

## 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 \_\_\_\_\_ (“**Virtual Company**”) and have entered 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.

4.3 Following appointment of the Managing Director 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. The Managing Director may be appointed to one other Directorship.

- 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 Virtual 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;
  - subject to clauses 13.2 and 13.3, 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 either the Managing Director or the Finance Director, and the YES Teacher. 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 be one to which value has been added and 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 significant 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 and the Mentor. Any amendments to the Constitution will be sent to Young Enterprise Trust ([robyn.borne.yetrust.co.nz](mailto:robyn.borne.yetrust.co.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.
- 11.2 All parties to a dispute will act in good faith and a timely manner.
- 11.3 Unless otherwise determined by the expert, the cost of the mediation shall be borne equally by the affected parties.

## **CLAUSE 12      Remuneration**

12.1 Directors and Shareholders shall not receive any remuneration until the winding up of the Virtual Company in accordance with clause 13. This particularly includes wages and commission.

## **CLAUSE 13      Winding Up**

13.1 The Shareholders will ensure that the Virtual Company terminates operations and completes the winding up procedures describe in clause 13.2 by the second week in October in the year this Constitution is signed. However winding up can be completed prior to this deadline.

13.2 Once the operations of the Virtual Company have ceased, the Board shall wind up the Virtual Company in accordance with the following procedures:

1. Where applicable, sale of assets including Business IP in accordance with clause 13.3;
2. Preparation of final accounts (Performance, Position, Movements in Equity), including valuation of goodwill;
3. Payment of tax;
4. Payment of any other third party liabilities;
5. Distribution to any holders of Preference Shares;
6. Payment of initial contributions to any Directors that resigned or were removed in accordance with clause 4; and
7. Distribution to Ordinary Shareholders, based on relative shareholding, if no other formal agreement has been signed.

13.3 Any sale of Business IP as part of the winding up process under clause 13.2 must be in accordance with the following procedures:

1. Where the Client Sponsor has met its obligations to the Virtual Company under the Enterprising Technology Programme, the Board and Shareholders must, by written notice, provide the Client Sponsor a first option to purchase the Business IP from the Shareholders in accordance with this clause 13.3.
2. The Client Sponsor will have at least 30 days from the date notice is provided under paragraph 1 above, to make an offer for the purchase of the Business IP.
3. Where the Client Sponsor makes an offer under paragraph 2, all the Shareholders must accept that offer and sell the Business IP to that Client Sponsor unless, within 14 days of that offer, a competing offer of greater value is recieved which is acceptable to at least a 75% majority of the Board or to Shareholders that hold at least 75% of the Shares. For the avoidance of doubt, that competing offer may be made by a Shareholder.
4. Where the Client Sponsor does not make an offer within 30 days of notice being provided under paragraph 1 above, the Shareholders will be free to sell the Business IP to any other party.

5. Subject to the rights of the Client Sponsor set out above, where an offer to purchase the Business IP is acceptable to at least a 75% majority of the Board or to Shareholders holding at least 75% of the Shares, all the Shareholders must accept that offer and sell the Business IP to that offeror.

13.4 If by the last day of February in the year following the year in which this Constitution is executed, the Directors have not wound up the Virtual Company in accordance with clause 13, then Young Enterprise Trust has the first right to endeavour to find a purchaser for the Business IP. If Young Enterprise Trust is successful in identifying a buyer and arranging the sale, proceeds of the sale or ongoing royalty would go first to pay for any out of pocket expenses incurred by Young Enterprise Trust in arranging the sale. Such out of pocket expenses would include legal fees, and other costs incurred by Young Enterprise Trust in arranging the brokerage. Once these costs have been covered, Young Enterprise Trust will retain a further 30% of the remaining funds and pay the remaining 70% to the known Shareholders who must distribute such funds in accordance with clause 13.2.

## **CLAUSE 14 Interpretation**

14.1 In this Constitution unless the context otherwise requires:

- “Board” means the Board of Directors of the Virtual Company as defined in clause 5.
- “Board Meeting” means a meeting of the Board.
- “Client Sponsor” means, for the purpose of the Enterprising Technology Programme, the key client of the Virtual Company as agreed by the Shareholders at the commencement of the Virtual Company under this Constitution.
- “Constitution” means the constitution of the Virtual Company contained in this document.
- “Director” means a director of the Virtual Company in accordance with clause 4.1.
- “Directorship” means an appointed area of responsibility allocated to a Director in accordance with clause 4.
- “Enterprising Technology Programme” means a programme developed by the Young Enterprise Scheme.
- “Intellectual Property” means all intellectual property including without limitation all trade or business names, copyrights, trade marks, patents and patent applications, discoveries, secret processes, improvements in procedure, inventions, and designs, registered and unregistered, and all related know how, goodwill and confidential information.
- “Mentor” means the mentor allocated to the Virtual Company.
- “Ordinary Share” means a share with the properties described in clause 3.1(a).
- “Ordinary Shareholder” means the holder of an Ordinary Share.
- “Preference Share” means a share with the properties described in clause 3.1(b).
- “Preference Shareholder” means the holder of a Preference Share.

- “School Policy” means the policies and practices of the School.
- “Shareholder” means the holder of an Ordinary Share or a Preference Share.
- “Student Participant” means a student of the School that is participating in running the Virtual Company as part of YES and is eligible under the School Policy to participate in YES.
- “YES” means the Lion Foundation Young Enterprise Scheme.
- “YES Teacher” means the teacher of the School primarily in charge of the YES team running the Virtual Company.

I have read and understand all the sections of the Constitution. I will comply with the provisions of the Constitution and the School Policy when participating in YES:

Name	Position	Signature	Date

**APPENDIX**

**Business Objective:**

The development, manufacture, distribution and sale of \_\_\_\_\_(the **"Product"**)

**OR** The development and supply of \_\_\_\_\_(the **"Service"**)

**Initial Shareholding**

Name	Type (Ordinary/Pref erence)	Number	Consideration