

Company Constitution

Central Queensland Regional Organisation of Councils Limited

[A Company Limited by Guarantee]

PART 1 INTERPRETATION

1.1 General

This Constitution is to be interpreted by reference to the definitions and subsequent provisions of this Part 1 unless:

- (1) a given context otherwise requires; or
- (2) a contrary intention appears.

1.2 Definitions

Each of the following expressions in bold to the left bears the meaning shown opposite:

<hr/> act <hr/>	Includes: <ol style="list-style-type: none">(1) an omission; and(2) a refusal to act.
<hr/> Act <hr/>	<ol style="list-style-type: none">(1) An Act passed by the Commonwealth Parliament or the Queensland Parliament.(2) Subordinate legislation made under the Act.(3) A direction or requirement made by a competent entity under the Act, subordinate legislation, instrument, or law.(4) A licence, authorization, consent, approval, or exemption granted under the Act, subordinate legislation, instrument, or law.(5) A planning instrument.(6) A local law and a subordinate local law.
<hr/> Address for Notices <hr/>	<ol style="list-style-type: none">(1) For the Company:<ol style="list-style-type: none">(a) its registered office;(b) if it is no longer at its registered office, its principal place of business in Queensland as noted upon Australian Securities and Investments Commission records for the time being;(c) its principal facsimile number at its registered office; and(d) its principal electronic mail address at its registered office.(2) For a Director, including an Alternate Director:<ol style="list-style-type: none">(a) his/her residential or business address last notified to the Company;(b) if the Secretary knows he/she is no longer at that address, and is aware of a later address, that later address;(c) his/her principal facsimile number at the residential or business the subject of whichever is relevant of <i>paragraphs (2)(a) and (2)(b)</i> of this

	definition; and
	(d) his/her principal electronic mail address at the residential or business the subject of whichever is relevant of <i>paragraphs (2)(a) and (2)(b)</i> of this definition.
	(3) For a Member:
	(a) its address shown in the register of Members, or such other address as the Member has supplied to the Company as its address for notices;
	(b) its facsimile number shown in the register of Members, or such other facsimile number as the Member has supplied to the Company as its facsimile number for notices; and
	(c) its electronic mail address shown in the register of Members, or such other electronic mail address as the Member has supplied to the Company as its electronic mail address for notices.
	(4) If a relevant entity is not at any of the addresses or numbers specified for it in the foregoing paragraphs: its last principal place of business or facsimile number in Queensland known to the entity giving the notice.
<hr/> Alternate Director <hr/>	A person appointed under <i>Rule 7.17</i> as an alternate Director.
<hr/> Auditor <hr/>	The Company's auditor.
<hr/> Board <hr/>	The collective of Directors.
<hr/> Business <hr/>	The activity or collection of activities that the Company undertakes in the pursuit of the objects detailed in Part 3.
<hr/> Business Day <hr/>	(1) For giving notice under this Constitution: a day other than a Saturday, Sunday, or public holiday in the locality to which the notice is to be sent. (2) For making a payment under the Constitution: a day, other than a Saturday, Sunday, or public holiday, upon which banks (as that expression is defined in the <i>Banking Act 1959 (Cwlth)</i>) are open for business in the locality of the recipient's Address for Notices. (3) For conducting a meeting pursuant to the Constitution: a day other than a Saturday, Sunday, or public holiday in the locality of the venue at which a meeting or adjourned meeting is to be held.
<hr/> Chair <hr/>	The chair of the Board. ¹
<hr/> Company <hr/>	Central Queensland Regional Organisation of Councils Limited.

¹ Refer to Rule 7.3.

Confidential Information	(1) Information regarding: (a) the Business; and (b) the assets or affairs of the Company and any Related Corporation. (2) Information that the Board lawfully declares by resolution to be confidential. (3) Information that the Company is contractually bound to keep confidential.
Constitution	This instrument, adopted by the Company as its constitution upon its (the Company's) registration.
<i>Corporations Act</i>	<i>Corporations Act 2001 (Cwlth).</i>
Delegate	An individual appointed as the delegate of the Member under <i>Rule 6.11</i> .
Deputy Chair	The deputy chair of the Board. ²
Director	A director of the Company.
Eligible Person	For accessing Company records, refer to <i>Rule 12.2</i> .
include	Comprise or encompass, without being limited to what is stated to be included. ³
<i>Income Tax Acts</i>	(1) <i>Income Tax Assessment Act 1936 (Cwlth).</i> (2) <i>Income Tax Assessment Act 1997 (Cwlth).</i>
Local Government	A local government as defined in the <i>Local Government Act 2009</i> .
Managing Director	The managing Director appointed under <i>Rule 8.1</i> .
Member	A member of the Company, including, in the context of a general meeting, that person's proxy, nominee (if the person is a corporation) or other lawful representative.
Primary Director	A Director for whom an Alternate Director is appointed.
Region	A region comprising the local government areas administered by the Members under the <i>Local Government Act 2009</i> .
Related Corporation	A "related body corporate" as defined in the <i>Corporations Act</i> , including a corporation that ceases to be a related body corporate through amendment, consolidation or replacement of the <i>Corporations Act</i> .
Remote Meeting	Refer to <i>Rule 7.10</i> .

² Refer to *Rule 7.4*.

³ Example: In the definition of "Act", subordinate legislation is stated to include a local law. However, the expression is not limited to a local law. It also encompasses a Regulation, a Standard Law and any other type of subordinate legislation.

Rule	A numbered clause, sub-clause, or paragraph of this Constitution.
Secretary	A secretary of the Company.
Superannuation Guarantee Scheme	The scheme governed by the: (1) <i>Superannuation Guarantee (Administration) Act 1992 (Cwlth)</i> ; and (2) <i>Superannuation Guarantee Charge Act 1992 (Cwlth)</i> , requiring employers to provide a prescribed minimum level of superannuation support for employees.
Third Corporation	Refer to <i>Rule 7.21(1)</i> .

1.3 Cognate Expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

1.4 Non-defined Expressions

- (1) A term used, but not relevantly defined, in the Constitution carries the meaning that the Oxford Dictionary of English ascribes to the term.
- (2) However, an expression that is not defined in the Constitution but is defined in the *Corporations Act* bears in the Constitution the meaning the *Corporations Act* ascribes to it.

1.5 Particular References

Where a provision that is prefaced or introduced by the expression, "in particular" or "particularly", refers to or qualifies another provision of more general application, the former provision does not limit the ambit of the latter provision.

Example: The particular acts of waiver to which Rule 6.11(11) refers do not limit the Directors' general power to waive in Rule 6.11(12).

1.6 Examples

- (1) Irrespective of whether it appears within the body of the provision or as a discrete statement that follows the provision, an example of a provision's operation or effect is part of the provision and is not to be disregarded when interpreting the Constitution.
- (2) The example is not exhaustive.
- (3) The example does not limit the meaning of the provision but it may extend that meaning.
- (4) The example and the provision are to be read:
 - (a) in the context of one another; and
 - (b) in the context of the other provisions of the Constitution.
- (5) If, so read, the example and the provision are inconsistent, the provision prevails.

1.7 Block References

- (1) Reference to the period between two specified dates, times or periods includes each of those two dates, times or periods.
- (2) Reference to the numbers, provisions, or items, in this or another document, between two specified numbers, numbered provisions, or numbered items, includes each of those two numbers, numbered provisions or items.

1.8 Durations

- (1) A period stated as beginning upon a specified day begins at the beginning of that day.

- (2) A period stated as ending upon a specified day ends at the end that day.

1.9 Miscellaneous References

- (1) Reference to the singular includes the plural, and vice-versa.
- (2) Reference to a gender includes each other gender.
- (3) Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic), a firm, and a voluntary association.
- (4) Reference to an entity that has ceased to exist, or has reconstituted, amalgamated, reconstructed, or merged, is to be treated as a reference to the person:
 - (a) established or constituted in its stead; or
 - (b) as nearly as may be, succeeding to its power or function.
- (5) Reference to an office or a position includes an office or a position:
 - (a) established or constituted in lieu of that office or position; or
 - (b) as nearly as may be, succeeding to its power or function.
- (6) Reference to an Act includes an Act that amends, consolidates, or replaces an Act.
- (7) Reference to a section or other provision of an Act includes a section or provision that amends, consolidates, or replaces the section or provision.
- (8) An Act not identified (by definition or otherwise) as an Act of the Commonwealth Parliament is an Act of the Queensland Parliament.
- (9) Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.
- (10) Reference to money is a reference to Australian dollars and cents.
- (11) Reference to a time of day is a reference to Australian Eastern Standard Time.
- (12) Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

1.10 References to Office or Position

Reference to the occupant of a particular office or position includes any person occupying or performing the duties of that office or position for the time being.

1.11 Exercise of Powers

- (1) Where this Constitution provides that a person "may" do something, that thing may be done at the person's discretion.
- (2) Where this Constitution confers a power to do something, included in that power is the power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary what is done.
- (3) Where this Constitution confers a power to do something specific concerning specific matters, included in that power is the power to do that thing concerning:
 - (a) some only of those matters; or
 - (b) a particular class or particular classes of those matters,and to make differing provision with respect to individual matters or classes of matter.
- (4) Where this Constitution confers a power to make appointments to an office or position, included in that power is a power:
 - (a) to appoint a person to act in the office or position pending an appointment to the office or position;
 - (b) subject to any contract between the Company and the relevant person, to remove or suspend the appointee, with or without cause; and

- (c) to appoint a temporary replacement for a person removed or suspended, or for a sick or absent appointee.
- (5) Where this Constitution confers a power or imposes a duty:
 - (a) the power may be exercised; and
 - (b) the duty must be discharged,
from time to time as the occasion requires.
- (6) Where this Constitution confers a power or imposes a duty on the holder of an office:
 - (a) the power may be exercised; and
 - (b) the duty must be performed,
by the holder of the office.
- (7) Where this Constitution empowers a person or body to delegate a function or power:
 - (a) the delegation may be made upon terms permitting the delegate to perform the function or exercise the power in addition to, or to the exclusion of, the person or body making the delegation;
 - (b) the delegation may be made subject to limitations;
 - (c) the delegation need not be to a specified person but may be to the occupant or holder for the time being of a specified office or position;
 - (d) the delegation may include the power to sub-delegate;
 - (e) if performance or exercise of the delegable function or power is a matter for the formation of an opinion or the exercise of discretion by the person or body holding the power of delegation, that function or power may be performed or exercised by the delegate similarly by the formation of an opinion or the exercise of discretion; and
 - (f) the function or power delegated, as performed or exercised by the delegate, will be deemed performed or exercised by the person or body that made the delegation.

1.12 Headings and Notes

The table of contents, the headings, and any footnotes and endnotes:

- (1) exist for convenience only; and
- (2) are to be disregarded when interpreting the Constitution.

1.13 Severance

A provision is to be treated as omitted from the Constitution if:

- (1) the provision is void, unenforceable, or incomprehensible; or
- (2) retaining the provision would render the Constitution or part of the Constitution void, unenforceable, or incomprehensible.

PART 2 INTRODUCTION

2.1 Company Name

The name of the Company is *Central Queensland Regional Organisation of Councils Limited*.

2.2 Company Type

- (1) The Company is a company limited by guarantee.
- (2) Accordingly, it cannot issue shares in its capital.

2.3 Corporations Act Rules

To the extent that it is inconsistent with this Constitution, a rule that applies under the *Corporations Act* as a replaceable rule⁴ for a public company does not apply to the Company.

PART 3 OBJECTS OF INCORPORATION

3.1 Principal Objects

The Company is incorporated to facilitate its Members to work collaboratively to enhance the economic growth, social capacity and environmental sustainability of the Region, principally by:

- (1) supporting and advancing the interests of Members and their constituencies in a Regional context;
- (2) formulating policies and strategies from which all Members may act collaboratively in determining complementary plans for the co-ordination of Regional growth and management of change;
- (3) fostering co-operation among Members on issues of mutual concern or to further joint interests;
- (4) acting as an advocate to Federal and State Governments or other bodies on issues of concern to Members;
- (5) progressing the collective interests of the Members in the Region and influencing senior decision makers within government, agencies and other bodies;
- (6) increasing investment by Federal and State Governments in infrastructure and services benefitting the Region;
- (7) fostering communication, information and resource sharing among Members;
- (8) building effective partnerships with State and Federal agencies that make decisions that affect the Region;
- (9) facilitating co-operation with community, business and academic organisations for the benefit of the Region; and
- (10) facilitating Members to work together to proactively promote sustainable growth so as to retain the region's natural assets and cultural diversity.

PART 4 MEMBERSHIP OF COMPANY

4.1 Classes of Membership

The Company's membership will consist of ordinary Members.

4.2 Members

- (1) On incorporation, the Members comprise the following Local Governments:
 - (a) Banana Shire Council;
 - (b) Gladstone Regional Council;
 - (c) Rockhampton Regional Council; ##To be confirmed##
 - (d) Central Highlands Regional Council;
 - (e) Livingstone Shire Council; and
 - (f) Woorabinda Aboriginal Shire Council.
- (2) Another Local Government may apply for Membership if it supports the objects of the Company.

4.3 Application for Membership

- (1) An application for membership must be:
 - (a) submitted in writing to the Secretary;

⁴ Refer to *Corporations Act* sections 134 to 141 and 198E.

- (b) in the form determined by the Board;
 - (c) signed by the applicant; and
 - (d) accompanied by the applicable membership fee.
- (2) The Members must consider an application for membership at the Company's next general meeting following receipt of:
 - (a) the application; and
 - (b) the applicable membership fee,
- (3) At that meeting, the Members must determine whether to accept or reject the application.
- (4) If the Members unanimously vote to accept the applicant as a Member, the applicant is accepted as an ordinary Member of the Company.
- (5) As soon as is practical after the Board accepts or rejects the application for membership, the Secretary must notify the applicant, in writing, of the Board's decision.

4.4 Membership Fees

The membership fee for Members will be:

- (1) determined by the Members at an annual general meeting of the Company; and
- (2) payable at the times and in the manner determined by the Board.

4.5 Special Levies

- (1) The Board may make a special levy or levies on Members from time to time to establish a fund or funds to defray any expenditure (incurred or to be incurred) in carrying out a matter to further the objects of the Company.
- (2) The Board may, in respect of any particular matter, fix different amounts of the special levy for different Members and generally determine the special levy payable by each Member on such basis or bases as it thinks fit.
- (3) A special levy made under this Rule is binding on all Members.
- (4) The Secretary must give written notice to each member specifying:
 - (a) the amount of the special levy payable by it; and
 - (b) the purpose for which such special levy is made.
- (5) A special levy is payable by a Member within 30 days after notice of the amount of the special levy is given to it.

4.6 Membership Entitlements

Each Member is:

- (1) responsible for payment of any subscriptions, fees and other levies imposed by the Board or by the Company in general meeting upon Members;
- (2) entitled to nominate up to three Delegates to attend, participate in the transaction of business, and cast a single vote on its behalf, at any general meeting of the Company;
- (3) eligible to participate in all activities promoted by the Company; and
- (4) entitled to nominate a person for membership of a committee or sub-committee of the Company.

4.7 Termination of Membership

- (1) A Member who has paid all membership fees may resign its membership of the Company by giving at least three months written notice to the Secretary.
- (2) The resignation takes effect:
 - (a) when the Secretary receives the written notice; or

- (b) if the notice stipulates a later day than the day the Secretary receives the notice, that later day.
- (3) The Board may terminate a membership of the Company if the Member:
 - (a) fails to comply with any of the Rules;
 - (b) is over two months in arrears of membership fees or other levies imposed upon it under the Rules; or
 - (c) conducts itself in a manner that brings the Company into disrepute or otherwise prejudicially affects the Company's interests.
- (4) However, the Board must not terminate a membership without affording the Member a full and fair opportunity to demonstrate that its membership should not be terminated.
- (5) If, after proper consideration of the Member's representations, the Board elects to proceed with termination of the membership, the Secretary must notify the Member of the decision promptly in writing.
- (6) The termination will be effective upon the earlier of:
 - (a) the time the Member receives the Secretary's written notification under *Rule 4.7(5)*; and
 - (b) the end of the 2nd Business Day after the day the Secretary's written notification is posted to the Member.
- (7) If a Member resigns its membership of the Company, or its membership is terminated under *Rule 4.7*, the Member:
 - (a) will not be eligible for any pro rata refund of membership fees paid to the Company; and
 - (b) will remain liable to pay any membership fees or other levies that are due from it to the Company at the time of the resignation or termination.

PART 5 AUDIT

5.1 Appointment of Auditor

- (1) The Company must appoint an Auditor within the period limited by the *Corporations Act*.⁵
- (2) The appointee must be a registered company auditor.⁶

5.2 Audit

The Auditor must audit the Company accounts annually.

5.3 Excluded Candidates

- (1) The appointed Auditor must be, and must be seen to be, wholly independent of the Company.
- (2) Accordingly, no Director, Member, or Company employee, and no former Director, Member, or Company employee, may be appointed as Auditor.
- (3) Further, no person who serves the Company as an independent contractor, and no person who has served the Company as an independent contractor, may be appointed as Auditor unless the services he or she supplies or has supplied are external audit services and nothing else.

PART 6 MEMBERS MEETINGS

6.1 Convening a General Meeting

- (1) The Directors may call and arrange to hold a general meeting at least four times per year when they consider it appropriate.

⁵ Refer to section 327A of the *Corporations Act*. The Directors must make the appointment within one month of registration unless the Company in general meeting has already made the appointment.

⁶ Refer to *Corporations Act Part 9.2 (section 1276 et seq)*.

- (2) However, the Directors must call and arrange to hold the meeting only in accordance with this *Rule 6.1* or in accordance with sections 249D⁷, 249E⁸, 249F⁹ and 249G¹⁰ of the *Corporations Act*.
- (3) The Directors may cancel, postpone or change the venue of a general meeting unless the meeting is called and arranged to be held by the Members or the court under section 249F or section 249G of the *Corporations Act*.
- (4) If they call and arrange to hold a general meeting under section 249D of the *Corporations Act*, the Directors may not:
 - (a) postpone it beyond the date by which section 249D requires it to be held; or
 - (b) cancel it without the consent of the requisitioning Member/s.

6.2 Notice of General Meeting

- (1) Subject to this Constitution, notice of a general meeting must be given:
 - (a) within the time limits specified in the *Corporations Act*; and
 - (b) in the manner authorized by *Rule 14.1*,to each person who is at the date of the notice:
 - (c) a Member;
 - (d) a Director; or
 - (e) an Auditor.
- (2) A notice of a general meeting must:
 - (a) specify the date, time and place of the meeting;
 - (b) state the general nature of the business to be transacted at the meeting; and
 - (c) be accompanied by a proxy form for use by the recipient if desired.¹¹
- (3) A person may waive the entitlement to receive notice of a general meeting by giving written notice to the Company.
- (4) Where a person does not receive notice of a general meeting, or the proxy form, to which the person is entitled under *Rules 6.2(1)* and *6.2(2)*, everything done at the meeting, including all resolutions passed, will be valid if:
 - (a) the non-receipt is the result of an accident or error (including an accident or error that resulted in the notice of meeting or proxy form not having been sent to the Member); and
 - (b) the person waives under *Rule 6.2(3)*, before or after the meeting, the entitlement to receive notice of that meeting.
- (5) If:
 - (a) a person does not receive notice of a general meeting, or the proxy form, to which the person is entitled under *Rules 6.2(1)* and *6.2(2)*; and
 - (b) before or after a general meeting, that person gives the Secretary written notice that the person agrees to a specified action being or having been taken at the meeting (including a resolution being or having been passed),the fact that the person does not receive notice of the meeting or proxy form does not invalidate the relevant action.

⁷ Directors must call and arrange to hold a meeting upon the request of a certain number of members.

⁸ Members who have made a request under section 249D, with which the Directors have failed to comply, may call and arrange to hold the meeting.

⁹ Members with a specified minimum quantity of combined votes may call and arrange to hold a meeting.

¹⁰ A court may order that a meeting be called.

¹¹ Refer to *Rule 6.11(8)* concerning the form of a proxy instrument.

- (6) Attendance at a general meeting waives any objection a person may make to:
- (a) notice of the meeting being defective, or not having been given; and
 - (b) the consideration of an issue the details of which were not specified in the notice of meeting as an item of business for the meeting,
- unless the person:
- (c) objects, at the beginning of the meeting, to the meeting being held; or
 - (d) objects, when it is presented at the meeting, to the issue being considered.

6.3 Member Presence at General Meeting

A Member is deemed present at a general meeting if present by proxy, attorney or Delegate.

6.4 Admission to a General Meeting

- (1) The chair of a general meeting may:
- (a) refuse a non-entitled person admission to the meeting; or
 - (b) require a non-entitled person to leave the meeting.
- (2) A non-entitled person is one who:
- (a) attends with a camera or audio-recording device;
 - (b) attends with a placard or banner;
 - (c) attends with an item that the chair considers dangerous, offensive, or potentially disruptive;
 - (d) refuses to produce, or to permit examination of, any article in the person's possession;
 - (e) behaves or threatens to behave dangerously, offensively, or disruptively;
 - (f) is not an Auditor, a Director or a Member, or the proxy, attorney, Delegate or councillor of a Member.
- (3) A councillor of a Member who is not a proxy, attorney or Delegate of the Member may attend a general meeting as an observer only and may not participate in discussion or debate at the meeting unless invited to speak by the chair.
- (4) A person may attend a general meeting by invitation of the Board; however, the Board may revoke the invitation at any time.
- (5) If the invitation is revoked, the chair of the general meeting may exercise against the person his or her entitlements under *Rule 6.4(1)*.

6.5 Quorum at a General Meeting

A quorum for a general meeting is four Members who are entitled to vote¹² at general meetings.

6.6 Chair of a General Meeting

- (1) The Chair of the Board must preside as the chair of a general meeting if:
- (a) he or she is present within 15 minutes after the time appointed for the meeting; and
 - (b) he or she is willing to act.
- (2) *Rule 6.6(3)* applies at a general meeting if:
- (a) there is no Chair; or
 - (b) the Chair is not present within 15 minutes after the time appointed for the meeting; or
 - (c) the Chair is present within the 15-minute grace period but is not willing to act as chair of the meeting,

¹² Refer to *Rule 6.10(2)* regarding when a Member is not entitled to vote.

- (3) The Members present and entitled to vote must elect as chair of the meeting another Director who is present and willing to act.
- (4) If no other Director is present and willing to act, those Members must elect as the chair of the meeting an attorney or Delegate of a Member.

6.7 Conduct of a General Meeting

- (1) Unless a quorum of Members is present when a general meeting proceeds to business, no business may be transacted at the meeting other than:
 - (a) appointment of the chair under *Rule 6.6(3)*; and
 - (b) adjournment of the meeting.
- (2) If a quorum is not present within 30 minutes after the appointed starting time, the general meeting is adjourned to the same time and place on the next Business Day.
- (3) If a quorum is not present within 30 minutes after the appointed starting time of the adjourned meeting, the meeting may proceed with those Members who were present at the initial meeting; otherwise, the meeting is dissolved.
- (4) If an issue arises at a general meeting, relating to the order of business, procedure, or conduct of the meeting:
 - (a) the chair must resolve the issue; and
 - (b) the chair's decision is final.
- (5) The chair may, and if directed by the meeting must, adjourn the meeting from time to time and from place to place.
- (6) No business may be transacted at an adjourned meeting except the business left unfinished at the meeting from which the adjournment occurred.
- (7) Where a meeting is adjourned for 30 days or longer, notice of the adjourned meeting must be given as if the adjourned meeting were the original meeting.
- (8) Otherwise, it is not necessary to give a notice of adjournment or of the business to be transacted at an adjourned meeting.

6.8 Decisions of a General Meeting

- (1) Subject to this Constitution and the *Corporations Act*:
 - (a) each issue at a general meeting will be decided by a majority of votes cast by the Members present at the meeting and entitled to vote; and
 - (b) each such decision is a decision of the Members.
- (2) The following actions may be taken at a general meeting only where the written approval of all Members is already held (by the Secretary or the Chair):
 - (a) undertaking projects in pursuit of the objects of the Company;
 - (b) determining funding arrangements for the Business (other than Membership fees under *Rule 4.4(1)* or special levies under *Rule 4.5*);
 - (c) materially altering the objects of the Company;
 - (d) materially altering the Business;
 - (e) acquiring a material business; and
 - (f) entering a new business.
- (3) Where a proposed decision will have an impact on an asset owned by a Member, the decision may be passed only where the written approval of the owning Member, in the form of a resolution passed by the Member, is already held (by the Secretary or the Chair).
- (4) If there is an equality of votes upon a motion at a general meeting:
 - (a) the chair does not have a second (casting) vote; and

- (b) the motion is lost.
- (5) A resolution put to the vote of a general meeting must be decided upon a show of hands unless:
 - (a) before the vote is taken; or
 - (b) before or immediately after the result of the show of hands is declared, a poll is demanded by the chair or by a Member present and entitled to vote on the motion.
- (6) The demand for a poll does not prevent the meeting continuing to transact business other than the issue the subject of the demand.
- (7) The demand for a poll may be withdrawn.
- (8) If no poll is properly demanded, or if the demand for a poll is withdrawn:
 - (a) the chair's declaration that a motion has been carried on a show of hands, carried unanimously, carried by a particular majority, or lost; and
 - (b) an entry to that effect in the book containing the minutes of Company proceedings, will be conclusive evidence of what it records, and the number or proportion of votes recorded in favour of or against the motion need not be proved.
- (9) A properly demanded poll must be taken immediately if it concerns:
 - (a) the election of a chair; or
 - (b) a question of adjournment.
- (10) Otherwise, however:
 - (a) the poll may be conducted immediately or after an interval or adjournment;
 - (b) the poll may be conducted in whatever manner the chair directs; and
 - (c) the result of the poll will be the resolution of the general meeting.

6.9 Decisions without a General Meeting

- (1) The Company may pass a resolution (other than a resolution to remove an Auditor) without a general meeting if:
 - (a) each of the Members entitled to vote upon the motion signs an affirmation document; and
 - (b) passage of the resolution otherwise accords with the requirements of the *Corporations Act*.
- (2) For this *Rule 6.9*, an affirmation document is a document that contains:
 - (a) the text of the resolution; and
 - (b) a statement that the Member is in favour of the resolution as specified in that text.

6.10 Voting at a General Meeting

- (1) Subject to this Constitution, at a general meeting of the Company, every Member present (in person or by representation) is entitled to one vote.
- (2) A Member is not entitled to vote at a general meeting if the Member is in arrears of membership fees or other money owing to the Company.
- (3) An objection to a Member's entitlement to vote:
 - (a) must be raised before or at the meeting at which the vote the subject of the objection to is cast; and
 - (b) will be determined by the chair of the meeting, whose decision will be final in the absence of manifest error or patent bias.
- (4) A vote not disallowed by the chair under *Rule 6.10(3)* is valid for all purposes.

6.11 Representation at a General Meeting

- (1) Each Member is entitled to be represented at general meetings by two Delegates appointed by it comprising:
 - (a) the appointing Member's chief executive officer; and
 - (b) a councillor of the appointing Member.
- (2) Subject to this Constitution and the *Corporations Act*, each Member entitled to attend and vote at a general meeting may:
 - (a) vote by a Delegate;
 - (b) vote by an attorney or attorneys; or
 - (c) appoint a person as the Member's proxy, to attend and vote on the Member's behalf at the meeting.¹³
- (3) A proxy, attorney or Delegate may be a person other than a Member.
- (4) A proxy, attorney or Delegate may be appointed:
 - (a) for all general meetings;
 - (b) for any number of general meetings; or
 - (c) for a particular general meeting.
- (5) Unless otherwise specified in the instrument of appointment, or in the *Corporations Act*, an appointment as proxy, attorney or Delegate gives the appointee the authority to act generally at the meeting, and, in particular:
 - (a) to agree to a meeting being convened upon shorter notice than that required by the *Corporations Act* or this Constitution;
 - (b) to speak to any proposed resolution upon which the appointee may vote;
 - (c) to demand or join in demanding a poll on any resolution upon which the appointee may vote;
 - (d) to vote upon any amendment moved to a proposed resolution, and on any motion that the proposed resolution not be put, or any similar motion;
 - (e) to vote upon any procedural motion, including any motion to elect the chair, vacate the chair, or adjourn the meeting;
 - (f) to attend and vote at a re-scheduled or adjourned meeting, or a meeting moved to a new venue.
- (6) The instrument of appointment may specify the manner in which the appointee must vote upon a particular motion, in which case the appointee is not entitled to vote upon the motion otherwise than as directed in the instrument.
- (7) The appointment of Delegates by a Member must specify which one of those Delegates is authorised to exercise the Member's voting entitlement at a general meeting.
- (8) An instrument appointing a proxy, attorney or Delegate need not be in any particular form, however, the instrument:
 - (a) must be in writing;
 - (b) must be valid at law; and
 - (c) must be signed by the appointer or the appointer's attorney.
- (9) A Delegate, proxy or attorney may not vote at a general meeting or on a poll unless the instrument of his or her appointment and the authority under which the instrument is signed (or a certified copy of the instrument and/or the authority):

¹³ This Rule is mandatory under sub-section 249X(1) of the *Corporations Act*.

- (a) have been received at the place specified for receipt of delegation-related instruments in the notice calling the meeting, or, if the notice specified no place, the Company's registered office;
 - (b) have been received at that place before the time the meeting or adjourned meeting is to be held or the poll is to be taken (as the case may be);
 - (c) have been tabled at the meeting or adjourned meeting at which the he or she proposes to vote; or
 - (d) are produced when the poll is taken.
- (10) The Directors may waive all or any of the requirements of *Rules 6.11(7)* and *6.11(9)*.
- (11) In particular, the Directors may accept, upon the production of whatever other evidence they require for establishing the validity of the proxy's, attorney's or Delegate's appointment:
- (a) an oral appointment;
 - (b) an instrument of appointment that is not signed by the appointer or the appointer's attorney (for example, an instrument signed for the appointer "per" another person); and
 - (c) a copy (including a copy sent by facsimile transmission or email) of the instrument of appointment, or of the power of attorney or other authority under which that instrument is signed.
- (12) A vote cast in accordance with the instrument of appointment is valid despite:
- (a) revocation of the appointment; or
 - (b) revocation, before the instrument was executed, of the authority under which the instrument was executed,
- unless notice of the revocation was:
- (c) received at the place specified for receipt of delegation-related instruments in the notice calling the meeting, or, if the notice specified no place, the Company's registered office;
 - (d) received at that place before the time the meeting or adjourned meeting is to be held or the poll is to be taken (as the case may be);
 - (e) tabled at the meeting or adjourned meeting at which the he or she proposes to vote; or
 - (f) produced when the poll is taken.
- (13) The appointment of a proxy, attorney or Delegate is not revoked by the appointer attending and participating in the general meeting.
- (14) However, if the appointer votes on a motion, the proxy, attorney or Delegate is not entitled to vote upon the motion, and must not vote upon it as the appointer's proxy, attorney or Delegate.

PART 7 DIRECTORS

7.1 Appointment and Removal of Directors

- (1) The Company will have no fewer than three Directors and no more than twelve Directors.
- (2) Each Member may appoint one Director.
- (3) The Board may also appoint one Director who is not a councillor, chief executive officer or other employee of a Member.
- (4) A Member or the Board, as applicable, may:
 - (a) remove from office a Director it has appointed;
 - (b) appoint a person to replace a Director it has removed from office.
- (5) For clarity, if a Director appointed by a Member or the Board vacates or is removed from office as a Director, the Member or Board, as applicable, must appoint a person to replace that Director.
- (6) The provisions of Rule 7.2(1) do not apply to a Director appointed by the Board under Rule 7.1(3)

7.2 Directors – General Qualification

- (1) Subject to Rule 7.1(6), a person is qualified to become and remain a Director only if that person is and remains a councillor or the Chief Executive Officer of a Member.
- (2) A person holding office as a Director vacates that office immediately upon:
 - (a) his or her death;
 - (b) his or her resignation;
 - (c) him or her ceasing to be a councillor or Chief Executive Officer of a Member;
 - (d) the Member who appointed the Director ceasing to be a member of the Company; or
 - (e) the conclusion of the third consecutive Directors meeting that the Director has failed to attend, without the Board's leave.

7.3 Chair of the Board

- (1) The Members:
 - (a) must elect a Director as Chair of the Board at each annual general meeting of the Company; and
 - (b) may terminate an appointment as Chair.
- (2) The Chair will hold that position until the next annual general meeting of the Company.
- (3) The Chair may resign as chair via notice to the other Directors.
- (4) The Members must appoint a new Chair in accordance with *Rule 7.3(1)* if the Chair:
 - (a) dies;
 - (b) resigns as Chair;
 - (c) ceases to be a Director; or
 - (d) is unable to continue discharging his or her responsibilities as Chair.¹⁴

7.4 Deputy Chair of the Board

- (1) The Members:
 - (a) may elect a Director as Deputy Chair of the Board; and
 - (b) may terminate an appointment as Deputy Chair.
- (2) The Deputy Chair will hold that position until the next annual general meeting of the Company.
- (3) The Deputy Chair must chair a Board meeting if the Chair:
 - (a) is absent from the meeting; or
 - (b) is unwilling to chair the meeting,
- (4) The Deputy Chair will possess for that meeting, in addition to his or her existing entitlements as a Director, all of the Chair's entitlements.
- (5) If the Deputy Chair is required to chair a Board meeting, but:
 - (a) is absent from the meeting; or
 - (b) is unwilling to chair the meeting,the meeting will be adjourned to a time and place agreed by the Directors present at the meeting.
- (6) The Deputy Chair may resign as deputy chair via notice to the other Directors.
- (7) The Directors must appoint a new Deputy Chair in accordance with *Rule 7.4(1)* if the Deputy Chair:
 - (a) dies;

¹⁴ Examples: Death, loss of capacity, removal as a Director.

- (b) resigns as Deputy Chair;
- (c) ceases to be a Director; or
- (d) is unable to continue discharging his or her responsibilities as Deputy Chair.¹⁵

7.5 Notification of Appointment and Removal

- (1) An appointee as Director must give the Company prompt notice of the appointment.
- (2) The Directors must give the Company prompt notice of a resignation or removal from office as a Director.
- (3) The notice will be properly given if given to the Secretary.

7.6 Membership Qualification (Unnecessary)

A Director may attend and speak at a general meeting of the Company despite not being a Member or a Delegate.

7.7 Additional Positions

- (1) A Director may hold another office or position in the Company, other than Auditor, in conjunction with his or her directorship.
- (2) The Director will not be entitled to remuneration for his or her services in that office or position.
- (3) Otherwise, however, the Director may be appointed to that office or position upon such terms as the Directors consider appropriate.

7.8 Termination of Employment

If a Director is also employed by the Company, and the Board terminates the employment for breach of the employment terms:

- (1) the person's appointment as a Director also terminates; and
- (2) the person is ineligible for reappointment as a Director.

7.9 Directors' Powers and Duties

- (1) The Directors are responsible for managing the Business.
- (2) They may exercise, to the exclusion of the Company in general meeting, all of the Company powers that the *Corporations Act* or this Constitution does not require exercised by general meeting.
- (3) Before the end of each financial year, the Directors must adopt a strategic plan for the Company, which plan must include a plan of action relating to such of the following issues as are relevant to the Business:
 - (a) business strategy;
 - (b) product and service strategy;
 - (c) pricing policy;
 - (d) personnel policy and hiring plans;
 - (e) investment strategy;
 - (f) financing requirements for working capital, investment, and expansion;
 - (g) profit objectives;
 - (h) a marketing plan;
 - (i) financial budgets;
 - (j) business policies;

¹⁵ Examples: Death, loss of capacity, removal as a Director.

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- (k) financial and non-financial performance targets;
 - (l) any proposed major disposal or divestment of assets; and
 - (m) key performance indicators determined by the Board from time to time.
- (4) The Managing Director (if any) is responsible for day-to-day management of the Company, subject to the Board's instructions.
- (5) Decisions that are not items of day-to-day Company management must be made at Board meetings.
- (6) Unless the Board determines otherwise, the Directors must ensure that the Company:
- (a) maintains its assets in good working order and condition (reasonable fair wear and tear, and damage from unforeseen circumstances, excepted), and repairs and replaces them where necessary;
 - (b) complies with all agreements to which it is a party;
 - (c) otherwise pays its debts as and when they fall due;
 - (d) adequately insures all of its insurable assets, for their full replacement value and on a re-instatement or replacement basis, against loss, damage and destruction from any cause against which it is prudent to insure;
 - (e) maintains adequate public risk insurance;
 - (f) maintains workers compensation insurance for all of its employees;
 - (g) (otherwise) maintains adequate insurance concerning risks against which a prudent person, holding assets and conducting a business similar to the Company's, would insure;
 - (h) complies with the requirements of all Acts relating to conduct of the Business and the administration of its affairs;
 - (i) maintains its corporate existence; and
 - (j) conducts the Business in accordance with its adopted strategic plan.
- (7) The Directors also must ensure that the Company maintains books and records, including minutes of Directors and Members meetings, in compliance with:
- (a) all applicable rules of general law;
 - (b) all applicable Acts, particularly the *Corporations Act* and the *Income Tax Acts*; and
 - (c) generally-accepted accounting principles and best practices.
- (8) Further, the Directors must ensure that the Company provides in its accounts for payment of all taxes it incurs, as they are incurred, after deducting any taxation credits arising from losses and adjustments in previous years.
- (9) The object of *Rule 7.9(8)* is to ensure that no provision is required in the Company accounts for losses to be carried forward or to be set off against profits in future years.
- (10) Without limiting *Rule 7.9(1)*, the Directors may exercise all of the Company's powers:
- (a) to borrow or otherwise to raise money;
 - (b) to charge Company assets; or
 - (c) to give other security for a debts, liabilities, or obligations of the Company or other persons.
- (11) The Directors may determine how negotiable instruments are signed, drawn, accepted, endorsed, or otherwise processed on behalf of the Company.
- (12) The Directors may pay from the Company's funds all of the expenses of:
- (a) promoting, forming, and registering the Company; and
 - (b) vesting in it of the assets it acquires.

- (13) The Directors may:
- (a) appoint or employ any person as an officer, agent, or attorney of the Company, for such purposes, and upon such terms, as they consider appropriate;
 - (b) authorize an officer, agent, or attorney to delegate any of the powers, discretions, and duties the Company has vested in that person; and
 - (c) (subject to any Act or rule of general law, and to any contract between the Company and that person) remove or dismiss at any time an officer, agent, or attorney of the Company, with or without cause.
- (14) A power of attorney granted by the Company may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Directors consider appropriate.

7.10 Proceedings of Directors

- (1) The Directors may:
- (a) meet for the dispatch of Company business as they consider appropriate; and
 - (b) adjourn and otherwise regulate their meetings as they consider appropriate.
- (2) Contemporaneous linkage of Directors, via telephone or other electronic medium, constitutes a meeting (a *Remote Meeting*) of the Board if the number of Directors so linked is sufficient to constitute a quorum.
- (3) The Rules relating to Directors meetings apply, to the extent that they can do so, and with such alterations as are necessary, to Remote Meetings.
- (4) A Director participating in a Remote Meeting will be regarded as present in person at the meeting.
- (5) A Remote Meeting will be regarded as held at the place determined by the Chair if at least one of the participating Directors is at that place throughout the meeting.

7.11 Convening a Board Meeting

- (1) The Chair may convene a Board meeting whenever he or she considers it appropriate.
- (2) A Secretary must convene a Board meeting if requested in writing to do so by a Director.

7.12 Notice of Board Meeting

- (1) Subject to the requirements of this Constitution: unless all Directors agree otherwise, notice of a Board meeting must be given at least two Business Days before the day of the proposed meeting.
- (2) The notice must be given to each person who is:
- (a) a Director, other than a Director on leave of absence approved by the Directors; or
 - (b) an Alternate Director appointed under *Rule 7.17* by a Director on leave of absence that has been approved by the Directors.
- (3) The notice of a Board meeting:
- (a) must specify the time and place of the meeting;
 - (b) must state the nature of the business to be transacted at the meeting, and include any applicable explanatory and supporting documents;
 - (c) may be given (despite *Rule 7.12(1)*) immediately before the meeting if the Directors agree;
 - (d) may be given by personal delivery, post, telephone, facsimile transmission, email, or by other electronic means; and
 - (e) will be regarded as having been given to an Alternate Director if it is given to the Director who appointed that Alternate Director.

- (4) Unless all Directors agree otherwise, the Board must not pass a resolution unless the notice of meeting included:
 - (a) notice of the subject-matter of that resolution; and
 - (b) the applicable explanatory and supporting documentation (if any).
- (5) A Director or Alternate Director may waive notice of a Board meeting by notifying the Secretary to that effect in person, or by post, telephone, facsimile transmission, email, or other electronic means.
- (6) Where a Director or Alternate Director does not receive the notice of a Board meeting to which he or she is entitled under *Rule 7.12(1)*, the failure will not invalidate anything done (including any resolution passed) at the meeting if:
 - (a) non-receipt is the result of an accident or error (including an accident or error resulting in the notice of meeting not having been sent);
 - (b) he or she waives under *Rule 7.12(5)*, before or after the meeting, the entitlement to receive notice of that meeting;
 - (c) he or she has agreed, or he or she agrees, to what is done at the meeting; or
 - (d) he or she attends the meeting.
- (7) That a Director or Alternate Director does not receive the notice of a Board meeting to which he or she is entitled under *Rule 7.12(1)*, does not invalidate an action taken at the meeting (including the passage of a resolution) if, before or after the meeting, he or she notifies the Secretary in person, or by telephone, post, facsimile transmission, email, or other electronic means, that he or she agrees to the action.
- (8) Attendance at a Board meeting waives the attending Director's or Alternate Director's entitlement to object to non-receipt of a notice of the meeting.
- (9) If the attendant is an Alternate Director, the Director who appointed him an Alternate Director, and any other Alternate Director appointed by that Director, is also taken to waive his or her entitlement to object to non-receipt of a notice of the meeting.

7.13 Quorum at Board Meeting

- (1) No business may be transacted at a Board meeting unless a quorum of Directors is present at the time the business is transacted.
- (2) Subject to *Rule 7.13(3)*, the quorum for a Board meeting is the number of Directors equal to a simple majority of the number of Members.
- (3) If a quorum is not present within 30 minutes after the appointed starting time, the meeting is adjourned to the same time and place on the next Business Day.
- (4) If a quorum is not present within 30 minutes after the appointed starting time of the adjourned meeting, the meeting may proceed with those Directors who were present at the initial meeting; otherwise the meeting is dissolved.
- (5) If there is a vacancy in an office of Director, the continuing Directors may transact Company business.
- (6) However, the Members must appoint further Directors in accordance with this Constitution as soon as possible if the number of Directors in office:
 - (a) becomes insufficient to constitute a quorum at a Board meeting; or
 - (b) becomes fewer than the minimum number of Directors fixed under this Constitution.
- (7) Until the further Directors are appointed, the continuing Directors may act only to the extent that an emergency requires.

7.14 Director Presence at Meetings

A Director is deemed present at a Board meeting, a committee meeting, or a general meeting:

- (1) if he or she present in person; or

- (2) (if he or she is not present in person) his or her Alternate Director is present in person.

7.15 Board Decisions

- (1) A Board meeting at which a quorum is present may exercise any of the authorities, powers, and discretions vested in or exercisable by the Board under this Constitution.
- (2) The Board may make decisions by majority vote.
- (3) Each Director entitled to vote at a Board meeting has one deliberative vote.
- (4) If there is an equality of votes upon a motion, the chair of the meeting has a second (casting) vote.

7.16 Documented Board Resolutions

- (1) An action will be regarded as having been taken at a Board meeting if:
 - (a) a document containing a statement that the action has been taken (for example, that a resolution has been passed) bears the signed assents of a sufficient number of Directors to constitute a quorum and pass a resolution at a Board meeting; and
 - (b) the assenting Directors would have constituted a quorum at a Board meeting held to consider the action taken.
- (2) For *Rule 7.16(1)*:
 - (a) if the Directors endorsed their assents on the same day, the meeting will be regarded as having been held on that day, at the time at which the last assent was endorsed upon document;
 - (b) if the Directors endorsed their assents on different days, the meeting will be regarded as having been held on the day upon which, and at the time at which, the last assent was endorsed upon document;
 - (c) two or more counterparts in identical terms, each of which bears the assent of one or more Directors, will be regarded as constituting an assent document; and
 - (d) a Director may assent to the relevant action by signing the assent document, or by notifying the Secretary of his or her assent to the document contents in person, or via post, telephone, facsimile transmission, email, or other electronic means.
- (3) Where, for *Rule 7.16(1)*, a Director signifies assent to the contents of a document otherwise than by signing the document he or she must sign the document, as confirmation, at the next Board meeting he or she attends.
- (4) However, failure to sign the document does not invalidate the act to which the document relates.

7.17 Alternate Directors

- (1) Each Member may appoint an Alternate Director, to act in place of the Director appointed by that Member.
- (2) An Alternate Director need not be a Director but must satisfy the general requirements for a Director prescribed at *Rule 7.2*.
- (3) One person may be an Alternate Director to more than one Primary Director.
- (4) An Alternate Director may attend and vote in the Primary Director's stead if the Primary Director:
 - (a) does not attend a Board meeting; or
 - (b) is not available to participate in a resolution process under *Rule 7.16*.
- (5) In addition to any vote to which he or she is entitled as a Director in his or her own right, an Alternate Director is entitled also to a separate vote for each Primary Director he or she represents.
- (6) In the absence of the Primary Director:
 - (a) an Alternate Director may exercise any power that the Primary Director may exercise; and

- (b) exercise of that power by the Alternate Director will be regarded as exercise of the power by the Primary Director.
- (7) The office of an Alternate Director is vacated when the Primary Director vacates office as a Director.
- (8) The appointment of an Alternate Director may be terminated at any time by the appointer despite the period of the Alternate Director's appointment not having expired.
- (9) The appointment of an Alternate Director, or the termination of that appointment:
 - (a) must be in writing, dated and signed by the appointer; and
 - (b) is not effective until the Secretary receives notice of the appointment or termination.
- (10) Alternate Directors will not be considered in determining the minimum or maximum number of Directors permitted under this Constitution.
- (11) In determining whether a quorum is present at a Board meeting, an Alternate Director who attends the meeting is to be counted as a Director for each Primary Director on whose behalf the Alternate Director attends the meeting.
- (12) An Alternate Director is entitled to such remuneration as the Board considers appropriate, either in addition to or in reduction of the remuneration payable to the Primary Director for whom the Alternate Director substitutes. Otherwise, the Alternate Director is not entitled to remuneration for his or her service in that capacity.
- (13) While acting as a Director, an Alternate Director:
 - (a) is responsible to the Company for his or her own acts; and
 - (b) is not the Primary Director's agent.

7.18 Committees of Directors

- (1) The Board may appoint a committee consisting of the Directors it considers appropriate.
- (2) The Board may delegate any of its powers to the committee of Directors.
- (3) A committee to which the Board delegates powers must exercise the delegated powers according to any directions from the Board.
- (4) The Rules that apply to Directors meetings and resolutions apply, to the extent that they can do so, and with such alterations as are necessary, to meetings and resolutions of a committee of Directors.

7.19 Delegation to Individual Director

- (1) The Board may delegate any of its powers to a single Director.
- (2) A Director to whom the Board delegates powers must exercise those powers according to any directions the Board gives.

7.20 Validity of Acts

- (1) This *Rule 7.20* applies to:
 - (a) an act done by a person as a Director; or
 - (b) an act done in or pursuant to a meeting of the Board, or a committee of Directors, attended by a person acting as a Director.
- (2) The act is not invalid merely because:
 - (a) the person's appointment as a Director is defective;
 - (b) the person is disqualified from holding office as a Director, or has vacated the office; or
 - (c) the person is not entitled to vote, at the meeting of the Board or committee of Directors.
- (3) However, the act is invalid if the Directors or committee (as the case may be) knew of the defect, disqualification, or disentitlement when the act was done.

7.21 Interested Directors

- (1) A Director may be a director or other officer of, or be otherwise interested in, a corporation other than the Company (a *Third Corporation*), including:
 - (a) a corporation promoted by the Company;
 - (b) a corporation of which the Company is a member; or
 - (c) a corporation with which the Company deals.
- (2) The Director is not accountable to the Company for remuneration or other benefits received from that corporation, or from his or her interest in that corporation.
- (3) The Directors may exercise, in any manner they consider appropriate, the voting entitlements conferred by the Company's membership of any corporation (a *Third Corporation*).
- (4) In particular, the Directors may exercise those voting entitlements by voting in favour of a resolution:
 - (a) appointing a Director as a director or other officer of the Third Corporation; or
 - (b) for the payment of remuneration to the directors or other officers of the Third Corporation.
- (5) If permitted by law, a Director may vote as *Rule 7.21(4)* permits despite the fact that:
 - (a) he or she is a director or other officer of the Third Corporation, or his or her appointment as such might be pending; and
 - (b) he or she is, accordingly, personally interested in the votes.
- (6) The mere fact that a person is a Director does not disentitle the person:
 - (a) to sell property to the Company or purchase property from it;
 - (b) to lend money to the Company or borrow any money from it, with or without interest or security;
 - (c) to guarantee for commission or profit the repayment of money borrowed by the Company;
 - (d) to underwrite or guarantee, for commission or profit, a subscription for securities in a corporation the Company promotes, or in which the Company is interested as a member or otherwise;
 - (e) to accept employment by the Company or to act on behalf of the Company in a professional capacity (other than as Auditor); or
 - (f) otherwise to deal with the Company.
- (7) That a Director:
 - (a) holds office as a Director; or
 - (b) is bound by fiduciary obligations arising from his or her position as a Director,is not sufficient, considered alone:
 - (c) to render void or voidable; or
 - (d) to render the Director liable to account to the Company for a profit realized from, a contract or arrangement:
 - (e) between the Director and the Company; or
 - (f) between the Company and another party, in which the Director may be interested.
- (8) A Director interested in a contract or arrangement, or a proposed contract or arrangement, involving the Company must declare the interest to the Board unless the interest is obvious.
- (9) Subject to *Rule 10.1(6)*: despite possessing such an interest, a Director:
 - (a) may be counted in determining whether a quorum is present at a Board meeting to consider the contract or arrangement, or the proposed contract or arrangement;

- (b) may vote upon the contract or arrangement, or the proposed contract or arrangement, or upon any matter arising from either; and
- (c) may sign any document relating to the contract or arrangement, or the proposed contract or arrangement, that the Company may execute.

PART 8 EXECUTIVE OFFICERS

8.1 Managing Director

- (1) The Board may appoint a Director to the office of Managing Director.¹⁶
- (2) An appointment as Managing Director automatically terminates if the appointee ceases to be a Director.

8.2 Company Secretaries

- (1) The Directors:
 - (a) must appoint at least one Secretary; and
 - (b) may appoint additional Secretaries.
- (2) The Directors may not appoint the Managing Director as a Secretary.

8.3 Executive Officers Generally

- (1) Reference to an executive officer in this *Rule 8.3*, is a reference to a Managing Director or a Secretary appointed under this Part 8.
- (2) An executive officer may be appointed upon terms the Directors consider appropriate.
- (3) Subject to any contract between the Company and the executive officer, the Directors may remove or dismiss an executive officer at any time, with or without cause.
- (4) The Directors may:
 - (a) invest an executive officer with the powers, discretions, and duties (including powers, discretions, and duties vested in or exercisable by the Directors) that they consider appropriate;
 - (b) withdraw, suspend, or vary an executive officer's powers, discretions, and duties; and
 - (c) authorize the executive officer to delegate any of his or her powers, discretions, and duties.
- (5) An executive officer's act is not invalid merely because:
 - (a) his or her appointment as an executive officer is defective; or
 - (b) he or she is not entitled to be appointed an executive officer;however, it is invalid if he or she is aware of the defect or non-entitlement when he or she takes the action.

PART 9 MINUTES AND RECORDS

9.1 Minutes of Meetings

- (1) The Board must ensure that minutes are recorded of proceedings and resolutions at:
 - (a) each general meeting of the Members; and
 - (b) each meeting of Directors and of each committee of Directors (including, for clarity, each Remote Meeting).¹⁷

¹⁶ Refer to Rule 7.9(4) Subject to Board instructions, the Managing Director is responsible for day-to-day management of the Company.

¹⁷ Refer to Rule 7.10(2) et seq.

- (2) The minutes must be recorded:
 - (a) within one month after each meeting is held;
 - (b) in a book kept for the purpose.

9.2 Minutes of Non-meeting Members Resolutions

- (1) The Board also must ensure that minutes are recorded of each resolution passed by Members without a meeting.¹⁸
- (2) The minutes must be recorded:
 - (a) within one month after the resolution is passed;
 - (b) in a book kept for the purpose.

9.3 Confirmation of Minutes

- (1) The minutes of a meeting must be signed within a reasonable period following the meeting.
- (2) The minutes must be signed by:
 - (a) the chair of the meeting; or
 - (b) the chair of the next meeting.
- (3) The minutes recording a Company resolution passed without a Members meeting must be signed by a Director within a reasonable period after the resolution is passed.

9.4 Evidence

A minute is prima facie evidence¹⁹ of the proceeding or resolution, or declaration to which it refers if:

- (1) it is recorded in accordance with *Rule 9.1* or *Rule 9.2* (as applicable); and
- (2) it is signed in accordance with *Rule 9.3*.

9.5 Inspection of Records

- (1) The Board must ensure the minute books for general meetings are open for inspection by Members without charge.
- (2) Subject to *Rule 9.1(1)*, the Board may determine:
 - (a) whether and, if so, to what extent; and
 - (b) at what times and places; and
 - (c) under what conditions,the Company's minute books, accounting records, and other documents, or any of those items, will be open for inspection by Members.
- (3) A Member may not inspect Company books, accounting records or other documents except as:
 - (a) provided by law; or
 - (b) authorized by the Board or this Constitution.

PART 10 COMPANY INCOME AND OTHER ASSETS

10.1 Use and Application Generally

- (1) The Company's income and property must be used solely for promoting its objects.²⁰

¹⁸ Refer to *Rule 6.9*.

¹⁹ *Prima facie evidence is evidence that, in the absence of evidence to the contrary, suffices as proof of the fact or proposition in question. It is to be contrasted with conclusive evidence, which is evidence that is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing that it overbears all proof to the contrary and established the fact or proposition beyond any reasonable doubt.*

-
- (2) Allocation of Company money or property:
 - (a) must accord with the Company's objectives; and
 - (b) must not be influenced by the expressed preference or interest of a donor to the Company.
 - (c) None of the Company's income or property is to be distributed to Members, directly or indirectly.
 - (3) None of the Company's income or property is to be:
 - (a) distributed to Members, directly or indirectly; or
 - (b) paid to its Directors or Alternate Directors as fees for services to the Company.
 - (4) However, for clarity, no distribution occurs where a Member is paid from Company funds:
 - (a) reasonable compensation for services the Member has rendered to the Company in good faith and with Board approval; or
 - (b) a sum to reimburse an expense the Member has incurred on behalf of the Company in good faith and with Board approval.
 - (5) Further, no payment of fees occurs where a Director or Alternate Director is paid from Company funds to reimburse an expense the Director has incurred on behalf of the Company in good faith and with Board approval.
 - (6) If, at a Board meeting or a general meeting, there is tabled a motion is to approve a payment under either of *Rules 10.1(3) and 10.1(5)*, the person the object of motion, and any other Director, Alternate Director, or Member who is related to that person, is not entitled:
 - (a) to propose or second the motion;
 - (b) to speak to the motion;
 - (c) to vote on the motion; or
 - (d) to be present at the meeting when the motion is put to the vote.
 - (7) For clarity, no payment from Company funds may be made to a Director or Alternate Director without Board approval.

10.2 Distribution of Surplus upon Liquidation

- (1) This *Rule 10.2* applies if:
 - (a) the Company goes into liquidation; and
 - (b) surplus Company assets remain after the satisfaction of its liabilities (including the liquidation costs).
- (2) The liquidator must transfer the surplus assets to an institution in Australia:
 - (a) that has objects similar to the Company's objects;
 - (b) that does not operate for profit or gain to its members and that has a constitution prohibiting the distribution of its income and assets to its members; and
 - (c) that is a charitable institution and deductible gift recipient for the purposes of any Commonwealth taxation Act and a charitable institution for any Queensland taxation Act.
- (3) A receipt issued by the recipient institution, with a written undertaking by the institution to use the transferred assets for the pursuit of its objects, will discharge to the liquidator's responsibility for the transferred assets.

10.3 Member Contributions to Assets

- (1) This *Rule 10.3* applies to each person:
 - (a) who is a Member when the Company is placed into liquidation; or

²⁰ Refer to Part 3.

- (b) who was a Member during the 365 days ending on the day the Company is placed into liquidation.
- (2) The person must contribute to the Company's assets to facilitate:
 - (a) satisfaction of the liabilities the Company incurred before the person ceased to be a Member;
 - (b) payment of the liquidation costs; and
 - (c) adjustment of the contributories' entitlements.
 - (d) However, the contribution will not exceed \$20.00.

PART 11 INDEMNITY AND INSURANCE

11.1 Affected Persons

Rules 11.2 and 11.3 apply:

- (1) to each person who is or has been a Director (including a Managing Director) or an Alternate Director;
- (2) to every other officer or former officer of the Company to whom the Board determines they should apply; and
- (3) if the Board so determines, to any Auditor or former Auditor.

11.2 Indemnity

- (1) To the extent permitted by law, the Company must indemnify against the losses and expenses he or she lawfully incurs in that capacity:
 - (a) every Director and Alternate Director;
 - (b) every Auditor; and
 - (c) every other Company officer.
- (2) Included among those losses and expenses are:
 - (a) expenses borne of or arising out of liability for negligence;
 - (b) the reasonable costs and expenses incurred in defending proceedings from which judgment is given in the officer's favour or from which he or she is acquitted of a charge; and
 - (c) the reasonable costs and expenses incurred in connection with an application upon which a court grants the officer relief under the *Corporations Act*.
- (3) Excluded from those losses and expenses, however, are:
 - (a) pecuniary penalties incurred under *Corporations Act* section 1317G; and
 - (b) compensation payable under *Corporations Act* section 1317H; and
 - (c) expenses borne of liability incurred to a person other than the Company, which arise out of conduct lacking good faith.
- (4) If requested by a given officer, the Company must execute a formal deed of indemnity in his or her favour, to secure the Company's obligation under *Rule 11.2(1)*.

11.3 Insurance

To the extent that the law permits it to do so, the Company may:

- (1) insure an officer to whom *Rule 11.2* applies; or
- (2) pay the premiums for insurance that the officer obtains, against the losses and liabilities the subject of *Rule 11.2*.

11.4 Ambit of Entitlements

- (1) The indemnity in *Rule 11.2* is a continuing obligation, remaining enforceable if an eligible officer ceases to be a Company officer or an Auditor.
- (2) The indemnity applies to losses and expenses incurred before and after *Rule 11.2* is adopted, but to the extent only that a relevant loss or expense is not covered by insurance proceeds.

PART 12 PROVISION OF INFORMATION

12.1 Periodic Reports

- (1) Subject to *Rules 12.1(3) to 12.1(6)*, each Director and each Member must do whatever is reasonable to ensure that information or material concerning the operations of the Company is promptly made available for inspection following an inspection request:
 - (a) from the Board; or
 - (b) from a Member that has not appointed personally a serving Director.
- (2) A request for the provision of information under this *Rule 12.1* must be directed to a Secretary.
- (3) The following reports must be available as soon as is practical, but not later than 14 days, after the end of each month:
 - (a) an unaudited profit and loss statement;
 - (b) a monthly cash flow statement (with projections for the ensuing 12 months) for the month and for the current financial year to date; and
 - (c) an unaudited balance sheet as at the end of the month.
- (4) Each report must be prepared in accordance with generally-accepted accounting principles and best practices consistently applied.
- (5) An audited profit and loss statement and an unaudited balance sheet for the financial year must be available as soon as is practical, but not later than 90 days, after the end of each financial year.
- (6) Information or material, other than information and material the subject of *Rules 12.1(3) and 12.1(5)*, requested by a Director or a Member to enable the Company or the Member (respectively) to satisfy a reporting obligation under an Act, must be made available as soon as is practical following the request.
- (7) A Member must bear the cost to the Company of providing information the Member requests under *Rule 12.1(6)*.

12.2 Access to Information

- (1) For this *Rule 12.2*, an *Eligible Person* is
 - (a) a Member or a Delegate;
 - (b) a current Director; or
 - (c) a former Director against whom a claim has been made in his or her capacity as a Director.
- (2) Upon reasonable notice, at any reasonable time, and as often as the Board considers reasonable, the Company must permit an Eligible Person:
 - (a) to inspect Company property;
 - (b) to inspect and take copies of any document relating to the Business, including its accounts; and

- (c) to discuss the Company's affairs, including particularly its finances and accounts, with the Company's officers and the Auditor.

12.3 Confidentiality

- (1) Subject to *Rules 12.2 and 12.5*, neither a Director or other Company officer nor a Member may:
 - (a) disclose Confidential Information; or
 - (b) use Confidential Information in a manner that may cause loss or other harm to the Company or its Members.
- (2) Each Director and Member must use its best endeavours to ensure that:
 - (a) nobody discloses Confidential Information; or
 - (b) nobody uses Confidential Information in a manner that may cause loss or other harm to the Company or any of its Members.

12.4 Permitted Disclosure

Confidential Information may be disclosed:

- (1) with the consent of the Board (where the Company owns the information or is entitled to the benefit of the confidence);
- (2) with the consent of all persons entitled to the benefit of the confidence (where more than one person is so entitled, whether or not the Board is one of those persons);
- (3) if it belongs solely to the Company and its disclosure is necessary in the ordinary course of transacting the Business;
- (4) if its disclosure is required by law;
- (5) if it comes into the public domain other than by a breach of this *Rule 12.2*;
- (6) (subject to *Rule 12.5*) to the Company's banker or professional adviser; and
- (7) if its disclosure is required by an Act.

12.5 Confidentiality Agreements

Confidential Information may be disclosed to a banker or professional adviser only if that person first undertakes to the Company, by deed, to comply with obligations similar to those contained in *Rules 12.3, 12.2* and this *Rule 12.5*, amended as necessary.

PART 13 EXECUTION OF DOCUMENTS

13.1 Manner of Execution

The Company executes an instrument, including a deed, by:

- (1) the signatures of two Directors;
- (2) the signatures of a Director and a Secretary;
- (3) the signature of a Director who is the only Director and the only Secretary (but he or she must state next his or her signature that he or she signs in the capacity of sole Director and sole Secretary); or
- (4) the signature of a person whom the Board, by resolution, authorizes to sign.

13.2 Common Seal

- (1) The Company may have a common seal.
- (2) *Rules 13.3 to 13.6* apply if the Company adopts a common seal.

13.3 Safe custody of Seal

The Directors must provide for the safe custody of the common seal.

13.4 Use of Seal

- (1) The common seal must be used only by the authority of:
 - (a) the Directors; or
 - (b) a committee of the Directors, which the Board has authorized to use of the seal.
- (2) The authority to use the common seal may be given before or after the seal is used.
- (3) Until the Board determines otherwise, every instrument to which the common seal is affixed must be signed by:
 - (a) two Directors;
 - (b) a Director and a Secretary;
 - (c) a Director and another person appointed by the Board to countersign the instrument or a class of instruments to which the instrument belongs;
 - (d) a Director who is the only Director and the only Secretary (but he or she must state next to his or her signature that he or she witnesses the affixation in the capacity of sole Director and sole Secretary); or
 - (e) a person authorized under *Rule 13.1(4)*.

13.5 Seal Register

- (1) If it adopts a common seal, the Company must keep a seal register.
- (2) If the Company keeps a seal register, the Secretary must enter in the register the particulars of every instrument to which the common seal is affixed, specifying in each instance:
 - (a) the date of the instrument;
 - (b) the names of the parties to the instrument;
 - (c) a short description of the instrument; and
 - (d) the names of the signatories under *Rule 13.4(3)*.
- (3) The register must be produced at Board meetings for confirmation of common seal use since confirmation was last effected under this *Rule 13.5*.
- (4) Non-compliance with either of *Rules 13.5(2)* and *13.5(3)* does not invalidate an instrument to which the common seal is otherwise properly affixed.

13.6 Duplicate Common Seal

- (1) The Company may have one or more duplicate common seals for use in place of its common seal outside the state or territory where its common seal is kept.
- (2) Each duplicate seal must be a facsimile of the common seal with the addition on its face of:
 - (a) "duplicate seal"; and
 - (b) the name of the place where it is to be used.
- (3) An instrument sealed with a duplicate common seal is to be regarded as having been affixed with the Company's common seal.

PART 14 NOTICES

14.1 Formal Requirements

- (1) This Part 14 governs notices under this Constitution unless another provision of the Constitution expressly provides otherwise.
- (2) A notice must be in writing.
- (3) The party giving the notice must sign the notice.

- (4) If the party is composed of more than one person:
 - (a) the notice need not be signed by all of those persons if it expressly states that the signatory is, or signatories are, authorized by all of those persons to sign the notice; and
 - (b) the recipient of the notice need not enquire into the validity of the authorization.

14.2 Service of Notices

- (1) A notice may be given:
 - (a) by delivering it to the intended recipient's Address for Notices; or
 - (b) by posting it to the intended recipient at its Address for Notices; or
 - (c) by transmitting it via facsimile to the intended recipient at its Address for Notices.
- (2) A notice also may be given by electronic mail, but only where the intended recipient has:
 - (a) requested or authorized the sender, in writing, to deliver notices (or a specific notice or type of notice) by that means; and
 - (b) has specified clearly in the written request or authorization the recipient's electronic mail address.
- (3) A notice posted to an address outside Australia must be sent via airmail.

14.3 Receipt of Notices

- (1) A notice that is delivered or posted is deemed received:
 - (a) if delivered: at the moment of delivery;
 - (b) if posted to an address in Australia: 2 Business Days after posting;
 - (c) if posted to an address outside Australia: 5 Business Days after posting.
- (2) A notice sent by facsimile transmission is deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 5:00pm.
- (3) If the confirmation report discloses receipt of the transmission after 5:00pm, the notice is deemed received at 8:30am on the Business Day following the date of receipt disclosed in the report.
- (4) A confirmation report is, for a facsimile transmission, a transmission confirmation report produced by the sender's facsimile machine:
 - (a) containing the identification code of the intended recipient's facsimile machine; and
 - (b) indicating that the transmission was received without error.
- (5) A notice sent by email or other electronic means other than facsimile is deemed received on the Business Day following the day upon which it is sent, unless the sender receives confirmation, by whatever means, that the message:
 - (a) has not been received by of the intended recipient; or
 - (b) has been received in corrupt, incomplete, or illegible form.
- (6) A notice received on a day that is not a Business Day is deemed received at 8:30am on the Business Day following the day of receipt.

14.4 Company Signature

A signature upon a notice from the Company to a Member may be:

- (1) hand-written; or
- (2) a facsimile, printed or affixed by mechanical or other means.

14.5 Notices via Facsimile and Electronic Mail

The fact that a person gives the Company a facsimile number or electronic mail address for notices to that person does not oblige the Company to give a notice to that person by facsimile transmission or other electronic means.

14.6 Evidence of Notice

A certificate signed by a Director or Secretary, stating that a notice has been given in accordance with this Constitution is prima facie evidence of that fact.

PART 15 MISCELLANEOUS

15.1 Exercise of Statutory Powers

The Company may do anything that the *Corporations Act* permits a company limited by guarantee to do, so long as the act is:

- (1) authorized by this Constitution;
- (2) done in a manner permitted by the *Corporations Act*.

15.2 Prohibition and Enforceability

- (1) If a provision of this Constitution, or application of the provision, is prohibited in a particular place, the provision or application in that place is ineffective only to the extent of the prohibition.
- (2) If a provision of this Constitution, or application of the provision, is void, illegal or unenforceable in a particular place:
 - (a) the provision or its application does not become void, illegal or unenforceable in another place; and
 - (b) the remaining provisions of the Constitution do not become void, illegal or unenforceable in any place,merely because of that fact.

15.3 Communications between Parties

- (1) Neither an approval nor a consent or permission given under the Constitution binds the person giving it unless that person gives it in writing.
- (2) An appointment or direction made or given under the Constitution is ineffective unless made or given in writing.
- (3) A statement the Constitution obliges a person to give is ineffective unless given in writing.
- (4) A request made under the Constitution is deemed neither made nor received if not made in writing.
- (5) The waiver of an entitlement under the Constitution is not binding unless made in writing.
- (6) For clarity, a notice under the Constitution is ineffective unless given in writing.²¹

15.4 Cumulative Entitlements

- (1) The remedies and other entitlements given by the Constitution are cumulative, not alternative.
- (2) Moreover, no remedy or entitlement is exclusive of other remedies or entitlements that the Constitution gives.

Adopted: , 2020.

²¹ Refer to Rule 14.1(2). A notice must be in writing.

[End of Constitution]

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Corporations Act 2001



**Central Queensland Regional Organisation of Councils
Limited**
[A Company Limited by Guarantee]

CONSTITUTION

**KING &
COMPANY**
— SOLICITORS —

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