



# 2018 YES Virtual Company Constitution

## EXPLANATORY NOTE

The purpose of this document is to simulate the constitution and shareholders' agreement that are often used to govern how companies are operated by their shareholders and directors. The entry into, and compliance with, this agreement is intended to give students experience and understanding of how documents like this are used in the business world.

This agreement is intended to create legally binding obligations for those who enter into it. However, if it is entered into by minors under the age of 18 then, in accordance with the Minors Contracts Act 1969 (and the Minors' Contracts Amendment Act 2005), it will not be enforceable against the minor unless a court finds that it is fair and reasonable and exercises its discretion to do so.

## AIM

The signatories to this Constitution (the **Shareholders**), as part of the **YES** programme at

**CLAUSE 1 - Responsibility** (the **School / Institution**), 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 Virtual Company is not a limited liability company and is not incorporated under the Companies Act 1993.

The Virtual Company is therefore not a real company, however, this Constitution represents an agreement

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

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:

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

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:

- b) 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; and
- c) 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, breaches any School Policy or is negligent.

1.3 The Virtual Company and its Student Participants will comply at all times with School Policy. Where there is

### CLAUSE 3 – Shareholders

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

- a) **Ordinary Shares:** These shares can only be held by 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) 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 can only be 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 Chief Executive Officer (or equivalent title) of the Virtual Company. The YES Teacher will have final approval.
- 4.3 Following appointment of the CEO in accordance with clause 4.2, the remaining Directors will make an application to the CEO outlining their preferred Directorship. The CEO 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 (or equivalent titles).
- 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 the YES Teacher has received a recommendation from the Board, and:

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, the Director will cease to be a Shareholder from the date of their resignation or dismissal and, unless agreed otherwise by all Shareholders, 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 CEO 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 may 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 CEO, Communications Director and Finance Director.
- 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 authorising payment of 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:
- a) amendment of this Constitution (in accordance with clause 8.1);
  - b) amendment to, or change of, the Business Objective for the Virtual Company;
  - c) any transaction involving the:
    - (i) expenditure;
    - (ii) incurrence of any debt;
    - (iii) disposal of any asset or group of assets; or
    - (iv) 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
  - d) 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:

- a) apologies;
- b) meeting minutes of previous meeting;
- c) report from each Director;
- d) motions made including the mover, seconder and votes for and against the motion; and
- e) closure time, venue and date for the next meeting.

#### **CLAUSE 6 - Finance**

6.1 The Virtual Company will have a separate bank account. Any payments are required to be authorised in writing by two directors including either the CEO or the Finance Director, and the YES Teacher (if directed by the 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 must not present any hazard to any person or property. The Product must not be sold on commission nor be a product purchased and resold, including importing, without value added.

7.2 The Product or Service must be allowed under the School Policy. Any Product using School logos or competing with School activities needs permission from the senior management of the School and the person in charge of the competing activity (where applicable).

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