
Constitution

The Office of the Independent Telecommunications Adjudicator
Limited A.C.N. [*to be inserted*]

(A public company limited by guarantee)

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1 Defined terms and interpretation

1.1 Defined terms

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) sets out the rules of interpretation which apply to this constitution; and
- (c) clarifies the effect of the Corporations Act on this constitution.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution.

2 Nature of company and liability

2.1 Nature of company

- (a) The company is a public company limited by guarantee.
- (b) The company has been established in compliance with Telstra's obligations under the Structural Separation Undertaking and for the purpose of section 152EQ of the CCA.
- (c) This constitution has been approved by the ACCC in accordance with paragraph 4.1 of Schedule 5 of the Structural Separation Undertaking.

2.2 Liability of each member is limited

The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$10.00 dollars to the assets of the company if it is wound up while he or she is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

3 Objects of the company

The objects of the company are to:

- (a) achieve the ITA objective set out in paragraph 3 of Schedule 5 of the Structural Separation Undertaking;
- (b) fulfil the role, and perform the functions, of the company limited by guarantee to be known as the Office of the Independent Telecommunications Adjudicator as set out in the Structural Separation Undertaking;
- (c) provide a means through which ITA Disputes can be adjudicated and resolved quickly and independently under the ITA Process; and
- (d) carry out such other functions and purposes which are necessary or incidental to the matters set out in rules 3(a) and 3(c).

4 Legal capacity and powers of the company

The company has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act.

5 The ITA Adjudicator

5.1 Appointment of the ITA Adjudicator

- (a) The company may appoint a person as a consultant of the company to perform the role of the ITA Adjudicator (as described in this rule 5) for the purpose of the Structural Separation Undertaking.
- (b) The company must not appoint a person as the ITA Adjudicator unless:
 - (i) that person has been nominated to the ACCC as the person that the company proposes to appoint as the ITA Adjudicator for the purposes of paragraph 5.1 of Schedule 5 of the Structural Separation Undertaking; and
 - (ii) the appointment of the person as the ITA Adjudicator has occurred in accordance with paragraph 5.1 of Schedule 5 of the Structural Separation Undertaking.
- (c) The company must not nominate a person as the ITA Adjudicator unless the board is satisfied that the person:
 - (i) has extensive practical and technical experience in telecommunications services, systems and processes and appropriate experience knowledge and skills to act as the ITA Adjudicator in accordance with the ITA Process;
 - (ii) has not been employed by or provided consultancy services to Telstra within two years prior to being appointed as the ITA Adjudicator;
 - (iii) does not have any direct financial interest in Telstra;
 - (iv) declares to the ACCC and Telstra any indirect or other interest in Telstra of which the ITA Adjudicator is aware; and
 - (v) is not employed by or does not act as consultant to Telstra or a carriage service provider within the period of at least six months immediately after ceasing for any reason to hold office as the ITA Adjudicator, without the ACCC's prior written consent.

5.2 Functions and powers of the ITA Adjudicator

The ITA Adjudicator will perform the functions and duties, and exercise the powers, set out in the Structural Separation Undertaking and the Plan, including:

- (a) functions and powers associated with the resolution of ITA Disputes, such as receiving, investigating, and facilitating the resolution of ITA Disputes;
- (b) a duty to have regard to the law, good industry practice and what is fair and reasonable in the circumstances when resolving ITA Disputes;
- (c) a duty to pursue fair, just economical and expeditious resolution of ITA Disputes;

- (d) functions and powers associated with investigating, consulting and providing expert advice in respect of matters referred by the ACCC to the ITA Adjudicator under the Structural Separation Undertaking and the Plan;
- (e) a duty to report annually to the board and the ACCC on the operation of the ITA Process, including the administration and operation of the ITA Process in compliance with the Charter of Independence;
- (f) a duty to provide information and reports to the ACCC in respect of:
 - (i) the general operation and effectiveness of the ITA Process;
 - (ii) general or specific information about those ITA Disputes it has received; and
 - (iii) any other matter relevant to an ITA Dispute or the ITA Process.

5.3 Independence of the ITA Adjudicator

- (a) The ITA Adjudicator will have authority to make decisions autonomously and independently of the company, the board and the members when performing its functions and duties and exercising its powers under and in accordance with the Structural Separation Undertaking, the Plan, the Charter of Independence, its terms of appointment and this constitution.
- (b) The company will not be a participant in the ITA Process and must not involve itself in, or seek to influence, a decision of the ITA Adjudicator and the functions, powers, responsibilities and role of the board and the members will be limited to the establishment, maintenance and administration of the company.
- (c) The independence of the ITA Adjudicator is to be enshrined in a Charter of Independence which is to be prepared and adopted by the board in accordance with rule 5.4.
- (d) Rules 5.3(a) and 5.3(b) have no effect to that extent that the board, a director or the company takes action to:
 - (i) respond to concerns about the ITA Adjudicator's failure to perform his or her functions or powers;
 - (ii) enforce the terms of appointment of the ITA Adjudicator; or
 - (iii) ensure that the company and its directors comply with law, including the Corporations Act.

5.4 Charter of Independence

- (a) As soon as reasonably practicable after the company is established and this constitution is approved by the ACCC, the company must prepare a Charter of Independence and provide a copy to the ACCC for approval in accordance with paragraph 4.2 of Schedule 5 of the Structural Separation Undertaking.
- (b) The Charter of Independence, and any variation to the Charter of Independence, is taken to be adopted by the company when approved by the ACCC in accordance with the Structural Separation Undertaking.
- (c) The terms of the appointment of the ITA Adjudicator must comply with the Charter of Independence.

- (d) The company and the board must deal with the ITA Adjudicator strictly in accordance with the Charter of Independence approved by the ACCC.
- (e) If there is an inconsistency between the Charter of Independence and this constitution, the Charter of Independence will prevail to the extent of the inconsistency, except where this would result in a contravention of law (in which case this constitution will prevail to the extent of the inconsistency).
- (f) The Charter of Independence must:
 - (i) provide for the ITA Adjudicator to act independently from Telstra, Wholesale Customers, NBN Co, the ACCC and government (whether federal, state, or territory);
 - (ii) provide for the ITA Adjudicator to serve a term of two years from the date of appointment, at which point his or her appointment will expire, unless Telstra and the ACCC agree to extend or otherwise vary the term of the appointment;
 - (iii) require that the ITA Adjudicator is not employed by or does not act as consultant to Telstra or a carriage service provider within a period of at least six months immediately after ceasing for any reason to hold office as the ITA Adjudicator, without the ACCC's prior consent;
 - (iv) require that the ITA Adjudicator does not disclose any information to the Board about a dispute being handled by the ITA Adjudicator other than to the extent strictly necessary for the board to fulfil its role under the constitution;
 - (v) require that the ITA Adjudicator does not formally or informally consult with or seek guidance from the board about a dispute being handled by the ITA Adjudicator;
 - (vi) provides that the ITA Adjudicator will only cease to hold office as the ITA Adjudicator only in the following circumstances:
 - (A) death or expiry of the term of engagement or employment;
 - (B) performance of any act of fraud, dishonesty or gross misconduct;
 - (C) extended absence without leave from the board, illness or other failure which substantially impairs the ITA Adjudicator's capacity to fulfil the function of the ITA Adjudicator;
 - (D) breach of the Charter of Independence of an Independence Direction;
 - (E) misuse of confidential information of a party received in the course of the performance of the function of ITA Adjudicator;
 - (F) cessation of the ITA Process;
 - (G) with the prior approval of the ACCC; or
 - (H) on any other grounds specified in the Charter of Independence approved by the ACCC;
 - (vii) provide a methodology in accordance with which the board is to determine the remuneration and other benefits provided to the ITA Adjudicator;

- (viii) provide a right for the ITA Adjudicator to report to and deal with the ACCC independently of the board, including to notify the ACCC of any matter relating to the operation of the ITA Process which in the ITA Adjudicator's opinion threatens or may threaten the independence of the role of the ITA Adjudicator;
- (ix) give the ITA Adjudicator the ability to seek independent legal advice or other advice when necessary or appropriate at reasonable cost and without prior approval of the board (a maximum cap may be specified in the Charter of Independence);
- (x) provide a process to identify and resolve conflicts of interest on the part of the ITA Adjudicator and for the ACCC to resolve any dispute about whether there is a conflict of interest involving the ITA Adjudicator in relation to a particular dispute being handled by the ITA Process;
- (xi) require the ITA Adjudicator to inform the ACCC of any complaint made by a party to a dispute about the independence of the ITA Adjudicator as soon as practicable after that complaint is made;
- (xii) require the ITA Adjudicator to provide any information requested by the ACCC for the purposes of investigating a complaint about the independence of the ITA Adjudicator, without a requirement to seek board consent to provide the information;
- (xiii) require the ITA Adjudicator to comply with a direction from the ACCC to take or not to take specified action in relation to the ITA Adjudicator's performance of his or her functions in accordance with the Charter of Independence which the ACCC considers is reasonable or necessary to ensure independence of the ITA Adjudicator (**Independence Direction**);
- (xiv) require the ITA Adjudicator to report annually to the board and the ACCC on the operation of the ITA Process, including the administration and operation of the ITA Process in compliance with the Charter of Independence; and
- (xv) not require a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

5.5 Appointment of a probity advisor

- (a) As soon as reasonably practicable, the company must appoint a suitably qualified probity advisor approved by the ACCC to provide advice to the board on matters relating to the independence of the ITA Adjudicator, the responsibilities of the board, the operation and administration of the ITA Process in accordance with the Charter of Independence and other matters the board considers appropriate.
- (b) In each year, the board must prepare and publish an annual report signed by the directors:
 - (i) confirming that the board has sought and obtained advice from a probity adviser under rule 5.5(a) as to whether the ITA Process is operating in accordance with the Charter of Independence;
 - (ii) stating whether, in the board's opinion (based on the probity adviser's advice), the ITA Process is operating in accordance with the Charter of Independence; and

- (iii) including a copy of the report that is to be prepared by the ITA Adjudicator in accordance with rule 5.2(e), subject to any redactions of information by the ITA Adjudicator as permitted by rule 5.4(f)(xv).

5.6 Establishment and operating costs of the ITA Adjudicator's office

- (a) The company may require the ITA Adjudicator to prepare an annual budget setting out the resources and funding the ITA Adjudicator considers necessary to meet his or her functions and duties.
- (b) The costs of the ITA Adjudicator's office are to be met as set out in paragraph 5.2 of Schedule 5 of the Structural Separation Undertaking and, other than to the extent required under that paragraph, the members will not be required to make any contributions to the capital or operating costs of the ITA Adjudicator's office.

5.7 Members to provide ITA Adjudicator with access to records and systems

Each member must provide the ITA Adjudicator with full access to its records, systems and personnel to facilitate the expeditious resolution of ITA Disputes, including confidential information of the member.

5.8 Information disclosure

- (a) Nothing in this constitution requires a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.
- (b) The directors must not disclose to Telstra any information of a confidential or commercially sensitive nature that is supplied by a Wholesale Customer to the ITA Adjudicator or the company (**Wholesale Customer Information**), except (and only to the extent) required to comply with law.
- (c) The company and the directors must not use or disclose Wholesale Customer Information of a Wholesale Customer in a manner which would be likely to enable a retail business unit of Telstra to gain or exploit an unfair commercial advantage over that Wholesale Customer in any market.

5.9 Inconsistency with other provisions of this constitution

If there is an inconsistency between a provision of this rule 5 and another provision of this constitution, the provision of this rule 5 will prevail to the extent of the inconsistency, except where this would result in a contravention of the Corporations Act (in which case the other provision will prevail to the extent of the inconsistency).

6 Membership

6.1 Classes of membership

- (a) Unless otherwise resolved by the company in a general meeting, the membership of the company will consist of ordinary members.
- (b) Subject to the Corporations Act and the terms of a particular class of membership, the company may vary or cancel rights attached to being a member of that class, or convert a member from one class to another, by special resolution of the company and either:
 - (i) a special resolution passed at a meeting of the members of that class; or

- (ii) the written consent of members who are entitled to at least 75% of the votes that may be cast in respect of membership of that class.

The provisions in this constitution concerning meetings of members (with the necessary changes) apply to a meeting held under rule 6.1(b)(i).

6.2 Ordinary members

The ordinary members of the company are the members at the date of incorporation of the company and those members who:

- (a) have paid the membership fee; and
- (b) have been admitted by the board to membership of the company as members after making an application for membership and satisfying any eligibility criteria adopted by the board.

6.3 Members rights

Subject to 6.1(b), a member has:

- (a) the right to receive notices of and to attend and be heard at any general meeting of the company; and
- (b) the right to vote at any general meeting of the company.

6.4 Eligibility

The board may approve eligibility criteria and rules governing the circumstances when a person may apply for membership.

6.5 Form of application

A person may apply in writing to be a member of the company. A person's application for membership must:

- (a) meet the requirements of any criteria and rules determined by the board under rule 6.4;
- (b) be signed by the applicant; and
- (c) accompanied by such documents or evidence as to eligibility as the board requires in accordance with rule 6.2.

6.6 Membership not transferable

No membership interest, benefit or right of any member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect same.

6.7 Certificates

- (a) The company may issue to each member, free of charge, one certificate evidencing that person as a member.
- (b) The company may issue a replacement certificate to a member if the company receives and cancels the existing certificate for that person's membership or the

company is satisfied that the existing certificate is lost or destroyed, and the member pays any fee as the directors resolve.

7 Admission to membership

7.1 Consideration of application by the board

If a person makes an application that complies with rule 6.4 the board must consider that application for membership as soon as practicable after its receipt and determine, in their discretion, the acceptance or rejection of that application for membership.

7.2 Acceptance or rejection of membership application

- (a) If an application for membership is accepted:
 - (i) the secretary must notify the applicant of admission; and
 - (ii) the name and details of the applicant must be entered in the register as membership details of the applicant in accordance with the Corporations Act.
 - (b) If an application for membership is rejected the secretary must notify the applicant that the application has been rejected.
 - (c) The directors do not have to give reasons for rejecting or accepting an application for membership.
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8 Removal and cessation of membership

8.1 Resignation

- (a) A member may resign from membership of the company by leaving written notice to that effect at the registered office addressed to the secretary.
- (b) Unless the notice provides otherwise, the resignation of a member is deemed to take effect from the date such notice is left at the registered office.

8.2 Expulsion of member

- (a) Subject to rule 8.2(c) the directors may resolve to expel a member if:
 - (i) an Expulsion Event occurs in respect of the member; and
 - (ii) the company gives that member at least 10 Business Days notice in writing stating the Expulsion Event and that the member is liable to be expelled, and informing the member of its right under rule 8.2(c).
- (b) The directors may resolve to expel a member if the member does not pay a fee payable by the member pursuant to this constitution within 20 Business Days after the due date for its payment.
- (c) Before the passing of any resolution under rule 8.2(a), a member is entitled to give the directors, either orally or in writing, any explanation or defence of the Expulsion Event the member may think fit.

- (d) Where a resolution is passed under rule 8.2(a) or 8.2(b), the company must give that member notice in writing of the expulsion within 10 Business Days of the resolution.
- (e) A member may by notice in writing to the company within 10 Business Days of receipt of the notice referred to in rule 8.2(d), request that a resolution under rule 8.2(a) be reviewed by the company at the next general meeting. If such a request is made, the directors must propose at the next general meeting of the company that a resolution be moved to confirm the expulsion of the member concerned.
- (f) A resolution under rule 8.2(a) takes effect:
 - (i) if the member gives a notice under rule 8.2(e), the date (if any) the resolution is confirmed by a general meeting of the company; or
 - (ii) if the member does not give a notice under rule 8.2(e), the date of the resolution.
- (g) A resolution under rule 8.2(b) takes effect on the date of the resolution.
- (h) The directors may reinstate an expelled member on any terms and at any time as the directors resolve, including a requirement that all amounts due but unpaid by the expelled member are paid.

8.3 Cessation Events

A person will cease to be a member of the company if a Cessation Event occurs in respect of that member. The estate of a deceased member is not released from any liability in respect of that person being a member of the company.

9 No profits for members

9.1 Transfer of income or property

Subject to the operation of rule 9.2, the assets and income of the company shall be applied solely in furtherance of the objects of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly to any member, except as bona fide compensation for services rendered or expenses incurred on behalf of the company.

9.2 Payments, services and information

Nothing in rule 9.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of the company for services actually rendered to the company;
- (b) an amount to any member in return for any services actually rendered to the company (whether by the member or any corporation or partnership in which the member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any member; or
- (d) reasonable and proper rent for premises let by any member to the company.

10 Fees

- (a) The directors may require the payment of fees or levies by members in the amounts and at the times as the directors resolve. The directors may make fees payable for one or more members for different amounts and at different times, and subject to the terms of membership payable by instalments. The directors may revoke or postpone payment of fees or extend the time for payment of fees.
- (b) The company must give members at least 10 Business Days notice of fees payable by members. A notice of fees must be in writing and specify the amount of the fee, and the time and place of payment of the fee. A fee is not invalid if a member does not receive notice of the fee.
- (c) A member must pay to the company the amount of each fee levied on the member at the times and places specified in the notice of the fee. If a fee is payable in one or more fixed amounts on one or more fixed dates, the member must pay to the company those amounts on those dates.
- (d) A member must pay to the company interest at the rate of 10% per annum on any amount referred to in rule 10(c) which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment, and expenses incurred by the company because of the failure to pay or late payment of that amount. The directors may waive payment of all or any part of an amount payable under this rule 10(d).
- (e) The company may recover an amount due and payable under rules 10(c) and 10(d) from a member by commencing legal action against the member for all or part of the amount due.
- (f) The debt due in respect of an amount payable under rules 10(c) and 10(d) is sufficiently proved by evidence that the name of the member sued is entered in the register and there is a record in the minute books of the company of the resolution requiring payment of the fee or the fixed amount referred to in rule 10(c).
- (g) The company may accept from any member all or any part of the fees payable before that amount is due and payable. The company may pay interest at any rate the directors resolve on the amount paid before it is due and payable (from the date of payment until and including the date the amount becomes actually payable) and the company may repay the amount so paid to that member.

11 General meetings

11.1 Convening of general meetings

- (a) A general meeting may be convened by:
 - (i) the directors by resolution of the board; or
 - (ii) members or the court in accordance with the Corporations Act.
- (b) A general meeting must be convened by the directors in accordance with the Corporations Act.
- (c) The Company must hold an annual general meeting if required by, and in accordance with, the Corporations Act.

- (d) Subject to rule 11.1(f), the directors may postpone, cancel or change the venue for a general meeting by giving notice not later than five Business Days before the time at which the general meeting was to be held to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the company.
- (e) A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- (f) A general meeting convened in accordance with of the Corporations Act may not be postponed beyond the date by which the Corporations Act requires it to be held and may not be cancelled without the consent of the member or members who requested it.
- (g) A meeting of members may be held in 2 or more places linked together by any technology that gives the members as a whole in those places a reasonable opportunity to participate in proceedings, enables the chair to be aware of proceedings in each place, and enables the members in each place to vote on a show of hands and on a poll.

11.2 Notice of general meetings

- (a) Subject to this constitution, any notice of or relating to a general meeting (including a notice of postponement or cancellation of, or a change in venue for, a general meeting) must be given within the time limits prescribed by the Corporations Act to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director;
 - (iii) an auditor of the company; or
 - (iv) the ITA Adjudicator.
- (b) A notice of a general meeting must specify the date, time and place of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this) and, except as provided in rule 11.2(c), state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- (c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report and the reports of the directors and auditor, the election of directors or the appointment or fixing of the remuneration of the auditor of the company.
- (d) A person may waive notice of any general meeting by notice in writing to the company.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 11.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:

- (i) the non-receipt or failure occurred by accident or error; or
- (ii) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 11.2(d); or
 - (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.
- (f) A person's attendance at a general meeting:
 - (i) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 11.2(c), unless the person objects to considering the matter when it is presented.

11.3 Admission to general meetings

- (a) The chair of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
 - (i) has a camera, tape recorder or video camera, or another audio or visual recording device;
 - (ii) has a placard or banner;
 - (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption;
 - (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) is not:
 - (A) a member or a proxy, attorney or Representative of a member;
 - (B) a director;
 - (C) an auditor of the company; or
 - (D) the ITA Adjudicator.
- (b) A person who is entitled to receive notice of a meeting or who is requested by the directors or the chair to attend a general meeting is entitled to be present, whether the person is a member or not.

11.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.

- (b) A quorum consists of:
 - (i) if the number of members entitled to vote is two or more - two of those members; or
 - (ii) if only one member is entitled to vote - that member,
present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened by, or at the request of, a member or members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

11.5 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) The directors present at a general meeting may elect a person present to chair the meeting if:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting.
- (c) Subject to rules 11.5(a) and (b), if at a general meeting:
 - (i) a chair has not been elected by the directors; or
 - (ii) an elected chair is not available or is not willing to act as a chair of the meeting (or part of the meeting),

the members present must elect as chair of the meeting another person who is present and willing to act.

11.6 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (i) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
 - (ii) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) Subject to the Corporations Act, the chair of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
- (i) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (ii) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- (c) Subject to the Corporations Act, the chair of a general meeting may:
- (i) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting or rule 11.2(c); and
 - (ii) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 11.2(a).
- (d) A decision by a chair under rules 11.6(a), (b) or (c) is final.
- (e) The chair of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (f) If the chair exercises his or her right under rule 11.6(e), it is in the chair's sole discretion whether to seek the approval of the members present to the adjournment.
- (g) If the chair does seek the members' approval, the chair must adjourn the meeting if the members present with a majority of votes agree or direct that the chair must do so.
- (h) The chair's rights under rule 11.6(e) are exclusive and, unless otherwise required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.
- (i) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (j) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- (k) Subject to rule 11.1(f), where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.

11.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and that decision is for all purposes a decision of the members.
- (b) If votes are equal on a proposed resolution, the chairperson of the meeting has a casting vote, in addition to any deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before a vote being decided by show of hands is taken or before or immediately after the declaration of the result of the show of hands:
 - (i) by the chair of the meeting; or
 - (ii) by any member present and entitled to vote on the relevant resolution.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it is to be taken in a way and subject to rule 11.7 (g) either at once or after an interval or adjournment or otherwise as the chair of the meeting directs. The result of the poll as declared by the chair is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn with the chair's consent.

11.8 Voting rights

- (a) Members have the following voting rights:
 - (i) on a show of hands, every person present who is a member has one vote; and
 - (ii) on a poll, every member present in person or by proxy or attorney has one vote.
- (b) A member present at a general meeting is not entitled to vote on any resolution if any fees or any other amount due and payable by that member to the company under this constitution have not been paid, or where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction. The company must disregard any vote on a resolution purported to be cast by a member present at a general meeting where that person is not entitled to vote on that resolution.

- (c) Where a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member, the following rules apply to a vote taken on a show of hands:
 - (i) the person is entitled to one vote only despite the number of members the person represents; and
 - (ii) the person's vote will be taken as having been cast for all the members the person represents; and
 - (iii) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 11.9(i) in any instrument appointing the person as a proxy or attorney.
- (d) An infant member is not entitled to vote at a general meeting. The parent or guardian of an infant member may vote at a general meeting on evidence being produced of the relationship or of the appointment of the guardian as the directors may require.
- (e) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
 - (ii) must be referred to the chair of the meeting, whose decision is final.
- (f) A vote not disallowed by the chair of a meeting under rule 11.8(e) is valid for all purposes.

11.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, where a member is a body corporate, by its Representative;
 - (ii) by proxy or, if the member is entitled to cast two or more votes at the meeting, by not more than two proxies; or
 - (iii) by attorneys.
- (b) A proxy, attorney or Representative may be a member of the company but does not have to be a member.
- (c) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative is taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
 - (ii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;

- (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
 - (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
 - (f) Where a member appoints two proxies to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
 - (i) where the appointment does not specify the proportion or number of the member's votes which each proxy may exercise, each proxy may exercise half of the member's votes;
 - (ii) on a show of hands, neither proxy may vote; and
 - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy represents.
 - (g) An instrument appointing an attorney or Representative must be in a form as the directors may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the member making the appointment and contains the name and address of that member, the name of the company, the name of the proxy or the name of the office of the proxy, and the meetings of members at which the proxy may be used. The chair of a meeting of members may determine that an instrument appointing a proxy is valid even if it contains only some of this information.
 - (h) If the name of the proxy or the name of the office of the proxy in a proxy form of a member is not filled in, the proxy of that member is the person specified by the company in the form of proxy in the case the member does not choose, or if no person is so specified, the chair of that meeting.
 - (i) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
 - (j) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:

- (i) at the registered office of the company, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting, as specified in the notice of meeting.
- (k) Unless the company has received written notice of the matter by the time and at the place or in the manner set out in rules 11.9(j)(i) and 11.9(j)(ii), a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
- (i) a Cessation Event occurs in relation to the appointer; or
 - (ii) the member revokes the proxy's or attorney's appointment; or
 - (iii) the member revokes the authority under which a third party appointed the proxy or attorney.
- (l) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while the member is present at the meeting.

11.10 Resolutions without meetings

- (a) Subject to rule 11.10(c), the company may pass a resolution without a general meeting being held, if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For the purposes of rule 11.10(a):
- (i) the document may be sent to members in any manner described in rule 18;
 - (ii) the resolution is passed when the last member signs;
 - (iii) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy;
 - (iv) a signature of a member transmitted to the company by facsimile is sufficient evidence of signature so long as the original is produced within 30 days of signing;
 - (v) where a share is held jointly, each joint member must sign.
- (c) Rule 11.10(a) does not apply to a resolution to remove an auditor.
- (d) Where a document is signed in accordance with rule 11.10(a) the document is to be taken as a minute of the passing of the resolution.

11.11 Resolutions of single member company

If the company has only one member, the company may pass a resolution by the member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

12 Directors

12.1 Appointment and removal of directors

- (a) There must be:
 - (i) at least 3 directors; and
 - (ii) unless the company resolves otherwise, not more than 10 directors.
- (b) The company may by resolution appoint or remove a director.
- (c) Where the company is the wholly owned subsidiary of another company (**Holding Company**), the Holding Company may by written notice served on the company appoint or remove a director.
- (d) The directors may appoint any natural person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but the total number of directors must not at any time exceed the maximum number allowed under this constitution.
- (e) Subject to rule 12.2 and to the terms of any agreement entered into between the company and the relevant director, a director holds office until the director dies or is removed from office under this rule 12.1.

12.2 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances prescribed by the Corporations Act;
- (b) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the director is removed from office under rule 12.1; or
- (d) if the director resigns by written notice to the company.

12.3 Remuneration of directors

- (a) Each director is entitled to the remuneration out of the funds of the company as the directors determine, but the remuneration of non-executive directors may not exceed in total in any year the amount fixed by the company in general meeting for that purpose.
- (b) The remuneration of directors:
 - (i) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
 - (ii) may be a share of a fixed sum determined by the company in general meeting to be the remuneration payable to all directors which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,

and if it is a stated salary under rule 12.3(b)(i) or a share of a fixed sum under rule 12.3(b)(ii), will be taken to accrue from day to day.

- (c) In addition to their remuneration under rule 12.3(a), the directors are entitled to be paid all travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- (d) Subject to any amount fixed in general meeting pursuant to rule 12.3(a), if a director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 12.3(a).
- (e) Nothing in rule 12.3(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 12.3(a).
- (f) The directors may, subject to the Corporations Act and any specific amount fixed in general meeting pursuant to rule 12.3(a):
 - (i) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director, a pension or lump sum payment for past services rendered by that director; and
 - (ii) cause the company to enter into a contract with the director for the purpose of providing for or giving effect to that payment.
- (g) The directors may, subject to any specific amount fixed in general meeting pursuant to rule 12.3(a), establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors.

12.4 Director need not be a member

- (a) A director is not required to be a member in the company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings even if he or she is not a member of the company.

12.5 Interested directors

- (a) A director may hold any other office or place of profit, other than auditor, in the company or a related body corporate in conjunction with his or her directorship. A director may be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director of the company may be a director or other officer of:
 - (i) a related body corporate;
 - (ii) a body corporate promoted by the company; or
 - (iii) a body corporate in which the company is interested, as shareholder or otherwise,

or be otherwise interested in any of those bodies corporate. A director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.

- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company as the directors think fit. This includes voting in favour of any resolution appointing a director as a director or other officer of that body corporate, or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if he or she is, or may be about to be appointed, a director or other officer of that other body corporate.
- (d) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation:
 - (i) selling any property to, or purchasing any property from, the company;
 - (ii) lending any money to, or borrowing any money from, the company with or without interest and with or without security;
 - (iii) guaranteeing the repayment of any money borrowed by the company for a commission or profit;
 - (iv) underwriting or guaranteeing the subscription for securities in the company or in a related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise, for a commission or profit; or
 - (v) being employed by the company or acting in any professional capacity, other than auditor, on behalf of the company.
- (e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with the company or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (g) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material person interest pass a resolution in accordance with the Corporations Act, or another exception applies under the Corporations Act, which permits that director to do so.
- (h) Subject to rules 12.5(i) and (j), a director who is in any way interested in a contract or arrangement or proposed contract or arrangement (other than by having a material personal interest) may, despite that interest:
 - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

- (iii) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things.
- (i) Rule 12.5(h) does not apply if, and to the extent that, it would be contrary to the Corporations Act or any other provision of the Corporations Act.
- (j) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the Corporations Act to disclose interests to the company.
- (k) Subject to compliance with the Corporations Act, any other applicable laws and any rules of common law and equity which may not lawfully be excluded, while the company remains a wholly owned subsidiary of Telstra, the directors:
 - (i) may disclose to Telstra any information, including confidential information, acquired as director other than Wholesale Customer Information; and
 - (ii) must disclose to Telstra on request any information necessary to allow Telstra to comply with its obligations under:
 - (A) the Telstra Corporation Act 1991, including but not limited to sections 8AE and 8AF; and
 - (B) the listing rules of any stock exchange on which Telstra's securities are listed.

For the purposes of this rule 12.5(l), Telstra may give any direction or request by notice in writing.

12.6 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required by the Corporations Act or this constitution to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 12.6(a), the directors may exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the company for the purposes, for the period and on the conditions as they think fit;

- (ii) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the directors;
 - (iii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iv) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer (excluding a director of the company), agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

12.7 Proceedings of directors

- (a) The directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of the directors may be held using any technology consented to by all the participating directors (**Approved Technology**) and the consent may be a standing one. The contemporaneous linking together by Approved Technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by Approved Technology.
- (c) A director participating in a meeting by Approved Technology is to be taken to be present in person at the meeting.
- (d) A meeting by Approved Technology is to be taken to be held at the place determined by the chairperson of the meeting as long as at least one of the directors involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

12.8 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

12.9 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
 - (i) a director, other than a director on leave of absence approved by the directors; or
 - (ii) an alternate director appointed under rule 12.14 by a director on leave of absence approved by the directors.

- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of, or form of technology for, the meeting;
 - (ii) must state the nature of the business to be transacted at the meeting;
 - (iii) may be given in person, by post or, subject to the Corporations Act, by a form of technology; and
 - (iv) is taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director or alternate director may waive notice of a meeting of directors by notifying the company to that effect in person, by post or by a form of technology.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) has waived or waives notice of that meeting under rule 12.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
 - (iii) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - (A) has waived or waives notice of that meeting under rule 12.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
 - (iii) the alternate director or the director who appointed the alternate director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting and:
 - (i) if the person is a director, an alternate director appointed by that person is also deemed to have waived any such objection; or

- (ii) if the person is an alternate director, the director who appointed that person as alternate director is also deemed to have waived any such objection.

12.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of:
 - (i) if the directors have fixed a number for the quorum, that number of directors; and
 - (ii) in any other case, two directors.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the company.

12.11 Chair and deputy chair of directors

- (a) The directors may elect one of the directors to the office of chair of directors and may determine the period for which that director is to be chair of directors.
- (b) The directors may elect one of the directors to the office of deputy chair of directors and may determine the period for which that director is to be deputy chair of directors.
- (c) The office of chair of directors or deputy chair of directors may be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 12.3(d) if:
 - (i) the directors resolve to do so; and
 - (ii) the total amount fixed by the company for remuneration of non-executive directors under rule 12.3(a) will not be exceeded.
- (d) The chair of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chair at each meeting of directors.
- (e) If at a meeting of directors:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting or of part of the meeting,then if the directors have elected a deputy chair of directors, the deputy chair of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chair of the meeting or part of it.
- (f) Subject to rules 12.11(d) and (e), if at a meeting of directors:

- (i) there is no deputy chair of directors;
- (ii) the deputy chair of directors is not present within 10 minutes after the time appointed for the holding of the meeting or of part of the meeting; or
- (iii) the deputy chair of directors is present within that time but is not willing to act as chair of the meeting or part of the meeting,

the directors present must elect one of themselves to be chair of the meeting or part of the meeting.

12.12 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of directors, unless the directors present resolve that the chair ought to have a casting or second vote in addition to any vote the chair may have in his or her capacity as a director:
 - (i) the chair of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is to be taken as having been lost.

12.13 Written resolutions

- (a) An act, matter or thing is taken to have been done or a resolution passed by a meeting of the directors, if a document containing a statement to that effect is assented to by all of the directors other than:
 - (i) a director on leave of absence approved by the directors;
 - (ii) a director who disqualifies himself or herself from considering the act, matter or thing in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (iii) a director who the directors reasonably believe is not entitled to do the act, matter or thing or to vote on the resolution in question,and the directors who assent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution.
- (b) The act, matter or thing is taken to have been done or the resolution passed when the document is last assented to by a director.
- (c) Two or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document.
- (d) A director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, facsimile, electronic, telephone or other method of written, audio or audio visual communication.

- (e) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 12.13, the document is to be taken as a minute of a meeting of directors.

12.14 Alternate directors

- (a) A director may, with the approval of the directors, appoint a person to be the director's alternate director for a period which the director thinks fit.
- (b) An alternate director may be a member or a director of the company but need not be a member or a director.
- (c) One person may act as alternate director to more than one director.
- (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of that power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect unless and until the company has received notice in writing of the appointment or termination.
- (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
- (k) In determining whether a quorum is present at a meeting of directors:
 - (i) where a director has appointed an alternate director, that alternate director is counted if the appointing director is not present;
 - (ii) where a person is present as director and an alternate director for another director, that person is counted separately provided that there is at least one other director or alternate director present; and
 - (iii) where a person is present as an alternate director for more than one director that person is counted separately for each appointment provided that there is at least one other director or alternate director present.
- (l) An alternate director is entitled to be paid the remuneration which the directors think fit, either in addition to or in reduction of the remuneration payable to the director for

whom the alternate director acts as alternate, provided that the total amount fixed by the company for remuneration of non-executive directors under rule 12.3(a) is not exceeded.

- (m) An alternate director is not entitled to be remunerated by the company for his or her services as alternate director except as provided in rule 12.14(l).
- (n) An alternate director, while acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

12.15 Committees of directors

- (a) The directors may resolve to delegate any of their powers to a committee or committees consisting of such number of directors as they think fit. The directors may revoke or vary any power so delegated.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may be treated as an extra service or special exertion performed by the members of the committee for the purposes of rule 12.3(d) if:
 - (i) the directors resolve to do so; and
 - (ii) the total amount fixed by the company for remuneration of non-executive directors under rule 12.3(a) will not be exceeded.

12.16 Delegation to individual directors

- (a) The directors may resolve to delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) Acceptance of such a delegation may be treated as an extra service or special exertion performed by the delegate for the purposes of rule 12.3(d) if:
 - (i) the directors resolve to do so; and
 - (ii) the total amount fixed by the company for remuneration of non-executive directors under rule 12.3(a) will not be exceeded.

12.17 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

13 Executive officers

13.1 Managing directors

- (a) The directors may appoint one or more of the directors to the office of managing director who must only exercise the powers conferred upon that managing director under rule 13.3(d).
- (b) A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

13.2 Secretaries

The directors must appoint at least one secretary and may appoint additional secretaries.

13.3 Provisions applicable to all executive officers

- (a) A reference in this rule 13.3 to an executive officer is a reference to a managing director, executive director or secretary appointed under this rule 13.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer of the company may be removed or dismissed by the directors at any time, with or without cause. Such removal or dismissal does not remove that person from office as a director.
- (d) The directors may:
 - (i) confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the directors;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to be a member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
 - (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer,if that circumstance was not known by the person when the act was done.

14 Seals

14.1 Adoption of common seal

- (a) The directors may determine that the company have a common seal or for the company to no longer have a common seal.
- (b) Rules 14.2, 14.3, 14.4, 14.5 and 14.6 only apply if the company has a common seal.

14.2 Safe custody of Seal

The directors must provide for the safe custody of the Seal.

14.3 Use of Seal

- (a) The Seal must be used only by the authority of the directors or a committee of the directors authorised by the directors to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Subject to rule 14.5, until the directors otherwise determine, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

14.4 Duplicate seal

- (a) The company may have for use in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

14.5 Certificate seal

- (a) The company may have for use on certificates for securities of the company in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the words "certificate seal".
- (b) A certificate for securities of the company sealed with a certificate seal is to be taken as having been sealed with the common seal of the company.

14.6 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the company by some mechanical or other means.

15 Winding up

Upon the winding up or dissolution of the company, any assets remaining after satisfaction of all of the company's debts and liabilities, will be paid to or distributed among the members.

16 Minutes and records

16.1 Minutes

The directors must cause minutes of:

- (a) all proceedings and resolutions of general meetings;
- (b) proceedings and resolutions of meetings of the directors and of committees of the directors; and
- (c) resolutions passed by directors without a meeting,

to be recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed.

16.2 Signing of minutes

- (a) Minutes of a meeting must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

16.3 Minutes as evidence

A minute that is recorded and signed in accordance with rules 16.1 and 16.2 is evidence of the proceeding, a resolution to which it relates, unless the contrary is proved.

16.4 Inspection of records

- (a) Subject to the Corporations Act, the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members other than directors.
- (b) A member other than a director does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.
- (c) The company must establish and administer all registers required to be kept by the company in accordance with the Corporations Act and each member must provide the company with such information as is required for the company to comply with this rule 16.4(c). If events occur which would cause the information contained a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.

- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
 - (e) The company must keep the financial records required by the Corporations Act.
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17 Indemnity and insurance

17.1 Persons to whom rules 17.2 and 17.4 apply

Rules 17.2 and 17.4 apply:

- (a) to each person who is or has been an ITA Adjudicator or a director, alternate director or executive officer (within the meaning of rule 13) of the company;
- (b) to such other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate.

17.2 Indemnity

The company may indemnify, to the extent permitted by law, each person to whom this rule 17.2 applies for all losses or liabilities incurred by the person as an officer and, if the directors so determine, an auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

17.3 Extent of Indemnity

The indemnity in rule 17.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 17.2 applies even though that person may have ceased to be an officer or auditor of the company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not paid by insurance.

17.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 17.4 applies against any liability incurred by the person as an officer or auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

17.5 Savings

Nothing in rule 17.2 or 17.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

17.6 Deed

Without limiting a person's right under this rule 17, the company may enter into a deed agreeing with the person to give effect to the rights of the person conferred by this rule 17 or the exercise of a discretion under this rule 17, on such terms and conditions as the directors think fit, as long as they are not inconsistent with this rule 17.

18 Notices

18.1 Notices by the company to members

- (a) A notice may be given by the company to a member:
 - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or any other address, or by facsimile or electronic mail to a facsimile number or electronic address, as the member has supplied to the company for the giving of notices; or
 - (ii) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- (b) The fact that a person has supplied a facsimile number for the giving of notices does not require the company to give any notice to that person by facsimile.
- (c) A signature to any notice given by the company to a member under this rule 18 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- (d) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

18.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any auditor, director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the auditor's, director's or alternate director's usual residential or business address, or such other address, or by facsimile or electronic mail to such facsimile number or electronic address, as the auditor, director or alternate director has supplied to the company for the giving of notices.

18.3 Notices by members or directors to the company

- (a) Subject to this constitution, a notice may be given by a member, director or alternate director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by facsimile or electronic mail to the principal facsimile number or electronic address at the registered office of the company.

- (b) The directors may resolve generally, or on a case by case basis, that a notice that is to be received by the company is not to be accepted if given by electronic means (excluding by facsimile).
- (c) If a resolution of directors is passed under rule 18.3(b), the company must give sufficient notice of the resolution to those required to give the particular notice to allow for the giving of notice by other means.

18.4 Notices to members outside Australia

A notice to be sent to a member outside Australia and its external territories must be sent by airmail, by facsimile or by electronic mail, or in another way that ensures it will be received quickly.

18.5 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile, the notice is to be taken to be given on the Business Day after it is sent.
- (c) Where a notice is sent by electronic means, service of the notice is to be taken to be effected:
 - (i) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation; or
 - (ii) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 18.5(c)(i), on the delivery to where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account or where the addressee is a corporation, the corporation's computer systems.
- (d) Where the company gives a notice under rule 18.1(a)(ii) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

18.6 Other communications and documents

Rules 18.1 to 18.5 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

18.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by facsimile or another form of written communication.

19 Rules

19.1 Power to formulate rules of the company

Without limiting the board's powers under this constitution, the board may from time to time pass resolutions to make regulations and rules relating to:

- (a) the qualifications of members and applicants for membership;
- (b) the procedure and timing of an application for admission;
- (c) procedure for nomination of directors;
- (d) the delegation by the board of its powers to committees;
- (e) the powers, role and function of any committee members, executive or directors (including the terms of appointment of any executive director);
- (f) any other matter not being inconsistent with this constitution which relates to the operations or conduct of the company.

19.2 Rules must comply with the Structural Separation Undertaking

Any regulations and rules made under rule 19.1 must comply with the provisions of the Structural Separation Undertaking.

19.3 Inconsistency

In the event of any inconsistency between rules or regulations formulated pursuant to rule 19.1 and the provisions of this constitution, the provisions of the Corporations Act or the provisions of the Structural Separation Undertaking, the provisions of this constitution, the Corporations Act and the Structural Separation Undertaking shall prevail.

20 General

20.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

20.2 Prohibition and enforceability

Any provision of, or the application of any provision of, this constitution which is void, illegal, prohibited or unenforceable in any place:

- (a) is, in that place, ineffective only to the extent to which it is void, illegal, prohibited or unenforceable; and
- (b) does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

20.3 Variation of this constitution

Other than an amendment which is made solely to reflect legislative changes or requirements, a resolution to vary this constitution will not take effect until the variation is approved by the ACCC.

Schedule 1 — Dictionary

1 Dictionary

In this constitution:

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

Cessation Event means:

- (a) in respect of a member of the company who is an individual:
 - (i) the death of the member;
 - (ii) the bankruptcy of the member; or
 - (iii) the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) the member ceases to satisfy any eligibility criteria specified by the board; and
- (c) in respect of a member of the company who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

Chair means the chair of a general meeting appointed in accordance with rule 11.5.

Charter of Independence means the charter to be prepared by the company and approved by the ACCC in accordance with rule 5.4.

Competition and Consumer Act (or **CCA**) means *Competition and Consumer Act 2010* (Cth).

Corporations Act means *Corporations Act 2001* (Cth).

Expulsion Event means, in respect of a member:

- (a) the member has wilfully refused or neglected to comply with the provisions of this constitution;
- (b) the conduct of the member, in the opinion of the directors, is unbecoming of the member or prejudicial to the interests or reputation of the Company; or
- (c) the member is, or any step is taken for the member to become, an externally administered body corporate).

Independence Direction has the meaning given in rule 5.4(f)(xiii).

ITA Adjudicator means the person to be appointed as the Adjudicator for the purposes of rule 5.

ITA Dispute has the same meaning as in the Structural Separation Undertaking.

ITA Process has the same meaning as in the Structural Separation Undertaking.

Representative, in relation to a body corporate, means a representative of the body corporate appointed in accordance with the Corporations Act or a corresponding previous law.

Plan has the meaning given in the Structural Separation Undertaking.

Regulated Service has the same meaning as in clause 71 of Schedule 1 to the Competition and Consumer Act.

Related Entity has the same meaning as in the Corporations Act.

Seal means any common seal, duplicate seal, seal or certificate seal of the company.

Structural Separation Undertaking means the undertaking given by Telstra and accepted by ACCC under s 577A of the *Telecommunications Act 1997* (Cth), as amended from time to time.

Telstra means Telstra Corporation Limited (ABN 33 051 775 556).

Wholesale Customer means a person that receives a Regulated Service from:

- (a) Telstra; or
- (b) a Related Entity of Telstra,

and which Regulated Service the person uses to provide a Carriage Service to a third party.

Wholesale Customer Information has the meaning given in clause 5.8(b).

2 Interpretation

2.1 General

- (a) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative.
- (b) A director is to be taken to be present at a meeting of directors if the director is present in person or by alternate director.
- (c) Where a provision of this constitution establishes an office of chair, the chair may be referred to as a chairman or chairwoman, as the case requires.
- (d) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (e) A reference to the board includes a reference to the directors who constitute the board.
- (f) In this constitution, headings and underlinings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:

- (i) words importing the singular include the plural and vice versa;
- (ii) words importing a gender include every other gender;
- (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (iv) a reference to a person includes that person's successors and legal personal representatives;
- (v) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 Application of the Corporations Act

- (a) This constitution is to be interpreted subject to the Corporations Act.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision.
- (c) Subject to rule (b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

2.3 Exercise of powers

- (a) The company may exercise in any manner permitted by the Corporations Act any power which under the Corporations Act a company limited by guarantee may exercise if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:

- (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
- (i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (iv) the delegation may include the power to delegate;
 - (v) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2.4 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.

2.5 Single member company

If at any time the company has only one member then, unless the contrary intention appears:

- (a) a reference in a rule to the “members” is a reference to that member; and
- (b) without limiting rule (a), a rule which confers power or imposes an obligation on the members to do a particular act or thing confers that power or imposes that obligation on that member.