

22 November 2021

Addendum to 2021 Notice of Annual General Meeting

StartupVic Limited (ACN 167 737 582) (**StartupVic** or the **Company**) hereby gives notice to members that the Board has determined to issue this addendum (**Addendum**) to the Notice of Annual General Meeting dated 1 November 2021 (**Notice of Meeting**) for the Company's Annual General Meeting (**AGM**) to be held at 3:00pm (AEDT) on 25 November 2021, via videoconference.

Defined terms in the Notice of Meeting have the same meaning in this Addendum, unless otherwise stated.

IMPORTANT NOTICE

This Addendum is supplemental to the [original Notice of Meeting](#) and should be read in conjunction with the original Notice of Meeting. Except for the amendments set out below, the Notice of Meeting remains unchanged.

The Company confirms that in issuing this Addendum there is no change to the time and date of the AGM.

PURPOSE OF THE ADDENDUM

This Addendum is issued in relation to Resolution 3 – Replacement of Constitution.

Following consultation with members, the Board proposes to amend a provision in the Proposed Constitution attached to the Notice of Meeting. The provision in question (rule 6) sets out the objects and purposes of the Company. As presently drafted, rule 6 focusses on Startup Vic's role within the startup community in Melbourne and Victoria. The Board considers that while Melbourne and Victoria are central to Startup Vic's role, objectives, and strategy, it is possible that the organisation may, with time, develop and shape communities, matters, or interests beyond the geographical boundaries of Melbourne and Victoria. More to the point, the Board does not wish to potentially constrain (in its constitution) the ability of the organisation to serve communities or pursue objectives or opportunities that exist outside of these geographical boundaries.

Accordingly, it is proposed that rule 6 of the Proposed Constitution be amended to remove all references to Victoria and Melbourne.

An amended Annexure B to the Notice of Meeting (Proposed Constitution) (in mark-up) to reflect the change set out in this Addendum are attached to this Addendum.

The Board recommends that you vote in favour of Resolution 3.

VOTING INFORMATION

Any member who has already submitted a proxy for Resolution 3 is not required to resubmit it as a result of this Addendum, unless any such member wishes to lodge a revised proxy.

Any member wishing to lodge a revised Proxy Form may do so by emailing the Proxy Form to the Company Secretary at cosec@startupvictoria.com.au. For convenience, the Proxy Form can be found by [clicking here](#).

Proxy Forms must be received by the Company by no later than 3:00pm (AEDT) on Wednesday, 24 November 2021. All Proxy Forms received to date by the Company will be treated as valid unless a revised Proxy Form is received by this time.

ATTENDING AND PARTICIPATING IN THE AGM

As was set out in the Notice of Meeting, due to the impacts of COVID-19, this year, the AGM will be held virtually. There will not be a physical meeting where members can attend.

Further details on how members can attend and participate in the AGM are set out in the Notice of Meeting.

Dated: 22 November 2021
By order of the Board

John Coghlan
Company Secretary

ANNEXURE B – PROPOSED CONSTITUTION



Constitution

STARTUPVIC LIMITED

ACN 167 737 582

A public company limited by guarantee

Adopted on: [insert date]

Prepared by:



Level 42, Rialto Sth Tower
525 Collins Street
Melbourne VIC 3000
cdandco.com.au

Table of contents

- 1. What is the name of the company?4
- 2. What type of company is Startup Vic?4
- 3. What is the liability of members?4
- 4. How much is the member guarantee?4
- 5. What is the meaning of certain terms used in this constitution?4
- 6. What is the purpose of Startup Vic?4
- 7. What are the powers of Startup Vic?4
- 8. Is the company a not-for-profit?5
- 9. How can this constitution be amended?5
- 10. Who is a member of Startup Vic?5
- 11. Who is eligible to be a member of Startup Vic?6
- 12. How does a person apply to become a member of Startup Vic?6
- 13. What role do directors have in approving membership?6
- 14. When does a person become a member?7
- 15. When does a person stop being a member?7
- 16. What rights do members have?7
- 17. Is membership transferable?7
- 18. What information is kept on the register of members?8
- 19. What fees are payable by members?8
- 20. In what circumstances might a member be disciplined?8
- 21. Can directors call a general meeting?9
- 22. Can members call a general meeting?10
- 23. When is the annual general meeting held?10
- 24. How is notice of general meetings to be given?10
- 25. What is the quorum for general meetings?12
- 26. Is the auditor entitled to attend meetings?12
- 27. How do incorporated members appoint a representative to attend meetings?12
- 28. Can the company use technology to hold general meetings?13
- 29. Who is the chairperson for general meetings?13
- 30. What is the role of the chairperson at a general meeting?13
- 31. In what circumstances may general meetings be adjourned?13
- 32. How are members' resolutions and statements requested?14
- 33. What are the company's obligations with respect to members' resolutions and statements?14
- 34. Can members' resolutions be passed by circular?15

35. How many votes does each member have?15

36. Can a member's right to vote be challenged?15

37. How is voting is carried out?16

38. When and how is a vote in writing required?16

39. When can a member appoint a proxy?.....16

40. How is voting by proxy carried out?17

41. Does the company accept direct votes?18

42. What is the number of directors?18

43. How are directors elected and appointed?.....18

44. How is the chairperson elected?19

45. What is the term of office of each director?19

46. In what circumstances is the office of director vacated?.....20

47. What powers do directors have?20

48. Can directors' powers be delegated?21

49. Are directors eligible to be paid?.....21

50. How does the company execute documents?.....21

51. What are the duties of directors?21

52. How are conflicts of interest to be managed?.....22

53. When do the directors meet?.....23

54. How are directors' meetings called?23

55. Who is chairperson of a directors' meeting?.....23

56. What is the quorum for directors' meetings?23

57. What technology can be used to hold directors' meetings?23

58. How do directors pass resolutions?24

59. Can directors pass resolutions by circular?24

60. How is the secretary appointed and what is their role?.....24

61. What records will the company maintain?25

62. What financial records will the company maintain?.....26

63. What regulations may the directors pass?.....26

64. What is notice?.....26

65. How is a notice delivered to the Company?26

66. How is a notice delivered to members?.....27

67. When is notice is taken to be given?27

68. What is the company's financial year?27

69. What is the scope of the company's indemnity in favour of officers?28

70. What insurance is available to officers?.....28

71. In what circumstances may directors have access to documents?.....28

72. What happens to surplus assets of the company following dissolution?.....28

73. What do defined terms mean?29

74. Reading this constitution with the Corporations Act30

75. Interpretation.....30

VIC UP START

Preliminary

1. What is the name of the company?

The name of the company is Startupvic Limited (**Startup Vic / the company**).

2. What type of company is Startup Vic?

Startup Vic is a not-for-profit public company limited by guarantee.

3. What is the liability of members?

The liability of members is limited to the amount of the guarantee in rule 4.

4. How much is the member guarantee?

Each member must contribute an amount not more than \$5 (the guarantee) to the property of Startup Vic if Startup Vic is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of Startup Vic incurred before the member stopped being a member; or
- (b) costs of winding up.

5. What is the meaning of certain terms used in this constitution?

In this constitution, words and phrases have the meaning set out in rule 73.

Purpose and Powers

6. What is the purpose of Startup Vic?

The purpose of Startup Vic is to be a member-based, non-profit entity dedicated to the promotion and growth of the startup ecosystem and, without limitation, to:

- (a) be independent and founder-focussed;
- (b) help to build and grow world-class startup companies;
- (c) implement programs and activities that support founders at various stages of the life-cycle of a startup;
- (d) increase public awareness of startups;
- (e) to receive and use any funds in a manner that advances the objects of the company; and
- (f) to do all such things as are incidental or conducive to the achievement of all or any of the objects of the company.

7. What are the powers of Startup Vic?

Subject to rule 8, Startup Vic has the following powers:

- (g) the powers of an individual; and
- (a) all the powers of a company limited by guarantee under the Corporations Act.

8. Is the company a not-for-profit?

- 8.1 The company is a not for profit entity and accordingly must not distribute any income or assets directly or indirectly to its members, except as provided in rule 8.2.
- 8.2 Rule 8.1 does not stop the company from paying in good faith a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company.

9. How can this constitution be amended?

- 9.1 Subject to the terms of this constitution, the members may amend this constitution by passing a special resolution.

Members

10. Who is a member of Startup Vic?

- 10.1 The members of Startup Vic are those:
- (a) properly registered members of the company as at the date of adoption of this constitution; and
 - (b) applicants that have been admitted as members of the company in accordance with rule 14, and have not ceased to be a member.
- 10.2 If an applicant is admitted as a member of Startup Vic, the secretary must ensure:
- (a) the applicant is given notice of:
 - (i) admission as a member of the company; and
 - (ii) the category of membership in which the member is admitted; and
 - (b) the name and details of the applicant are entered in the members' register in accordance with rule 18.2.
- 10.3 The secretary must ensure each applicant not admitted as a member of the company is informed of this decision. The directors may, but are not required to, provide reasons for the decision not to admit an applicant into membership.

11. Who is eligible to be a member of Startup Vic?

To be eligible to apply to be a member of Startup Vic under rule 12, an applicant must:

- (a) where the applicant is an individual, be aged 18 years or over;
- (b) not have been previously expelled from membership of the company;
- (c) satisfy any eligibility requirements for the category of membership into which the member seeks admission; and
- (d) be a person who has ensured that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;

12. How does a person apply to become a member of Startup Vic?

To become a member of Startup Vic a person must:

- (a) satisfy the membership eligibility criteria under rule 11;
- (b) complete and lodge a membership application in such form and by such method, including online, as determined by the directors from time to time;
- (c) ensure that all information provided when applying for membership of Startup Vic is true and accurate and is not misleading or deceptive;
- (d) pay any membership fee that may be required under rule 19;
- (e) agree to comply with this constitution;
- (f) agree to comply with the member code of conduct;
- (g) be admitted into membership by the directors (or their delegate) in such manner as the directors determine; and
- (h) satisfy such other membership criteria as the directors may resolve from time to time.

13. What role do directors have in approving membership?

13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.

13.2 If the directors approve an application, the secretary must as soon as possible:

- (a) enter the new member on the register of members; and
- (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see rule 14).

- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

14. When does a person become a member?

An applicant will become a member when they are entered on the register of members.

15. When does a person stop being a member?

A person immediately stops being a member if they:

- (a) die;
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member);
- (c) resign, by writing to the secretary;
- (d) are expelled under rule 20;
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member; or
- (f) do not pay any applicable membership fee within 90 days of when it falls due for payment.

16. What rights do members have?

- 16.1 In addition to the voting rights set out in rule 35, each member has the right to receive notices of and to attend and be heard at any general meeting of Startup Vic.

- 16.2 Separate to the membership rights available to a member under this constitution and at law and subject to rule 72, the directors may:

- (a) choose to grant access to certain benefits associated with membership, including by granting different benefits to members holding different membership statuses; and
- (b) adopt such policies and procedures relating to the benefits associated with membership as they so determine from time to time.

17. Is membership transferable?

Membership of StartupVic and the rights associated with membership cannot be transferred or sold in any manner whatsoever.

18. What information is kept on the register of members?

18.1 Startup Vic must keep a register of members in accordance with the law.

18.2 Without limiting the requirement under rule 18.1, the following must be entered in the register in respect of each member:

- (a) the name and address of the member;
- (b) the category of membership into which the member is admitted;
- (c) the date of admission to and cessation of membership; and
- (d) any other information required by the directors or the law from time to time.

19. What fees are payable by members?

19.1 The directors may at their complete discretion:

- (a) prescribe the annual membership fee (which may be characterised as a membership renewal fee) of Startup Vic;
- (b) determine one or more members or by members holding different membership statuses pay different membership fees;
- (c) determine that the membership fee payable by one or more members or by members holding different membership statuses be payable at a different time or times, including by instalments; and
- (d) determine, or waive all or some of, the fees payable by one or more members or members holding different membership statuses at any time.

19.2 A member that has not paid the required membership fee in accordance with this rule 19, may not exercise any of the rights associated with that member's membership while the membership fee remains outstanding, including the right to exercise any vote the member may have at a meeting of members.

Disciplinary matters

20. In what circumstances might a member be disciplined?

20.1 The directors may resolve to warn, suspend or expel a member from the company if the directors consider that:

- (a) the member has breached this constitution

- (b) the member has breached the member code of conduct; or
- (c) the member's behaviour is causing, has caused, or is likely to cause harm to the company, any of its officers, employees or agents or any other member,

and may prescribe such processes or procedures as to the investigation and determination of such matters as the directors think fit.

20.2 Notwithstanding rule 20.1:

- (a) the directors cannot fine a member; and
- (b) disciplinary procedures must be completed as soon as reasonably practical.

20.3 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this rule.

General meetings of members

21. Can directors call a general meeting?

21.1 The directors may call a general meeting.

21.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:

- (a) within 21 days of the members' request, give all members notice of a general meeting; and
- (b) hold the general meeting within 2 months of the members' request.

21.3 The percentage of votes that members have (in rule 21.2) is to be worked out as at midnight before the members request the meeting.

21.4 The members who make the request for a general meeting must:

- (a) state in the request any resolution to be proposed at the meeting;
- (b) sign the request; and
- (c) give the request to the company.

21.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

22. Can members call a general meeting?

22.1 If the directors do not call the meeting within 21 days of being requested under rule 21.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.

22.2 To call and hold a meeting under rule 22.1 the members must:

- (a) as far as possible, follow the procedures for general meetings set out in this constitution;
- (b) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost; and
- (c) hold the general meeting within three months after the request was given to the company.

22.3 The company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

23. When is the annual general meeting held?

23.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year in accordance with applicable law.

23.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:

- (a) a review of the company's activities;
- (b) a review of the company's finances;
- (c) any auditor's report;
- (d) the election of directors; and
- (e) the appointment and payment of auditors, if any.

23.3 Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.

23.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

24. How is notice of general meetings to be given?

24.1 Notice of a general meeting must be given to:

- (a) each member entitled to vote at the meeting;
- (b) each director; and

- (c) the auditor (if any).
- 24.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 24.3 Subject to rule 24.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 24.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 24.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution; and
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (i) the proxy does not need to be a member of the company;
 - (ii) the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - (iii) the proxy form must be delivered to the company at least 48 hours before the meeting.
- 24.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

25. What is the quorum for general meetings?

- 25.1 For a general meeting to be held, at least two members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 25.2 No business may be conducted at a general meeting if a quorum is not present.
- 25.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

26. Is the auditor entitled to attend meetings?

- 26.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 26.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

27. How do incorporated members appoint a representative to attend meetings?

- 27.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under rule 31; and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 27.2 The appointment of a representative by a member must:
- (a) be in writing;
 - (b) include the name of the representative;
 - (c) be signed on behalf of the member; and

(d) be given to the company or, for representation at a meeting, be given to the chairperson before the meeting starts.

27.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

27.4 The appointment may be standing (ongoing).

28. Can the company use technology to hold general meetings?

28.1 The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

28.2 Anyone using this technology is taken to be present in person at the meeting.

29. Who is the chairperson for general meetings?

29.1 The elected chairperson is entitled to chair general meetings.

29.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:

(a) there is no elected chairperson; or

(b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting;
or

(c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

30. What is the role of the chairperson at a general meeting?

30.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

30.2 The chairperson does not have a casting vote.

31. In what circumstances may general meetings be adjourned?

31.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.

31.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

32. How are members' resolutions and statements requested?

32.1 Members with at least 5% of the votes that may be cast on a resolution may give:

- (a) written notice to the company of a resolution they propose to move at a general meeting (members' resolution); and/or
- (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).

32.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

32.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

32.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

32.5 The percentage of votes that members have (as described in rule 32.1) is to be worked out as at midnight before the request or notice is given to the company.

32.6 If the company has been given notice of a members' resolution under rule 32.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.

32.7 This rule does not limit any other right that a member has to propose a resolution at a general meeting.

33. What are the company's obligations with respect to members' resolutions and statements?

33.1 If the company has been given a notice or request under rule 32:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost, or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.

33.2 The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1,000 words long;
- (b) the directors consider it may be defamatory;

- (c) rule 33.1(b) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

34. Can members' resolutions be passed by circular?

- 34.1 Subject to rule 34.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 34.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 34.3 Circular resolutions cannot be used:
 - (a) for a resolution to remove an auditor, appoint a director or remove a director;
 - (b) for passing a special resolution; or
 - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 34.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in rule 34.5 or rule 34.6.
- 34.5 Members may sign:
 - (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 34.6 The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

35. How many votes does each member have?

Each member has one vote.

36. Can a member's right to vote be challenged?

- 36.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 36.2 If a challenge is made under rule 36.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

37. How is voting is carried out?

37.1 Voting must be conducted and decided by:

- (a) a show of hands;
- (b) a vote in writing; or
- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

37.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

37.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

37.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

38. When and how is a vote in writing required?

38.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five members present;
- (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
- (c) the chairperson.

38.2 A vote in writing must be taken when and how the chairperson directs, unless rule 38.3 applies.

38.3 A vote in writing must be held immediately if it is demanded under rule 38.1:

- (a) for the election of a chairperson under rule 29.2; or
- (b) to decide whether to adjourn the meeting.

38.4 A demand for a vote in writing may be withdrawn.

39. When can a member appoint a proxy?

39.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.

39.2 A proxy does not need to be a member.

39.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

- (a) speak at the meeting;
- (b) vote in a vote in writing (but only to the extent allowed by the appointment); and

- (c) join in to demand a vote in writing under rule 38.1.
- 39.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
 - (b) the company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 39.5 A proxy appointment may be standing (ongoing).
- 39.6 Proxy forms must be received by the company at the address stated in the notice under rule 24.5(d) or at the company's registered address at least 48 hours before a meeting.
- 39.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 39.8 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 39.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

40. How is voting by proxy carried out?

- 40.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 40.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

41. Does the company accept direct votes?

The directors may determine that at any meeting of members, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the directors. The directors may pass regulations in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

Directors

42. What is the number of directors?

42.1 Unless otherwise determined in accordance with this constitution, the company must have at least three and no more than ten directors.

42.2 The company may, by resolution, increase or reduce the number of directors.

43. How are directors elected and appointed?

43.1 The members may elect a director by a resolution passed in a general meeting.

43.2 Each of the directors must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together; and
- (b) no votes were cast against that resolution.

43.3 A person is eligible for election as a director of the company if that person:

- (a) is 18 years of age or older;
- (b) is not ineligible to be a director under the Corporations Act;
- (c) is a member of the company, or a representative of a member of the company (appointed under rule 27);
- (d) is nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting);
- (e) meets any other criteria relating to the process for nomination, the composition of the board, and skills and qualifications of directors as may be determined by the directors (or any committee that

the directors have established for the purpose of assessing candidates for such positions) from time to time; and

(f) gives the company their signed consent to act as a director of the company.

43.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

(a) is 18 years of age or older;

(b) is not ineligible to be a director under the Corporations Act;

(c) is a member of the company, or a representative of a member of the company (appointed under rule 27);

(d) meets any other criteria relating to the process for nomination, the composition of the board, and skills and qualifications of directors as may be determined by the directors (or any committee that the directors have established for the purpose of assessing candidates for such positions) from time to time; and

(e) gives the company their signed consent to act as a director of the company.

43.5 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

44. How is the chairperson elected?

The directors must elect a director as the company's elected chairperson and may elect any number of directors to occupy the position of chairperson on an alternating basis.

45. What is the term of office of each director?

45.1 The term of office of each director is the longer of:

(a) 3 years; and

(b) the third annual general meeting,

following that director's last election or appointment.

45.2 Other than a director appointed under rule 43.4, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they must retire.

45.3 At each annual general meeting:

- (a) any director whose term of office is due to expire in accordance with rule 45.1 must retire; and
- (b) any director appointed by the directors to fill a casual vacancy or as an additional director must retire.

45.4 A director who retires under rule 45.1 may nominate for election or re-election.

45.5 A director retiring at an annual general meeting who is not disqualified by law from being re-appointed is eligible for re-election and may act as a director throughout the meeting at which the director retires.

46. In what circumstances is the office of director vacated?

46.1 In addition to the circumstances prescribed by law, the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:

- (a) ceases to be a member of the company;
- (b) is, due to physical or mental impairment, unable to properly perform his or her duties as a director as determined by a suitably qualified health professional, acting reasonably;
- (c) becomes bankrupt;
- (d) is convicted of an indictable offence;
- (e) fails to attend three consecutive directors' meetings without leave of absence approved by the directors;
- (f) ceases to hold or is removed from office as a director; or
- (g) is removed from office by members in accordance with the requirements of the Corporations Act.

46.2 Nothing in rule 46.1 prevents a director from vacating his or her office if the director resigns in writing to the company.

Powers of directors

47. What powers do directors have?

47.1 The directors are responsible for managing and directing the activities of the company to achieve the purposes set out in rule 6.

47.2 The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.

47.3 The directors must decide on the responsible financial management of the company including:

- (a) any suitable written delegations of power under rule 48; and
- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

47.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

48. Can directors' powers be delegated?

48.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.

48.2 The delegation must be recorded in the company's minute book.

49. Are directors eligible to be paid?

49.1 The company must not pay fees to a director for acting as a director.

49.2 The company may:

- (a) pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
- (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.

49.3 Any payment made under rule 49.2 must be approved by the directors.

49.4 The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

50. How does the company execute documents?

50.1 The company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the company; or
- (b) a director and the secretary.

Duties of directors

51. What are the duties of directors?

The directors must comply with their duties as directors under legislation and common law (judge-made law), which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
- (b) to act in good faith in the best interests of the company;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 52;
- (f) to ensure that the financial affairs of the company are managed responsibly; and
- (g) not to allow the company to operate while it is insolvent.

52. How are conflicts of interest to be managed?

52.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors; or
- (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

52.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

52.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under rule 52.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

52.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the company, and the other members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see rule 70);
- (c) their interest relates to a payment by the company under rule 69 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or

- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

53. When do the directors meet?

The directors may decide how often, where and when they meet.

54. How are directors' meetings called?

54.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

54.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

55. Who is chairperson of a directors' meeting?

55.1 The elected chairperson is entitled to chair directors' meetings.

55.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting; or
- (b) present but does not want to act as chairperson of the meeting.

56. What is the quorum for directors' meetings?

56.1 Unless the directors determine otherwise, the quorum for a directors' meeting is three directors.

56.2 Despite rule 56.1, the quorum cannot be less than three directors.

56.3 A quorum must be present for the whole directors' meeting.

57. What technology can be used to hold directors' meetings?

57.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

57.2 The directors' agreement may be a standing (ongoing) one.

57.3 A director may only withdraw their consent within a reasonable period before the meeting.

58. How do directors pass resolutions?

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

59. Can directors pass resolutions by circular?

59.1 The directors may pass a circular resolution without a directors' meeting being held.

59.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 59.3 or rule 59.4.

59.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

59.4 The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

59.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in rule 59.3 or rule 59.4.

Secretary

60. How is the secretary appointed and what is their role?

60.1 The company must have at least one secretary, who may also be a director.

60.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.

60.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

60.4 The role of the secretary includes:

- (a) maintaining a register of the company's members; and

- (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

60.5 The secretary may delegate any of their powers and functions to a committee or an employee of the company (such as a chief executive officer) or any other person, as may be approved by resolution of the directors.

60.6 The delegation in rule 60.5 must be recorded in the company's minute book.

Minutes and records

61. What records will the company maintain?

61.1 The company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings;
- (b) minutes of circular resolutions of members;
- (c) a copy of a notice of each general meeting; and
- (d) a copy of a members' statement distributed to members under rule 33.

61.2 The company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
- (b) minutes of circular resolutions of directors.

61.3 To allow members to inspect the company's records:

- (a) the company must give a member access to the records set out in rule 61.1; and
- (b) the directors may authorise a member to inspect other records of the company, including records referred to in rule 61.2 and rule 62.1.

61.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

61.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

62. What financial records will the company maintain?

- 62.1 The company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 62.2 The company must also keep written records that correctly record its operations.
- 62.3 The company must retain its records for at least 7 years.
- 62.4 The directors must take reasonable steps to ensure that the company's records are kept safe.

Regulations

63. What regulations may the directors pass?

- 63.1 The directors may pass a resolution to make regulations to give effect to this constitution.
- 63.2 Members and directors must comply with the regulations as if they were part of this constitution.

Notice

64. What is notice?

- 64.1 Anything written to or from the company under any rule in this constitution is written notice and is subject to rules 65 to 67, unless specified otherwise.
- 64.2 Rules 65 to 67 do not apply to a notice of proxy under rule 39.6.

65. How is a notice delivered to the Company?

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:

- (a) delivering it to the company's registered office;
- (b) posting it to the company's registered office or to another address chosen by the company for notice to be provided; or
- (c) sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address.

66. How is a notice delivered to members?

66.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
- (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

66.2 If the company does not have an address for the member, the company is not required to give notice in person.

67. When is notice is taken to be given?

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the business day after it is posted with the correct payment of postage costs (if applicable);
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under rule 66.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

68. What is the company's financial year?

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

69. What is the scope of the company's indemnity in favour of officers?

69.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

69.2 In this rule, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

69.3 In this rule, 'to the relevant extent' means:

- (a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so; and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

69.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

70. What insurance is available to officers?

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

71. In what circumstances may directors have access to documents?

71.1 A director has a right of access to the financial records of the company at all reasonable times.

71.2 If the directors agree, the company must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors; and
- (b) any other documents referred to in those documents.

Winding up

72. What happens to surplus assets of the company following dissolution?

If the company is dissolved or wound up, any surplus assets must not be distributed to a member or a former member of the company, but instead must be given or transferred to another organisation:

- (a) with similar purposes to company;

- (b) which is not carried on for the profit or gain of its individual members; and
- (c) whose constituent documents prohibit the distribution of its income and property amount its members on terms substantially to the effect of clause 8.

Definitions and interpretation

73. What do defined terms mean?

In this constitution:

- (a) **Corporations Act** means the Corporations Act 2001 (Cth);
- (b) **elected chairperson** means a person elected by the directors to be the company's chairperson under rule 44;
- (c) **general meeting** means a meeting of members and includes the annual general meeting;
- (d) **member** means a person whose name is entered in the register of members as a member of the company in accordance with the requirements of this constitution and any membership status, designation and category guidelines (which may be comprised of one or more documents), as are published or amended by the directors from time to time;
- (e) **member code of conduct** means the code of conduct or terms and conditions of membership applicable to members (which may be comprised of one or more documents), as is published or amended by the directors from time to time.
- (f) **member present** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting;
- (g) **person** means an individual or incorporated body;
- (h) **regulations** means policies, terms of reference, charters, guidelines, procedures or protocols as approved by resolution of the directors from time to time;
- (i) **special resolution** means a resolution:
 - (i) of which notice has been given under rule 24.5(c); and
 - (ii) that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution; and

- (j) **surplus assets** means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up or dissolving the company.

74. Reading this constitution with the Corporations Act

- 74.1 The replaceable rules set out in the Corporations Act do not apply to the company.
- 74.2 The Corporations Act overrides any rule in this constitution which is inconsistent with that Act.
- 74.3 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

75. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an 'Act' includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act.