

## AIM

The signatories to this Constitution (the “**Shareholders**”), as part of the **YES** programme at \_\_\_\_\_ (the “**School**”) aim to run a successful business, obtain an insight into the business world in both theory and practice, and acquire entrepreneurial skills for future use.

The Shareholders wish to establish a virtual company called \_\_\_\_\_ (“**Virtual Company**”) and have entered into this Constitution to govern how they will jointly:

- operate the business;
- make decisions in relation to the business;
- own and deal with tangible and intangible assets invested into and arising from the operation of the business;
- share responsibility for obligations arising in relation to the business; and
- wind-up the business.

## OBJECTIVES

The agreed objective of the business undertaken by the Virtual Company is set out in the Appendix (the “**Business Objective**”). In undertaking the business we intend to:

- Establish and capitalise the Virtual Company.
- Organise a Board of Directors and elect Officers for the Virtual Company.
- Maintain a complete financial record system for the Virtual Company.
- Make a profit and pay taxes.

## CLAUSE 1 - Responsibility

1.1 The Virtual Company is not a limited liability company and incorporated under the Companies Act 1993. The Virtual Company is therefore not a real company; however this Constitution represents an agreement between the Shareholders to operate the Virtual Company in a similar way to a company incorporated under the Companies Act 1993.

1.2 Each Shareholder understands that all Shareholders are responsible for any acts and/or omissions of any individual Shareholder taken for or on behalf of the Virtual Company provided that:

- 1.2.1 subject to this clause 1.2, such responsibility will be shared proportionally to the relative shareholding of each Shareholder;

1.2.2 to the extent that the acts and/or omissions of that individual Shareholder were not authorised by the other Shareholders in accordance with this Constitution, breach this Constitution, breach any law, breach any School Policy or are negligent, that individual Shareholder will be solely responsible for such acts and/or omissions;

1.2.3 the liability of each Shareholder to the other Shareholders will be limited to the value of the shareholding of that Shareholder other than to the extent that act or omission was not authorised by the other Shareholders in accordance with this Constitution, breaches this Constitution, breaches any law or is negligent; and

1.2.4 such responsibility will be subject to the Minors' Contracts Act 1969 under which the court has a wide discretion to cancel a contract entered into by a minor (being a person who has not attained the age of 18 years) if it is satisfied that at the time the contract was entered into, any of its provisions were harsh or oppressive towards the minor(s).

1.3 The Virtual Company and its Student Participants will comply at all times with School Policy. Where there is any inconsistency between School Policy and this Constitution, the School Policy will prevail.

## **CLAUSE 2 - Student Participants**

2.1 Student Participants must be enrolled students at the School and be eligible to participate in YES in accordance with School Policy.

## **CLAUSE 3 - Shareholders**

3.1 Shares in the Virtual Company are divided into two types:

a) **Ordinary Shares:** These shares can only be held a Student Participant. On the date of execution of this Constitution, each Shareholder holds the Ordinary Shares in relation to the Virtual Company as set out in the Appendix. The Board may issue further Ordinary Shares to Student Participants in proportion to their future capital contributions. Upon winding up of the Virtual Company in accordance with clause 13, the residual (left over) profits (after all liabilities (including taxation payable) have been paid and payments for Preference Shares have been paid), will be divided between the holders of the Ordinary Shares in proportion to their relative shareholding.

b) **Preference Shares:** These shares are held by investors and cannot be held by Student Participants. Preference Shares will be allocated by the Board. They entitle the holder to receive their investment, with an agreed return, at the wind-up phase of the Virtual Company in accordance with clause 13.

## **CLAUSE 4 - Appointment and dismissal of Directors**

4.1 Upon signing this Constitution, each Student Participant will be a Director of the Virtual Company.

4.2 Each Director will make an application to the YES Teacher outlining their preferred Directorship. The YES Teacher will, in consultation with all Directors, appoint the Managing Director (CEO).

4.3 Following appointment of the Managing Director (CEO) in accordance with clause 4.2, the remaining Directors will make an application to the Managing Director outlining their preferred Directorship. The Managing Director

will, in consultation with the YES Teacher and all Directors, allocate all Directors a Directorship. The Directorships must include a Communications Director and a Finance Director.

- 4.4 Directors may resign from the Virtual Company by leaving the School or relevant class voluntarily.
- 4.5 Directors may be dismissed by the YES Teacher where they have received a recommendation from the Board, in the following circumstances:
- (a) Where the Director has committed misconduct and the following procedure has been completed:
- (i) The Board has previously given an oral warning in relation to previous misconduct which is stated in the minutes of a Board Meeting; and
- (ii) The Board has previously given a written warning in relation to a further previous misconduct which is stated in the minutes of a Board Meeting; or
- (b) Where the Director has committed "gross misconduct" justifying instant dismissal.
- Any dismissal must be consistent with School Policy.
- 4.6 Where a Director resigns or is dismissed from the Virtual Company in accordance with clauses 4.4 or 4.5 above, their initial investment will be refunded as part of the winding up procedure set out in clause 13.
- 4.7 A Director may be reinstated upon recommendation of the Managing Director and a majority vote of the Board.

## **CLAUSE 5 - Board**

- 5.1 Control of the Virtual Company is vested in the Board.
- 5.2 The members of the Board shall consist of all Directors of the Company.
- 5.3 All members of the Board are required to attend all Board Meetings. Directors have both speaking and voting rights at Board Meetings. Failure by a Director to attend three consecutive meetings without prior written apology will constitute gross misconduct for the purposes of clause 4.5(b) and result in dismissal of that Director.
- 5.4 A quorum at any Board Meeting shall be made up of one-half of the Directors, including any two of the Managing Director, Communications Director or Director of Finance.
- 5.5 The duties of the Board shall include, but not be limited to, making decisions on behalf of the Virtual Company, representing the Virtual Company to the general public, requiring reports of Directors, and establishing dividends.
- 5.6 Each Director will have one vote. A simple majority shall decide any motion to come before the Board, with the exception that a motion for any of the following will require a 75% majority:
- amendment of this Constitution (in accordance with clause 8.1);
  - amendment to, or change of, the Business Objective for the Virtual Company;
  - any transaction involving the:

expenditure;

incurrence of any debt;

disposal of any asset or group of assets; or

encumbrance of any asset or group of assets;

that has a value equal to or greater than 20% of the capital value of the Virtual Company at the time of that transaction; or

- the allocation of preference shares.

5.7 An Agenda must be circulated before each Board Meeting and meeting minutes shall be recorded at each Board Meeting. Minutes shall include:

- Apologies
- Meeting minutes of previous meeting
- Report from each Director
- Motions made including the mover, seconder and votes for and against the motion
- Closure time, venue and date for the next meeting.

## **CLAUSE 6 - Finance**

6.1 The Virtual Company will have a separate cheque account. Cheques are required to be signed by two directors including either the Managing Director or the Finance Director, and the YES Teacher (if directed by school). All payments must obtain prior approval from the Board and accounts showing all payments must be presented by the Finance Director at each Board Meeting.

## **CLAUSE 7 - Product/Service**

7.1 The Product or Service produced by the Virtual Company shall not present any hazard to any person or property. The Product will not be "sold on commission" nor a product purchased and resold, including importing, without value added.

7.2 The Product or Service will be permissible within the School Policy. Any Product using School logos or competing with School activities needs permission from the senior management of the School and the competing activity.

7.3 The Service offered by the Virtual Company will not be a one-off activity.

## CLAUSE 8 - Amendments

8.1 Clauses to this Constitution may be amended by a 75% vote of the Board, together with the agreement of the YES Teacher. Any amendments to the Constitution will be sent to Young Enterprise Trust ([leah.macdonell@youngenterprise.org.nz](mailto:leah.macdonell@youngenterprise.org.nz)) for approval prior to them becoming effective.

## CLAUSE 9 - Intellectual Property

9.1 If, a Student Participant develops any Intellectual Property related to the Business Objective (“**Business IP**”) he or she will promptly inform the Board of the specific nature of that Business IP.

9.2 Business IP will, from the time of discovery or development, be deemed to be owned jointly by all Shareholders as tenants in common in shares proportional to the relative shareholding of each Shareholder.

9.3 No Shareholder will disclose or use Business IP other than:

- for the purpose of that Party performing its obligations in relation to the Business Objective in accordance with this Constitution;
- with the written permission of the Board (subject to clause 5.6); or
- as otherwise agreed in writing by the parties with an ownership interest in such Business IP.

9.4 Where, in accordance with the terms of this Constitution, the Board resolves to sell, license or otherwise transfer any Business IP, each Shareholder:

- will be deemed to have consented to that sale, license or transfer;
- will complete such documentation as is required in relation to that sale, license or transfer; and
- grants a power of attorney to a Director nominated by the Board to complete such documentation on behalf of that Shareholder where that Shareholder is not able or does not do so within 5 days of being requested to do so.

## CLAUSE 10 - Local Policies

(These exist to comply with local authority by-laws, and will vary from area to area, or Virtual Company to Virtual Company. The following is included as a guide only.)

10.1 **Safety** - In compliance with insurance provisions, no person may operate power machinery until they have been approved by Occupation Safety and Health in relation to the equipment. An adviser must also be present when equipment is operated.

## CLAUSE 11 - Dispute Resolution

11.1 In the case of any unresolved dispute involving the Virtual Company and being between Student Participants, Directors and/or Shareholders, the affected parties will appoint an expert as a mutually acceptable third party to mediate upon the dispute and the affected parties agree to comply with the recommendation of such mediator.