
FSS Management Limited



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CONSTITUTION

1 Definitions and interpretation

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993.

Board means Directors who number not less than the required quorum acting together as a board of directors of the Company.

Class has the meaning set out in section 116 of the Act.

Company means FSS Management Limited.

Constitution means this constitution, as amended from time to time.

Controlling Interest means one person having a controlling interest in another person, including where the first person directly or indirectly by legal or beneficial ownership:

- (a) has, or may have, the power to appoint, remove or direct the majority of the members of the governing body of the other person;
- (b) controls, or has or may have the power to control, the affairs or decisions of the other person; or
- (c) holds more than 50% of the beneficial ownership interest in the other person,

and **Control** and **Controlled** have corresponding meanings.

Director means a person appointed as a director of the Company.

Interest Group, in relation to any action or proposal affecting rights attached to Shares, has the meaning set out in section 116 of the Act.

Interested, in relation to a Director, has the meaning set out in section 139 of the Act.

Ordinary Resolution means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the resolution.

Personal Representative means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

Related Party means, in relation to a Shareholder:

- (a) a spouse (which includes any person with whom the relevant person is living in a relationship in the nature of marriage) father, mother, son or daughter of that Shareholder;
- (b) a trustee of that Shareholder, the settlor or beneficiary of that Shareholder or any spouse (which includes any person with whom the relevant person is living in a relationship in the nature of marriage) of that trustee, settlor or beneficiary; \
- (c) a related company of that Shareholder (as that term is defined in section 2(3) of the Act, provided that, for the purposes of this agreement, the expression **company** in that subsection includes a body corporate); or
- (d) any person which Controls that Shareholder, is Controlled by that Shareholder or is Controlled by the same person who Controls the Shareholder (and for the avoidance of doubt includes any shareholder of the Shareholder).

Representative means:

- (a) a person appointed as a proxy under section 18;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under clause 18.5.

Security means security as defined in the Financial Markets Conduct Act 2013.

Share means a share issued, or to be issued, by the Company.

Shareholder means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares.

Shareholders' Agreement means a shareholders' agreement entered into between the Shareholders relating to the Company (if any).

Share Register means the share register for the Company kept in accordance with the Act.

Special Resolution means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the resolution.

Working Day has the meaning set out in section 2 of the Act.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- 1.2.1 Reference to one gender includes each other gender.
- 1.2.2 Singular will include the plural and vice versa.
- 1.2.3 Reference to persons will include reference to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality.
- 1.2.4 Reference to any statutes or regulations will include all amendments and re-enactments and any statutory instruments, regulations, rules and orders made thereunder.
- 1.2.5 The term **including** means including without limitation.

- 1.2.6 Words and expressions defined or explained in the Act have the same meaning in this Constitution.
- 1.2.7 References to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.
- 1.3 **The Act:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that, as permitted by the Act, they are negated or modified by this Constitution.
- 2 Rights attaching to Shares and issue of Shares**
- 2.1 **Initial Shares:** At the time of adoption of this Constitution, the Company has already issued Shares. The initial Shares will have the rights attached to them as set out in section 36(1) of the Act (subject to any restrictions set out elsewhere in this Constitution).
- 2.2 **Issue of further Shares and other securities:** The Board may issue Shares, securities that are convertible into or exchangeable for Shares or options to acquire Shares (including different Classes of Shares with different rights attaching to them). Section 45 of the Act will not apply.
- 2.3 **Consolidation and subdivision of Shares:** The Board may consolidate and divide the Shares or any Class and subdivide the Shares or any Class in proportion to those Shares or the Shares in that Class.
- 2.4 **Bonus issues:** The Board may apply any amount which is available for distribution either in paying up in full Shares or other Securities of the Company to be issued credited as fully paid or in paying up any amount which is unpaid on any Shares held by the Shareholders or partly in one way and partly in the other.
- 2.5 **Shares in lieu of dividends:** The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.
- 3 Alteration of rights attaching to Shares**
- 3.1 **Special Resolution of Interest Group:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares must be approved by Special Resolution of each Interest Group.
- 3.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, with any necessary modifications.
- 3.3 **Issue of further Shares:** The issue of further Shares ranking equally with, or in priority to, any existing Shares is deemed not to be an action affecting the rights attaching to the existing Shares of that Class.
- 4 Buybacks and redemptions of Shares**
- 4.1 The Company may purchase or otherwise acquire Shares from one or more Shareholders in accordance with the provisions of the Act and may, subject to any requirements or restrictions imposed by law, hold any Shares so purchased or acquired.
- 5 Calls on Shares**
- 5.1 **Making call:** The Board may make such calls upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by

the terms of issue of those Shares. The Board may revoke or postpone any call or require that a call is made in instalments.

- 5.2 **Time of call:** A call is deemed to be made when the resolution of the Board making the call is passed.
- 5.3 **Notice of call:** At least five Working Days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 5.4 **Fixed instalments deemed calls:** The Board may, by the terms of issue of Shares, fix an amount which is payable on allotment or at a fixed date and is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 5.5 **Differential calls:** The Board may, by the terms of issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 5.6 **Liability to pay:** Each relevant Shareholder shall be liable to pay in accordance with notice of the call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.
- 5.7 **Interest on overdue amounts:** If a call is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board may reasonably determine, unless the Board waives payment of interest wholly or in part.
- 5.8 **Calls in advance:** The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder. The Company may pay interest on the amount at such rate as the Board and the Shareholder agree for the period between the date the amount is accepted and the date the amount becomes payable.

6 Forfeiture of Shares

- 6.1 **Notice of non-payment:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment. The notice shall specify a further date (not earlier than 10 Working Days after the date of service of the notice) by which the payment is to be made. The notice shall also state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due is liable to be forfeited.
- 6.2 **Forfeiture:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice had been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect.
- 6.3 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.
- 6.4 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.
- 6.5 **Effect of forfeiture:** The holder of a share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

7 Lien on Shares

- 7.1 The Company has a first ranking lien on each Share and all distributions made in respect of the Share, for:
- 7.1.1 unpaid calls, instalments or other amounts owing in respect of the Share and interest thereon (if any);
 - 7.1.2 any amount which the Company may be called upon to pay under any legislation in respect of the Share; and
 - 7.1.3 all liabilities and obligations of the Shareholder to the Company.

Unless the Company gives prior notice to the contrary to the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share.

8 Sale of Shares due to forfeiture or lien

- 8.1 **Power of sale:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but:
- 8.1.1 the Company shall not sell any Shares unless the amount in respect of which a lien exists is due and payable and until the expiry of 10 Working Days after written notice demanding payment of the amount owing has been given to the person who is or (but for any forfeiture) would be the registered Shareholder in respect of the Shares; and
 - 8.1.2 before the power of sale is exercised the Shares shall be offered for sale to the holders of the remaining Shares as though they are new Shares to which the provisions of clause 2.2 apply.
- 8.2 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share. The Purchaser shall not be bound to see to the application of the purchase money and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale.
- 8.3 **Application of proceeds:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

9 Transfer of Shares

- 9.1 **Transferor remains holder:** The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share Register.
- 9.2 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share by an instrument of transfer which complies with this Constitution.
- 9.3 **Forms of transfer:** Every instrument of transfer of Shares shall:
- 9.3.1 be in any usual or common form or any other form which the Board may approve;
 - 9.3.2 be signed or executed by or on behalf of the transferor; and

- 9.3.3 where the Shares being transferred are not fully paid up, be signed or executed by or on behalf of the transferee.
- 9.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share Register. The transferee shall provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.
- 9.5 **Registration of transfer:** On receipt of a form of transfer in accordance with clause 9.4, the Board must as soon as practicable enter the name of the transferee on the Share Register as holder of the Shares, unless:
- 9.5.1 the Board resolves within 10 Working Days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
- 9.5.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board; and
- 9.5.3 the refusal or delay in the registration is permitted or required by clause 9.6 or 10.
- 9.6 **Power to refuse to register:** Subject to section 84 of the Act, the Board may refuse to register a transfer of any Share if:
- 9.6.1 the Company has a lien on the Share;
- 9.6.2 the Share is not fully paid up;
- 9.6.3 the instrument of transfer is not accompanied by such evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- 9.6.4 the Board has notice of any Shareholders' Agreement and the transfer, or any matter relating to it, does not comply with the Shareholders' Agreement;
- 9.6.5 the transfer, or any matter relating to it, does not otherwise comply with this Constitution.
- 9.7 **Transfer of securities other than Shares:** This clause applies to transfers of securities of the Company other than Shares with any necessary modifications.
- 10 Restrictions on transfer of Shares**
- 10.1 No Shareholder will sell, transfer or otherwise dispose of the legal or beneficial ownership of any or all of its Shares (or any interest in Shares) otherwise than in accordance with any Shareholders' Agreement (and, if there is no Shareholders' Agreement or the Shareholders' Agreement does not provide for it, there is no restriction on the transfer of Shares under this clause 10.1).
- 11 Transmission of Shares**
- 11.1 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.
- 11.2 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:

- 11.2.1 is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by the Shareholder; and
- 11.2.2 is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representatives pursuant to this sub-clause.
- 11.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.
- 12 Meetings of Shareholders**
 - 12.1 **Methods of meeting:** A meeting of Shareholders may be held either:
 - 12.1.1 by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 12.1.2 if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting; or
 - 12.1.3 if determined by the Board, by a combination of those methods.
 - 12.2 **Powers exercisable by meeting or written resolution:** A power reserved to the Shareholders by the Act or by this Constitution may be exercised either at a meeting of Shareholders or by a resolution in writing signed in accordance with section 122 of the Act.
 - 12.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised and any approval of Shareholders may be given by Ordinary Resolution.
 - 12.4 **Annual meetings:** The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act unless in the case of any annual meeting, everything required to be done at that meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.
 - 12.5 **Special meetings:** All meetings of Shareholders, other than annual meetings, will be called special meetings. A special meeting of Shareholders may be called by the Board at any time and shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.
 - 12.6 **Time and place of meetings:** Each meeting of Shareholders shall be held at such time and place as the Board appoints.
 - 12.7 **Minutes:** The Board shall ensure that minutes are kept at all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings unless they are shown to be inaccurate.
- 13 Notice of meetings of Shareholders**
 - 13.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor (if any) of the Company, not less than 10 Working Days before the meeting.
 - 13.2 **Contents of notice:** A notice of meeting shall state:

- 13.2.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- 13.2.2 the text of any Special Resolution to be submitted to the meeting.
- 13.3 **Irregularity in notice:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 13.4 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.
- 13.5 **Adjourned meetings:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 13.1.
- 14 Quorum for meetings of Shareholders**
- 14.1 **Requirement for quorum:** Subject to clause 14.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 14.2 **Size of quorum:** Subject to clause 14.3, a quorum for a meeting of Shareholders is that specified in any Shareholders' Agreement (and, if there is no Shareholders' Agreement or the Shareholders' Agreement does not provide for it, the quorum will be the presence of Shareholders who together hold a simple majority of the votes).
- 14.3 **Lack of quorum:** If a quorum is not present for the meeting the meeting is adjourned in the manner set out in any Shareholders' Agreement (and, if there is no Shareholders' Agreement or the Shareholders' Agreement does not provide for it, to the same day in the following week at the same time and place or to such other date, time and place as the Board may appoint) and, if at the adjourned meeting a quorum is not present for the meeting, the Shareholders or their Representatives present are a quorum.
- 14.4 **Adjournment:** The Chairperson may (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 15 Chairperson of meetings of Shareholders**
- 15.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting.
- 15.2 **Other chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require. If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.
- 16 Voting**
- 16.1 **Meeting in one place:** In the case of a meeting of Shareholders held under clause 12.1.1 unless a poll is demanded in accordance with clause 17.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

- 16.2 **Audiovisual meeting:** In the case of a meeting of Shareholders held under clause 12.1.2 or 12.1.3 unless a poll is demanded in accordance with clause 17.1, voting at the meeting shall be by any method permitted by the chairperson of the meeting.
- 16.3 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines, that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.
- 16.4 **Number of votes:** Subject to 16.7 and to any rights or restrictions for the time being attached to any Class of Shares:
- 16.4.1 where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- 16.4.2 on a poll every Shareholder present in person or by Representative has one vote in respect of each Share held by that Shareholder.
- 16.5 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 17.1.
- 16.6 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 16.7 **Voting restrictions:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.
- 16.8 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.
- 17 Polls**
- 17.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- 17.1.1 the chairperson; or
- 17.1.2 not less than five Shareholders having the right to vote at the meeting; or
- 17.1.3 a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- 17.1.4 a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.
- 17.2 **Time of demand for poll:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 17.3 **Timing of poll:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll. A poll shall be taken in such manner as the chairperson directs and the result of a poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 17.4 **Counting of votes on poll:** On a poll:

- 17.4.1 votes may be given either personally or by Representative;
- 17.4.2 votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares;
- 17.4.3 a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.
- 17.5 **Declaration of results of poll:** The chairperson is entitled to declare the results of a poll.
- 18 Proxies and corporate representatives**
 - 18.1 **Proxy permitted:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.
 - 18.2 **Form of proxy:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term.
 - 18.3 **Lodging proxy:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at such other address as is specified for that purpose in the notice convening the meeting, not later than the start of the meeting.
 - 18.4 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.
 - 18.5 **Corporate representative:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.
- 19 Appointment and removal of Directors**
 - 19.1 **Number:** The number of Directors (excluding alternate Directors) shall not at any time be less than such number set out in any Shareholders' Agreement (and, if there is no Shareholders' Agreement or the Shareholders' Agreement does not provide for it, the number shall not be less than one).
 - 19.2 **Initial Directors:** At the time of adoption of this Constitution, there are Directors in office who shall continue in office subject to this constitution.
 - 19.3 **Appointment and removal of Directors:** A person may be appointed as a Director at any time by written notice to the Company signed by a Shareholder entitled to appoint the Director by any Shareholders' Agreement or by Ordinary Resolution. A Director may at any time be removed from office by written notice to the Company signed by a Shareholder entitled to appoint the Director by any Shareholders' Agreement or by Ordinary Resolution.
 - 19.4 **Vacation of office.** A Director vacates office if he or she:
 - 19.4.1 dies; or
 - 19.4.2 resigns by written notice to the Company; or

19.4.3 becomes disqualified from being a Director pursuant to section 151 of the Act; or

19.4.4 is removed from office in accordance with clause 19.3; or

19.4.5 becomes bankrupt or make arrangement or composition with his or her creditors generally.

19.5 **Appointment of alternate Director:** Each Director may by giving written notice to the Company, appoint any person who is not already a director to act as an alternate Director in his or her place. The following provisions will apply to an alternate Director:

19.5.1 The appointment may at any time be revoked by written notice to the Company given by the appointor and is automatically revoked when the appointor vacates office.

19.5.2 The alternate Director is not entitled to any remuneration in his or her capacity as an alternate Director additional to that of the Director in whose place he or she acts.

19.5.3 Unless otherwise provided by the terms of the appointment, the alternate Director, while acting in that capacity, has the same rights, powers and privileges (excluding the power to appoint an alternate Director) and will discharge all the duties and obligations of the Director in whose place he or she acts.

20 Powers of Directors

20.1 **Management of Company:** The overall business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

20.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company that are not required, either by the Act or this Constitution, to be exercised by the Shareholders or any other person.

20.3 **Delegation of powers:** The Board may delegate any aspects of the management of the Company to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act. In exercising the Board's delegated powers, a delegate must comply with any requirement imposed on the delegate by the Board.

20.4 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

21 Interested Directors

21.1 **Disclosure of Interests:** A Director shall comply with the disclosure of interest requirements of section 140 of the Act but failure to comply with that section does not affect the validity of any contract or arrangement entered into by the Company.

21.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act and section 199(2) of the Act, a Director may:

21.2.1 contract with the Company in any capacity;

21.2.2 be a party to any transaction with the Company;

- 21.2.3 have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
 - 21.2.4 become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
 - 21.2.5 retain any remuneration, profit or benefits in relation to any of the foregoing,
- and no contract or arrangement referred to in this clause may be avoided due to a Director's Interest.
- 21.3 **Interested Directors may vote, etc:** A Director who is interested in a transaction entered into, or to be entered into, by the Company may:
- 21.3.1 vote on any matter relating to the transaction;
 - 21.3.2 attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
 - 21.3.3 sign a document relating to the transaction on behalf of the Company; and
 - 21.3.4 do any other thing in his or her capacity as a Director in relation to the transaction,
- as if the Director were not Interested in the transaction.
- 21.4 **Exception to acting in best interests of Company:** Any Director may, when exercising power or performing duties as a Director, act in a manner which he or she believes is in the best interests of the Company's holding company, even though it may not be in the best interests of the Company.
- 22 Proceedings of Board**
- 22.1 **Methods of holding:** A meeting of the Board may be held either:
- 22.1.1 by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 22.1.2 by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 22.2 **Convening of meeting:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 22.3.
- 22.3 **Notice of meeting:** The following provisions apply in relation to meetings of the Board except where otherwise agreed by all Directors in relation to any particular meeting or meetings:
- 22.3.1 Not less than two days' notice of a meeting shall be given to each Director (other than a Director who has waived that right) unless the chairperson believes it is necessary to continue a meeting as a matter of urgency in which case not less than two business hours shall be given.
 - 22.3.2 Notice to a Director of a meeting may be:

- (a) given to the Director by telephone or other oral communication, in which case the notice will be deemed to be given when the call is answered at that time;
- (b) delivered to the Director, in which case notice will be deemed to be given when delivered;
- (c) posted to the address given by the Director to the Company for such purpose, in which case notice will be deemed to be given three days after it is posted;
- (d) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose, in which case notice will be deemed to be given at the time of transmission; or
- (e) sent by electronic means in accordance with any request made by the Director for such purpose, in which case notice will be deemed to be given at the time it is sent.

22.3.3 It is not necessary to give notices of meetings to an alternate Director, unless the Director who appointed that person has given written notice to the Company requiring that such notices be given.

22.3.4 A notice of meeting shall specify the date, time and place of the meeting and if a meeting by means of audio, or audio and visual, communication, specify the manner in which the Director will be contacted and give an indication of the matters to be discussed.

22.4 **Waiver of irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during or after the meeting) to the waiver.

22.5 **Size of quorum:** A quorum for a meeting of the Board is that specified in any Shareholders' Agreement (and, if there is no Shareholders' Agreement or the Shareholders' Agreement does not provide for it, the quorum will be the presence of a majority of Directors). No matter may be considered at a meeting of the Board if a quorum is not present.

22.6 **Lack of quorum:** If a quorum is not passed, the meeting is adjourned in the manner set out in any Shareholders' Agreement (and, if there is no Shareholders' Agreement or the Shareholders' Agreement does not provide for it, to the same time and place five Working Days later and, if at the adjournment meeting a quorum is not passed for the meeting, the Directors in attendance will constitute the quorum).

22.7 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which he or she is to hold office. If no chairperson is elected or if, at a meeting of the Board, the chairperson is not present, the Directors present may choose one of their number to be chairperson of the meeting. The chairperson does not have a casting vote.

22.8 **Votes:** Every Director has one vote. A resolution of the Board is passed if a majority of the votes cast on it are in favour of the resolution.

22.9 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

22.10 **Written resolution:** A resolution in writing signed or assented to by all of the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered into the records of the Company.

- 22.11 **Validity of acts:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 22.12 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure. The provisions of the third schedule to the Act shall not apply to proceedings of the Board except to the extent those provisions are included in this Constitution.
- 23 Remuneration of Directors**
- 23.1 **Authorisation:** The Board may exercise the powers conferred by section 161 of the Act.
- 23.2 **Expenses:** Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meeting or otherwise in connection with the Company's business.
- 23.3 **Special remuneration:** Without limiting clause 23.1 the Board may authorise special remuneration to any Director whose is or has been engaged by the Company to carry out any work or perform any services which is not in the capacity of a director of the Company.
- 24 Indemnity and insurance for Directors**
- 24.1 **Indemnity for Directors:** Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act. The Board may determine the amounts and terms and conditions of such an indemnity.
- 24.2 **Other indemnities and insurance:** In addition to the indemnity set out in clause 24.1, the Company may:
- 24.2.1 indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- 24.2.2 indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- 24.2.3 with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.
- 24.3 **Interpretation:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 24.
- 25 Dividends**
- 25.1 **Method of payment:** A dividend or other distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholder or, in the case of joint holders, to the holder named first in the Share Register, or to such other person and in such manner as the holder or joint holders may direct.
- 25.2 **Deductions:** The Board may deduct from dividends payable to any Shareholder in respect of any Shares any unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares in respect of which the Company has a lien, and amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.
- 25.3 **Unclaimed dividends:** Dividends or other monetary distributions unclaimed for one year after the due date for payment may be used for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust. All dividends

or other monetary distributions unclaimed for five years or more after the due date for payment may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and subject to compliance with the solvency test, pay the dividend or other monetary distribution to the person producing evidence of entitlement.

26 Notices

- 26.1 **Method of service:** All notices, reports, accounts or documents required to be sent to a shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.
- 26.2 **Joint Shareholders:** A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the register in respect of the Security.

27 Inspection of records

- 27.1 Subject to section 191(2) of the Act, all accounting and other records of the Company will be open to inspection by any Director. Except as provided in the Act or unless the Board determines otherwise in any particular case, no Shareholders shall be entitled to inspect any records, books, papers, correspondence or documents of the Company or require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or sued by the Company.

28 Liquidation

- 28.1 **Distribution of surplus:** Subject to the rights of the Shareholders and to clause 28.2 and 28.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their shareholding. If any Shareholder's shares are not fully paid up the liquidator of the Company may require those shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those shares.
- 28.2 **Distribution of kind:** With the approval of the Shareholders by Ordinary Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may attribute values to assets as the liquidator considers appropriate and determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.
- 28.3 **Trusts:** With the approval of the Shareholders by Ordinary Resolution, the liquidator of the Company may best the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

29 Method of contracting

- 29.1 **Manner of execution:** A contract or other enforceable obligation may be entered into by the Company as follows:
- 29.1.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
- (a) two or more Director; or
 - (b) if there is only one Director, by that Director whose signature must be witnessed; or
 - (c) any Director or another person authorised by the Board, whose signature must be witnessed; or

- (d) one or more attorneys appointed by the Company in accordance with this constitution;
- 29.1.2 an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- 29.1.3 an obligations which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.
- 29.2 **Company may appoint attorneys:** The Company may, by an instrument in writing executed in accordance with clause 29.1.1(a), appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

