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CORPORATIONS ACT

A COMPANY LIMITED BY SHARES

**CONSTITUTION
OF
WIND PORTFOLIO PTY LTD
ACN 114 267 695**

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A COMPANY LIMITED BY SHARES

CONSTITUTION

OF

Wind Portfolio Pty Ltd

1 INTERPRETATION

1.1 Definitions

In this Constitution, unless the contrary intention appears:

“**Alternate Director**” means a person appointed as an alternate Director in accordance with **clause 14.12**.

“**Auditor-General**” means the person appointed under s.50 of the *Financial Administration and Audit Act 1977* (Qld) from time to time.

“**Business Day**” means a day on which trading banks are open for general banking business in Queensland.

“**Cabinet**” means the cabinet of the State of Queensland.

“**Capital**” means the share capital of the Company from time to time.

“**Company**” means Wind Portfolio Pty Ltd ACN 114 267 695.

“**company GOC**” has the meaning given in the GOC Act.

“**Constitution**” means this document as amended from time to time.

“**Corporations Act**” means the Corporations Act 2001 (Cth) and the Corporations Regulations made under it as amended from time to time.

“**Director**” includes an Alternate Director.

“**General Meeting**” means a meeting of the Company.

“**GOC**” has the meaning given to it in the GOC Act.

“**GOC Act**” means the *Government Owned Corporations Act 1993* (Qld).

“**GOC Subsidiary**” means a subsidiary of a company GOC.

“**Member**” means any person entered in the Register as the holder of a Share.

“**Office**” means the registered office for the time being of the Company.

“**paid**”, in relation to Shares and Capital, includes credited as paid.

“**Parent GOC**” means the company GOC of which the Company is a GOC Subsidiary.

“**Register**” means the register of Members kept pursuant to the Corporations Act.

“**Representative**” means a person authorised to act as a Member’s representative pursuant to section 250D of the Corporations Act.

“**Resolution**” means a resolution of the Company.

“**Seal**” means any common seal or duplicate seal of the Company.

“**senior executive**” has the meaning given in the GOC Act.

“**Share**” means any share in the Capital.

“**Shareholding Ministers**” has the meaning given to the phrase “shareholding Ministers” in the GOC Act and when used in the context of the Company, refers to the shareholding Ministers of the Parent GOC.

“**Special Resolution**” has the meaning given to that term in section 9 of the Corporations Act.

“**subsidiary**” has the meaning given in the GOC Act.

1.2 Construction

- (a) An expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of this Constitution that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.
- (b) References to statutes or regulations include all statutes or regulations amending, consolidating or replacing them.
- (c) A reference to a body or entity (whether corporate or unincorporated) includes, if the body or entity ceases to exist, or is reconstituted, renamed or replaced from time to time, a reference to the body or entity established or constituted in its place or nearly as may be succeeding to its powers, objects or functions.
- (d) Unless the contrary intention appears:
 - (i) words in the singular include the plural and vice versa;
 - (ii) any gender includes the other gender; and
 - (iii) the term “person” or words importing persons include bodies corporate.

1.3 Replaceable rules excluded

The replaceable rules contained in the Corporations Act are excluded and do not apply to the Company (except insofar as they are repeated in this Constitution).

2 PROPRIETARY COMPANY REQUIREMENTS

2.1 Name

The name of the Company is Wind Portfolio Pty Ltd.

2.2 Legal capacity and powers

The Company shall have the legal capacity and powers of an individual both in and outside Australia as well as all powers referred to in section 124 of the Corporations Act.

2.3 Limited by Shares

The Company is a proprietary company which is limited by shares.

2.4 Liability of Members

The liability of Members is limited.

2.5 No Liability of the Parent GOC or State

Where the Company is a GOC Subsidiary, pursuant to s.130 of the GOC Act the Parent GOC and the State of Queensland are not liable for the debts or other liabilities of the Company by virtue of the Company being a subsidiary of the Parent GOC, except to the extent that liability is expressly and lawfully undertaken on behalf of the State or the Parent GOC, as applicable.

2.6 Maximum number of Members

- (a) The Company must have no more than 50 non-employee Members.
- (b) In applying **clause 2.6(a)**:
 - (i) joint holders of Shares are counted as one person; and
 - (ii) an employee Member is:
 - (A) a Member who is an employee of the Company or of a subsidiary of the Company; or
 - (B) a Member who was an employee of the Company, or of a subsidiary of the Company, when the Member became a Member.

2.7 Prohibition on public fund-raising activities

- (a) Subject to **clause 2.7(b)**, the Company must not engage in any activity that would require disclosure to investors under Chapter 6D of the Corporations Act.
- (b) **Clause 2.7(a)** does not apply to an offer of Shares to:
 - (i) existing Members of the Company; or

- (ii) employees of the Company or a subsidiary of the Company.

3 PURPOSE OF COMPANY

3.1 Application of this clause

This clause 3 applies while the Company is a GOC Subsidiary.

3.2 Purposes of the Company

The purposes for which the Company has been established are to:

- (a) hold a share or shares in a subsidiary company ("**Emu Downs Subsidiary**") which will:
- (i) acquire, own, finance, develop, operate, maintain and replace all or part of a wind-powered electricity generating facility at Emu Downs, Western Australia ("**Emu Downs Wind Farm**"), whether alone or in conjunction with others;
 - (ii) sell or otherwise deal with the its share of the output and other rights and benefits which may arise or accrue from the Emu Downs Wind Farm;
 - (iii) own shares in and participate in the management of a company established to operate, maintain and manage the Emu Downs Wind Farm on behalf of its owners;
 - (iv) dispose of, charge or otherwise encumber all or part of its interest in the Emu Downs Wind Farm, the company referred to in paragraph (iii) and any other associated asset; and
 - (v) carry on any activity relating or helpful to any of the purposes listed above; and
- (b) hold a share or shares in any company which may acquire, own, finance, operate, maintain or replace one or more wind powered electricity generating facilities, whether alone, or in conjunction with others ("**Other Wind Subsidiary**");
- (c) charge, mortgage or otherwise encumber all or part of its interest in the Emu Downs Subsidiary, any Other Wind Subsidiary or any other subsidiary company;
- (d) dispose of all or any part of its interest in the Emu Downs Subsidiary, any Other Wind Subsidiary or any other subsidiary company;
- (e) carry on any other business, undertaking or activity (whether alone or in conjunction with others or whether directly or indirectly and including via the ownership of an interest in a company or an entity of any nature) for such other purposes as the Directors of the Company determine from time to time with the prior approval of the directors of the Parent GOC; and
- (f) carry on any activity relating or helpful to any of the purposes listed above.

4 APPLICATION OF THE GOC ACT

4.1 Application of this clause

This **clause 4** applies while the Company is a GOC Subsidiary.

4.2 Application of Chapter 3 of GOC Act

The provisions of Chapter 3 of the GOC Act which apply to a subsidiary of a company GOC apply to the Company to the fullest extent permitted by law.

5 SHARE CAPITAL

5.1 Issue of Shares

- (a) The Directors may:
 - (i) issue Shares to any person on such terms and conditions as the Directors determine, subject to **clause 5.1(c)**; and
 - (ii) grant to any person options to take up unissued Shares, in such manner and on such terms and conditions as the Directors determine,subject to the Corporations Act and without prejudice to any special rights of Members holding any existing Shares or class of Shares.
- (b) The Directors may offer unissued Shares by notice in writing:
 - (i) specifying the number of Shares offered; and
 - (ii) the period for which the offer will remain open.
- (c) Subject to **clause 5.1(e)**, any unissued Shares to be issued must be offered to Members in proportion, as nearly as the circumstances allow, to the number of Shares held by them respectively.
- (d) Where a Member who is offered unissued Shares does not notify the Directors within the time specified in the notice that the Member agrees to subscribe for the Shares offered to that Member, the Directors may:
 - (i) offer the Shares not taken up by that Member to any other Member or Members, and if more than one Member in proportion, as nearly as the circumstances allow, to the number of Shares held by them respectively; or
 - (ii) determine not to issue the number of Shares offered to that Member.
- (e) The Directors may issue any number of Shares to any person, whether a Member or not, with the agreement of all the Members.

- (f) Despite clauses 5.1(a), (b), (c), (d) and (e), while the Company is a GOC Subsidiary, the Directors may not issue any Share to any person other than the Parent GOC without the prior written approval of the Shareholding Ministers.

5.2 Power to issue bonus, preference and partly paid Shares

Subject to the Corporations Act, the power of the Directors to issue Shares under **clause 5.1** includes (without limiting **clause 5.3**), the power to issue:

- (a) bonus shares (being shares for which no consideration is payable to the Company);
- (b) preference shares (including redeemable preference shares); and
- (c) partly paid shares (whether or not on the same terms for the amount of calls to be paid or the time for paying calls).

5.3 Class rights

- (a) The Directors may issue Shares with such preferred, deferred or other special rights or such restrictions as to dividends, voting, return of Capital, payment of calls or otherwise as the Directors determine.
- (b) Where the share capital of the Company is divided into different classes of Shares, unless the terms of issue of the Shares of any class provide otherwise, the rights attached to that class may be varied or abrogated in any way with the approval of a Special Resolution passed at a separate meeting of the Members holding the issued Shares of that class or with the consent in writing of the Members holding three-quarters of the issued Shares of that class.
- (c) The provisions of the Corporations Act and this Constitution relating to Special Resolutions and General Meetings apply so far as they are capable of application to a Resolution or meeting referred to in **clause 5.3(b)**.
- (d) The rights conferred upon the holders of Shares of any class issued with preferred or other rights, unless expressly provided by the terms of issue of the Shares of that class, are deemed to be varied by the creation or issue of further Shares ranking equally with or in priority to the first-mentioned Shares.

5.4 Recognition of interest

- (a) Except as required by law, the Company shall not recognise a person as holding a Share upon any trust.
- (b) The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any Share or unit of a Share or (except as otherwise provided by this Constitution or by law) any other right in respect of a Share, except an absolute right of ownership in the registered holder of the Share.

5.5 Certificates

- (a) The Company shall complete and deliver a Share certificate to the allottee or transferee of Shares (or to any person nominated in writing by an allottee or transferee) as required by section 1071H of the Corporations Act.
- (b) Where a Share certificate is lost or destroyed:
 - (i) if the owner of the Shares lodges an application for a duplicate certificate in accordance with section 1070D of the Corporations Act, the Directors shall; and
 - (ii) in any other circumstances, the Directors may,

issue a duplicate certificate to replace the lost or destroyed Share certificate.
- (c) Where a Share certificate is worn out or defaced, the Directors may, upon its production to the Company, order the certificate to be cancelled and issue a replacement certificate to replace the worn out or defaced certificate.
- (d) The Company may charge a fee for the issue of a replacement certificate, of an amount determined by the Directors but not to exceed the maximum fee (if any) prescribed under the Corporations Act.
- (e) Delivery of a certificate for a Share to one of several joint holders is sufficient delivery to all such holders.

5.6 Joint holders

Where two or more persons are registered as the holders of a Share, they are deemed to hold the Share as joint tenants with rights of survivorship, subject to the provisions of this Constitution as to joint shareholdings and the following provisions:

- (a) they and their respective legal personal representatives are jointly and severally liable to pay all calls, interest or other amounts payable in respect of the Share;
- (b) subject to **clause 5.6(a)**, on the death of any one of them, the survivor or survivors are the only person or persons whom the Company shall recognise as having any title to the Share, and for this purpose, the Directors may require reasonable evidence of death; and
- (c) any one of them may give effectual receipts for any dividend, interest or other amounts payable in respect of the Share.

6 CALLS ON SHARES

6.1 Power to make calls

- (a) Subject to any conditions of allotment, the Directors may from time to time make calls upon the Members in respect of any moneys unpaid on the Shares held by them.

- (b) The Directors may determine that a call may be payable by instalments.
- (c) A call is made when the resolution of the Directors authorising the call is passed.
- (d) The Directors may revoke or postpone a call.

6.2 Notice of call

- (a) The Directors shall send notice of a call to the Members upon whom a call is made at least 10 Business Days before the due date for payment, specifying the time or times and place of payment and such other information as the Directors determine.
- (b) The accidental omission to give notice of any call to or the non-receipt of any such notice by any of the Members does not invalidate the call.

6.3 Interest on calls

If a sum called in respect of a Share is not paid before or on the day appointed for payment of the call, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the call to the time of actual payment at such rate (not exceeding 20 per cent per annum) as the Directors may determine, but the Directors may waive payment of such interest wholly or in part.

6.4 Deemed call

Any sum that, by the terms of issue of a Share, becomes payable on allotment or at a fixed date, is for the purposes of this Constitution deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. If the sum is not paid before or on that date, the provisions of this Constitution as to payment of interest, expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

6.5 Differentiation between calls

The Directors may on the issue of Shares differentiate between the holders as to the amount of calls to be paid and the times of payment.

6.6 Payment in advance of calls

The Directors may accept from any Member all or any part of the amount unpaid on a Share although no part of that amount has been called up. The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate as is determined by the Directors.

7 LIEN ON SHARES

7.1 Lien for calls

The Company has a first and paramount lien and charge upon all the Shares (other than fully paid Shares) registered in the name of each Member (whether solely or jointly with

others) for all moneys (whether presently payable or not) called or payable in respect of such Shares.

7.2 Other lien

- (a) The Company has a first and paramount lien upon all the Shares (other than fully paid Shares) registered in the name of each Member (whether solely or jointly with others) for all moneys which the Company may be called upon by law to pay in respect of those Shares, together with interest on any moneys so paid.
- (b) Any moneys so paid by the Company in respect of the Shares may be recovered from the Member or the Member's legal personal representatives as a debt due by the Member or the Member's estate to the Company.
- (c) The Company may charge and recover interest at current bank overdraft rates on any moneys so paid by the Company until the moneys have been paid in full by the Member or the Member's legal personal representatives to the Company.

7.3 Lien over dividends

The Company's lien on a Share extends to all dividends from time to time payable in respect of that Share.

7.4 Enforcement of lien

- (a) The Directors may sell Shares subject to a lien for the purpose of enforcing the lien, without consent of the holder of the Shares or any other person, subject to **clause 7.4(b)**.
- (b) Shares on which the Company has a lien cannot be sold unless:
 - (i) a sum in respect of which the lien exists is presently payable; and
 - (ii) the Company has, at least 14 days before the date of sale, given to the registered holder for the time being of the Share or the person entitled to the Share by reason of death or bankruptcy of the registered holder notice in writing, setting out and demanding payment of that part of the amount in respect of which the lien exists as is presently payable.
- (c) The Company shall apply the net proceeds of any sale of Shares under **clause 7.4(a)** in or towards satisfaction of that part of the amount in respect of which the lien exists as is presently payable, together with any interest on that amount and expenses paid or payable in connection with the enforcement of the lien and the sale of the Shares.
- (d) The Company shall pay any balance of the net proceeds of sale (subject to any like lien for sums not presently payable that existed upon the Shares before sale) to the person entitled to the Shares at the date of sale.
- (e) Upon any sale of Shares under this **clause 7.4**, the Directors may authorise a person to transfer the Shares sold to the purchaser of those Shares and may enter

the purchaser's name in the Register as holder of the Shares comprised in the transfer.

- (f) The purchaser's title to the Shares is not affected by any irregularity or invalidity in connection with the sale of Shares under this **clause 7.4**.

7.5 Exemption

The Directors may, at any time, exempt a Share wholly or in part from the provisions of this **clause 7**.

8 FORFEITURE AND SURRENDER OF SHARES

8.1 Notice regarding forfeiture

- (a) If any Member fails to pay, on or before the day appointed for payment, any call or instalment of a call or any money payable under the terms of allotment of a Share, the Directors may at any time after that day while any part of the call, instalment or other moneys remains unpaid, serve a notice on the Member requiring payment of:
- (i) the unpaid call, instalment or other moneys;
 - (ii) any interest that may have accrued on the unpaid call, instalment or other moneys; and
 - (iii) any costs and expenses that may have been incurred by the Company by reason of the non-payment.
- (b) The notice sent to a Member under **clause 8.1(a)** shall:
- (i) name a further day (not being less than 14 days from the date of the notice) on or before which the call, instalment or other moneys and all interest and expenses that have accrued by reason of the non-payment of the call, instalment or other moneys, are to be paid;
 - (ii) identify the place where payment is to be made; and
 - (iii) include a statement to the effect that in the event of non-payment of all of the moneys on or before the date and at the place appointed, the Shares in respect of which the payment is due will be liable to be forfeited.

8.2 Forfeiture

- (a) If the requirements of a notice served under **clause 8.1** are not complied with, any Share in respect of which the notice has been given may be forfeited by a resolution of the Directors to that effect at any time after the day before payment required by the notice has been made.
- (b) A forfeiture includes all dividends determined or fixed in respect of the forfeited Share and not actually paid before the forfeiture.

- (c) The Directors may re-allot, sell or otherwise dispose of any forfeited Share in a manner and on terms and conditions they determine.
- (d) The Directors may at any time before any forfeited Share is re-allotted, sold or otherwise disposed of, annul the forfeiture of the Share upon such terms and conditions as they determine.
- (e) A Member whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but notwithstanding the forfeiture remains liable to pay to the Company all money (including accrued expenses) that at the date of forfeiture was payable by the Member to the Company in respect of such Shares, including interest on all such moneys from the date of forfeiture until payment in full, at such rate as the Directors determine, if the Directors decide to enforce payment of interest.
- (f) The liability of a Member whose Shares have been forfeited ceases if and when the Company receives payment in full of all the money (including accrued expenses and interest) payable in respect of the forfeited Shares.

8.3 Surrender of Shares

- (a) The Directors may accept the surrender of any fully paid Share by way of compromise of any question as to the holder being properly registered in respect of that Share.
- (b) The Directors may dispose of any Share so surrendered in the same manner as a forfeited Share.

8.4 Evidence of ownership

- (a) In the event of the re-allotment, sale or disposal of a forfeited or surrendered Share, a statutory declaration in writing, declaring that the declarant is a Director or secretary of the Company and that the Share has been duly forfeited or surrendered in accordance with this Constitution, is conclusive evidence of the facts stated in the declaration as against all persons claiming to be entitled to the Share.
- (b) Upon re-allotment, sale or disposal of a forfeited or surrendered Share, the Directors may authorise a person to transfer the Share in favour of the person to whom the Share is re-allotted, sold or disposed.
- (c) The Directors may enter the name of the new allottee, transferee or purchaser in the Register as the holder of the Share re-allotted, sold or disposed of in accordance with this **clause 8**.
- (d) The new allottee, transferee or purchaser is not bound to see to the application of any money paid as consideration.
- (e) The title of the new allottee, transferee or purchaser of the Share is not affected by any irregularity or invalidity in connection with the forfeiture, surrender, re-allotment, sale or disposal of the Share.

8.5 Deemed forfeiture

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a Share becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

9 TRANSFER OF SHARES

9.1 General

- (a) Subject to this Constitution, a Member may transfer all or any of the Member's Shares by instrument in writing duly stamped in any usual or common form or in any other form that the Directors approve.
- (b) An instrument of transfer shall be executed by or on behalf of both the transferor and the transferee (except where execution by the transferee is unnecessary under the Corporations Act) or may be otherwise executed in accordance with the Corporations Act.
- (c) The transferor of Shares remains the holder of the Shares transferred and a Member in respect of those transferred Shares, until the transfer is registered and the name of the transferee is entered in the Register in respect of those Shares.
- (d) An instrument of transfer must be left for registration at the Office or at the address where the Register is kept, accompanied by such evidence (including the certificate for the Shares to be transferred where a certificate has been issued) as the Directors may properly require to prove the title of the transferor.
- (e) The Directors may suspend registration of transfers of Shares at the times and for the periods they determine. The periods must not exceed 30 days in any one calendar year.

9.2 Refusal of registration

- (a) The Directors may refuse to register any transfer of Shares in the Company to any person of whom they do not approve and are not obliged to give any reason for such refusal.
- (b) Where the Directors refuse to register a transfer of any Shares, the Company must, within two months after the date of lodgment of the transfer, send to the transferee a notice of refusal in accordance with section 1071E of the Corporations Act.

10 TRANSMISSION OF SHARES

10.1 Death or bankruptcy

Subject to **clause 10.3**, a person entitled to a Share on the death or bankruptcy of a Member may, upon producing such evidence as is properly required by the Directors to establish the person's entitlement, elect either to be registered as the holder of the Share, or to transfer the Share to some other person nominated by that person.

10.2 Procedure for transfer on death or bankruptcy

If a person entitled to a Share under **clause 10.1**:

- (a) elects to be registered as the holder of the Share, the person shall deliver or send to the Company a signed notice in writing stating that the person so elects; or
- (b) elects to have another person registered as the holder of such Share, the person shall execute a transfer of that Share to that other person.

10.3 Restrictions on transfer on death or bankruptcy

Clause 9 applies to any notice or transfer under **clause 10.2** as if the notice or transfer were a transfer signed by the Member concerned.

10.4 Effect of death, bankruptcy or infirmity

A person entitled to a Share under **clause 10.1** is, upon production of such evidence as is properly required by the Directors to establish the person's entitlement, entitled to the same dividends and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise, but in the case of voting rights subject to **clause 13.1(e)**) as the registered holder would have been entitled to.

11 CONVERSION AND REDUCTION OF CAPITAL

11.1 Conversion of Shares into larger or smaller numbers

The Company may convert all or any of its Shares into a larger or smaller numbers of Shares in the manner set out in section 254H of the Corporations Act.

11.2 Reduction of capital

The Company may reduce its Capital in any manner set out in Part 2J.1 of the Corporations Act.

12 GENERAL MEETINGS

12.1 Convening and notice of General Meetings

- (a) Any Director may at any time convene a General Meeting of the Company or a meeting of any class of Members.
- (b) The Directors shall, on a requisition in accordance with section 249D of the Corporations Act, convene a General Meeting of the Company or a meeting of any class of Members.
- (c) A notice convening a meeting of the Company or of any class of Members shall:
 - (i) specify the place, date and time of the meeting and the general nature of the business to be dealt with at the meeting; and
 - (ii) otherwise comply with section 249L of the Corporations Act.

- (d) Members shall be entitled to receive notice of all meetings in accordance with section 249H.
- (e) The Directors may by notice in writing to the Members postpone any meeting which has been convened to a date specified in the notice, or cancel the meeting, subject to the Corporations Act.
- (f) The accidental omission to give notice of any General Meeting to, or the non-receipt of any such notice by, any person entitled to be notified does not invalidate the meeting or any Resolution passed at that meeting.

12.2 Proceedings at General Meetings

- (a) Where the Company has only one Member, the Company shall not be required to hold meetings and may rely on the provisions of **clause 13.3** and section 249B of the Corporations Act.
- (b) A quorum at a General Meeting of the Company is constituted, where the Company has two or more Members, by two Members present in person or by proxy, attorney or Representative.
- (c) No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (d) If a quorum is not present within 15 minutes after the time appointed for a meeting or such longer period as the chairman of the meeting allows, the meeting:
 - (i) if convened upon requisition of Members pursuant to section 249D of the Corporations Act, or by Members pursuant to section 249E or section 249F of the Corporations Act, is dissolved;
 - (ii) in any other case, stands adjourned to the same day in the next week at the same time and place or to such other day, time and place as the chairman determines.
- (e) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.
- (f) The chairman's ruling on all matters relating to the order of business, procedure and conduct of a General Meeting is final.

12.3 Voting procedures at General Meetings

- (a) The chairman of Directors shall preside at every General Meeting of the Company, but where there is no chairman present and willing to act within 15 minutes after the time appointed for a meeting, the following may preside as chairman of the meeting, in the following order of entitlement:
 - (i) a Director chosen by a majority of the Directors present;
 - (ii) the only Director present;

- (iii) a Member or a proxy, attorney or Representative of a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.
- (b) In the case of an equality of votes, the chairman of the meeting does not have a casting vote, either on a show of hands or on a poll, and the motion is deemed not to have been passed.
- (c) Every question submitted to a meeting shall be decided by a show of hands unless, before or upon the declaration of the result of the show of hands, a poll is demanded by:
 - (i) the chairman of the meeting;
 - (ii) not less than three Members present in person or by proxy, attorney or Representative and having the right to vote at the meeting;
 - (iii) a Member or Members present in person or by proxy, attorney or Representative representing not less than 10% of the total voting rights of all Members having the right to vote at the meeting; or
 - (iv) a Member or Members present in person or by proxy, attorney or Representative holding Shares conferring a right to vote at the meeting on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all Shares conferring that right.
- (d) Unless a poll is demanded, a declaration by the chairman of the meeting that the Resolution has been carried or carried unanimously or without dissent or by a particular majority or lost, and an entry to that effect in the minutes of the meeting, is conclusive evidence of the result of the Resolution and it is not necessary to prove the number or proportion of votes cast in favour of or against the Resolution.
- (e) Where a poll is duly demanded, it shall be taken in such manner and at the time and place the chairman of the meeting directs.
- (f) The result of the poll is deemed to be the Resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded on the election of a chairman of a meeting or on the adjournment of a meeting.
- (h) A demand for a poll does not prevent the continuance of the meeting or the transaction of any business other than the question on which the poll has been demanded.
- (i) The demand for a poll may be withdrawn.

12.4 Adjournment of General Meetings

- (a) The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but the only business that may be

transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

- (b) Where a meeting is adjourned for more than 21 days, the Directors must give at least three Business Days' notice of the adjourned meeting in the same manner as for the original meeting. Otherwise, it is not necessary to give notice of any adjournment or of the business to be transacted at an adjourned meeting.

13 VOTES OF MEMBERS

13.1 Right to vote

- (a) A Member entitled to receive notice of General Meetings of the Company has the right to attend General Meetings.
- (b) Unless a Share does not carry any voting right under this Constitution or the terms of issue of the Share prohibit or restrict the holder of the Share from voting, and subject to any rights or restrictions attached to or affecting any class of Shares:
 - (i) on a show of hands, each Member present in person or by proxy, attorney or (where the Member is a body corporate) Representative has one vote; and
 - (ii) on a poll, each Member present in person or by proxy, attorney or (where the Member is a body corporate) Representative has one vote for each Share held by the Member.
- (c) In the case of joint holders of a Share, the vote of the person whose name is recorded first in the Register who tenders a vote, whether in person or by proxy, attorney or Representative, shall be accepted to the exclusion of the votes of other joint holders, but the other or others of the joint holders are entitled to be present at General Meetings.
- (d) Several legal personal representatives of a deceased Member in whose sole name a Share is registered are for the purposes of **clause 13.1(c)** deemed joint holders of the Share.
- (e) A person entitled to a Share under **clause 10.1** may vote in respect of that Share as if the person were the registered holder of the Share if:
 - (i) the Directors have previously admitted the person's right to vote the Share; or
 - (ii) the person satisfies the Directors of the person's entitlement to that Share under **clause 10.1** not less than 48 hours before the time appointed for the meeting, adjourned meeting or poll at or on which the person proposes to vote in respect of the Share.
- (f) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Member's committee or trustee or other person as properly has the management of the

Member's estate may exercise any rights of the Member in relation to a General Meeting as if the committee, trustee or other person were the Member.

- (g) An objection may be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll only at that meeting or adjourned meeting or when that poll is taken, and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is deemed valid for all purposes.
- (h) In the case of a dispute as to the admission or rejection of a vote, the chairman of the meeting shall decide the matter and the chairman's decision is final and conclusive.
- (i) Despite anything else in this **clause 13**, a Member is not entitled to vote at a General Meeting unless all calls and other sums presently payable by the Member in respect of Shares have been paid.

13.2 Proxies and Attorneys

- (a) A Member who is entitled to attend and vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) An appointment of a proxy may be a standing one.
- (c) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (d) If a Member is entitled to two or more votes at a meeting, the Member may appoint two proxies but neither proxy is entitled to vote on a show of hands. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (e) The Company shall disregard any fractions of votes resulting from the application of **clause 13.2(c)** or **(d)**.
- (f) An instrument appointing a proxy shall be in the following form, or any other form that the Directors may accept or require:

Wind Portfolio Pty Ltd

FORM OF PROXY

I/We

of

being a Member or Members of **Wind Portfolio Pty Ltd**, hereby appoint [*name of or office held by proxy*] of [*insert address of proxy*] as my proxy to vote on my behalf at the General Meeting of the Company to be held on [*insert date*] and at

any adjournment of that meeting, [*insert name of proxy*] or failing that person, the chairman of the meeting.

This Form of Proxy is to be used *in favour of/against the resolution.

If this proxy is signed under power of attorney, the signatory declares that the attorney has had no notice of revocation of the power of attorney.

DATED _____

Signature(s)

* delete as appropriate.

- (g) Unless the Company has received written notice of the matter before the start of resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (i) the appointing Member dies;
 - (ii) the Member is mentally incapacitated;
 - (iii) the Member revokes the proxy's appointment;
 - (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (v) the Member transfers the Share in respect of which the proxy was given.
- (h) An instrument appointing a proxy, unless the instrument expressly provides otherwise, confers on the proxy authority to agree to:
- (i) a meeting being convened by shorter notice than is required by the Corporations Act; and
 - (ii) demand or join in demanding a poll.
- (i) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular Resolution, and if so, the proxy is not entitled to vote on the Resolution except as specified in the instrument.
- (j) A Member may, by power of attorney duly executed in the presence of at least one witness and (if necessary) duly stamped, appoint an attorney (whether a Member or not) to act on the Member's behalf at all or any meetings of the Company or of any class of Members.
- (k) A Member may, if it is a body corporate, appoint a Representative (whether a Member or not) to act on its behalf at all or any meetings of the Company or of any class of Members.

- (l) Subject to the Corporations Act, an instrument appointing a proxy is valid only if there is lodged or received at the Office (or at such other place as is specified by the Company in the notice of meeting):
- (i) at least 24 hours before the time appointed for the meeting or adjourned meeting at which the person named in the proxy proposes to attend and vote; or
 - (ii) (in the case of a poll) at least 24 hours before the time appointed for the taking of a poll,
- the instrument appointing the proxy (or a legible facsimile transmission copy of it) and if the instrument is signed by an attorney, the relevant power of attorney or authority (or a copy of the power of attorney notarially certified).
- (m) A Member must provide to the Office any evidence of stamping, execution or non-revocation of any instrument, power or authority lodged or received at the Office under **clause 13.2(l)**, as the Directors may request.
- (n) Despite anything else in this **clause 13.2**, a proxy is to be deemed validly received by the Company if received in any manner authorised by section 250B of the Corporations Act.

13.3 Resolutions without meetings

- (a) Nothing in this Constitution limits the Company's power under the Corporations Act to:
- (i) pass a Resolution as a circulating Resolution, if the Company has more than one Member; or
 - (ii) pass a Resolution by recording the Resolution in writing and signing that record, if the Company has only one Member.
- (b) For the purposes of **clause 13.3(a)(i)** and section 249A(2) of the Corporations Act:
- (i) an electronically transmitted facsimile copy of a document, the original of which in the opinion of the secretary has been apparently signed by a Member, is deemed to be a document signed by that Member; and
 - (ii) a statement, sent electronically by a Member to an electronic address specified by the Company, that the Member is in favour of a specified Resolution, is deemed to be a document containing that Resolution and duly signed by the Member at the time when the statement is received at the specified electronic address.

14 DIRECTORS

14.1 Appointment of Directors

- (a) Unless otherwise determined by the Company in General Meeting, the number of Directors shall be not more than four (4).
- (b) A Director must be a natural person.
- (c) A Director is not required to hold any Shares and is not subject to retirement by rotation.
- (d) Subject to **clauses 14.2 and 14.3**, the Directors may at any time appoint any person as a Director either to fill a casual vacancy or as an addition to the current Directors, but so that the total number of Directors (excluding any Alternate Directors) does not at any time exceed the number determined in accordance with this Constitution.
- (e) The Company may, subject to **clause 14.3**, by ordinary Resolution remove any Director from office and, subject to **clauses 14.2 and 14.3**, may by ordinary Resolution appoint another Director.

14.2 Eligibility of Directors

While the Company is a GOC Subsidiary the only persons eligible to be appointed as a Director are:

- (a) persons who are directors of the Parent GOC; or
- (b) such other persons as are approved in writing by the Shareholding Ministers.

14.3 Approval of Appointment and Removal of Directors

While the Company is a GOC Subsidiary:

- (a) the appointment of a Director does not take effect until the appointment has been approved in writing by the Shareholding Ministers; and
- (b) the removal of a Director by the Company does not take effect until the removal has been approved in writing by the Shareholding Ministers.

14.4 Remuneration and expenses

- (a) Subject to **clause 14.5**, the Directors are entitled to receive such remuneration as is from time to time determined by the Company in General Meeting.
- (b) Directors' fees accrue on a day to day basis and are apportionable accordingly.
- (c) Subject to **clause 14.5**, where a Director renders or is called upon to perform extra services or to make any special exertions or otherwise for the Company, the Directors may arrange with that Director special remuneration by payment of a stated sum of money determined by the Directors, and that special remuneration

may be either in addition to or in substitution for the Director's remuneration provided for in this Constitution.

- (d) In addition to a Director's remuneration (if any), the Director is entitled to be reimbursed out of the funds of the Company reasonable travelling, accommodation and other expenses the Director incurs when travelling to or from and attending meetings of the Directors or a committee of the Directors or when otherwise engaged on the business of the Company.
- (e) Subject to **clause 14.5**, in addition to any other fees or remuneration otherwise provided by this Constitution, when a Director (who is not engaged in the full time employment of the Company or of a subsidiary of the Company) ceases to hold office by reason of retirement, death or otherwise, the Directors may pay that Director (or in the case of the Director's death, the Director's spouse, dependants or legal personal representatives) such sum as the Directors decide, either in the form of a lump sum or instalments, but not exceeding the sum permitted by or approved in accordance with sections 200B and 200E of the Corporations Act.

14.5 Remuneration while the Company is a GOC Subsidiary

While the Company is a GOC Subsidiary:

- (a) the Directors are not entitled to be paid for their services as Directors except to the extent such arrangements are approved by Cabinet and the Shareholding Ministers; and
- (b) no change to a Director's remuneration arrangements will have effect until it has been approved in writing by the Shareholding Ministers.

14.6 Vacation of office and conflict of interest

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if:
 - (i) while the Company is a GOC Subsidiary,:
 - (A) if eligible to be a Director under **clause 14.2(a)**, the Director ceases to be a director of the Parent GOC; or
 - (B) if eligible to be a Director under **clause 14.2(b)**, a condition of the Shareholding Minister's approval under **clause 14.2(b)** ceases to be satisfied or the Shareholding Minister's approval under **clause 14.2(b)** is revoked;
 - (ii) the Director dies;
 - (iii) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (iv) the Director resigns from office by notice in writing to the Company or refuses to act; or

- (v) the Director is absent from the meetings of the Directors for a continuous period of six calendar months without special leave of absence from the Directors (but for the purposes of determining whether the Director is absent from a meeting, attendance by the Director's alternate is deemed to be attendance by the Director).
- (b) A Director is not disqualified by that office from:
- (i) holding any other office or position of profit (except that of auditor) in the Company or in any body corporate in which the Company is a member or otherwise interested;
 - (ii) entering into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and participating in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company;
 - (iii) retaining for the Director's own benefit any profit arising from any other office or position of profit, or from any such contract or arrangement and any remuneration, pension, allowance, commission or other benefit received in relation to those matters or received by reason of participation in any such association, institution, fund, trust or scheme;
 - (iv) voting on any contract or arrangement or proposed contract or arrangement or any other matter in which the Director has, directly or indirectly, an interest;
 - (v) signing or countersigning a contract or other document to which the Seal is affixed and in which the Director has, whether directly or indirectly, an interest; and
 - (vi) being counted in the number present for a quorum, where the Director has an interest in any matters arising in the meeting.
- (c) A Director who is in any way, directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of the interest at a meeting of Directors if required under and in accordance with section 191 of the Corporations Act.
- (d) If a Director of the Company has a material personal interest in a matter that relates to the affairs of the Company and:
- (i) under **clause 14.6(c)** the Director discloses the nature and extent of the interest and its relation to the affairs of the Company at a meeting of the Directors; or
 - (ii) the interest is one that does not need to be disclosed under **clause 14.6(c)**;
- then:
- (iii) the Director may vote on matters that relate to the interest; and

- (iv) any transactions that relate to the interest may proceed; and
- (v) the Director may retain benefits under the transaction even though the Director has the interest; and
- (vi) the Company can not avoid the transaction merely because of the existence of the interest.

If disclosure is required under **clause 14.6(c)**, paragraphs **14.6(d)(v)** and **(vi)** apply only if the disclosure is made before the transaction is entered into.

14.7 Powers of Directors

- (a) Subject to the Corporations Act, the management of the business of the Company is vested in the Directors and they may exercise all the powers of the Company and do all such acts and things as the Company can exercise and do and are not required to be exercised or done by the Company in General Meeting.
- (b) Without limiting **clause 14.7(a)**, the Directors may exercise all powers of the Company to:
 - (i) borrow or raise or secure the payment or repayment of any sum or sums of money;
 - (ii) charge, mortgage or otherwise encumber any or all of the undertakings, property, assets or business of the Company (both present or future whatsoever and wheresoever situate) or all or any of its uncalled Capital;
 - (iii) issue notes, bonds, debentures or any other securities whatsoever or give any other security or guarantee for any debt, liability or obligation of the Company or of any other person,

in such manner and on such terms and conditions as the Directors determine.
- (c) If a Director or other officer of the Company becomes personally liable for the payment of a sum primarily due from the Company, the Directors may mortgage, charge or otherwise give security over the whole or any part of the Company's undertakings, property or assets (present or future) including its uncalled Capital, by way of indemnity to secure the Director against any loss in respect of that liability.
- (d) All cheques, bills of exchange, promissory notes, bankers drafts and other negotiable instruments and all receipts for money paid to the Company, shall be signed, accepted, drawn, made, endorsed or otherwise executed for and on behalf of the Company by such persons (whether Directors or officers of the Company or not) in such manner as the Directors determine.
- (e) If the Company is a wholly-owned subsidiary, the Directors may take into account and act in the best interests of the Company's holding company, in the exercise of their powers as Directors of the Company.

14.8 Meetings of Directors

- (a) The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) Without limiting **clause 14.8(a)** each Director, on becoming a Director (or on the adoption of this Constitution), consents to the following for calling or holding a Directors' meeting:
 - (i) the Directors may confer by telephone, video, electronic mail or any other technology which permits each Director to communicate with every other Director (or any combination of any of these methods);
 - (ii) a resolution passed at such a conference, notwithstanding the Directors are not present together in one place at the time of the conference, is deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held;
 - (iii) the provisions of this Constitution relating to proceedings of Directors apply, so far as they are capable of application (*mutatis mutandis*), to conferences held by these means.
- (c) A Director may withdraw his or her consent given under **clause 14.8(b)** within a reasonable period before a Directors' Meeting, in accordance with the Corporations Act.
- (d) A Director may, and the secretary shall upon the request of a Director, convene a meeting of the Directors.
- (e) The person convening a meeting of Directors shall give notice of the meeting to each Director by delivering or posting the notice or by sending the notice by communication service to the last address or communication service number or address (as the case may be) within Australia provided by the Director for the purposes of this **clause 14.8**.
- (f) If any Director considers that a meeting of the Directors is required upon short notice for consideration of urgent business, notice of such meeting and of the general nature of the business for discussion at the meeting may be given by telephone to each Director at the Director's last telephone number within Australia provided by the Director for the purposes of this **clause 14.8**.
- (g) Notice of meetings of Directors may be given to a Director at an address or communication service number outside Australia provided by the Director for the purposes of this **clause 14.8**, but the Director or secretary convening a meeting of Directors is not obliged to give notice to any Director at an address or communication service number outside Australia.
- (h) For the purposes of this **clause 14.8**, "**communication service**" means any facsimile, electronic mail or other electronic means of written communication.

- (i) Two Directors constitute a quorum at a meeting of Directors, unless:
 - (i) the Directors at any time determine that a greater number of Directors must be present to constitute a quorum; or
 - (ii) the Company has only one Director, in which case that Director alone constitutes a quorum.

14.9 Proceedings of Directors

- (a) The Directors may elect a chairman and may determine the period during which the chairman holds office.
- (b) The chairman of Directors shall preside at meetings of the Directors, but if at the time of any meeting a chairman has not been elected or is not present within 15 minutes of the time appointed for holding the meeting, the Directors present shall elect one of them to be chairman of that meeting.
- (c) Subject to this Constitution, questions arising at a meeting of the Directors are decided by a majority of votes of the Directors present and competent to vote on the question.
- (d) In the case of an equality of votes, the chairman of the meeting has a casting vote in addition to a deliberative vote, unless only two Directors are present at the meeting or only two Directors are competent to vote on the question, in either of which cases the chairman does not have a casting vote.
- (e) The Directors may delegate any of their powers to committees consisting of any Director or Directors and may at any time revoke that delegation.
- (f) A committee to which any powers have been delegated shall exercise the powers delegated in accordance with any directions of the Directors.
- (g) Subject to **clause 14.9(f)**, the meetings and proceedings of a committee of Directors are governed by the provisions of this Constitution regulating meetings and proceedings of the Directors, so far as they are capable of application (*mutatis mutandis*) to meetings and proceedings of committees.
- (h) All acts of the Directors, a committee of the Directors or a member of a committee of Directors are valid even if it is discovered afterwards that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified from acting or had vacated office.

14.10 Resolutions without meeting

- (a) The Directors may pass a resolution without holding a Directors' meeting if all the Directors entitled to vote on the resolution (which does not include any Alternate Director whose appointor signs the document) sign a document containing a statement that they are in favour of the resolution set out in the document.

- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. An electronically transmitted facsimile copy of a document, the original of which in the opinion of the secretary has been apparently signed by a Director, is deemed to be a document signed by that Director for these purposes.
- (c) A statement sent electronically by a Director to an agreed electronic address that he or she is in favour of a specified resolution is deemed to be a document containing that statement and duly signed by the Director at the time when the statement is received at the agreed electronic address.
- (d) The resolution is passed when the last Director signs.
- (e) If the Company has only one Director, the Director may pass a resolution by recording the resolution and signing the record.

14.11 Restriction on Managing Directors

The Company and the Directors may not appoint a Director as an executive director or a managing director or in any similar capacity.

14.12 Alternate Directors

- (a) Subject to the Corporations Act, a Director may by writing appoint a person (whether a Member or not and whether otherwise a Director or not) approved by a majority of the other Directors, to act as an Alternate Director in the Director's place on the terms and conditions and for the period as the Director specifies.
- (b) In this **clause 14.12 "appointing Director"** means a Director who appoints an Alternate Director.
- (c) An appointment, or the termination of an appointment, of an Alternate Director is effected by notice in writing signed by the appointing Director and served on the Company, either by delivery of the notice to the Office or sending the notice to the Company by post, courier, airmail, facsimile transmission or electronic mail.
- (d) An Alternate Director:
 - (i) may at any time be removed or suspended from office by notice in writing signed by his or her appointing Director, even if the period of the appointment of the Alternate Director has not expired;
 - (ii) is entitled to receive notice of meetings of the Directors and to attend and vote at those meetings if the appointing Director is not present;
 - (iii) (if he or she is also a Director), has a separate additional vote on behalf of the appointing Director;
 - (iv) may exercise all the powers of the appointing Director (subject to any conditions or restrictions imposed in that regard by the appointing Director) but does not have the power to appoint an Alternate Director;

- (v) automatically ceases to be an Alternate Director if the appointing Director ceases to be a Director;
 - (vi) whilst acting as a Director, is responsible to the Company for his or her own acts and defaults, and the appointing Director is not responsible for those acts or defaults;
 - (vii) is not entitled to receive any fees or remuneration from the Company as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, but is entitled to be reimbursed out of the funds of the Company for all reasonable travelling, accommodation and other expenses incurred by the Alternate Director in travelling to or from and attending meetings of the Directors or a committee of the Directors or when otherwise engaged on the business of the Company; and
 - (viii) is counted in determining a quorum for the purposes of **clause 14.8(i)**, but where the Alternate Director is also a Director, is not counted in both capacities.
- (e) Despite **clauses 14.12(a), (c) and (d)**, while the Company is a GOC Subsidiary:
- (i) only a director of the Parent GOC is eligible for appointment as an Alternate Director;
 - (ii) the appointment of an Alternate Director does not take effect until the appointment has been approved in writing by the Shareholding Ministers; and
 - (iii) the removal of an Alternate Director by the Company does not take effect until the removal has been approved in writing by the Shareholding Ministers.

14.13 Appointment of attorney

- (a) The Directors may, by power of attorney appoint a person or persons, jointly or severally, to be the attorney or attorneys of the Company for the purposes and with the powers (not exceeding those conferred on the Directors by this Constitution) and on the terms and conditions as the Directors determine.
- (b) An attorney may be, but need not be, a Director or a Member.
- (c) A power of attorney may:
 - (i) contain provisions for the protection or convenience of persons dealing with the attorney as the Directors determine; and
 - (ii) authorise the attorney to delegate any power for the time being vested in the attorney

- (d) Despite **clauses 14.13(a), (b)** and (c), while the Company is a GOC Subsidiary the Directors may only appoint a person to be the attorney of the Company if the appointment has been approved in writing by the Shareholding Ministers.

14.14 Minutes

- (a) The Directors shall ensure that minutes of all proceedings of General Meetings and of meetings of Directors are entered in books kept for that purpose within one month after the relevant meeting is held.
- (b) Except in the case of documents that are deemed to be minutes by virtue of **clauses 13.3 and 14.10**, minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

15 EMPLOYEES OF COMPANY

15.1 Application of this clause

This **clause 15** applies while the Company is a GOC Subsidiary.

15.2 Senior Executives

- (a) The senior executives of the Company are to be appointed in accordance with the requirements of the GOC Act.
- (b) The Company must inform the Shareholding Ministers as soon as reasonably practicable about the appointment of senior executives of the Company, the setting of remuneration arrangements for senior executives and any variations to the remuneration arrangements for senior executives.

16 SECRETARY

16.1 Appointment by Directors

Subject to **clause 16.2**, the Directors may appoint one or more secretaries of the Company and may at any time terminate the appointment of any secretary.

16.2 Eligibility for Secretary

- (a) This **clause 16.2** applies while the Company is a GOC Subsidiary.
- (b) If the Directors decide to appoint a person to be secretary of the Company, the only person eligible to be appointed as a secretary is a person who is a secretary of the Parent GOC.
- (c) The Directors must terminate the appointment of the secretary if the secretary ceases to be a secretary of the Parent GOC.

16.3 Terms of office

A secretary of the Company holds office on the terms and conditions, as to remuneration or otherwise, as the Directors determine.

17 SEALS AND EXECUTION OF DOCUMENTS

17.1 Types of Seals

- (a) The Company may have a common seal and if so, the Company may have:
 - (i) a duplicate common seal, which shall be a facsimile of the common seal with the addition on its face of the words “Share Seal” or “Certificate Seal”; and
 - (ii) an official Seal for use in any place outside the State of Queensland, which shall be a facsimile of the common seal with the addition on its face of the name of every place where it is to be used.
- (b) The Directors shall provide for the safe custody of all Seals in the manner as they determine.

17.2 Use of Seal

- (a) A Seal shall be used only by the authority of the Directors.
- (b) If the Seal is fixed to a document, the document must be signed by:
 - (i) two Directors;
 - (ii) a Director and the secretary of the Company (or another person appointed generally or in a particular case by the Directors for that purpose); or
 - (iii) where the Company has a sole Director who is also the sole secretary of the Company, by that Director in his or her capacity as sole Director and sole secretary of the Company.
- (c) The Directors may determine, generally or in a particular case, that the Seal and the signatures of the Director, secretary or other person appointed by the Directors for the purpose of signing documents to which the Seal is fixed, may be fixed or written on documents by a specified mechanical means so as to produce a facsimile of such Seal and signatures.

17.3 Other execution

Nothing in this **clause 17** limits the ways in which the Company may execute documents.

18 DIVIDENDS

18.1 Application of clause

This **clause 18** applies subject to **clause 19**.

18.2 Determination of dividends

The Directors may determine that a dividend is payable and fix:

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

18.3 Preferential dividends

If the terms of issue of any Shares include an entitlement to preferential dividends, the Directors may pay preferential dividends on those Shares in accordance with the terms of issue of those Shares.

18.4 Payment of dividends

- (a) A dividend may only be paid out of profits of the Company. A declaration by Directors as to the amount of profits available for dividends is conclusive evidence of the amount so available.
- (b) Interest is not payable on any dividend or any other moneys payable on or in respect of a Share.
- (c) The Directors may deduct from any dividend payable to a Member all money (if any) presently payable by the Member to the Company on account of calls (where Shares have been issued partly paid) or otherwise in relation to Shares held by the Member.
- (d) A transfer of Shares does not pass the right to any dividend determined or fixed to be payable on those Shares before registration of the transfer of those Shares.

18.5 Dividend entitlement

- (a) Shares on which the full amount of the issue price has been paid are entitled to participate equally in any dividends payable on the Shares, subject to any special rights attaching to any Shares.
- (b) Partly paid Shares are entitled to participate in any dividends payable on the proportion to the amounts paid on the Shares at the time fixed for payment for the dividend. An amount paid on a Share in advance of calls is deemed for the purposes of this **clause 18.5** not to have been paid.
- (c) Any Shares having special rights to dividends are entitled to participate in dividends payable in accordance with the terms of issue of those Shares.

18.6 Methods of payment of dividends

- (a) The methods of payment of dividends may include payment of cash, the issue of Shares, the grant of options and the transfer of assets, and the Directors may determine that any particular method of payment applies:
 - (i) to all or any part of any dividend payable; and/or
 - (ii) in relation to all or some of the Shares on which the dividend is payable.
- (b) Any dividend (or part of a dividend) payable in cash may be paid:
 - (i) by cheque posted or delivered to:
 - (A) the address of the Member recorded in the Register or, in the case of joint holders, to the address of the holder first named in the Register in respect of the joint holding; or
 - (B) to such other address as the holder or joint holders directs or direct;
 - (ii) by electronic transfer; or
 - (iii) in such other manner as the Directors determine.
- (c) If a dividend (or part of a dividend) is paid otherwise than in cash, the Directors may for the purpose of giving effect to the payment in a manner that is fair as between all Members of the Company:
 - (i) issue Shares, notes or debentures in fractions;
 - (ii) fix the value of any specific assets;
 - (iii) determine that cash payments will be made to any Members on the value fixed for any specific assets;
 - (iv) vest any specific assets in trustees; or
 - (v) settle any difficulty which arises in relation to the payment.

18.7 Establishment and application of reserves

The Directors may:

- (a) before determining or recommending a dividend, set aside reserves out of the profits of the Company, to be applied for any purpose for which the profits of the Company may be properly applied, and use the reserves in the business of the Company or invest the reserves in such investments as the Directors determine; and
- (b) carry forward so much of the profits of the Company as the Directors think ought not be distributed as dividends, without transferring these profits to a reserve.

18.8 Capitalisation of profits

- (a) The Directors may capitalise profits to:
 - (i) pay up any amount unpaid on issued Shares; and
 - (ii) pay up Shares to be issued to Members as fully paid bonus Shares.
- (b) The Directors may do anything necessary to give effect to a capitalisation and in particular, to the extent necessary to adjust the rights of the Members among themselves, may:
 - (i) issue Shares in fractions or make cash payments in cases where Shares become issuable in fractions; and
 - (ii) settle any difficulty which arises in regard to the application or distribution of the capitalised sum.

19 DIVIDENDS WHILE A GOC SUBSIDIARY

19.1 Application of clause

While the Company is a GOC Subsidiary, this **clause 19** applies.

19.2 Determination of dividends

Whether an interim or final dividend will be payable by the Company is to be determined by the Shareholding Ministers on recommendation of the directors of the Parent GOC in accordance with the GOC Act.

19.3 Payment of dividends

Where the payment of a final or interim dividend has been determined under **clause 19.2**, the Company must comply with the Shareholding Ministers' direction to pay the dividend as determined and advised to the Company.

20 ACCOUNTS AND AUDIT

20.1 Auditor's Entitlements

If the Company has an auditor, the auditor or the auditor's agent authorised in writing for the purpose is entitled to:

- (a) attend General Meetings;
- (b) receive all notices of and other communications relating to General Meetings which a Member is entitled to receive; and
- (c) speak at any General Meeting which the auditor attends on any part of the business of the meeting which concerns the auditor in that capacity,

but does not have the right to vote at General Meetings.

20.2 Auditor

While:

- (a) the Company is a GOC Subsidiary; and
- (b) the Company is required to be audited under the Corporations Act or the GOC Act,

the Company must appoint the Auditor-General to be the auditor of the Company and ensure that the Auditor-General remains at all times the auditor of the Company.

20.3 Inspection of Company records

- (a) Subject to the Corporations Act, the Directors shall determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents of the Company or any of them will be open to inspection by the Members and other persons.
- (b) A Member or other person (not being a Director):
 - (i) has no right to inspect any documents of the Company, except as conferred by the Corporations Act or any other statute, or except as authorised by the Directors; and
 - (ii) is not entitled to require, demand or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of or used by the Company.

21 NOTICES

21.1 Mode of service

- (a) The Company may give a Share certificate, cheque, warrant, notice or other document to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post, courier or airmail to the Member at the address recorded in the Register or the address for notices supplied by the Member to the Company;
 - (iii) where applicable, sending it to the Member by facsimile transmission to the facsimile number for notices supplied by the Member to the Company; or
 - (iv) transmitting it to the electronic mail address for notices supplied by the Member to the Company.
- (b) A notice may be given by the Company to joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.

21.2 Deemed receipt of notice

- (a) A document sent by ordinary post, courier or air mail is deemed to be received or served on the day next following that on which it was posted or dispatched. In proving delivery or service it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped (if posted) and was posted or dispatched.
- (b) A document sent by facsimile transmission is deemed to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient if produced before 5.00 pm on a Business Day, otherwise on the next Business Day.
- (c)
 - (i) A document sent by electronic mail is deemed to be received on the day of transmission, if transmitted before 5.00 pm on a Business Day, otherwise on the next Business Day.
 - (ii) A document sent by electronic mail is deemed not to be served only if the computer system used to send it reports that delivery failed.

21.3 Proof of service

A certificate in writing signed by a Director, secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted or dispatched, or that a document was sent by facsimile transmission and a transmission report was produced by the machine from which it was sent which indicated that the facsimile was sent in its entirety, or that a document was sent by electronic mail and the computer system used to send it did not report that delivery failed, is conclusive evidence of those facts.

21.4 Previous notice

A person who by operation of law, or by transfer or other means becomes entitled to be registered as the holder of or to transfer a Share, is bound by every notice previously given in respect of that Share.

21.5 Notice on transmission

The Company may give a notice to a person entitled to a Share on a Member's death or bankruptcy by:

- (a) serving it on the person personally; or
- (b) sending it to the person by post, courier, airmail, facsimile transmission or electronic mail addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt or by any similar description,

at the address, facsimile number or electronic address (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice would have been sent had it been sent to the Member.

22 WINDING UP

22.1 Division of assets

If the Company is wound up whether voluntarily or otherwise, the liquidator may (but without prejudice to the rights of any holders of Shares issued on special terms or conditions):

- (a) with the approval of a Special Resolution, divide among the Members in specie the whole or any part of the assets of the Company;
- (b) set a value upon any property to be divided;
- (c) determine how the division is to be carried out as between the Members or different classes of Members;
- (d) with the approval of a Special Resolution, vest the whole or any part of any such assets of the Company in a trustee upon such trusts for the benefit of the Members or any of them as the liquidator determines.

22.2 No obligation to accept liability

A Member is not obliged to accept any property in respect of which there is any liability upon a division or vesting of assets under **clause 22.1**.

23 INDEMNITY

23.1 Definition of “Officer”

In this **clause 23**:

- (a) “**Officer**” means any of:
 - (i) a Director, secretary or executive officer of the Company;
 - (ii) a receiver or receiver and manager of property of the Company;
 - (iii) an administrator of the Company or of a deed of company arrangement executed by the Company;
 - (iv) a liquidator of the Company; or
 - (v) any person administering a compromise or arrangement made between the Company and another person or persons.
- (b) References to “**Officers**” or to “**auditor**” include references to former Officers and former auditors.

23.2 Indemnity to Officers

- (a) Subject to **clauses 23.2(b) and 23.2(c)**, every Officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses and liabilities incurred by that Officer or auditor in the person’s capacity

as an Officer or auditor of the Company by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer or auditor of the Company.

- (b) An Officer or auditor of the Company is not entitled to be indemnified out of the assets of the Company for a liability (other than a liability for legal costs) that did not arise out of conduct in good faith or where the liability is to the Company or a related body corporate, or where the liability is for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act.
- (c) An Officer or auditor of the Company is not entitled to be indemnified out of the assets of the Company against legal costs incurred by that person if the costs are incurred:
 - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under **clause 23.2(b)**; or
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (iv) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

Paragraph (iii) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

23.3 Liability as between Officers

Subject to the Corporations Act, an Officer is not liable for the negligence, default or breach of duty of any other Officer except to the extent of the Officer's own negligence, default or breach of duty.

23.4 Reimbursement of expenses

Subject to **clause 23.2**, every Officer is entitled to have reimbursed to the Officer out of the funds of the Company all expenses which the Officer may from time to time incur in consequence of and in discharge or attempted discharge of the Officer's duties.

23.5 Benefit to survive

The benefit of any indemnity given under this **clause 23** continues, despite any amendment to or deletion of this **clause 23**, in respect of liability arising from acts or omissions occurring before the amendment or deletion.

23.6 Insurance

The Directors may authorise the Company to enter into any insurance policy for the benefit of any Officer or auditor of the Company, to the extent permitted by law and on such terms as the Directors approve. This **clause 23.6** does not limit the powers of the Company.

24 AMENDMENT OF CONSTITUTION

24.1 Application of this clause

This **clause 24** applies while the Company is a GOC Subsidiary.

24.2 Approval of amendments

No amendment to this Constitution, including this clause, will be of effect until the approval of the Shareholding Ministers has been obtained.

24.3 Variation by Shareholding Ministers

This Constitution may be varied in accordance with a direction made by the Shareholding Ministers under the GOC Act.