

Constitution of Telecommunications Dispute Resolution Limited

Under the Companies Act 1993

1 July 2023

There are three important documents relating to the Scheme:

- The **Constitution** is the foundational document of Telecommunications Dispute Resolution Limited (“**TDR Limited**”), which funds and oversees the Scheme. The Constitution sets out the rights, powers and duties of TDR Limited, and its owners and board of directors.
- The **Scheme TOR** sets out how the Scheme is operated. This includes what each Scheme Member’s obligations are in relation to the Scheme, and the process under which Disputes are heard by the Scheme Agent.
- The **Customer Care Code** requires Providers to establish and publish a customer care policy which will include the minimum standards of practice a Provider will follow when engaging with Customers and describe the Provider’s Complaints handling process.

Table of contents

1.	Defined terms and interpretation	5
1.1	Defined terms	5
1.2	Interpretation	6
1.3	Constitution subject to changes in the Act	7
1.4	Precedence	7
2.	Purpose of the Company	7
2.1	Purpose	7
3.	Shares	7
3.1	Existing shares	7
3.2	Section 45 of the Act	8
3.3	Amount owing on issue of shares	8
4.	Transfer of shares	8
4.1	Entry in Register	8
4.2	Form of transfer	8
4.3	Board's right to refuse registration of transfer	8
5.	Permitted transferees	8
5.1	A Shares	8
5.2	B Shares	8
5.3	No undermining	8
6.	Levies and distributions	8
6.1	Levies and surpluses	8
6.2	No distributions except on winding up or liquidation	9
7.	Management review by Shareholders	9
7.1	Board reports	9
7.2	Review of Scheme	9
7.3	Discussions by Shareholders	9
7.4	Resolution not binding on Board	9
8.	Meetings of Shareholders	9
8.1	Methods of holding meetings	9
8.2	Exercise of power by meeting or written resolution	9
8.3	Powers exercisable by Ordinary Resolution	9
8.4	Unanimous Resolutions – amendments to Constitution	9
8.5	Unanimous Resolutions – other actions	10
8.6	Annual meetings	10
8.7	Special Meetings	10
8.8	Time and place of meetings	10
8.9	Notice of meetings of Shareholders	10
8.10	Contents of notice	10
8.11	Irregularity in notice	10
8.12	Chairperson of meetings of Shareholders	10
8.13	Regulation of procedure	11

8.14	Quorum for meetings of Shareholders quorum required	11
8.15	Size of quorum	11
8.16	Lack of quorum	11
8.17	Adjournment of meeting	11
8.18	Voting	11
8.19	Best interests of the Company	11
8.20	Proxies permitted	11
8.21	Form of proxy	11
8.22	Lodging proxy	11
8.23	Corporate representatives	11
8.24	Minutes of Shareholder meetings	12
8.25	Shareholder proposals notice to the Board	12
9.	Board	12
9.1	Board composition	12
9.2	Skills of Directors	12
9.3	A Directors	12
9.4	B Directors	12
9.5	Independent Director	13
9.6	Chairperson	13
9.7	Quorum	13
9.8	Period of office	13
9.9	Disqualification and removal	13
9.10	Appointment of proxies	13
10.	Indemnity and insurance	14
10.1	Types of proceedings that may be indemnified against	14
10.2	Types of liability that may be indemnified against	14
10.3	Insurance of Directors and employees	14
10.4	Directors to sign certificate	14
10.5	Entry in the interests register	15
10.6	Definitions	15
11.	Powers and duties of the Board	15
11.1	Management by Board	15
11.2	Power of Board	15
11.3	Delegation by Board	15
11.4	Best interests of the Company	15
11.5	Appointment of Scheme Agent	15
11.6	Appointment of secretariat	15
11.7	Financial statements and audit	15
12.	Proceedings of the Board	15
12.1	Methods of holding meetings	15
12.2	Notice of meeting	16
12.3	Contents of notice	16
12.4	Waiver of irregularity	16
12.5	Votes	16
12.6	Resolutions in writing	16
12.7	Committees	17
12.8	Minutes	17

12.9	Validity of acts	17
12.10	Disclosure of interests	17
12.11	Personal involvement of Directors	17
12.12	Interested Directors may not vote	17
12.13	Matters determined by the Company	18
12.14	Other procedures	18
12.15	Directors' remuneration Authorisation	18
12.16	Expenses	18
12.17	Special remuneration	18
12.18	Scheme TOR	18
13.	Method of contracting	18
13.1	Deeds	18
13.2	Other written contracts	18
13.3	Other obligations	18
14.	Liquidation	19
14.1	Liquidation proposal	19
14.2	Distribution of surplus assets on liquidation	19
14.3	Distribution in specie	19

Details

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Act means the Companies Act 1993.

A Director means a Director appointed by the holder of the A Shares in accordance with clause 9.3.

A Share means an ordinary share held by the Independent Director.

Board means the Directors, numbering not less than the required quorum set out in clause 9.7, acting as the board of directors of the Company.

B Director means a Director appointed by the holder of the B Shares in accordance with clause 9.4.

B Share means an ordinary share held by TCF on the date of this Constitution.

CAB means Citizen Advice Bureaux New Zealand Incorporated NZBN 9429042678694.

Company means Telecommunications Dispute Resolution Limited.

Complaint has the meaning set out in the Scheme TOR.

Constitution means this constitution of the Company and all amendments to it from time to time.

Consumer NZ means Consumer NZ Incorporated NZBN 9429000014502.

Customer has the meaning set out in the Scheme TOR.

Customer Care Code means the New Zealand Telecommunications Forum Customer Care Code endorsed by TCF, as amended from time to time.

Director means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company.

Independent Director means the Director appointed in accordance with clause 9.5.

Interested has the meaning set out in section 139 of the Act.

Ordinary Resolution means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

Participation Agreement has the meaning set out in the Scheme TOR.

Permitted B Shareholder means TCF or its representative, the successor industry body of TCF for providers of Telecommunication Services in New Zealand or a Related Person of TCF or its successor industry body.

Related Person of a person (**A**) means a person, whether now or hereafter existing that directly or indirectly (i) is controlled by A, (ii) is under common control with A or (iii) controls A. For the purposes of this definition **control** means the possession, directly or indirectly, of (i) the power to direct, or cause the direction of, the management or policies of the relevant person (by contract, statute or otherwise), or (ii) the ability to appoint or remove a number of directors or offices as together hold a majority of the voting rights in respect of that person.

Register means the register of Shareholders maintained by the Company.

Scheme has the meaning set out in the Scheme TOR.

Scheme Agent mean the person appointed by the Company to provide the Telecommunications Dispute Resolution Scheme service.

Scheme Cost Allocation means the method for allocating the costs of the Scheme between Scheme Members from time to time including the “New Tiering Structure” referred to in paragraph 3(b) of Schedule 2 of the Scheme TOR.

Scheme Member has the meaning set out in the Scheme TOR.

Scheme TOR means the Telecommunications Dispute Resolution Scheme Terms of Reference, as amended from time to time.

Shareholder means a person:

- (a) registered in the Register as the owner of one or more shares; or
- (b) until the person’s name is entered in the Register, a person named as a shareholder in the application for registration of the Company at the time of registration of the Company; or
- (c) until the person’s name is entered in the Register, a person who is entitled to have that person’s name entered in the Register under a registered amalgamation proposal as a shareholder in an amalgamated company.

Special Majority means a Board resolution approved by 5 or more Directors.

Special Meeting means a meeting called in accordance with section 121 of the Act.

TCF means the New Zealand Telecommunications Forum Incorporated NZBN 9429042987178.

Telecommunications Services has the meaning set out in the Scheme TOR.

TUANZ means Technology Users Association of New Zealand Incorporated NZBN 9429042861386.

Unanimous Resolution means a resolution approved by all of the votes of those Shareholders entitled to vote and voting on the question.

1.2 Interpretation

In this document:

- (a) a reference to a **clause** is to that clause in this Constitution;
- (b) a reference to a **person** includes a natural person, body corporate, company, incorporated or unincorporated society, partnership or trust and includes a reference to that person’s personal representative, successors and permitted assigns;
- (c) headings are inserted for convenience only and shall be ignored in construing this Constitution;
- (d) **written** and **in writing** includes any means of reproducing words, figures or symbols:
 - (i) in a tangible and visible form in any medium; or
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;
- (e) **signature** includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory’s approval of the information contained in the document;
- (f) **working day** has the same meaning as defined in section 2 of the Act;

- (g) words or phrases defined in the Act have the same meaning in this Constitution unless the context otherwise requires.

1.3 Constitution subject to changes in the Act

If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

1.4 Precedence

If there is any conflict between:

- (a) a provision in this Constitution;
- (b) a provision in the Scheme TOR; and
- (c) a Scheme Member's Participation Agreement,

then the provisions of this Constitution shall prevail and the Scheme TOR shall have second priority.

2. Purpose of the Company

2.1 Purpose

The purpose of the Company is to administer the Scheme including by:

- (a) ensuring that Customers have access to an effective independent dispute resolution mechanism to address issues where the Customer is not satisfied with the outcome from their Scheme Member's internal Complaints handling or dispute resolution process in relation to a Complaint;
- (b) facilitating the resolution of Complaints relating to Telecommunications Services in New Zealand through practices that are fair and equitable and are consistent with the purposes and provisions of the Telecommunications Act 2001;
- (c) providing prompt, fair and independent resolution of disputes, having regard to the Customer Care Code and the service standards it sets out, as well as relevant legal requirements;
- (d) assisting Scheme Members' to improve internal Complaints resolution processes with early and effective resolution of Complaints and to help prevent future Complaints;
- (e) promoting consumer awareness of the Scheme;
- (f) monitoring Scheme Members' compliance with the Scheme;
- (g) identifying, investigating and reporting systemic issues arising from Complaints, disputes and determinations; and
- (h) operating in accordance with the Scheme TOR.

3. Shares

3.1 Existing shares

At the time of adoption of this Constitution, the Company has 100 shares on issue comprising:

- (a) 75 fully paid ordinary A Shares held by [Name of Chair] on trust for the purposes set out in clause 2.1; and
- (b) 25 fully paid ordinary B Shares held by TCF.

3.2 Section 45 of the Act

Section 45 of the Act does not apply so that the Company may issue shares so as to alter voting and distribution rights as between Shareholders without first offering those shares to existing Shareholders.

3.3 Amount owing on issue of shares

Where money or other consideration is due at a fixed time to the Company on shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the Shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

4. Transfer of shares

4.1 Entry in Register

Subject to clauses 4.2 and 4.3, shares may be transferred by entry of the name of the transferee on the Register.

4.2 Form of transfer

The form of transfer may be in any form approved by the Board.

4.3 Board's right to refuse registration of transfer

The Board may only refuse or delay the registration of the transfer of any shares in accordance with section 84 of the Act.

5. Permitted transferees

5.1 A Shares

A Shares must be held by the Independent Director from time to time. When a person ceases to hold office as Independent Director, that person or their personal representative irrevocably appoints the Board as attorney to execute a share transfer to transfer all of the A Shares to the incoming Independent Director.

5.2 B Shares

B Shares may only be held by a Permitted B Shareholder. If the holder of a B Share ceases to be a Permitted B Shareholder, then it must immediately transfer all B Shares held by it to a Permitted B Shareholder. If the holder of a B Share does not comply with the terms of this clause 5.1 within 5 working days of ceasing to be a B Shareholder, the Board may execute a share transfer form as the holder's attorney to transfer the relevant B Shares to a Permitted B Shareholder.

5.3 No undermining

A Shareholder must not do anything that has the purpose or effect of undermining or circumventing any restriction on the transfer of shares as set out in this clause 5.

6. Levies and distributions

6.1 Levies and surpluses

The Board shall set levies for Scheme Members from time to time at a level that allows the Company to recover its costs. If the Company generates a surplus, the Board may resolve to return such surplus to Scheme Members by way of a rebate on levies paid or a discount on future levies.

6.2 No distributions except on winding up or liquidation

The Board shall not authorise a distribution by the Company to Shareholders except in accordance with clause 14.

7. Management review by Shareholders

7.1 Board reports

The Board shall provide an annual report to the Shareholders which includes audited annual financial statements.

7.2 Review of Scheme

A Shareholder may, by written notice to the Company, require that the Company commissions an independent review of the Scheme (**Scheme Review**) provided that a Scheme Review has not been completed within 2 years before the date of such notice. The Board shall prescribe the terms of reference for the Scheme Review and appoint an independent reviewer who is neither a member of TCF nor a Scheme Member to conduct the Scheme Review.

7.3 Discussions by Shareholders

A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.

7.4 Resolution not binding on Board

A meeting of Shareholders may pass a resolution relating to the management of the Company, but such resolution is not binding on the Board.

8. Meetings of Shareholders

8.1 Methods of holding meetings

A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

8.2 Exercise of power by meeting or written resolution

A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

8.3 Powers exercisable by Ordinary Resolution

Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by Ordinary Resolution.

8.4 Unanimous Resolutions – amendments to Constitution

The following provisions of this Constitution may only be amended by a Unanimous Resolution:

- (a) this clause 8.4;
- (b) clause 2 (Purpose of the Company);
- (c) clause 5 (Permitted transferees); and

(d) clauses 9.1, 9.3, 9.4 and 9.5 (Board).

8.5 Unanimous Resolutions – other actions

The Company may only undertake the following actions by a Unanimous Resolution:

- (a) approval of a “major transaction” as defined in the Act;
- (b) approval of the annual budget for the Company;
- (c) approval of the Scheme Cost Allocation and any changes to the Scheme Cost Allocation;
- (d) winding up the Scheme; and
- (e) subject to compliance with the Act, the liquidation of the Company.

8.6 Annual meetings

The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act unless, in the case of any annual meeting, everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

8.7 Special Meetings

A Special Meeting of Shareholders entitled to vote on an issue:

- (a) may be called by the Board at any time;
- (b) shall be called by the Board on the written request of Shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

8.8 Time and place of meetings

Each meeting of Shareholders shall be held at such time and place as the Board appoints.

8.9 Notice of meetings of Shareholders

Written notice of the time, date and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than 10 working days before the meeting but, with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.

8.10 Contents of notice

A notice of meeting must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Ordinary Resolution or Unanimous Resolution to be submitted to the meeting.

8.11 Irregularity in notice

An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

8.12 Chairperson of meetings of Shareholders

The Independent Director shall chair each meeting of Shareholders.

8.13 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders.

8.14 Quorum for meetings of Shareholders quorum required

No business may be transacted at a meeting of Shareholders if a quorum is not present.

8.15 Size of quorum

A quorum for a meeting of Shareholders is present if the holder of B Shares and the Independent Director are both present.

8.16 Lack of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the request of Shareholders entitled to exercise that right, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Board may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the Shareholders or their Representatives present will constitute a quorum.

8.17 Adjournment of meeting

The chairperson may, with the consent of the meeting at which a quorum is present (and shall, 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 an adjourned meeting other than business left unfinished at the relevant meeting.

8.18 Voting

Shareholders may exercise the right to vote at a meeting by casting one vote per share held.

8.19 Best interests of the Company

The Independent Director must, when exercising any powers as a Shareholder, act in what the Independent Director believes to be the best interests of the Company and to further the purposes of the Company set out in clause 2.

8.20 Proxies permitted

A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

8.21 Form of proxy

A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

8.22 Lodging proxy

No appointment of a proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting before the start of the meeting.

8.23 Corporate representatives

A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A representative has the same rights and powers as if the representative were a proxy.

8.24 Minutes of Shareholder meetings

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

8.25 Shareholder proposals notice to the Board

A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

9. Board

9.1 Board composition

Subject to the provisions of this clause 9, the Company will have a maximum of 7 Directors comprising:

- (a) three A Directors appointed in accordance with clause 9.3;
- (b) three B Directors appointed in accordance with clause 9.4; and
- (c) the Independent Director appointed in accordance with clause 9.5.

9.2 Skills of Directors

Each Shareholder shall have regard to the skills matrix in Appendix 1 when appointing a Director to fill an existing vacancy in accordance with either clause 9.3 or 9.4 so that the composition of the Board from time to time includes Directors with a broad mix of skills and experience.

9.3 A Directors

The Independent Director may appoint three A Directors by giving a written notice to the Company. The Independent Director shall appoint the three A Directors as follows:

- (a) one A Director shall be the nominee of the Secretary of the Ministry of Business Innovation and Employment (or the chief executive of any successor Government Ministry or Department with oversight of consumer affairs);
- (b) one A Director shall be the nominee of Consumer NZ; and
- (c) one A Director shall be the joint nominee of TUANZ and CAB (and if they cannot agree, then the Independent Director may select a nominee proposed by either of them).

Each A Director shall serve a three year term provided that the initial A Directors and their respective terms of office are:

- (d) [name] who shall hold office until [date];
- (e) [name] who shall hold office until [date]; and
- (f) [name] who shall hold office until [date].

Each A Director may be reappointed at the end of their term for one further term of up to 3 years provided that no B Director may hold office for more than 6 years.

9.4 B Directors

The holder of the B Shares may, having regard to the TDR industry representative nomination policy for the Board, appoint three B Directors by giving a written notice to the Company. Any B Director may be removed by a written notice signed by the B Shareholder delivered to the Company. As at the date of this Constitution, the B Directors and their respective terms of office are:

(a) [name] who shall hold office until [date];

(b) [name] who shall hold office until [date]; and

(c) [name] who shall hold office until [date].

Each B Director may be reappointed at the end of their term for one further term of up to 3 years provided that no B Director may hold office for more than 6 years.

9.5 Independent Director

The initial Independent Director is [name]. The Independent Director shall serve a maximum of one term of three years unless the Board resolves by a Special Majority to extend the term. Not less than 6 months before the end of the current Independent Director's term of office, or if the current Independent Director ceases as a Director for any reason, the Board shall appoint a replacement Independent Director:

- (a) having regard to the skills matrix in Appendix 1;
- (b) who must not be directly or indirectly associated with a Scheme Member, CAB, Consumer NZ or TUANZ including as a director, employee or contractor; and
- (c) whose term shall commence immediately after the current Independent Director's term of office comes to an end.

The appointment of a replacement Independent Director must be approved by a Special Majority. If the Board is unable to pass a Special Majority resolution to appoint a replacement Independent Director, the Board must, within 10 working days, request the President of the New Zealand Law Society to appoint an independent expert to make the appointment. The independent expert's decision shall be final.

9.6 Chairperson

The Independent Director shall be the chairperson of the Board.

9.7 Quorum

A quorum for a meeting of the Board will comprise at least:

- (a) one A Director;
- (b) one B Director; and
- (c) the Independent Director.

9.8 Period of office

A Director holds office until the earlier of:

- (a) the end of their term of office; or
- (b) their resignation, disqualification or removal in accordance with this Constitution.

9.9 Disqualification and removal

A person will be disqualified from holding the office of Director if that person:

- (a) resigns in writing and is not reappointed in accordance with this Constitution; or
- (b) becomes disqualified from being a Director pursuant to the Act.

9.10 Appointment of proxies

- (a) A Director may exercise the right to vote at a Board meeting either by being present in person or by proxy.

- (b) A proxy must be appointed by notice in writing signed by the appointing Director and the notice must state whether the appointment is for a particular meeting or a specified term.
- (c) No appointment of a proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Board at any place specified for the purpose in the notice of meeting before the start of the meeting.

10. Indemnity and insurance

10.1 Types of proceedings that may be indemnified against

The Board shall cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by them in any proceeding:

- (a) that relates to liability for any act or omission in their capacity as a Director or employee; and
- (b) in which judgment is given in their favour or in which they are acquitted, or which is discontinued.

10.2 Types of liability that may be indemnified against

The Board shall cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:

- (a) liability to any person other than the Company or a related company for any act or omission in their capacity as a Director or employee; or
- (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;

not being:

- (c) criminal liability;
- (d) liability in respect of a breach of section 131 of the Act; or
- (e) liability for breach of any fiduciary duty owed to the Company or a related company.

10.3 Insurance of Directors and employees

The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and for employees of the Company or a related company in respect of:

- (a) liability, not being criminal liability, for any act or omission in their capacity as a Director or employee;
- (b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in their capacity as a Director or employee and in which they are acquitted.

10.4 Directors to sign certificate

The Directors who vote in favour of authorising the effecting of insurance under clause 10.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

10.5 Entry in the interests register

The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or a related company are forthwith entered in the interests register of the Company.

10.6 Definitions

For the purpose of this clause 10, **Director** includes a former Director and **employee** includes a former employee.

11. Powers and duties of the Board

11.1 Management by Board

Subject to clause 11.2 and any restrictions in the Act or this Constitution the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

11.2 Power of Board

The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

11.3 Delegation by Board

The Board may delegate to a committee of Directors, a Director, or an employee of the Company or any other person any one or more of its powers, other than the powers referred to in the second schedule to the Act.

11.4 Best interests of the Company

Each Director must, when exercising powers or performing duties, act in good faith and in what the director believes to be the best interests of the Company and to further the purposes of the Company set out in clause 2.

11.5 Appointment of Scheme Agent

The Board shall have the power to appoint and terminate the appointment of the Scheme Agent.

11.6 Appointment of secretariat

The Board shall have the power to appoint and terminate the appointment of a person to provide secretariat services to the Company.

11.7 Financial statements and audit

The Board shall ensure that the Company prepares financial statements in accordance with generally accepted accounting practice (as defined in the Financial Reporting Act 2013). The Board shall appoint a qualified auditor to audit the Company's financial statements and report to the Shareholders within 4 months after the end of each financial year.

12. Proceedings of the Board

12.1 Methods of holding meetings

A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- (b) by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

12.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 12.2 and 12.3. Each Director must be given not less than [10] working days' notice of a meeting of the Board, unless the Director waives that right or in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances must be given. Notice may be given to a Director in any of the following ways:

- (a) by giving the notice to the Director in person, by telephone or other oral communication; or
- (b) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered; or
- (c) by sending the notice by e-mail to the e-mail address given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or
- (d) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted; or
- (e) by sending by electronic means in accordance with any request made by the Director from time to time for such purpose.

12.3 Contents of notice

A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting. The notice shall give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of those matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.

12.4 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

12.5 Votes

Every Director (including the Independent Director) has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

12.6 Resolutions in writing

A resolution in writing, signed or assented to by all Directors, entitled to vote on that resolution, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including electronic documents) in like

form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.

12.7 Committees

A committee of directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

12.8 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

12.9 Validity of acts

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director; or
- (b) that any of them were disqualified;
- (c) any irregularity in a notice of meeting.

12.10 Disclosure of interests

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interests of directors) but failure to comply with that section does not affect the operation of clause 12.11.

12.11 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to clause 12.12, sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a Director or other officer of, or otherwise Interested in, any company promoted by the Company or in which the Company may be directly or indirectly interested as a Shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause 12.11 may be avoided by reason of a Director being Interested.

12.12 Interested Directors may not vote

A Director who is Interested in a transaction entered into, or to be entered into, by the Company may not:

- (a) vote on any matter relating to the transaction;
- (b) attend any part of a meeting of the Board at which any matter relating to the transaction arises;

- (c) sign a document relating to the transaction on behalf of the Company; or
- (d) do any other thing in their capacity as a Director in relation to the transaction.

12.13 Matters determined by the Company

Other than as provided by the Act and clause 12.12, a Director is not disqualified by virtue of their office from discussing or voting on any matter which directly or indirectly affects a Scheme Member or a Customer that is a Related Person of the Director.

12.14 Other procedures

Except as set out in this clause 12, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act do not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

12.15 Directors' remuneration Authorisation

The Board may exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.

12.16 Expenses

Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

12.17 Special remuneration

The Board may authorise the Company to pay any Director who is or has been engaged by the Company to carry out any work or perform any services which is not in the capacity of a director.

12.18 Scheme TOR

The Company may amend the Scheme TOR if approved by a Special Majority.

13. Method of contracting

13.1 Deeds

A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) one or more attorneys appointed by the Company; or
- (c) any Director, or any other person authorised by the Board, whose signature must be witnessed.

13.2 Other written contracts

An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

13.3 Other obligations

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

14. Liquidation

14.1 Liquidation proposal

In addition to the grounds for the commencement of liquidation of the Company set out in section 241 of the Act, a Shareholder may propose that the Company is liquidated on the grounds that the Company is no longer materially achieving the purposes set out in clause 2.

Each Shareholder must have regard to ensuring the continuation of the Scheme (or the availability of a replacement scheme for dealing with Complaints) before exercising a decision to vote to commence liquidation under clause 8.5(e).

14.2 Distribution of surplus assets on liquidation

Subject to the terms of issue of any shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed to the TCF and either:

- (a) distributed by the TCF to the Scheme Members pro rata to the Scheme Cost Allocation;
or
- (b) used for the purposes of any telecommunications industry dispute resolution scheme.

14.3 Distribution in specie

Upon the liquidation of the Company the liquidator may, with the sanction of an Ordinary Resolution and any other sanction required by law, distribute to the TCF in kind the whole or any part of the assets of the Company (whether it consists of property of the same kind or not).

Appendix 1

Skills matrix for Board appointments

Director	Independent Director	A1	A2	A3	B1	B2	B3
Skills							
Dispute resolution - knowledge of dispute resolution schemes and commitment to alternative dispute resolution							
Legal expertise							
Financial skills - financial accounting & reporting, budgeting, risk & internal controls, audit							
Commitment to diversity and ensuring the scheme is accessible to all, especially more vulnerable communities							
Knowledge of telecommunications products							
Knowledge of consumer issues in telecommunications industry							
Diversity (including in relation to age, gender and ethnicity)							