

**THE COMPANIES LAW (2018 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**MEMORANDUM AND ARTICLES OF ASSOCIATION  
OF  
GALAXY DIGITAL HOLDINGS LTD.**

**THE COMPANIES LAW (2018 REVISION)**

**OF THE CAYMAN ISLANDS**

**COMPANY LIMITED BY SHARES**

**MEMORANDUM OF ASSOCIATION**

**OF**

**GALAXY DIGITAL HOLDINGS LTD.**

- 1 The name of the Company is Galaxy Digital Holdings Ltd.
- 2 The Registered Office of the Company will be at the offices of Maples Corporate Services Limited at PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company will have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is CAD\$2,000,000 divided into 2,000,000,000 Ordinary Shares of CAD\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.

**THE COMPANIES LAW (2018 REVISION)**

**OF THE CAYMAN ISLANDS**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**GALAXY DIGITAL HOLDINGS LTD.**

**1 Interpretation**

- 1.1 In the Articles, Table A in the First Schedule to the Statute does not apply and, unless there is something in the subject or context inconsistent therewith:

**Accredited Investor** means an “accredited investor” within the meaning of Rule 501(a) of Regulation D under the United States Securities Act of 1933, as amended.

**Articles** means these articles of association of the Company.

**Auditor** means the person for the time being performing the duties of auditor of the Company (if any).

**Company** means the above-named company.

**Directors** means the directors for the time being of the Company.

**Disqualified Holder** means: (a) any U.S. Benefit Plan Investor other than one all of whose holdings of Shares or other securities of the Company were purchased from the Company (or result from conversion or exercise of securities purchased from the Company) after complete and correct disclosure by the U.S. Benefit Plan Investor to the Company with respect to its status as such; (b) any U.S. Subscriber or U.S. Transferee who is not an Accredited Investor and a Qualified Purchaser; and (c) any person, as determined by the Directors, to whom a sale or transfer of Shares, or in relation to whom the holding of Shares: (i) would or could be in breach of the laws or requirements of any jurisdiction or governmental authority or in circumstances (whether directly or indirectly affecting such person, and whether taken alone or in conjunction with other persons, connected or not, or any other circumstances) appearing to the Directors to be relevant; or (ii) might result in the Company’s incurring a liability to taxation or suffering a pecuniary, fiscal, legal, administrative or regulatory disadvantage, including the Company’s being required to register as an “investment company” under the U.S. Investment Company Act, the Company’s no longer being a “foreign private issuer” for purposes of the U.S. Exchange Act, the assets of the Company being deemed to be plan assets of a U.S. Benefit Plan Investor, the Company’s becoming subject to regulation as a depository institution holding company subsidiary or otherwise subject to banking law or the Company’s otherwise not being in compliance with the U.S. Investment Company Act, ERISA, the U.S. Code or any other provision of U.S. federal or state law or non-U.S. law.

**Dividend** means any dividend (whether interim or final) resolved to be paid on Shares pursuant to the Articles.

**Electronic Record** has the same meaning as in the Electronic Transactions Law.

**Electronic Transactions Law** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.

**Eligible Transferee** means a person to whom a Required Disposal is permitted to be made.

**ERISA** means the U.S. Employee Retirement Income Security Act of 1974.

**Independent Director** means a Director who is not also an officer or employee of the Company, the Primary Subsidiary or any affiliate of either, and who has not otherwise been determined by the Directors to be non-independent for purposes of any laws applicable to the Company.

**IFRS** means International Financial Reporting Standards, as adopted by the International Accounting Standards Board and as in effect from time to time.

**Member** has the same meaning as in the Statute.

**Member Resolution** means an Ordinary Resolution or a Special Resolution, as applicable.

**Memorandum** means the memorandum of association of the Company.

**Ordinary Resolution** means a resolution passed by a simple majority of the voting power, determined in accordance with Section 19.2, of Members who, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.

**Ordinary Share** means an ordinary share of CAD\$0.001 in the share capital of the Company.

**Primary Subsidiary** means Galaxy Digital Holdings LP, including any successor-in-interest thereto.

**Public Company** means a company that:

- (i) is a reporting issuer, as defined in applicable Canadian securities laws, or the equivalent in any jurisdiction in Canada; or
- (ii) has any of its securities traded on or through the facilities of a securities exchange or reported through the facilities of a quotation and trade reporting system.

**Qualified Purchaser** has the same meaning as in Section 2(a)(51) of the U.S. Investment Company Act and the regulations thereunder.

**Register of Members** means the register of Members maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate register of Members.

**Registered Office** means the registered office for the time being of the Company.

**Required Disposal** means a transfer or other disposal or disposals of all Disqualifiable Securities, which transfer or other disposal is made to another person who, in the sole and

conclusive determination of the Directors, is not a Disqualified Holder and which transfer would not cause any other person to become a Disqualified Holder.

**Seal** means the common seal of the Company and includes every duplicate seal.

**Share** and **Shares** means a share or shares, including Ordinary Shares, of the Company, and includes a fraction of a Share.

**Special Resolution** has the same meaning as in the Statute, where the voting power of Members for this purpose will be determined in accordance with Section 19.2, and includes a unanimous written resolution.

**Statute** means the Companies Law (2018 Revision) of the Cayman Islands.

**Subscriber** means the subscriber to the Memorandum.

**Transfer Agent** means such company as may from time to time be appointed by the Company to act as registrar and transfer agent of the Shares, together with any sub-transfer agent duly appointed by the Transfer Agent.

**Treasury Share** means a Share held in the name of the Company as a treasury share in accordance with the Statute.

**U.S. Benefit Plan Investor** means: (a) a person that is or uses assets of: (i) an “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title I of ERISA; (ii) a “plan” as defined in Section 4975 of the U.S. Code, including an individual retirement account or other arrangement that is subject to Section 4975 of the U.S. Code; or (iii) an entity that is deemed to hold the assets of any of the foregoing types of plans, accounts or arrangements that is subject to Title I of ERISA or Section 4975 of the U.S. Code; or (ii) a governmental, church, non-U.S. or other employee benefit plan that is subject to any federal, state, local or non-U.S. law that is substantially similar to the provisions of Title I of ERISA or Section 4975 of the U.S. Code.

**U.S. Code** means the U.S. Internal Revenue Code of 1986.

**U.S. Exchange Act** means the U.S. Securities Exchange Act of 1934.

**U.S. Investment Company Act** means the U.S. Investment Company Act of 1940.

**U.S. Person** means a “U.S. person” as defined in Regulation S under the U.S. Securities Act.

**U.S. Securities Act** means the U.S. Securities Act of 1933.

1.2 In the Articles:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing the masculine gender include the feminine gender;
- (c) words importing persons include corporations as well as any other legal or natural person;
- (d) “written” and “in writing” include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) references to provisions of any law or regulation will be construed as references to those provisions as amended, modified, re-enacted or replaced;

- (f) any phrase introduced by the terms “including,” “include,” “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms;
- (g) the term “and/or” is used herein to mean both “and” as well as “or.” The use of “and/or” in certain contexts in no respects qualifies or modifies the use of the terms “and” or “or” in others. The term “or” will not be interpreted to be exclusive and the term “and” will not be interpreted to require the conjunctive (in each case, unless the context otherwise requires);
- (h) headings are inserted for reference only and will be ignored in construing the Articles;
- (i) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (j) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (k) sections 8 and 19(3) of the Electronic Transactions Law will not apply;
- (l) the term “clear days” in relation to the period of a notice means that period excluding the day when the notice is received or deemed to be received and the day for which it is given or on which it is to take effect; and
- (m) the term “holder” in relation to a Share means a person whose name is entered in the Register of Members as the holder of such Share.

## **2 Business of the Company**

- 2.1 The business of the Company may be commenced as soon after incorporation of the Company as the Directors see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and establishment of the Company, including the expenses of registration.
- 2.3 At all times, the Company will not, directly or indirectly, undertake any acquisition or investing activity or operate any business, except in or through the Primary Subsidiary or subsidiaries of the Primary Subsidiary.

## **3 Issue of Shares**

- 3.1 Subject to the provisions of the Statute and the Articles about the redemption and purchase of the Company’s own Shares, the Directors have general and unconditional authority to allot (with or without confirming rights of renunciation), issue, grant options over or otherwise deal with any unissued Shares of the Company to such persons, at such times and on such terms and conditions as they may decide. No Share may be issued at a discount. The Company’s Shares are non-assessable. A Share will not be issued until the consideration for the Share is fully paid in money or in property or services that are not less in value than the fair equivalent of the money that the Company would have received if the Share had been issued for money.
- 3.2 The Company will not issue Shares to bearer.
- 3.3 Terms Applicable to Primary Subsidiary Units.

- (a) The holder of each limited partnership unit of the Primary Subsidiary designated as a “Class B Unit” (a “**Primary Sub Class B Unit**”) will, pursuant to the terms of and subject to the conditions of the Limited Partnership Agreement of the Primary Subsidiary, as amended from time to time (the “**Primary Sub LP Agreement**”), and any Exchange Agreement between the Company, the Primary Subsidiary, the general partner of the Primary Subsidiary and each person who from time to time executes an Exchange Agreement or is deemed to be a party thereto (an “**Exchange Agreement**”), have the right to exchange such Primary Sub Class B Unit for one fully paid and nonassessable Share or, at the option of the Primary Subsidiary, an equivalent amount of cash, in each case, on and subject to the terms and conditions set forth hereunder, in the Primary Sub LP Agreement and in the Exchange Agreement.
  - (b) In connection with such exercise of the exchange privilege under the Primary Sub LP Agreement and the Exchange Agreement, the Company will (unless and to the extent that the Primary Subsidiary has elected in accordance with the terms and provisions of the Primary Sub LP Agreement and the Exchange Agreement to pay cash in lieu of Shares) issue to or as directed by the Primary Subsidiary a number of Shares, as requested by the Primary Subsidiary, in exchange for an equal number of limited partnership units of the Primary Subsidiary designated as “Class A Units,” which may be subdivided in accordance with the Primary Sub LP Agreement (the “**Primary Sub Class A Units**”) issued to the Primary Subsidiary, provided that the aggregate number of Shares issued will not exceed the number of Primary Sub Class B Units surrendered to the Primary Subsidiary by the exchanging partner of the Primary Subsidiary and the number of Primary Sub Class A Units delivered to the Company by the Primary Subsidiary.
  - (c) Such number of Shares as may from time to time be required for exchange pursuant to the terms of this Article 3.3 will be reserved for issuance upon exchange of outstanding Primary Sub Class B Units.
- 3.4 All initial subscribers of Shares or other securities of the Company that are U.S. Persons (“**U.S. Subscribers**”) must give the Company such notice and certifications as the Directors may require upon the sale or other transfer by the U.S. Subscriber of such Shares or other securities in order to give notice to the Company as to whether such Shares or other securities have been sold to or for the account of another U.S. Person (a “**U.S. Transferee**”). All U.S. Transferees, whether having purchased their Shares or other securities from the U.S. Subscriber or from another U.S. Transferee, must also give the Company such certifications as the Directors may require in order to assure the Company that such U.S. Transferee is an Accredited Investor and a Qualified Purchaser and is not otherwise a Disqualified Holder and must further give the Company such notice and certifications as the Directors may require upon the sale or other transfer by such U.S. Transferee of such Shares or other securities in order to give notice to the Company as to whether such Shares or other securities have been sold to another U.S. Transferee.

#### **4 Register of Members**

- 4.1 The Company will maintain or cause to be maintained the Register of Members in accordance with the Statute.
- 4.2 The Directors may from time to time appoint a registrar to maintain the Register of Members and a Transfer Agent to maintain the register of transfers, which may be the same person. The Directors may determine that the Company will maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which Register of Members will constitute the principal register and which will constitute the branch register or registers, and to vary such determination from time to time.

## **5 Closing Register of Members or Fixing Record Date**

- 5.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Dividend or other distribution or right, or in order to make a determination of Members for any other purpose, the Directors may provide that the Register of Members will be closed for transfers for a stated period which will not in any case exceed 40 days.
- 5.2 In lieu of, or apart from, closing the Register of Members, the Directors may:
- (a) set a date as the record date for the purpose of determining Members entitled to notice of any general meeting. The record date must not precede the date on which the general meeting is to be held by more than two months or, in the case of a general meeting requisitioned by Members, by more than four months. The record date must not precede the date on which the general meeting is held by fewer than 21 days. If no record date is set, the record date is 5:00 p.m. Toronto time on the day immediately preceding the first date on which the notice is sent or, if no notice is sent, the beginning of the general meeting;
  - (b) set a date as the record date for the purpose of determining Members entitled to vote at any general meeting. The record date must not precede the date on which the general meeting is to be held by more than two months or fewer than 21 days or, in the case of a general meeting requisitioned by Members, by more than four months. If no record date is set, the record date is 5:00 p.m. Toronto time on the day immediately preceding the first date on which the notice is sent or, if no notice is sent, the beginning of the general meeting. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination will apply to any adjournment thereof; and
  - (c) fix in advance or arrears a date, preceding by not more than 50 days the date for the payment of any Dividend or distribution or the date for the issue of any warrant or other evidence of right to subscribe for securities of the Company, as the record date for the determination of the Members entitled to receive payment for such Dividend or distribution or to exercise the right to subscribe for such securities, and notice of any such record date will be given not less than seven days before such record date in accordance with Article 40.1.
- 5.3 If no record date is so fixed, the record date for the determination of the Members entitled to receive payment of any Dividend or distribution or to exercise the right to subscribe for securities of the Company will be 5:00 p.m. Toronto time on the day on which the resolution relating to such dividend or distribution or right to subscribe is passed by the Directors.

## **6 Certificates for Shares**

- 6.1 Every holder of one or more Shares may request, but will not be entitled to and such request may be approved or denied in the Company's sole discretion, a share certificate stating the number and class or series of Shares or other securities of the Company held by him or her as shown on the Register of Members. Share certificates will be in such form as the Directors will from time to time approve and will bear any legends as required by law or otherwise determined to be appropriate by the Directors. Any share certificate will be signed in accordance with Article 35.4; it need not be under the corporate seal. The signature of one or more of the signing officers may be printed or mechanically reproduced upon share certificates. Every printed or mechanically reproduced signature will for all purposes be deemed to be a signature binding upon the Company. Unless the Directors otherwise determine, certificates representing Shares in respect of which a Transfer Agent or registrar, as the case may be, has been appointed will not be valid unless countersigned by or on behalf of such Transfer Agent or registrar. In the case of share certificates which are not valid unless countersigned by or on behalf of a Transfer Agent or registrar, the signature of any one or more signing officers may be printed or mechanically

reproduced upon share certificates and every such printed or mechanically reproduced signature will for all purposes be deemed to be a signature binding upon the Company. Notwithstanding any change in the persons holding office between the time of signing and the issuance of any certificate, and notwithstanding that a person may not have held office at the date of issuance of such certificate, any such certificate so signed will be valid and binding upon the Company.

- 6.2 In the event that Shares or other securities of the Company are jointly held by more than one person, delivery of a certificate to one joint holder will be a sufficient delivery to all of them.
- 6.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) upon delivery of the old certificate.
- 6.4 Every share certificate sent in accordance with the Articles will be sent at the risk of the Member or other person receiving the certificate. The Company will not be responsible for any share certificate lost or delayed in the course of delivery.

## **7 Transfer of Shares**

- 7.1 Subject to Article 7.3, Shares are transferable subject to the approval by resolution of the Directors who may, in their absolute discretion, decline to register any transfer of Shares without giving any reason. If the Directors refuse to register a transfer, they will notify the transferee within two months of such refusal.
- 7.2 The instrument of transfer of any Share must be in writing and must be executed by or on behalf of the transferor (and if the Directors so require, signed by or on behalf of the transferee). The transferor will be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.
- 7.3 For so long as the Company is a Public Company, the Shares (other than those held by U.S. Subscribers, U.S. Transferees or Disqualified Holders) will be freely transferable in any usual or common form approved by the Directors.
- 7.4 Without prejudice to Article 7.1 or Article 7.2, and notwithstanding Article 7.3 or anything in these Articles to the contrary:
  - (a) The Directors may in their sole discretion and without assigning any reason therefor decline to register any person as a holder of a Share or other securities of the Company unless there has been furnished to them a declaration (in such form as the Directors may from time to time prescribe), together with such evidence as the Directors may require of the authority under which any such declaration may have been signed, stating whether or not such person is a Disqualified Holder and whether or not, upon registration of such Share or other securities of the Company in the relevant name or names, any Disqualified Holder is or will be interested in such Share or other securities of the Company. The Directors may in any case where they may consider appropriate require such person to provide such evidence or give such information as to the matters referred to in the declaration as they think fit, and may decline to register any person as a holder of a Share or other security of the Company if such further evidence or information is not provided or given.
  - (b) The Directors may at any time give notice in writing to the holder (or to any or each one of joint holders) of a Share or other security of the Company requiring it within such reasonable period as may be specified in the notice to show to Directors' satisfaction whether or not a Disqualified Holder is interested in such Share or other security of the Company. If within 14 days after the giving of such notice (or such extended time as in all the circumstances the Directors consider reasonable or shorter period as may be required to comply with law or avoid a disadvantage to the Company) they are not so

satisfied, the Directors may declare that a Disqualified Holder is interested in such Share or other security of the Company.

- (c) If it comes to the attention of the Directors that any Shares or other securities of the Company are owned directly or beneficially by any Disqualified Holder (such Shares or other securities, “**Disqualifiable Securities**”), or the Directors have declared that a Disqualified Holder is interested in any Shares or other securities of the Company (such Shares or other securities also constituting Disqualifiable Securities), then the Directors will serve written notice (a “**Transfer Notice**”) on a registered holder of Disqualifiable Securities and on any other person who appears to them to be a Disqualified Holder (or any one of such persons where Disqualifiable Securities are registered in joint names) in relation to those Disqualifiable Securities calling for a Required Disposal to be made within 14 days of the service of the Transfer Notice on the registered holder (or such extended time as in all the circumstances the Directors consider reasonable or shorter period as may be required to comply with law or avoid a disadvantage to the Company). The registered holder of the Disqualifiable Securities and any other person on whom a Transfer Notice is served may make representations to the Directors in such manner and detail as the Directors deem appropriate to the effect that no Disqualified Holder is interested in relation to such Shares or other securities of the Company. The Directors may extend the period in which a Transfer Notice is required to be complied with and may withdraw any Transfer Notice (whether before or after the expiration of the period referred to) if it appears to them that there is no Disqualified Holder in relation to the Shares or other securities of the Company concerned. Upon the giving of a Transfer Notice and save for the purpose of a Required Disposal, no transfer of any Disqualifiable Securities subject to a Transfer Notice (or any interest therein) may be made until either the Transfer Notice has been withdrawn or a Required Disposal has been made to the satisfaction of the Directors and registered.
- (d) If a Transfer Notice served under Article 7.4(c) has not been complied with in all respects to the satisfaction of the Directors and has not been withdrawn, the Directors may in their sole discretion, so far as they are able, arrange for a Required Disposal to be made at the best price reasonably obtainable at the relevant time and will give written notice within such reasonable time as the Directors may determine of such disposal to the former registered holder. The manner, timing and terms under which any such Required Disposal is made or sought to be made by the Directors (including the price or prices at which the same is made and the extent to which assurance is obtained that no transferee is or would become a Disqualified Holder) will be such as the Directors determine, based upon advice from financial or legal counsel or other appropriate persons consulted by them for the purpose, to be reasonably practicable having regard to all the circumstances (including the number of Disqualifiable Securities to be disposed of and the requirement for the disposal be made without delay), and the Directors will not be liable for any of the consequences of reliance on such advice.
- (e) For the purpose of a Required Disposal under Article 7.4(d), the Directors may appoint any person to execute as transferor an instrument of transfer in favour of the transferee and may enter the name of the transferee in respect of the transferred Disqualifiable Securities in the Register of Members notwithstanding the absence of any Share or other security certificate and such instrument of transfer will be as effective as if it had been executed by the registered holder and the title of the transferee will not be affected by any irregularity or invalidity in the proceedings relating thereto. The Company may instruct a broker to sell the relevant Disqualifiable Securities at the best price reasonably obtainable at the time of sale to any one or more Eligible Transferees. To give effect to a sale, the Directors may authorise in writing the Transfer Agent to transfer the relevant Disqualifiable Securities on behalf of the holder thereof (or any person who is automatically entitled to the Shares by transmission or by law) or to cause the transfer of the Disqualifiable Securities to the Eligible Transferee, and in

relation to an uncertificated security, may require the Transfer Agent to convert the security into certificated form and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or the person entitled by transmission to, the relevant Disqualifiable Securities. An Eligible Transferee is not bound to see the application of the purchase money and the title of the Eligible Transferee is not affected by any irregularity in or invalidity of the proceedings connected to the sale. The net proceeds of a Required Disposal will be received by the Company (whose receipt will be a good discharge for the purchase money) and will be held on trust for and paid (together with interest at such rate as the Directors deem appropriate) to the former registered holder (or, in the case of joint holders, the first named joint holder thereof in the Register of Members), upon surrender by him or her or on his or her behalf of any certificate in respect of the Shares or other securities sold and formerly held by him or her. When a Required Disposal is made as aforesaid the Directors will notify the former registered holder of the Shares or other securities of the Company disposed of and inform him or her that such net proceeds of the Required Disposal will be paid to him or her upon surrender by him or her or on his or her behalf of any certificate in respect of the Shares or other securities concerned. The Company may register or cause the registration of the Eligible Transferee as holder of the relevant Shares or other securities and thereupon the Eligible Transferee will become absolutely entitled thereto.

- (f) On and after the date of a Transfer Notice, and until registration of the Required Disposal or withdrawal of the Transfer Notice, any rights and privileges attaching to the Disqualifiable Securities will be suspended and not capable of exercise other than as specifically set forth in this Article 7.4(f). A registered holder of a Disqualifiable Security on whom a Transfer Notice has been served under Article 7.4(c) will not in respect of that Share or other security of the Company be entitled, until such time as the Transfer Notice either has been complied with to the satisfaction of the Directors or withdrawn, to attend or vote in person or, except as follows, by proxy, at any meeting of Members, and any such registered holder will be deemed to have appointed the chairman of any such meeting as his or her proxy in respect of the rights to attend and to demand and vote on a poll attached to the Disqualifiable Security. The manner in which the chairman exercises or refrains from exercising any such right will be entirely at his or her discretion. The chairman of any such meeting as aforesaid will be informed by the Directors of any Share or other security becoming or being deemed to be a Disqualifiable Security.
- (g) Subject to the provisions of this Article 7.4 and to the delivery of all required certifications the Directors will, unless any Director has any reason to believe otherwise, be entitled to assume without enquiry that no Shares or other securities are Disqualifiable Securities and that no person is a Disqualified Holder.
- (h) The Directors will not be obliged to serve any notice required under this Article 7.4 upon any person if they know neither his or her identity nor his or her address. The absence of service in such circumstances as aforesaid and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this Article 7.4 will not prevent the implementation of or invalidate any procedure under this Article 7.4. Subject as aforesaid, the provisions of Article 40 dealing with the service of notices will apply to this Article 7.4.
- (i) In exercising their powers under this Article 7.4 in respect of Disqualifiable Securities, the Directors will, so far as practicable and determined by the Directors to be equitable, have regard to the order of the date (insofar as the Directors are able to determine) in which such Shares or other securities of the Company became Disqualifiable Securities and/or the relative number of Disqualifiable Securities held or owned beneficially by each Disqualified Holder.

- (j) The Directors will, so long as they act reasonably and in good faith, be under no liability to the Company or to any other person for failing to treat any Share or other security of the Company as a Disqualifiable Security or any person as a Disqualified Holder in accordance with the provisions of this Article 7.4, and neither will the Directors be liable to the Company or any other person if, having acted reasonably and in good faith, they determine erroneously that any Share or other security of the Company is a Disqualifiable Security, or any person is a Disqualified Holder, or on the basis of such determination or any other determination or resolution of the Directors, they perform or exercise (or purport to perform or exercise) their duties, powers, rights or discretions under this Article 7.4 in relation to such Share or other security of the Company.

7.5 Other than in the case of initial subscribers of Shares or other securities of the Company to be issued by the Company, a person may not acquire Shares, either as part of an initial distribution of Shares or subsequently, if such person is, or is acting on behalf of or with the assets of, a U.S. Benefit Plan Investor. Each purchaser and transferee of Shares will be deemed to represent, warrant and covenant, to and for the benefit of the Company and the Directors, it is not, and is not acting on behalf of or with the assets of, a U.S. Benefit Plan Investor.

7.6 A person who becomes aware that his or her owning directly or beneficially of Shares or other securities of the Company will be or is likely to be a holding of Disqualifiable Securities will forthwith, unless he or she has already received a Transfer Notice, either transfer the Shares to one or more Eligible Transferees or give a request in writing to the Directors for the issue of a Transfer Notice. Every such request must, in the case of certificated securities, be accompanied by the certificate(s) for the securities to which it relates.

7.7 The Directors will not be required to give any reasons for any decision, determination or declaration taken or made in accordance with this Article 7. The exercise of the powers conferred by this Article may not be questioned or invalidated in any case on the ground that there was insufficient evidence of direct or beneficial ownership or holding of securities by any person or that the true direct or beneficial owner or holder of any securities was otherwise than as appeared to the Directors at the relevant date provided that the said powers have been exercised in good faith.

## **8 Redemption, Repurchase and Surrender of Shares**

8.1 Subject to the provisions of the Statute the Company may issue Shares that are to be redeemed or are liable to be redeemed at the option of the Member or the Company. The redemption of such Shares will be effected in such manner and upon such other terms as the Company may, by Special Resolution, determine before the issue of the Shares.

8.2 Subject to the provisions of the Statute, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.

8.3 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

8.4 The Directors may accept the surrender for no consideration of any fully paid Share.

## **9 Treasury Shares**

9.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share will be held as a Treasury Share.

9.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## **10 Variation of Rights of Shares**

- 10.1 If at any time the share capital of the Company is divided into different classes of Shares, all or any of the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of not less than two-thirds of the issued Shares of that class, or with the sanction of a resolution passed by a majority of not less than two-thirds of the votes cast at a separate meeting of the holders of the Shares of that class. To any such meeting all the provisions of the Articles relating to general meetings will apply *mutatis mutandis*.
- 10.2 For the purposes of a separate class meeting, the Directors may treat two or more or all the classes of Shares as forming one class of Shares if the Directors consider that such class of Shares would be affected in the same way by the proposals under consideration, but in any other case will treat them as separate classes of Shares.
- 10.3 The rights conferred upon the holders of the Shares of any class issued with preferred or other rights will not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith.

## **11 Commission on Sale of Shares**

The Company may, from time to time, in so far as the Statute permits, pay a reasonable commission to any person in consideration of his or her subscribing or agreeing to subscribe (whether absolutely or conditionally) or procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares. Such commissions may be satisfied by the payment of cash or the issue of fully paid-up Shares. The Company may also on any issue of Shares pay such brokerage as may be lawful.

## **12 Non-Recognition of Trusts**

The Company will not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by the Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the holder.

## **13 Transmission of Shares**

- 13.1 If a Member dies, the survivor or survivors (where he or she was a joint holder) or his or her legal personal representatives (where he or she was a sole holder) will be the only persons recognised by the Company as having any title to his or her Shares.
- 13.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being produced as may be required by the Directors, elect, by a notice in writing sent by him or her to the Company, either to become the holder of such Share or to have some person nominated by him or her registered as the holder of such Share provided that such person is not a Disqualified Holder. If he or she elects to have another person registered as the holder of such Share he or she will sign an instrument of transfer of that Share to that person. The Directors will, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his or her death or bankruptcy or liquidation or dissolution, as the case may be.
- 13.3 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of a Member (or in any other case than by transfer) will, provided that he or she is not a Disqualified Holder, be entitled to the same Dividends, other distributions and other advantages to which he or she would be entitled if he or she were the holder of such Share. However, he or she will not, before becoming a Member in respect of a Share, be entitled in

respect of it to exercise any right conferred by membership in relation to general meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or herself or to have some person nominated by him or her be registered as the holder of the Share (but the Directors will, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his or her death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within 90 days of being received or deemed to be received (as determined pursuant to the Articles) the Directors may thereafter withhold payment of all Dividends, other distributions, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## **14 Amendments of Memorandum and Articles of Association and Alteration of Capital**

14.1 The following actions will only be taken by the Company if approved by Special Resolution:

- (a) increase its share capital by such sum as the Special Resolution will prescribe and with such rights, priorities and privileges annexed thereto, as the Company in general meeting may determine;
- (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
- (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum or into Shares without par value;
- (d) cancel any Shares that at the date of the passing of the Special Resolution have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the Shares so cancelled;
- (e) change its name;
- (f) alter or add to the Articles;
- (g) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (h) reduce its share capital or any capital redemption reserve fund.

All new Shares created in accordance with the provisions of the preceding Article will be subject to the same provisions of the Articles with reference to the payment of liens, transfer, transmission, forfeiture and otherwise as the Shares in the original share capital.

14.2 The Company will not take any action to convert Shares into stock.

14.3 For as long as the Company is a reporting issuer, as defined in applicable Canadian securities laws, or the equivalent in any jurisdiction in Canada and has any of its securities traded on or through the facilities of a Canadian securities exchange (each, an “**Exchange**”), the Company will seek prior written approval from the applicable Exchange prior to amending the Memorandum or Articles.

## **15 Offices and Places of Business**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## 16 General Meetings

- 16.1 All general meetings other than annual general meetings will be called extraordinary general meetings. The Directors may call general meetings.
- 16.2 Unless an annual general meeting is deferred or waived in accordance with the Articles, the Company must hold a general meeting of Members as its annual general meeting at least once in each calendar year and, in any event, not more than 15 months after the last annual general meeting, and the Directors will specify the meeting as such in the notices calling it for the purpose of considering the financial statements and reports to be placed before the annual general meeting, electing directors, appointing auditors and for the transaction of such other business as may properly be brought before the annual general meeting. Any annual general meeting will be held at such time and place as the Directors may determine. At these meetings the report of the Directors (if any) and the audited accounts of the Company for the prior financial year, as required under Article 38.3, will be presented.
- 16.3 Members referred to in Article 16.4 may requisition an extraordinary general meeting for the purpose of transacting any business that may be transacted at a general meeting.
- 16.4 A requisition by Members under this Article 16:
- (a) may be made by at least two Members who, at the date on which the requisition is received by the Company, hold in the aggregate more than twenty percent in par value of the issued Shares which as at that date carry the right to vote at general meetings of the Company;
  - (b) must, in 1,000 words or less, state the business to be transacted at the extraordinary general meeting, including any special resolution to be submitted to the extraordinary general meeting;
  - (c) must be signed by, and include the names and mailing addresses of, all of the requisitioning Members;
  - (d) may be made in a single record or may consist of several records, in similar form and content, each of which is signed by one or more of the requisitioning Members; and
  - (e) must be delivered to the delivery address of, or mailed by registered mail to the mailing address of, the Registered Office.
- 16.5 If a requisition under this Article 16 consists of more than one record, the requisition is received by the Company on the first date by which the Company has received requisition records that comply with Article 16.4 from Members who, in the aggregate, hold at least the number of Shares necessary to qualify under Article 16.4(a).
- 16.6 On receiving a requisition that complies with Article 16.4, the Directors will call an extraordinary general meeting to be held not more than four months after the date on which the requisition is received by the Company to transact the business stated in the requisition and must, subject to Article 16.8:
- (a) send notice of the date, time and location of that extraordinary general meeting at least the prescribed number of days, but not more than four months, before the extraordinary general meeting:
    - (i) to each Member entitled to attend the extraordinary general meeting; and
    - (ii) to each Director; and

- (b) send, in accordance with Article 16.7, to the persons entitled to notice of the extraordinary general meeting, the text of the requisition referred to in Article 16.4(b).
- 16.7 The text referred to in Article 16.4(b) must be sent:
  - (a) in, or within the time set for the sending of, the notice of the requisitioned meeting; or
  - (b) in the Company's information circular or equivalent, if any, sent in respect of the requisitioned meeting.
- 16.8 The Directors need not comply with Article 16.6 if:
  - (a) the directors have called a general meeting to be held after the date on which the requisition is received by the Company and have sent notice of that meeting in accordance with these Articles;
  - (b) substantially the same business was submitted to Members to be transacted at a general meeting that was held not more than the prescribed period before the receipt of the requisition, and any resolution to transact that business at that earlier meeting did not receive the prescribed amount of support;
  - (c) it clearly appears that the business stated in the requisition does not relate in a significant way to the business or affairs of the Company;
  - (d) it clearly appears that the primary purpose for the requisition is:
    - (i) securing publicity; or
    - (ii) enforcing a personal claim or redressing a personal grievance against the Company or any of its Directors, officers or security holders;
  - (e) the business stated in the requisition has already been substantially implemented;
  - (f) the business stated in the requisition, if implemented, would cause the Company to commit an offence; or
  - (g) the requisition deals with matters beyond the Company's power to implement.
- 16.9 If the Directors do not, within 21 days after the date on which the requisition is received by the Company, send notice of an extraordinary general meeting, the requisitioning Members, or any one or more of them holding, in the aggregate, more than two and a half percent in par value of the issued Shares which as at that date carry the right to vote at general meetings of the Company, may send notice of an extraordinary general meeting to be held to transact the business stated in the requisition.
- 16.10 An extraordinary general meeting called under Article 16.9 by the requisitioning Members must:
  - (a) be called in accordance with Article 16.4;
  - (b) be held within four months after the date on which the requisition is received by the Company; and
  - (c) as nearly as possible, be conducted in the same manner as an extraordinary general meeting called by the Directors.
- 16.11 Unless the Members resolve otherwise by an Ordinary Resolution at the extraordinary general meeting called, under Article 16.9, by the requisitioning Members, the Company will not

reimburse the requisitioning Members for the expenses actually and reasonably incurred by them in requisitioning, calling and holding that extraordinary general meeting.

## **17 Notice of General Meetings**

17.1 At least 21 days' notice will be given of any general meeting. Every notice will specify the place, the day and the hour of the meeting and the general nature of the business to be conducted at the general meeting and will be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company.

17.2 The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a general meeting by, any person entitled to receive such notice will not invalidate the proceedings of that general meeting.

17.3 If the Members will consider any special business, as defined below in Article 17.4, at any general meeting, the notice of meeting must:

- (a) state the general nature of the special business; and
- (b) if the special business includes considering, approving, ratifying, adopting or authorizing any document or the signing of or giving of effect to any document, have attached to it a copy of the document or state that a copy of the document will be available for inspection by Members:
  - (i) at the Company's principal office, or at such other reasonably accessible location as is specified in the notice; and
  - (ii) during statutory business hours on any one or more specified days before the day set for the holding of the meeting.

17.4 At any general meeting of Members, the following business is special business:

- (a) at a meeting of Members that is not an annual general meeting, all business is special business except business relating to the conduct of or voting at the meeting; and
- (b) at an annual general meeting, all business is special business except for the following:
  - (i) business relating to the conduct of or voting at the meeting;
  - (ii) consideration of any financial statements of the Company presented to the meeting;
  - (iii) consideration of any reports of the Directors or auditor;
  - (iv) the setting or changing of the number of Directors;
  - (v) the election or appointment of Directors;
  - (vi) the appointment of an auditor;
  - (vii) the setting of the remuneration of an auditor; and
  - (viii) any other business which, under these Articles, may be transacted at a meeting of Members without prior notice of the business being given to the Members.

## **18 Proceedings at General Meetings**

- 18.1 No business will be transacted at any general meeting unless a quorum is present. Two or more Members holding at least 25% in par value of the Shares entitled to vote at such general meeting being individuals present in person or by proxy or if a corporation or other non-natural person by its duly authorised representative or proxy will be a quorum.
- 18.2 A person may participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 18.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by or on behalf of all of the Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) will be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 18.4 If a quorum is not present within half an hour from the time appointed for the meeting to commence or if during such a meeting a quorum ceases to be present, the meeting, if convened upon a Members' requisition, will be dissolved and in any other case it will stand adjourned to the same day in the next week at the same time and/or place or to such other day, time and/or place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting to commence, the Members present will be a quorum.
- 18.5 The chairman of any meeting will be the first mentioned of such of the following officers as have been appointed and who is present at the meeting: chairman of the board, chief executive officer, president or a vice-president who is a Member. If no such officer is present within 15 minutes from the time fixed for holding the meeting, the persons present and entitled to vote will choose one of their number to be chairman. If the Secretary of the Company is absent, the chairman will appoint some person, who need not be a Member, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Members, may be appointed by a resolution or by the chairman with the consent of the meeting.
- 18.6 The chairman may, with the consent of a meeting at which a quorum is present (and must 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 any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 18.7 When a general meeting is adjourned for 30 days or more, notice of the adjourned meeting will be given as in the case of an original meeting. Otherwise it will not be necessary to give any such notice of an adjourned meeting.
- 18.8 A resolution put to the vote of the meeting will be decided on a poll.
- 18.9 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll will be taken as the chairman directs, and the result of the poll will be deemed to be the resolution of the general meeting at which the poll was demanded.
- 18.10 A poll demanded on the election of a chairman or on a question of adjournment will be taken forthwith. A poll demanded on any other question will be taken at such date and time being within seven days of such demand, and at such place as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 18.11 In the case of an equality of votes, the chairman will not be entitled to a second or casting vote.

## 19 Votes of Members

19.1 Subject to Article 19.2 and to any rights or restrictions attached to any Shares, every Member present in any such manner will have one vote for every Share of which he or she is the holder.

19.2 In respect of any Member Resolution, each Member holding Shares will be required to certify that, at the time of the general meeting (or any adjournment thereof) at which the relevant Member Resolution is proposed, or in the case of a Member Resolution that is proposed as a written resolution at the time of signifying its agreement to the proposed written resolution: (i) it is not a U.S. resident; and (ii) to the extent that it holds Shares for the account or benefit of any other person, such person is not a U.S. resident, provided that each Member will certify the extent to which Shares it owns beneficially are owned beneficially for U.S. residents and to which Shares it holds are owned beneficially for persons that are not U.S. residents.

(a) Each Member holding Shares that does not certify at the relevant time in a manner satisfactory to the Directors, in their absolute discretion, that: (i) it is not a U.S. resident; and (ii) to the extent that it holds Shares for the account or benefit of any other person, such person is not a U.S. resident, is referred to in this Article 19.2 as a **“Non-Certifying Shareholder,”** provided that to the extent that a certifying Member holds Shares for the benefit of one or more persons that are U.S. residents and one or more persons that are not U.S. residents, that Member will be a Non-Certifying Shareholder with respect to the Shares that it owns beneficially for the U.S. residents and not a Non-Certifying Shareholder with respect to the Shares that it owns beneficially for the persons that are not U.S. residents.

(b) For the purposes of calculating the number of votes that all Non-Certifying Shareholders, whether or not actually voting, are entitled to cast on a Member Resolution, if and to the extent that, in the absence of this Article:

$$A > (49 \div 100) \times C,$$

then “A” will be reduced to “D” such that “D” is the whole number nearest to but not exceeding:

$$B \times (49 \div 51).$$

(c) Where the aggregate number of votes actually cast by Non-Certifying Shareholders (whether on a poll or on a written resolution) “for” and “against” the relevant Member Resolution, when added to the number of votes withheld by Non-Certifying Shareholders in respect of such Member Resolution, exceeds “D,” then the number of: (i) votes cast “for”; (ii) votes cast “against”; and (iii) votes withheld in respect of such Member Resolution by Non-Certifying Shareholders will each be reduced pro rata until the aggregate number of votes “for,” votes “against” and votes withheld in respect of such Member Resolution by Non-Certifying Shareholders is equal to “D”. Where the aggregate number of votes actually cast (whether on a poll or on a written resolution) and votes withheld, in each case by Non-Certifying Shareholders, is equal to or less than “D,” then each of such votes or votes withheld (as applicable) will be counted and no reduction will occur.

(d) For the purposes of the foregoing:

(i) “A” equals the aggregate total of votes that all Non-Certifying Shareholders, whether or not actually voting, are entitled to cast, whether on a poll or on a written resolution, on the relevant Member Resolution prior to the operation of this Article;

- (ii) “B” equals the aggregate total of votes that all Members holding Shares who are not Non-Certifying Shareholders, whether or not actually voting, are entitled to cast, whether on a poll or on a written resolution, on the relevant Member Resolution;
  - (iii) “C” equals “A” plus “B”; and
  - (iv) “D” equals the aggregate total of votes that Non-Certifying Shareholders whether or not actually voting, are entitled to cast, whether on a poll or on a written resolution, on the relevant Member Resolution, following the operation of this Article.
- 19.3 The Directors may specify such other requirements or vary the requirements of Article 19.2 as they in their discretion consider necessary or appropriate to give effect to the restrictions set out in Article 19.2.
- 19.4 In the case of joint holders the vote of the senior holder who tenders a vote, whether in person or by proxy (or, in the case of a corporation or other non-natural person, by its duly authorised representative or proxy), will be accepted to the exclusion of the votes of the other joint holders, and seniority will be determined by the order in which the names of the holders stand in the Register of Members.
- 19.5 A Member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction in lunacy, may vote, by his or her committee, receiver, curator bonis, or other person on such Member’s behalf appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.
- 19.6 No person will be entitled to vote at any general meeting unless he or she is registered as a Member on the record date for such.
- 19.7 Without limitation on Article 19.2, no objection will be raised as to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at the meeting will be valid. Any objection made in due time in accordance with this Article will be referred to the chairman whose decision will be made in good faith and will be final and conclusive.
- 19.8 Without limitation on Article 19.2, on a poll, votes may be cast either personally or by proxy (or in the case of a corporation or other non-natural person by its duly authorised representative or proxy). A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy will specify the number of Shares in respect of which each proxy is entitled to exercise the related votes.
- 19.9 Without limitation on Article 19.2, on a poll, a Member holding more than one Share need not cast the votes in respect of his or her Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing him or her, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which he or she is appointed either for or against a resolution and/or abstain from voting a Share or some or all of the Shares in respect of which he or she is appointed.

## **20 Proxies**

- 20.1 The instrument appointing a proxy must be in writing and must be executed under the hand of the appointor or of his or her attorney duly authorised in writing, or, if the appointor is a

corporation or other non-natural person, under the hand of its duly authorised representative. A proxy need not be a Member.

- 20.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the manner by which the instrument appointing a proxy will be deposited and the place and the time (being not later than the time appointed for the commencement of the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy will be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting or in an instrument of proxy sent out by the Company, the instrument appointing a proxy will be deposited physically at the Registered Office not less than 48 hours before the time appointed for the meeting or adjourned meeting to commence at which the person named in the instrument proposes to vote.
- 20.3 The chairman may in any event at his or her discretion declare that an instrument of proxy will be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted, or which has not been declared to have been duly deposited by the chairman, will be invalid.
- 20.4 The instrument appointing a proxy may be in any usual or common form (or such other form as the Directors may approve) and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy will be deemed to include the power to demand or join or concur in demanding a poll.
- 20.5 Votes given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

## **21 Corporate Members**

Any corporation or other non-natural person that is a Member may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person so authorised will be entitled to exercise the same powers on behalf of the corporation which he or she represents as the corporation could exercise if it were an individual Member. The Directors may require such evidence as they consider necessary in order to confirm the due authorisation of any such representative.

## **22 Shares That May Not Be Voted**

Shares in the Company that are beneficially owned by the Company will not be voted, directly or indirectly, at any meeting and will not be counted in determining the total number of outstanding Shares at any given time.

## **23 Directors**

There will be a board of Directors consisting of not less than three persons; provided that, at all times, a majority of the Directors must be persons that are not U.S. citizens or residents. If not otherwise determined by the Members by Ordinary Resolution, the numbers of Directors will be set from time to time by resolution of the directors, subject to the foregoing minimum number of directors. There will be no maximum number of directors.

## 24 Nomination of Directors

24.1 For purposes of this Article 24:

- (a) “**Applicable Meeting of Members**” means such annual or extraordinary general meeting of the Members at which one or more persons are nominated for election to the board by a Nominating Member;
- (b) “**owned beneficially**” or “**owns beneficially**” means, in connection with the ownership of Shares by a person, any such Shares which such person owns legally or beneficially at the applicable time; and
- (c) “**public announcement**” means disclosure in a press release or other public announcement disseminated in a manner that satisfies the requirements for dissemination of news releases or Company announcements pursuant to the rules of each securities exchange or quotation service on or through which the Company or its Shares is or are listed or quoted (other than a listing or quotation that has arisen without the consent of the Company), or in a document publicly filed by the Company or its agents as required under securities laws applicable to the Company.

24.2 Subject only to the Statute, only persons who are nominated in accordance with the following procedures will be eligible for election as Directors of the Company. Nominations of persons for election as directors of the Company may be made at any annual general meeting of the Members or any extraordinary general meeting of the Members (but only if the election of Directors is a matter specified in the notice of meeting given by or at the direction of the person calling such extraordinary general meeting) either:

- (a) by or at the direction of the board of Directors or the chairman of the board of Directors, including pursuant to a notice of meeting; or
- (b) by or at the direction or request of one or more Members (a “**Nominating Member**”) pursuant to a requisition by Members of an extraordinary general meeting made in accordance with Article 16.

24.3 To be eligible to be a candidate for election as a Director and to be duly nominated, a candidate must be nominated in the manner prescribed in this Article 24 and the candidate for nomination, whether nominated by the board of Directors, the chairman of the board of Directors or by any other manner, must have previously delivered to the Secretary of the Company at the Registered Office, not less than five days prior to the date of the Applicable Meeting of Members, a written consent to act as a Director.

24.4 No person will be eligible for election as a Director unless nominated in accordance with the provisions of this Article 24; provided, however, that nothing in this Article 24 will be deemed to preclude discussion by a Member (as distinct from nominating Directors) at a meeting of Members of any matter in respect of which it would have been entitled to submit a proposal pursuant to these Articles and applicable laws. The chair of a meeting of Members will have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination will be disregarded.

24.5 For a nomination to be made by a Nominating Member, such person must have given proper notice of the nomination in written form to the Secretary of the Company at the Registered Office of the Company in accordance with this Article 24. To be in proper written form, a Nominating Member’s notice to the Secretary of the Company under this Article 24.5 must set forth as to each person whom the Nominating Member proposes to nominate for election as a Director at the extraordinary general meeting: (a) the name, age, business address, citizenship and residence address of the person; (b) the principal occupation or employment of the person; (c) the class or series and number of shares in the capital of the Company which are controlled or

which are owned beneficially or of record by the person as of the record date for the Applicable Meeting of Members (if such date will then have been made publicly available and will have occurred) and as of the date of such notice; (d) a statement as to whether and how such person would be “independent” of the Company, if elected as a Director, in accordance with any criteria applicable to the Directors, including any criteria applying to a determination of the independence of Directors that were described by the Company in its most recent circular or other communication to Members in connection with the most recent Applicable Meeting of Members, and the reasons and basis for such determination; (e) a questionnaire to be completed by the nominee in the form determined by the board of Directors; and (f) any other information relating to the person that may be required by the board of Directors or would be required to be disclosed in a circular or other communication to Members in connection with solicitations of proxies for election of Directors pursuant to the Statute, applicable securities laws and other applicable laws. For the avoidance of doubt and notwithstanding Section 16.7(b), the contents of this notice of nomination will not need to be included on the Company’s information circular or proxy card.

24.6 Notwithstanding any other provision to this Article 24, notice or any delivery given to the Secretary of the Company pursuant to this Article 24 may only be given by personal delivery, facsimile transmission or by email (provided that the Secretary of the Company has stipulated an email address for purposes of this notice, at such email address as stipulated from time to time), and will be deemed to have been given and made only at the time it is served by personal delivery, emailed (at the address as aforesaid) or sent by facsimile transmission (provided that receipt of confirmation of such transmission has been received) to the Secretary at the address of the Registered Office; provided that if such delivery or electronic communication is made on a day which is a not a business day or later than 5:00 p.m. (Toronto time) on a day which is a business day, then such delivery or electronic communication will be deemed to have been made on the subsequent day that is a business day.

24.7 Notwithstanding the provisions of this Article 24:

- (a) for the first annual general meeting of the Members following the registration of the Company in the Cayman Islands, the board shall nominate Mr. Michael Novogratz (the “**Founder**”) for election as a director; and
- (b) for so long as the Founder owns, directly or indirectly, 25% of the total outstanding Shares (assuming for such purposes the conversion of all Class B Units to Shares), the board shall nominate the Founder for election as a director at each annual general meeting of the Members.

## **25 Powers of Directors**

25.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company will be managed by the Directors who may exercise all the powers of the Company, provided that no transaction or series of transactions resulting in the sale, lease or other disposal of all or substantially all of the assets or undertaking of the Company may be completed without the approval of a Special Resolution. No alteration of the Memorandum or Articles and no such direction will invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.

25.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments and all receipts for monies paid to the Company will be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors will determine by resolution.

25.3 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the

Company or to his or her widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

- 25.4 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and assets (present and future) and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

## **26 Appointment and Removal of Directors**

- 26.1 Subject to Article 19.2, the Company may by Ordinary Resolution appoint any person to be a Director or may by Special Resolution remove any Director. If at any general meeting where the Members are asked to vote on the election of Directors the number of Director nominees exceeds the number of seats to be filled on the board of Directors, then the Director nominees to be elected will be those nominees who receive the greatest number of votes of Members (as determined pursuant to Article 19.2), in declining order, until all available seats on the board of Directors have been filled; provided that no Director will be elected unless he or she has been sanctioned by an Ordinary Resolution of the Members in accordance with Article 19.2. For example, if at a general meeting there are five seats to be filled on the board of Directors and seven Director nominees are approved for election by Ordinary Resolution, the five Director nominees who receive the greatest number of votes of Members (as determined pursuant to Article 19.2) will be elected to the board of Directors, provided that the number of votes cast in favour of each Director nominee's appointment exceeds the number of votes cast against each such Director nominee's appointment (as determined pursuant to Article 19.2). For the avoidance of doubt, each nominee will be voted on separately and votes cast pursuant to this Article 26 will not be cumulative.

- 26.2 The board of Directors may remove any Director before the expiration of his or her term of office if the Director is convicted of an indictable offence.

- 26.3 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with the Articles as the maximum number of Directors.

## **27 Vacation of Office of Director**

- 27.1 Every Director will retire from office at the annual general meeting of the Company in each year, but each retiring Director will be eligible for re-election.

- 27.2 Subject to Article 27.1, the office of a Director will be vacated if:

- (a) the Director gives notice in writing to the Company that he or she resigns the office of Director; or
- (b) the Director dies, becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
- (c) the Director is found to be or becomes of unsound mind.

## **28 Proceedings of Directors**

- 28.1 The quorum for the transaction of business at any meeting of the Directors will consist of fifty percent (50%) of the directors then in office and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the Directors.

- 28.2 Subject to the provisions of the Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting will be decided by a majority of votes. In the case of an equality of votes, the chairman will not have a second or casting vote. Directors and classes of Directors will have the same voting rights.
- 28.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors the meeting will be deemed to be held at the place where the chairman is located at the start of the meeting.
- 28.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of the Directors will be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors, as the case may be, duly convened and held.
- 28.5 At the chair of the board of Directors, any “lead” Director of the board of Directors, two Directors, the chief executive officer or the president, if any, may call a meeting of the Directors by at least two days’ notice in writing to every Director, which notice will set forth the general nature of the business to be considered unless notice is waived by all the Directors either at, before or after the meeting is held. To any such notice of a meeting of the Directors all the provisions of the Articles relating to the giving of notices by the Company to the Members will apply mutatis mutandis.
- 28.6 The continuing Directors (or a sole continuing Director, as the case may be) may act notwithstanding any vacancy in their body.
- 28.7 The Directors may elect a chairman of their board and determine the period for which he or she is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 15 minutes after the time appointed for the meeting to commence, the Directors present may choose one of their number to be chairman of the meeting.
- 28.8 All acts done by any meeting of the Directors or of a committee of the Directors will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director, and/or that they or any of them were disqualified, and/or had vacated their office and/or were not entitled to vote, be as valid as if every such person had been duly appointed and/or not disqualified to be a Director and/or had not vacated their office and/or had been entitled to vote, as the case may be.

## **29 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken will be presumed to have assented to the action taken unless his or her dissent will be entered in the minutes of the meeting or unless he or she will file his or her written dissent from such action with the person acting as the chairman or secretary of the meeting before the adjournment thereof or will forward such dissent by registered post to such person immediately after the adjournment of the meeting. Such right to dissent will not apply to a Director who voted in favour of such action.

## **30 Directors’ Interests**

- 30.1 A Director may hold any other office or place of profit under the Company or the Primary Subsidiary (other than the office of Auditor) in conjunction with his or her office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.

- 30.2 A Director may act by himself or herself or by, through or on behalf of his or her firm in a professional capacity for the Company and he or she or his or her firm will be entitled to remuneration for professional services as if he or she were not a Director, provided that the Director has complied with Articles 30.5 and 30.6.
- 30.3 A Director may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as a shareholder, a contracting party or otherwise, and no such Director will be accountable to the Company for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interest in, such other company, provided that the Director has complied with Articles 30.5 and 30.6.
- 30.4 Provided that the applicable person has complied with Articles 30.5 and 30.6, no person will be disqualified from the office of Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor will any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director will be in any way interested be or be liable to be voided, nor will any Director so contracting or being so interested be liable to account to the Company for any profit realised by or arising in connection with any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established.
- 30.5 In the circumstances described in Articles 30.2 through 30.4, a Director will: (a) disclose to the board of Directors the general nature and extent of his or her interest in the matter, relationship or transaction described in Articles 30.2, 30.3 or 30.4, as the case may be, in writing or orally at a meeting of the board of Directors or in writing; (b) provide the disclosure required under the preceding subparagraph prior to any consideration of the matter, relationship or transaction in question; and (c) abstain from any vote of the board of Directors or any committee thereof with respect to the matter, relationship or transaction in question.
- 30.6 A general notice that a Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any matter, relationship or transaction with such firm or company will be sufficient disclosure for the purposes of subparagraph (a) of Article 30.5.

### **31 Minutes**

The Directors will cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or the holders of any class of Shares and of the Directors, and of committees of the Directors, including the names of the Directors present at each meeting.

### **32 Delegation of Directors' Powers**

- 32.1 The Directors may delegate any of their powers, authorities and discretions, including the power to subdelegate, to any committee consisting of one or more Directors, provided that in no circumstances will the Directors delegate (a) the power to fill vacancies in the board of Directors, (b) the power to remove a director, (c) the power to change the membership of, or fill vacancies in, any committee of the directors, or (d) such other powers, if any, as may be set out in any resolution of the directors. They may also delegate to any Director or officer or officers of the Company such of their powers, authorities and discretions as they consider desirable to be exercised by the recipient of such delegated powers, authorities and discretions. Any such delegation may be made subject to any conditions the Directors may impose and either collaterally with or to the exclusion of their own powers and any such delegation may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of a committee of Directors will be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying, as well as to any charter or similar instrument approved by the Directors, or absent such approval, by such committee, for the regulation of the affairs of such committee.

- 32.2 The Directors may establish any committees, local boards or agencies or appoint any person (including a person who is not a Director or officer of the Company) to be an agent for managing the affairs of the Company and may appoint any person to be a member of such committees, local boards or agencies. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and any such appointment may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of any such committee, local board or agency will be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 32.3 The Directors may by power of attorney or otherwise appoint any person to be the agent of the Company on such conditions as the Directors may determine, provided that the delegation is not to the exclusion of their own powers and may be revoked by the Directors at any time.
- 32.4 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under the Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised signatory to delegate all or any of the powers, authorities and discretions vested in him or her.
- 32.5 The Directors will annually or as often as may be required appoint a chief executive officer, president, chief financial officer and a Secretary, and, if deemed advisable, may annually or as often as may be required appoint one or more vice-presidents (to which title may be words added indicating seniority or function), a treasurer and such other officers as the Directors may determine, including one or more assistants to any one of the officers so appointed, as they consider necessary on such terms, at such remuneration and to perform such duties, and subject to such provisions as to disqualification and removal, as the Directors may think fit. Unless otherwise specified in the terms of his or her appointment, an officer of the Company may be removed by resolution of the Directors or Members. An officer of the Company may vacate his or her office at any time if he or she gives notice in writing to the Company that he or she resigns his office.
- 32.6 An officer who is a party to, or who is a director or officer (or acting in a similar capacity) of or has a material interest in a party to, any material contract or transaction, whether made or proposed, with the Company will disclose to the Directors the nature and extent of his or her interest at the time. Any such contract or transaction will be referred to the Directors or Members for approval even if such contract is one that in the ordinary course of the Company's business would not require approval by the Directors or Members.

### **33 No Minimum Shareholding for Directors**

No director is required to hold Shares.

### **34 Remuneration of Directors**

- 34.1 The remuneration to be paid to the Directors, if any, will be such remuneration as the Directors will determine. The Directors will also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any class of Shares or other securities of the Company, or otherwise in connection with the business of the Company or the discharge of their duties as a Director, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.

34.2 The Directors may by resolution approve additional remuneration to any Director for any services which in the opinion of the Directors go beyond his or her ordinary routine work as a Director. Any fees paid to a Director who is also counsel, attorney or solicitor to the Company, or otherwise serves it in a professional capacity, will be in addition to his or her remuneration as a Director.

### **35 Seal, Execution of Instruments and Banking Arrangements**

35.1 The Company may, if the Directors so determine, have a Seal. The Seal will only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed will be signed by at least one person who will be either a Director or some officer of the Company or other person appointed by the Directors for the purpose.

35.2 The Company may have for use in any place or places outside the Cayman Islands a duplicate Seal or Seals each of which will be a facsimile of the common Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.

35.3 A Director or officer, representative or attorney of the Company may without further authority of the Directors affix the Seal over his or her signature alone to any document of the Company required to be authenticated by him or her under seal or to be filed with the Registrar of Companies in the Cayman Islands or elsewhere wheresoever.

35.4 Subject to Article 35.5, contracts, documents or instruments in writing requiring the signature of the Company may be signed on behalf of the Company by any one (or more) officer or Director. The Directors are authorized from time to time by resolution to appoint any officer or officers or any other person or persons on behalf of the Company either to sign contracts, documents or instruments in writing generally or to sign specific contracts, documents or instruments in writing. In addition, any Director or officer who may execute contracts, documents or instruments in writing, on behalf of the Company, may direct the manner in which and the person or persons by whom any particular contract, document or instrument in writing, or class thereof, may or will be executed and delivered on behalf of the Company. The signature or signatures of any officer or Director of the Company and of any officer or officers, person or persons appointed as set out above by resolution of the Directors may, if specifically authorized by resolution of the Directors, be printed, engraved, lithographed or otherwise mechanically or electronically reproduced upon all contracts, documents or instruments in writing or bonds, debentures or other securities of the Company executed or issued by or on behalf of the Company, and all contracts, documents or instruments in writing or securities of the Company on which the signature or signatures of any of the foregoing officers, Directors or persons will be so reproduced, as authorized by resolution of the Directors, will be deemed to have been manually signed by such officers, Directors or persons whose signature or signatures is or are so reproduced, and will be as valid to all intents and purposes as if they had been signed manually.

The term “contracts, documents or instruments in writing” as used in this Article will include deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of securities and all paper writings.

35.5 The banking business of the Company (but, for the avoidance of doubt, not the Primary Subsidiary) including, without limitation, the borrowing of money and the giving of security therefor, will be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Directors. Such banking business or any part thereof will be transacted under such agreements, instructions and delegations of powers as the Directors may from time to time by resolution prescribe or authorize.

35.6 All securities (including Shares, debentures, bonds, notes, warrants or other obligations or securities) owned by the Company and represented in physical form will be lodged in the name of the Company with a chartered bank or a trust company or in a safety deposit box or, if so authorised by resolution of the Directors, with such other depositaries or in such other manner as may be determined from time to time by the Directors. All securities (including Shares, debentures, bonds, notes, warrants or other obligations or securities) belonging to the Company may be issued and held in the name of a nominee or nominees of the Company (and if issued or held in the names of more than one nominee will be held in the names of the nominees jointly with right of survivorship), and will be endorsed in blank with endorsement guaranteed in order to enable transfer thereof to be completed and registration thereof to be effected.

### **36 Dividends, Distributions and Reserve**

36.1 Subject to the Statute and this Article 36 and except as otherwise provided by the rights attached to any Shares, the Directors may resolve to pay Dividends and other distributions on Shares in issue and authorise payment of the Dividends or other distributions out of the funds of the Company lawfully available therefor. A Dividend shall be deemed to be an interim Dividend unless the terms of the resolution pursuant to which the Directors resolve to pay such Dividend specifically state that such Dividend shall be a final Dividend. No Dividend or other distribution will be paid except out of the realised or unrealised profits of the Company, out of the share premium account or as otherwise permitted by law.

36.2 Except as otherwise provided by the rights attached to any Shares, all Dividends and other distributions will be paid according to the par value of the Shares that a Member holds. If any Share is issued on terms providing that it will rank for Dividend as from a particular date, that Share will rank for Dividend accordingly.

36.3 The Directors may resolve that any Dividend or other distribution be paid wholly or partly by the distribution of specific assets and in particular (but without limitation) by the distribution of shares, debentures, or securities of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments will be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees in such manner as may seem expedient to the Directors.

36.4 Except as otherwise provided by the rights attached to any Shares, Dividends and other distributions may be paid in any currency. The Directors may determine the basis of conversion for any currency conversions that may be required and how any costs involved are to be met.

36.5 The Directors may, before resolving to pay any Dividend or other distribution, set aside such sums as they think proper as a reserve or reserves which will, at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the discretion of the Directors, be employed in the business of the Company.

36.6 Any Dividend, other distribution, interest or other monies payable in cash in respect of Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant will be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Dividends, other distributions, bonuses or other monies payable in respect of the Share held by them as joint holders.

36.7 No Dividend or other distribution will bear interest against the Company.

- 36.8 Any Dividend or other distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date on which such Dividend or other distribution becomes payable may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company will not be constituted as a trustee in respect of that account and the Dividend or other distribution will remain as a debt due to the Member. Any Dividend or other distribution which remains unclaimed after a period of six years from the date on which such Dividend or other distribution becomes payable will be forfeited and will revert to the Company.

### **37 Capitalisation**

The Directors may at any time capitalise any sum standing to the credit of any of the Company's reserve accounts or funds (including the share premium account and capital redemption reserve fund) or any sum standing to the credit of the profit and loss account or otherwise available for distribution; appropriate such sum to Members in the proportions in which such sum would have been divisible amongst such Members had the same been a distribution of profits by way of Dividend or other distribution; and apply such sum on their behalf in paying up in full unissued Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors will do all acts and things required to give effect to such capitalisation, with full power given to the Directors to make such provisions as they think fit in the case of Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter on behalf of all of the Members interested into an agreement with the Company providing for such capitalisation and matters incidental or relating thereto and any agreement made under such authority will be effective and binding on all such Members and the Company.

### **38 Books of Account**

- 38.1 The Directors will cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books will not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.
- 38.2 The Directors will determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them will be open to the inspection of Members not being Directors, and no Member (not being a Director) will have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorised by the Directors or by the Company in a general meeting, provided that a Member is entitled to inspect the Register of Members at the office of the Transfer Agent during its usual business hours if such Member has first provided the Company with a sworn statement and undertaking providing (a) such Member's name, address and address for service (if different), and (b) such Member's undertaking that the Register of Members and information therein will not be used by such Member except in connection with (i) an effort to influence the voting of Members, (ii) an offer to acquire securities of the Company or (iii) any other matter relating to the affairs of the Company.
- 38.3 The Directors will prepare financial statements for the Company for each completed financial year of the Company which will be prepared in accordance with IFRS and will include:
- (a) a balance sheet;
  - (b) a statement of retained earnings;

- (c) an income statement; and
- (d) a cash flow statement.

The financial statements will be approved by the Directors prior to publication and will be signed by one or more Directors to confirm the approval of the Directors. The financial statements will be audited by the Auditor of the Company. The Directors will place before each annual general meeting the audited financial statements of the Company for the most recently completed financial year, together with the report of the Auditor of the Company on such financial statements.

### **39 Audit**

- 39.1 The Company will, by Ordinary Resolution, appoint an Auditor of the Company who will hold office on such terms as the Directors determine, provided that if an incumbent Auditor of the Company vacates such office, the Directors may appoint a successor Auditor to fill the vacancy. The Company may, by Ordinary Resolution, remove any Auditor previously appointed.
- 39.2 Every Auditor of the Company will have a right of access at all times to the books and accounts and vouchers of the Company and will be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 39.3 Auditors will, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next extraordinary general meeting following their appointment, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

### **40 Notices**

- 40.1 Notices will be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to him or her or to his or her address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent by airmail.
- 40.2 Where a notice is sent by courier, service of the notice will be deemed to be effected by delivery of the notice to a courier company, and will be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and will be deemed to have been received on the day following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice will be deemed to be effected by properly addressing and sending such notice and will be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail, service will be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and will be deemed to have been received on the same day that it was sent, and it will not be necessary for the receipt of the e-mail to be acknowledged by the recipient.
- 40.3 A notice may be given by the Company to the person or persons who the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices that are required to be given under the Articles and will be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

- 40.4 Notice of every general meeting will be given in any manner authorised by the Articles to every holder of Shares carrying an entitlement to receive such notice on the record date for such meeting except that in the case of joint holders the notice will be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of his or her being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for his or her death or bankruptcy would be entitled to receive notice of the meeting, and no other person will be entitled to receive notices of general meetings.

#### 41 **Winding-Up**

- 41.1 If the Company will be wound up the liquidator will apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. Subject to the rights attaching to any Shares, in a winding-up:

- (a) if the assets available for distribution amongst the Members will be insufficient to repay the whole of the Company's issued share capital, such assets will be distributed so that, as nearly as may be, the losses will be borne by the Members in proportion to the par value of the Shares held by them; or
- (b) if the assets available for distribution amongst the Members will be more than sufficient to repay the whole of the Company's issued share capital at the commencement of the winding-up, the surplus will be distributed amongst the Members in proportion to the par value of the Shares held by them at the commencement of the winding-up subject to a deduction, from those Shares in respect of which there are monies due, of all monies payable to the Company.

- 41.2 If the Company will be wound up the liquidator may, subject to the rights attaching to any Shares and with the sanction of a Special Resolution of the Company and any other sanction required by the Statute, divide amongst the Members in kind the whole or any part of the assets of the Company (whether such assets will consist of property of the same kind or not) and may for that purpose value any assets and determine how the division will be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Members as the liquidator, with the like sanction, will think fit, but so that no Member will be compelled to accept any asset upon which there is a liability.

#### 42 **Indemnity and Advancement of Expenses**

- 42.1 Each Director and officer of the Company and such Director or officer's heirs and legal personal representatives is an "**Indemnified Person**" for purposes of this Article. The Company agrees to hold harmless and indemnify Indemnified Persons to the fullest extent permitted by law, as such may be amended from time to time.

- 42.2 Without limiting the generality of Section 42.1, the Company agrees, subject to Article 42.3, to indemnify an Indemnified Person and save the Indemnified Person harmless against any and all losses, liabilities, claims, damages, costs, charges and expenses which are reasonably incurred by an Indemnified Person in connection with any Proceeding (as defined below) or any claim, issue or matter therein, whether incurred by him or her, alone or jointly with others, on his or her own behalf, including any interest thereon and any federal, provincial, state, local or foreign taxes ("**Liabilities**"), including, without limitation: (a) an amount paid to settle an action or satisfy a judgment in respect of any threatened, pending or completed demand, action, application, suit, proceeding, litigation, claim, charge, complaint, prosecution, assessment, reassessment, arbitration or alternative dispute resolution mechanism, hearing, inquiry, inspecting audit or investigation of any nature or kind whatever, whether civil, criminal, administrative, investigative, arbitral or otherwise and whether brought by or on behalf of the Company or any other party, which an Indemnified Person is, or is threatened to be, involved in (including, without limitation, serving as a witness) or a party to by reason of his or her status

as a Director or officer, or a former Director or officer, of the Company or of any other company or other enterprise that such person is or was serving as a director at the express written request of the Company (the “**Enterprise**”) (a “**Proceeding**”); (b) all legal and other professional retainers and fees (including, without limitation, fees of experts and witness fees) and disbursements incurred in connection with any Proceeding; (c) all reasonable out of pocket expenses and disbursements incurred in connection with any Proceeding, including, without limitation, court costs, transcript costs, travel expenses, duplicating costs, printing and binding costs, telephone charges, delivery service fees, postage and all other disbursements or expenses of the types customarily incurred for attending discoveries, trials, hearings and meetings and otherwise in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding, including such fees, disbursements and expenses incurred in connection with any appeal resulting from any Proceeding; (d) any fines or financial penalties imposed against an Indemnified Person in connection with any Proceeding as a result of a conviction or reprimand under the law because of the position of an Indemnified Person as Director or officer of the Company, or any award, court order, settlement, or other resolution of a Proceeding; (e) the full amount of any income taxes that an Indemnified Person is required to pay as a consequence of receiving any payment made by the Company under this Article 42, including additional income taxes on the amount of such income taxes, except to the extent that, in computing income for income tax purposes the Indemnified Person is entitled to deduct the amounts paid by the Indemnified Person on account of Liabilities for which the Indemnified Person has been indemnified by the Company under this Article 42.2; and (f) the full amount of all court costs and expenses, including the reasonable fees of counsel on a full indemnity basis, incurred by an Indemnified Person with respect to a successful action instituted by the Indemnified Person under the Articles to enforce or interpret any of the terms of the Articles or in establishing or enforcing a right to indemnification under applicable provision of the Statute, unless as part of any such action, the court of competent jurisdiction determines that any of the material assertions made by the Indemnified Person as a basis for the action arises through the actual fraud or wilful default of such Indemnified Person.

- 42.3 The Company will have no obligation or liability to indemnify an Indemnified Person under the Articles, unless: (a) the Indemnified Person acted honestly and in good faith with a view to the best interests of the Company; and (b) in the case of a criminal or administrative Proceeding that is enforced by a monetary penalty, the Indemnified Person had reasonable grounds for believing that his, her or its conduct was lawful.
- 42.4 Unless a court of competent jurisdiction otherwise has finally held or decided that the Indemnified Person is not entitled to be fully or partially indemnified under the Articles, the determination of any Proceeding by judgment, order, settlement, conviction or reprimand, whether with or without court approval, or upon a plea of nolo contendere or its equivalent, will not, in and of itself, create any presumption that the Indemnified Person is not entitled to indemnification under the Articles. The termination of any civil, criminal or administrative action or other Proceeding by judgment, order, settlement, conviction or similar or other result will not, in and of itself, create a presumption either that the Indemnified Person did not act honestly and in good faith with a view to the best interests of the Company or that, in the case of a criminal or administrative action or other Proceeding that is enforced by a monetary penalty, the Indemnified Person did not have reasonable grounds for believing that his, her or its individual conduct was lawful. In addition, where the Company wishes to assert that it has no obligation or liability to indemnify an Indemnified Person under the Articles because of Article 42.3, the onus will be on the Company to demonstrate that clause (a) or (b) of Article 42.3 is applicable.
- 42.5 The following procedures and presumptions will apply in the event of any question as to whether an Indemnified Person is entitled to indemnification under the Articles:
- (a) Upon written request by an Indemnified Person for indemnification pursuant to Article 42.2, a determination with respect to the Indemnified Person’s entitlement thereto will be made in the specific case by one of the following four methods, which will be at the

election of the board of Directors: (i) by a majority vote of the disinterested Directors, even though less than a quorum, (ii) by a committee of disinterested Directors designated by a majority vote of the disinterested Directors, even though less than a quorum, (iii) if there are no disinterested Directors or if the disinterested Directors so direct, by Independent Counsel (as defined below) in a written opinion to the board of Directors, a copy of which will be delivered to the Indemnified Person or (iv) if so directed by the board of Directors, by the Members of the Company. For purposes hereof, disinterested Directors are those members of the board of Directors who are not parties to the Proceeding in respect of which indemnification is sought by the Indemnified Person.

- (b) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Article 42.5(a) hereof, the Independent Counsel will be selected by the board of Directors and notified in writing to the Indemnified Person. The Indemnified Person may, within ten days after such written notice of selection will have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of “**Independent Counsel**” as defined in this Article 42.5, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If a written objection is made, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. The Company will pay any and all reasonable fees and expenses of Independent Counsel in connection with acting pursuant to the Articles, and the Companies will pay all reasonable fees and expenses incident to the procedures of this Article 42.5.
- (c) The Indemnified Person will be deemed to have acted in good faith if the Indemnified Person’s action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to the Indemnified Person by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. Anyone seeking to overcome this presumption will have the burden of proof and the burden of persuasion by clear and convincing evidence. If such books, records, information, advice, or reports are not applicable, it will in any event be presumed that the Indemnified Person has at all times acted honestly and in good faith with a view to the best interests of the Company. Anyone seeking to overcome this presumption will have the burden of proof and the burden of persuasion by clear and convincing evidence. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise will not be imputed to the Indemnified Person for purposes of determining the right to indemnification under the Articles.
- (d) If the person, persons or entity empowered or selected under this Article 42.5 to determine whether the Indemnified Person is entitled to indemnification will not have made a determination within 60 days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification will be deemed to have been made and the Indemnified Person will be entitled to such indemnification absent (i) a misstatement by the Indemnified Person of a material fact, or an omission of a material fact necessary to make the Indemnified Person’s statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60 day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided further, that the foregoing provisions of this Article 42.5(d) will not apply if the determination of

entitlement to indemnification is to be made by the Members pursuant to Article 42.5(a), in which case the board of Directors of the Company will procure that such general meeting will take place no later than 75 days after the Company's receipt of the indemnification request.

- (e) The Indemnified Person will cooperate with the person, persons or entity making such determination with respect to the Indemnified Person's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Indemnified Person and reasonably necessary to such determination. Any Independent Counsel, member of the board of Directors or Member of the Company will act reasonably and in good faith in making a determination regarding the Indemnified Person's entitlement to indemnification under the Articles. Any costs or expenses (including attorneys' fees and disbursements) incurred by the Indemnified Person in so cooperating with the person, persons or entity making such determination will be borne by the Company unless the final determination is that the Indemnified Person is not entitled to indemnification, in which case the Indemnified Person will pay its own costs and reimburse the Company for any advances made to the Indemnified Person under the Articles.
- (f) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which the Indemnified Person is a party is resolved in any manner other than by adverse judgment against the Indemnified Person (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it will be presumed that the Indemnified Person has been Successful, on the merits or otherwise, in such action, suit or proceeding. Anyone seeking to overcome this presumption will have the burden of proof and the burden of persuasion by clear and convincing evidence.
- (g) **"Independent Counsel"** means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or the Indemnified Person in any matter material to either such party (other than with respect to matters concerning the Indemnified Person under this Article 42.5, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term **"Independent Counsel"** will not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnified Person in an action to determine the Indemnified Person's rights under this Article 42.5. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Article 42.5 or its engagement pursuant hereto.

42.6 Subject to applicable law, the Company will, within five business days of receipt of a written request, advance monies to an Indemnified Person for all reasonable costs, charges and expenses which have been incurred by the Indemnified Person in connection with any Proceeding, provided that the Indemnified Person will repay any monies that have been so advanced if a court will have made a final determination, as to which all rights of appeal will have been exhausted or lapsed, that the Indemnified Person was not entitled to indemnification. Any advances under this Article 42.6 will be unsecured and interest-free.

42.7 The indemnity granted in this Article has effect as and from the first date on which the Director or officer became an Indemnified Person and will continue in full force and effect after the date on which the Director or officer ceases to be an Indemnified Person.

- 42.8 Promptly after receipt by the Indemnified Person of notice of the commencement, or the threat of commencement, of any Proceeding, the Indemnified Person will, if the Indemnified Person believes that indemnification may be sought from the Company under the Articles, notify the Company. Any failure of the Indemnified Person to provide such a notice to the Company will not, however, relieve the Company of any liability it may have to the Indemnified Person under the Articles unless and to the extent that the failure causes a material adverse effect upon the interests of the Company.
- 42.9 Notwithstanding any other provision of this Article 42, to the extent that the Indemnified Person is not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done, and fulfills the conditions set out in Article 42.3 (“**Successful**”), in any Proceeding, he or she will be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all expenses, as set forth above, actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If the Indemnified Person is not wholly successful in such Proceeding but is Successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify the Indemnified Person against such expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each Successfully resolved claim, issue or matter. For purposes of this Article 42.9 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a Successful result as to such claim, issue or matter.
- 42.10 If the Company may be obligated to pay the Liabilities of any Proceeding, the Company is entitled to assume the defense of the Proceeding with counsel reasonably satisfactory to the Indemnified Person, and will so notify the Indemnified Person. After the Company provides such a notification, satisfaction with counsel by the Indemnified Person and the retention of such counsel by the Company, the Company will not be liable to the Indemnified Person under the Articles for any fees of counsel or related expenses subsequently incurred by the Indemnified Person with respect to the same Proceeding, provided always that the Indemnified Person will have the right to employ his, her or their own counsel in any such Proceeding at the expense of the Indemnified Person. Notwithstanding the foregoing, if: (a) the employment of counsel by the Indemnified Person has been previously authorized by the Company; (b) the Indemnified Person will have been advised in writing by counsel that there may be a conflict of interest between the Company and the Indemnified Person in the conduct of any such defense; or the Company will not, in fact, have employed, or continue to employ, counsel or diligently instructed counsel in the defense of the Proceeding in question, then the fees and the expenses of the counsel of the Indemnified Person will be borne and paid by the Company.
- 42.11 The Company will not settle any Proceeding in any manner that would impose any penalty, limitation or un-indemnified Liabilities on the Indemnified Person, or which would reasonably be expected to result in a material loss or diminishment of the Indemnified Person’s reputation, without the Indemnified Person’s written consent, which will not be unreasonably withheld.
- 42.12 The Company and the Indemnified Person will, from time to time, provide such information and cooperate with the other, as the other may reasonably request, in respect of all matters under this Article. Without limiting the foregoing, the Indemnified Person and his, her or its advisors will at all times be entitled to review during regular business hours all documents, records and other information with respect to the Company which are under the Company’s control and which may be reasonably necessary for the Indemnified Person to defend against any Proceeding, provided that the Indemnified Person will maintain all such information in the strictest confidence except to the extent necessary for the Indemnified Person’s defence.
- 42.13 In respect of an action or other Proceeding by or on behalf of the Company to procure judgment in its favour to which the Indemnified Person is made a party by reason of being or having been a Director or officer of the Company, the Company will immediately make application for approval of the Ontario Superior Court of Justice or any other applicable court of competent jurisdiction to indemnify the Indemnified Person against all Liabilities reasonably incurred by

him or her in connection with such action or Proceeding if (a) the Indemnified Person acted honestly and in good faith with a view to the best interests of the Company; and (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Indemnified Person had reasonable grounds for believing that his or her individual conduct was lawful. In respect of an action or other Proceeding by or on behalf of the Company to procure judgment in its favour in respect of which the Company is obligated by this Article 42.13 to make application for approval of the Ontario Superior Court of Justice or any other applicable court of competent jurisdiction to indemnify the Indemnified Person, the Company will in the first instance pay all such expenses in respect the final disposition of the action or Proceeding in question as such expenses are incurred; provided that the Indemnified Person hereby undertakes to repay such amount if a court in a final judgment determines that the Indemnified Person is not entitled to be indemnified.

**43 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company will end on 31st December in each year and, following the year of incorporation, will begin on 1st January in each year.

**44 Transfer by Way of Continuation**

The Company will, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**45 Mergers and Consolidations**

The Company will, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.