

## **CONSTITUTION**

CONSTITUTION OF NBN CO LIMITED

A PUBLIC COMPANY LIMITED BY SHARES INCORPORATED IN THE  
AUSTRALIAN CAPITAL TERRITORY

Last updated: 22 February 2013 (refer Special Resolution 4)

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## CONSTITUTION

### CONSTITUTION OF NBN CO LIMITED

#### 1. Interpretation

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##### 1.1. Definitions

1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

<b>Chairperson</b>	means the Chairperson appointed under rule 7.3;
<b>Chief Executive Officer</b>	means the Chief Executive Officer appointed under rule 12;
<b>Commonwealth</b>	means the Commonwealth of Australia acting in its capacity as sole shareholder in the Company;
<b>Constitution</b>	means this document as amended from time to time;
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> ;
<b>Deputy Chairperson</b>	means the person appointed as such under rule 7.3;
<b>Director</b>	<ol style="list-style-type: none"><li>subject to paragraph b, means any person occupying the position of director of the Company;</li><li>for the purposes of rule 11, means any person occupying the position of director of the Company or any Subsidiary;</li></ol>
<b>Directors or Board</b>	mean all or some of the Directors acting as a board;
<b>Ministers</b>	means the Commonwealth Minister for Broadband, Communications and the Digital Economy and the Commonwealth Minister for Finance and Deregulation or the persons acting in those positions from time to time or the Commonwealth Ministers responsible for the Company;
<b>Replaceable Rules</b>	means the provisions referred to in section 141 of the Corporations Act;
<b>Senior Manager</b>	means a person (other than a Director, the Company Secretary, a Secretary of a Subsidiary, the Ministers or their representatives) who: <ol style="list-style-type: none"><li>makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company or, for the purposes of rule 11, of the Company or any Subsidiary; or</li><li>has the capacity to affect significantly the Company's</li></ol>

or, for the purposes of rule 11, the Company's or any Subsidiary's, financial standing;

**Subsidiary** means any wholly-owned subsidiary (within the meaning of the Corporations Act) of the Company.

- 1.1.2. In this Constitution unless the contrary intention appears:
- a. words importing the singular include the plural and vice versa;
  - b. words importing any gender include the other genders;
  - c. headings do not affect construction or interpretation;
  - d. a reference to a person includes a body corporate and a body politic; and
  - e. an expression in a rule that deals with a matter dealt with by a particular provision of the Corporations Act has the same meaning as in that provision of the Corporations Act.
- 1.1.3. To the extent any provision of this Constitution is unlawful it shall be severed without affecting the operation of any other provision.

## **2. Constitution**

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- 2.1.1. This document, as amended from time to time in accordance with the Corporations Act, will be the Constitution of the Company, a public company limited by shares.

## **3. Replaceable Rules**

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- 3.1.1. The Replaceable Rules set out in the Corporations Act do not apply to the Company.

## **4. Objects and powers**

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- 4.1.1. The Company's objects are to roll-out, operate and maintain a national wholesale broadband network while working closely with the Commonwealth during the implementation study in order to facilitate the implementation of Australian Government broadband policy and regulation.
- 4.1.2. The Company has the powers set out in the Corporations Act but only to do all things that are necessary, convenient or incidental to carry out the objects set out in rule 4.1.1 and which are consistent with Australian Government policy as communicated to the Company by the Commonwealth from time to time.
- 4.1.3. Notwithstanding rule 4.1.2, the Company shall not carry on any business or do any act or thing that would render the holding of those shares in the Company beyond the powers of the Commonwealth of Australia under the Australian Constitution.

## **5. Officers and employees**

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### **5.1. Powers of directors**

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

### **5.2. Directors acting in the interests of the Commonwealth**

- 5.2.1. Despite any other rule in this Constitution, the Directors are taken to act in good faith in the best interests of the Company, provided that:
- a. each Director acts in good faith;
  - b. the relevant act is in the best interests of the Commonwealth;
  - c. the relevant act is within the power of the Company;
  - d. the Company is not insolvent at the time of the relevant act, and does not become insolvent because of the relevant act; and
  - e. the relevant act does not breach any law (including the Corporations Act), any fiduciary duty, or breach any contract.
- 5.2.2. A Director acts in the best interests of the Commonwealth, if they act in accordance with a resolution of the Commonwealth in accordance with rule 8.

### **5.3. Negotiable Instruments**

- 5.3.1. Any two Directors of the Company may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 5.3.2. The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

### **5.4. Appointment and removal of Directors**

- 5.4.1. There shall be a minimum of three and a maximum of nine Directors.
- 5.4.2. Subject to rule 5.4.1, the Commonwealth may at any time by written notice to the Company, appoint a person to be an additional or replacement Director of the Company.
- 5.4.3. The Board must, within 14 days of being notified or otherwise becoming aware of a Board vacancy, notify the Commonwealth in writing of that vacancy.
- 5.4.4. The Commonwealth may at any time by written notice to the Company remove a Director from his or her office without compensation, whether or not the Director's appointment was expressed to be for a specified period.

## **5.5. Term of appointment**

- 5.5.1. Subject to the provisions of this Constitution, the term of office of a Director is to be determined by the Commonwealth at the time of appointment, with the maximum term of office to be 3 years.
- 5.5.2. A Director retires, but is eligible for re-appointment on the expiry of his or her term of office.

## **5.6. Vacation of office**

- 5.6.1. In addition to the situations set out in the Corporations Act and this Constitution, the office of a Director will become vacant if the Director:
- a. is absent without the consent of the Directors from meetings of the Directors held during a period of 3 months; or
  - b. is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest at a meeting of the Directors as soon as practicable after the relevant facts have come to the Director's notice.
- 5.6.2. In rule 5.6.1.b, a reference to a contract or proposed contract with the Company includes a grant of financial assistance or proposed grant of financial assistance by the Company.

## **5.7. Remuneration of Directors**

- 5.7.1. The Directors are to be paid such remuneration as is provided for by any applicable determination of the Remuneration Tribunal under the *Remuneration Tribunal Act 1973* (Cth), or, if there is no applicable determination, such remuneration that the Commonwealth determines.

## **5.8. Director may resign by giving written notice to company**

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

## **5.9. Company Secretary**

- 5.9.1. The Company Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

## **6. Inspection of books**

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- 6.1.1. Subject to any reasonable restrictions as to the time of inspecting the same that may be imposed by the Board, the financial records and books of the Company shall be open to inspection by the Commonwealth.

## **7. Directors' Meetings**

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### **7.1. Circulating resolutions**

7.1.1. The Directors may pass a resolution without a Directors' meeting being held if all of the available Directors entitled to vote on the resolution (being not less than the number required for a quorum at a meeting of the Board) sign a document (*Document*) containing a statement that they are in favour of the resolution set out in the Document.

7.1.2. For the purposes of rule 7.1.1:

- a. all Directors entitled to vote on the resolution must have been given the Document, which must include notice of the resolution and any necessary explanatory material (in the same form and content as if for an ordinary meeting of the Board);
- b. a Director is 'available' if he or she has confirmed receipt of the Document within 48 hours of its issuance;
- c. separate copies of the Document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy;
- d. the resolution is passed when the last Director entitled to vote on the resolution signs the Document; and
- e. any document referred to in, or signature required by, this rule may be in the form of a facsimile or electronic transmission.

### **7.2. Calling Directors' meetings**

7.2.1. A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

### **7.3. Chairing Directors' meetings**

7.3.1. A Chairperson must be appointed by the Commonwealth from amongst the Directors. By resolution of the Directors and following consultation with the Ministers, there may be a position of Deputy Chairperson created. The appointment of a person to the position of Deputy Chairperson must be by the Commonwealth from amongst the Directors. The Chairperson, after consultation with the Ministers, may put a resolution to the Board relating to the respective areas of corporate oversight and focus of the Chairperson and Deputy Chairperson.

7.3.2. Subject to rules 7.3.3 and 7.3.4, a Chairperson (or any Deputy Chairperson) holds office for so long as he or she remains a Director of the Company.

7.3.3. The Commonwealth may remove a Chairperson (or any Deputy Chairperson) from that office by giving notice to that person. The removal of either person from that office in this manner does not, of itself, affect the Chairperson's or Deputy Chairperson's continuing role as Director.



7.3.4. A Chairperson or Deputy Chairperson can resign from that office by written notice of one month to the Company.

7.3.5. If:

- a. there is no Chairperson;
- b. the Chairperson is not present at the meeting within 10 minutes of the time appointed for the commencement of the meeting; or
- c. the Chairperson is not willing to act as Chairperson of the meeting

the Deputy Chairperson will be the Chairperson of the Directors' meeting, but if there is no Deputy Chairperson or that person is not available for any reason, the Directors present at the meeting can elect one of their number to be the Chairperson of the Directors' meeting.

#### **7.4. Quorum of Directors**

7.4.1. The quorum for a Directors' meeting is the majority of the total number of Directors holding office at the time of the meeting. The quorum must be present at all times during the meeting.

#### **7.5. Passing of Directors' resolutions**

7.5.1. A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

7.5.2. The Chairperson (or the Deputy Chairperson or any other person acting in the capacity as the Chairperson at a Directors' meeting under rule 7.3.5) has a casting vote if necessary in addition to any vote they have in their capacity as a Director.

#### **7.6. Vacancy of Chairperson**

7.6.1. The Deputy Chairperson shall act as the Chairperson:

- a. during any period, when the Chairperson is, for any reason, unable or not available to perform the duties of the position; and
- b. during a vacancy in the position of Chairperson (other than by expiry of the Chairperson's term of appointment ).

### **8. Meetings of Members and exercise of Company powers through general meeting where the Commonwealth is the sole shareholder**

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8.1.1. Subject to the Corporations Act:

- a. the Commonwealth may pass a resolution where the Ministers sign the resolution (including a special resolution) and provide it to the Company for its records; and

- b. to the extent permitted by law, any power exercisable by the Company may be exercised as provided for in rule 8.1.1.a.

8.1.2. For the purposes of rule 8.1.1:

- a. separate copies of a document may be used for signing by Ministers if the wording of the resolution and statement is identical in each copy;
- b. the resolution is passed when the last Minister signs; and
- c. any document referred to in this rule may be in the form of a facsimile or electronic transmission.

## **9. Shares**

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### **9.1. Share capital**

9.1.1. The Commonwealth may determine, from time to time, to increase the maximum share capital.

### **9.2. Issuing Shares**

9.2.1. Subject to the Corporations Act and this Constitution:

- a. the power to decide to issue new shares in the Company may only be exercised by the Company in general meeting; and
- b. the Company in general meeting may determine the terms on which the Company's shares may be issued, and the rights and restrictions which will attach to such shares.

### **9.3. Dividends**

9.3.1. The Directors may make recommendations to the Commonwealth in respect of the prospective exercise by the Company of its powers under rule 9.3.2.

9.3.2. Subject to the Corporations Act and this Constitution, the Company may by resolution determine that a dividend is payable, fix the amount, time and manner for payment and authorise the payment or crediting of the dividend by the Company to the Commonwealth.

## **10. Transfer of Shares**

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10.1.1. A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

10.1.2. The Company and the Directors must register a transfer executed under rule 10.1.1 as soon as practicable, whether or not the relevant share certificate has been lodged at the Company's registered office with the transfer and whether or not the transfer is executed by the transferee.

## **11. Indemnity and insurance**

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- 11.1.1. To the extent permitted by law, the Company indemnifies every person who is or has been a Director, Company Secretary, or Senior Manager any, against any liability:
- a. incurred by that person in his or her capacity as a Director, Company Secretary, auditor or Senior Manager other than a liability:
    - i. owed to the Company or a related body corporate, or
    - ii. for a pecuniary penalty order under section 1317G or a compensation order under section 1317H, or
    - iii. that is owed to someone other than the Company or a related body corporate which did not arise out of conduct in good faith; and
  - b. for legal costs incurred by that person in his or her capacity as a Director, Company Secretary, auditor or Senior Manager other than:
    - i. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 11.1.1.a; or
    - ii. in defending or resisting criminal proceedings in which the person is found guilty; or
    - iii. in defending or resisting proceedings brought by the Australian Securities and Investments Commission (ASIC) or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for a court order); or
    - iv. in connection with proceedings for relief to the person under the Corporations Act in which the Court denies the relief.
- 11.1.2. The Company may, where the Directors of the Company consider it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been a Director, Company Secretary, auditor or Senior Manager against:
- a. any liability incurred by that person in his or her capacity as a Director, Company Secretary, auditor or Senior Manager other than a liability which arises out of:
    - i. conduct involving a wilful breach of duty in relation to the Company or a Subsidiary; or
    - ii. a contravention of section 182 (Use of Position) or section 183 (Use of Information) of the Corporations Act; and
  - b. any liability for legal costs incurred by that person in his or her capacity as a Director, Company Secretary, auditor or Senior Manager in defending

proceedings, whether civil or criminal, whatever their outcome, and without the qualifications set out in rules 11.1.2.a.i and 11.1.2.a.ii above.

## **12. Chief Executive Officer**

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12.1.1. Following consultation with the Commonwealth, the Board will appoint the Chief Executive Officer.

### **12.2. Powers of Chief Executive Officer**

12.2.1. The Board may delegate any of the powers of the Board to the Chief Executive Officer:

- a. on the terms and subject to any restrictions the Board decides; and
  - b. so as to be concurrent with the powers of the Board,
- and may revoke the delegation at any time.

12.2.2. The Chief Executive Officer will:

- a. be the chief executive officer of the Company;
- b. act consistently with the objects of the Company;
- c. use his or her best endeavours at all times to enhance the good name of the Company;
- d. in as far as the resources available permit, implement the policies of the Board;
- e. prepare an annual report for the Board on the work and activities of the Company during the preceding 12 months ending on 30 June in each year; and
- f. exercise such other functions duties and responsibilities as may be determined from time to time by the Board.

### **12.3. Termination of appointment of Chief Executive Officer**

12.3.1. The appointment of a Chief Executive Officer terminates:

- a. at the expiration of a fixed term if so defined in a written contract; or
- b. if, following consultation with the Commonwealth, the Board removes the Chief Executive Officer from that office (which, subject to any contract between the Company and the Chief Executive Officer, the Board has power to do).

## **13. Surplus assets in winding up**

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13.1.1. If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property, this property must be given or transferred to the Commonwealth.