


Constitution of FlexForum Incorporated

20 July 2023

I Terry Paddy, an officer of FlexForum Incorporated (the "Society"), certify that:

1. A majority of the members have consented to the application for incorporation of the Society
2. The rules attached to the application have been approved by the Society

Dated 22 July 2023

Signed by 
T. R. Paddy

Constitution of FlexForum Incorporated

1. Name and Office

- 1.1 The name of the incorporated society is **FlexForum Incorporated** (the **FlexForum**).
- 1.2 The principal office of the FlexForum will be at such place as may be determined by the Steering Group from time to time.

2. Interpretation

- 2.1 In this Constitution:

Act means the Incorporated Societies Act;

Chair means the Chair elected in accordance with clause 6;

Flexibility Plan means the list of practical, scalable and least-regrets steps and actions, updated from time-to-time, which are required for households, businesses and communities to make choices which maximise the value of consumer and distributed energy resources and flexibility;

FlexForum Workplan means the workplan setting out the tasks and activities for the next financial year(s) presented to the Members each year at the Annual General Meeting;

General Meeting means an Annual General Meeting or an Extraordinary General Meeting;

Member means any person admitted to membership of the FlexForum pursuant to this Constitution;

Policies and Procedures means the policies and procedures developed by the Steering Group from time to time;

Steering Group means the committee of Members elected in accordance with clause 6.

3. Objective, purpose and powers

- 3.1 The objective of the FlexForum is to make it easier for households, businesses and communities to maximise the value of consumer and distributed energy resources (CDER) and flexibility to:
- (a) support affordable and reliable operation of the electricity market and power system;
 - (b) enable accelerated electrification by households and businesses as part of the transition in Aotearoa New Zealand to zero emissions economy;
 - (c) do everything incidental to achieving the foregoing objectives.
- 3.2 The purpose of the FlexForum is to support coordinated and collaborative action to achieve the objective by doing things including:
- (a) maintain the Flexibility Plan, monitoring progress, making updates and amendments
 - (b) identify the practical, scalable and least-regret steps needed for households, businesses and communities to make choices which maximise the value of CDER and flexibility;
 - (c) support and encourage the coordination of activity by the electricity industry, government agencies, regulatory agencies, interested organisations and people;
 - (d) support and encourage collaboration by the electricity industry, government agencies, regulatory agencies, interested organisations and people;
 - (e) support and encourage learning-by-doing;
 - (f) support and encourage sharing of insights, information and advice
 - (g) any activity or initiative the FlexForum considers helpful for achieving its objective.
- 3.3 Subject to the Act, the FlexForum will have power to do everything necessary to achieve the objects in clause 3.1 and the FlexForum Workplan, and in particular may:
- (a) receive money from any person;
 - (b) borrow money, obtain grants, and apply for funding, alone or with other stakeholder groups;

- (c) give or receive guarantees or indemnities for the payment of money or the performance of obligations;
- (d) have headquarters and other facilities as the FlexForum may determine from time to time;
- (e) purchase, take on lease or otherwise acquire any real and personal property for the FlexForum's purposes;
- (f) erect, maintain, improve or alter any building or works the FlexForum may require;
- (g) sell, lease, exchange, mortgage or otherwise deal with the FlexForum's real and personal property;
- (h) create databases, gather and share information, print, publish materials for the promotion of the FlexForum's objects;
- (i) employ staff and contractors for such purposes and for such periods and on such terms as the Steering Group thinks fit.

4. Membership

- 4.1 Membership of the FlexForum will be open to any person who is committed to achieving the objective and purpose of the FlexForum, and meets the criteria and expectations set by the Steering Group, as specified in Policies and Procedures.
- 4.2 To become a Member an applicant will apply to the Steering Group and agree to pay the applicable annual subscription.
- 4.3 The Steering Group will have complete discretion about whether to allow the applicant to become a Member. The Steering Group will advise the applicant of its decision. The Steering Group will not be required to give any reason for a refusal to grant membership.
- 4.4 The Steering Group will keep a Register of Members, which will include contact details of an Applicant and the applicant's logo or branding (if relevant). Each Member will notify the Steering Group of all changes to information in the Register of Members.
- 4.5 A Member may resign from the FlexForum at any time on giving written notice to the Steering Group.
- 4.6 If the Steering Group resolves by a two-thirds majority vote of its members that a Member is guilty of conduct that reflects badly on the FlexForum or is contrary to this Constitution, the Steering Group may admonish, suspend and/or expel that Member.

5. Subscriptions

- 5.1 Every Member will pay to the FlexForum an annual subscription fixed by the Steering Group. On payment of this subscription the Member will be entitled to the rights and privileges of a Member.
- 5.2 Any Member whose subscription remains unpaid for three months after the due date may be removed from membership by the Steering Group.
- 5.3 The annual subscription will fund the functions and activities as described in the FlexForum Workplan and budget.
- 5.4 The Steering Group may set proportional subscription fees for Members joining during the year or to account for the circumstances of a specific Member.
- 5.5 The Steering Group may ask Members to contribute funds additional to the annual subscription if required based on the FlexForum Workplan and budget.
- 5.6 A Member may, with the consent of the Steering Group, provide an in-kind contribution in lieu of some or all the annual subscription or additional contribution.

6. Steering Group

- 6.1 The management of the affairs of the FlexForum will be in the hands of the Steering Group, which may exercise all the powers of an incorporated society that are not required, either by this Constitution or the Act, to be exercised by the Members. The Steering Group:
 - (a) may make, amend or rescind regulations, Policies and Procedures not inconsistent with this Constitution governing its meetings and the business of the FlexForum;
 - (b) may do anything necessary to carry out the objectives and purpose of the FlexForum;

- (c) may appoint sub-committees, which will act subject to any directions given by the Steering Group.
- 6.2 The Steering Group will comprise between seven and eight members, plus an independent Chair who does not need to be a Member. All other Steering Group members must be Members or their representatives.
- 6.3 Steering Group members will act in their personal capacity and not as representatives of their employer or organisation.
- 6.4 Steering Group members should be selected based on the following criteria:
 - (a) to ensure the Steering Group membership reflects the diverse and whole-of-supply chain interests and participation in the FlexForum and will provide Members with confidence that the Steering Group will act in the best interests of the FlexForum, its objectives and purpose, rather than specific sectoral or organisational interests;
 - (b) able to demonstrate a clear commitment to the objective and purpose of the FlexForum and the Flexibility Plan;
 - (c) an ability for independent thinking, pragmatism, and a preference for learning by doing;
 - (d) an ability to see the big picture and knowing when to get into the detail;
 - (e) an ability to collaborate, recognise different perspectives, ask challenging questions and to be challenged
 - (f) any other criteria set out in the Policies and Procedures.
- 6.5 The Chair of the Steering Group must also be able to:
 - (a) act independently of sectoral or organisational interests; and
 - (b) facilitate discussions and achieve consensus in a way that is objective and consistent with the objectives of the FlexForum and the interests of all Members.
- 6.6 Steering Group members will be elected as follows:
 - (a) The Steering Group will, at least 45 days before the date of the next Annual General Meeting, provide members with:
 - (i) advice regarding the number of vacancies on the Steering Group which are to be filled at the next Annual General Meeting;
 - (ii) the nomination form template;
 - (iii) advice about the selection process; and
 - (iv) the person appointed by the Steering Group to be the receiving officer for nominations and votes.
 - (b) Members may each submit to the receiving officer a single nomination for each vacancy at least 30 days before the date of the Annual General Meeting. Each nomination must be accepted by the nominee.
 - (c) The Steering Group will prepare a shortlist of candidates for vacancies on the Steering Group, including the Chair.
 - (d) The shortlist of candidates will be provided to Members no more than 10 days after the specified due date for receiving nominations.
 - (e) Members may each submit to the receiving officer a single vote for each vacancy other than for the Chair, within 10 days of receiving the shortlists of candidates.
 - (f) The vote for the Chair will take place at the Annual General Meeting using the single transferable vote process. The first candidate to receive 50% of all votes of Members present will be elected as Chair.
 - (g) For candidates other than the Chair, the Chair will review the votes and select candidates to fill the vacancies taking account of the number of votes received and to ensure the Steering Group membership reflects the diverse and whole-of-supply chain interests and participation in the FlexForum.
 - (h) Members will vote on the candidates selected by the Chair at the Annual General Meeting by way of a single resolution, so that all of the candidates named in the list are elected by 60% of Members present.

- (i) If the candidates are not elected under paragraph (h), the Chair will propose another list of candidates. Voting will continue until all of the candidates named in a list are elected by 60% of Members present.
 - (j) The Steering Group member appointments will take effect at the conclusion of the Annual General Meeting at which they are elected.
- 6.7 Steering Group members may not delegate their membership of the Steering Group.
- 6.8 Steering Group members will serve for an initial two-year term but may be appointed for a further two-year term.
- 6.9 Any vacancy in the number of members of the Steering Group may be filled by the Steering Group. Any person so appointed will hold office until the conclusion of the next Annual General Meeting.
- 6.10 The first Chair will hold office until the conclusion of the first Annual General Meeting but may be reappointed at that meeting.
- 6.11 If the Chair resigns, the Steering Group may elect a Steering Group member to chair the Steering Group until a new Chair is appointed at the next Annual General Meeting.
- 6.12 The Steering Group may invite non-voting observers to attend meetings as it sees fit, including from MBIE, Commerce Commission, Electricity Authority, Energy Efficiency and Conservation Authority and similar bodies.
- 6.13 The quorum for a Steering Group meeting will be five Steering Group members.
- 6.14 At Steering Group meetings each member will be entitled to one vote. Every question will be decided by a majority of votes.
- 6.15 Subject to the following, the Steering Group may regulate its own procedures:
- (a) the Steering Group will meet at least monthly via video or telephone conference, or other format decided by the Steering Group;
 - (b) no meeting may be held unless more than one-half of the Steering Group members attend;
 - (c) the Chair will chair Steering Group meetings, or if the Chair is absent, the Steering Group will elect one of their members to chair that meeting;
 - (d) the Steering Group will attempt to reach consensus decisions. Otherwise, decisions will be by a majority vote;
 - (e) the Steering Group must have a process stating how conflicts of interest and identified and mitigated, so that members avoid influencing deliberations or decisions where they have a conflict of interest;
 - (f) the Steering Group will operate transparently, including by promptly after each meeting publishing the agenda, relevant papers and notes outlining the discussions and decisions.

7. General Meetings

- 7.1 The FlexForum's financial year will be from 1 April to 31 March and the FlexForum will hold an Annual General Meeting as soon as can be conveniently arranged in the following year, but in any case not more than six months after the end of a financial year.
- 7.2 The business of each Annual General Meeting will be:
- (a) to receive and consider the Steering Group's report on the FlexForum's affairs during the preceding year, together with the annual statement of accounts and other reports of the FlexForum;
 - (b) to decide the appointment of the Steering Group members;
 - (c) to review of progress against the Flexibility Plan;
 - (d) to review the FlexForum Workplan and approve the budget for next financial year. The budget will be approved by 50% of Members present at the meeting;
 - (e) to approve changes or additions to the Flexibility Plan, which will be approved by 60% of Members present at the meeting;
 - (f) to consider, discuss and deal with any business included in the notice of meeting.
- 7.3 Extraordinary General Meetings of the FlexForum may be called at any time:
- (a) by two or more Steering Group members; or

- (b) on the written requisition of at least nine Members, provided that the notice of requisition must specify fully the business to be put before the meeting and must be given at least 30 days before the date of the meeting.
- 7.4 General Meetings will be convened by giving at least 30 days' notice to all Members specifying the business to be conducted. No other business may be considered at a General Meeting, unless the notice requirement is waived by a majority of all Members having the right to vote at a General Meeting.
- 7.5 General Meetings may be held in person or via video or telephone conference, or other format decided by the Steering Group;
- 7.6 The Chair will chair all General Meetings. In his or her absence the Members present may elect a chairperson for the meeting from the Steering Group members.
- 7.7 The quorum at a General Meeting will be nine Members present in person. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of Members, will be dissolved. In any other case the meeting will be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting, the Members present will be a quorum.
- 7.8 The Chair or chairperson may adjourn the General Meeting but no business will be transacted at an adjourned meeting other than business left unfinished at the General Meeting from which the adjournment took place. When a General Meeting is adjourned for 30 days or more, notice of the adjourned General Meeting will be given as in the case of an original meeting. Otherwise, it will not be necessary to give notice of an adjournment or of the business to be conducted at the adjourned meeting.
- 7.9 Any Member wishing to put a motion at an Annual General Meeting must notify the Steering Group at least 30 days prior to the Annual General Meeting and the Secretary will include a copy or summary of the motion in the notice of meeting.
- 7.10 Each Member will be entitled to one vote at a General Meeting and, unless otherwise specified in this constitution, every question will be decided by a majority of votes.
- 7.11 A Member may vote by proxy. The instrument appointing a proxy will be deposited with the person nominated by the Steering Group not less than 48 hours before the time appointed for the meeting at which the proxy is to be used. No Member present in person at any General Meeting may cast more than two proxy votes in addition to the Member's own vote.

8. Finances and records

- 8.1 The Steering Group must:
 - (a) keep proper records of all Steering Group meetings and General Meetings;
 - (b) keep proper books of account and financial records of the FlexForum;
 - (c) keep all other documents and records, connected with the FlexForum;
 - (d) have control of all funds of the FlexForum and operate all bank accounts in the manner determined by the Steering Group;
 - (e) have control of the Common Seal, which may only be affixed to a document by a resolution of the Steering Group.
- 8.2 As soon as practicable following the end of each financial year the Steering Group will arrange for the preparation of a statement containing particulars of:
 - (a) the income and expenditure for that financial year; and
 - (b) the assets and liabilities of the FlexForum as at the end of that financial year.
- 8.3 The Steering Group will cause the statements referred to in clause 8.2 to be examined by a suitably qualified accountant, who is not associated with a Member. The accountant may request the production of any documents relating to the affairs of the FlexForum and will, if requested by the Steering Group, present a report to the Steering Group prior to the Annual General Meeting following the relevant financial year.

9. **Payments to members**

- 9.1 No private pecuniary profit may be made from the FlexForum by any Member, except that:
- (a) a Member may receive full reimbursement for all expenses properly incurred by the Member in connection with the affairs of the FlexForum, as approved by the Steering Group;
 - (b) the FlexForum may pay reasonable and proper remuneration to any person in return for services provided to the FlexForum, as approved by the Steering Group;
 - (c) a Member may be paid all usual professional, business or trade charges for services provided, time spent and acts done in connection with the affairs of the FlexForum by the Member, as approved by the Steering Group; and
 - (d) a Member may retain any remuneration properly payable to the Member by any entity with which the FlexForum may be in any way connected and for which the Member has acted in any capacity whatever. This applies even if the Member's connection with that entity is in some way attributable to the Member's connection with the FlexForum. However, the FlexForum may not lend money or lease property or assets at less than current commercial rates, having regard to the nature and terms of the loan and lease to any person (as defined in the Income Tax Act):
 - (i) who is a Member;
 - (ii) who is a shareholder or director of a company by which any business of the FlexForum is carried on; or
 - (iii) who is a settlor or a trustee of a Trust that is a shareholder of a company by which any business of the FlexForum is carried on; or
 - (iv) if that person or company and the settlor or trustee or shareholder or director referred to in any one of the foregoing paragraphs of this proviso are associated persons (as defined in the Income Tax Act).

10. **Complaints**

- 10.1 Complaints or disputes regarding a Member's interests, behaviour, rights or duties will be dealt with in the manner set out in Schedule 2 of the Act.

11. **Amendment of the Constitution**

- 11.1 Any motion to amend or replace the Flexibility Plan or this Constitution will be either proposed by the Steering Group or proposed by at least 10% of eligible Members and given in writing to the Steering Group at least 30 days before the meeting at which the motion is to be considered and accompanied by a written explanation of the reasons for the proposal.
- 11.2 At least 14 days before the meeting at which the proposed change to this Constitution is to be considered the Steering Group will give to all Members notice of the proposed motion and the reasons for the proposal.
- 11.3 This Constitution may be amended by resolution passed by a two-thirds majority vote of Members at a General Meeting of which not less than notice has been given in accordance with the preceding clauses.
- 11.4 No amendment of this Constitution will be approved if it would affect clause 10.

12. **Dissolution**

- 12.1 The FlexForum will be wound up in accordance with the Act.
- 12.2 The FlexForum may be dissolved if a resolution is passed in favour of dissolution by a two-thirds majority vote of the Members present at a General Meeting.
- 12.3 If on the winding up or dissolution of the FlexForum any property remains after the satisfaction of all debts and liabilities, that property will be paid or distributed to a not-for-profit organisation having purposes similar to those of the FlexForum, as determined by a majority of the Members present at a General Meeting.