

I certify that the rules attached are the rules of the New Zealand Internet Exchange Incorporated and are those referred to in the attached certificate signed this 12th day of February 2016 by me, Joseph Wooler:



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Joseph Wooler - Secretary

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**Rules of the**  
**New Zealand Internet Exchange Incorporated**

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# Rules of the New Zealand Internet Exchange Incorporated

## 1. NAME

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- 1.1 The name of the Society shall be the “New Zealand Internet Exchange Incorporated” (“the Society”). The Society shall have the ability to nominate a trading name suitable for its purposes as resolved by the Committee as it deems fit, but shall at all times legally operate under the name stated herein before.

## 2. INTERPRETATION

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- 2.1 In these Rules unless a contrary interpretation appears:
- a. **Annual General Meeting:** Shall mean the annual meeting of the Society.
  - b. **Affiliate Member:** Shall mean any member of the Society as constituted in Rule 5.4.
  - c. **Chairperson:** Shall mean the person elected by the Committee as chairperson of the Society.
  - d. **Clear Day:** Shall mean all days excluding:
    - i. weekends; and
    - ii. public holidays in New Zealand and in the region in which the Society has its registered office.
  - e. **Committee:** Shall mean the management committee of the Society as constituted in Rule 7.
  - f. **Committee Meeting:** Shall mean the meetings of the Committee.
  - g. **Founding Member:** Shall mean the Western Australian Internet Association (Inc.) (ABN 71 817 988 968) (“WAIA”).
  - h. **Full Member:** Shall mean any member of the Society as constituted in Rule 5.3.
  - i. **General Meeting:** Shall mean either an Annual General Meeting or a Special General Meeting.

- j. **Member:** Shall mean any member of the Society as specified in Rule 5.
- k. **Patron:** Shall mean the person appointed to that position by the Committee from time to time pursuant to Rule 7.4.7.
- l. **Resolution:** Shall mean, in respect of a General Meeting and subject to Rule 11.1, any resolution passed at a General Meeting by a majority of the Members attending in person, or by proxy, and voting.
- m. **Secretary:** Shall mean the person elected by the Committee as secretary of the Society.
- n. **Society:** Shall mean **New Zealand Internet Exchange Incorporated**.
- o. **Special General Meeting:** Shall mean a meeting of the Society convened in accordance with Rule 6.3.1.
- p. **Treasurer:** Shall mean the person elected by the Committee as treasurer of the Society.

2.2 Unless the context otherwise requires, in these Rules:

- a. Headings are inserted for convenience only and shall be ignored in construing any matter.
- b. References to a person shall include a natural person, company, association or other entity, whether incorporated or not and whether or not having a separate legal personality and includes that persons successors, assigns, executors and administrators.
- c. Words denoting individuals shall include corporations and vice versa.
- d. References to any legislation or to any provision of legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless otherwise stated, to New Zealand legislation and further, unless the context requires otherwise, shall also include any statutory instruments or regulations issued under such legislation or provision.
- e. The words 'includes' or 'including' shall not imply any limitation.

### **3. REGISTERED OFFICE**

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- 3.1 The registered office of the Society shall be at such place as determined by the Committee of the Society from time to time.

### **4. OBJECTS AND POWERS**

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- 4.1 The Society is a not-for-profit common interest society which is established to maintain and extend the interests of the professional internet community throughout New Zealand. The underlying principles of the Society are to widely promote the internet, its applications and associated technologies, as an essential attribute to the business and not-for-profit sectors, while also advancing internet services and benefits to private citizens in the community. The Society is modelled along the lines of its mentor Association in Australia, WAIA.
- 4.2 The primary objects of the Society shall include to:
- a. support and protect the interests of the Internet community in New Zealand;
  - b. assist the operation and expansion of Internet usage within New Zealand including but not limited to the Society and other Internet based services;
  - c. promote education and informed discussions on matters relating to the Internet;
  - d. support, encourage and advise on the development and use of online services and related innovations;
  - e. develop and maintain valuable links with similar organisations within New Zealand and globally for the benefit of Members; and,
  - f. offer services to Members and the general public to assist in fulfilling the aforementioned stated objects.
- 4.3 The Society shall achieve the aforementioned objects by exercising its full legal powers permitted under law, including to:
- a. establish, operate and administer one or more Internet exchange points in New Zealand;

- b. determine, implement and enforce protocols, policies and rules for the operation and use of any Internet exchange point operated by the Society;
- c. purchase, lease, hire, or otherwise acquire and hold real and personal property, rights, and privileges;
- d. construct, maintain and alter any buildings, premises or facilities and carry out works it considers necessary or desirable for the advancement or improvement of such buildings, premises or facilities;
- e. sell, lease, mortgage, charge or otherwise dispose of any property of the Society and to grant such rights and privileges of such property as it considers appropriate;
- f. control and raise money, including to borrow, invest, loan or advance monies and to secure the payment of such by way of mortgage, or charge over all or part of any of its real and personal property **provided that** interest paid on such funds borrowed or raised must not exceed the current market rate, and funds advanced or loaned must be at no lesser than the current market rate, unless the recipient of such funds loaned or advanced has objects the same as or similar to the objects of the Society;
- g. determine, raise and receive money by subscriptions, fees, levies, sponsorship or otherwise;
- h. engage people and organisations to work for and with the Society, provided that the payment for such services shall not exceed the market rate;
- i. if so determined by the Committee, to be a member of the Asia Pacific Internet Exchange Association or any successor or similar organisation;
- j. determine who are its Members in accordance with the Rules;
- k. establish and maintain the Committee, sub-committees, and other groups and to delegate its powers and functions to such groups;
- l. establish, maintain, and have an interest in corporate or other entities to carry on and conduct any part of the affairs of the Society and for that purpose, to utilise any of the assets of the Society;

- m. produce, develop, create, licence and otherwise exploit, use, and protect the Intellectual Property of the Society; and,
- n. purchase or otherwise acquire all or any part of the property, assets and liabilities of any one or more companies, institutions, incorporated societies or organisations whose activities or objects are similar to those of the Society, or with which the Society is authorised to amalgamate or merge, or generally for any purpose designed to benefit the Society; and do any other acts or things which further its objects.

The powers specified in Rule 4.3 shall not limit the rights and powers of the Society as an incorporated society under the Incorporated Societies Act 1908.

## **5. MEMBERSHIP**

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5.1 **Membership Categories:** The Society shall have three categories of Members:

- a. Full Members (Rule 5.3);
- b. Affiliate Members (Rule 5.4); and
- c. A Founding Member (Rule 5.5).

Within the specified membership categories there may be sub categories of membership as determined by the Committee.

5.2 **Eligibility:** All persons with an expressed interest in the Internet industry, who support the objectives of the Society and who meet any other criteria specified by the Committee shall be eligible to become Members.

5.3 **Full Members:** Full Members shall:

- a. be entitled to all the rights and privileges of full membership of the Society including the right to speak and vote at General Meetings; and

- b. have the right to connect to any Internet exchange operated by the Society subject to compliance with any applicable terms and conditions imposed by the Committee.

5.4 **Affiliate Members:** Affiliate Members shall:

- a. not have voting rights; and
- b. may, with the approval of the Committee and subject to compliance with any applicable terms and conditions, connect to any Internet exchange operated by the Society.

5.5 **Founding Member:** The Founding Member shall:

- a. be entitled to all the rights and privileges of a Full Member of the Society but shall not be required to pay any membership fee or subscription or any fee to connect to any Internet exchange operated by the Society; and

- b. have the other rights, powers and privileges as are set out in these Rules,

until such time as the Founding Member retires as Founding Member following which resignation, Rules 7.1(b) and 11.1.2 shall cease to have any effect and the requirement in Rule 12.1.1 for the Founding Member to approve a resolution to wind up the Society shall no longer apply.

5.6 **Conduct:** All Members shall promote the interests and the objects of the Society and shall do nothing to bring the Society into disrepute.

5.7 **Applications for Membership:** Those persons wishing to become Members shall make application to the Committee in the form and manner as the Committee shall decide. On receipt of a properly completed application, the Committee shall determine whether the application is accepted. The Committee may refuse to accept any applicant for membership on any lawful grounds. The Committee is not required to give reasons for any refusal to grant membership but may choose to do so.

5.8 **Nomination:** Where a Member is a company or other corporate body that Member shall nominate a natural person as its duly authorised representative in matters relating to the Society that require the involvement of that Member, including election as a member of

the Committee or any other committee acting on behalf of the Society. Nothing in this rule shall relieve that Member of its obligations to comply with this Constitution.

5.9 **Term of Membership:** The term of membership for all Members shall:

- a. commence on the date the person's membership is accepted by the Committee or any other date as may be specified by the Committee; and
- b. continue until membership ceases in accordance with Rule 5.11.

5.10 **Register of Members:** The Secretary shall keep a register of Members which shall show the full names and addresses of Members and the date on which they become a Member. This register will be maintained in confidence by the Committee and the Secretary. Where permission is granted by the Member, the Member's name, address and other contact details will be published to the membership.

5.11 **Cessation of Membership:**

5.11.1 **Resignation:** Any Member may resign from the Membership and/or the Committee by giving the Secretary notice in writing to the effect at least two Clear Days before the next Committee Meeting.

5.11.2 **Expulsion:** Any Member, other than the Founding Member, may be expelled from membership on the recommendation of the Committee by a vote of the majority of the Members present at a General Meeting of the Society but ten Clear Days written notice shall be given to such Member(s) by the Secretary of the meeting at which expulsion is to be considered and of the grounds upon which the Committee are recommending expulsion of the said Member and the said Member shall be entitled to be present at the General Meeting and to speak and call any witnesses.

5.11.3 **Removal by Committee:** Any Member other than the Founding Member, who has:

- a. breached this Constitution or the rules, bylaws, codes or policies of the Society; or
- b. breached the terms and conditions of any other contract between that Member and the Society;



- c. acted recklessly, or conducted himself/herself/itself in any way so as to bring the reputation of the Society into disrepute; or
- d. defaulted for more than 15 Clear Days in payment when due of any annual membership fees or other amounts owing to the Society,

may be removed from membership by the Committee and in that case the Committee shall give written notice of removal to that Member. The removal shall be effective as from the date of the Committee's decision.

## 6. MEETINGS

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### 6.1 Committee Meetings:

- 6.1.1 **Timing:** The time, date and place of all Committee Meetings shall be fixed by the Committee.
- 6.1.2 **Chairperson:** In the absence of the Chairperson, the Committee shall elect another Committee member to act as chairperson for that meeting.
- 6.1.3 **Quorum:** At any Committee Meeting a quorum will be 50% of the Committee. If a quorum is not present within thirty minutes of the starting time for the meeting then no business shall be discussed and the meeting shall be adjourned until the same time and place five Clear Days later. At such reconvened meeting if a quorum is not present then those members of the Committee present 30 minutes after the starting time of the reconvened meeting shall constitute a quorum.
- 6.1.4 **Voting:** At all Committee Meetings each member of the Committee, except the Patron (who shall not have a vote), shall have one vote provided that in the situation where the vote is split equally then the Chairperson shall have the casting vote. Resolutions of the Committee shall be passed by majority. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by all of the Committee members entitled to vote shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted. Such resolution in writing may consist of several documents (including documents sent by electronic mail, facsimile or other visible form of electronic communication) in like form, each signed or assented to by one or more members of the Committee.

6.1.5 **Closed Meetings:** Committee meetings shall be private and exclude other Members of the Society, unless resolved by the Committee otherwise.

## 6.2 **Annual General Meeting:**

6.2.1 **Timing:** The Society shall hold an Annual General Meeting within three calendar months of the end of the financial year (being 31 March in each year), at such time, date and place as decided by the Committee.

6.2.2 **Notice:** Notice of the Annual General Meeting shall be given to members in writing, with an agenda, at least 10 Clear Days before such meeting. In addition, notice may be given by such other medium as is considered desirable.

6.2.3 **Purpose:** The primary purposes of the Annual General Meeting shall be:

- a. Presentation and consideration of annual reports, audited annual balance sheets and a statement of accounts;
- b. Election or removal of such Committee members as may be necessary or considered desirable by the Members;
- c. Appointment of auditors for the ensuing year;
- d. Any other business as may be deemed necessary or appropriate; and,
- e. Setting of annual membership fees, if any, after considering any recommendation of the Committee in that regard.

## 6.3 **Special General Meeting:**

6.3.1 **Calling of:** A Special General Meeting of the Society shall be called within 10 Clear Days by the Secretary on receipt of a written requisition signed by:

- a. At least two members of the Committee; or,
- b. At least five Members of the Society.

6.3.2 **Notice of:** At least five Clear Days' notice shall be given to Members of any Special General Meeting and the only business to be discussed at the Special General Meeting will be:

- a. To pass a resolution of no confidence in the Committee.
- b. To consider any business included in the written requisition which led to the convening of the Special General Meeting.

6.4 **Quorum for General Meetings:** A quorum for any General Meeting of the Society will be fifteen Full Members or one-third of the Full Members, whichever is the lesser attending in person or by proxy. If a quorum is not present within 30 minutes of the starting time for the meeting then no business shall be discussed and the meeting shall be adjourned until the same time and place five Clear Days later or to such other time and place as the Committee shall determine. At such reconvened meeting if a quorum is not present then those Full Members present 30 minutes after the starting time of the reconvened meeting shall constitute a quorum.

6.5 **Format of Meetings:** All meetings of the Committee and General Meetings may incorporate attendance by or be held using interactive Internet technologies. The technical protocols and procedures for the implementation of such meetings will be detailed in guidelines as determined from time to time by the Committee.

## 7. MANAGEMENT COMMITTEE

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7.1 **Composition:** Subject to Rule 7.2, the Committee shall consist of not less than three and up to seven persons appointed or elected as follows:

- a. Up to two persons appointed by the Founding Member;
- b. Up to five or, if there is no Founding Member, up to seven, persons elected to the Committee by the Members at the Annual General Meeting; and
- c. Any such other advisors or professionals that the Committee wishes to co-opt onto the Committee by a majority vote.

7.2 **Restrictions:** Not more than one employee or officer of any company, organisation or individual may simultaneously hold positions as members of the Committee. Related companies (as defined by the Companies Act 1993) will be treated as a single company for this purpose. This provision:

- a. shall not place any restriction on the nomination of candidates for election as Committee members; and
- b. shall not apply in relation to any officer, member or employee of the Founding Member including, without limitation, in relation to those persons (if any) appointed by the Founding Member under Rule 7.1(a).

7.3 **Election of Officers:** At the first Committee meeting following each Annual General Meeting, the Committee shall elect from amongst their number:

- a. The Chairperson;
- b. The Treasurer;
- c. The Secretary; and
- d. Such other officers as determined by the Committee.

7.4 **Powers of the Management Committee:**

7.4.1 **Management:** With the exception of specific resolutions passed at Annual General Meetings or Special General Meetings of the Society, the management of the property and the investments of the funds of the Society shall be conducted by the Committee, with guidance and direction from WAIA as required from time to time.

7.4.2 **Powers:** The Committee may exercise any powers vested in the Society that are not required by those rules to be exercised by the Society in an Annual General Meeting or Special General Meeting, and may delegate any of its power to sub-committees. However, the Committee shall consult with the executive of WAIA on major decisions in respect of the Society, including issues concerning the operational systems of the Society and its expansion within New Zealand.

- 7.4.3 **Bylaws:** The Committee may determine bylaws (to be known as “Bylaws”) covering any matters as the Committee in its discretion deems appropriate, provided they are not inconsistent with this Constitution. Bylaws shall be binding on all Members and may be rescinded, amended, or added to from time to time but only by resolution of the Committee.
- 7.4.4 **Delegates:** The Committee shall have power to appoint and to instruct delegates or representatives to bodies with which the Society is affiliated or which have provisions for representation of the Society at their meetings.
- 7.4.5 **Employees:** The Committee shall have power to employ and dismiss staff on such terms as the Committee considers necessary or desirable.
- 7.4.6 **Temporary Appointments:** The Committee shall have power to appoint a person to temporarily fulfil the duties of any officer of the Society during such period as such officer is unable to fulfil his/her duties.
- 7.4.7 **Patron:** The Committee shall have power to appoint a Patron of the Society from time to time on terms to be agreed between the Committee and the Patron. The Committee shall also have power to remove the Patron at any time and the Patron may also resign at any time.
- 7.4.8 **General Powers:** The Committee may do any act or thing which may be incidental or conducive to the attainment of the objects of the Society.

## 8. VOTING AT GENERAL MEETINGS

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- 8.1 **Method:** Each Full Member attending a General Meeting either in person or by proxy shall be entitled to one vote provided that if any Full Member is in default in payment of any annual membership fees or any other amount due and owing to the Society, such Member shall not be entitled to vote. For the avoidance of doubt a Full Member which is an incorporated body may appoint a proxy or may be represented by one of its directors or other officers. If the General Meeting incorporates attendance by the Internet, those attending by the Internet shall vote by use of the secure means of identification specified in the notice of meeting or as otherwise specified by the Committee. Voting shall otherwise be by a show of hands or a poll and in accordance with the following provisions.

- 8.2 **Declaration:** Unless a poll is specifically requested, a declaration by the chairperson that the Resolution has been passed shall be considered conclusive proof that it was.
- 8.3 **Poll:** If a poll is requested by five or more Members at the meeting in response to a Resolution it shall be taken in such a manner as directed by the Chairperson and either at the meeting, or by postal or electronic ballot within 10 Clear Days of the meeting at which the poll is demanded, and the result of the poll shall be deemed to be the result of the Resolution.
- 8.4 **Casting Vote:** In the case of equality of votes the Chairperson at the meeting shall be entitled to a second or casting vote.
- 8.5 **Chairperson:** The chairperson at the meeting shall be the Chairperson or if he is absent, then such person as may be present and elected by Resolution before the commencement of other business.
- 8.6 **Proxies:** To be effective, a proxy must be appointed by a notice in writing that is signed by the Member and lodged at the registered office of the Society, or delivered to the Secretary, prior to the relevant General Meeting. A proxy need not be a Member. Such notice of proxy must state whether the proxy is for a particular meeting (which shall include any adjournment) or for a particular period, not exceeding 12 months. The notice of proxy may direct the proxy to vote in a particular way in respect of any Resolution but if it does not then the proxy shall be free to vote on any Resolution as he or she thinks fit.

## 9. FINANCE

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- 9.1 **Authorisation:** The Committee is authorised:
- 9.1.1 **Property Acquisition:** To take on lease, or otherwise acquire any real or personal property.
- 9.1.2 **Property Dealing:** To sell, exchange, maintain, improve, lease, hire, mortgage, dispose of, manage, control, invest, reserve or otherwise deal with and return to account any real or personal property of the Society.

- 9.1.3 **Borrowing:** To borrow or raise money by any means and upon such conditions may be reasonable and proper, including the giving of security.
  - 9.1.4 **Bank Accounts:** To open and operate trading and savings accounts. The signatories of any account shall be any two of three persons as designated by a General Meeting of the Society.
  - 9.1.5 **Budgets:** To approve and implement an annual budget.
  - 9.1.6 **Annual Fees:** To recommend to Members the appropriate annual membership fees, if any, to apply from time to time.
- 9.2 **Application of Income and Pecuniary Gain:**
- 9.2.1 **Application of Income:** The income and property of the Society shall be applied to the charitable purposes and objects of the Society within New Zealand.
  - 9.2.2 **No Pecuniary Profit:** No Member or person associated with a Member shall participate in or materially influence any decision made by the Society in respect of the payment to or on behalf of that Member or associated person of any income, benefit or advantage whatsoever. Any such payment made by the Society to or on behalf of a Member or any person associated with a Member shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).
  - 9.2.3 **Entrenchment:** The provisions and effect of this Rule 9.2 shall not be removed from this document and shall be included and implied into any document replacing this document.

## 10. COMMON SEAL

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- 10.1 **Location:** The Common Seal shall be kept by the Secretary at the registered office of the Society.
- 10.2 **Witnessing:** The Common Seal shall not be fixed to a document, instrument, deed, writing, paper or other thing unless pursuant to a resolution of the Committee and in the

presence of two members of the Committee who shall sign the said document, instrument, deed, writing paper or other thing as witnesses.

## **11. ALTERATIONS OF RULES**

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**11.1 Procedure:** These Rules may only be altered, added to or repealed:

11.1.1 by a resolution passed by a 2/3<sup>rd</sup>s (67%) majority of the Full Members present and entitled to vote at an Annual General Meeting or Special General Meeting called in accordance with these Rules; and

11.1.2 with the written approval of the Founding Member.

**11.2 Timing:** Notice of an intention to alter these Rules must be proposed by at least two Full Members in writing by submitting the proposed amendments to the Secretary at least 15 Clear Days prior to an Annual General Meeting or as part of a request to hold a Special General Meeting made in accordance with Rule 6.3.

**11.3 Restriction:** No alteration, addition to, or revision shall breach Rule 9.2.3.

## **12. WINDING UP**

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**12.1 Voluntary:** The Society may be put into liquidation if:

12.1.1 A Resolution is passed at a General Meeting appointing a liquidator and that resolution is approved by the Founding Member; and

12.1.3 Such Resolution is confirmed by a Resolution at a subsequent Special General Meeting called for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.

**12.2 Other:** The Society may be put into liquidation in accordance with the Incorporated Societies Act 1908.



- 12.3 **Distribution:** If, upon the liquidation, winding up or dissolution of the Society, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, that property shall not be paid to or distributed among the Members of the Society but shall be distributed to such organisation within New Zealand that has objects the same as or similar to the objects of the Society and that does not allow any part of its income or other funds to be used for the pecuniary profit of any individual.

### 13. INDEMNITY

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- 13.1 **Indemnity:** Every officer of the Society or employee of the Society shall be indemnified out of the funds of the Society to pay all costs, losses and expenses which any such officer or employee may incur or become liable for by reason of any contract entered into or act or thing done by them as an officer or employee of the Society acting in good faith and within his or her actual authority, including travelling expenses and reasonable out of pocket expenses.

### 14. INTERPRETATION OF THESE RULES

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- 14.1 **Substantial Compliance:** A substantial compliance with these Rules whether as to form, time, number or any other matter in all cases shall be good and sufficient and no regulation, resolution, decision, election, appointment, notice or other matter or thing shall be invalidated by reason only of a failure to comply exactly with these rules. In particular, the accidental omission to give notice to, or the non-receipt of notice by, any Member or member of the Committee shall not invalidate the proceedings at any meeting to which the notice relates.