Constitution of Sunwater Limited

ACN 131 034 985

CONTENTS

1.	**PRELIMINARY**		**1**
	1.1	Replaceable rules	1
	1.2	Definitions	1
	1.3	Interpretation of this Constitution	3
	1.4	Application of GOC Act	4
2.	**OBJECTS OF COMPANY**		**4**
	2.1	Objects	4
	2.2	Interpretation	5
3.	**DIRECTORS**		**5**
	3.1	Number of Directors	5
	3.2	Appointment of Directors	5
	3.3	Retirement by rotation	5
	3.4	Leave of Absence	5
	3.5	Suspension	6
	3.6	Cessation of Director's appointment	7
	3.7	Removal from office	8
4.	**POWERS OF THE BOARD**		**8**
	4.1	Powers generally	8
	4.2	Statement of Corporate Intent	8
	4.3	Exercise of powers	8
	4.4	Responsibilities under the GOC Act	9
5.	**DELEGATION OF BOARD POWERS AND AUTHORISATIONS**		**9**
	5.1	Power to delegate	9
	5.2	Committees	9
	5.3	Powers delegated to Committees	9
	5.4	Appointment of attorney	9
6.	**DIRECTORS' DUTIES AND INTERESTS**		**9**
	6.1	Compliance with duties under the Act	9
	6.2	Degree of care and diligence required	10
	6.3	Director's interests	10
	6.4	Director interested in a matter	10
	6.5	Register of interests	11
7.	**DIRECTORS' REMUNERATION**		**11**
	7.1	Remuneration of Directors	11
	7.2	Expenses of Directors	11
8.	**OFFICERS' INDEMNITY AND INSURANCE**		**11**

8.1 Indemnity 11
8.2 Insurance 12
8.3 Contract 12

9. CHIEF EXECUTIVE OFFICER 13

9.1 Appointment 13
9.2 Terms and conditions 13

10. BOARD MEETINGS 13

10.1 Board meetings 13
10.2 Convening Board meetings 13
10.3 Notice of Board meeting 13
10.4 Use of technology 13
10.5 Chairing Board meetings 14
10.6 Quorum 14
10.7 Majority decisions 14
10.8 Circulating resolutions 14
10.9 Proceedings of Committees 14
10.10 Valid proceedings 15

11. MEETINGS OF MEMBERS 15

11.1 Annual general meeting 15
11.2 Calling general meetings of Members 15
11.3 Notice of meeting 15

12. PROCEEDINGS AT GENERAL MEETINGS 15

12.1 Resolutions without a meeting 15
12.2 Signature of resolutions 15
12.3 Appointment of attorney 16
12.4 Quorum at general meetings 16
12.5 Voting on a show of hands 16

13. SECRETARY 16

13.1 Appointment of Secretary 16
13.2 Terms and conditions of office 17
13.3 Cessation of Secretary's appointment 17
13.4 Removal from office 17

14. COMPANY SEALS 17

14.1 Common seal 17
14.2 Use of seals 17
14.3 Fixing seals to documents 18

15. SHARES 18

15.1 Power to issue shares 18
15.2 Permitted Members 18
15.3 Members rights 18

16. **CERTIFICATES** 18

16.1 Issue of share certificate 18
16.2 Lost and worn out certificates 18

17. **DIVIDENDS** 19

17.1 Dividends able to be paid 19
17.2 Time when the debt arises 19
17.3 No interest on dividends 19

18. **TRANSFER OF SHARES** 19

18.1 Transfer to Shareholding Minister 19
18.2 Transfer on Member ceasing to be Shareholding Minister 19
18.3 Mode of transfer 20
18.4 Premier may execute transfer 20
18.5 Provisions of the GOC Act 20
18.6 Delivery of transfer and certificate 20
18.7 Refusal to register transfer 20
18.8 Transferor remains holder until transfer registered 20

19. **TRANSMISSION OF SHARES** 21

20. **REDUCTION OF SHARE CAPITAL AND PAYMENTS IN KIND** 21

20.1 Reduction of capital 21
20.2 Payments in kind 21

21. **WINDING UP** 22

21.1 Entitlement of Members 22
21.2 Distribution of assets generally 22
21.3 No distribution of liabilities 22
21.4 Distribution not in accordance with legal rights 22

22. **NOTICES** 23

22.1 Form of document 23
22.2 Notices by Company 23
22.3 When notice is given 23
22.4 Business days 24
22.5 Counting days 24

CONSTITUTION OF SUNWATER LIMITED

1. PRELIMINARY

1.1 Replaceable rules

The provisions of the Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

1.2 Definitions

The following definitions apply in this Constitution.

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

Affiliate means a:

(a) relative of a Director;

(b) relative of a Director's spouse;

(c) body corporate, partnership, trust or other entity or arrangement which a:

(i) Director;

(ii) relative of a Director; or

(iii) relative of a Director's spouse,

or any combination of them controls (having regard to section 50AA, where relevant); or

(d) body corporate in which a:

(i) Director;

(ii) relative of a Director;

(iii) relative of a Director's spouse,

or any combination of them own or hold in aggregate more than 20% of the voting shares.

Approved Leave of Absence means a Leave of Absence approved under rule 3.4.

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

Board means the Directors acting collectively under this Constitution.

Committee means a committee of Directors to which powers have been delegated by the Board under rule 5.2 or section 198D of the Act (as applicable).

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

Constitution means the constitution for the time being of the Company as constituted by this document and as may be amended from time to time.

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

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.

Governor in Council has the meaning given to that term under the *Acts Interpretation Act 1954* (Qld).

Indirect Interest means, in relation to a Director, an interest of an Affiliate of which the relevant Director is, or should reasonably be, aware.

Leave of Absence means leave from the Board where the Director:

(a) reasonably expects to be temporarily unable to fulfil their responsibilities for a period that is likely to coincide with two or more Board meetings; or

(b) believes it is in the best interests of the Company, or in the public interest, to take the leave sought.

Material Personal Interest is to be interpreted in the same way as under the Act, and may include a material Indirect Interest.

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' under the *Public Service Act 2008* (Qld).

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

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

Shareholding Ministers means the GOC Minister and the Portfolio Minister.

Statement of Corporate Intent has the meaning given to 'statement of corporate intent' under the GOC Act.

1.3 **Interpretation of this Constitution**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Constitution, 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, attorney 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 one gender includes other genders.

(d) If a word is defined, other grammatical forms of that word have corresponding meanings.

(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 Constitution 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.

(l) Unless a contrary intention appears, where this Constitution uses the word **including**, it means "including without limitation", and where it uses the word **includes**, it means "includes without limitation".

1.4 Application of GOC Act

(a) For so long as the Company is a GOC:

(i) this Constitution is to be read subject to the GOC Act;

(ii) to the extent of any inconsistency between the GOC Act and the Act regarding this Constitution, the GOC Act will prevail; and

(iii) to the extent of any inconsistency between the GOC Act and this Constitution, the GOC Act will prevail.

(b) To the extent of any inconsistency between the Act and this Constitution, subject to rule 1.4(a)(ii), the Act will prevail.

(c) A rule that references the GOC Act, Shareholding Ministers, the Governor in Council, the Premier, a Public Service Officer or a Statement of Corporate Intent:

(i) applies in full for so long as the Company is a GOC; and

(ii) where the Company is not a GOC, applies to the extent (if any) that the rule can be interpreted with the reference disregarded.

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) bulk water storage and distribution;

(ii) water treatment, reticulation and drainage;

(iii) water infrastructure development;

(iv) engineering consultancy services;

(v) operations and maintenance services;

(vi) water business management services;

(vii) carrying out any activity that is incidental to or doing anything likely to complement or enhance the objects set out in this rule 2.1, including but not limited to hydro-electricity development associated with the Company's bulk water storage; and

(viii) to perform any other functions and exercise any other powers conferred on it under:

(A) any act;

(B) any regulation;

(C) the Company's Statement of Corporate Intent; or

(D) the Company's Corporate Plan.

(b) The Company must not undertake any activities which do not come within the scope of the objects contained in this rule.

2.2 **Interpretation**

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

3. DIRECTORS

3.1 **Number of Directors**

For so long as the Company is a GOC, the number of Directors of the Company is the number of Directors that are appointed from time to time by the Governor in Council in accordance with the GOC Act.

3.2 **Appointment of Directors**

(a) For so long as the Company is a GOC, all Directors must be appointed by the Governor in Council in accordance with the GOC Act.

(b) For so long as the Company is not a GOC, the Company may by Ordinary Resolution appoint any person as a Director.

3.3 **Retirement by rotation**

No Director is subject to retirement by rotation.

3.4 **Leave of Absence**

(a) Upon written request from a Director:

(i) for so long as the Company is a GOC, the Shareholding Ministers; or

(ii) for so long as the Company is not a GOC, the Board,

may:

(iii) approve a Leave of Absence for the Director;

(iv) determine when the Leave of Absence will commence and end, including by reference to the occurrence of a particular event or circumstances; and

(v) otherwise cancel a previously Approved Leave of Absence for the Director.

(b) Unless otherwise permitted by the Act or specified in the approval given under rule 3.4(a), during the term of an Approved Leave of Absence, the Director is not entitled to:

(i) receive Board or Committee papers;

(ii) attend meetings of the Board or a Committee;

(iii) have access to the Company's premises, systems or electronic devices; or

(iv) accrue Directors' fees.

(c) After a Director's Approved Leave of Absence ends or is cancelled, the Director is entitled to:

(i) with the prior approval of:

(A) the chair; or

(B) if the Director is the chair, the Board excluding the Director,

and subject to any conditions imposed as part of that approval (which may include redactions, or non-disclosure, of certain material), access:

(C) Board and Committee papers distributed; and

(D) Board and Committee minutes from meetings which occurred,

during their Approved Leave of Absence that they would otherwise have been given access to had they not taken an Approved Leave of Absence; and

(ii) attend meetings of the Board or a Committee which they are otherwise entitled to attend, even if notice of the meeting was distributed during their Approved Leave of Absence.

3.5 **Suspension**

(a) For so long as the Company is a GOC, the Governor in Council may:

(i) suspend a Director from office;

(ii) determine when the suspension will commence and end, including by reference to the occurrence of a particular event or circumstances; and

(iii) otherwise lift the Director's suspension.

(b) Unless otherwise permitted by the Act or specified in the approval given under rule 3.5(a), during the suspension term, a suspended Director is not entitled to:

(i) receive Board or Committee papers;

(ii) attend meetings of the Board or a Committee;

(iii) have access to the Company's premises, systems or electronic devices; or

(iv) accrue Directors' fees.

(c) After a Director's suspension ends or is lifted, the Director is entitled to:

(i) with the prior approval of:

(A) the chair; or

(B) if the Director is the chair, the Board excluding the Director,

and subject to any conditions imposed as part of that approval (which may include redactions, or non-disclosure, of certain material), access:

(C) Board and Committee papers distributed; and

(D) Board and Committee minutes from meetings which occurred,

during their suspension term that they would otherwise have been given access to; and

(ii) attend meetings of the Board or a Committee which they are otherwise entitled to attend, even if notice of the meeting was distributed during their suspension term.

3.6 **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 the 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;

(g) unless due to a suspension under rule 3.5, is absent from all Board meetings held over four consecutive months without an Approved Leave of Absence; or

(h) is removed from office under rule 3.7.

3.7 **Removal from office**

Despite any other rule in this Constitution and whether or not:

(a) a Director's appointment was expressed to be for a specified period;

(b) a Director is on an Approved Leave of Absence; or

(c) a Director is suspended,

then:

(d) for so long as the Company is a GOC, the Governor in Council; or

(e) for so long as the Company is not a GOC, the Company by Ordinary Resolution,

may remove a Director from office.

4. POWERS OF THE BOARD

4.1 **Powers generally**

Except as otherwise required by the Act, the GOC Act, any other applicable law or this Constitution, 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 **Statement of Corporate Intent**

Rule 4.1 is subject to any undertaking the Company gives to the Shareholding Ministers in its most recent Statement of Corporate Intent.

4.3 **Exercise of powers**

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.

4.4 **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 AND AUTHORISATIONS

5.1 **Power to delegate**

(a) The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

(b) The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in addition to any powers of delegation contained in the Act, including the power conferred by section 198D of the Act.

5.2 **Committees**

Without limiting rule 5.1, the Board may delegate any of its powers, other than powers required by law to be dealt with by all Directors, to a Committee or Committees consisting of one or more of their number as they think fit.

5.3 **Powers delegated to Committees**

A Committee to which any powers have been delegated under rule 5.2 must exercise those powers in accordance with any directions of the Board.

5.4 **Appointment of attorney**

(a) Without limiting rule 5.1, the Board or a Committee may appoint a person (including an employee of the Company) as attorney of the Company:

(i) for the purposes determined by the Board or Committee (as relevant);

(ii) with the powers, authorities and discretions vested in or exercisable by the Board or Committee (as relevant); and

(iii) for such period, and subject to such conditions and restrictions, as determined by the Board or Committee (as relevant).

(b) The Board or Committee (as relevant) may at any time revoke or vary an appointment.

6. DIRECTORS' DUTIES AND INTERESTS

6.1 **Compliance with duties under the Act**

Each Director must comply with the obligations and duties of directors under the Act, the GOC Act and any other applicable law.

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's interests**

Subject to complying with:

(a) the Act regarding disclosure of and voting on matters involving Material Personal Interests; and

(b) other relevant laws, including the *Crime and Corruption Act 2001* (Qld),

a Director may:

(c) hold any office or place of profit in the Company, except that of auditor; and

(d) hold any office or place of profit in any other company, body corporate, partnership, trust or other entity or arrangement, except that, for so long as the Company is a GOC, a Public Service Officer; and

(e) do any of the authorised items above and any other thing approved by the Members:

(i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and

(ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this rule 6.3 is also a reference to each related body corporate of the Company.

6.4 **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.

(b) 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 6.4(c) applies only if the interest has been disclosed before the transaction is entered into.

(d) The Company cannot avoid the transaction merely because:

(i) of the existence of the interest;

(ii) a Director fails to disclose the interest;

(iii) a Director is present at, or counted in the quorum for, a Board or Committee meeting that considers or votes in relation to the transaction; or

(iv) a Director consents to a resolution in relation to the transaction under rule 10.8.

6.5 Register of interests

(a) The Company must maintain a register of interests disclosed under section 191 and section 192.

(b) If requested by the Shareholding Ministers, the Company must provide them with a copy of the register maintained under rule 6.5(a).

7. DIRECTORS' REMUNERATION

7.1 Remuneration of Directors

The Directors are to be remunerated for their services in the amounts, if any, approved by:

(a) for so long as the Company is a GOC, the Shareholding Ministers; and

(b) for so long as the Company is not a GOC, the Company in general meeting.

7.2 Expenses of Directors

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

(a) in attending meetings of the Company, the Board or a Committee;

(b) on the business of the Company; or

(c) in carrying out duties as a Director.

8. OFFICERS' INDEMNITY AND INSURANCE

8.1 Indemnity

The Company indemnifies any current or former officer of the Company, any officer of a subsidiary of the Company, and any person nominated by the Company or a subsidiary of the Company as an officer of another company (in each case including where the Company, subsidiary or the other company is acting as a trustee or in a nominee role), out of the property of the Company against any and all:

(a) liability incurred by the person in that capacity except a liability for legal costs or independent advice (which may be subject to an indemnity under rule 8.1(b) or 8.1(c));

(b) legal costs on a full indemnity basis reasonably incurred by the person in that capacity:

(i) in defending, or otherwise being represented in connection with, a claim, demand, suit, cause of action, allegation, complaint, investigation or inquiry;

(ii) in obtaining legal advice in relation to any issues that may arise under this rule 8, a deed of indemnity or any insurance policy procured by the Company, in connection with making or deciding whether to make a claim for indemnification under this rule 8, that deed or any insurance policy procured by the Company; and

(iii) in connection with any civil, criminal, administrative, investigative or arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any civil, criminal, administrative or arbitral proceedings) in which the person is made a witness by reason of the fact of their service as an officer; and

(c) with the prior approval of the Board, costs on a full indemnity basis reasonably incurred by the person in obtaining independent legal, accounting or financial advice on issues relevant to the performance of their functions and the discharge of their duties as an officer,

except to the extent that:

(d) the Company is forbidden by law to indemnify the person against the liability or costs; or

(e) an indemnity by the Company of the person against the liability or costs, if given, would be made void by law.

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 referred to in rule 8.1 against any liability incurred by the person in a capacity referred to in rule 8.1, including a liability for costs, unless:

(a) the Company is forbidden by law to pay or agree to pay the premium; or

(b) the contract would, if the Company paid the premium, be made void by law.

8.3 **Contract**

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 referred to in rules

8.1 or 8.2 to give effect to the rights of the person under this rule 8 on any terms and conditions that the Board thinks fit. An agreement entered into under this rule 8.3 may include provisions relating to rights of access to the books of the Company.

9. CHIEF EXECUTIVE OFFICER

9.1 Appointment

For so long as the Company is a GOC, the chief executive officer 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 will be determined by the Board with the approval of the Shareholding Ministers.

10. BOARD MEETINGS

10.1 Board meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

10.2 Convening Board meetings

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

10.3 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 not suspended or on an Approved Leave of Absence at that time; 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.

10.4 Use of technology

A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. 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 chair of the meeting is located.

10.5 **Chairing Board meetings**

(a) For so long as the Company is a GOC, the Shareholding Ministers may nominate a Director to chair meetings of the Board and decide the period for which that Director holds the office of chair.

(b) Subject to rule 10.5(a), the Board may elect a Director to chair its meetings and decide the period for which that Director holds the office of chair.

(c) If there is no chair of Directors or the chair is not present within 15 minutes after the time for which a Board meeting is called or is unwilling or unable to act, the Directors present must elect another Director present to chair the meeting.

10.6 **Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is half the number of Directors appointed to the Board (not including Directors suspended or on an Approved Leave of Absence) 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 to be held in another way permitted by section 248D for the first time then, before that meeting is held, the Board must resolve the basis on which Directors will be treated as present.

10.7 **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 chair of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a motion, the motion is defeated.

10.8 **Circulating resolutions**

(a) If a majority of Directors entitled to receive notice of a Board meeting and to vote on the resolution have consented to the resolution in accordance with this rule 10.8, a Board resolution in those terms is passed at the time when the last Director needed to constitute a majority consents.

(b) A Director may consent to a resolution by signing a document containing a statement that they are in favour of the resolution set out in the document.

(c) Alternatively, a Director may consent to a resolution by giving the Company notice (including by fax, email or other electronic means) addressed to and received by the Secretary or chair that signifies the Director's assent to the resolution.

10.9 **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 Constitution which regulate the meetings and proceedings of the Board.

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 **Annual general meeting**

Each calendar year the Company must hold an annual general meeting as required by section 250N or pass a resolution dealing with all matters required to be dealt with at an annual general meeting in accordance with rule 12.1.

11.2 **Calling general meetings of Members**

(a) Any Director or the Board may convene a general meeting.

(b) The Board must convene a general meeting at the request of Members if required to do so in accordance with the Act.

11.3 **Notice of meeting**

Notice of a general meeting must be given in accordance with the Act and rule 22.2.

12. PROCEEDINGS AT GENERAL MEETINGS

12.1 **Resolutions without a meeting**

(a) For so long as the Company is a GOC and in accordance with section 84 of the GOC Act, the Company may pass a resolution without a general meeting being called or held if the Shareholding Ministers sign a document containing a statement that they are in favour of the resolution set out in the document. Such a resolution is passed when the last Shareholding Minister signs the document.

(b) For so long as the Company is not a GOC, the Company may pass a resolution without a general meeting being called or held if all the Members sign a document containing 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 **Appointment of attorney**

(a) Subject to rule 12.3(b), a Member may appoint an attorney to:

(i) sign a document under rule 12.1;

(ii) attend and vote at a general meeting convened under rule 11; or

(iii) otherwise exercise any or all of the Member's powers under this Constitution or the Act, or the rights attaching to the Member's shares.

(b) For so long as the Company is a GOC, an attorney appointed under rule 12.3(a):

(i) will only be recognised by the Company if the attorney is the Shareholding Minister who holds that office as a successor (either on a permanent or acting basis) of the Member who has appointed the attorney; and

(ii) may be appointed by reference to a named individual or to the holder of an office, including a holder of an office that has responsibility for administering a particular matter.

(c) An appointment of an attorney is not effective until a copy of the instrument effecting the appointment is delivered:

(i) to the Company at its registered office;

(ii) to the Company by fax or post; or

(iii) by email or other electronic means to the Secretary or a Director.

12.4 **Quorum at general meetings**

Business must not be transacted at a general meeting unless two Members are present (in person or by attorney).

12.5 **Voting on a show of hands**

(a) At a general meeting a motion put to the vote of the meeting must be decided on a show of hands. If an equal number of votes is cast for and against a motion, the motion is defeated.

(b) On a show of hands each Member has one vote.

13. SECRETARY

13.1 **Appointment of Secretary**

The Company must have one or more Secretaries who are to be appointed by the Board.

13.2 **Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) and with the powers, duties and authorities that the Board decides. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board. 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 or a person liable to be dealt with in any way under the law relating to mental health;

(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 suspend or remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

14. COMPANY SEALS

14.1 **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.

14.2 **Use of seals**

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

14.3 **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.

15. SHARES

15.1 **Power to issue shares**

For so long as the Company is a GOC, the Board may, on behalf of the Company, issue, allot, cancel or otherwise dispose of shares only in accordance with the GOC Act.

15.2 **Permitted Members**

For so long as the Company is a GOC and unless otherwise provided by the GOC Act, only a Shareholding Minister may hold shares in the Company and be entered in the Register as a Member of the Company.

15.3 **Members rights**

For so long as the Company is a GOC and unless otherwise provided by the GOC Act:

(a) each Shareholding Minister must at all times have an equal number of voting shares in the Company;

(b) each Shareholding Minister must at all times be entitled to voting rights equal to those to which the other Shareholding Minister is entitled; and

(c) each Shareholding Minister may hold non-voting shares and need not hold an equal number of non-voting shares.

16. CERTIFICATES

16.1 **Issue of share certificate**

After the issue or transfer of shares, the Company must issue a certificate that complies with section 1070C and deliver it to the holder of those shares, or a person nominated by the holder of those shares, in accordance with section 1071H.

16.2 **Lost and worn out certificates**

If a certificate:

(a) is lost or destroyed and the holder 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.

17. DIVIDENDS

17.1 Dividends able to be paid

The Board may, subject to compliance with the requirements of the Act, the GOC Act, any other applicable law, this Constitution and the terms of issue or rights of any Shares with special rights to dividends, determine that a dividend or interim dividend is payable and fix:

(a) the amount;

(b) time for payment; and

(c) the method of payment (including whether the payment will be satisfied either wholly or partly by a payment in kind in accordance with rule 20.2).

The Board may rescind or alter any such determination before payment is made.

17.2 Time when the debt arises

Subject to the Act and the GOC Act (for so long as the Company is a GOC), the Company incurs a debt for payment of a dividend only when the time fixed for payment arrives.

17.3 No interest on dividends

Interest is not payable by the Company on a dividend.

18. TRANSFER OF SHARES

18.1 Transfer to Shareholding Minister

For so long as the Company is a GOC, a Member may transfer shares only in accordance with the GOC Act.

18.2 Transfer on Member ceasing to be Shareholding Minister

For so long as the Company is a GOC:

(a) a Member shall cease to be eligible to hold shares in the Company if the Member ceases to be a Shareholding Minister;

(b) the shares held by a Member ceasing to be a Shareholding Minister must be transferred in accordance with the GOC Act; and

(c) if a Member ceases to be a Shareholding Minister that Member must not exercise any rights as a Member under this Constitution (except to transfer shares in accordance with the GOC Act or by the exercise of such rights by a new

Shareholding Minister under a power of attorney granted by the Member under rule 12.3).

18.3 **Mode of transfer**

Subject to rules 18.1 and 18.6, the Act and the GOC Act (for so long as the Company is a GOC), a share in the Company is transferable by any method of transfer required or permitted by the Act.

18.4 **Premier may execute transfer**

For so long as the Company is a GOC and in accordance with the GOC Act, the Premier may execute a transfer on behalf of either or both the transferor and transferee.

18.5 **Provisions of the GOC Act**

Notwithstanding any contrary rules in this Constitution or the Act, for so long as the Company is a GOC, 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.

18.6 **Delivery of transfer and certificate**

A document of transfer under rule 18.3 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.

18.7 **Refusal to register transfer**

Subject to rule 18.5 and the Act, the Board may, in their absolute discretion and without assigning any reason, refuse to register a transfer of shares.

18.8 **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.

19. TRANSMISSION OF SHARES

In the event of the death, bankruptcy or mental incapacity of a Member, the provisions of rules 18.2, 18.3 and 18.4 apply.

20. REDUCTION OF SHARE CAPITAL AND PAYMENTS IN KIND

20.1 Reduction of capital

The Company may reduce its share capital:

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

(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 law.

20.2 Payments in kind

(a) Where the Company reduces its share capital in accordance with Division 1 of Part 2J.1 or pays a dividend in accordance with rule 17, 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.

(b) If the reduction or dividend payment is by distribution of specific assets, the Board may:

(i) fix the value of any assets distributed;

(ii) pay cash or issue shares, debentures or other securities to any Member in order to adjust the rights of all parties;

(iii) vest any of those specific assets, cash, shares, debentures or other securities in a trustee or nominee on trust for the persons entitled to the distribution or capitalised amount, on any terms that seem expedient to the Board; and

(iv) authorise any person to make, on behalf of the Members, or a particular Member, entitled to any specific assets, cash, shares, debentures or other securities as a result of the decision, an agreement (including in writing) with the Company or another person which provides as appropriate, for the distribution or issue to them of the assets, cash, shares, debentures or other securities and by applying to them their respective proportions of the amount resolved to be distributed.

(c) Any agreement made under an authority referred to in rule 20.2(b)(iv) is effective and binds all Members concerned.

(d) Instead of making a distribution or issue of specific assets, shares, debentures or other securities to a particular Member, the Board may make a cash payment to that

Member or allocate some or all of the assets, shares, debentures or other securities to a trustee to be sold on behalf of, and for the benefit of, or in respect of, that Member, if:

(i) the distribution or issue would otherwise be illegal or unlawful;

(ii) in the Board's discretion, the distribution or issue would, for any reason, be impracticable; or

(iii) the Member so agrees.

(e) Subject to the GOC Act, if the Company distributes to Members (either generally or to specific Members) shares, debentures or securities of the Company or another body corporate or trust (whether as a dividend or return of capital or otherwise and whether or not for value), each of those Members appoints the Company and any officer of the Company nominated on their behalf by the Board, as their agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution, including agreeing to become a member, holder of shares, holder of debentures or holder of securities of the Company or that other body corporate or trust.

21. WINDING UP

21.1 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.

21.2 Distribution of assets generally

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

(a) divide the whole or any part of 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.

21.3 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.

21.4 Distribution not in accordance with legal rights

If the liquidator decides on a division or vesting of assets of the Company under rule 21.2 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.

22. NOTICES

22.1 Form of document

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

22.2 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 the address for the person in the Register or an alternative address nominated by the person;

(iii) sent by fax to the fax number (if any) nominated by that person;

(iv) sent by email to the address (if any) nominated by that person; or

(v) notified to the person by an electronic means nominated by the person that:

(A) the document is available; and

(B) how the person may access the document.

22.3 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 (or a notification that it is available) 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, delivered or given to a person personally, by post, fax, email or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means is conclusive evidence of service.

22.4 **Business days**

For the purposes of rule 22.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

22.5 **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.