

**Constitution of
Ergon Energy Corporation
Limited**

ACN 087 646 062

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CONSTITUTION OF ERGON ENERGY CORPORATION LIMITED

1. PRELIMINARY

1.1 Replaceable rules

The replaceable rules referred to in section 141 do not apply to the Company and are replaced by the rules set out in this document.

1.2 Definitions

The following definitions apply in this document.

Act means the *Corporations Act 2001* (Cth).

Affiliate means:

- (a) any entity (such as body corporate, partnership or trust) which a Director or Relative controls (within the meaning of section 50AA); or
- (b) a Relative of the Director or the Director's spouse, or a body corporate in which the Director, or any Relative own or hold in the aggregate more than 20% of the voting shares (as defined in the Act).

Auditor-General means the Queensland Auditor-General, appointed under the *Auditor-General Act 2009* (Qld).

Board means the Directors acting collectively under this document.

Company means the company named at the beginning of this document whatever its name is for the time being.

Director means a person who is, for the time being, a director of the Company.

dividend includes bonus.

GOC has the meaning given in the GOC Act.

GOC Act means the *Government Owned Corporations Act 1993* (Qld) and its regulations.

GOC Minister has the meaning given to that term under the GOC Act.

Indirect Interest includes an interest of a Relative of a Director or an Affiliate of a Director or Relative.

Member means a person whose name is entered in the Register as the holder of a share.

ordinary resolution means a resolution passed at a meeting of Members by a majority of the votes cast by Members entitled to vote on the resolution.

Portfolio Minister has the meaning given to 'portfolio Minister' under the GOC Act.

Premier means the Premier of the State of Queensland.

Public Service Officer has the meaning given to 'public service officer' by the *Public Service Act 2008* (Qld).

Register means the register of Members kept as required by sections 168 and 169.

Relative has the meaning given to 'relative' by section 9.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

Shareholding Ministers means the GOC Minister and the Portfolio Minister of:

- (a) any Member that is a GOC or Members that are GOCs; or
- (b) any holding company of any Member or Members where that holding company is a GOC.

special resolution has the meaning given to 'special resolution' by section 9.

1.3 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.

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- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
 - (h) A reference to a power is also a reference to authority or discretion.
 - (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
 - (j) A word (other than a word defined in rule 1.2) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
 - (k) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act.

1.4 **GOC Act prevails**

- (a) This document is to read subject to the GOC Act.
- (b) To the extent of any inconsistency between the GOC Act and the Act regarding this document, the GOC Act will prevail.
- (c) To the extent of any inconsistency between the GOC Act and this document, the GOC Act will prevail.
- (d) To the extent of any inconsistency between the Act and this document, subject to rule 1.4(b), the Act will prevail.

2. **OBJECTS OF COMPANY**

2.1 **Objects**

- (a) The Company's objects are to, either directly or indirectly through a subsidiary of the Company or an entity in which the Company has a direct or indirect investment:
 - (i) operate or invest in any one or more of the following as defined under the *Electricity Act 1994* (Qld):
 - (A) 'distribution entity';
 - (B) 'generation entity';
 - (C) 'retailer';

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- (ii) operate as a distribution network service provider as defined under the *National Electricity Law*;
 - (iii) provide technical and engineering services;
 - (iv) provide energy and related products and services;
 - (v) provide energy metering services;
 - (vi) generate and sell electricity;
 - (vii) undertake business investments in the energy industry including network utilisation;
 - (viii) invest in any entity which undertakes one or more of the objects set out in rules 2.1(a)(i) to 2.1(a)(vii); and
 - (ix) carry out any activity that is incidental to the objects set out in this rule 2.1.
- (b) The Company must not undertake any activities which do not come within the scope of the objects contained in this rule.
- (c) Without limiting rule 2.1(b), the Company must not carry out the object of generating electricity except:
- (i) for an isolated supply network;
 - (ii) if the generation is needed to ensure electricity supply to customers during maintenance or reinforcements of a supply network;
 - (iii) if the generation is needed for the extension or reinforcement of the supply network to a location because the extension or reinforcement is commercially less viable than an embedded generation solution;
 - (iv) where the generation is not a 'Scheduled Generator' for the purposes of the *National Electricity Rules*, unless the Shareholding Ministers have been advised and have approved the generation; or
 - (v) where the Shareholding Ministers have been advised and approved any other generation proposals (whether specific or general).

2.2 Interpretation

The Company's objects are to be interpreted independently and not as limiting any other object.

3. DIRECTORS

3.1 Public Service Officers not eligible

A Public Service Officer is not eligible for appointment as a Director of the Company.

3.2 **Appointment of Directors**

- (a) A person may only be appointed as a Director with the prior approval of the Shareholding Ministers.
- (b) Subject to rule 3.2(a), the Company may by ordinary resolution:
 - (i) appoint any person as a Director to fill a vacancy or as an addition to the existing Directors; and
 - (ii) appoint another person in the Director's place.

3.3 **Retirement by rotation**

No Director is subject to retirement by rotation.

3.4 **Cessation of Director's appointment**

A person automatically ceases to be a Director if the term of the Director's appointment expires, or if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a Director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing functions of that office;
- (d) resigns by notice in writing to the Company;
- (e) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (f) dies; or
- (g) is removed from office under rule 3.5.

3.5 **Special GOC rule regarding cessation of appointment**

In addition to the circumstances set out in rule 3.4, a person automatically ceases to be a Director if:

- (a) the ultimate holding company of the Company is a GOC; and
- (b) the person ceases to be a director of the ultimate holding company of the Company,

unless the Shareholding Ministers consent to the person remaining as a Director prior to the person ceasing to be a director of the ultimate holding company of the Company.

3.6 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may by ordinary resolution remove a Director from office.

4. **POWERS OF THE BOARD**

4.1 **Powers generally**

Except as otherwise required by the Act, the GOC Act, and any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company and the attainment and performance of the Company's objects; and
- (b) may exercise every right, power or capacity of the Company.

4.2 **Exercise of powers**

- (a) A power of the Board can be exercised only by resolution passed at a meeting of the Board or otherwise in accordance with rule 5 or 10.
- (b) Each Director is authorised to act in the best interests of any company of which it is a wholly-owned subsidiary, including its ultimate holding company.

Note: By virtue of this rule, section 187 of the Act has the effect that a Director who acts in good faith in the best interests of a holding company of the Company will be taken to act in good faith in the best interests of the Company if, and only if, the Company is a wholly-owned subsidiary of that holding company and the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act. The term wholly-owned subsidiary has a technical meaning given by the Act.

4.3 **Responsibilities under the GOC Act**

The roles, responsibilities and duties of the Directors include those required of them under the GOC Act.

5. **DELEGATION OF BOARD POWERS**

5.1 **Power to delegate**

The Board may delegate any of its powers as permitted by section 198D.

5.2 **Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

5.3 **Terms of delegation**

- (a) A delegation of powers under rule 5.1 may be made:
 - (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

5.4 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

6. **DIRECTORS' DUTIES AND INTERESTS**

6.1 **Compliance with duties under the Act**

Each Director must comply with sections 180 to 183 and 588G.

6.2 **Degree of care and diligence required**

In determining, for the purposes of the Act the degree of care and diligence that a reasonable person in a like position in a Company would exercise in the circumstances of the Company, regard must be had to:

- (a) the application of the GOC Act to the Company; and
- (b) relevant matters required or permitted to be done under the GOC Act in relation to the Company.

6.3 **Director can hold other offices etc**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or that of a Public Service Officer; or
- (b) be a member of any corporation (other than the Company) or partnership.

6.4 **Disclosure of interests**

Each Director must comply with section 191 and section 192.

6.5 **Director interested in a matter**

- (a) A Director must not be present, and is not entitled to vote, at a Board meeting when the Board considers a matter in which that Director has a material personal interest (whether that interest is a direct interest or an Indirect Interest).
- (b) If the interest has been disclosed by the Director, the Company may proceed with any transaction that relates to the Director's interest.
- (c) A Director may retain benefits under the transaction even though the Director has the interest. If the interest is required to be disclosed under section 191, this rule 6.5(c) applies only if the interest has been disclosed before the transaction is entered into.
- (d) The Company cannot avoid the transaction merely because of the existence of the interest.

6.6 **Register of Interests**

- (a) In addition to recording every declaration of interest in the minutes of the meeting at which it is made, the Company must maintain a register of interests disclosed under section 191 and section 192.
- (b) The Shareholding Ministers may request the Company to provide them with a copy of the register maintained under rule 6.6(a) and the Company must provide the register as requested by the Shareholding Ministers.

6.7 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

6.8 **Obligation of secrecy**

- (a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (i) in the course of duties as an officer of the Company;
 - (ii) by the Board or the Company in general meeting; or
 - (iii) by law.
- (b) The Company may require a Director, Secretary, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

7. DIRECTORS' REMUNERATION

7.1 Remuneration of Directors

The Directors of the Company are to be paid by way of fees for their services the amounts, if any, approved by:

- (a) the Company in general meeting; and
- (b) the Shareholding Ministers.

7.2 Additional remuneration for extra services

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may pay that Director a fixed sum set by the Board, with the prior approval of the Shareholding Ministers, for doing so.

Remuneration under this rule may be either in addition to, or in substitution for, any remuneration to which that Director is entitled under rule 7.1.

7.3 Expenses of Directors

The Company must pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

8. OFFICERS' INDEMNITY AND INSURANCE

8.1 Indemnity

Subject to and so far as permitted by the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company against a Liability incurred as such an officer to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith and or involves a pecuniary penalty;
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee in defending an action for a Liability incurred as such an officer or employee or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

8.2 **Insurance**

Subject to the Act and any other applicable law, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company except a liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty; or
- (b) a contravention of section 182 or 183.

8.3 **Former officers**

The indemnity in favour of officers under rule 8.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.

8.4 **Deeds**

Subject to the Act and any other applicable law, the Company may, without limiting a person's rights under this rule 8, enter into an agreement with a person who is or has been an officer of the Company, to give effect to the rights of the person under this rule 8 on any terms and conditions that the Board thinks fit.

9. **CHIEF EXECUTIVE OFFICER AND SENIOR EXECUTIVES**

9.1 **Appointment**

The chief executive officer and senior executives must be appointed in accordance with the GOC Act.

9.2 **Terms and conditions**

The terms and conditions of appointment (including remuneration) of the chief executive officer and other senior executives of the Company shall be determined by the Board (and is subject to the approval of the Shareholding Ministers), as may be required.

10. **BOARD MEETINGS**

10.1 **Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

10.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing;

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

10.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chairperson of the meeting is located.

10.4 Chairing Board meetings

- (a) The Board may elect a Director to chair its meetings and decide the period for which that Director holds the office of chairperson.
- (b) If there is no chairperson of Directors or the chairperson is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

10.5 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is half the number of Directors appointed to the Board and if that number is not a whole number, the next highest whole number. A quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

10.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairperson of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

10.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

10.8 **Written resolution**

If a majority of the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

10.9 **Additional provisions concerning written resolutions**

For the purpose of rule 10.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

10.10 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

11. **MEETINGS OF MEMBERS**

11.1 **Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

11.2 **Notice of meeting**

Subject to rule 11.3, at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each Member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

11.3 **Short notice**

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

12. **PROCEEDINGS AT MEETINGS OF MEMBERS**

12.1 **Resolutions without a meeting**

The Company may pass a resolution without a general meeting being called or held if the resolution set out in a document is signed and dated by each Member a statement that they are in favour of the resolution set out in the document. Such a resolution is passed when the last Member signs the document.

12.2 **Signature of resolutions**

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.

12.3 **Quorum at general meetings**

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Except where the Company has only one (1) member, in which case the member is a quorum or as otherwise set out in this document, two (2) Members present is a quorum.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:
 - (i) and if the meeting was convened on the requisition of Members, it must be dissolved; or
 - (ii) it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.

12.4 **Quorum at adjourned general meetings**

If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

12.5 **Representatives of Members**

- (a) At meetings of Members of classes of Members, each Member entitled to vote may vote in person or by proxy or by attorney.
- (b) A person attending as a proxy, as the attorney of a Member, or as representing a corporation which is a Member is to be treated as a Member for the purposes of:
 - (i) determining whether a quorum is present; and
 - (ii) demanding a poll.

12.6 **Appointment of chairperson**

- (a) If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairperson at every general meeting.
- (b) The Directors present at a general meeting must elect one of their number to be chairperson of the meeting if:
 - (i) a Director has not been elected as chairperson of directors meetings; or
 - (ii) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or he/she is unwilling to act.
- (c) The Members present at a general meeting must elect one of their number to be chairperson of the meeting if:
 - (i) there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
 - (ii) all Directors present decline to take the chair.

12.7 **Chairperson's powers**

Subject to the terms of this document dealing with adjournment of meetings, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

12.8 **Adjournment of meetings**

- (a) The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

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- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
 - (c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
 - (d) Except when a meeting is adjourned for thirty (30) days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

12.9 **Voting on a show of hands**

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded.
- (b) If a poll is not duly demanded, a declaration by the chairperson 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.

12.10 **Demand for a poll**

- (a) A poll may be demanded by:
 - (i) the chairperson;
 - (ii) any three (3) Members who have the right to vote at the meeting;
 - (iii) any Member or Members representing not less than ten percent (10%) of the total voting rights of all the Members having the right to vote at the meeting; or
 - (iv) a Member or Members holding shares conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than ten percent (10%) of the total sum paid up on all the shares conferring that right.
 - (b) The demand for a poll may be withdrawn.
 - (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
 - (d) If a poll is duly amended, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
 - (e) A poll demanded on the election of a chairperson or on a question or adjournment must be taken immediately.
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12.11 **Voting rights of Members**

Subject to any rights or restrictions for the time being attached to a class or classes of shares:

- (a) on a show of hands every person present who is a Member or who represents a Member has one vote; and
- (b) on a poll every person present who is a Member or who represents a Member has one vote for each share held by the Member.

12.12 **Joint shareholders' vote**

In the case of joint holders the vote of the the first named holder of the share or shares in the share register who tenders a vote, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority must be determined by the order in which the names stand in the share register.

12.13 **Voting rights where calls unpaid**

A Member is not entitled to vote at a general meeting unless all calls or other sums presently payable by the Member in respect of shares have been paid.

12.14 **Chairperson's vote at general meetings**

The chairperson of a general meeting is not entitled to a second or casting vote.

12.15 **Objections to voter qualification**

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the chairperson of the meeting, whose decision is final.
- (c) A vote not disallowed according to an objection as provided in this document is valid for all purposes.

13. **SECRETARY**

13.1 **Appointment of Secretary**

- (a) The Board:
 - (i) must appoint at least 1 individual; and
 - (ii) may appoint more than 1 individual,to be a Secretary either for a specified term or without specifying a term.

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- (b) If the ultimate holding company of the Company is a GOC, an individual can only be appointed as a Secretary if:
- (i) the individual is also a company secretary of the ultimate holding company of the Company; or
 - (ii) the Shareholding Ministers consent to the individual being a Secretary without being a company secretary of the ultimate holding company of the Company.

13.2 **Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

13.3 **Cessation of Secretary's appointment**

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company;
- (e) dies; or
- (f) is removed from office under rule 13.4.

13.4 **Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

14. **MINUTES**

14.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings;

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- (d) resolutions passed by Directors without a meeting; and
 - (e) disclosures and notices of Directors' interests,
- to be kept in accordance with sections 191, 192 and 251A.

14.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

14.3 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B.

15. **COMPANY SEALS**

15.1 **Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

15.2 **Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

15.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

16. **FINANCIAL RECORDS AND AUDIT**

16.1 **Company must keep financial records**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and

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- (b) would enable true and fair financial statements to be prepared and audited, and must allow a Director and the auditor to inspect those records at all reasonable times.

16.2 **Audit**

The Auditor-General will be the auditor of the company and the remuneration of the auditor will be in accordance with the GOC Act for so long as:

- (a) any Member is a GOC; or
- (b) any holding company of any Member is a GOC.

17. **SHARES**

17.1 **Power to issue shares**

- (a) The shares in the Company may only be issued by the Board, on behalf of the Company:
- (i) with the prior written approval of the Shareholding Ministers; and
- (ii) to its Members unless all the Members otherwise agree in writing.
- (b) The Directors must comply with any written direction of the Shareholding Ministers concerning the issue of shares.

17.2 **Special rights**

Shares may be issued with those preferred, deferred or other special rights or with those restrictions, whether with regard to dividends, voting, return of capital or otherwise as the Board determines.

17.3 **Effect of allotment of class rights**

The rights conferred on the holders of the shares of a class allotted with preferred rights are not to be treated as varied by the allotment of further shares by the Company ranking equally with them unless the terms of allotment of the earlier allotted shares expressly provide otherwise.

17.4 **Power to issue redeemable preference shares**

Subject to the Act, preference shares may be issued on terms that they are, or at the option of the Company, are liable to be redeemed.

18. **CERTIFICATES**

18.1 **Issue of share certificate**

- (a) The Company must issue a certificate of title to shares that complies with section 1070C and deliver it to the holder of those shares in accordance with section 1071H.
- (b) The Company is not bound to issue more than one certificate of title to shares in respect of a share or shares held jointly by several persons. Delivery of a certificate for a share or shares to one of several joint holders is sufficient delivery to all such holders.

18.2 **Rights and obligations of joint holders**

If several persons are jointly entitled to a share or shares:

- (a) in the absence of an express direction from those persons to the contrary, the Company may enter the names of those persons as Members in the share register in the order in which their names appear on the application for shares or the instrument of transfer or the notice of death or bankruptcy given to the Company to establish the entitlement of those persons to the share or shares;
- (b) it is sufficient discharge of any of the Company's obligations to those persons if the Company discharges that obligation in relation to the first named holder of the share or shares in the share register;
- (c) any one of those persons may give effectual receipts for any dividend or return of capital payable to those persons; and
- (d) those persons are jointly and severally liable to pay all calls, interests and other amounts in respect of the share or shares.

18.3 **Lost and worn out certificates**

If a certificate:

- (a) is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D(5), the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

19. **DIVIDENDS**

19.1 **Dividends able to be paid**

The Board may, subject to compliance with the requirements of the Act, the GOC Act and any other applicable law, determine or declare that a dividend or interim dividend is payable and fix:

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- (a) the amount;
 - (b) time for payment; and
 - (c) the method of payment.

19.2 Time when the debt arises

Subject to the Act and the GOC Act, the Company incurs a debt for payment of a dividend only when the time fixed for payment arrives.

19.3 No interest on dividends

No Member may claim, and the Company must not pay, interest on a dividend (either in money or kind).

20. TRANSFER OF SHARES

20.1 Mode of transfer

Subject to rule 20.4 and the GOC Act, a Member may transfer a share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee. The Board must not register a transfer that does not comply with this rule.

20.2 Premier may execute transfer

In accordance with the GOC Act the Premier may execute a transfer on behalf of either or both the transferor and transferee.

20.3 Provisions of the GOC Act

Notwithstanding any contrary rules in this document or the Act, the Board:

- (a) must register a transfer of shares that complies with the GOC Act; and
- (b) must not register a transfer of shares unless the provisions of the GOC Act concerning the transfer of shares are fully complied with.

20.4 Delivery of transfer and certificate

A document of transfer under rule 20.1 must be:

- (a) delivered to the registered office of the Company or the address of the Register last notified to Members by the Company;
- (b) accompanied by the certificate (if any) for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (c) marked with payment of any stamp duty payable.

Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

20.5 Refusal to register transfer

Subject to rule 20.3, the Board may, in their absolute discretion and without assigning any reason, refuse to register a transfer of shares.

20.6 Transferor remains holder until transfer registered

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

21. TRANSMISSION OF SHARES

In the event of the death, bankruptcy or mental incapacity of a Member, the provisions of rules 20.1, 20.2 and 20.3 apply.

22. VARIATION OF CLASS RIGHTS

22.1 Form of consent

If at any time the share capital is divided into different classes of shares, the rights attached to a class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied:

- (a) with the consent in writing of the holders of 75% of the issued shares of that class; or
- (b) with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

22.2 Separate general meeting

The provisions of this document relating to general meetings, with all necessary changes required by the context of this rule, apply to every separate general meeting except that:

- (a) two Members represented in any manner permitted at general meetings who together hold one-third of the issue shares or the class, or the only Member holding shares in the class, is a quorum; and
- (b) any person qualified to be counted in a quorum may demand a poll.

23. ALTERATION OF SHARE CAPITAL

23.1 Reduction of capital

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1;

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- (b) by buying back shares in accordance with Division 2 of Part 2J.1;
 - (c) in the ways permitted by sections 258E and 258F; or
 - (d) in any other way for the time being permitted by the Act.

23.2 **Payments in kind**

Where the Company reduces its share capital in accordance with Division 1 of Part 2J.1, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the reduction is by distribution of specific assets, the Board may:

- (a) fix the value of any assets distributed;
- (b) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves; and
- (c) vest an asset in trustees.

24. **WINDING UP**

24.1 **Entitlement of Members**

Subject to the terms of issue of shares, the surplus assets of the Company remaining after payment of its debts are divisible among the Members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

24.2 **Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

- (a) divide the assets of the Company among the Members in kind;
- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the Members as the liquidator thinks appropriate.

24.3 **No distribution of liabilities**

The liquidator cannot compel a Member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

24.4 **Distribution not in accordance with legal rights**

If the liquidator decides on a division or vesting of assets of the Company under rule 24.2 which does not accord with the legal rights of the contributories, any contributory who

would be prejudiced by it may dissent and has ancillary rights as if that decision were a special resolution passed under section 507.

25. **NOTICES**

25.1 **Notices by Company**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

25.2 **When notice is given**

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
 - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by fax or electronic message:
 - (i) by 5 pm (local time in the place from which it is sent or given) on a business day – on that day; or
 - (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
 - (i) within Australia - 3 business days after posting; or
 - (ii) to a place outside Australia - 7 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

25.3 Business days

For the purposes of rule 25.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

25.4 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

26. AMENDMENT OF THIS DOCUMENT

26.1 Amendment by Shareholding Ministers

Notwithstanding any contrary rules in this document or in the Ac, the Shareholding Ministers may at any time direct the amendment of this document in accordance with the GOC Act.

26.2 Consent of Shareholding Ministers required

Notwithstanding any contrary rules in this document or the Act, this document must not be amended without the prior written consent of the Shareholding Ministers.

27. NO LIABILITY TO THE STATE OF QUEENSLAND

In accordance with section 130 of the GOC Act, the State of Queensland is only liable for the debts and other liabilities of the Company if, and to the extent that, the liability is expressly and lawfully undertaken on behalf of the State of Queensland.