

**Version 006**

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**CONSTITUTION**

**- of -**

**EFTPOS PAYMENTS AUSTRALIA LIMITED**

**A Company limited by Guarantee**



# CONSTITUTION OF EFTPOS PAYMENTS AUSTRALIA LIMITED

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# CONSTITUTION

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## EFTPOS PAYMENTS AUSTRALIA LIMITED

A Company limited by Guarantee

### 1. PRELIMINARY

#### 1.1 Introduction

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

#### 1.2 Definitions

- (a) Terms used in the Constitution not defined in this clause have the meaning given to them in:
  - (i) the Scheme Rules; or
  - (ii) if also not defined in the Scheme Rules, in the CECS Regulations and Manual.
- (b) The following words have these meanings in this Constitution unless the contrary intention appears.

**Acquirer Member** means a Member which acquires Scheme Transactions.

**Acquirer Scheme Volume** means, in respect of a Member, a percentage calculated using the following formula in accordance with Article 4.9:

$$\frac{A+O}{T} \times 100$$

where:

A = the number of Scheme Transactions acquired by that Member that result in Scheme Interchange Activities;

O = the number of Scheme Transactions that are On-Us Transactions of that Member; and

T = the aggregate number of Scheme Transactions that:

- (a) result in Scheme Interchange Activities; or
- (b) are On-Us Transactions.

**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.

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

**Class Meeting** means a meeting of Acquirer Members or Issuer Members to consider an Extraordinary Resolution or a Class Special Resolution.

**Class Special Resolution** means a resolution of the Members passed at Class Meetings 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 at both Class Meetings:
  - (i) 66.67% or more of the maximum number of votes which could be cast on a poll under Article 4.8, if all Acquirer Members or Issuer Members (as the case may be) were present at that meeting, are cast in favour of the resolution; or
  - (ii) all Acquirer Members or Issuer Members (as the case may be) except one cast votes in favour of the resolution.

**Company** means EFTPOS Payments 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 (one or more of which may also be eligible for membership).

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

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

**EFTPOS Participant** means either:

- (a) an EFTPOS Issuer;
- (b) an EFTPOS Acquirer (including a Self-Acquirer); or
- (c) a representative of an EFTPOS Issuer or an EFTPOS Acquirer (including a Self-Acquirer) which engages in and/or settles EFTPOS Interchange Activities on their behalf.

**Extraordinary Resolution** means a resolution of the Members passed at Class Meetings 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 at both Class Meetings, 75% or more of the maximum number of votes which could be cast on a poll under Article 4.8, if all Acquirer Members or Issuer Members (as the case may be) were present at that meeting, are cast in favour of the resolution.

**Independent Director** means a Director who is not appointed by a Member or Members under Article 5.3(b), 5.3(c) or 5.3(d) and who is not an employee or officer of any Member.

**Issuer Member** means a Member which gives its customers the ability to initiate Scheme Transactions.

**Issuer Scheme Volume** means, in respect of a Member, a percentage calculated using the following formula in accordance with Article 4.9:

$$\frac{I+O}{T} \times 100$$

where:

I = the number of Scheme Transactions initiated by customers of that Member that result in Scheme Interchange Activities;

O = the number of Scheme Transactions that are On-Us Transactions of that Member; and

T = the aggregate number of Scheme Transactions that:

- (c) result in Scheme Interchange Activities; or
- (d) are On-Us Transactions.

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

**Merchant** means a person which provides goods or services to an EFTPOS Cardholder and which, in the normal course, is reimbursed by the EFTPOS Acquirer to which, from the EFTPOS Terminal that it operates, it electronically transmits that EFTPOS Transaction.

**On-Us Transaction** means a transaction that is:

- (a) initiated by a customer of a Member; and
- (b) acquired by that same Member.

**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.

**Scheme Interchange Activities** means the exchange of payment instructions and related messages between Members, usually by electronic means, in relation to Scheme Transactions.

**Scheme Rules** means any rules adopted by the Company in accordance with Article 9.

**Scheme Transaction** means an EFTPOS Transaction or any other type of transaction specified in the Scheme Rules.

**Scheme Volume** means, in respect of a Member, a percentage calculated using the following formula in accordance with Article 4.9:

$$\frac{I+A+2*O}{2*T} \times 100$$

where:

I = the number of Scheme Transactions initiated by customers of that Member that result in Scheme Interchange Activities;

A = the number of Scheme Transactions acquired by that Member that result in Scheme Interchange Activities;

O = the number of Scheme Transactions that are On-Us Transactions of that Member; and

T = the aggregate number of Scheme Transactions that:

- (a) result in Scheme Interchange Activities; or
- (b) are On-Us Transactions.

**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 75% or more of the maximum number of votes which could be cast on a poll under Article 4.8, if all Members were present at that meeting, are cast in favour of the resolution.

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

### **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) 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 Scheme Rules, the CECS Regulations or the CECS Manual the Constitution 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 New South Wales or the Territory for determination.

## **1.8 Objects**

- (a) The primary objects for which the Company is incorporated are to:
  - (i) provide a forum for developing and determining the strategic, commercial and technical direction of the EFTPOS system;
  - (ii) manage the positioning of the EFTPOS system as a payment system; and

- (iii) invest in infrastructure required for the development of the EFTPOS system.
- (b) Notwithstanding paragraph (a), but subject to the terms of this Constitution, the Company has, both within and outside the Territory, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside the Territory, power to:
  - (i) issue debentures of the Company;
  - (ii) distribute any of the property of the Company among the Members, in kind or otherwise;
  - (iii) grant a floating charge on property of the Company;
  - (iv) procure the Company to be registered or recognised as a body corporate in any place outside Australia; and
  - (v) 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) is a Constitutional Corporation which carries on business at or through a permanent establishment in Australia; and
  - (ii) either:
    - A. is an EFTPOS Participant; or
    - B. on or after the date of adoption of the Scheme Rules, is able to in accordance with the applicable provisions of the Scheme Rules:

I. give its customers the ability to initiate Scheme Transactions; and/or

II. acquire Scheme Transactions,

may apply in writing to become a Member.

- (b) The Directors must admit an applicant as a Member if they are satisfied that:
- (i) the applicant satisfies the applicable criteria in (a) above;
  - (ii) the applicant is able to comply with applicable laws, this Constitution and the Scheme Rules applicable to it, including in relation to certification;
  - (iii) the applicant either:
    - A. is an Australian ADI (as defined in the Corporations Act);
    - B. will only represent and settle Scheme Transactions on behalf of Australian ADIs; or
    - C. otherwise has sufficient financial resources to fulfil its obligations as a Member; and
  - (iv) admitting the applicant as a Member will not adversely affect the conduct of Scheme Transactions, Scheme Interchange Activities or the settlement thereof (or otherwise introduce a significant new risk).
- (c) The Directors may require an applicant to provide security for the performance of its obligations as a Member in an amount and in such form as the Directors consider appropriate.
- (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. The Directors may waive this restriction at the request of a member of a Corporate Group, on such terms and subject to such conditions as the Directors specify.

## **2.2 Rights of Membership**

- (a) A Member:
  - (i) has the right to attend and speak 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 Scheme Rules; 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) the Directors terminating the person's membership in accordance with this Constitution;



- A. if, in the reasonable opinion of the Directors, a Member no longer satisfies the criteria which entitled the Member to become or remain a Member; and
  - B. if, when requested by the Directors, a Member fails to demonstrate that the Member continues to satisfy the criteria which entitled the Member to become a Member or remain a Member; or
- (iv) the Member giving at least three months notice in writing to the Company and complying with any applicable requirements in the Scheme Rules.
- (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 or the Scheme Rules prior to the date such termination takes effect or arising in respect of any act, matter or thing occurring prior to that date, including obligations to comply with any requirements in the Scheme Rules relating to ceasing to be a Member.

#### **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) 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 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 2.5(a), 5.3 or 7.10(b) prior to being submitted to Members in accordance with this Constitution, must be approved by a meeting of the Directors, where at least 75% of the number of votes which could be cast at a meeting of Directors are cast in favour of the resolution.

## **2.6 Fees**

- (a) Members must pay to the Company:
  - (i) a fee on becoming a Member, in an amount determined by the Board by ordinary resolution from time to time; and
  - (ii) such other fees and charges as are prescribed by the Scheme Rules from time to time.
- (b) The Directors may waive the payment of any fees 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 Articles 1.7, 5.3, 9.1, 9.2 and 16, 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 appoint two proxies ;and
  - D. if a Member is entitled to appoint two proxies and the appointment does not specify the proportion or number of votes each proxy may exercise then each proxy may exercise half the votes.
- (c) If a Special Resolution, Class Special Resolution or Extraordinary Resolution is to be proposed, the notice of meeting must set out an intention to propose the Special Resolution, Class Special Resolution or Extraordinary 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.

### **3.5 Class Meetings**

Articles 3.3 and 3.4 apply to Class Meetings, with any necessary modifications.

## **4. PROCEEDINGS AT GENERAL MEETINGS AND CLASS 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 or Class 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 or Class 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 or Class Meeting and, except as otherwise specified in the Scheme Rules, every other meeting of all or any of the Members.
- (b) Where a general meeting or Class 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 or Class 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 or Class 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 and Class Meeting**

- (a) At any general meeting or Class 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 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) a resolution is taken to be carried if more than 50% 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; and
- (b) a resolution to amend this Constitution must be approved in accordance with Article 16.

#### **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 a 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 the number of votes determined by the Company and notified to the Member from time to time, which equals:
  - (i) for general meetings, its Scheme Volume; and
  - (ii) for Class Meetings, its Acquirer Scheme Volume and/or its Issuer Scheme Volume.
- (b) For the purposes of determining Scheme Volume, Acquirer Scheme Volume or Issuer Scheme Volume:
  - (i) the Company must from time to time collect information from Members as to their Scheme Volume, Acquirer Scheme Volume or Issuer Scheme Volume on a national basis for a nominated period (not being less than one calendar month). The Company must specify the method of collecting such information;
  - (ii) the Board must, from time to time, but no later than 1 month before the date of each general meeting of the Company or a Class Meeting, estimate the



Scheme Volume, Acquirer Scheme Volume and Issuer Scheme Volume to the nearest 1% for each Member on the basis of the information collected under Article 4.9(b)(i);

- (iii) the Board may re-estimate the Scheme Volumes, Acquirer Scheme Volume or Issuer Scheme Volume of the Members, in the event of the admission or resignation of a Member or a change in the capacity in which a Member is entitled to be a member of the Company; and
  - (iv) If a Member (the **First Member**) settles and/or engages in Scheme Interchange Activities on behalf of another Member (the **Second Member**) then unless otherwise agreed by the First Member, the Second Member and the Company:
    - A. the First Member's Scheme Volume, Acquirer Scheme Volume and Issuer Scheme Volume will not include the Scheme Transactions involving the Second Member; and
    - B. the Second Member's Scheme Volume, Acquirer Scheme Volume and Issuer Scheme Volume will include the Scheme Transactions involving the First Member.
  - (v) the Secretary must promptly notify each Member of each estimate or re-estimate of that Member's Scheme Volume, Acquirer Scheme Volume and Issuer Scheme Volume before each general meeting or Class Meeting or within 1 month of a re-estimation of Scheme Volumes, Acquirer Scheme Volumes or Issuer Scheme Volumes.
- (c) An estimate of Scheme Volume, Acquirer Scheme Volume or Issuer Scheme Volume under Article 4.9(b) made in good faith will be binding and conclusive on all Members and will supersede any previous estimate.

#### **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 and Class 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 or Class 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, the minimum number of Directors is three and there is no maximum number of Directors.

#### **5.2 Qualification of Directors**

- (a) A Director is not required to be a Member of the Company.
- (b) A Director must not be a director or officer of any other card payment scheme.

#### **5.3 Appointment and Removal of Directors**

- (a) The Board will consist of:
  - (i) from the time at which a resolution is first proposed to adopt the Scheme Rules and subject to Article 7.5(b), three Independent Directors, whose appointment must be approved by an Extraordinary Resolution;
  - (ii) Directors appointed under Articles 5.3(b), 5.3(c) and 5.3(d); and
  - (iii) the Chief Executive Officer, if so appointed in accordance with Article 7.10(b).
- (b) Without prejudice to the rights of the Directors to appoint non-voting Directors pursuant to Article 7.6(a), each Corporate Group which includes a Member or Members and which has Scheme Volume of at least 5% is entitled to appoint a Director and to remove that Director.
- (c) Members whose Scheme Volume is individually less than 5% and who are not part of a Corporate Group entitled to appoint a Director under Article 5.3(b) may

aggregate their Scheme Volumes to a level in excess of 5%, to enable them to jointly appoint a Director and to remove that Director.

- (d) The Members who:
  - (i) are not entitled to appoint a Director under Article 5.3(b); and
  - (ii) have not participated in the appointment of a Director under Article 5.3(c) may collectively appoint and remove one Director.
- (e) The appointment or removal of a Director under Articles 5.3(b) and 5.3(c) shall be in writing signed by or on behalf of the Member or Members entitled to make such appointment or effect such removal.
- (f) The appointment or removal of a Director under Article 5.3(d) shall be determined by a resolution of the Members who are entitled to participate in appointing or removing that Director, passed by at least 50% of the votes which may be cast by those Members. Any such resolution must be passed at a meeting held in accordance with Article 4, to the extent Article 4 is applicable to such a meeting.
- (g) 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.
- (h) If the Members who are part of a Corporate Group fail to remove a Director or Directors as required under Article 5.3(g), the Directors may call a general meeting to remove the required number of Directors appointed by the members of the Corporate Group.
- (i) Subject to article 5.3(j), and unless a Director is removed or otherwise vacates office beforehand or unless the notice or resolution of appointment fixes a lesser period, Directors hold office until the end of the third annual general meeting of the Company after they are appointed. A Director whose term of office has expired is eligible for re-appointment. A Director must not hold office as a Director of the Company for more than 3 consecutive terms. This clause does not apply to the term of office of Director of the Chief Executive Officer, if appointed as a Director pursuant to article 7.10(b).

- (j) The following transitional arrangements apply to the terms of office of Directors up to the end of the 2012 annual general meeting of the Company:
  - (i) 3 Directors appointed by the Members in accordance with article 5.3 (b), (c) or (d) and one Independent Director (as determined by the Board) will retire at the 2011 annual general meeting of the Company;
  - (ii) 2 Directors appointed by the Members in accordance with article 5.3 (b), (c) or (d) and 2 Independent Directors (as determined by the Board) will retire at the 2012 annual general meeting of the Company.

#### **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;
  - D. is removed in accordance with Article 5.3(h); or
  - E. becomes ineligible to be a Director under Article 5.2(b); or
- (ii) the Member, members of a Corporate Group or group of Members entitled to appoint and remove that person as a Director cease to be entitled to appoint and remove a Director pursuant to Article 5.3.

- (b) Where the office of a Director becomes vacant pursuant to Article 5.6(a) (**retiring Director**), the person who is appointed as a Director in replace of the retiring Director in accordance with Article 5.3 (other than a replacement of any Managing Director) shall only hold office for the remaining term of the retiring Director but shall be 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 Scheme Rules; 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), 7.5(b), 7.6(e) and 7.10(b), at a meeting of Directors:
  - (i) each Independent Director may cast 5 votes;
  - (ii) if the Chief Executive Officer is appointed a voting Director in accordance with Article 7.10(b), the Chief Executive Officer may cast the number of

votes allocated to him or her on appointment (but not more than 5 votes);  
and

- (iii) each Director may cast the number of votes which the Member or Members who appointed the Director are entitled to cast on a poll at a general meeting.
- (c) If a Director is also an Alternate Director, that person may cast votes as an Alternate Director when permitted to do so under Article 7.3(d), in addition to the votes 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 must not be a director or officer of any other card payment scheme.

- (g) 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) more than 60% of the total number of Directors of the Company including at least one Independent Director; or
- (b) such greater number as is determined by the Directors from time to time, but including at least one Independent Director.

#### **7.5 Remaining Directors may act**

- (a) 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.
- (b) In the event of a vacancy or vacancies in the required number of Independent Directors, the Directors may continue to act and the Independent Director or Independent Directors remaining will, between them, cast 15 votes.

#### **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 Scheme Rules.

- (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 Articles 5.3(a) to 5.3(d), they may also determine that the chairman is not entitled to vote.
- (f) A voting Director elected as chairman pursuant to Article 7.6(a), deputy chairman pursuant to Article 7.6(b) or 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 must 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, by a resolution of the Members:
  - (i) be appointed as a Director of the Company; and
  - (ii) be allocated up to 5 votes for the purpose of voting at meetings of the Board.
- (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 such persons as they think fit, or to a person in accordance with section 198D of the Corporations Act. 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. SCHEME RULES**

### **9.1 Promulgation of Scheme Rules**

- (a) The Company may, by a resolution of Directors and a Class Special Resolution, adopt rules (**the Scheme Rules**) relating to any aspect of Scheme Transactions. The Scheme Rules may include, without limitation, rules, with respect to:
  - (i) clearing and settlement;
  - (ii) the functionality required to effect a Scheme Transaction;
  - (iii) wholesale pricing, including fees payable to the Company and interchange fees;
  - (iv) Scheme Interchange Activities;
  - (v) technical or operational rules and standards;
  - (vi) dispute resolution;
  - (vii) branding or requirements for marketing and advertising programs, including use of logos;
  - (viii) sanctions for non-compliance with Scheme Rules;

- (ix) payment of financial incentives to Members;
  - (x) the infrastructure that may be used to effect a Scheme Transaction; and
  - (xi) requirements for a Member to resign as a Member.
- (b) Each Member must comply with the Scheme Rules which are applicable to it.

## **9.2 Amendment**

The Scheme Rules may be amended from time to time by approval of the Directors. For the avoidance of doubt, the Board may delegate its powers to approve amendments to the Scheme Rules in accordance with Article 8.1

## **9.3 Notice**

The Company shall provide all Members with:

- (a) the Scheme Rules at least 3 months before they become effective; and
- (b) notice of any amendment to the Scheme Rules a reasonable time (as determined by the Board in its absolute discretion) before the amendment becomes effective.

## **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.

## **16. AMENDING THIS CONSTITUTION**

### **16.1 Amending rules on directorships, voting and the Scheme Rules**

The Company may only add to, delete or vary Articles 4.9, 5.1, 5.3, 7.2, 7.10(b), 9.1, 9.2 and 16 of this Constitution and any defined terms used in any of those Articles by passing an Extraordinary Resolution.

### **16.2 Amending this constitution generally**

Subject to Article 16.1, the Company may, by a Special Resolution of Members, add to, delete or vary all other Articles of this Constitution.