disadvantage*

That **relevant information** does not, or ceases to, commercially disadvantage the **generator, purchaser or service provider** in a material manner if the information were to be **published**; or

5.3.2 Information previously disclosed

That **relevant information** is known to be disclosed to any other person not bound by a legal obligation to maintain that **relevant information** as confidential,

provided that from this point on the **generator, purchaser or service provider** is not bound by a legal obligation to maintain that **relevant information** as confidential, and provided that such **relevant information** will not be required to be released if the release of that **relevant information** is prohibited by law.

5.4 Compliance with rule 5.5

For the avoidance of doubt, entry into an obligation in breach of rule 5.5 is not grounds for withholding information under rule 5.2.

5.5 Participants not to contract out

Participants will so far as is reasonably possible without materially affecting the **business** of the **participant**, avoid entering into any obligation to any person that would have the effect of prejudicing the **participant's** ability to comply freely with the provisions of this section VII.

VIII Rules concerning software

1 Introductory rules

1.1 Contents of this section

The **rules** contained in this section VIII concern the process that **service providers** must follow for **software** development and before implementing changes to **software**. The rules also provides for **software** to be available to **members**.

2 Model formulation

This rule concerns the model formulation set out in schedule G6.

2.1 The Board to refer model formulation and operating procedures to working groups

The **Board** will refer to a **working group** appointed in accordance with the rules contained in schedule A3 the task of developing the **model formulation** contained in schedule G6 together with the operating procedures which define the context in which the model will operate, and any proposed changes to the **model formulation** that is made in writing by a **participant** and received by the **Board**.

2.2 Rule change process to be followed

The **model formulation** and the operating procedures will be treated in the same way as a **rule change**. The **model formulation** and operating procedures developed by the **working group**, and any proposed change to the **model formulation**, will be deemed, for the purposes of these **rules**, to be a **proposal** to which rule 1 of section IV applies.

2.3 Approved model formulation and operating procedures added to service provider contract

The **model formulation** and operating procedures and any proposed change to the **model formulation** will be added to the **service provider** contracts of the **system operator** and **pricing manager**, as appropriate.

3 Service provider contractually bound to software specifications

Each **service provider contract** will contain the specifications for all **software** to be used by that **service provider**, and that **service provider** will ensure that its **software** performs in accordance with such specifications. No specifications in any

services provider contract can be amended without the consent of the **service provider**.

4 Service provider to arrange audit of software

Each **service provider** will arrange and pay for a suitably qualified **independent** person approved by the **Board** to provide:

4.1 Audit of new software

An **audit** of all new **software** before it is used by the **service provider**. The auditor will be required to certify to the **Board** that the **software** will perform in accordance with the proposed **software** specification provided as part of the **software proposal** to be submitted under rule 5.1 and, in the case of the **system operator** and the **pricing manager**, the **model formulation** contained in the contract with that **service provider**; and

4.2 Annual audit of existing software

An **annual audit** of all existing **software**. The **auditor** will be required to certify to the **Board** that all existing **software** will perform in accordance with the **software** specification contained in the contract with that **service provider**.

5 Service provider to inform the Board of proposed change

If a **service provider** proposes to effect any change to any software, it will notify the **Board**, in writing, of the proposed change even where the **software** change may not be material or have any effect on the market. This notification is, for the purposes of this rule 5, to be known as a "**software proposal**". The **software proposal** must include:

5.1 Proposed software specification

A proposed **software** specification to be used in the contract of the **service provider** should the change be implemented;

5.2 Certificate of audit of new software

An audit certificate issued in accordance with rule 4.1; and

5.3 Certificate of impact of the proposed change

A certificate as to whether the change will affect the ability of the **service provider** to comply with the rules or affect the rights or obligations of any other **participant**.

6 The Board to determine if change is material

Upon receiving a **software proposal** in accordance with rule 5, the **Board** will determine whether the **software proposal** affects the ability of the **service provider** to conform to the **rules**. If:

6.1 Participants to be notified on non-material changes

The **Board** determines that the **software proposal** does not affect the ability of the **service provider** to conform to the **rules** it will notify **participants** of the **software proposal**; or

6.2 Material changes referred to a working group

The certificate submitted by the **service provider** pursuant to rule 5 indicates, or the **Board** determines that the **software proposal** affects the ability of the **software** to conform to the **rules**, the **Board** will refer the **software proposal** to a **working group**, as if it were a **rule change** proposal under rule 1.4 of section IV. The **software proposal** will be treated in the same way as a **rule change** and the **software proposal** will be deemed, for the purposes of the **rules**, to be a **proposal** to which section IV applies.

7 Non-material change implemented after 10 business days

If, after ten **business days** from the date of notification of the **software proposal** pursuant to rule 6.1, no **participant** has objected to the **software proposal**, the **Board** will give written notification to the **service provider** that the **software** change may be implemented. The **service provider** will then confirm the time from which the **software** change will be effected and the **Board** will notify all **participants** of the time of this implementation.

8 Objections to change referred to working group

If, within ten **business days** from the date of notification of the **software proposal** pursuant to rule 6.1, any **participant** has objected to the decision made by the **Board** pursuant to rule 6.1, then the **Board** will refer the **software proposal** to a **working group** pursuant to rule 1.4 of section IV of part A, as if it were a **rule change** proposal under that rule. The **software proposal** will be treated in the same way as a **rule change** and the **software proposal** will be deemed for the purpose of the **rules** to be a **proposal** to which section IV applies.

9 Approved changes added to service contract

The proposed software specification from any **software proposal** that is notified pursuant to rule 6.1 or is accepted by **participants** will be added to the contract with the **service provider** and will become the software specification for that **service provider**, replacing the previous software specification. No such specification can be altered without the consent of the **service provider**.

10 Software to be available to members

Each contract with a **service provider** will provide for the **service provider** to make the software available on commercial terms to **members**. Recovery of costs of any licensing arrangements will be matter for negotiation between the **members** involved and will not be recouped through **service provider** fees.

IX Services to non-members

1 Introductory rules

1.1 Contents of this section

The **rules** contained in this section IX concern the consequences of a **generator, purchaser, distributor, grid owner** or **direct consumer** who is not a **member** receiving services or benefits which would be governed by these **rules** if that party were a **member**.

1.2 Application of this section

The rules contained in this section IX apply only to services or benefits received by a **non-member** other than a **non-member** who has previously been a **member** but has resigned pursuant to rule 2 of section III and who, following that resignation, continues to be party to an acceptable alternative arrangement as determined by the **Board** under rule 2.3 of section III.

2 Terms of provision of service or benefit

2.1 Fair price for service to non-member

The **participants** agree that a fair price for the provision of services or benefits which are generally governed by the **rules** to a **non-member** is the sum of the following amounts (with compound interest payable from the date the amounts would have been due if the **non-member** was a **member** of the **rules** at the rate payable from time to time on debts and damages under section 87 of the Judicature Act 1908):

2.1.1 *Price payable under rules*

The total of all fees, charges and other payments (whether direct or indirect) that would be payable by the **non-member** if it were a **member** and received, or was entitled to all the services and benefits of **members** under the **rules**, including, for avoidance of doubt and without limitation, the charge for **electricity**;

2.1.2 *Extra quantifiable costs*

The extra quantifiable costs incurred by **participants** (which, for the avoidance of doubt includes **members**) as a result of the **non-member** taking a service or benefit without becoming a **member**. This may include costs of enforcement (including legal expenses) or any costs associated with the **non-member** not complying with obligations (for example, security obligations and information provision) which apply to **members**; and

2.1.3 *Premium for unquantifiable costs*

An extra 1% of the amount specified in rule 2.1.1, to account for extra benefits received by the **non-member** as a result of that **non-member** not contracting for a fixed or indefinite term to use and pay for those services or benefits.

2.2 Participants may refuse to deal with non-members

A **participant** may refuse to provide a **non-member** any service or benefit which, if provided to a **member**, would be subject to the **rules**.

2.3 Contractual terms of provision of service to non-member

If a **participant** contracts to provide to a **non-member** a service or benefit which, if provided to a **member**, would be subject to the **rules**, the service or benefit must be provided on the same terms and conditions (excluding price) that would apply if the service or benefit was provided under the **rules** to a **member** and that **member** received or was entitled to all the service and benefits of **members** under the **rules** and no additional or different service may be provided in substitution for those services or benefits under the **rules**. These services or benefits will be provided at the fair price for that service determined in accordance with rule 2.1.

2.4 Member may supply all of the services governed by the rules

If a **non-member** seeks any of services from a **participant** which, if provided to a **member**, would be subject to the **rules** in the absence of a contract, and that **participant** decides to provide those services or benefits then it may do so only on the basis that the **non-member** will be provided with all the same services and benefits, and not some only of the services and benefits, which would have been provided to that **non-member** if it had been a **participant** receiving or being entitled to all the services and benefits of **members** under the **rules** and no additional or different services may be provided in substitution for those services or benefits under the **rules**. Before providing any such service or benefits to a **non-member** a **participant** must notify the **non-member** that those services and benefits will be made available only on that basis, regardless of whether the **non-member** seeks part only of the services and benefits or seeks them on different terms. If, contrary to this **rule**, a **participant** provides some only of those services and benefits, or provides them on different terms and conditions, that **participant** shall be liable to other **participants** for the price of all the services and benefits supplied as though that **participant** were the recipient of those services or the beneficiary of those benefits.

2.5 Member may supply service and seek quantum meruit

Where a **participant** (including the **Board**) supplies to a **non-member** a service or benefit which, if provided to a **member**, would be subject to the **rules** in the absence of a contract, in accordance with rule 2.4, that **participant** shall do so as the agent of all **members** (and each **member** hereby irrevocably appoints that **participant** its agent for that purpose). Thereupon that **participant** will irrevocably appoint the **Board** its agent, and to the extent necessary each **member** also appoints the **Board** its agent for these purposes, to recover payment for that service or benefit. If required by the **Board**, that **participant** and all **members** must assign its claim against the

non-member in relation to the services or benefits supplied to the **Board** in accordance with rule 3.1.

3 Assignment of claim to Board

3.1 Participant assigns causes of action to Board

If a **participant** or **participants** provides services or benefits which, if provided to a **member**, would be subject to the **rules** in the absence of a contract, to a **non-member** in accordance with rule 2 the **participant** or **participants** must appoint the **Board** its agent pursuant to rule 2 and in addition, if required by the **Board** assign all causes of action, including a claim to quantum meruit, against the **non-member** to the **Board**.

3.2 Payment for assignment

The **Board** must pay the **participant** or **participants** who so appoint the **Board** its or their agent or assign the cause of action referred to in rule 3.1 the amount to which they would have been entitled for that service under part H if the **non-member** who received that service or benefit had paid the full amount due in respect thereof at the time of that appointment or assignment, less any amount actually paid or to which it is entitled to payment from **members** under the **rules** for that service under the **rules**.

3.3 Levy

In order to fund the payments to **participants** under rule 3.2, the **Board** will impose a levy in respect of each service or benefit received by the **non-member** under any part of the **rules**, on the basis that each **member** which pays for that type of service or benefit shall pay to the **Board** its proportionate share of the amount paid or payable by the **Board** under rule 3.2 in respect of that service or benefit.

The "proportionate share" payable by a **member** shall be equal to the proportion which the amount paid by that **member** for that particular service or benefit bears to the total amount paid by all **members** for that type of service or benefit in the last calendar year in which final accounts have been completed at the time that service was first taken by that **non-member**. If there has not yet been a complete calendar year, or final amounts have not been completed for that first calendar year, the proportionate share shall be calculated on the basis of a reasonable estimate made by the **Board** of the total amount that will be paid (or, where the first calendar year has been completed, the total amount that has been paid) by all **members** for that type of service or benefit.

3.4 Assignment to more than one participant

The **participants** acknowledge that the services and benefits provided by a **participant** under rule 2 may be capable of being provided only because other **participants** have provided other services or benefits to that first **participant**. Any such other **participant** who provided such other services or benefits, and who has not been paid the price for them must assign all causes of action arising out of the provision of those other services and benefits to the **Board** and the provisions of rule 3.1, 3.2 and 3.3 shall apply with necessary amendments.

3.5 Member will effect assignment

Each **participant** will enter into all deeds and further assurances necessary to give effect to the assignment referred to in rules 3.1 and 3.4.

4 Board must seek payment

4.1 Participants must assist

The **Board** must take such steps as it considers necessary to recovery the amount payable by the **non-member** referred to in rule 2.1, alleging all available causes of action, including a claim to quantum meruit for the fair price, as determined in accordance with rule 2.1. Each **participant** must assist the **Board** in whatever process for recovery the **Board** determines by:

4.1.1 *Entering into legal arrangements*

Entering into such legal arrangements with the **Board** in relation to that claim as the **Board** requires;

4.1.2 *Lending name to any claim*

Lending its name to any claim, including arbitration or litigation to the extent the **Board** considers necessary.

4.2 Steps which the Board may take include:

4.2.1 *Termination of services*

Termination of services or benefits (in which case all **participants** must comply with any direction by the **Board** to terminate applicable services or benefits provided by them to or for the benefit of that **non-member**);

4.2.2 *Arbitration or litigation*

Arbitration or litigation;

4.2.3 *Set off or reduction or amount owing*

Set-off or reduction of any amount owing to that **non-member** by a **participant** (in which case a **participant** must make the set-off or deduction as directed by the **Board** and the **Board** must indemnify that **participant** for any liability arising therefrom) and recover any amount paid on that indemnity under part H as if it was a cost of part A and allocated under schedule A7.

4.3 Initial costs of claim

Prior to commencing the steps referred to in rule 4.1 (including preparation for litigation), the **Board** will estimate the initial costs, up to and including any stage that the **Board** considers appropriate. Such costs will be allocated amongst **members** in accordance with rule 3 of section I.

4.4 Ongoing costs of claim

If, during the process of any claim, the **Board** considers that further contributions to the claim costs are necessary, the **Board** will request the **members** of part A to contribute the amount the **Board** deems necessary. Such amount shall be contributed by the **members** of part A in accordance with rule 3 of section I.

4.5 Board to supply evidence of costs if requested

If, after receiving a request for payment from the **Board** in accordance with rules 4.3 or 4.4, the **member** disputes the payment, the **member** may request documentary evidence from the **Board** supporting the costs of the claim and the allocation to the **member**. This evidence must be supplied by the **Board** to the **member** within 5 **business days** of receiving the request. Within 5 **business days** of receiving that evidence, the **member** must either pay the allocated share or refer a dispute to the **Rulings Panel** in accordance with rule 4.6.

4.6 Refer dispute to Rulings Panel

If a **member** of part A disputes the need for payment, or the amount the **member** is individually required to pay (after receiving documentary evidence in accordance with rule 4.5), the **member** must refer this dispute to the **Rulings Panel**. The **Rulings Panel** must request documentary evidence from the **Board** and the **Board** must provide such evidence within 5 **business days**. The **Rulings Panel** shall determine the dispute within 15 **business days** of receiving that evidence. The **member** must pay the amount due as determined by the **Rulings Panel** within 5 **business days** of the **Rulings Panel** determining the dispute.

5 Conduct of claim

5.1 Board has discretion

The **Board** is free to conduct any claim as it sees fit, provided always that the **Board** acts in the best interests of the industry as a whole.

5.2 Board may consult members

The **Board** may consult any or all of the **members** of part A on the conduct of the claim, as it sees fit. For the avoidance of doubt, the **Board** shall not be bound to act in accordance with those views once received.

5.3 Board may settle arbitration and litigation

The **Board** may settle any arbitration and litigation with the **non-member** at any time, provided that the **Board** has first consulted with, and considered the views of, the **participant** that supplied the relevant goods or services. For the avoidance of doubt, the **Board** is not obliged to act in accordance with the views of that **participant**, but must act in accordance with its duty contained in rule 5.1.

6 Conclusion of claim

6.1 Reconciliation of costs of claim

At the conclusion of the claim, the **Board** will determine the total cost of the claim and will reconcile this with all amounts received from **members** of part A under rules 4.3 and 4.4. If there is a deficit, so that the **members** are required to contribute more, this cost shall be allocated among the **members** of part A in accordance with rule 3 of section I. If there is a surplus, so that the amount contributed exceeds costs, this shall be returned to the **members** of part A pro rata in accordance with the amounts contributed by each **member**.

6.2 Quantum meruit to be paid to contributors

Where:

6.2.1 *Judgement against non-member*

the claim results in a judgment against a **non-member**, the judgement amount, where such amount is stated to be compensation for the service or benefit supplied by a **participant** to the **non-member**, plus any interest awarded on that amount; or

6.2.2 *Settlement of dispute with non-member*

the **Board** settles the dispute with the **non-member**, the amount agreed to be compensation for the service or benefit supplied by the **participant** to the **non-member**;

will be paid by the **Board** to the **participants** who paid for that service or benefit taken by the **non-member** either under rule 3.3 or as a result of the operation of the **rules**. The **Board** shall pay such amount to the **participant** without deduction, provided that the **Board** may deduct any unpaid amount owing by a **member** under rules 4.3, 4.4 or 6.1.

6.3 Recovery of costs

Any contribution to costs recovered by the **Board**, either pursuant to a judgment or after a settlement, shall be distributed amongst the **members** of part A pro rata in accordance with the amounts contributed by each **member**.

7 Publicity

7.1 Board may publicise fact of litigation

The **Board** may publicise, in a manner it sees fit, the fact of the litigation and the reasons for the litigation. The **Board** will publicise the decision or settlement if it deems appropriate.

7.2 Board may publicise fact of non-membership

The **Board** may publicise the fact that an industry participant is not a **member** of the **rules**, and the consequences of this non-membership for the **non-member's** consumers, including the possibility of non-supply of **electricity** to such consumers.

8 Transmission services

8.1 Rules 3 to 7 will apply

If and to the extent that a **transmission provider** provides **transmission services** to a **non-member** which fails to pay the amount due to the **transmission provider** for such services, the provisions of rules 3 to 7 shall apply as if:

8.1.1 *Transmission services subject to rules*

The **transmission services** were services subject to the **rules**;

8.1.2 *Transmission purchasers were members who pay for that service*

transmission purchasers were **members** who pay for that type of service under part F; and

8.1.3 *Non-member was a transmission purchaser*

The non-member was a **transmission purchaser** under part F.

8.2 Amount payable for transmission services by non-member

For the purposes of rule 4.1, the sum payable to the **transmission provider** by a **non-member** for **transmission services** shall be deemed to be an amount payable by the **non-member** referred to in rule 2.1

9 Board has no residual liability

If the **Board** has received inadequate funds to repay under rule 6.2 all **members** who paid for the service or benefit taken by the **non-member** either under rule 3.3 or as a

result of the operation of the **rules**, and the **Board** has exercised such rights as are reasonable to recover any amounts outstanding from the **non-member**, the **Board** will be under no residual liability to **members** in respect of the unpaid sum.

10 Member may be assigned or subrogated to Board's rights of recovery

If the situation in rule 9 arises whereby the **Board** is unable to repay under rule 6.2 **members** the full amount paid for the service or benefit taken by the **non-member** either under rule 3.3 or as a result of the operation of the **rules**, then a **member** or **members** will be entitled to be assigned or subrogated to the rights of the **Board** in respect of those amounts payable to the **Board** by the **non-member** which, if paid, would have been required to be repaid to **members** in accordance with rule 6.2. The **Board** will do all that is reasonably necessary, including the granting of a power of attorney in favour of the **member** or **members** to assist the **member** or **members** in the exercise of such rights.

Schedule A1 – Constitution of Electricity Governance Board Limited

1 Definitions and interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

“**Act**” means the Companies Act 1993.

“**Board of Directors**” means:

- (a) Directors who number not less than the required quorum, acting together as a board of Directors; or
- (b) if the Company has only one Director, that Director.

“**Chairman**” means the chairman of the Board of Directors appointed in accordance with clause 18.

“**Company**” means Electricity Governance Board Limited.

“**Constitution**” means this constitution, as altered from time to time.

“**Director**” means a person appointed as a director of the Company in accordance with this Constitution.

“**Distribution**” means:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of the Shareholder; or
- (b) the incurring of a debt to or for the benefit of the Shareholder,

in relation to Shares held by the Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means.

“**interested**”, in relation to a Director, has the meaning set out in section 139 of the Act.

“**Member**” means any person who is admitted as a member in accordance with the Rules.

“**month**” means calendar month.

“**Ordinary Resolution**” means a resolution that is approved by a simple majority of the votes of the Shareholder.

“**person**” includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

“**Records**” means the documents required to be kept by the Company under section 189(1) of the Act.

“**Representative**” means a representative appointed by a corporation under clause 9.1.

“**Rules**” means [rules of the new arrangement] as amended from time to time.

“**Share**” means a share issued, or to be issued, by the Company, as the case may require.

“**Shareholder**” means the person whose name is entered in the Share Register as the holder for the time being of all the Shares;

“**Share Register**” means the share register for the Company kept in accordance with the Act.

“**Special Resolution**” means a resolution approved by a majority of 75% or more of the votes of the Shareholder.

“**Working Day**” has the meaning set out in section 2 of the Act.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - that legislation or provision as from time to time amended, re-enacted or substituted;
 - any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) “written” and “in writing” include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act have the same meaning in this Constitution;

- (f) words and expressions cognate with words or expressions defined in this Constitution have meanings corresponding to those of the defined words and expressions;
- (g) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.

1.3 Constitution to prevail

If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,
- (c) the provision, word or expression in this Constitution prevails.

1.4 Amending this Constitution

This Constitution can only be amended in accordance with rule 1.3 of section II of Part A of the Rules.

2 Shares

2.1 Ownership of Shares

The Shares shall at all times be held by the Shareholder elected in accordance with the Rules from time to time.

2.2 Number of Shares fixed

The number of Shares of the Company is fixed as at the date of incorporation. The Board of Directors may not issue Shares after the initial issue on incorporation.

2.3 Company may not purchase Shares

For the avoidance of doubt, the Company may not purchase or otherwise acquire its Shares.

3 Alteration of shareholder rights

3.1 Shareholder rights fixed

The rights, privileges, limitations or conditions attached to any Shares by this Constitution or the Act may not be amended.

3.2 Shareholder not obliged to enforce rights of shares

The Shareholder shall not be obliged to enforce any of the rights, privileges or conditions attached to the Share or to exercise any remedy available to it under this constitution or the Act unless:

- (a) it is directed to by the Board of Directors in writing, such direction certifying that a resolution of members has been passed under the Rules authorising the Shareholder to take such action; and
- (b) it has received from the members of the Rules an indemnity in a form reasonably satisfactory to the Shareholder.

4 Share certificates

4.1 Issue of Share certificates

The Company may issue a Share certificate in respect of the Shares and must, within 20 Working Days after receiving an application by the Shareholder, send to the Shareholder a Share certificate, in accordance with section 95 of the Act.

4.2 Replacement Share certificates

The Company:

- (a) may issue a replacement certificate for the Share certificate, if it is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board of Directors, an appropriate indemnity being given to the Company.

5 Transfer of shares

5.1 No right to transfer

The Shareholder may not transfer the Shares in the Company, other than in accordance with this section 5.

5.2 Transfer

The Shareholder may only transfer all of the Shares as a whole and may not transfer a single Share or group of Shares. The Shareholder may only transfer all of the Shares if approved under the Rules and only to a person approved under the Rules to be the Shareholder.

5.3 Delivery to Company

An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share Register, together with the Share certificate (if any) relating to the Shares to be transferred, and the transferee shall provide such evidence as the Board of Directors or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares (including evidence of the approval referred to in clause 5.2).

5.4 Board may refuse to register

Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board of Directors may refuse to register a transfer of any Shares if the instrument of transfer is not accompanied by the relevant Share certificates (if any), a copy of the resolution of Members approving the transfer under the Rules, and such other evidence as the Board of Directors reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares (including evidence of the resolution of Members referred to in clause 5.2), provided that the Board of Directors resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board of Directors, and provided further that in the case of any transfer of any shares by the first Shareholder to any other person the Company must forthwith enter or cause to be entered the name of the transferee in the share register as holder of the shares, and for the purposes of section 84 (4) (c) this Constitution does not permit the Board of Directors to refuse or delay such registration for any reason.

5.5 When transfer effective

A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

5.6 Company to retain transfer

If the Company registers a transfer it shall retain the instrument of transfer.

6 Distributions

6.1 Power to authorise

The Board of Directors may not make Distributions.

7 Meetings and resolutions

7.1 Exercise of power by meeting or written resolution

A power or right of approval reserved to the Shareholder by the Act, or by this Constitution, may be exercised either at a meeting or by a resolution in writing signed in accordance with section 122 of the Act and, unless otherwise specified in the Act or this Constitution, may be exercised by Ordinary Resolution.

7.2 Annual meetings

Subject to clause 7.3, the Company shall hold an annual meeting in each calendar year, in addition to any other meetings in that year, not later than six months after the balance date of the Company, and not later than 15 months after the previous annual meeting.

7.3 First annual meeting

The Company need not hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

7.4 Resolution in lieu of annual meeting

It is not necessary for the Company to hold an annual meeting in any calendar year if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

7.5 Special meetings

All meetings other than annual meetings shall be called special meetings. A special meeting may be called by the Board of Directors at any time, and must be called by the Board of Directors on the written request of the Shareholder.

7.6 Proceedings at meetings

The provisions of the first schedule to the Act govern proceedings at all meetings of the Shareholder.

7.7 Chairperson

If the Directors have elected a Chairperson, and he or she is present at a meeting of the Shareholder, he or she shall chair the meeting.

7.8 Entitlement to vote

Subject to any rights or restrictions for the time being attached to the Shares, the Shareholder is entitled on any resolution to one vote in respect of each Share held by the Shareholder.

8 Notice of meetings of shareholder

8.1 Written notice

Written notice of the time and place of a meeting of the Shareholder shall be sent to the Shareholder and to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of the Shareholder, it may be convened by such shorter notice and in such manner as the Shareholder agrees.

8.2 Contents of notice

8.3 A notice of meeting shall state:

the nature of the business to be transacted at the meeting in sufficient detail to enable the Shareholder to form a reasoned judgment in relation to it; and

the text of any Special Resolution to be submitted to the meeting.

8.4 Waiver of notice irregularity

An irregularity in a notice of a meeting is waived if the Shareholder attends the meeting without protest as to the irregularity, or if the Shareholder agrees to the waiver.

8.5 Accidental omission of notice

The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.

8.6 Notice of adjourned meeting

If a meeting of the Shareholder is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 8.1.

9 Corporate representative

9.1 Appointment of Representative

A corporation which is the Shareholder may appoint a person to attend a meeting of the Shareholder on its behalf ("Representative").

9.2 Notice of appointment

A Representative shall be appointed by written notice signed by the Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term.

9.3 Production of notice

No appointment of a Representative is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at such other address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting.

9.4 Validity of Representative vote

A vote given in accordance with the terms of a notice of appointment of a Representative is valid notwithstanding the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the Representative is appointed, if no written notification of such revocation or transfer is received

by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the Representative is appointed.

10 Appointment and removal of directors

10.1 Number of Directors

There shall be a single Director from the date of incorporation of the Company until Directors are appointed by the Shareholder following the first election of Directors held in accordance with the Rules. Thereafter, there shall be seven Directors provided that there may be a lesser number where there is a temporary vacancy pending appointment of a new Director.

10.2 Appointment

The Directors are those Directors appointed from time to time by the Shareholder. In appointing Directors, the Shareholder must give effect to the Rules.

10.3 First Director

The first Director is David Francis Caygill.

10.4 Vacation of office

A Director ceases to be a Director if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (c) becomes disqualified from being a Director pursuant to the Act; or
- (d) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (e) without the prior leave of the Chairman of the Board of Directors, misses two consecutive meetings of the Board of Directors.

10.5 Dissolution of Board of Directors

The Board of Directors may be dissolved by the Shareholder acting pursuant to a resolution passed in accordance with the Rules. The Shareholder will dissolve the Board of Directors at the same time as replacement Directors, elected in accordance with the Rules, are appointed as Directors by the Shareholder under clause 10.2.

11 Remuneration and other benefits of directors

The Board of Directors may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section, provided that any such authorisation must reflect the provisions of the Rules and any budget approved pursuant to rule 1.21 of section II of part A of the Rules. The initial fees of the Directors, including the Chairman, shall be no more than that set out in rule 1.21.1 of section I of Part A of the Rules.

12 Indemnity and insurance

12.1 Indemnity of Directors

Subject to clause 12.2 every Director and employee shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or employee and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company for any act or omission by him or her in his or her capacity as a Director or employee, and costs incurred by him or her in defending or settling any claim or proceedings relating to any such liability.

12.2 Exceptions

An indemnity given pursuant to clause 12.1 shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a Director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act.

12.3 Insurance

The Company may, with the prior approval of the Board of Directors, effect insurance for a Director or employee of the Company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

12.4 Definitions

In this section

- (a) “Director” includes a former Director and “director” includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

13 Powers of directors

13.1 Management of Company

The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board of Directors.

13.2 Functions and powers of Company under the Rules

Any decision or determination required to be made by the Company under the Rules shall be made by a simple majority of Directors voting in accordance with clause 2.5 of Appendix A of this Constitution.

13.3 Exercise of powers by Board

The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholder.

13.4 Appointment of attorney

The Company may not exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter.

13.5 Ratification by Shareholder

Subject to the provisions of section 177 of the Act (relating to ratification of Directors’ actions) the Shareholder, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board of Directors in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

14 Obligations of Directors regarding Rules

The Directors will act in accordance with, and shall take such actions as may be necessary to ensure that the Company acts in accordance with, the Rules.

15 Interests of Directors

15.1 Disclosure of Interests

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of Directors) but failure to comply with that section does not affect the operation of clause 15.3. A Director with a conflict of interest in relation to any matter being considered by the Board must enter the fact of the conflict in the interests register and must declare that conflict to the Board of Directors.

15.2 Participation of Interested Directors

Once a Director has declared the existence of a conflict in relation to any matter being considered by the Board of Directors:

- (a) if the Director elects not to disclose the nature and extent of such conflict, he or she may not take part in any further deliberations on the matter and must not vote on the matter;
- (b) if the Director elects to enter the nature and extent of such conflict in the interests register and disclose the nature and extent of the conflict to the Board of Directors, the Chairperson will decide whether or not that Director may take part in deliberations on the matter and whether or not the Director may vote on that matter.

15.3 Personal involvement of Directors

In addition to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is interested) and section 199(2) of the Act (prohibiting a Director from acting as auditor of a company), a Director may not:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company; or
- (c) retain any remuneration, profit or benefits in relation to any of the foregoing,

and a contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's interest.

16 Proceedings of board of directors

16.1 Third schedule to Act not to apply

The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

16.2 Proceedings of Board of Directors

The Directors may hold meetings and pass resolutions in accordance with the procedures set out in Appendix A of this Constitution.

17 Appointment of Chairman

17.1 Chairman appointed at first meeting and annually

At the first meeting of the Board of Directors, and annually thereafter, the Directors will appoint a Chairman from among their number. The Chairman will serve for one year, unless, during that year, there is an appointment of new Directors or the Chairman's term as a Director expires. If there is an appointment of new Directors or the Chairman's term as a Director expires before the completion of the Chairman's one year term of appointment, the Chairman shall cease to hold office as Chairman. On the expiry of the term of office of the Chairman, the Directors will again elect a Chairman in accordance with this clause 17. That Chairman may be any Director including the incumbent Chairman.

17.2 Method of appointing Chairman

If there is only one nomination for the position of Chairman, that nominee will automatically be deemed to be appointed as the Chairman. If there is more than one nomination, then the Directors will seek to agree on the nominee that is to be appointed as the Chairman. In the event that the Directors cannot reach agreement, they will conduct a vote and the nominee who receives the greatest number of votes will be appointed as Chairman. In the event of a tie, lots will be drawn. The Board of Directors will immediately notify participants of the Rules of the result under the appointment, and publish such result on the Company's website.

18 Method of contracting

18.1 Deeds

A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) if there is only one Director, by that Director whose signature must be witnessed; or
- (c) a Director, and any person authorised by the Board, whose signatures must be witnessed; or

18.2 Other written contracts

An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

18.3 Other obligations

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

19 Inspection of records

19.1 Inspection by Directors

Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other Records of the Company shall be open to the inspection of any Director.

19.2 Inspection by Shareholder

The Shareholder or any Member of the Rules is entitled to inspect any accounting or other Records of the Company. The Board of Directors must provide the Shareholder or Member requesting information regarding the Company with such information, within a reasonable time, provided that the Shareholder or Member agrees to pay a reasonable copying charge.

20 Notices

20.1 Reports, etc to Shareholder

Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section 391 of the Act.

20.2 Accidental omissions

The failure to send an annual report, notice, or other document to a Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of the Shareholder if the failure to do so was accidental.

20.3 Waiver by Shareholder

Subject to section 210 of the Act (which requires financial statements to be sent to the Shareholder who elects not to receive annual reports), the Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

21 Notices to Company

Any notice or other communication to be given to the Company must be delivered or posted, addressed to the Company, at the address for the time being of the principal place of business of the Company.

22 Liquidation

22.1 Distribution of assets

If the Company is liquidated, the liquidator may, with the approval of the Shareholder by Special Resolution and any other sanction required by the Act:

- (a) distribute to the Shareholder in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not); and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

22.2 Company to be liquidated and removed from register

the Board of Directors shall liquidate the company and remove it from the New Zealand register if either:

- (a) the Rules come to an end; or
- (b) the Rules have commenced but then cease to have any Members.

Schedule A2 – Appendix to the constitution: Board Procedures

1 Notice Of Meetings

1.1 Notice of meeting must be given

Any two Directors, or the Chairman acting alone, or where there is only one Director, that Director, may convene a meeting of the Board of Directors by giving notice in accordance with this clause.

1.2 Not less than two days notice

Not less than two days' notice of a meeting of the Board of Directors must be sent to every Director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed. Notices may be sent to Directors by way of facsimile or electronic mail.

1.3 Irregularity in notice

An irregularity in the notice of meeting referred to in clause 1.2 is waived if Directors representing a quorum attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

2 Procedure At Meetings

2.1 Methods of holding meetings

A meeting of the Board of Directors may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

2.2 Quorum

A quorum for meetings of the Board of Directors will be more than 50% of the total number of Directors holding that office at the time of the meeting.

2.3 Quorum not present

No business may be transacted at a meeting of the Board of Directors if a quorum is not present.

2.4 Chairman

If the Chairman is not present at the meeting the Directors who are present will elect a chair for that meeting from among their members.

2.5 Voting

When the Board of Directors is required to vote:

- (a) Every Director has one vote.
- (b) If there is an equality of votes on any matter then in addition to the deliberative vote granted by clause 2.5(a) the Chairman has a casting vote;
- (c) Directors must use reasonable efforts to reach a consensus view on any matter that the Board of Directors considers. If Directors are unable to reach a consensus view then, except where a different majority is specifically designated within the Rules, a decision of the Board of Directors will require an affirmative vote of any four Directors present and voting;
- (d) A Director may abstain from a vote as an interested party. In that instance the Director's vote will not be counted in favour of the resolution; and
- (e) A Director present at a meeting of the Board of Directors is presumed to have agreed to, and to have voted in favour of, a resolution of the Board of Directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

2.6 Minutes are to be kept

The Board of Directors shall publish its minutes except to the extent that the Board of Directors resolves that certain parts of them should be kept confidential to avoid commercial prejudice to any participant under the Rules.

2.7 Written resolutions are permissible

A resolution in writing, signed or assented to, by all Directors then entitled to receive notice of a Board of Directors meeting, is valid and effective as if it had been passed at a meeting of the Board of Directors duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication in like form), each signed or assented to by one or more Directors. Any such document sent by a Director by telegram, facsimile will be deemed to have been signed by the Director.

3 Delegation

3.1 Board of Directors may delegate powers to a subcommittee

The Board of Directors may delegate any of its powers to a subcommittee consisting of any number of Directors that the Board of Directors thinks fit and may, from time to time, revoke any such delegation. Any subcommittee so formed will:

- (a) in the exercise of the powers delegated to it, conform to any restriction that may, from time to time, be imposed upon it by the Board of Directors;

- (b) make decisions on matters delegated to it through the unanimous approval of all the members of the subcommittee.
- (c) comply with any procedural or other requirements imposed on it by the Board of Directors and with this appendix relating to proceedings of Directors, with appropriate modification (other than this clause 3.1).

3.2 Advisers and consultants

The Board of Directors may engage advisers and consultants in accordance with the Rules where it considers necessary for the purpose of fulfilling the Company's functions under the Rules.

3.3 Board of Directors may otherwise regulate their own procedures

Except as expressly provided in the Rules and this Constitution, including this appendix, the Board of Directors may regulate its own procedure.

Schedule A3 – Working group appointment and procedures

1 Board drafts selection criteria for working group

If the **Board** decides that a **working group** should be established it will determine:

1.1 Terms of reference

the terms of reference for the **working group**.

1.2 Selection criteria

the selection criteria for the **working group**.

1.3 Size

the size of the **working group**.

1.4 Standing or ad hoc

whether the **working group** should be a standing **working group** or an ad hoc **working group** which exists only for the duration of considering a particular **proposal**.

1.5 Reporting

when the **working group** is required to report back to the **Board**.

1.6 Consumer interests

whether a particular **proposal** to be considered by the **working group** involves issues relevant to some or all classes of consumer.

2 Board calls for nominations

The **Board** will ensure that the selection criteria reflect a balance of interests and expertise relevant to the **working group's** terms of reference. The **Board** will call for written nominations for the membership of the proposed **working group**.

3 Nominations made within 5 business days

Nominations for membership of any **working groups** must be made within 5 **business days** of the **Board's** call for nominations made pursuant to rule 2. Any person may make nominations. Nominees must confirm their willingness to be appointed to a **working group** and specify any remuneration and expenses they may request for **Board** approval under rule 7 of this schedule.

4 Board selects working group

The **Board** will select, from the nominations received, the members of the **working group** that it believes have the expertise that meets the selection criteria and that results in a balance of interests and expertise appropriate to the **working group's** terms of reference. In making that selection the **Board** will have regard to the membership of those parts of the rulebook that will be affected by the **proposal** that the **working group** will consider, and to the interests of **consumers**. Each person selected for a **working group** will be selected personally, and not as a representative of their employer or any other organisation or interest group.

5 Procedure if insufficient or inadequate nominees

If the **Board** is unable to form a **working group** in accordance with the selection criteria determined under rule 1, the **Board** will call for further nominations. If after calling for nominations for the second time the **Board** still cannot select a **working group** complying with the selection criteria, the **Board** will continue to call for nominations and/or amend the selection criteria.

6 Working group members are participants

It will be a condition of every appointment to a **working group** that the appointee agrees to comply with the **rules**.

7 Term of membership of standing working groups

The selection of a person to a **working group** that is a standing **working group** will be for two years from the date of selection and that person will cease to be a member of the **working group** upon the expiry of such term or earlier by giving written notice to the **Board**. Any person who, without leave of the majority of the remaining **members** of the **working group**, misses two consecutive **working group** meetings, will be deemed to be removed from the **working group**. The **Board** must remove any member of a **working group** in the event of that member's criminal conviction, serious misconduct or incapacity. Upon the expiry or termination of any selection, further nominations will be called for and the procedures set out in rules 1 to 5 will be followed. Nothing will prevent a person being re-nominated and re-selected to a **working group**. Any member of a **working group** who changes employers must tender his or her resignation.

8 Board has discretion to authorise payment

The **Board** may decide that any or all **working group** members be remunerated for their time and expenses on a basis determined by the **Board** consistent with the annual operating budget.

9 Board provides resources for working groups

The **Board** will appoint a person to chair the **working group** and will ensure that every **working group** has the resources necessary for it to consider the **proposals** before it.

10 Working group to consider proposals and report to the Board

Each **working group** will use reasonable efforts to reach unanimous agreement and deliver a report to the **Board** within the time required by its terms of reference. If the **working group** is unable to agree unanimously then it must provide a report of the substantial majority of the **working group**, within the time required by its terms of reference, noting in the report the views of the dissenting members. In determining any such application the **Board** may allow the **working group** such further time as the **Board** considers necessary to resolve the issues raised by the **proposal**, or the **Board** may appoint a new **working group** to investigate the **proposal**.

11 Matters the working group must consider

Each **working group** must:

11.1 Submissions

11.1.1 Notice

Notify all **participants** of each **proposal** and of the time by which submissions on the **proposal** may be made. The **working group** will allow at least 20 **business days** for submissions and may extend that time by giving notice to all **participants**.

11.1.2 Copies

Allow any **participant** to inspect or obtain copies of any information held by the **working group** and which relates to the **proposal**.

11.1.3 Consider

Consider all submissions submitted by **participants** within the time specified by the **working group** under rule 11.1.1.

11.2 Ask service providers about fee entitlements

Ask each relevant **service provider** in writing whether it considers the proposed **rule change** will, if passed, entitle it to increase its fee entitlements, or entitle the **Board** to reduce the **service provider's** fee entitlements. Each **service provider** must, when responding, set out the reasons why it does or does not consider the proposed **rule change** will entitle it or the **Board** to change its fee entitlements; and

11.3 Seek a report from the system operator

Where the **rule change** relates to part C or part G, seek a report from the **system operator**, to be provided within the time required by the **working group**, on whether the **proposal** would affect the **system operator's** ability to meet its obligations in relation to common quality and security, and will include the **system operator's** report in the report that the **working group** provides to the **Board**. The **system operator's** report will set out the practicality of

implementing the rule change, including scope, feasibility, timing and any consequent changes to the **policy statement** or **procurement plan**; and

11.4 Seek consents

11.4.1 *Transpower*

Seek the consent of **Transpower** where any **rule change proposal** would affect:

11.4.1.1 Metering

The rules in part D or part G concerning **metering installations** or metering information and would materially adversely affect **Transpower** in its capacity as **grid owner**; or

11.4.1.2 MACQS cost recovery

The provisions of rule 1.3 of section III of part I.

11.4.2 *MARIA cost recovery*

Seek the consent of each Principal who is a **participant** where any **rule change proposal** would affect rule 4 of section IV of part I, in accordance with rule 4.6 of that section.

12 Responses to working groups

Each person from whom any **working group** seeks any submission or response or report under rule 11 must respond in writing to the **working group** within the time that the **working group** notifies in writing when it seeks the submission, response, or report.

13 Process for obtaining consent

13.1 Written request

Where any consent is required under rule 11.3.1 the **working group** will ask **Transpower** in writing whether it considers that the **rule change** would materially adversely affect it in its capacity as a **grid owner** and if so, whether it will consent to the **rule change**.

13.2 Response within 15 days

Within 15 **business days** of being asked for its consent, or such longer period as the **working group** may allow, **Transpower** must advise in writing whether it considers that the **rule change** would materially adversely affect it in its capacity as a **grid owner** and, if so, whether it will consent to the **rule change**. **Transpower** may not unreasonably withhold its consent

under this rule. If **Transpower** does not respond within the time required, it will be deemed to have given its consent.

13.3 Withholding of consent may lead to arbitration

If **Transpower** withholds its consent and the **Board** does not agree that **Transpower** would be materially adversely affected by the proposed **rule change** or believes that the consent has been withheld unreasonably, it may require the question of how **Transpower** would be affected by the **rule change**, or the reasonableness of **Transpower's** withholding of consent, to be determined by an arbitrator appointed by the chair of the **Board**.

14 Working group report

Once it has considered every submission, response or report obtained under rule 11 the **working group** will report to the **Board** on whether:

14.1 Ensure the rule change is legally effective

On the basis of external advice, the proposed **rule change** is consistent with the rest of the **rules** and will be legally effective; and

14.2 Ensure consistency with Guiding Principles

On the basis of external advice, the proposed **rule change** is consistent with the **Guiding Principles** when considered all together; and

14.3 Ensure no disadvantages

The **rule change** would materially financially disadvantage any **member**, or is controversial, or there is any other reason why the **rule change** should not be put to a **resolution**; and

14.4 Implementation

There are any practical issues relating to implementing the proposed **rule change**; and

14.5 Contents

It is satisfied that the contents of any proposed **rule change** fall within the description of the part or schedule that is affected by the **rule change**; and

14.6 Rights and obligations affected

Any proposed **rule change** affects the rights or obligations of any **member** who would not be entitled to vote if the **rule change** were put to a **resolution**; and

14.7 Administration costs

Any additional administrative costs will arise from the **rule change**.

14.8 A member materially and disproportionately affected

Any **member** might be materially and disproportionately affected by the proposed **rule change**.

15 Board monitors performance of working groups

The **Board** will monitor the performance of all **working groups** and may disband the **working group**, if the output from the **working group** is not forthcoming or is unjustifiably delayed, or the quality of the work produced is objectively unacceptable.

Schedule A4 – Voting entitlements for electing directors to the Board

1 Allocation of votes to voting classes

In any election to appoint **directors** to the **Board**, 99,999 votes will be allocated on the following basis:

Generators and purchasers	one third
Distributors and grid owners	one third
Approved consumer representatives	one third

2 Allocation of votes among voters

In any election to appoint **directors** to the **Board**:

2.1 Generators and purchasers

33,333 votes will be allocated among **generators** and **purchasers** on the basis of **electricity** generated or purchased by them, as the case may be, in the previous 12 months, calculated in accordance with rule 2 of schedule A6.

2.2 Distributors and grid owners

33,333 votes will be allocated among **distributors** and **grid owners** on the basis of ODV, calculated in accordance with rule 3 of schedule A6.

2.3 Consumer groups

33,333 votes will be allocated by the **Rulings Panel** among those groups and individuals approved by the **Rulings Panel** as eligible to vote, on the basis on **electricity** consumed by them or by the interest group(s) they have been approved to represent.

2.4 Voters can allocate votes among candidates

Any voter may cast any number of the votes that have been allocated to it among some or all of the candidates.

3 How consumer groups become eligible to vote

3.1 Written application

Any individual or organisation may apply to the **Rulings Panel** to be eligible to vote as a consumer group in an election of **directors**. For the avoidance of doubt, any single customer

or group of customers may apply for voting rights as a consumer group. Every such application must be in writing and must contain supporting information to enable the **Rulings Panel** to make an assessment of the application, including:

3.1.1 Contact details

The name, address and other contact details of the applicant and, where applicable, of the organisation on behalf of which the application is made.

3.1.2 Nature of interest

A description of the nature of the interest group represented in the application.

3.1.3 Mandate

Evidence, to the satisfaction of the **Rulings Panel**, that the applicant holds a mandate from the interest group that the applicant represents.

3.2 Rulings Panel notifies other voters

The **Rulings Panel** will notify **members** of every application it receives under rule 3.1.

3.3 Rulings Panel may request further information

The **Rulings Panel** may require any applicant to provide additional information at any stage of an application and within any reasonable time. If the applicant does not provide the information requested within the time required then the application will lapse.

3.4 Rulings Panel will consider relationships with other voters

In considering any application made under this rule, the **Rulings Panel** will give consideration to the following:

- the extent to which other consumer groups that hold voting entitlements represent the interests of a single applicant;
- the extent to which the interest of any applicant group overlaps with that of any other applicant group;
- the extent to which different classes of consumers (domestic, commercial etc) are represented among the consumer groups; and
- the proportion of votes that each group holds in proportion to the consumption of all groups;
- that no party that claims to represent small industry, commercial or domestic consumers may be an employee, director or partner of a large industrial firm.

3.5 Applicant entitled to be heard

Every application made under this rule 3 will be heard by the **Rulings Panel** in accordance with the process set out in rule 4 of section V of part A.

3.6 Rulings Panel notifies its decision

The **Rulings Panel** will advise the **Board** of its decision within 10 **business days** of the conclusion of the **Rulings Panel's** hearing. The **Board** will notify every applicant in writing of the decision within 5 **business days** of receiving the decision from the **Rulings Panel**.

3.7 Rulings Panel will allocate consumer votes annually

The **Rulings Panel** will carry out the process for considering applications from consumer groups annually and all at the same time, immediately prior to the annual election of directors.

3.8 Special provision for the first Board election

Where any consumer group applies to vote on the initial election of directors the assessment and allocation of voting rights under this rule 3 will be carried out by the Market Surveillance Committee.

4 Transfer of votes allowed

Any person who is entitled to vote in an election of **directors** may transfer one or more votes to any person who is entitled to vote in the same class of voter, by giving written notice to the **Board** no less than 10 **business days** before any election is due to take place. The notice must specify the person to whom the votes are to be transferred, the number of votes to be transferred (expressed either by number or as a percentage of the transferor's entitlement) and the date the transfer is to take place. As soon as it receives notice of any transfer under this rule the **Board** will:

4.1.1.1 Notify transferee

Notify the transferee of the transfer and specify the date from which the transferee may exercise the votes transferred, which shall be no sooner than 5 **business days** after the date of the **Board's** notice; and

4.1.1.2 Notify members

Notify all other **members** of the transfer and of the alteration to voting entitlements.

Every such transfer will be effective until revoked.

Schedule A5 – Resolutions of members

1 Passage of resolutions

A **resolution** can be passed by a ballot conducted by the **Board** in accordance with this schedule A5.

2 Voting entitlements

On any ballot, a **member's** entitlement to vote and the number of votes that each **member** may cast are calculated in accordance with schedule A6.

3 Required majorities for ballots

For a proposed **resolution** to be validly passed the votes cast in favour of it (and the **members** by whom the votes are cast) must comply with the majority requirements set out in schedule A6.

4 The Board will send out ballot forms

A ballot voting form will be sent by the **Board** by facsimile or email to each **member** that is entitled to vote on the **resolution**. Each ballot voting form must contain:

4.1 Voting entitlements

A certificate setting out that **member's** voting entitlements and advice as to the voting entitlements of each other **member** that is also entitled to vote on the **resolution**; and

4.2 When to return voting forms

The date by which the ballot voting forms must be completed and returned and the address to which they must be returned which may include a facsimile number or email address.

5 Ballots occur over 15 days

At least 15 **business days** must be allowed between the date that the **Board** transmits the ballot voting forms and the date by which the completed ballot voting forms are to be returned.

6 How ballot forms are to be completed

A ballot voting form must be completed by specifying the number of votes of the specific **member**, which are to be cast either in favour of or against of the **resolution** and must be signed by or on behalf of that **member**.

7 Accidents will not invalidate a ballot

The non-receipt of a ballot voting form by, or the accidental omission to send a ballot voting form to, any **member** will not invalidate a **resolution** passed by such ballot. The non-receipt by the **Board** of a completed ballot form will not invalidate any **resolution** passed by such ballot.

8 The Board to certify the passage of a ballot

A certificate recording each **resolution** passed by way of a ballot will be signed by the **Board** and will be prima facie evidence, until the contrary is proved, of the matters stated in the certificate. The **Board** will circulate to all **participants** a copy of this certificate as soon as practicable after the passing of the **resolution** to which the certificate relates. Attached to this certificate will be a table setting out **members'** voting entitlements and how each of them voted on the **resolution**. If a **resolution** is not passed, then the **Board** will notify all **participants** of the outcome and send them the table described in the previous sentence of this rule 8.

9 Ballots bind all participants

A **resolution** passed by a ballot, whether or not all **members** entitled to vote on that **resolution** voted, will be binding upon all **members** and all **participants**.

Schedule A6 – Voting entitlements on resolutions

1 Vote entitlements

Subject to rule 3.1 of section IV of part A, in any **resolution** of **members** the voting entitlements are as follows:

1.1 Part A - Governance

In any **resolution** to change the rules in or schedules to part A, the **members** entitled to vote, the allocation of votes and requisite majority are the same as those for an election of **directors**, as set out in schedule A4.

1.2 Part B – Consumer issues

In any **resolution** to change the rules in part B:

1.2.1 *Members entitled to vote*

[] are entitled to vote

1.2.2 *Allocation of votes*

Votes are allocated on the basis of []

1.2.3 *Requisite majority*

A majority is required of [].

1.3 Part C – Quality and security

In any **resolution** to change the rules in or schedules to part C:

1.3.1 *Members entitled to vote*

Generators, grid owners, distributors and voting customers are entitled to vote.

1.3.2 *Allocation of votes*

Votes will be allocated as follows:

1.3.2.1 Generators

25,000 votes will be allocated among **generators** on the basis of **MWh of electricity** generated over the previous 12 months, calculated in accordance with rule 2 and rule 10.

1.3.2.2 Retailers

25,000 votes will be allocated among **retailers** on the basis of **electricity** consumed by them over the previous 12 months, calculated in accordance with rule 2 and rule 10.

1.3.2.3 Grid owners and distributors

25,000 votes will be allocated among **grid owners** and **distributors** on the basis of ODV calculated in accordance with rule 3 and rule 10.

1.3.2.4 Voting customers

25,000 votes will be allocated among **voting customers** on the basis of **MWh** of **electricity** consumed by them over the previous 12 months, calculated in accordance with rule 4 and rule 10.

1.3.3 **Requisite majority**

When voting on a **resolution** to change the rules in part C, a majority is required of 75% of the votes cast. When voting to change any **technical code** in schedule C3, a majority is required of 50% of the votes cast.

1.3.4 **Customers may apply for voting entitlements**

Any **customer** who is not a **member** and who wishes to exercise any voting entitlement as a **voting customer** must make a written application to the **Board** to become a **member** in accordance with rule 1 of section III.

1.3.5 **Voting customers must produce proof of consumption**

Every **voting customer** must produce records satisfactory to the **Board** showing that **voting customer's** consumption of **electricity** over the 12 months before the date at which it was admitted as a **member**. Without limiting the rights of the **Board** to determine that other material constitutes satisfactory records, **GST** invoices for the purchase of **electricity** by the **voting customer** that include quantity data, or records of that consumption held by the **reconciliation manager**, will constitute satisfactory records. The **Board** will allocate **MWs** to the **voting customer** based on the consumption for which satisfactory proof is provided. Every such allocation will apply for 12 months from the date that the **voting customer** is admitted as a **member**, after which the **voting customer** must make a full application for a voting allocation and produce records for the 12 month period immediately preceding the further application.

1.4 **Part D – Metering standards**

In any **resolution** to change the rules in or schedules to part D:

1.4.1 *Members entitled to vote*

Generators (except those who are only **embedded generators**) and **retailers** are entitled to vote on any **resolution** to change the rules in section II of part D and the schedules to part D.

Retailers and **embedded generators** are entitled to vote on any **resolution** to change the rules in section III of part D.

1.4.2 *Allocation of votes for changes to section II & the schedules*

For any **resolution** to change the **rules** in section II or the schedules to part D votes will be allocated as follows:

1.4.2.1 Generators

50,000 votes will be allocated among **generators** on the basis of **electricity** generated by them in the previous 12 months, calculated in accordance with rule 2 and rule 10; and

1.4.2.2 Purchasers

50,000 votes will be allocated among **purchasers** on the basis of **electricity** purchased by them in the previous 12 months, calculated in accordance with rule 2 and rule 10.

1.4.3 *Allocation of votes for changes to section III*

For and **resolution** to change the rules in section III of part D votes will be allocated as follows:

100,000 votes will be allocated among **purchasers** on the basis of **electricity** purchased by them in the previous 12 months, calculated in accordance with rule 2 and rule 10.

1.4.4 *Requisite majority*

In any **resolution** to change the rules in or schedules to part D a simple majority is required of the votes cast.

1.5 Part E – Registry information and customer switching

In any **resolution** to change the rules in or the schedules to part E:

1.5.1 *Members entitled to vote*

Retailers and **distributors** are entitled to vote.

1.5.2 Allocation of votes

Votes will be allocated as follows:

1.5.2.1 Retailers

50,000 votes will be allocated among **retailers** on the basis of ICP share, in accordance with rule 5 and rule 10; and

1.5.2.2 Distributors

50,000 votes will be allocated among **distributors** on the basis of ICP share, calculated in accordance with rule 5 and rule 10.

1.5.3 Requisite majority

A simple majority is required of the votes cast.

1.6 Part F – Transport

In any **resolution** to change the rules in part F:

1.6.1 Members entitled to vote

Section I: **Transpower** and **Transpower customers** are entitled to vote on any **resolution** to change the rules in section I of part F.

Section II: **Generators, purchasers, grid owners, distributors and voting customers** are entitled to vote on any **resolution** to change the rules in section II of part F.

Section III: **Transmission providers and transmission purchasers** are entitled to vote on any **resolution** to change the rules in section III of part F.

1.6.2 Allocation of votes

Votes will be allocated as follows:

Section I: For any **resolution** to change the rules in Section I, 50,000 votes will be allocated among **Transpower customers** on the basis of the value of services purchased from **Transpower** in the previous 12 months, in accordance with rule 7 and rule 10. 50,000 votes will be allocated to **Transpower**.

Section II: Generators

For any **resolution** to change the rules in Section II, 33,333 votes will be allocated among **generators** on the basis of **MWh**

of **electricity** generated over the previous 12 months, in accordance with rule 2 and rule 10.

Grid owners and distributors

33,333 votes will be allocated among **grid owners** and **distributors** on the basis of ODV, in accordance with rule 3 and rule 10.

Voting customers and purchasers

33,333 votes will be allocated firstly among **voting customers** on the basis of **MWh** of **electricity** consumed over the previous 12 months, in accordance with rule 9 and rule 10. Any unallocated votes will be allocated among **purchasers** on the basis of **MWh** of **electricity** purchased over the previous 12 months, in accordance with rule 2 and rule 10.

Section III: For any **resolution** to change the rules in Section III, 50,000 votes will be allocated among **transmission providers** on the basis of the value of services provided in the previous 12 months, in accordance with rule 8 and rule 10. 50,000 votes will be allocated among **transmission purchasers** on the basis of the value of services purchased in the previous 12 months, in accordance with rule 8 and rule 10.

1.6.3 Requisite majority

The majority required for any **resolution** to succeed is as follows:

Section I: Simple majority of votes in each **class**

Section II: Simple majority of all votes cast

Section III: Simple majority of votes in each **class**

1.7 Part G: Trading Arrangements

In any **resolution** to change the rules in or the schedules to part G:

1.7.1 Members entitled to vote

Generators and **purchasers** are entitled to vote on any **resolution** to change the rules in part G.

1.7.2 Allocation of votes

Votes will be allocated as follows:

1.7.2.1 Generators

50,000 votes will be allocated among **generators** on the basis of **electricity** generated by them in the previous 12 months, calculated in accordance with rule 2 and rule 10.

1.7.2.2 Purchasers

50,000 votes will be allocated among **purchasers** on the basis of **electricity** purchased by them on the previous 12 months, calculated in accordance with rule 2 and rule 10;

1.7.3 *Requisite majority*

A simple majority is required of the votes cast.

1.8 Part H – Clearing and settlement

In any **resolution** to change the rules in or the schedules to part H:

1.8.1 *Members entitled to vote*

Generators, purchasers and other buyers and sellers of **ancillary services** are entitled to vote on any **resolution** to change the rules in part H; and

1.8.2 *Allocation of votes*

100,000 votes will be allocated among **generators, purchasers** and other providers of **ancillary services** on the basis of the value of transactions in the previous 12 months, calculated in accordance with rule 6 and rule 10.

1.8.3 *Requisite majority*

A simple majority is required of the votes cast.

1.9 Part I – Transition issues

In any resolution to change the rules in or schedules to part I, the **members** entitled to vote, the allocation of votes and requisite majority are the same as for part A.

1.10 Other resolutions

1.10.1 *The Board and the rules*

The voting entitlements, voting allocations and requisite majority that apply to change the rules in part A also apply to the following **resolutions**:

- To create a new part in the rulebook
- To dissolve the **Board** under 1.13 of section II of part A

- To approve the constitution of [] Limited under rule 1.22.2 of section II of part A
- To approve a transfer of shares by the trustee shareholder under rule 1.25 of section II of part A.

1.10.2 Approving budget and operations plan

The part A voting entitlements and vote allocation also apply to any **resolution** to approve the annual budget and business plan proposed by the **Board** in terms of its deed of appointment in terms of rule 1.21 of part I. The requisite majority is 50% of all votes cast.

1.11 Voting entitlements in table form

The respective voting entitlements and processes are shown in a table on the next page.

Table of voting entitlements for rule changes

Part	Members entitled to vote	Allocation	Majority required
Part A Governance	All members	As for an election of directors as set out in schedule A4	75% majority of all votes cast.
Part B Consumer issues			
Part C, sections I, II, III, IV Quality & security	Generators, retailers, grid owners, distributors, and voting customers	25% to generators on the basis of MWh generated 25% to voting customers on the basis of electricity consumed or purchased 25% to distributors and grid owners on the basis of ODV 25% to retailers on the basis of MWh purchased	75% majority of all votes cast
Part C, schedules	Generators, retailers, grid owners, distributors, retailers and voting customers	25% among retailers on the basis of MWh purchased 25% among voting customers and direct consumers on the basis of MWh purchased 25% among grid owners and distributors on the basis of ODV 25% among generators on the basis of MWh generated	50% majority of all votes cast
Part D, section II Grid metering	Generators (except those who are only embedded generators) and retailers	50% among generators on the basis of MWh generated 50% among retailers on the basis of MWh purchased.	Simple majority of all votes cast
Part D section III Local network metering	Retailers and embedded generators	Retailers on the basis of MWh purchased Embedded generators on the basis of MWh generated	Simple majority of all votes cast
Part E The registry & switching	Retailers and distributors	50% among retailers on the basis of ICPs 50% to distributors on the basis of ICPs	Simple majority of all votes cast
Part F Transport Section I Developing transmission services	Transpower and Transpower customers	50% to Transpower 50% among Transpower customers on the basis of value of services purchased	Simple majority of votes cast by both Transpower and Transpower customers
Part F section II Changes to transmission services	Transpower, distributors, generators, voting customers, retailers	Allocated on the basis of value of services provided and/or purchased	Simple majority of all votes cast
Part F section III Pricing methodology	Transmission providers and transmission purchasers	50% among transmission providers on the basis of value of services provided 50% among transmission purchasers on the basis of value of services purchased	Simple majority of votes cast in each group
Part G: Trading rules	Generators and purchasers	50% among generators on the basis of electricity generated 50% among purchasers on the basis of	Simple majority of all votes cast

		electricity purchased	
Part H Clearing and settlement	Generators, purchasers and other members who provide ancillary services	Allocated among generators, purchasers and other buyers and sellers of ancillary services on the basis of the value of services settled	Simple majority of all votes cast
Part I Transition issues	All members	As for an election of directors as set out in schedule A4	75% majority of all votes cast

2 Allocation of votes on basis of MWh generated or purchased

In any **resolution** in which voting entitlements are allocated on the basis of the amount of **electricity** generated by a **generator** and/or purchased by a **purchaser**, each voter will be entitled to exercise one vote for each whole vote allocated to that voter by the following formula:

$$\text{RMWS} = (\text{RMW} / \text{TRMW}) * \text{class votes}$$

Where:

RMWS means the voter's share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;

RMW means on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other specified date on which the voting entitlement is calculated, the aggregate quantity of **electricity** that the **reconciliation manager** has reconciled against the **relevant contracts** of the **generator** or the **purchaser** (as the case may be) pursuant to the **rules** during the 12 months up to and including the final day of the last **reconciliation period** for which the reconciliation process has been completed;

TRMW means on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other specified date on which the voting entitlement is calculated, the total quantity of **electricity** reconciled against all **relevant contracts** during the 12 months up to and including the final day of the last **reconciliation period** for which the reconciliation process has been completed;

* means multiplied by;

"**relevant contracts**" means the contracts established under rules 6.1 and 6.2 of part H.

3 Allocation of votes on basis of ODV

In any **resolution** in which voting entitlements are allocated on the basis of ODV, each voter will be entitled to exercise one vote for each whole vote allocated to that voter by the following formula:

$$\text{ODVS} = (\text{ODV}/\text{TODV}) * \text{class votes}$$

Where:

ODVS means the voter's share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;

ODV means the most recently audited value of the voter's business valued accordingly to the methodology described in the handbook issued by the Ministry of Economic Development (the ODV handbook) for valuing the line business system fixed assets;

TODV means the total ODV of all voters;

***** means multiplied by.

4 Allocation of votes on the basis of voting customers' MWh

In any **resolution** to change the **rules** in part C, each **voting customer** will be entitled to exercise one vote for each whole vote allocated to that **voting customer** by the following formula:

$$CMWS = (CMW / TCMW) * \text{class votes}$$

Where:

CMWS means the **voting customer's** share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;

CMW means the **MWhs** allocated to the **voting customer** under rule 1.3.5;

TCMW means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other specified date on which **voting entitlements** are calculated, the total **MWhs** allocated to all **voting customers** under rule 1.3.5;

***** means multiplied by.

5 Allocation of votes on the basis of ICPs

In any **resolution** in which voters are allocated voting entitlements on the basis of **ICPs**, each voter will be entitled to exercise one vote for each whole vote allocated to that voter by the following formula:

$$ICPS = (ICP/TICP) * \text{class votes}$$

Where:

ICPS means the voters' share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;

ICP means, on the date the **Board** transmits the ballot voting forms for the **resolution** or any other date on which the voters' voting entitlement is

calculated, the number of **installation control points** interconnected with an isolation device owned or controlled by the voter (excluding all **installation control points** assigned against streetlights);

TICP means, on the date the **Board** transmits the ballot voting forms for the **resolution** or any other date on which the voters' voting entitlement is calculated, the total number of **installation control points** (excluding **installation control points** assigned against streetlights);

* means multiplied by.

6 Allocation of votes on the basis of value of transactions

In any **resolution** to change the **rules** in part H, each voter will be entitled to one vote for each whole vote allocated to that voter by the following formula:

$$\$VS = (\$V/T\$V) * \text{class votes}$$

Where:

\$VS means the voter's share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;

\$V means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other date on which voting entitlements are calculated, the aggregate value of invoices issued to the voter by the **clearing manager** during the 12 months up to and including the final day of the last **billing period** before the ballot voting forms are transmitted;

T\$V means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other date on which voters' voting entitlements are calculated, the total value of invoices issued by the **clearing manager** to all voters of the same class during the 12 months up to and including the final day of the last **billing period** before the ballot voting forms are transmitted;

* means multiplied by.

7 Allocation of votes on the basis of value of services purchased from Transpower

In any **resolution** to change the **rules** in part F, section I, each **Transpower customer** will be entitled to exercise one vote for each whole vote allocated to that **Transpower customer** by the following formula:

$$VTS = (\$VT/T\$VT) * \text{class votes}$$

Where:

- VTS means the **Transpower customer's** share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;
- \$VT means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other date on which voters' voting entitlements are calculated, the amount paid by the **Transpower customer** to **Transpower** for **transmission services** or a **service that substitutes for transmission** in the previous 12 months. Where the **transmission services** or the **service that substitutes for transmission** were not the subject of a **confirmed pricing methodology** the **Transpower customer** must provide reasonable evidence that the payments are bona fide;
- T\$VT means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other date on which voters' voting entitlements are calculated, the total amount paid by all **Transpower customers** to **Transpower** for **transmission services** or a **service that substitutes for transmission** in the previous 12 months;
- * means multiply.

8 Allocation of votes on the basis of value of services purchased or provided

In any **resolution** to change the **rules** in part F, section III, each voter will be entitled to exercise one vote for each whole vote allocated to that voter by the following formula:

$$VTPS = (\$VTP/T\$VTP) * \text{class votes}$$

Where:

- VTPS means the voter's share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;
- \$VTP means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other date on which voters' voting entitlements are calculated, in the case of a **transmission provider** the amount invoiced under a **confirmed pricing methodology** (which, for the avoidance of doubt, in the case of **Transpower** includes a **pricing methodology** authorised by the Commerce Commission) for **transmission services** or a **service that substitutes for transmission** in the previous 12 months, and in the case of a **transmission purchaser** the amount paid under a **confirmed pricing methodology** (which, for the avoidance of doubt, in the case of **Transpower** includes a **pricing methodology** authorised by the Commerce Commission) for **transmission services** or a **service that substitutes for transmission** in the previous 12 months;
- T\$VTP means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other date on which voters' voting entitlements are calculated, in the case of a **transmission provider** the total amount invoiced under **confirmed pricing methodologies** for **transmission services** or a **service that substitutes for transmission** by all

transmission providers in the previous 12 months, and in the case of a **transmission purchaser** the total amount paid under **confirmed pricing methodologies** for **transmission services** or a **service that substitutes for transmission** by all **transmission purchasers** in the previous 12 months;

* means multiply.

9 Allocation of a share of votes on the basis of voting customers' MWh

In any **resolution** to change the **rules** in part F, section II, each **voting customer** will be entitled to exercise one vote for each whole vote allocated to that **voting customer** by the following formula:

$$\text{CRMWS} = (\text{CRMW} / \text{TRMW}) * \text{class votes}$$

Where:

CRMWS means the voter's share of the votes allocated to that **class** of voter in accordance with the appropriate part of rule 1 of this schedule;

CRMW means the **MWhs** allocated to the **voting customer** under rule 1.3.5;

TCRMW means, on the date that the **Board** transmits the ballot voting forms for the **resolution** or any other specified date on which **voting entitlements** are calculated, the total quantity of **electricity** reconciled against all **relevant contracts** during the 12 months up to and including the final day of the last **reconciliation period** for which the reconciliation process has been completed;

* means multiplied by;

"**relevant contracts**" means all contracts established by **retailers** under rule 6.2 part H.

10 Transfer of votes allowed

Any voter may elect to transfer its voting entitlement to any other person by giving written notice to the **Board**. The notice must specify the person to whom the votes are to be transferred, the number of votes to be transferred (expressed either by number or as a percentage of the transferor's entitlement) and the date the transfer is to take place. As soon as it receives notice of any transfer under this rule the **Board** will:

10.1.1.1 Notify transferee

Notify the transferee of the transfer and specify the date from which the transferee may exercise the votes transferred, which shall be no sooner than **5 business days** after the date of the **Board's** notice; and

10.1.1.2 Notify members

Notify all other **members** of the transfer and of the alteration to voting entitlements.

11 Board will publish number of votes

11.1 Publication on website

The **Board** will publish on its website the number of votes to which each voter is entitled under the **rules** in this schedule.

11.2 System operator, reconciliation manager, clearing manager, market administrator and registry to provide information

The **system operator, reconciliation manager, clearing manager, market administrator** and the **registry** will provide the **Board** with any information necessary for the **Board** to be able to calculate the number of votes to which each voter is entitled. The information will be provided in the form and within the time that the **Board** reasonably requests.

12 Voters may have no votes

A voter with less than one whole vote will not have any votes under the **rules**.

13 Obtaining new voting rights

13.1 Recognition of potential voting entitlements

It is recognised that prospective voters and existing voters should be given voting entitlements based on their prospective positions. The procedure for obtaining these entitlements is set out in this rule 12.

13.2 Application by new members

Where a person becomes a **member** under rule 1.1 of section III, that person may request that the **Board** award voting entitlements under this rule 12.2 based on irrevocable binding contracts involving substantial financial commitment entered into by that person to either generate or purchase **electricity**, or to provide ancillary services, or to interconnect one or more **ICPs** with one or more isolation devices owned or controlled by that person (excluding any **ICPs** assigned against streetlights).

13.3 Application by existing members

Where an existing **member** believes that it has entered into irrevocable binding contracts involving substantial financial commitment to either generate or purchase **electricity** or to provide ancillary services or to interconnect one or more **ICPs** with one or more isolation devices owned or controlled by that person (excluding any **ICPs** assigned against streetlights) such that its voting entitlements under this rule 9 ought to be increased, that voter may apply

to the **Board** and request that the **Board** award that voter additional voting entitlements based on that voter's prospective **voting entitlements** resulting from such contracts.

13.4 The Board to determine applications

In assessing any application made to it under rule 12.2 or 12.3, the **Board** will have regard to the irrevocability of the binding nature of contracts entered into by the applicant, the degree of financial commitment involved and the possible voting entitlement of the applicant that may result from those contracts. The **Board** will allow any application where it determines, on the basis of the evidence provided by the applicant, that it is satisfied that:

13.4.1 Applicant has binding contracts

The applicant has entered into irrevocable binding contracts involving substantial financial commitment to either generate or purchase **electricity** in the future, or to supply ancillary service or to interconnect **ICPs** (excluding **ICPs** assigned against streetlights) with isolation devices owned or controlled by the applicant, as the case may be; and

13.4.2 Contracts likely to result in 0.1% share

That such contract are likely to lead to the applicant obtaining 1% or more, or, in the case of an existing **member** a further 0.1% or more, of the total voting entitlement as determined in accordance with rule 1.

13.4.3 The Board may reject application

If the **Board** determines, on the basis of the evidence provided by the applicant under rules 12.2 and 12.3, that it is not satisfied that the criteria set out in rules 12.4.1 and 12.4.2 have been met, the **Board** must reject the application.

13.5 The Board to award voting entitlements

If the **Board** allows an application under this rule 12, it will assess the voting rights to which the applicant should be entitled and will adjust the voting entitlements of the other voters as necessary in accordance with that assessment, so that the total votes do not exceed 100,000 and notify all voters of the result.

13.6 Effect of any ruling on subsequent votes

If the **Board** makes a ruling under rule 12.5 then, subject to any further reassessment pursuant to rule 12.7, from the date of that ruling until the expiry of one year after the applicant begins generating or purchasing, as the case may be, the **electricity** that was the subject of the application or acquires connections to **ICPs** that were the subject of the application, any votes on **rule changes** will be conducted in accordance with the adjusted voting entitlements assessed by the **Board**. At the conclusion of the one-year period mentioned above, voting entitlements will then be reassessed in accordance with rule 12.3.

13.7 The Board may review awards of voting entitlements

The **Board** may, at any time, at the request of any person or of its own motion, and will, when required to by rule 12.6, review any previous decision made by it under this **rule** and it may, after considering such further evidence as will be available, reassess the allocation of voting entitlements of any applicant and the other affected voters.

Schedule A7 – Fees payable by members

1 Obligation to pay fees

Pursuant to rule 3 of section I of part A, each **member** will pay fees in accordance with this schedule.

2 Fixed fees

Each **member** will pay fixed fees in accordance with this rule 2:

2.1 Annual fee

An annual fixed fee of \$1000; and

2.2 Fee per Part

An annual fee of \$500 for each part of the **rules** where the **member** is allocated at least one vote in accordance with schedule A6.

3 User fee proportions for each Part

Each **member** of each part of the **rules** will pay user fees that are determined by multiplying the proportion payable by that **member** in accordance with this rule 3 with the total fees payable in accordance with rule 4. The proportion of user fees for each part of the rules attributed to each **member** is determined by:

3.1 Quality and security

Rule 3 of section I of part C;

3.2 Metering arrangements

Rule 3 of section II of part D and rule 3 of section III of part D;

3.3 Registry information and customer switching

Rule 1.4.6 of part E;

3.4 Transport

Rule 4 of section I of part F;

3.5 Trading arrangements

Rule 5.4 of part G;

3.6 Clearing and settlement

Rule 1.3 of part H.

4 Total fee payable by members of each Part

The **Board** will determine annually or more frequently at its discretion the amount payable in total by the **members** of each part as follows:

4.1 Costs of part A

The **Board** will allocate any costs incurred in part A to the part of the **rules** to which the costs are attributable and will allocate the remainder, after deducting fees paid by **members** under rule 2, to the **members** of part A in proportion to their respective voting entitlements.

4.2 Service provider costs

The **Board** will allocate the costs of each **service provider** contract to the part of the **rules** to which the service is attributable and may, after having regard to the economic principles of pricing, allocate the costs to two or more parts of the **rules** where the service is attributable to those parts jointly:

4.2.1 Registry

The **registry** contract pursuant to rule 1.2 of section VI of part A will be allocated to part E.

4.2.2 Reconciliation manager

The **reconciliation manager** contract pursuant to rule 1.3 of section VI of part A will be allocated to part G except that portion relating to profiling, described in rule 6.3, and that portion relating to grid reconciliation fees described in rule 6.6.

4.2.3 Pricing manager

The **pricing manager** contract pursuant to rule 1.4 of section VI of part A will be allocated to part G.

4.2.4 Clearing manager

The **clearing manager** contract pursuant to rule 1.5 of section VI of part A will be allocated to part H, except that portion relating to auction fees described in rule 6.7.

4.2.5 System operator

The **system operator** contract pursuant to rule 1.1 of section VI of part A will be allocated to parts C and G after having regard to economic principles of pricing.

4.2.6 Market administrator

The **market administrator** contract pursuant to rule 1.6 of section VI of part A;

4.2.7 Any other service provider

Any other **service provider** appointed pursuant to rule 1.7 of section VI and any other person appointed as **service provider** pursuant to rule 1.7 of section VI of part A will be allocated to parts of the **rules** after having regard to economic principles of pricing.

4.3 Development costs

4.3.1 Customer switching development fees

For the purposes of this rule 4, the **Board** will not include the customer switching development fees pursuant to rule 4 of section IV of part I;

4.3.2 NZEM reform costs

For the purpose of this rule 4, the **Board** will not include the **NZEM** reform costs defined in rule 4 of section IV of part I.

4.3.3 MACQS development costs

For the purpose of this rule 4, the **Board** will not include the **MACQS Establishment costs, MACQS reform costs and MACQS implementation costs** defined in rule 1.4 of section III of part I.

4.4 Allocation to sections

In any part of the **rules** where the proportions payable by **members** differs across sections of that part, the **Board** will allocate any costs between the sections.

5 Calculation of voting entitlements

For the purpose of rule 3:

5.1 Specified dates

The **Board** will specify an annual date for calculation of voting entitlements and may also specify other dates for voting entitlements to be recalculated.

5.2 No transfer of voting entitlement

Obligations to pay fees do not transfer when a **member** transfers votes to another person under rule 10 of schedule A6.

6 Other fees

Each **member** will pay other fees in accordance with this rule 6:

6.1 Customer switching development fees

The customer switching development fees pursuant to rule 4 of section IV of part I, allocated between the **members** of part E in accordance with rule 1.4.1 of part E;

6.2 Reconciliation manager profiling fees

The **reconciliation manager** fees attributed to profiling, allocated between the **members** of part E in accordance with rule 1.4.2 of part E.

6.3 Profiling fees

The profiling fees attributed to rule 1.4.4 of part E, allocated between the **members** of part E in accordance with rule 1.4.5 of part E.

6.4 NZEM reform costs

The NZEM reform costs in accordance with rule 4 of section V of part I;

6.5 MACQS development costs

The **MACQS Establishment Costs**, **MACQS Reform Costs** and **MACQS Implementation costs** in accordance with rule 1.4.2 of section III of Part I;

6.6 Grid reconciliation fees

The fees payable per **grid injection point** and **grid exit point**, allocated in accordance with rules 5.1 and 5.2 of part G.

6.7 Auction fees

The auction fees in accordance with section VI of part I, allocated in accordance with rule 5.3 of part G.

6.8 Litigation costs

The costs of any litigation initiated by the **Board** under rule 3.3 of section IX of part A will be allocated among **members** in the same proportions as the **Board** allocates costs under rule 4.1.

6.9 System operator identification costs

The costs incurred by the **system operator** under rule 2.5 of section II of part C will be allocated among the **members** of part C in the same proportion as their voting entitlements.

6.10 Any other costs

Any other costs allocated by the **Board** among **members** after having regard to the economic principles of pricing.