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COMPANIES ACT, 2014

PRIVATE COMPANY LIMITED BY SHARES

CONSTITUTION

of

[INSERT COMPANY NAME] LIMITED

1. NAME

The name of the Company is [INSERT COMPANY NAME] Limited.

2. PRIVATE COMPANY LIMITED BY SHARES

The Company is a private company limited by shares registered under Part 2 of the Companies Act 2014.

3. LIABILITY LIMITED

The liability of the members is limited.

4. INTERPRETATION

4.1 Definitions: In this Constitution:

“**Act**” means the Companies Act, 2014;

“**Affiliate**” means, in relation to a body corporate, any other body corporate which controls, is controlled by or is under common control with that party;

“**Auditors**” means the auditors or auditor for the time being of the Company;

“**Bad Leaver**” means a person (other than the Founder) who ceases to be connected with the Company and is not a Good Leaver;

“Compulsory Transfer Event” means, in relation to a member [other than the Founder]¹:

- (a) in the case of an individual, the death of that member;
- (b) in the case of an individual, the declaration of that member to be unsound of mind;
- (c) in the case of an individual, the adjudication of that member as bankrupt or the entry by that member into any voluntary arrangement or composition with his creditors;
- (d) in the case of an individual, the ceasing by that member, for whatever reason, to be connected with the Company;
- (e) in the case of a body corporate, the acquisition of control (direct or indirect) of that member by any single person or group of persons [(other than the spouse or children of the existing controller)]²;
- (f) in the case of a body corporate, the appointment of a receiver, administrator, examiner, liquidator or judicial custodian or other officer analogous to any of the foregoing to that member or over all or any part of its assets or undertaking; or
- (g) the breach by that member of the provisions of this Constitution regarding the transfer of Shares;

“Directors” means the directors of the Company for the time being and from time to time;

“Non-Accepting Shareholder” means a member of the Company (other than the Qualifying Offeror) who has not signed a Drag Along Notice which has been issued;

“Drag Along Notice” means a notice relating to a Qualifying Takeover Offer, issued in accordance with Regulation 7.4(b), and signed by a Qualifying Majority, stating that each signatory has accepted unconditionally that Qualifying Takeover Offer;

“Eligible Offeree” means a member other than one in respect of whose Shares an outstanding Transfer Notice has been given or is deemed to have been given (and for this purpose, a Transfer Notice is outstanding until the earlier of:

- (a) the date on which it is revoked in accordance with Regulation 7.2; and
- (b) the 61st day next following the Offer Round Expiry Date);

¹ Tailor as appropriate.

² Tailor as appropriate.

“Excluded Shares” means any or all of the following:

- (a) any Shares to be issued upon a capitalisation of profits or reserves;
- (b) any Shares to be issued in connection with a share split;

“Excluded Shareholder” means any member other than a Relevant Offeree;

“Exempt Transfer” means any transfer of the entire legal and beneficial interest in a Share:

- (a) approved in writing by [all] members having the right to attend and vote at general meetings of the Company;
- (b) from one body corporate (not being the holder of the Shares concerned as a trustee or nominee for another or others) to another body corporate which is a member of its Group;
- (c) by the Founder;
- (d) by any member to any person provided that such person is the trustee of a settlement or trust for the benefit of the transferor;
- (e) by any nominee of, or trustee for, any person to that person;
- (f) by any nominee or nominees of, or trustee or trustees for, any person to another nominee other nominees of, or another trustee or other trustees for, that person;
- (g) to the Company (whether upon a re-purchase or redemption); or
- (h) made pursuant to an agreement arising upon acceptance of a Qualifying Takeover Offer;

“Founder” means the [sole member of the Company] on the date of adoption of this Constitution;

“Good Leaver” means a person (other than the Founder) who ceases to be connected with the Company:

- (a) by reason of his death;
- (b) by reason of ill-health (other than ill-health arising as a result of abuse of drugs or alcohol) which, as certified by an appropriately qualified medical practitioner, compel him permanently to discontinue working;
- (c) by reason of his wrongful dismissal;
- (d) voluntarily at any time after the fifth anniversary of the date of adoption of these Regulations; or

(e) in circumstances where the Board determines that the person is a Good Leaver;

“**group**” means, in relation to a person, that person and its Affiliates;

“**Group**” means the Company and any company which is from time to time a holding company of the Company or a subsidiary of the Company or of such holding company, and “**Group Company**” shall be construed accordingly;

“**Notice Price**” means the amount specified in a Transfer Notice as the price at which a Prospective Transferor wishes to sell the Notice Shares, expressed as a price per Share;

“**Notice Shares**” means the Shares to which a given Transfer Notice relates;

“**Offer Round Commencement Date**” means:

- (a) in a case involving the valuation of the Notice Shares by a Valuer the date on which notice of the Valuer’s Price is issued to the Prospective Transferor; and
- (b) in any other case, the date of receipt (actual or deemed) by the Company of a Transfer Notice;

“**Offer Round Expiry Date**” means that date which falls 21 days after the Offer Round Commencement Date;

“**Prospective Transferor**” means a member of the Company desiring or required to transfer some or all of his Shares;

“**Qualifying Majority**” means, at any time, one or more members of the Company together holding at that time not less than 80% (in nominal value) of the issued equity share capital of the Company (excluding any Shares held by the Qualifying Offeror);

“**Qualifying Offeror**” means the person or, together the persons, making a Qualifying Takeover Offer;

“**Qualifying Takeover Offer**” means an offer to purchase all of the issued share capital of the Company (other than Shares which at the date of the offer are already held by the Qualifying Offeror) upon such terms that an offeree shall not be required to give or make any indemnity or warranty for the benefit of the Qualifying Offeror upon sale of his Shares except for a warranty to the effect that he has good title to his Shares, free from all encumbrances, and is entitled to sell and transfer his Shares to the Qualifying Offeror;

“**Relevant Offer**” means an offer to purchase Shares which, if accepted, would result in the making of a Relevant Transfer;

“**Relevant Offeree**” means a person to whom there has been made an offer which, if accepted, would result in the occurrence of a Relevant Transfer; and

“Relevant Transfer” means a single transfer of Shares, or a transfer of one or more Shares forming part of a larger transaction or of a series of transfers, which would result in a person or persons who is or are not members of the Company on the date of adoption of this Constitution obtaining control of the Company; and for these purposes “control” shall mean direct or indirect beneficial ownership of at least fifty per cent of the voting share capital of the Company;

“Restrictive Covenant” means, in relation to a person, any covenant, agreement or undertaking made or given by or on behalf of that person (whether alone or jointly with others) to or for the benefit of the Company or any other member of the Company’s Group, not to engage in specified activities;

“Sale Price” means:

- (a) in any case where the Transfer Notice is deemed to have been given in consequence of a Compulsory Transfer Event arising because of the bankruptcy or insolvency of the transferor: €1.00, divided by the number of Notice Shares;
- (b) in any case where the Transfer Notice is issued or deemed to have been issued by a Bad Leaver; €1.00, divided by the number of Notice Shares;
- (c) in any other case where the Transfer Notice is deemed to have been given in consequence of a Compulsory Transfer Event: the Valuer’s Price;
- (d) in any other case, means the Notice Price;

“Share” means a share of any class in the capital of the Company;

“Transfer Notice” means a notice of the kind referred to in Regulation 7.2(c);

“Valuer” means an appropriately qualified person with expertise in the field of the valuation of shares such as the Notice Shares; and

“Valuer’s Price” means the amount certified by the Valuer to be, as at the date on which the Transfer Notice is received (or deemed to have been received) by the Company, the fair value of the Notice Shares as between a willing buyer and a willing seller, determined on the basis of the whole Company as a going concern, with no account being taken of the fact (if so) that the Notice Shares constitute a particular majority or minority interest in the issued share capital of the Company, and expressed as a price per Share.

4.2 **Construction:** In this Constitution, unless a contrary intention is stated, a reference to:

- (a) the singular shall include the plural and vice versa;
- (b) either gender includes the other;

- (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (d) a person includes that person's legal personal representative, permitted assigns and successors;
- (e) a Regulation is a reference to a regulation of this Constitution and a reference to a paragraph or sub-paragraph is a reference to a paragraph or sub-paragraph of the Regulation in which it appears;
- (f) time shall be construed by reference to whatever time may from time to time be in force in Ireland;
- (g) any agreement, document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
- (h) 'including' means comprising, but not by way of limitation to any class, list or category; and
- (i) 'writing' shall include a reference to any electronic mode of representing or reproducing words in visible form.

4.3 **Companies Act Terms:** Save as otherwise expressly defined in this Constitution, or where a contrary intention is stated, each word and phrase defined in the Act (excluding any modification or re-enactment thereof not in force on the date of adoption of this Constitution) shall, when used in this Constitution, have the meaning given to it in the Act.

4.4 **Connection with Company:** For the purposes of this Constitution, an individual shall be treated as "connected with the Company" if but only if and so long as he is an employee or a Director of the Company or of any other member of the Group.

4.5 **Headings:** Headings are to be ignored in the construction of this Constitution.

5. **OPTIONAL PROVISIONS**

The optional provisions of the Act (as defined in section 54(1) of the Act) shall apply to the Company save and so far as they are excluded or modified by this Constitution and such optional provisions together with the provisions of this Constitution shall constitute the Regulations of the Company.

6. CAPITAL³

6.1 **Capital Structure:** The share capital of the Company is divided into ordinary shares and redeemable ordinary shares of €1.00]⁴ each .

6.2 **The Issuance of New Shares:**

- (a) The Directors are generally and unconditionally authorised to exercise all powers of the Company to allot shares (as defined by section 70(3)(b) of the Act).
- (b) Unless otherwise determined in writing by [all members]⁵, any unissued Shares in the capital of the Company from time to time [other than the Excluded Shares]⁶ shall, before they are issued, be offered to all the holders of Shares in the Company in proportion as nearly as the circumstances permit to the nominal value of the Shares held by them respectively (and that offer shall be at the same price and on the same terms to each such holder). Each such offer shall be made by notice specifying the number and class of Shares offered, the proportionate entitlement of the member to whom it is addressed, the price per Share, and a period (not being less than 14 days after service of the notice) upon the expiry of which the offer, if not accepted during that period, shall be deemed to have been declined and also stating that any person who desires allotment of Shares in excess of his proportion should state within a specified period how many excess shares he desires to have. After the expiration of the period so stipulated, the Directors shall offer the Shares so declined or deemed to have been declined to the persons who have, within the stipulated period, accepted all the Shares offered to them, in the same manner as the original offer, stipulating a period (not being less than 14 days after service of the notice) within which the offer, if not accepted, shall be deemed to have been declined. If any Shares comprised in such a further offer are declined or deemed to have been declined, then that further offer shall be withdrawn in respect of those Shares. At the expiration of the time limited by the notice(s), the Directors shall allot and issue the Shares so offered to or amongst the members who have notified their willingness to take all or any of such Shares in accordance with the terms of the offer. No member shall be obliged to take more than the maximum number of Shares he has indicated his willingness to take.

³ If inserting various classes of shares and the rights attaching thereto, include also provision for the variation of class rights because of the impact of section 88 of the Companies Act 2014.

⁴ Shares are commonly given a nominal value of €1.00 each. Amend if an alternative value is required.

⁵ Consider whether this should be all or a majority of the shareholders.

⁶ Review definition of Excluded Shares and consider whether it is appropriate to include this carve-out.

- (c) Any Shares not accepted pursuant to paragraph (b) above, or not capable of being so offered except by way of fractions, and any shares released from the provisions of paragraph (b) above in the manner contemplated by that paragraph, or to which that paragraph does not apply, shall, subject to the provisions of section 69 of the Act, be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper.
- (d) In accordance with section 69(8) of the Act, the application of section 69(6) of the Act is excluded in relation to the allotment by the Company of shares (as defined by section 70(3)(b) of the Act).

6.3 **Purchase of Own Shares:** Subject to and in accordance with the provisions of the Act, the Company may purchase its own shares (including any redeemable shares).

6.4 **Financial Assistance:** The Company may give any form of financial assistance which is permitted under section 82 of the Act for the purpose of an acquisition by subscription, purchase, exchange or otherwise made or to be made by any person of or for any shares in the Company or, where the Company is a subsidiary, in the Company's holding company.

7. TRANSFER OF SHARES

7.1 **Directors' Discretion:** Save as provided in this Regulation 7, the Directors may, in their absolute discretion, and without assigning any reason for doing so, decline to register any transfer of any share, whether or not it is a fully paid share. Section 95(1) of the Act shall not apply to the Company.

7.2 Offer Round:

- (a) No member shall dispose of any interest in, or right attaching to, or renounce or assign any right to receive or to subscribe for, any Share, or create or permit to exist any charge, lien, encumbrance or trust over any Share, or agree (whether subject to any condition precedent, condition subsequent or otherwise) to do any of the foregoing things, except as expressly permitted or required by this Regulation 7.2.
- (b) The restrictions on the transfer of Shares contained in this Regulation 7.2 shall not apply to, and there shall be no restriction on, any Exempt Transfer, and accordingly, but subject to Regulation 7.2(p) (*furnishing of information*), the Directors shall register every such transfer.
- (c) Except for a transfer of Shares which is an Exempt Transfer, no Share shall be transferred until the following provisions of this Regulation 7.2 have been complied with. A member proposing to transfer one or more Shares shall give notice to the Company of his desire to do so, specifying in that notice the Shares concerned and (except where the Transfer Notice is deemed to have been given in consequence of a Compulsory Transfer Event) the price per

share at which he wishes to sell. No Transfer Notice shall relate to Shares of more than one class. A Transfer Notice (other than one deemed to have been given in consequence of a Compulsory Transfer Event) may state that the Prospective Transferor shall be under no obligation to transfer some only of the Notice Shares. Save where expressly provided to the contrary in this Regulation 7.2, a Transfer Notice shall not be revocable without the agreement of the Directors.

- (d) A Transfer Notice shall constitute the Company the agent of the Prospective Transferor for the sale of the Notice Shares at the Sale Price per Share in accordance with this Regulation 7.2.
- (e) If the Transfer Notice is deemed to have issued in consequence of a Compulsory Transfer Event for which a Valuer's Price is required, a Valuer shall be appointed for that purpose by the Company. The Valuer shall act as an expert and not as an arbitrator (and accordingly the Arbitration Act, 2010 shall not apply). The determination of the Valuer shall, in the absence of manifest error, be final and binding on all persons interested. The cost of engaging the Valuer shall be borne by the Company. Following receipt of written notification of the Valuer's Price, the Company shall promptly notify the Prospective Transferor of it in writing.
- (f) From and after the Offer Round Commencement Date, the Notice Shares shall be dealt with in the manner contemplated by paragraphs (g) to (k) inclusive.
- (g) If the Company does not issue a Conversion and Redemption Notice in respect of the Notice Shares during the period of 30 days from and including the Offer Round Commencement Date, then the Notice Shares shall be offered at the Sale Price per share first to the Eligible Offerees holding shares of the class of the Notice Shares, as nearly as may be in proportion to the number of Shares [of that class] held by them respectively. The offer shall in each case stipulate a deadline of 21 days following the date of the offer upon expiry of which, the offer, if not accepted, shall be deemed to have been declined. The offer shall also state that an offeree who wants to buy a number of Notice Shares in excess of his proportion should, in his reply to the Company, state how many Shares in excess he wants to buy. Any Notice Shares unclaimed shall be used (in such manner as the Directors in their absolute discretion see fit) for satisfying the claims in excess.
- (h) If following implementation of the procedures provided for in Regulation 7.2(g) above there remain unclaimed Notice Shares, they shall be offered at the Sale Price per share to Eligible Offerees to whom they have not previously been offered in such proportions as the Directors shall in their absolute discretion determine. The offer shall in each case stipulate a deadline of 21 days following the date of the offer upon expiry of which, the offer, if not accepted, shall be deemed to have been declined. The offer shall also state that an offeree who wants to buy a number of Notice Shares in excess of his

proportion should in his reply to the Company, state how many Shares in excess he wants to buy. Any Notice Shares that are unclaimed shall be used (in such manner as the Directors in their absolute discretion see fit) for satisfying the claims in excess.

- (i) If:
 - (i) accepting offerees are found for all Notice Shares; or
 - (ii) accepting offerees are found for some but not all of the Notice Shares, but the Transfer Notice does not state that the Prospective Transferor shall be under no obligation to transfer some only of the Notice Shares,

then, upon payment to him or to the Company (as his agent) of the Sale Price per share (or the first instalment thereof in accordance with Regulation 7.2(o) (*payment for shares in circumstances of a compulsory transfer event*), as applicable), the Prospective Transferor shall be bound to transfer to the accepting offerees all of the Notice Shares in respect of which offers of sale have been accepted.

- (j) If in any case the Prospective Transferor, after becoming bound to do so, makes a default in transferring any Notice Shares, then the Company, and each and every person appointed by it in writing for that purpose, in each case acting alone, shall be entitled to execute, on behalf of the Prospective Transferor and in his name or otherwise, a transfer or transfers of the Shares and, following execution and, where necessary, the stamping, of the required transfer or transfers, the Company shall cause the name or names of the transferee or transferees to be entered in the register as the holder or holders of the Shares and shall hold the purchase money (subject to any lien in favour of the Company) in trust for the Prospective Transferor (but without any obligation to pay interest on, or to invest, that money). The Company's receipt shall be a good discharge to each transferee for the purchase price, and no question shall be raised as to the title of a transferee to any such Shares after he is registered as the owner thereof.
- (k) If by the Offer Round Expiry Date, the Notice Shares have not been redeemed by the Company, or any Notice Shares have not been accepted for purchase by persons to whom they have been offered in accordance with the foregoing procedures, and the Transfer Notice has not been revoked, then, except where the Transfer Notice is deemed to have been given in consequence of a Compulsory Transfer Event, the Prospective Transferor shall be free for a period of 60 days commencing on the day next following the Offer Round Expiry Date to sell some or all of the Notice Shares (other than any which he has become bound to sell to accepting offerees in accordance with Regulation 7.2(i)) for a consideration not less than the Sale Price per share to such person or persons as he sees fit, and, subject to Regulation 7.2(p) (*furnishing of information*), the Directors shall not be entitled to decline or refuse to register

any such transfer or transfers provided that the admission of the transferee or transferees to membership of the Company would not, in the opinion of the Directors bona fide held by them, be adverse to the interests of the Company.

- (l) Upon the happening of a Compulsory Transfer Event [with regard to a member other than the Founder]⁷, a Transfer Notice shall (subject to Regulation 7.2(o) below) be deemed to have been given by the member concerned (and received by the Company) in respect of all Shares of each class then registered in his name. In such event the Transfer Notice(s) shall not (notwithstanding anything to the contrary in this Constitution) be revocable under any circumstance.
- (m) Where a Transfer Notice in respect of any Share is deemed to have been given under Regulation 7.2(l), and the circumstances are such that the Directors (as a whole) are unaware of the facts giving rise to the Compulsory Transfer Event concerned, that Transfer Notice shall be deemed to have been received by the Company on the date on which the Directors (as a whole) become actually aware of those facts.
- (n) If, having ceased to be connected with the Company as a Good Leaver, an individual:
 - (i) directly or indirectly, and whether as principal, partner, director, consultant, agent or through the medium of any body corporate in which he has an interest (other than a non-material interest in a publicly quoted company), or as an employee or under a contract for services, becomes engaged or interested in any business which is carried on in competition with any business of any member of the Group; and/or
 - (ii) breaches any Restrictive Covenant,

the Company may issue to that individual a written notice stating that the circumstances contemplated by this Regulation apply to him (a “**Transformation Notice**”). Each instalment of purchase consideration payable to that individual for his Shares after the issuance to him of a Transformation Notice shall (in place of the amount which it would have been but for the operation of this Regulation 7.2(n)) be an amount equal to that which it would have been had that individual been a Bad Leaver when he ceased to be connected with the Company.

- (o) In the case of a transfer of Shares from one member to one or more of the other members for the time being, in consequence of a Compulsory Transfer Event or the issuance of a Transfer Notice by the legal personal representatives of a deceased member each of the transferees may, if he so wishes, instead of paying the purchase consideration in one lump sum upon completion of the

⁷ Tailor as appropriate.

offer round process, pay it in three equal consecutive annual instalments, the first of which shall be paid as upon completion of the offer round process.

- (p) For the purpose of ensuring that a particular transfer of Shares is permitted under this Constitution, the Directors may require the transferor or the person named as transferee in any transfer lodged for registration to furnish them with such information and evidence as they may think reasonably necessary or relevant. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a period of 28 days after such request the Directors shall be entitled to refuse to register the transfer in question.

7.3 **Restrictions on Transmission:** All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfers of Shares, shall be applicable to the transmission of Shares in the event of the death or bankruptcy of a member.

7.4 [**“Drag Along:**⁸

- (a) If, at a time when a Qualifying Takeover Offer remains open for acceptance, it has been accepted unconditionally by a Qualifying Majority in respect of all Shares held by them, and a Drag Along Notice is issued, then each Non-Accepting Shareholder shall be deemed to have accepted that Qualifying Takeover Offer in respect of all Shares held by him. That deemed acceptance shall be subject to the condition that the Qualifying Takeover Offer shall have become unconditional as to any condition relating to acceptances, or would become so if the deemed acceptances of all Non-Accepting Shareholders were themselves unconditional.
- (b) A Drag Along Notice shall be served by sending it by ordinary pre-paid post or delivering it by hand to the Company at its registered office for the attention of the secretary, and the Company shall forthwith forward a copy of it to each Non-Accepting Shareholder.
- (c) If a Drag Along Notice has been received by the Company, then a transfer of Shares made for the purposes of the Qualifying Takeover Offer concerned shall be an Exempt Transfer.
- (d) Following the issuance of a Drag Along Notice, each Non-Accepting Shareholder shall be bound to sign any document or deed and do such things are necessary or desirable in connection with the transfer of his Shares pursuant to, and the making of any necessary elections for the purposes of, a Qualifying Takeover Offer.

⁸ The purchaser of a private limited company will most likely be interested only in buying the entire issued share capital. This gives minorities something of a veto. Commonly known as a ‘drag along’ provision, this regulation seeks to eliminate a minority’s ability to obstruct the wish of the majority to sell the Company.

- (e) Any consideration receivable by any Non-Accepting Shareholder in consequence of a transfer of shares executed by an attorney for such Shareholder appointed under Regulation 7.4(f) may be paid or delivered to the Company which shall receive and hold it on trust for that Non-Accepting Shareholder (but without any obligation to pay interest on, or to invest, that money) and the receipt of the Company for such consideration shall be a good discharge for the Qualifying Offeror, who shall not be bound to see to the application of such consideration.
- (f) By his signing the written resolution adopting this Constitution,⁹ each person who is a member of the Company as at the date of their adoption, and by his signing an application for issuance to him of Shares and/or by his becoming a member of the Company, each person who becomes a member of the Company after the adoption of this Constitution, irrevocably, and as security for his obligations under Regulation 7.4(d), appoints any Director or any person authorised by the Company as his agent and/or attorney to execute and deliver any document or deed and do such things as may in the opinion of that agent and/or attorney seem necessary or desirable in connection with a transfer of that member's Shares pursuant to, and the making of any necessary elections for the purposes of, a Qualifying Takeover Offer at any time after a Drag Along Notice shall have been served.
- (g) Each member undertakes to ratify whatever any person appointed as its agent and/or attorney shall lawfully do or cause to be done in accordance with the appointment in the preceding provisions of Regulation 7.4, and to indemnify and keep indemnified such person from all claims, costs, expenses, damages and losses which such person may suffer as a result of the lawful exercise by him of the powers so conferred on him.]

7.5 [Tag Along:¹⁰ Notwithstanding the provisions of Regulation 7.2(b) (*exempt transfers*), no Relevant Transfer shall be made without the consent of each of the Excluded Shareholders unless the Relevant Offer has been extended to all Excluded Shareholders and left open for acceptance by them for at least 30 days from the date of delivery to the last of them of notice of its having been so extended.]

⁹ Obviously, this necessitates the written resolution procedure for the adoption of the new constitution.

¹⁰ This provision, commonly known as a 'tag along' right, might be considered the converse of the Drag Along provision. It gives minorities comfort in situations in which the majority wish to sell out and the purchaser is happy to purchase the majority of the shares, leaving outstanding a rump. This provision gives the holders of that rump an entitlement to participate in the sale. **Most often, a provision such as this is not contained in a constitution, and specific instructions should be sought in relation to the issue, where thought necessary. In all other instances, it should not be included.**

8. PROCEEDINGS AT GENERAL MEETINGS

- 8.1 **Delivery of Proxies:** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the office or at such other place within the State as is specified for that purpose in the notice convening the meeting, before the commencement of the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, before the commencement of the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid. Sub-sections (5) and (6) of section 183 of the Act shall not apply to the Company.
- 8.2 **Poll:** In addition to the right to demand a poll set out in section 189(2) of the Act, a poll may be demanded by any member present in person or by proxy who is entitled to vote at the meeting.
- 8.3 **[No Casting Vote:** Where there is an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and section 187(8) of the Act shall not apply to the Company.]¹¹

9. DIRECTORS¹²

- 9.1 **[Maximum Number:** The Company shall not have more than [seven] Directors.]¹³
- 9.2 **Appointment of Directors:** A Director appointed to fill a casual vacancy or as an addition to the existing Directors shall not be required to retire from office at the annual general meeting next following his appointment and section 144(3)(c) of the Act shall not apply to the Company.
- 9.3 **[No Share Qualification:** A Director or alternate Director shall not be required to hold any shares in the Company by way of qualification, and section 136 of the Act shall not apply to the Company.]¹⁴
- 9.4 **Notice to Directors outside State:** The Directors shall give notice in writing of any meeting of the Directors to any Director who, being resident in the State, is for the time being absent from the State and section 160(4) of the Act shall be modified accordingly. The provisions of section 218(5) of the Act shall apply in respect of any such notice.¹⁵

¹¹ Delete if the chairman is to have a casting vote.

¹² To be considered whether the Constitution is to incorporate provisions for retirement by rotation. The Companies Act, 2014 does not contain such provisions.

¹³ Delete if you do not wish to set a maximum number of directors.

¹⁴ Delete if you do not want a requirement that directors hold shares in the company.

¹⁵ Notice of the meeting can be given by email.

- 9.5 **[Remuneration of Directors:** The remuneration of the Directors shall from time to time be determined by the Company in general meeting. Such remuneration shall be deemed to accrue from day to day. Section 155(2) of the Act shall not apply to the Company.]¹⁶
- 9.6 **Executive Directors:** The Directors may from time to time appoint one or more of themselves to be managing director or any other category of executive director. Sections 159(4) to (6) of the Act (inclusive) shall apply to all executive directors as they apply to a managing director.
- 9.7 **Alternate Directors:**
- (a) A Director may from time to time appoint any person [approved by a majority of the Directors] to be his alternate and may at any time revoke any such appointment. [Section 165(1) of the Act shall not apply to the Company.]¹⁷ More than one person may stand appointed at a particular time to be an alternate Director as respects a particular Director (the “appointer”), provided that only one person so appointed shall be entitled to represent and vote on behalf of the appointer in respect of any particular meeting or resolution. Section 165(2) of the Act shall not apply to the Company.
- (b) An alternate Director shall be entitled to receive notice of and to attend and vote at any meeting of the Directors at which the appointer is not personally present and, in the absence of the appointer, to exercise all the powers, rights, duties and authorities of the appointer as a Director including (without limitation) with regard to the signing or countersigning of instruments to which the seal of the Company is affixed, but excluding the right to appoint an alternate. For the purposes of section 161(1) of the Act, the signature of an alternate Director shall suffice in place of the signature of the appointer. Section 165(3) of the Act shall not apply to the Company.
- (c) A person may act as an alternate for more than one Director and while he is so acting shall be entitled to a separate vote for each Director he is representing and, if he is himself a Director, his vote or votes as an alternate shall be in addition to his own vote. An alternate shall be counted for the purpose of reckoning whether a quorum is present at any meeting attended by him at which he is entitled to vote, but where he is himself a Director or is the

¹⁶ Section 155(2) of the Act provides that remuneration of the directors is to be determined by the board of directors and such remuneration is deemed to accrue from day to day. Delete the wording above if Section 155(2) is to prevail.

¹⁷ Section 165(1) of the Act provides that the appointment of any person other than a director of the company as an alternate requires the approval of the majority of the directors. Section 165(1) applies save to the extent that it is modified or dis-applied by the constitution of the company. If the requirement of majority approval of the directors is to be dis-applied amend Regulation 9.6(a) accordingly.

alternate of more than one Director he shall only be counted once for such purpose.

- (d) An alternate Director's appointment shall terminate if for any reason the appointer ceases to be a Director.
- (e) An alternate Director shall not by virtue of his appointment be an agent of the appointer.

9.8 **Use of Company Property:** For the purposes of section 228(1)(d) of the Act, the reasonable personal use by a Director for his own benefit of any property of the Company and made available for use by the Director in connection with the business or affairs of the Company shall be permitted, subject to any restrictions imposed by the Company under contract or otherwise and provided that such use shall not be materially prejudicial to the commercial interests of the Company.

9.9 **Disqualification of Directors:** The office of Director shall be vacated if:

- (a) the Director makes any arrangement or composition with his creditors generally;
- (b) a declaration of restriction is made in relation to the Director and the Directors, at any time during the currency of the declaration, resolve that his office be vacated;
- (c) an appropriately qualified medical practitioner certifies that the health of the Director is such that he can no longer be reasonably regarded as possessing an adequate decision making capacity;
- (d) the Director resigns his office by notice in writing to the Company;
- (e) the Director is absent from meetings of the Directors for six successive months without leave, and his alternate Director (if any) shall not during such period have attended in his stead, and the Directors resolve that his office be vacated;
- (f) the Director is convicted of an indictable offence, other than an offence specified in section 839 and other than a conviction on indictment of an offence specified in section 855(1) or section 856(1) of the Act, and the Directors resolve that his office be vacated; or
- (g) the Director is removed from office by a resolution duly passed pursuant to section 146 of the Act, or under any provision of this Constitution,

and sections 148(2) to (3) of the Act (inclusive) shall not apply to the Company.

- 9.10 [No Casting Vote: Where there is an equality of votes in relation to a question arising at any meeting of the Directors, the chairman of the Directors shall not have a second or casting vote and section 160(2) of the Act shall not apply to the Company.]¹⁸

10. COMMITTEES OF DIRECTORS

The meetings and proceedings of any committee formed by the Directors shall be governed by the provisions of sections 160(10) to (12) of the Act (inclusive) and the provisions of this Constitution regulating the meetings and proceedings of Directors so far as the same are applicable and are not superseded by any regulations imposed on such committee by the Directors.

11. NOTICES

The provisions of section 218(5) of the Act shall apply in relation to the Company and shall apply to notices served upon the persons listed in section 180(1) of the Act. For the purposes of section 218(3)(d), notices may be served by electronic means (including electronic mail) and by his signing the written resolution adopting this Constitution, each person who is a member of the Company as at the date of its adoption, and by his signing an application for the issuance to him of shares and/or by his becoming a member of the Company, each person who becomes a member of the Company after the adoption of this Constitution, irrevocably consents to the use of electronic means for the service or giving of notices in relation to him.

12. INDEMNITY

Subject to the Act:

- (a) every Director, managing director, agent, auditor, secretary and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in relation to his acts while acting in such office, in which judgment is given in his favour or in which he is acquitted or in connection with any application under sections 233 and 234 of the Act in which relief is granted to him by the court. Section 235(3) of the Act shall apply to the Company; and
- (b) every Director, managing director, agent, auditor, secretary and other officer for the time being of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he or she may sustain or incur in or about the execution of the duties of his or her office or otherwise in relation thereto and no officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his or her office or in relation thereto. This

¹⁸ Delete if the chairman is to have a casting vote.

Regulation 12(b) shall have effect only in so far as its provisions are not void under section 235 of the Act.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this Constitution, and we agree to take the number of shares in the capital of the Company set opposite our respective names.¹⁹

Names, addresses and descriptions of subscribers	Number of shares taken by each subscriber
Total number of shares taken:	

Dated 20[●]

Witness to the above signatures:

Name: _____

Address: _____

¹⁹ The subscribers are the founding Members of the company and will be the first names entered in the Register of Members.