

CORPORATIONS ACT

**A COMPANY LIMITED BY GUARANTEE
AND NOT HAVING SHARE CAPITAL**

CONSTITUTION

OF

**TELECOMMUNICATIONS INDUSTRY SUB-CONTRACTORS
GROUP LIMITED**

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1. INTERPRETATION

I How to read this Constitution

This Constitution contains clauses setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.

There are two types of clauses in the Constitution being:

- (1) clauses that are called "Replaceable Rules" which are repeated from the stated sections of the *Corporations Act 2001* but are agreed to be read as subject to any amendments to the relevant section of the *Corporations Act 2001* from time to time; and
- (2) all other clauses that are to apply unless amended by Members.

Replaceable Rules as provided for by ss.134 and 141 of the *Corporations Act 2001* apply to the Company to the extent that they are not displaced or modified by provisions in this Constitution.

For convenience and consistency, in some instances the exact wording of a Replaceable Rule in this Constitution may differ to the Act.

2 Definitions

- (1) In this Constitution, unless the context otherwise requires:

"Act" means the *Corporations Act 2001* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as modified, amended or re-enacted.

"AGM" means an annual general meeting of the Company held in accordance with section 250N of the Act.

"ASIC" means the Australian Securities and Investments Commission.

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

"Constitution" means this Constitution and any supplementary, substituted or amended Constitution for the time being in force.

"Chair" means the person appointed to be the Chair of meetings of Directors, the Chair of meetings of Members or the Chair of meetings (as applicable).

"Director" means any person formally and lawfully appointed as a director of the Company, including an alternate Director

"Directors" means all or, any number of the Directors for the time being

"Guarantee" means the maximum amount each Member agrees to pay to the Company in accordance with clause 8

"Member" means a person admitted as a Member under this Constitution

"Officer" means an officer of the Company within the meaning of section 9 of the Act

"Project Coordinator" means the Project Coordinator appointed in accordance with clause 29,

"Register of Members" means the Register of Members to be kept pursuant to section 169 of the Act

"Replaceable Rule" has the same meaning as in part 2B 4 of chapter 2B of the Act

"Secretary" means Secretary as defined in the Act

(2) Words importing:

(a) persons include companies and corporations

(b) the masculine gender include the feminine gender and vice, and

(c) the singular number includes the plural number and vice versa.

(3) An expression used in this Constitution that has a particular meaning in any Part or Division of the Act has the same meaning as in the Part or Division.

3. Amendment to Constitution

No addition, alteration or amendment shall be made to or in this Constitution unless the Company has received advice to the effect that the proposed addition, alteration or amendment does not remove or have the effect of removing the tax-exempt status or any status under the Act of the Company

(2) the costs, charges and expenses of any winding up, and

(3) the adjustment of the rights of Members among themselves, in the event that the company is wound up:

(a) while the Member is a Member, or

(b) within one year after the Member ceases to be a Member.

II THE COMPANY

4 Public Company limited by Guarantee

The Company is a public company limited by Guarantee.

5 Limitation of Company

(1) The Company must have at least two Members.

- (2) The Company must not be carried on for the purpose of the profit or gain of any Member.
- (3) All income of the Company must be used solely for the objects of the Company. No portion of the income or property of the Company are to be paid or transferred to any Member or Director other than as payment for *bona fide* and reasonable expenses or for services rendered.
- (4) The Company does not have the power to:
 - (a) issues shares of any kind, or
 - (b) apply, pay or transfer, whether directly or indirectly, any portion of the Income and property of the Company for the benefit of, or to a, Member or Director, other than as provided in clause 20.

6. Profits of the Company

The Company will apply all of its profits (if any) and any other income in promoting its objects.

7. Dividends not to be paid to Members

The Company is prohibited from paying dividends to its Members.

8. Guarantee of Members

Each Member undertakes to contribute a maximum of \$2.00 to the Company for payment of:

- (1) the debts and liabilities of the Company,

9 Objects of the Company

The objects for which the Company is established are:

- (a) to provide advice, assistance and support to its members in connection with their rights and obligations as independent sub-contractors;
- (b) to provide representation of members interests to relevant Governmental authorities;
- (c) to provide education and training to its members in relation to their interest as independent sub-contractors; and
- (d) to represent the interests of members as independent sub-contractors.

10. Scope of powers of the Company

Solely for the purpose of carrying out the objects set out in clause 9, the Company may, in any manner permitted by the Corporations Act:

- (1) exercise any power;
- (2) take any action; and
- (3) engage in any conduct or procedure,

which, under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its constitution.

III DIRECTORS

11 Qualifications of Directors

A Director need not be a Member.

12 Number of Directors

The Company must have at least 3 and not more than 5 Directors, unless the Company in general meeting otherwise determines.

13 Directors to take Office

The following shall (subject to their consenting) take office as Directors:

- (1) 1 nominee of the Communications Division of the CEPU who shall be chair;
- (2) 1 person appointed by the Company in General Meeting who shall be an eligible independent sub-contractor being a natural person;
- (3) 1 person appointed by the Company in General Meeting who shall be an officer or employee of an eligible corporate independent sub-contractor.

14 Directors may appoint other Directors

[Replaceable Rule 201 H.]

- (1) The Directors may appoint a person as a Director
- (2) A person may be appointed as a Director in order to make up a quorum for a Directors meeting even if the total number of Directors otherwise present is not enough to make up that quorum.
- (3) If a person is appointed under this clause as a Director, the Company must confirm the appointment by resolution at the Company's next AGM.

15 Period of appointment of Directors

Each Director shall hold office for a period of three years, unless they vacate the office in accordance with clause 19, or are removed in accordance with clause 18.

16 Alternate Directors

[Replaceable Rule 201 K.]

- (1) With the other Directors' approval, a Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.
- (2) If the appointing Director requests the Company to give the alternate notice of Directors' meetings, the Company must do so.
- (3) When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- (4) The appointing Director may terminate the alternate's appointment at any time.
- (5) An appointment or its termination must be in writing and copies must be given to:
 - (a) the Company, and
 - (b) the ASIC.

17 Director may resign

[Replaceable Rule 203A.]

A Director may resign as a Director of the Company by giving written notice of resignation to the Company at its registered office.

18 Removal Of Directors

- (1) The Company may, by resolution, remove a Director before the end of the Director's period of office in accordance with section 203C of the Act.
- (2) A Director shall not be removed by, or required to vacate their office because of, any resolution, request, or notice of the Directors or any of them.

19 Vacation of office of Director

- (1) The office of the Director shall be immediately vacated if the Director:
 - (a) ceases to be a Director or becomes prohibited from being a Director in accordance with the pct,
 - (b) resigns their office by written notice to the Company,
 - (c) for more than 2 consecutive Directors' meetings is absent without permission of the other Directors,
 - (d) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest, or
 - (e) is removed from the office of Director by a resolution of the Company in
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accordance with clause 18.

- (2) Subject to clause 19(1), where there are only five Directors, a Director shall not vacate their office voluntarily unless prior to that vacation, another person has been appointed to be a Director.

20 Remuneration of Directors

- (1) The Company must not make any payments to Directors other than:
 - (a) for the payment of Director's fees or honoraria determined by the Company, or for out of pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Directors;
 - (b) for payment of any service rendered to the Company by a Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and the amount payable is approved by a resolution of the Directors and is not more than an amount which commercially would be reasonable payment for the service; or
 - (c) for payment of any amount due to a Director in his or her capacity as an employee of the Company, where the terms of employment have been approved by a resolution of the Directors.

IV MANAGEMENT OF THE BUSINESS

21 Powers of Directors

[Replaceable Rule 198A.]

- (1) The business of the Company is to be managed by or under the direction of the Directors.
- (2) The Directors may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.

22 Negotiable Instruments

[Replaceable Rule 198B.]

- (1) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

Directors' Meetings

23 Circulating Resolutions

[Replaceable Rule 248A.]

- (1) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors 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.
- (2) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is passed when the last Director signs.

24 Calling Directors' Meetings

- (1) The Directors shall meet at such times and places as the Directors shall determine.
- (2) Meetings of Directors shall be chaired by the Director who takes office under clause 13(3) or, in her or his absence a Director elected by the meeting.
- (3) A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

25 Quorum at Directors' meetings

Unless the Directors determine otherwise, the quorum for a Directors' meeting is 3 Directors.

26 Passing of Directors' resolutions [Replaceable Rule 248G I

- (1) A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (2) The Chair has a casting vote, if necessary, in addition to any vote they have in their capacity as a Director.

VI SECRETARY

27 Appointment of Secretary

The Directors must appoint a Secretary in accordance With the Act

28 Terms and Conditions

[Replaceable Rule 204F.]

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

VII Project Director

29 Project Director

- (1) The Directors may appoint a Project Coordinator.
- (2) The Directors may vest in the Project Coordinator such powers and authorities as they may from time to time determine and the Project Coordinator must exercise all such powers and authorities subject at all times to the direction of the Directors.
- (3) The Project Coordinator must attend all meetings of the Directors unless excused by the Directors and may be heard on any matter but is not entitled to vote.

VII MEMBERS

30 Number of Members

- (1) There must be at least 2 Members.
- (2) The Directors may set a limit on the maximum number of Members.

31 Admission to membership

- (1) The Directors may admit any person as a Member on the terms and conditions they prescribe from time to time.
- (2) Each Member shall sign an undertaking to be bound by the Constitution.

32 Ordinary Members

The Ordinary members of the Company shall be those natural persons and those corporations who are independent sub-contractors in the telecommunications industry who are admitted to membership from time to time.

33 Classes of Members

The Directors may:

- (1) establish different classes of Members, and
- (2) prescribe the qualifications, rights and privileges of persons to become a Member of a class.

34 Cessation of membership

A Member ceases to be a Member if they:

- (1) die
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- (2) resign in writing
- (3) are convicted of an indictable offence, or
- (4) if they are a company, have a receiver or receiver and manager appointed to its assets or some of them or passes a resolution or take or has taken against it any action having the effect of its winding up.

35 Effect of cessation

A Member' who ceases to be a Member continues to be liable for:

- (1) any subscription and all arrears due and unpaid at the date of cessation,
- (2) all other moneys due by them to the Company, and
- (3) the Guarantee.

IX MEETINGS OF MEMBERS

36 Who may call a meeting of Members

A meeting of Members may be called in accordance with the provisions of the Act.

37 Notice of meetings

- (1) Subject to the Act, at least 21 days notice must be given of a meeting of Members.
 - (2) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
 - (3) The Company may give the notice of meeting to a Member:
 - (a) personally,
 - (b) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by the member,
 - (c) by sending it to the fax number or electronic address (if any) nominated by the Member, or
 - (d) by any other means authorised by the Act.
 - (4) [Replaceable Rule 249J(4)]
 - (a) Notice of meeting sent by post is taken to be given 3 days after it is posted.
 - (b) A notice of meeting sent by fax or other electronic means is taken to be given on the business day after it is sent.
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38 Contents of notice of meeting

The notice of meeting must conform with the requirements of section 249L of the Act.

39 Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of division 4 of part 2G.2 of chapter 2G of the Act.

40 Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and place.

41 Technology

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

42 Quorum

- (1) The quorum for a meeting of Members is 2 Members and the quorum must be present at all times during the meeting.
- (2) (a) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted.

(b) If a Member has appointed more than one proxy or representative, only one of them is to be counted.
- (3) (a) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.

(b) If the Directors do not specify one or more of those requirements, the meeting is adjourned to:
 - (i) if the date is not specified, the same day of the week,
 - (ii) if the time is not specified, the same time, or
 - (iii) if the place is not specified, the same place.
- (4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

43 Chairing meetings of Members

Replaceable Rule 249U.]

- (1) The Director taking office under clause 13(3) shall Chair meetings of Members or in her or his absence the Directors may appoint a Director to
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Chair meetings of the Members.

- (2) If a Director has not already been appointed by the Directors to Chair a meeting of Members, or, having been appointed, is not available to Chair the meeting (or part of it), the Directors at the meeting of Members must elect a Director present to Chair the meeting (or part of it).
- (3) The Chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair do so.

44 Proxies and body corporate representatives

- (1) A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- (2) Any proxy or representative appointed under clause 44(1) must be appointed and has the rights set out in division 6 of Part 2G.2 of chapter 2G of the Act.
- (3) The appointment of a proxy or representative shall be in or to the effect of the form set out in Schedule 1 or such other form as the Directors approve.

45 How many votes a Member has

- (1) At a meeting of Members on a show of hands, each Member has one vote.
- (2) The Chair shall not have a casting vote.

46 Holding of AGM

- (1) The Company must hold an AGM within 18 months after its registration.
- (2) The Company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.
- (3) An AGM is to be held in addition to any other meetings held by the Company in a year.

47 Extension of time for AGM

The Company may lodge an application within the ASIC to extend the period within which it is required to hold the AGM in accordance with section 250P of the Act.

48 Consideration of reports at AGM

The Directors must lay before an AGM:

- (1) the financial report,
 - (2) the Directors' report, and
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- (3) the Auditor's report,

for the last financial year that ended before the AGM completed in accordance with the requirements of Part 2M.3 of Chapter 2M of the Act.

49 Business of the AGM

The business of the AGM may include any of the following, even if not referred to in the notice of meeting: .

- (2) the election of Directors,
- (3) the appointment of the Auditor,
- (4) the fixing of the Auditor's remuneration, and
- (5) the consideration of the annual financial report, Director's report and Auditor's report.

X DIRECTORS' AND MEMBERS' MINUTES

50 Minutes

- (1) The Company must keep minute books in which it records within one month of such event:
 - (a) proceedings and resolutions of Members' meetings,
 - (b) proceedings and resolutions of Directors' meetings and including committee meetings,
 - (c) resolutions passed by Members without a meeting, and
 - (d) resolutions passed by Directors without a meeting.
- (2) The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
- (3) The Company must ensure the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

XI WINDING UP

51 Winding Up

On winding up of the Company surplus funds (if any) which would otherwise be payable to Members must be paid to another corporation (as defined under the *Corporations Act*), the objects of which stated in its constitution are restricted to one or more of those specified in clause 9 of this Constitution and to objects incidental or

conducive to the specified objects and which by its constitution is required to apply profits (if any) or other income in promoting its objects and is prohibited from paying dividends to its Members.

XII INDEMNITY AND INSURANCE

52 Indemnity

- (1) Every person who is an Officer shall be indemnified by the Company against, and shall be paid on demand by the Officer, the amount of any liability to another person (other than the Company or related body corporate of the Company as defined in the Act) incurred in that person's capacity as an Officer unless such liability arises out of conduct involving a lack of good faith.
 - (2) The Company shall indemnify any other employee of the Company at the Directors' discretion.
 - (3) The Company shall indemnify an Officer against a liability for costs and expenses (including, without limitation, legal expenses on a fully indemnity basis) incurred by the Officer:
 - (a) in defending proceedings, whether civil or criminal, in which:
 - (i) judgement is given in favour of the Officer, or
 - (ii) the Officer is acquitted or,
 - (b) in connection with an application, in relation to proceedings under clause 52(3)(a), in which a court grants relief to the Officer under the Act.

SUBJECT only to an obligation on the Officer to repay to the Company the expenses advanced by the Company if:

 - (a) judgment is not given in the Officer's favour, or
 - (b) the Officer is not acquitted, or
 - (c) a court subsequently determines that the indemnification is not permitted, or
 - (d) indemnification is not permitted by the Act.
 - (4) For the purposes of this clause, the Company shall have the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
 - (5) If the Company determines that the Officer to be indemnified is not entitled to be indemnified, that person shall be entitled to direct that the Company obtain and follow, at the Company's expense, an opinion as to such entitlement from a Queen's Counsel or Senior Counsel with relevant expertise practicing in Victoria.
 - (6) The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and the Company and shall continue to
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have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

53 Payment of costs

The Directors may, out of the funds of the Company, pay all costs, losses and expenses which any Officer may incur or become liable to pay by reason of any contract entered into or act or thing done by them as such Officer or in any way in discharge of their duties.

54 Limit of indemnity

Subject to the provisions of the Act, an Officer of the Company shall not be liable for:

- (1) The acts, receipts, neglect or defaults of any other officer.
- (2) joining in any receipt or other act of conformity or for any loss or expense happening to the Company through:
 - (a) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company, or
 - (b) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested,
- (3) any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any moneys, securities or effects shall be deposited,
- (4) any loss occasioned by any error of judgment or oversight on the Officer's part, or
- (5) any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office,

unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

55 Contract of insurance

The Company may pay a premium for a contract insuring a person who is or has been an Officer, against:

- (1) any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act, or
 - (2) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company whether civil or criminal and whatever their income.
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SCHEDULE I

Appointment of Proxy or Representative

"I

Of

Being authorised by *(Insert Name of Member) (the Member)*

hereby appoint

of

as the proxy/ representative of the Member referred to above at any meetings which the Member may be entitled to attend and to exercise all rights and duties which the Member might have by reason of its membership of the Company.

Signature of Authorised Officer

Signed in the presence of:
