

CONSTITUTION
- of -
EFTPOS ACCESS AUSTRALIA LIMITED

A Company limited by Guarantee

As adopted by special resolution
passed on ~~_____~~ 8 September 2006

Effective Date ~~_____~~ 15 September 2006

Copyright © 2006 EFTPOS Access Australia Limited
ABN 99 119 811 344

EFTPOS Access Australia Limited
Level 24, 25 Bligh Street, SYDNEY NSW 2000
Telephone: (02) 9221-8944 Facsimile: (02) 9221 8057
www.eftposaccess.com.au

CONSTITUTION OF EFTPOS ACCESS ~~COMPANY~~AUSTRALIA LIMITED
EXPOSURE DRAFT

TABLE OF CONTENTS

1. PRELIMINARY	1
1.1 Introduction	1
1.2 Definitions	1
1.3 Interpretation	3
1.4 Replaceable rules not to apply	4
1.5 Inconsistencies	4
1.6 Limited liability	4
1.7 Distribution on a winding up	5
1.8 Objects	5
1.9 Registered office	6
2. MEMBERSHIP	6
2.1 Membership	6
2.2 Rights of Membership	7
2.3 Termination of Membership	7
2.4 Discretions	8
2.5 Variations of rights	8
2.6 Fees	8
3. GENERAL MEETINGS	9
3.1 Annual general meeting	9
3.2 General meeting	9
3.3 Notice of meeting	9
3.4 Postponement or cancellation of meeting	10
4. PROCEEDINGS AT GENERAL MEETINGS	11
4.1 Representation of Member	11
4.2 Quorum	12
4.3 Failure to achieve quorum	12

4.4	Appointment and powers of chairman of general meeting	12
4.5	Adjournment of general meeting	13
4.6	Voting at general meeting	14
4.7	Passing of resolutions	14
4.8	Poll	14
4.9	Entitlement to vote	15
4.10	Objection to voting qualification	15
4.11	Appointment of proxy	16
4.12	Deposit of proxy and other instruments	16
4.13	Validity of vote in certain circumstances	16
4.14	Director entitled to notice of meeting	16
4.15	Resolution in writing	17
5.	DIRECTORS	17
5.1	Number of Directors	17
5.2	Qualification of Directors	17
5.3	Appointment and Removal of Directors	17
5.4	Remuneration of Directors	18
5.5	Director's interests	18
5.6	Vacation of office of Director	19
6.	POWERS AND DUTIES OF DIRECTORS	20
6.1	Directors to manage Company	20
6.2	Appointment of attorney	21
6.3	Minutes	21
6.4	Execution of Company cheques etc.	22
7.	PROCEEDINGS OF DIRECTORS	22
7.1	Directors' meetings	22
7.2	Voting	22
7.3	Alternate Directors	23
7.4	Quorum for Directors' meetings	23

7.5	Remaining Directors may act	24
7.6	Chairman and Deputy Chairman	24
7.7	Written resolution by Directors	25
7.8	Directors' meetings defined	25
7.9	Validity of acts of Directors	26
7.10	Chief Executive Officer	26
8.	DIRECTORS' COMMITTEES	26
8.1	Delegation of Powers	26
8.2	Directions	27
8.3	Proceedings of Committees	27
9.	ACCESS CODE	27
9.1	Promulgation of the Access Code	27
9.2	Amendment	28
10.	SECRETARY	28
10.1	Appointment of Secretary	28
10.2	Suspension and removal of Secretary	28
10.3	Powers and duties of Secretary	28
10.4	Secretary to attend meetings	29
10.5	Assistant Secretary	29
11.	COMMON SEAL AND OFFICIAL SEAL	29
11.1	Custody and use of common seal	29
11.2	Use of official seals	29
12.	INSPECTION OF RECORDS	29
12.1	Inspection by Members	29
13.	RESERVES	30
13.1	Reserves carried forward	30
14.	NOTICES	30
14.1	Service of notices	30
14.2	Persons entitled to notice of general meeting	31

15. INDEMNITY	31
15.1 Indemnity	31
15.2 Insurance	32

CONSTITUTION

- of -

EFTPOS ACCESS ~~COMPANY~~AUSTRALIA LIMITED

A Company limited by Guarantee

1. PRELIMINARY

1.1 Introduction

- (a) The name of the Company is EFTPOS Access ~~Company~~Australia Limited.
- (b) The Company is limited by guarantee.

1.2 Definitions

The following words have these meanings in this Constitution unless the contrary intention appears.

Access Agreement has the meaning given in the Access Code.

Access Code means the document establishing the Access Regime adopted by the Company, as amended from time to time.

Access Regime means the access regime established by the Company in respect of EFTPOS, under the Access Code.

Alternate Director means a person appointed as alternate director under Article 7.3.

Article means an Article of this Constitution.

Auditor means the auditor for the time being of the Company.

Board means the board of directors of the Company.

CECS Regulations means the regulations for the Consumer Electronic Clearing System established by Australian Payments Clearing Association Limited, as amended from time to time.

Chief Executive Officer means any person appointed as chief executive officer under Article 7.10.

Company means EFTPOS Access ~~Company~~[Australia](#) Limited.

Constitution means this constitution as amended from time to time, and a reference to a particular Part or a particular Article has a corresponding meaning.

Corporate Group means a company which is a Member together with its Related Bodies Corporate.

Corporations Act means the Corporations Act 2001 of Australia and any regulations made under it.

Direct Connector has the meaning given in the Access Code.

Director means a director (whether voting or non-voting) for the time being of the Company and, where appropriate, includes an Alternate Director.

EFTPOS Access Regime has the meaning given in the Access Code.

EFTPOS Interchange Activities has the meaning given in the CECS Regulations.

EFTPOS means electronic funds transfer at point of sale.

Member means a person for the time being entered in the Register in accordance with Article 2.1.

~~**National Transaction Volume** means the daily aggregate of the number of Transaction Messages delivered by a Direct Connector to another Direct Connector or received by a Direct Connector from another Direct Connector in the Access Regime (including Transaction Messages relating to the activities of the Direct Connector as an Issuer or Acquirer and Transaction Messages relating to the activities of Issuers and Acquirers to whom the Direct Connector offers switching services) on a national basis, comprising the sum of those EFTPOS Interchange Activities specified under Article 4.9(b) from time to time, averaged over a period determined by the Board and otherwise estimated from time to time in accordance with Article 4.9.~~

Register means the register of Members of the Company to be kept under the Corporations Act and where appropriate includes a branch register.

Registered Office means the registered office for the time being of the Company.

Representative means a person appointed to represent a corporate Member at any meeting of the Company in accordance with the Corporations Act.

Secretary means a person appointed by the Directors under Article 10.1 to perform the duties of secretary of the Company.

Section means a section of the Corporations Act.

Special Resolution means a resolution of the Members complying with the following provisions:

(a) at least 28 days' notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) specifying the matters set out in Article 3.3(b) must be given to such persons as are entitled to receive notices from the Company; and

~~(b) the resolution is only taken to be carried if:~~

~~(i) 75% or more of the maximum number of votes which could be cast on a poll under Article 4.9, if all Members were present at that meeting, are cast in favour of the resolution; and~~

~~(i) Members voting in favour of the resolution have, in aggregate, National Transaction Volumes of more than 50%.~~

Territory means the Australian Capital Territory or such other state or territory in which the Company is from time to time registered.

Transaction Message has the meaning given to that term in the Access Code.

1.3 Interpretation

(a) In this Constitution:

(i) words importing any gender include the other genders;

(ii) the word person includes a firm, a body corporate, an unincorporated association or an authority;

(iii) the singular includes the plural and vice versa; and

(iv) a reference to a statute, code or the Corporations Act (or to a provision of a statute, code or the Corporations Act) means the statute, the code, the Corporations Act or the provision as modified or amended and in operation for the time being, or any statute, code or provision enacted (whether by the Territory or the Commonwealth of Australia) in lieu

thereof and includes any regulation or rule for the time being in force under the statute, the code, the Corporations Act or the provision.

- (b) Words defined in the Corporations Act have, unless the contrary intention appears, the same meaning in this Constitution.
- (c) An expression used in a particular part or division of the Corporations Act that is given by that part or division a special meaning for the purposes of that part or division has, in any part of this Constitution that deals with the matter dealt with by that part or division, unless the contrary intention appears, the same meaning as in that part or division.
- (d) Words defined in the Access Code have, unless the contrary intention appears, the same meaning in this Constitution.
- (e) Headings are inserted for convenience and do not affect the interpretation of this Constitution.

1.4 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and, accordingly, do not apply to the Company.

1.5 Inconsistencies

If a provision in this Constitution is inconsistent with a provision of the EFTPOS Access Regime, the provision of the EFTPOS Access Regime prevails.

1.6 Limited liability

- (a) The liability of the Members is limited.
- (b) Every person who is a Member of the Company undertakes to contribute \$10,000 to the assets of the Company, in the event of the Company being wound up while such person is a Member, or within one year after such person ceases to be a Member, for:
 - (i) payment of the debts and liabilities of the Company (contracted before such person ceases to be a Member) and the costs, charges and expenses of winding up; and

- (ii) the adjustment of the rights of the contributories among themselves.

1.7 Distribution on a winding up

If, on the winding-up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, such property must be:

- (a) transferred to another company or institution determined by the Members as having objects similar to the objects of the Company and whose constitution prohibits the distribution of its income and property among its members in a similar manner to this Article 1.7; or
- (b) distributed among all or some of the Members in the manner determined by the Members,

in either case, by Special Resolution at or before the time of winding-up or dissolution or, in default of such determination, by application to the Supreme Court of the Australian Capital Territory for determination.

1.8 Objects

The primary object for which the Company is incorporated is to co-ordinate, manage and ensure the implementation and operation of the Access Regime. Notwithstanding the preceding sentence, but subject to the terms of this Constitution, the Company has, both within and outside the Australian Capital Territory, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside the Australian Capital Territory, power to:

- (a) issue debentures of the Company;
- (b) distribute any of the property of the Company among the Members, in kind or otherwise;
- (c) grant a floating charge on property of the Company;
- (d) procure the Company to be registered or recognised as a body corporate in any place outside Australia; and
- (e) do any other act that it is authorised to do by any law.

1.9 Registered office

The registered office of the Company is to be in Sydney.

2. MEMBERSHIP

2.1 Membership

- (a) Subject to the provisions of Part 2, any person who:
- (i) has entered into an Access Agreement under the Access Code; ~~or~~
 - (ii) as at the date of incorporation of the Company, is, or expects to be, a Direct Connector under the Access Code; ~~(if it were a Member); or~~
 - (iii) would be a Direct Connector under the Access Code if it were a Member,
- may apply in writing to become a Member.
- (b) A person ~~seeking~~eligible to seek admission as a Member under Article 2.1(a)(ii) may only apply to become a Member within 3 months of the date of incorporation of the Company and may not seek admission as a Member under Article 2.1(a)(iii).
- (c) The Directors may admit such an applicant as a Member. The Directors may not refuse to admit an applicant as a Member if it satisfies the qualifications to be a Member set out in Article 2.1(a).
- (d) Except to the extent (if any) determined in accordance with Article 1.7, a Member may not share in any distribution of profits of the Company or in a distribution on a winding up or dissolution of capital of the Company.
- (e) The liability of a Member to contribute on a winding up or dissolution of the Company is limited to the amount specified in Article 1.6(b).
- (f) A Member may not transfer its membership in the Company.
- (g) At any time only one member of a Corporate Group may be a Member.

2.2 Rights of Membership

- (a) A Member:
- (i) has the right to attend, speak and vote at general meetings of the Company and at any meetings of all or any of the Members. A Member's voting entitlement at such meetings shall be determined in accordance with Article 4.9;
 - (ii) is entitled to participate in the appointment of Directors in accordance with Article 5.3;
 - (iii) is entitled to receive all notices, annual reports and audited profit and loss accounts and audited balance sheets required to be distributed by the Company to members of a company limited by guarantee by the Corporations Act or any other applicable law; and
 - (iv) has all other rights conferred on Members by:
 - A. this Constitution or the Access Code; or
 - B. on members of a company limited by guarantee by the Corporations Act or any other applicable law.

2.3 Termination of Membership

- (a) A Member ceases to be a Member on:
- (i) becoming insolvent or making an arrangement or composition with creditors generally;
 - (ii) being wound-up, dissolved or otherwise ceasing to exist;
 - (iii) that Member no longer satisfying the eligibility criteria in clauses 2.2(a)(i) and 2.2(a)(iii)-(iv) of the Access Code and any other eligibility criteria which entitled the Member to become a Member; or
 - (iv) the Directors terminating the person's membership in accordance with this Constitution.

- (b) Any termination of the membership of a Member pursuant to Article 2.3(a) shall not affect any right or liability arising under this Constitution prior to the date such termination takes effect or arising in respect of any act, matter or thing occurring prior to that date.

2.4 Discretions

The Directors may exercise any discretion granted under this Part 2 and are not obliged to give any reasons for their determination. Any determination by the Directors pursuant to this Article 2.4 is final and conclusive.

2.5 Variations of rights

- (a) The identity and criteria to be satisfied by companies qualified to become Members as set out in Article 2.1 are designed to ensure they have an ability to participate as Members of the Company.

Accordingly, it may from time to time be necessary to review the identity and criteria to be satisfied by bodies corporate qualified to become Members and/or the voting entitlements of Members. In addition to the procedures set out in Part 3, any 3 Directors may propose a resolution to amend Article 2.1 and/or the voting entitlements of Members. The Directors must, on the requisition of those Directors immediately convene a general meeting of the Company to be held as soon as practicable, but in any case, not later than 3 months after the receipt by the Company of the requisition to consider that resolution. Part 3 applies to the requisitioning of a general meeting of the Company in accordance with this Article 2.5(a) in the same manner as it applies to the requisitioning of a general meeting by Members in accordance with the Corporations Act.

- (b) Any resolution to amend any of Articles 2.1, 2.5(a) or (b), Article 5.3 or the voting entitlements of Members:
 - (i) prior to being submitted to Members in accordance with this Constitution, must be approved by at least 75% of the Directors, entitled to vote at meetings of Directors; and
 - (ii) must be a Special Resolution.

2.6 Fees

Members must pay to the Company [a joining fee and](#) an annual membership fee (if any) in such amount and by such date as is determined by the Directors from time to time and such other fees and changes as are prescribed by the Access Code from time to time. The Directors may waive the payment of any such fee by a Member.

3. GENERAL MEETINGS

3.1 Annual general meeting

The Company must hold annual general meetings in accordance with the Corporations Act.

3.2 General meeting

The Directors may convene a general meeting of the Company and the Directors must convene and arrange to hold a general meeting when requisitioned by Members in accordance with the Corporations Act.

3.3 Notice of meeting

(a) Subject to Article 2.5(b) and except where the Corporations Act permits shorter notice, at least 21 days notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) of a general meeting must be given to each Member (and each other person entitled to receive notices under this Constitution or the Corporations Act).

(b) A notice of general meeting must:

(i) set out the place, day and the hour of the meeting, and state the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and

(ii) state that:

A. a Member who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy in accordance with this Constitution;

B. a proxy need not be a Member; and

- C. a Member who is entitled to cast two or more votes may not appoint separate proxies in respect of separate votes which the Member is entitled to cast.
- (c) If a Special Resolution is to be proposed, the notice of meeting must set out an intention to propose the Special Resolution and state the resolution.
- (d) The non-receipt of notice of a meeting by, or the accidental omission to give notice of a meeting to, a person entitled to receive notice does not invalidate any resolution passed at the meeting.

3.4 Postponement or cancellation of meeting

- (a) Where a general meeting (including an annual general meeting) is convened by the Directors, they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) Written notice of cancellation or postponement of a general meeting must be given to each Member (and each other person entitled to receive notices under this Constitution or the Corporations Act) and must specify the reason for cancellation or postponement (as the case may be).
- (c) A notice postponing the holding of a general meeting must specify:
 - (i) a date and time for the holding of the postponed meeting; and
 - (ii) a place for the holding of the postponed meeting, which may be either the same as or different from the place specified in the notice convening the general meeting; and
 - (iii) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the postponed meeting in that manner.
- (d) The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.
- (e) The only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the notice convening the general meeting.

- (f) The accidental omission to give notice of the cancellation or postponement of a general meeting to, or the non-receipt of any such notice by, any Member or person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.
- (g) Where:
 - (i) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
 - (ii) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Article 3.4(g), that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of representative unless the Member appointing the proxy, attorney or representative gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

4. PROCEEDINGS AT GENERAL MEETINGS

4.1 Representation of Member

- (a) A Member may be present and vote in person or may be represented at any meeting of the Company by:
 - (i) a proxy;
 - (ii) an attorney;
 - (iii) in the case of a Member which is a company, a Representative.
- (b) Unless the contrary intention appears, a reference to a Member in this Part 4 means a Member or a proxy, attorney or a Representative of that Member.

4.2 Quorum

- (a) No business may be transacted at any general meeting unless a quorum is present comprising Members who are entitled to cast not less than 75% of the maximum number of votes which could be cast on a poll if all Members were present at that meeting.
- (b) An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is to be deemed to be present throughout the meeting unless the chairman of the meeting on the chairman's own motion or at the instance of a Member, proxy, attorney or Representative who is present otherwise declares.

4.3 Failure to achieve quorum

- (a) Where a meeting is convened on the requisition of Members in accordance with the Corporations Act and a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting must be dissolved.
- (b) Where a meeting is convened in any manner other than as specified in Article 4.3(a) and a quorum is not present within 30 minutes from the time appointed for the meeting:
 - (i) the meeting must be adjourned to such day, time and place as the Directors determine or if no determination is made by them to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the meeting must be dissolved.

4.4 Appointment and powers of chairman of general meeting

- (a) If the Directors have appointed a chairman of their meetings, that person is entitled to preside as chairman at every general meeting of the Company and, except as otherwise specified in the Access Code, every other meeting of all or any of the Members.
- (b) Where a general meeting is held and:
 - (i) a chairman has not been appointed as provided by Article 4.4(a); or

- (ii) the appointed chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be chairman of the meeting, or, if no Director is present or if all Directors present decline to take the chair, the Members present must elect a person representing a Member as chairman of the meeting.

- (c) The chairman of the general meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for a proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
 - (iii) may, having regard where necessary to sections 250S and 250T of the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this Article is final.

4.5 Adjournment of general meeting

- (a) The chairman may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.
- (c) Except as provided by Article 4.5(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

- (d) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

4.6 Voting at general meeting

- (a) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the Corporations Act.
- (b) Unless a poll is properly demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or 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.

4.7 Passing of resolutions

Subject to:

- (a) Article 2.5; and
- (b) any requirements of the Constitution or the Corporations Act including, without limitation, any requirement that a greater number of votes to be cast in favour of a resolution,

a resolution is taken to be carried if 66.67% or more of the maximum number of votes which could be cast on a poll if all Members were present at that meeting are cast in favour of the resolution.

4.8 Poll

- (a) If a poll is properly demanded, it must be taken in such manner and (subject to Article 4.8(b)) either at once or after an interval or adjournment or otherwise as the chairman directs. The result of the poll is the resolution of the meeting at which the poll was demanded.

- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) The demand for a poll may be withdrawn.

4.9 Entitlement to vote

- ~~(a) Except as set out in this Constitution, each Member is entitled to 1 vote per each direct connection between the Member and another Direct Connector **under the Access Code.**~~
- ~~(b) The Company must from time to time collect information from Members as to the volume of Transaction Messages delivered by that Member in its capacity as a Direct Connector to another Direct Connector or received by that Member in its capacity as a Direct Connector from another Direct Connector, on a national basis for a nominated period. The Company must specify the method of collecting such information.~~
- ~~(c) The Board must, from time to time, but no later than 1 month before the date of the annual general meeting of the Company, estimate the respective percentage shares of National Transaction Volume to the nearest 1% for each Member on the basis of the information collected under Article 4.9(b).~~

~~The Board may re-estimate the percentage shares of National Transaction Volume in the event of the admission or resignation of a Member or a change in the capacity in which a Member is a participant in the Access Regime.~~

- ~~(e) The Secretary must promptly notify each Member of each estimate or re-estimate of that Member's percentage share of National Transaction Volume for the purpose of determining whether a resolution put to any meeting of the Company has been passed.~~

4.10 Objection to voting qualification

- (a) An objection may be raised to the qualification of a Member to vote only at the meeting or adjourned meeting before the vote objected to is given or tendered.
- (b) Any such objection must be referred to the chairman of the meeting, whose decision is final.
- (c) A vote not disallowed under such an objection is valid for all purposes.

4.11 Appointment of proxy

- (a) An instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Member.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.
- (d) An instrument appointing a proxy must be in the form approved by the Directors from time to time.
- (e) A proxy may vote on a show of hands or on a poll.

4.12 Deposit of proxy and other instruments

An instrument appointing a proxy is not to be treated as valid unless the instrument, and an original or certified copy of the power of attorney or other authority (if any) under which the instrument is signed, is or are received by the Company before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting.

4.13 Validity of vote in certain circumstances

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the revocation of the instrument (or of the authority under which the instrument was executed) or of the power if no intimation in writing of the revocation has been received by the Company at its Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

4.14 Director entitled to notice of meeting

A Director is entitled to receive notice of, attend and speak at all general meetings of the Company and all other meetings of all or any of the Members.

4.15 Resolution in writing

Subject to the provisions of the Corporations Act, a resolution in writing signed by all the Members is as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Members.

5. DIRECTORS

5.1 Number of Directors

Except as required by the Corporations Act, there is no minimum or maximum number of Directors.

5.2 Qualification of Directors

A Director is not required to be a Member of the Company.

5.3 Appointment and Removal of Directors

- (a) Without prejudice to the rights of the Directors to appoint non-voting Directors pursuant to Articles 7.6(a) and 7.10, each Corporate Group which includes a Member or Members is entitled to appoint and remove one Director.
- (b) The appointment or removal of a Director shall be in writing signed by or on behalf of the Member or Members entitled to make such appointment or effect such removal.
- (c) If two or more Members are or become members of the same Corporate Group, then all but one of the Directors appointed by those Members must be removed by those Members with effect from a date no later than 1 month (or such longer period specified by the Directors) after the date they first became members of the same Corporate Group.
- (d) If the Members who are part of a Corporate Group fail to remove a director or directors as required under Article 5.3(c), the Directors may resolve to remove the required number of Directors appointed by the members of the Corporate Group.
- (e) Unless a Director is removed beforehand, the appointment of a Director expires at the conclusion of the second annual general meeting of the Company following the Director's appointment. A Director whose term of office expires in

accordance with this Article 5.3(e) may be re-appointed in accordance with Article 5.3.

5.4 Remuneration of Directors

- (a) The Directors may be paid such remuneration as is determined from time to time by the Company in general meeting. That remuneration is deemed to accrue from day to day.
- (b) The Directors may also be paid all travelling and other expenses properly incurred by them:
 - (i) in attending and returning from:
 - A. meetings of the Directors or any committee of the Directors; or
 - B. general meetings or any other meetings of all or any of the Members; or
 - (ii) otherwise in connection with the business of the Company.

5.5 Director's interests

- (a) No Director is disqualified by his office from holding any office or place of profit (other than that of Auditor) in the Company. Any Director may:
 - (i) be or become a director of or otherwise hold office or a place of profit in any other company promoted by the Company or in which the Company may be interested as vendor, shareholder or otherwise; and
 - (ii) contract or make any arrangement with the Company whether as vendor, purchaser, broker, solicitor or accountant or other professional person or otherwise.

Any contract or arrangement entered or to be entered into by or on behalf of the Company in which any Director is in any way interested is not avoided for that reason.

- (b) Any Director holding any office or place of profit under the Company or being a director of or otherwise holding office or a place of profit in any other company promoted by the Company or in which the Company may be interested or

contracting or arranging with the Company as set out in Article 5.5(a) is not, by reason only of any of those facts or any interest resulting therefrom or the fiduciary relationship thereby established, liable to account to the Company for any remuneration or other benefits accruing therefrom.

- (c) Each Director must disclose his interests to the Company in accordance with the Corporations Act and the Secretary must record any such declaration in the minutes of the relevant meeting.
- (d) A Director may only vote in respect of any contract or proposed contract or arrangement in which he has a material interest (other than an interest arising merely as a director or employee of a Member) if he has first disclosed his interest to the Directors in accordance with the Corporations Act. If a Director is not permitted to vote under this Article, but does so vote, then his vote may not be counted although he may be counted in the quorum present at any Directors' meeting at which such contract or arrangement is considered.
- (e) The restrictions contained in Article 5.5(d) may at any time or times be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Company in general meeting.
- (f) Subject to prior approval by resolution of the Company in general meeting, a Director who is not an employee of a Member may act by himself or his firm in a professional capacity (other than as Auditor) for the Company and he or his firm is entitled to remuneration for professional services as if he were not a Director.
- (g) A Director may, notwithstanding his interest, and whether or not he is entitled to vote or does vote, participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing the same or otherwise.

5.6 Vacation of office of Director

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director becomes vacant if:
 - (i) the Director:
 - A. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- B. resigns his office by notice in writing to the Company;
 - C. is absent without the consent of the Directors from meetings of the Directors held during a period of 6 months; or
 - D. is removed in accordance with Article 5.3(b); or
- (ii) the Member or all members of a Corporate Group entitled to appoint and remove that person as a Director cease to be a Member or Members.

(b) Where:

- (i) a Director is removed pursuant to Article 5.3(b); or
- (ii) the office of a Director becomes vacant pursuant to Article 5.6(a),

the person who is appointed as a Director in accordance with Article 5.3(a) in place of the retiring Director shall only hold office for the remaining term of the removed or retiring Director. Such a person is eligible for re-appointment as a Director in accordance with Article 5.3.

6. POWERS AND DUTIES OF DIRECTORS

6.1 Directors to manage Company

(a) The Directors must not:

- (i) sell or dispose of the Company's main undertaking or sell, dispose of or discontinue the operations of the Access Regime; or
- (ii) create or allow to exist any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation or other security interest (other than a lien arising by operation of law) on the whole or any part of the Company's present or future property,

without either:

- (iii) the prior approval of the Company in general meeting; or
- (iv) such sale, disposal, discontinuance or security interest being subject to ratification by the Company in general meeting.

- (b) Subject to:
 - (i) the Corporations Act;
 - (ii) Article 6.1(a); and
 - (iii) any other provision of this Constitution,

the business of the Company is managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

- (c) Without limiting the generality of Article 6.1(b) but subject to Article 6.1(a), the Directors may exercise all the powers of the Company to borrow or 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.

6.2 Appointment of attorney

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

6.3 Minutes

- (a) The Directors must cause minutes to be made:
 - (i) of the names of the Directors present at all general meetings, all meetings of all or any Members and all meetings of the Directors; and
 - (ii) of all proceedings of general meetings, meetings of all or any Members and meetings of Directors,

and cause those minutes to be entered in the minute book as soon as practicable.

- (b) The minutes referred to in Article 6.3(a) must be signed as a true and correct record of the relevant meeting by the chairman of the next succeeding meeting of Directors following confirmation or amendment of those minutes at that next succeeding meeting of directors.

6.4 Execution of Company cheques etc.

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine from time to time.

7. PROCEEDINGS OF DIRECTORS

7.1 Directors' meetings

- (a) The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the requisition of a Director, convene a meeting of the Directors.

7.2 Voting

- (a) Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of at least 66.67% of the votes cast by the Directors present and entitled to vote on the matter and a decision of that kind is for all purposes a determination of the directors.
- (b) Subject to Articles 7.2(c), 7.6(e) and 7.10(b), each Director may cast one vote at a meeting of Directors.
- (c) If a Director is also an Alternate Director, that person may cast one vote as an Alternate Director when permitted to do so under Article 7.3(d), in addition to the vote such person is entitled to as a Director.

7.3 Alternate Directors

- (a) Each Member or group of Members entitled to appoint and remove a Director pursuant to Article 5.3 may also appoint a person to be an Alternate Director to act in the place of the person appointed as a Director by that Member or group of Members. The appointment of an Alternate Director shall be for a period corresponding to the period of appointment of the Director for whom that Alternate Director acts as the alternate.
- (b) An Alternate Director may be removed or replaced in the same manner as the Director for whom he acts as an Alternate Director.
- (c) An Alternate Director is entitled to notice of all meetings of the Directors and is entitled to attend those meetings. An Alternate Director is not entitled to speak at meetings of the Directors unless the Director for whom the Alternate Director acts as the alternate is not present or unless invited to do so by the chairman of that meeting.
- (d) In the absence of the Director for whom an Alternate Director acts as the alternate, that Alternate Director may exercise any powers which that Director may exercise and in the exercise of any such power by the Alternate Director he is an officer of the Company and is not deemed to be an agent of that Director.
- (e) An Alternate Director is not required to be a Member of the Company.
- (f) An Alternate Director is subject in all respects to the conditions attaching to the Directors generally, including without limitation the payment of remuneration under Article 5.4(b).

7.4 Quorum for Directors' meetings

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is:

- (a) such number of Directors who are entitled to cast not less than 75% of the maximum number of votes which could be cast if all Directors entitled to vote were present at that meeting; or
- (b) such greater number as is determined by the Directors from time to time.

7.5 Remaining Directors may act

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, 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, only for the purpose of convening a general meeting of the Company.

7.6 Chairman and Deputy Chairman

- (a) The Directors must appoint a person as chairman of the Company.

The Directors may remove a person appointed under this Article 7.6(a) from the office of chairman and appoint another to that office instead.

- (b) Unless the chairman is removed from the office of chairman by the Directors beforehand, the chairman's term of office expires on the day two calendar years after the date of his or her appointment. A chairman whose term of office expires in accordance with this Article 7.6(b) may be re-appointed in accordance with Article 7.6(a).

- (c) In addition, the Directors may elect one of their number as deputy chairman of the Company and may determine the period for which the deputy chairman is to hold office.

The deputy chairman is, in the chairman's absence, entitled to exercise any of the powers and obliged to carry out any of the obligations of the chairman which are granted to, or imposed upon, the chairman pursuant to this Constitution or the Access Code.

- (d) Where a meeting of Directors is held and:
- (i) a chairman has not been elected or appointed as provided by Article 7.6(a); or
 - (ii) the chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act,
- and:
- (iii) a deputy chairman has not been elected as provided by Article 7.6(b); or

- (iv) the deputy chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

- (e) If the Directors appoint a person as chairman, who was not already appointed as a Director under clause 5.3(a), they may also determine that the chairman is not entitled to vote.
- (f) A voting Director elected as deputy chairman pursuant to Article 7.6(b), or as chairman of a meeting pursuant to Article 7.6(d), is entitled to vote when acting in that capacity but shall not have a casting vote.

7.7 Written resolution by Directors

- (a) If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Directors held on the day on which the document was last signed by a Director.
- (b) For the purposes of Article 7.7(a), 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors who are eligible to vote on the resolution are together deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

7.8 Directors' meetings defined

For the purposes of this Constitution, a meeting of Directors means:

- (a) a meeting of Directors assembled in person on the same day at the same time and place; or
- (b) the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion notwithstanding they (or one or more of them) are not physically present in the same place,

and a Director participating in the meeting under Article 7.8(b) is deemed to be present (including for the purposes of constituting a quorum) and entitled to vote at the meeting.

7.9 Validity of acts of Directors

All acts done by any meeting of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and were qualified to be a Director.

7.10 Chief Executive Officer

- (a) The Directors may appoint a person to the office of Chief Executive Officer either for a fixed term or, without limitation, as to period of appointment (but not for life), and may remove a person so appointed and appoint another instead.
- (b) The Chief Executive Officer may be appointed a non-voting Director of the Company.
- (c) The Chief Executive Officer may, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.
- (d) The Directors may, on such terms and conditions and with such restrictions as they think fit, confer on the Chief Executive Officer any of the powers exercisable by them.
- (e) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- (f) The Directors may at any time withdraw or vary any of the powers so conferred on the Chief Executive Officer.

8. DIRECTORS' COMMITTEES

8.1 Delegation of Powers

The Directors may delegate any of their powers, other than powers required by law to be dealt with by the Directors as a board, to a committee or committees consisting of at least

one of their number and such other persons as they think fit. Any delegation of powers pursuant to this Article 8.1 may be subject to such conditions or restrictions as the Directors think fit.

8.2 Directions

A committee to which any powers have been delegated in accordance with Article 8.1 must exercise the powers delegated in accordance with any directions of the Directors. A power so exercised is deemed to have been exercised by the Directors.

8.3 Proceedings of Committees

- (a) The Directors must select a member of the relevant committee to act as chairman at its meetings. The Directors must determine the period for which a person selected as chairman of a committee is to hold that office.
- (b) Where such a meeting is held and the chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act, the members present may elect one of their number to be chairman of the meeting.
- (c) A committee may meet and adjourn as it thinks proper.
- (d) Any person selected by the Directors under Article 8.3(a) to act as chairman of a committee retains a deliberative vote, but has no casting vote.
- (e) Article 5.6 applies (with any necessary modifications) to members of committees as if such members were Directors.
- (f) Articles 7.7 - 7.9 inclusive apply to meetings of committees as if all members were Directors.

9. ACCESS CODE

9.1 Promulgation of the Access Code

- (a) The Company must prescribe the Access Code for the use and operation of, or participation by, participants in the Access Regime. The Access Code may include, without limitation, rules, regulations and by-laws with respect to:

- (i) the eligibility criteria to be satisfied before a company may be admitted as a participant in the Access Regime;
- (ii) the terms and conditions on which a Member may be a participant in the Access Regime;
- (iii) the minimum period of notice required before the resignation of a participant becomes effective;
- (iv) the pre-conditions (if any) to be satisfied before the Directors may terminate the membership of a participant in respect of the Access Regime; and
- (v) the fines and penalties (if any) which may be imposed for a breach of the Access Code.

9.2 Amendment

The Access Code may be amended from time to time in accordance with any procedure set out in the Access Code.

10. SECRETARY

10.1 Appointment of Secretary

There must be at least one Secretary of the Company who may be appointed by the Directors for such term, at such remuneration and on such conditions as they think fit.

10.2 Suspension and removal of Secretary

The Directors have power to suspend or remove the Secretary.

10.3 Powers and duties of Secretary

The Directors may vest in the Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

10.4 Secretary to attend meetings

The Secretary is entitled to attend all meetings of the Directors and all general meetings and meetings of a class of Members of the Company and may be heard on any matter.

10.5 Assistant Secretary

The Directors may at any time appoint, suspend or remove an Assistant Secretary.

11. COMMON SEAL AND OFFICIAL SEAL

11.1 Custody and use of common seal

- (a) The Directors must provide for the safe custody of the common seal.
- (b) The common seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the common seal. Every document to which the common seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

11.2 Use of official seals

- (a) The Company may have for use, outside the State or Territory in which the common seal is kept, in place of the common seal, one or more official seals, each of which must be a facsimile of the seal with the addition on its face of the name of every place where it is to be used.
- (b) The Company may by writing under its common seal empower a person in a place either generally or in respect of a specified matter to affix its official seal for that place to any instrument to which the Company is a party.

12. INSPECTION OF RECORDS

12.1 Inspection by Members

Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors. A Member other than a Director does

not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

13. RESERVES

13.1 Reserves carried forward

- (a) The Directors may set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- (c) The Directors may carry forward so much of the profits remaining as they think fit without transferring those profits to a reserve.

14. NOTICES

14.1 Service of notices

- (a) A notice may be given by the Company to any Member or other person receiving notice under this Constitution either by:
 - (i) serving it personally; or
 - (ii) by sending it by post or facsimile transmission to the address shown in the Register or the address supplied by that Member or person to the Company for the giving of notices; or
 - (iii) sending an electronic mail message through such system and in such manner as that Member or person has agreed for the giving of notices.
- (b) Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and the notice is deemed to have been served on the day after the date of its posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected by properly addressing the facsimile transmission and transmitting

same and the notice is deemed to have been served on the day following its dispatch.

- (d) Where a notice is sent by electronic mail, service of the notice is deemed to be effected by properly addressing the electronic mail and sending the same and the notice is deemed to have been served on the day following its dispatch.

14.2 Persons entitled to notice of general meeting

- (a) Notice of every general meeting and meeting of all or any of the Members must be given in a manner authorised by Article 14.1 and in accordance with this Constitution and the Corporations Act to:

- (i) every Member entitled to attend the relevant meeting;
- (ii) every Director and Alternate Director; and
- (iii) the Auditor.

- (b) No other person is entitled to receive notices of general meetings, except as required by the Corporations Act or the order of a court of competent jurisdiction.

15. INDEMNITY

15.1 Indemnity

Every person who is or has been a Director, Alternate Director or Secretary of the Company is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or

- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

15.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.