
Constitution

Australian Digital Commerce Association Ltd

(ACN 169 053 534)

(A public company limited by guarantee)

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Part A – preliminary matters

1 Defined terms and interpretation

- (a) The Dictionary in Schedule 1:
 - (i) defines some of the terms used in this constitution;
 - (ii) sets out the rules of interpretation which apply to this constitution; and
 - (iii) clarifies the effect of the Corporations Act on this constitution.
- (b) The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution.

2 Nature of company and liability

- (a) The company is a public company limited by guarantee.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of ten dollars to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

Part B – Purpose

3 Purpose of the company

The purpose of the company is to promote and increase the use of, and confidence in, financial technologies (**Fin Tech**), including digital commerce platforms and systems, by:

- (a) promoting and supporting the development and implementation of guidance to the industry and public on matters relating to Fin Tech;
- (b) generating and increasing the awareness of Fin Tech issues among individuals, the community, educational institutions, business and government;
- (c) increasing knowledge, skills and capacity of those working in, or wanting to know about, the fin Tech field;
- (d) building, enhancing and maintaining relationships with and between Fin Tech organisations, individuals, Government, international bodies and educational institutions;
- (e) providing advice and guidance to Government on the creation of policy, law and legislation in relation to Fin Tech;
- (f) conducting research and development activities to help improve the understanding, adoption and operation of Fin Tech (including digital currency systems and platforms);

- (g) providing an ongoing forum to share learning, knowledge, skills, experience, ideas and innovation in the Fin Tech field;
- (h) providing support services for Fin Tech professionals within Australia (including members);
- (i) developing, promoting, enforcing and supporting digital commerce practices and standards;
- (j) contributing to the development and implementation of Fin Tech regulation (including ongoing compliance); and
- (k) doing all other things necessary for or ancillary to the purposes and activities of the company listed above.

Part C – Members and membership

4 Membership

4.1 Members of the company

- (a) The members of the company are:
 - (i) those entities listed on the application for incorporation of the company; and
 - (ii) any applicant that has been admitted as a member of the company in accordance with rule 4.2.
- (b) If an applicant is admitted as a member of the company, the secretary must ensure that:
 - (i) the applicant is given notice of admission as a member of the company; and
 - (ii) the name and details of the applicant are entered in the members' register in accordance with rule 4.6.
- (c) The secretary must ensure that each applicant not admitted as a member of the company is informed of this decision.

4.2 Becoming a member

To become a member of the company the applicant must:

- (a) have a commitment to the purposes of the company described at rule 3;
- (b) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (c) pay any joining and annual fee as determined by the directors under rule 4.7;
- (d) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;

- (e) satisfy the eligibility criteria and on-going requirements for the class of membership to which the applicant is applying as described at Schedule 2 or as otherwise adopted by the directors from time to time; and
- (f) be admitted into membership by the directors.

4.3 Members rights

Each member has the rights associated with the particular class of membership to which it belongs as described in Schedule 2.

4.4 Membership not transferable

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

4.5 Representatives

- (a) Each body corporate Member must nominate a Representative for all communications with the company and to attend general meetings of members.
- (b) A body corporate member may nominate a new Representative from time to time but must notify the company of any re-nominations as soon as practicable after such renomination has occurred.

4.6 Register of Members

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.6(a), the following must be entered in the register in respect of each member:
 - (i) the name and address of the member;
 - (ii) the name of the nominated Representative for that member;
 - (iii) the date of admission to and cessation of membership;
 - (iv) the class of membership to which the member belongs; and
 - (v) any other information required by the directors or the law from time to time.

4.7 Membership fees

- (a) The joining fee for each class of membership of the company is the amount described at Schedule 2 or such other amount determined by the directors and notified to the applicant prior to joining. The joining fee must be paid at the time the membership application is made and will be refunded if the application is declined.
- (b) The annual fee for each class of membership of the company is the amount described at Schedule 2 or such other amount determined by the directors and notified to members prior to the date upon which the payment becomes due. The initial annual fee must be paid at the time the membership application is made and will be refunded if the application is declined.
- (c) Annual membership fees are to be paid at such times and in such manner as the directors determine from time to time.

- (d) The directors may at their complete discretion and from time to time:
 - (i) waive all or some of the fees payable by one or more members; and
 - (ii) determine the amount of fees for one or more members or one or more class of members.
 - (e) For the avoidance of doubt, a member that has not paid the required membership fee, even where that member has not yet ceased to be a member under rule 5.3(b), may not exercise any of the rights associated with the class of membership to which that member belongs including the right to exercise any vote the member may have at a meeting of members.
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5 Ceasing to be a member

5.1 General overview

- (a) There are a number of circumstances that will result in the cessation of membership. For instance, if a member:
 - (i) resigns from membership. See rule 5.2;
 - (ii) automatically ceases to be a member. See rule 5.3;
 - (iii) is expelled from membership. See rule 5.4; or
 - (iv) no longer complies with the membership eligibility criteria set out at rule 4.2 or any additional requirements associated with the class of membership to which the member belongs as set out in the table at Schedule 2.
- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.

5.2 Resignation from membership

A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

5.3 Automatic cessation of membership

A member's membership will automatically cease if the member:

- (a) dies, or in the case of a body corporate member, becomes insolvent or is wound up; or
- (b) fails to pay any required membership fee within two months after the date on which that membership fee becomes due or such later time as the directors may determine.

5.4 Disciplining, suspension and expulsion of member

- (a) This rule 5.4 describes what needs to happen when considering whether or not to discipline a member (excluding situations relating to compliance with the ADCA

Standards which are to be dealt with in accordance with those standards). In summary the process involves:

- (i) putting the member in question on notice and giving the opportunity to provide information; and
 - (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member.
- (b) So long as the steps set out in this rule 5.4 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:
- (i) has refused or neglected to comply with the provisions of this constitution; or
 - (ii) has acted in a way that, in the opinion of the directors, is unbecoming of the member or prejudicial to the interests or reputation of the company.

(Member Disciplinary Resolution)

- (c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and let the member know:
- (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
 - (ii) the reasons why the directors are considering taking the determined action; and
 - (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action.
- (d) A director that is also a director, member or employee of a member subject to a Member Disciplinary Resolution is not entitled to vote on that resolution.
- (e) Directors must notify the relevant member in writing about the directors' decision within 14 days after the date a Member Disciplinary Resolution is passed. The Member Disciplinary Resolution is final.

6 General meetings

6.1 Calling general meetings

- (a) A general meeting of members may be initiated by:
- (i) a resolution of the directors; or
 - (ii) the Voting Members or the court in accordance with the law.
- (b) A meeting of members may be held in two or more places linked together by any technology so long as it:
- (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chair to be aware of proceedings in each place; and

- (iii) enables the Voting Members in each place to vote on a show of hands and on a poll.

6.2 Notice of general meetings

- (a) Subject to any relevant law relating to special resolutions and consent to short notice, at least 21 days notice of a general meeting of members (including an annual general meeting) must be given to each person who is at the date of the notice:
 - (i) a member of the company eligible to receive notices of meetings;
 - (ii) a director of the company; or
 - (iii) an auditor of the company.
- (b) A notice of a general meeting must specify:
 - (i) the date, time and place of the meeting;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted at the meeting; and
 - (iv) any other matters required under the law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member or a Representative of a member.

6.3 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is 50% of all Voting Members or ten Voting members (whichever is the lower number). If 50% of Voting Members is not a whole number, then the number is to be rounded up.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) the meeting stands adjourned to the same day in the next week at the same time and place;
 - (ii) at the adjourned meeting the quorum is at least 2 Voting Members present and entitled under these rules to vote at a general meeting if there is more than one member; and
 - (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.4 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting.

- (b) If the chair of directors is absent or is unwilling to act, then the deputy-chair of directors, if one has been appointed, must preside as chair at the meeting.
- (c) If both the chair and deputy-chair are absent or are both unwilling to act, then the Voting Members present at that meeting may elect a person present to chair the meeting.

6.5 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
 - (i) proper and orderly debate or discussion; and
 - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may, with the consent of the majority of Voting Members present at the meeting, adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

6.6 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the Voting Members present at the meeting (including being present by technological means) and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the chair has a second or casting vote in addition to any vote the chair may have in his or her capacity as a Representative of a Voting Member.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands of Voting Members unless a poll is demanded.
- (d) A Voting Member may only exercise one vote on a show of hands regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a show of hands is taken or before or immediately after the declaration of the result of the show of hands:
 - (i) by the chair of the meeting;
 - (ii) by at least five members present and entitled to vote on the relevant resolution; or
 - (iii) by a Voting Member or Voting Members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.

- (f) Unless a poll is demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (g) If a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

6.7 Voting rights

Each member has the voting rights associated with the class of membership to which it belongs as described in the table at Schedule 2.

6.8 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) by its Representative;
 - (ii) by proxy in a form as the directors may prescribe or accept; or
 - (iii) by attorney in a form as the directors may prescribe or accept.
- (b) A proxy or attorney may be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a Representative, proxy or attorney to establish to the satisfaction of the chair that the person has been validly appointed as a Representative, proxy or attorney and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
 - (i) the person specified by the company in the proxy form; or
 - (ii) if no person is specified in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:
 - (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting.

- (f) Unless otherwise permitted by the chair, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that member's Representative is present at the meeting.
- (g) The chair may hold as many proxies as are given to the chair. All other proxy holders may hold a maximum of three proxies.

Part D – Not-for-profit

7 No profits for members

- (a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of the purpose of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.
- (b) The company may, with the approval of the directors, make payment in good faith to a member of the company:
 - (i) by way of reasonable and proper remuneration for any goods supplied or services rendered to the company (including payment as a consultant);
 - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
 - (iii) by way of reasonable and proper rent for premises let by that member to the company; and
 - (iv) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (c) For the avoidance of doubt, nothing in this rule 7:
 - (i) prevents a member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
 - (ii) prohibits a member from receiving a benefit that is directly related to its membership of the company.

Part E – Directors and secretary

8 Directors

8.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is 12.
- (b) The directors may change the maximum number of permitted director positions in accordance with the law.

- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
 - (i) in an emergency;
 - (ii) for the purpose of convening a general meeting of the company; or
 - (iii) for the purpose of increasing the number of directors to three.

8.2 Becoming a director

Subject to rule 8.20, a person may become a director in three ways:

- (a) election by members, such election to be for a term of two years (**Elected Directors**);
- (b) appointment by the directors, such appointment to be for a term of up to two years with the precise period determined by the directors at the time of appointment (**Appointed Directors**); and
- (c) appointment by the directors of any person to fill any vacancy in the number of Elected Directors however arising, such appointment, if made, to be for the period up to the next annual general meeting at which point that director must retire.

8.3 Rules about the composition of the board

- (a) Subject to rule 8.2(c):
 - (i) five of the director positions are reserved for, and may only be filled by, Industry Member Directors;
 - (ii) four of the director positions are reserved for, and may only be filled by, Partner Directors; and
 - (iii) one of the director positions is reserved for, and may only be filled by an Associate Director.
- (b) Two of the director positions are reserved for, and may only be filled by, Appointed Directors.

8.4 Qualifications and requirements of directors

- (a) To be eligible for election as a director, a director must:
 - (i) be nominated for election by a fully paid up member in the way determined by the directors from time to time and as described in Schedule 2;
 - (ii) have knowledge about, have expertise relevant to and be committed to the purpose and activities of the company; and
 - (iii) meet any other criteria relating to the composition of the board and skills and qualifications of directors as may be determined by the directors from time to time.
- (b) An Appointed Director may be, but does not need to be, a member or a Representative of a member.

8.5 Directors time in office

- (a) Each director is to remain as a director until the term of her or his office expires or until he or she resigns, retires or is otherwise removed as a director of the company in accordance with the law and this constitution. However, subject to the law and rules 8.5(b) and 8.3, a person is eligible for re-election.
- (b) A person must not hold the office of director for any more than six continuous years unless otherwise resolved by a special resolution of Voting Members.
- (c) A person having held office as a director for six continuous years is eligible for re-election or re-appointment once a period of two years has expired since he or she last held office as a director.

8.6 Vacation of office

- (a) 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:
 - (i) 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;
 - (ii) becomes bankrupt;
 - (iii) is convicted of an indictable offence; or
 - (iv) fails to attend more than three directors' meetings in any six month period without leave of absence approved by the directors.
- (b) Nothing in rule 8.6(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

8.7 Payments to directors

- (a) Subject to rule 8.7(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees and branches but will not otherwise receive any payment for acting as a director.
- (b) Nothing in this rule 8.7 restricts the remuneration to which a director may be entitled as an officer or employee of the company in a capacity other than director.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by the directors or such other person or persons to whom the directors may have delegated such authority consistent with rule 8.18.

8.8 Interested directors

- (a) A director may hold any other position in the company, other than auditor, in conjunction with his or her directorship. A director may be appointed to that office on the terms as to remuneration, tenure of office and otherwise as the directors determine.

- (b) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (c) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the law which permits that director to do so.
- (d) Subject to rule 8.8(e), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest:
 - (i) be counted in determining whether a quorum is present at any meeting of directors considering that arrangement;
 - (ii) sign or countersign any document relating to that arrangement; and
 - (iii) vote in respect of the arrangement or any matter arising out of it.
- (e) Rule 8.8(d) does not apply to the extent that it would be contrary to law.

8.9 Powers and duties of directors

Subject to rule 8.20, the directors are responsible for managing the business of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the company in general meeting.

8.10 Directors' meetings

The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

8.11 Convening of meetings of directors

A meeting of directors may be convened by the chair or any two of the directors.

8.12 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
 - (i) be given in a way permitted by rule 13;
 - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting; and
 - (iii) state the nature of the business to be transacted at the meeting.
- (c) A resolution passed at a directors meeting is not invalid just because a director did not receive notice of the meeting provided that:
 - (i) the notice was not received because of accident or error;

- (ii) before or after the meeting, the director notifies the company of his or her agreement to the resolution; or
- (iii) the director attended the meeting.

8.13 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of at least 50% of current directors so long as at least two Industry Member Directors are present. If 50% of current directors is not a whole number then the number is to be rounded up.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by electronic means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

8.14 Chair and deputy-chair

- (a) The directors must, subject to the rules relating to term of office found at rule 8.5, appoint a director to the office of chair.
- (b) The directors may, subject to the rules relating to term of office found at rule 8.5, appoint a director to the office of deputy-chair.
- (c) A person may only fill the office of chair or deputy-chair for so long as that person is a director of the company.
- (d) The chair must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.
- (e) If the chair is unable to attend a directors' meeting or unwilling to act, then the deputy-chair, if one has been appointed, must preside as chair of that meeting.
- (f) If both the chair and deputy-chair are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from among their number to preside as chair for that meeting.

8.15 Decisions of directors

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting and any other matter to be determined by the directors under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors (unless this constitution specifically requires a higher approval threshold).
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may cast a second vote.

8.16 Decisions without meetings

Directors may pass resolutions and otherwise make decisions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

8.17 Committees

- (a) The directors may resolve to:
 - (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.
- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

8.18 Delegation to individuals

- (a) The directors may resolve to delegate any of their powers:
 - (i) to one or more directors;
 - (ii) to one or more members; or
 - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

8.19 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

8.20 Initial Directors

- (a) This rule 8.20 applies for the period starting on the date this constitution is adopted by the Voting Members to the day immediately prior to the company's 2016 annual general meeting, at which point this rule ceases to be of effect
- (b) For so long as they remain a director of the company, only the Initial Directors may resolve to appoint directors into a vacant director position.
- (c) For the purpose of this rule 8.20, Initial Directors means:
 - (i) those persons listed as directors on the form of application for incorporation of the company; and
 - (ii) any other director they resolve can take part in the resolution.

9 Secretaries

- (a) The directors must appoint a secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by the law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalidated just because:

- (i) of a defect in the person's appointment as a secretary; or
 - (ii) the person is disqualified from being a secretary,
- if that circumstance was not known by the person when the act was done.

Part F – Winding up

10 Winding up

- (a) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to an organisation or organisations that:
 - (i) has objects or purposes similar to those of the company; and
 - (ii) by its constituent rules, prohibits the distribution of its income and property amongst its Members to an extent at least as great as is imposed upon the company.
- (b) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 10(a):
 - (i) is to be determined by the directors at or before the winding up or dissolution of the company; or
 - (ii) if required, by the Court.
- (c) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

Part G – Administrative matters

11 Minutes and records

11.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

11.2 Inspection of records

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute

books, accounting records and other documents of the company or any of them will be open to inspection.

- (b) A Voting Member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

12 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule); and
 - (ii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs).

13 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determine by the directors from time to time.

14 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.

- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 Dictionary

1 Dictionary

In this constitution:

ADCA Certified means an applicant that has satisfied all the requirements described at section 3 of Schedule 3 for ADDCA certification.

ADCA Member License means the Australian Digital Commerce Association member license setting out the rules and requirements associated with the use of the ADCA name and trademark as amended by the directors from time to time.

ADDCA Standards means the Australian Digital Commerce Association Digital Commerce Industry Standards and Practices as adopted and amended by the directors from time to time in accordance with section 3 of Schedule 3.

Affiliate Member means a person who has been admitted into membership of the company as an affiliate member in accordance with rule 4.2 and having the rights and obligations associated with this class of membership described in the table at Schedule 2.

Appointed Director has the meaning at rule 8.2(b).

Associate Director means a person nominated for election as a director of the company by an Associate Member and elected by the Industry Members and Associate Members voting together to fill that office.

Associate Member means a member that has been admitted into membership of the company as an associate member in accordance with rule 4.2 and having the rights and obligations associated with this class of membership described in the table at Schedule 2.

Elected Director has the meaning at rule 8.2(a).

Industry Member Director means a person nominated for election as a director of the company by an Industry Member and elected by the Industry Members to fill that office.

Industry Member means a member that has been admitted into membership of the company as an Industry Member in accordance with rule 4.2 and having the rights and obligations associated with this class of membership described in the table at Schedule 2.

Member Disciplinary Resolution has the meaning at rule 5.4(b).

Partner Director means a person nominated for election as a director of the company by a Partner Member and elected by the Industry Members and Partner Members voting together to fill that office.

Partner Member means a member that has been admitted into membership of the company as a partner member in accordance with rule 4.2 and having the rights and obligations associated with this class of membership described in the table at Schedule 2.

Representative means a representative of a member appointed in the way permitted by section 250D of the *Corporations Act 2001* (Cth) regardless of whether that member is in fact bound by the *Corporations Act 2001* (Cth).

Surplus Assets has the meaning given in rule 10(a).

Voting Member means an Associate Member, an Industry Member, a Partner Member and any other member that has the right to exercise a vote as described in the table at Schedule 2.

2 Interpretation

2.1 General

A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.

In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every other gender;
- (c) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (d) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 Replaceable rules not to apply

The replaceable rules contained in the *Corporations Act 2001* (Cth) from time to time do not apply to the company.

Schedule 2 Membership requirements, rights and fees

| Membership class | Qualifications | On-going requirements | Rights | Joining fee | Annual Fee |
|------------------|--|---|---|---|---|
| Industry Member | <p>Must:</p> <ul style="list-style-type: none"> Be a legally incorporated entity under the laws of Australia or other country approved by the directors from time to time; Be a Fin Tech or digital economy centric business (including blockchain and digital currency); Be nominated for membership by an existing fully paid up Voting Member. | <p>Must continue to comply with the requirements set out at rule 4.2 and the eligibility criteria for membership as an Industry Member set out in this table.</p> | <ul style="list-style-type: none"> To receive notices of any general meeting of the company. To appoint a Representative to attend and be heard at any general meeting of the company. Through its Representative, to vote at any general meeting of the company by show of hands and on a poll. To nominate a candidate for election as an Industry Member Director only. To have the member's name listed on the ADCA website as an Industry Member. To apply to be ADCA Certified and, if successful, to enjoy all the associated benefits of certification. | <p>[insert amount] or such other amount as determined by the directors from time to time.</p> | <p>[insert amount] or such other amount as determined by the directors from time to time.</p> |

| | | | | | |
|------------------|--|--|---|--|--|
| Partner member | <p>Must:</p> <ul style="list-style-type: none"> • Be a legally incorporated entity under the laws of Australia or other country approved by the directors from time to time; • Be nominated for membership by an existing fully paid up Industry Member. | Must continue to comply with the requirements set out at rule 4.2 and the eligibility criteria for membership as a Partner Member set out in this table. | <ul style="list-style-type: none"> • To receive notices of any general meeting of the company. • To appoint a Representative to attend and be heard at any general meeting of the company. • Through its Representative, to vote at any general meeting of the company by show of hands and on a poll except with respect to the election of directors in which case the member may only vote on the election of Partner Directors. • To nominate a candidate for election as a Partner Director only. • To have the member's name listed on the ADCA website as a Partner Member. • To apply for ADCA certification and, if successful, to enjoy the benefits associated with certification. | [insert amount] or such other amount as determined by the directors from time to time. | [insert amount] or such other amount as determined by the directors from time to time. |
| Associate Member | <p>Must:</p> <ul style="list-style-type: none"> • Be a legally incorporated entity under the laws of Australia or other country approved | Must continue to comply with the requirements set out at rule 4.2 and the eligibility criteria for membership as an Associate Member set | <ul style="list-style-type: none"> • To receive notices of any general meeting of the company. • To appoint a Representative to attend and be heard at any general meeting of the | [insert amount] or such other amount as determined by the directors from time to time. | [insert amount] or such other amount as determined by the directors from time to time. |

| | | | | | |
|------------------|---|--|--|---|---|
| | <p>by the directors from time to time;</p> <ul style="list-style-type: none"> • Be nominated for membership by an existing fully paid up Voting Member; and • Be a merchant that accepts payment of one or more forms of digital currency or that otherwise adopts and embraces Fin Tech and digital commerce systems and principles as part of its enterprise. | <p>out in this table.</p> | <p>company.</p> <ul style="list-style-type: none"> • Through its Representative, to vote at any general meeting of the company by show of hands and on a poll except with respect to the election of directors in which case the member may only vote on the election of the Associate Director. • To nominate a candidate for election as an Associate Director only. • To have the member's name listed on the ADCA website as an Associate Member. | | |
| Affiliate Member | <p>Must be: a natural person over the age of 18.</p> | <p>Must continue to comply with the requirements set out at rule 4.2 and the eligibility criteria for membership as an Affiliate Member set out in this table.</p> | <ul style="list-style-type: none"> • To receive notices of any general meeting of the company. • To attend, but not to speak or vote at, any general meeting of the company. | <p>[insert amount] or such other amount as determined by the directors from time to time.</p> | <p>[insert amount] or such other amount as determined by the directors from time to time.</p> |

Schedule 3 ADCA certification and standards

1 Membership not tied to certification

While a member must be a member of a specific membership class to be eligible to become ADCA Certified, certification is not a prerequisite or ongoing requirement for membership. That is, an ADCA Certified member will not lose its membership merely because it loses its certification. However, the provisions found at rule 5 of the constitution relating to the disciplining, suspending and expelling of members still applies to all members both certified and non-certified.

2 ADCA Standards

- (a) The directors may implement a certification program and adopt a set of ADCA Standards to cover things such as:
 - (i) the requirements to become ADCA Certified;
 - (ii) the requirements to remain ADCA Certified;
 - (iii) the benefits associated with being ADCA Certified;
 - (iv) the rights and obligations associated with being ADCA Certified;
 - (v) the fees associated with applying for certification and becoming and remaining certified;
 - (vi) the mechanisms and protocols for monitoring and enforcing compliance with the certification requirements;
 - (vii) the consequences of failing to comply with the certification requirements; and
 - (viii) the systems used to evaluate the certification program.

(ADCA Standards)

- (b) The directors may from time to time, and after consultation with ADCA Certified members, update the ADCA Standards and the way in which the certification program is administered and enforced.
-

3 ADCA Certification

To be ADCA Certified an applicant must:

- (a) be a member of a class of member that is eligible to apply to become ADCA Certified
- (b) apply to become certified;
- (c) satisfy the certification requirements set out in the ADCA Standards;

- (d) agree to be bound by the ADCA Standards as may be in force from time to time;
 - (e) agree to be bound by the ADCA Member License as may be in force from time to time;
 - (f) be granted certification by a resolution of the directors;
 - (g) pay, and continue to pay, any required certification fees;
 - (h) continue to meet the ADCA Standards; and
 - (i) meet such other requirements for certification as may be required.
-

4 Breach of ADCA Standards

- (a) A breach of the ADCA Standards may, in certain circumstances, result in corrective, remedial or disciplinary action (including the suspension or cessation of certification or, in some circumstances, the suspension or expulsion from membership).
- (b) The directors may implement policies and procedures in relation to the operation and enforcement of the ADCA Standards including in relation to:
 - (i) what happens if a non-material breach occurs;
 - (ii) what types of breaches are considered material;
 - (iii) what happens if a material breach occurs; and
 - (iv) the establishment of one or more review committees (including determining the composition and terms of reference of any such committee).