

Meeting. In addition, the Applicants issued a press release on June 15, 2020 announcing their intention to seek an Order of the Court to file the Plan and call, hold and conduct a meeting of the Senior Lenders;

- c) the Meeting was properly constituted and the voting on the Plan was carried out in accordance with the Meeting Order; and
- d) the Plan was approved by the Required Majority.

[26] Sections 6(3), 6(5) and 6(6) of the CCAA provide that the Court may not sanction a plan unless the plan contains certain specified provisions concerning Crown claims, employee claims and pension claims. The Applicants' submit that these provisions of the CCAA are satisfied by the Plan. Crown claims and employee claims are treated by the Plan as Unaffected Claims, meaning that such claims, if any, are not compromised or otherwise affected. The Applicants do not maintain any pension plans, and thus section 6(6) of the CCAA does not apply. In compliance with s. 6(8) of the CCAA, the Plan does not provide for any recovery to equity holders.

[27] I accept the foregoing submissions. I am satisfied that the statutory prerequisites to approval of the Plan have been satisfied, and that there has been strict compliance with all statutory requirements.

[28] The Applicants submit that no unauthorized steps have been taken in these CCAA Proceedings and throughout the entirety of these CCAA Proceedings, they have kept this Court and Monitor apprised of all material aspects of the Applicants' conduct, activities, and key issues they have worked to resolve. I accept this submission.

[29] The Applicants' submit that when considering whether a plan of compromise and arrangement is fair and reasonable, the court should consider the relative degree of prejudice that would flow from granting or refusing to grant the relief sought. Courts should also consider whether the proposed plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available (see: *Re Canadian Airlines Corp*, 2000 ABQB 442 at paras. 3, 94, 96, and 137 – 138; and *Re Canwest Global Communications Corp*, 2010 ONSC 4209).

[30] The CCAA permits the filing of a Plan by an Applicant to its secured creditors. The Applicants' submit the fact that unsecured creditors may receive no recovery under a proposed plan of arrangement does not, of itself, negate the fairness and reasonableness of a plan of arrangement (*Anvil Range Mining Corp. (Re)*, 2002 CanLII 42003 (ONCA); and *1078385 Ontario Ltd., (Re)*, 2004 CanLII 55041 (ONCA) at paras 30-31 ([CanLII](#)), affirming 2004 CanLII 66329 (ONSC)).

[31] The Plan was presented to the Senior Lenders, who are the Applicants' only secured creditors and they voted on the Plan as a single class. The Senior Lenders voted in favour of the Plan by the Required Majority. The value of the claims of Orion and Osisko, who voted in

favour of the Plan comprise 77.8% of the total value of the Affected Creditors who were present and voting.

[32] RCF, a secured lender and 32% shareholder, did not vote in favour of the Plan. RCF has advised that it “does not intend at this time to propose or fund an alternative to the Plan, and in the absence of such an alternative we expect that the Court will have no choice but to issue the Sanction and Implementation Order.”

[33] I have been advised that an issue as between the Senior Lenders and ING has been resolved and for greater certainty this Plan does not compromise any claim that ING may have in respect of proceeds from a successfully-asserted arbitration claim. In addition, the Senior Lenders have agreed that, after payment of all claims of the Senior Lenders to proceeds from a successfully-asserted arbitration claim whether on account of: (i) claims of the Senior Lenders prior to the Plan Implementation Date; or (ii) further advances made by the Senior Lenders (or their affiliates) after the Plan Implementation Date, (whether such further advances are made as equity, secured debt or unsecured debt), the proceeds will be paid to Lydian Armenia in an amount sufficient and to be used to pay ING’s claims against Lydian Armenia prior to any further monies being returned to equity holders.

[34] The Applicants submit that the structure and the nature of the releases in the Plan recognizes and continues the priority position of the Senior Lenders. Secured creditors and unsecured creditors with claims at or below Restructured Lydian will continue to maintain their claims in the Restructured Lydian Group, including Lydian Armenia, with the same priority as they previously had, ranking behind the Senior Lenders.

[35] The Applicants state that they have considered and believe the Plan is the best available outcome for the Applicants, and the interests of the stakeholders generally in the Lydian Group.

[36] As noted in the BMO Affidavit, despite multiple rounds of the SISP and the Treaty Arbitration financing solicitation process, the Applicants submit that no transaction which would satisfy the Lydian Group’s secured obligations is currently available to the Applicants.

[37] The Applicants submit that the monetization of Treaty Arbitration is also not open to the Applicants at this time, and if initiated would require an extended period to litigate and significant additional financial resources.

[38] The Applicants submit that for the purposes of valuing an estate at a plan sanction hearing, the “value has to be determined on a current basis. [...] It is inappropriate to value the assets on a speculative or (remote) possibility basis.” A relevant consideration in this analysis is the scope and extent of previous sale or capital raising efforts undertaken by the company and any financial advisors. In support of this submission, the Applicants reference: *Anvil Range Mining Corp. (Re)*, 2002 CanLII 42003 (ONCA), para 36 ([CanLII](#)); *Philip Services Corp., Re*, 1999 CanLII 15012 (ONSC) at para 9 ([CanLII](#)) *1078385 Ontario Ltd., (Re)*, 2004 CanLII 55041 (ONCA) at paras 30-31 ([CanLII](#)), affirming *1078385 Ontario Ltd. (Re)*, 2004 CanLII 66329 (ONSC) ([CanLII](#)).

[39] The Applicants submit that the outcome of the Plan, that being the distribution of the Applicants' estates to the Senior Lenders, is essentially identical to what would be achieved with any other options available in the circumstances. Without the Plan, the Senior Lenders could (a) privatize the Applicants' assets through the enforcement of share pledges and other security, or (b) could credit bid their debt to acquire the shares or assets; or (c) enforce their secured positions following the Applicants filing for bankruptcy, administration, or liquidation proceedings across multiple jurisdictions. In each scenario (as with the Plan), the Applicants' assets are transitioned to the Senior Lenders.

[40] The foregoing submissions were not challenged.

[41] The Monitor supports the Plan. As noted in the Monitor's Seventh Report, "it is the Monitor's view that the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable."

[42] I am aware that concerns with respect to the fairness of the Plan have been raised by numerous shareholders of Lydian International and oral submissions were made by John LeRoux, Hasan Ciftehan, Mehmet Ali Ekingen and Atilla Bozkay.

[43] In addition, a number of emails were sent directly to the court, which were forwarded to counsel to the Monitor. In addition, certain emails were sent to the Monitor. None of the emails were in a proper evidentiary form.

[44] The concerns of the shareholders included criminal complaints of activities in Armenia, the content of certain press releases and the impact of the COVID-19 pandemic. Some shareholders requested a delay of three months in these proceedings.

[45] As previously noted, equity claims and unsecured claims against Lydian International will not be assumed by Restructured Lydian as part of the Plan. Simply put, the shareholders of Lydian International will not receive any compensation for their shareholdings. This is a reflection of the insolvency of the Applicants and the priority position afforded to shareholders by the CCAA.

[46] I recognize that the shareholders' monetary loss will be crystalized if the Plan is sanctioned. However, a monetary loss resulting from the ownership, purchase or sale of their equity interest is an "equity claim" as defined in s. 2(1) of the CCAA. This definition is significant as s. 6(8) of the CCAA provides:

6(8) Payment – equity claims – No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

[47] The Plan does not provide for payment in full of claims that are not equity claims. Consequently, equity claimants are not in the position to receive any compensation.

[48] The economic reality facing the shareholders existed prior to the COVID-19 pandemic. The Applicants were insolvent when they filed these proceedings on December 23, 2019. The financial situation facing the Applicants has not improved since the filing. In fact, it has declined. The mine is not operating with the obvious result that it is not generating revenues and interest continues to accrue on the secured debt. The fact that shareholders will receive no compensation is unfortunate but is a reflection of reality which does not preclude a finding that the Plan is fair and reasonable for the purposes of this motion.

[49] The Senior Lenders have voted in sufficient numbers in favour of the Plan. I am satisfied that there are no viable alternatives, and, in my view, it is not feasible to further delay these proceedings.

[50] Section 6.6 of the Plan provides for full and final releases in favour of the Released Parties, who consist of (a) the Applicants, their employees, agents and advisors (including counsel) and each of the members of the Existing Lydian Group's current and former directors and officers; (b) the Monitor and its counsel; and (c) the Senior Lenders and each of their respective affiliates, affiliated funds, their directors, officers, employees, agents and advisors (including counsel) (collectively, the "Ancillary Releases"). A chart setting out the impact of the releases is attached as Schedule "A" to these reasons.

[51] The Applicants submit that the releases apply to the extent permitted by law and expressly do not apply to, among other things:

- a) Lydian Canada's, Lydian UK's or the Senior Lenders' obligations under the Plan or incorporated into the Plan;
- b) obligations of any Existing Lydian Group member other than Lydian International under the Credit Agreement and Stream Agreement, and any agreements entered into relating to the foregoing, from and after the Plan Implementation Date;
- c) any claims arising from the willful misconduct or gross negligence of any applicable Released Party; and
- d) any Director from any Director Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

[52] Unsecured creditors' claims, other than the Ancillary Releases in favour of the Directors, are not compromised or released and remain in the Restructured Lydian Group.

[53] The Applicants submit that it is accepted that there is jurisdiction to sanction plans containing releases if the release was negotiated in favour of a third party as part of the "compromise" or "arrangement" where the release reasonably relates to the proposed restructuring and is not overly broad. There must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan (see: *Re Canadian Airlines Corp*, 2000 ABQB 442

at para 92 ([CanLII](#)) CCAA at s. 5(1); *Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 61 and 70 ([CanLII](#)); *Re Canwest Global Communications Corp*, 2010 ONSC 4209 at para 28-30 ([CanLII](#)); and *Re Kitchener Frame Ltd*, 2012 ONSC 234 at paras 85-88 ([CanLII](#)).

[54] The Applicants submit that in considering whether to approve releases in favour of third parties, courts will consider the particular circumstances of the case and the objectives of the CCAA. While no single factor will be determinative, the courts have considered the following factors:

- a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- c) Whether the plan could succeed without the releases;
- d) Whether the parties being released were contributing to the plan; and
- e) Whether the release benefitted the debtors as well as the creditors generally.

[55] The Applicants submit that the releases were critical components of the decision-making process for the Applicants' directors and officers and Senior Lenders' participation in these CCAA Proceedings in proposing the Plan and the Applicants submit that they would not have brought forward the Plan absent the inclusion of the releases.

[56] The Applicants also submit that the support of the Senior Lenders is essential to the Plan's viability. Without such support, which is conditional on the releases, the Plan would not succeed.

[57] The Applicants submit that the Released Parties made significant contributions to the Applicants' restructuring, both prior to and throughout these CCAA Proceedings. The extensive efforts of the Applicants' directors and officers and the Senior Lenders and Monitor resulted in the negotiation of the Plan, which forms the foundation for the completion of these CCAA Proceedings. The Senior Lenders financial contributions through forbearances, additional advances and DIP and Exit Financing were instrumental.

[58] The Applicants also submit that the releases are an integral part of the CCAA Plan which provides an orderly and effective alternative to uncoordinated and disruptive secured lender enforcement proceedings. The Plan permits unsecured creditors future potential recovery in the Restructured Lydian Group, which may not exist in bankruptcy (*Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 71 ([CanLII](#)); and *Re Kitchener Frame Ltd*, 2012 ONSC 234 at paras 80-82 ([CanLII](#))).

[59] The Applicants submit that this Court has exercised its authority to grant similar releases, including in circumstances where the released claims included claims of parties who did not vote on the plan and were not eligible to receive distributions (*Target Canada Co. et al.* (2 June 2016), Toronto CV-15-10832-00CL (Ont. Sup. Ct. [Comm. List]) Sanction and Vesting Order at Schedule “B” art. 7 ([Monitor’s website](#)); *Rubicon Minerals Corporation et al.* (8 December 2016), Toronto CV-16-11566-00CL (Ont. Sup. Ct. [Comm. List]) Sanction Order at Schedule “A” art. 7 ([Monitor’s website](#)); and *Nortel Networks Corporation et al.* (30 November 2016), Toronto 09-CL-7950 (Ont. Sup. Ct. [Comm. List]) Plan of Compromise and Arrangement at art. 7 ([Monitor’s website](#))).

[60] Full disclosure of the releases was made in (a) the draft Plan that was circulated to the Service List and filed with this Court as part of the Applicants’ Motion Record (returnable June 18, 2020); and (b) the Plan attached to the Meeting Order. The Applicants also issued the Press Releases. This notification process ensured that the Applicants’ stakeholders had notice of the nature and effect of the Plan and releases.

[61] The foregoing submissions with respect to the releases were not challenged.

[62] In my view, each of the Released Parties has made a contribution to the development of the Plan. In arriving at this determination, I have taken into account the activities of the Released Parties as described in the Reports of the court-appointed Monitor. I am satisfied that it is appropriate for the Plan to include the releases in favour of the Released Parties.

[63] The development of this Plan has been challenging and as the Monitor has stated, “the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable”.

[64] I accept this assessment and find that the Plan is fair and reasonable in the circumstances.

### **DIP Charge**

[65] The terms of the DIP Exit Facility Amendment are described in the Sellers Sanction Affidavit. The DIP Exit Facility Amendment provides for exit financing totalling \$1.866 million to assist in implementing the Plan and taking the necessary ancillary steps to terminate the CCAA Proceedings and support the J&E Process.

[66] This Court has the jurisdiction to authorize funding in the context of a CCAA restructuring pursuant to s. 11.2(1) and 11.2(2) of the CCAA. In considering whether to approve DIP financing, the Court is to consider the non-exhaustive list of factors set out in s. 11.2(4) of the CCAA. These same provisions of the CCAA provide this Court with the authority to approve amendments to a DIP agreement and secure all obligations arising from the amended DIP loans with an increased DIP charge.

[67] The Applicants submit that, based on the following, the DIP Amendment should be approved and the increase to the DIP Facility should be secured by the DIP Charge:

- a) the DIP Exit Credit Facility is necessary to enable the Applicants to implement the Plan;
- b) the Monitor is supportive of the DIP Exit Facility Amendment;
- c) the DIP Exit Facility Amendment is not anticipated to give rise to any material financial prejudice; and
- d) the DIP Lenders are the majority of Senior Lenders.

[68] I am satisfied that the requested relief in respect to the DIP Amendment is reasonably necessary and appropriate in the circumstances.

### **Sealing Request**

[69] The Applicants seek to seal the unredacted Sellers Sanction Affidavit on the basis that the redacted portions of the Sellers Sanction Affidavit contain commercially sensitive information, the disclosure of which could be harmful to stakeholders.

[70] The redactions currently being sought are consistent with previous Orders in these CCAA Proceedings. In my view, the documents in question contain sensitive commercial information. Having considered the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 Sec. 41 at para. 53 I am satisfied that the request for a sealing order is appropriate and is granted.

### **Stay Period**

[71] On the Plan Implementation Date, the CCAA Proceedings with respect to Lydian UK and Lydian Canada will be terminated, such that Lydian International will be the only remaining Applicant in the CCAA Proceedings. The Applicants are requesting an extension of the Stay Period for Lydian International until and including the earlier of (i) the issuance of the Monitor's CCAA Termination Certificate and (ii) December 21, 2020 to enable the remaining Applicant and the Monitor to take the steps necessary to implement the Plan and terminate the CCAA Proceedings and initiate the J&E Process. The Applicants are also requesting an extension of the Stay Period for the Non-Applicant Stay Parties (other than Lydian US) until and including the earlier of the issuance of the Monitor's Plan Implementation Certificate.

[72] I am satisfied that the Applicants in requesting the extension of the Stay Period have demonstrated that circumstances exist that make the order appropriate; and that they have acted and are acting in good faith and with due diligence such that the request is appropriate.

### **Approval of Monitor's Activities**

[73] The Applicants are seeking an order approving the Monitor's activities to date, as detailed in the Fifth Report, Sixth Report and the Seventh Report (collectively, the "Reports").

This Court has already approved the activities of the Monitor that were detailed in its previous reports. There was no opposition to the request.

[74] I am satisfied that the Reports and the activities described therein should be approved. The Reports were prepared in a manner consistent with the Monitor's duties and the provisions of the CCAA and in compliance with the Initial Order. The Reports are approved in accordance with the language provided in the draft order.

**Approval of Monitor's Fees**

[75] The Applicants further seek approval of the fees and disbursements of (i) the Monitor for the period April 14, 2020 to June 23, 2020, inclusive, and (ii) counsel to the Monitor for the period April 16, 2020 to June 23, 2020. The Applicants have reviewed the fees of the Monitor and its counsel and support the payment of the same.

[76] I am satisfied that the fee requests are appropriate in the circumstances and they are approved.

**DISPOSITION**

[77] The Applicants' motion is granted. The Plan is sanctioned and approved. The ancillary relief referenced in the motion is also granted and an Order reflecting the foregoing has been signed.



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Chief Justice Geoffrey B. Morawetz

**Date: July 10, 2020**

## SCHEDULE “A”

### *Lydian International Limited et al.*

#### Impact of the Releases Described in s. 6.6 of the Plan

<b>Lydian Jersey</b>		
Type of Claim	Treatment	Plan Reference
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Released	Section 6.3(n)
<b>Unsecured Guarantee of Equipment Lessors</b> ING, CAT, Ameriabank	Not Released. Addressed in the J&E Process in Jersey	Section 6.6 (carve-out (E))
<b>Other Unsecured Claims</b> Includes Maverix Metals claim against Lydian Jersey	Not Released. Addressed in the J&E Process in Jersey.	Section 6.6 (carve-out (E))
<b>Equity Claims</b> Held by RCF, Orion, and public Shareholders	Not Released. Addressed in the J&E Process in Jersey.	Section 3.5
<b>D&amp;O Claims</b> Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Monitor</b> Claims against the Monitor, and Monitor’s legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Intercompany Claims</b> Claims by Lydian Jersey against Lydian Canada and other subsidiaries	Assigned to Lydian Canada	Section 6.3(h)
<b>Priority Claims</b> Admin Charge, DIP Lender’s Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date  Admin Charge and DIP Lender’s Charge to be terminated on CCAA Termination Date	Section 5.2(i)

<b>Lydian Canada</b>		
Type of Claim	Treatment	Plan Reference
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Not Released	Section 6.6
<b>Unsecured Claims of Equipment Lessors<sup>1</sup></b> ING, CAT, Ameriabank	Not Released	Section 6.6 (carve-out (E))
<b>Other Unsecured Claims</b>	Not Released	Section 6.6 (carve-out (E))
<b>Equity Claims</b> Shareholdings of Lydian Jersey in Lydian Canada	Not Released (but subject to amalgamation with SL Newco)	Section 3.5
<b>D&amp;O Claims</b> Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

<sup>1</sup> This includes contractual rights as outlined in the Waiver and Consent Agreement between Lydian Jersey, Lydian Canada, Lydian UK and Lydian Armenia dated November 26, 2018 (the “**Waiver**”).

<b>Claims against Monitor</b> Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Priority Claims</b> Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date  Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

<b>Lydian UK</b>		
<b>Type of Claim</b>	<b>Treatment</b>	<b>Plan Reference</b>
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Not Released	Section 6.6
<b>Unsecured Claims of Equipment Lessors</b> ING, CAT, Ameriabank <sup>2</sup>	Not Released	Section 6.6 (carve-out (E))
<b>Other Unsecured Claims</b>	Not Released	Section 6.6 (carve-out (E))
<b>Equity Claims</b> Shareholdings of Lydian Canada in Lydian UK	Not Released	Section 3.5
<b>D&amp;O Claims</b> Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Monitor</b> Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Priority Claims</b> Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date  Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

<sup>2</sup> This includes the contractual rights outlined in the Waiver.

11910728 Canada Inc. ("DirectorCo")		
Type of Claim	Treatment	Plan Reference
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Not Released	Section 6.6
<b>Unsecured Claims</b>	Not Released	Section 6.6 (carve-out (E))
<b>Equity Claims</b> Shareholdings of Lydian Canada in DirectorCo	Not Released	Section 3.5
<b>D&amp;O Claims</b> Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii) of the Plan
<b>Claims against Monitor</b> Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian International Holdings Limited, Lydian Resources Armenia Limited, and Lydian Resources Kosovo Limited		
Type of Claim	Treatment	Plan Reference
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Not Released	Section 6.6
<b>Other Secured Claims</b> Includes claim of Maverix Metals in shares of Lydian Resources Armenia Limited, which is subordinated to claims of Senior Lenders	Not Released	Section 6.6
<b>Unsecured Claims</b> Includes Maverix Metals claim against Lydian International Holdings Limited	Not Released	Section 6.6 (carve-out (E))
<b>Equity Claims</b> Shareholdings of Lydian UK in Lydian International Holdings Limited, and shareholdings of Lydian International Holdings Limited in Lydian Resources Armenia ("BVI") and Lydian Resources Kosovo Limited  Includes Maverix Metals' share pledge in BVI	Not Released	Section 6.6 (carve-out (E))
<b>D&amp;O Claims</b> Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii) of the Plan
<b>Claims against Monitor</b> Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

<b>Lydian Armenia</b>		
<b>Type of Claim</b>	<b>Treatment</b>	<b>Plan Reference</b>
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Not Released	Section 6.6
<b>Equipment Lessor Secured Claims</b> ING, CAT and Ameriabank (to the extent secured by their collateral)	Not Released	Section 6.6 (carve-out (E))
<b>Equipment Lessor Unsecured Claims</b> ING, CAT and Ameriabank (unsecured deficiency claims)	Not Released	Section 6.6 (carve-out (E))
<b>Other Unsecured Claims</b> e.g. Trade creditors	Not Released	Section 6.6 (carve-out (E))
<b>Equity Claims</b> Shareholdings held by BVI / DirectorCo (as sole shareholder representative of BVI)	Not Released	Section 3.5
<b>D&amp;O Claims</b> Claims against the Directors	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6 (i) and (ii)
<b>Claims against Monitor</b> Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

<b>Lydian US Lydian Zoloto, Lydian Resources Georgia Limited ("Lydian Georgia") and Georgian Resource Company LLC ("Lydian GRC", and collectively with Lydian US, Lydian Zoloto and Lydian Georgia, the "Released Guarantors" under the Plan)</b>		
<b>Type of Claim</b>	<b>Treatment</b>	<b>Plan Reference</b>
<b>Senior Lender Claims</b> Held by RCF, Orion and Osisko	Released	Section 6.3(n)
<b>Unsecured Claims</b>	Not Released	Section 6.6
<b>Equity Claims</b> (a) Shareholdings of Lydian Jersey in Lydian US, Lydian Georgia and Lydian Zoloto; and (b) Shareholdings of Lydian Georgia in Lydian GRC	(a) Not Released. Per s. 6.4 of the Plan, Lydian US and Lydian Zoloto to be wound-up and dissolved pursuant to the laws of Colorado and Armenia, respectively.  (b) Lydian Georgia shares held by Lydian Jersey to be transferred to Lydian Georgia Purchaser on Plan Implementation Date.  (b) Shares of Lydian GRC held by Lydian Georgia not released. See note re: Lydian Georgia above.	Section 3.5 and section 6.4
<b>D&amp;O Claims,</b> Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

<b>Claims against Monitor</b> Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
<b>Claims against Senior Lenders</b> Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)



# LYDIAN INTERNATIONAL

## NOTICE OF ANNUAL GENERAL MEETING OF SHAREHOLDERS

**NOTICE IS HEREBY GIVEN** that the annual general meeting (the “**Meeting**”) of holders of ordinary shares (the “**Shareholders**”) of Lydian International Limited (the “**Corporation**”) will be held at the offices of Stikeman Elliott LLP, Barristers & Solicitors, 5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9 on Thursday, the 23<sup>rd</sup> day of June, 2016 at 10:00 a.m. (Eastern Daylight Time) for the purpose of considering and, if thought advisable, approving, with or without variation, the following resolutions 1 to 5, which will be proposed as ordinary resolutions:

1. in accordance with Article 20.1 of the Corporation's Articles of Association, to determine that the minimum number of directors of the Corporation be five (5) and that the maximum number of directors of the Corporation be ten (10);
2. to elect, as separate ordinary resolutions, the following directors of the Corporation who will serve until the end of the next annual Shareholder meeting or until their successors are appointed:
  - Gordon Wylie
  - Howard H.J. Stevenson
  - Willan J. Abel
  - Timothy Read
  - Stephen J. Altmann
  - Josh Parrill
  - John Stubbs
3. to re-appoint Grant Thornton LLP as the auditors of the Corporation from the close of the Meeting until the close of the next annual general meeting of the Shareholders and to authorize the directors to fix the remuneration to be paid to the auditors;
4. conditional upon receipt of applicable Jersey regulatory consent, to ratify and approve certain amendments to the Corporation's stock option plan, as amended and restated on May 23, 2016 (the “**Stock Option Plan**”) and to approve all unallocated Options under the Stock Option Plan, all as more particularly described in the Corporation's management information circular dated May 26, 2016 (the “**Circular**”); and
5. conditional upon receipt of applicable Jersey regulatory consent, to ratify and approve the Corporation's restricted stock unit plan, all as more particularly described in the Circular.

In addition, the audited financial statements of the Corporation for the years ended December 31, 2015 and 2014, including the auditors' report thereon, will be placed before the Meeting.

The Corporation may also transact such further and other business as may properly come before the Meeting or any adjournment thereof.

The board of directors of the Corporation has fixed May 26, 2016 as the record date for determining Shareholders who are entitled to receive notice of and vote at the Meeting. Only Shareholders whose names have been entered in the register of the Corporation at the close of business in Toronto, Ontario, Canada on that date will be entitled to receive notice of and vote at the Meeting.

The Circular provides additional information relating to the matters to be dealt with at the Meeting and is deemed to form part of this notice.

**IMPORTANT NOTES:**

- (a) Shareholders are entitled to appoint a proxy to exercise all or any of their rights to attend and to speak and vote on their behalf at the Meeting. A Shareholder may appoint more than one proxy in relation to the Meeting provided that each proxy is appointed to exercise the rights attached to a different Ordinary Share or Shares held by that Shareholder. A proxy need not be a Shareholder of the Corporation.
- (b) The form of proxy, which must be used to make such appointment and give proxy instructions, accompanies this notice.
- (c) **A Shareholder wishing to be represented by proxy at the Meeting or any adjournment thereof must complete, sign, date and return the enclosed form of proxy to the Corporation's Canadian registrar and transfer agent Computershare Investor Services Inc. at its Toronto office located at 100 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario M5J 2Y1, Canada, Attention: Proxy Unit not later than 10 a.m. (Eastern Daylight Time) on June 21, 2016 or, in the event the Meeting is adjourned not later than 48 hours preceding the time the adjourned Meeting is reconvened. You can also vote using the telephone or over the Internet by following the instructions on the enclosed form of proxy.**
- (d) Shareholders who are unable to attend the Meeting in person, are requested to date, complete, sign and return the enclosed form of proxy to the Corporation's Canadian registrar and transfer agent as per the instructions in (c) directly above so that as large a representation as possible may be had at the Meeting.
- (e) **If you are a non-registered (or beneficial) Shareholder (meaning you own Ordinary Shares through another person such as a securities broker, clearing agency, financial institution, trustee or custodian), please refer to the section in the accompanying Circular entitled "Non-Registered (or Beneficial) Shareholders" for information on how to vote your Ordinary Shares.**
- (f) **Ordinary Shares represented by properly executed forms of proxy in favour of the persons designated in the enclosed form of proxy will be voted in accordance with instructions therein on any vote that may be held. Where the Management Proxyholder (as defined in the Circular) is appointed to act as proxy for a Shareholder and no voting indication is specified by that Shareholder in the relevant form of proxy the Ordinary Shares represented by such form of proxy will be voted by the Management Proxyholder IN FAVOUR of the resolutions proposed at the Meeting.**

DATED this 26<sup>th</sup> day of May, 2016.

By Order of the Board of Directors.

*(signed) Howard H. J. Stevenson*

Howard H. J. Stevenson, President, Chief Executive Officer and Director

**Lydian International Limited (the Company)**  
**Minutes of a meeting of the directors**

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**Date:** June 15, 2020

**Time:** 2:00 PM EST

**Place:** By conference call with Victor Flores located in New York and Edward Sellers located in Ontario, Canada.

**Present:** Edward Sellers, Victor Flores, Directors

**In attendance:** D'Arcy Nordick, Elizabeth Pillon, Dan Glavin (Stikeman Elliott), Andrew Salisbury (Mourant), Paul Martin (Mourant), Stephen Alexander (Mourant)

1. **Chairman**

Victor Flores was appointed chairman of the meeting.

2. **Interests**

(a) Each director gave a notice for the record that:

- (i) Edward Sellers and Black Swan Advisors Inc (Black Swan) have entered into an engagement agreement with the Company effective as of June 12, 2019, pursuant to which Edward Sellers would act as interim President and Chief Executive Officer of the Company (the **Engagement Agreement**). The Engagement Agreement contains a provision that provides for; a) payment of an implementation fee by the Company to Black Swan under certain circumstances in the discretion of the Board Chair, in consultation with the Chair of the Company's Compensation Committee, and with respect to stipulated criteria, which Edward Sellers and Black Swan believe will be triggered upon implementation of the Plan (as defined below); and b) requires the Company to seek an order protecting the obligations payable to Black Swan under the Engagement Agreement; and
- (ii) Victor Flores is an employee of Orion Co IV (ED) Limited (**Orion**), one of the senior lenders whose claims are affected by the Plan (as defined below). Upon implementation of the Plan, Orion, along with the other senior lenders, will directly control the restructured Lydian Group (as defined below).

(b) The directors note that the above disclosures made pursuant to Article 75 of the Companies (Jersey) Law 1991 (the **Companies Law**) and Articles 27.2(c) of the Company's articles of association (the **Articles**), but only to the extent that such disclosures are required under those provisions and without expressing an opinion regarding whether or not such interests are sufficiently material to constitute a disclosable interest under those provisions.

(c) The directors noted that, under Article 26.2(f) of the Articles, a director who is directly or indirectly interested in a transaction into which the Company proposes to enter, is not entitled to be counted towards the quorum for, and to vote on, that transaction.

- (d) Pursuant to Article 26.2(k) of the Articles, the directors noted that the chairman has the power to make a determination that a director's interest in the matters to be discussed at the meeting was not sufficiently material to constitute an interest which would preclude him from voting and counting in the quorum pursuant to Article 26.2(f) of the Articles. However, in circumstances where the Chairman himself also has a conflict of interest, he does not have standing to make such a determination.
- (e) The directors were therefore required to consider whether they should be exercising their discretion to make decisions which are required to be in the best interests of the Company in circumstances where each had disclosed a conflict of interest. In normal circumstances, steps would be taken to seek the appointment of replacement directors without conflicts of interest. However, for the reasons set out below, the Directors considered that it was in the best interests of the Company for the meeting to proceed and for each of them to exercise their discretion.
- (f) The Company is hopelessly insolvent. The Lydian Group (as defined below) has current obligations to its secured lenders totalling an aggregate amount of approximately USD 406.8 million. The sole operating asset of the Lydian Group, the Amulsar mine, has been inaccessible since June 2018 due to illegal blockades and the associated actions and inactions of the Government of Armenia (**GOA**).
- (g) In circumstances where the Company is insolvent, the directors' duty to act in the best interests of the Company with regard for shareholders had transitioned to a duty to act in the best interest of the Company with regard for creditors; and in particular to minimise their losses.
- (h) By an order dated 23 December 2019 of the Superior Court of Justice (Province of Ontario, Canada) (the **Ontario Court**), as amended and restated on 23 January 2020 (collectively, the **CCAA Orders**), the Company, Lydian Canada Ventures Corporation (**Lydian Canada**) and Lydian U.K. Corporation Limited (the **Original Applicants**) were granted protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Canada) (**CCAA**) on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (together with the Applicants, the Non-Applicant Stay Parties are the **Lydian Group**).
- (i) By an Act of Court dated 25 February 2020, the Royal Court of Jersey ordered, *inter alia*, that it would recognise (i) the appointment of Alvarez & Marsal Canada Inc. (the **Monitor**) in Jersey, and (ii) the stay of proceedings imposed by the CCAA proceedings in Jersey. The Royal Court further ordered that the Company would remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, the Company would continue to carry on business in a manner consistent with the preservation of its business and property.
- (j) The subject-matter of the decisions intended to be taken by this meeting concern, *inter alia*, approval, filing, and implementation of a plan of arrangement filed under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Canada) (the **CCAA**) and Business Corporations Act (British Columbia) (the **BCBCA**) (the **Plan**), as set out in more detail below.
- (k) In view of the senior lending arrangements which the Company is subject to, the duty to act with regard for the creditors effectively equates to acting with regard for the senior lenders, given that there is no current scenario in which the Company's unsecured creditors or members will be entitled to any distribution on the insolvency of the Company.

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<sup>1</sup> Lydian Armenia CJSC ("**Lydian Armenia**"), Lydian Resources Armenia Limited, Lydian International Holdings Limited and Lydian U.S. Corporation ("**Lydian US**") (together known as the "**Non-Applicant Stay Parties**").

- (l) The approval of at least two thirds in value of the senior lenders' is a pre-requisite to the Plan being approved under the CCAA. Therefore, in circumstances where the secured creditors holding two thirds in value are content with the decisions being taken in relation to the Company, the directors consider that such transactions envisaged by this meeting properly regard their interests.
- (m) The options to resolve the conflict issue set out above, are to either seek the appointment of alternative directors which has the potential to delay the restructuring, or for the directors to make the decisions envisaged by this meeting notwithstanding their conflicts of interest. There is a motion before the Ontario Court on 18 June 2020 seeking approval to file the Plan and to hold a meeting of the creditors. There is not, therefore, sufficient time to appointment further directors. In the circumstances, the directors consider that the interests of the Company and the creditors would be best served by proceeding with the meeting notwithstanding their conflict of interest.

### 3. **Notice and quorum**

The chairman noted that, in accordance with the Company's articles of association:

- (a) notice of the meeting had been given to each director entitled to receive it;
- (b) in view of the conflicts of interest discussed above, it was not possible for the directors to hold a quorate meeting in accordance with Article 27.2 of the Articles of Association, which requires a minimum quorum of two directors (unless otherwise fixed by the directors).

But nonetheless declared the meeting constituted.

### 4. **Transaction**

The chairman explained that the Company proposes to enter into a transaction (the **Transaction**) under which (among other things):

- (a) An amount to be determined and finalized will be advanced by the senior lenders to Lydian Armenia, which will then be loaned to the Company, as part of the DIP loan financing of Lydian Armenia and the Company for the purposes of funding expenses after implementing the Plan;
- (b) Lydian US will assign to the Company the indebtedness owed to Lydian US by Lydian Armenia in exchange for the satisfaction of approximately USD\$3,200,000 owing by Lydian US to the Company;
- (c) Lydian US will repay approximately USD\$9,000,000 to the Company and the Company will repay the entirety of its debt to Lydian US by way of set-off;
- (d) The remaining debt owed by Lydian US to the Company of approximately USD\$500,000 shall be transferred and assigned by the Company to Lydian US as a capital contribution to Lydian US by the Company without the issuance of shares of common stock of Lydian US;
- (e) The Company will repay its indebtedness to Lydian Armenia by: (i) offsetting the amount owed with the amount of post-implementation expenses actually paid by the Monitor in the CCAA Proceedings pursuant to the Plan; and (ii) the Monitor returning any unused funds reserved for post-implementation expenses to Lydian Armenia;
- (f) The Company will assign to Lydian Canada the indebtedness owed to it by Lydian Armenia in exchange for Lydian Canada issuing common shares of Lydian Canada to the Company;

- (g) The Company will transfer and assign its shares of Lydian Resources Georgia Limited and the indebtedness owed to it by Georgian Resource Company LLC to Vahe Kevorkov or an entity controlled by him;
- (h) The Company will transfer and assign all claims of the Company against Lydian Canada and any of Lydian Canada's subsidiaries, to Lydian Canada;
- (i) Lydian Canada will amalgamate with a newly incorporated entity controlled by the senior lenders and will be organized pursuant to the terms of the Plan;
- (j) All remaining claims as contemplated by the Plan shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any liability, payment or other compensation;
- (k) The new directors of the Company, as contemplated by the Plan, will be appointed;
- (l) The preferred share of the newly amalgamated entity issued to the Company will be redeemed by the Company in accordance with its terms;
- (m) The Company will undergo a process for an orderly wind up through a just and equitable winding up process pursuant to the laws of Jersey;
- (n) Lydian US will be wound-up and dissolved pursuant to the laws of Colorado;
- (o) Kavkaz Zoloto CJSC will be wound-up and dissolved pursuant to the laws of Armenia; and
- (p) The Company will undertake all other steps and enter into any additional transactions as necessary to implement the Plan.

5. **Plan of Arrangement**

The chairman presented to the meeting a draft of the plan of arrangement of the Company, Lydian Canada Ventures Corporation, Lydian U.K. Corporations Limited and 11910728 Canada Inc. (the **Plan of Arrangement**) relating to the Transaction.

6. **Commercial benefit**

After considering and discussing the Transaction (as a whole) and the terms of the Plan of Arrangement, each director confirmed that the director believes that it is:

- (a) in the best interests of the Company; and
- (b) for a proper purpose of the Company,

for the Company to enter into and perform the Transaction, the Plan of Arrangement and the transactions contemplated by the Plan of Arrangement.

7. **Resolutions**

After due and careful consideration, it was unanimously resolved that:

- (a) **Transaction:** the Company's entry into the Transaction and its entry into, and the performance of its obligations under, the Plan of Arrangement and the transactions contemplated by the Plan of Arrangement, are approved.
- (b) **Plan of Arrangement:**
  - (i) the Plan of Arrangement is approved in the form presented to the meeting or with any additions or modifications (whether or not material) as any Authorised Person (as defined below) thinks fit; and

- (ii) any Authorised Person (and more than one, if required) is authorised to execute (under hand or seal or electronically) and deliver the Plan of Arrangement on behalf of the Company in the form presented to the meeting or with any additions or modifications (whether or not material) as the Authorised Person executing it thinks fit;
- (c) **Additional documents:** any Authorised Person is authorised to prepare, approve, execute (under hand or seal or electronically), give and/or deliver on behalf of the Company any other document of any nature (each, an **Additional Document**, and together with the Plan of Arrangement, the **Documents**), including, without limitation, any:
  - (i) notice, certificate, instruction, waiver or release;
  - (ii) fee letter or engagement letter;
  - (iii) letter of appointment for any agent (including any process agent), power of attorney or document which contains an appointment of an agent or a power of attorney; and
  - (iv) document which supplements or amends (whether or not in any material way) any Document,

as that Authorised Person considers, and in any form that Authorised Person considers, to be necessary or desirable in connection with any of the matters considered at this meeting, the Documents and/or any transaction contemplated by any Document;

- (d) **Further actions:** any Authorised Person is authorised to do (or cause to be done) all other acts and things (including, without limitation, amending any Document, in manuscript or otherwise) as that Authorised Person considers to be necessary or desirable in connection with any of the matters considered at this meeting, any Document and/or any transaction contemplated by any Document;
- (e) **Ratification:** any action (including, without limitation, execution of documents) taken prior to this meeting by any attorney, director, officer, employee or agent of the Company in contemplation of, or in connection with, any of the matters considered at this meeting, any Document and/or any transaction contemplated by any Document is approved, ratified and confirmed in all respects as an act of the Company;
- (f) **Lydian Group:** as the direct or indirect shareholder of the Original Applicants and 11910728 Canada Inc. (**DirectorCo**), the Company hereby authorizes and approves, on behalf of the Original Applicants and DirectorCo, the entering into, and the performance of obligations under, the Plan of Arrangement and the transactions contemplated by the Plan of Arrangement and each Additional Document, as applicable, by the Original Applicants and DirectorCo.
- (g) **Interpretation:** for the purposes of the above resolutions:
  - (i) **Authorised Person** means any director (including any alternate director); and
  - (ii) each Authorised Person may exercise, or refrain from exercising, any right, power or discretion conferred on that Authorised Person by these resolutions in the Authorised Person's sole and absolute discretion.

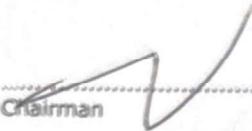
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- (h) **Fillings and records:** the secretary of the Company is authorised to make any fillings and update the Company's statutory records in connection with any of the resolutions in this minute.

8. **Close of meeting**

There being no further business, the meeting was closed.

.....  
Chairman



**Companies (Jersey) Law 1991**

**MEMORANDUM OF ASSOCIATION  
OF  
Lydian International Limited**

1. The name of the Company is Lydian International Limited.
2. The Company is a public company.
3. The Company is a no par value company.
4. The Company is authorised to issue an unlimited number of shares with no par value of one class, designated as ordinary shares.
5. The liability of a member of the Company is limited to the amount unpaid (if any) on such member's share or shares.

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**Companies (Jersey) Law 1991**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**Lydian International Limited**

**1. Definitions and Interpretation**

1.1 In these Articles, unless inconsistent with the subject or context, the following expressions shall have the following meanings:

<b>Expressions</b>	<b>Meanings</b>
“these Articles”	These Articles of Association in their present form or as from time to time altered and “Article” shall refer to an Article of these Articles.
“Approved Operator”	An “approved operator” as defined in the Order.
“auditors”	Auditors (if any) of the Company appointed pursuant to these Articles.
“bankrupt”	Shall have the meaning defined in the Interpretation (Jersey) Law, 1954.
“Board”	The board of Directors.
“Business Day”	A day on which commercial banks in London and the Island of Jersey are open for general banking business other than Saturdays, Sundays and public holidays.
“Certificated Share”	A share which is recorded in the Register as being held in certificated form.
“clear days”	In relation to the period of a notice, shall mean that period excluding the day when the notice is served or deemed to be served and the day for which it is given or on which it is to take effect.
“Directors”	The directors of the Company for the time being.
“Exchange”	Means the TSX Venture Exchange Inc., the TSX and any recognized stock exchange or trading or quotation system in Canada or the United Kingdom on which the securities of the Company may be listed, quoted or posted for trading.
“Exchange Rules”	Means the rules, policies and procedures of any Exchange.
“Jersey”	The Island of Jersey and its dependencies.
“the Law”	The Companies (Jersey) Law 1991.

“Member”	A person whose name is entered in the Register as the holder of shares in the Company or where the context permits the members of the Company whose names are entered in the Register as joint holders of shares in the Company.
“Memorandum of Association”	The memorandum of association of the Company.
“month”	Calendar month.
“notice”	A notice in writing unless otherwise specifically stated.
“Office”	The registered office of the Company.
“Operator”	Any person as may for the time being be approved by the Jersey Financial Services Commission as an approved operator under the Order.
“Operator-instruction”	A properly authenticated dematerialised instruction attributable to the Operator.
“Ordinary Resolution”	A resolution passed by a simple majority of the Members who are entitled to vote in respect of such resolution.
“ordinary shares”	ordinary shares in the capital of the Company as described in the Company's Memorandum of Association.
“Order”	The Companies (Uncertificated Securities) (Jersey) Order 1999 and the terms “operator’s system”, “authorised operator”, “participating security” and “uncertificated” in these Articles shall have the meanings given in the Order.
“paid up”	Shall include credited as paid up.
“present in person”	In relation to general meetings of the Company and to meetings of the holders of any class of shares, shall include present by attorney or by proxy or, in the case of a corporate shareholder, by representative.
“Register”	The register of members of the Company to be kept and maintained in Jersey pursuant to these Articles, Article 41 of the Law and Article 18 of the Order.
“relevant system”	A computer-based system, and procedures of the Operator, which enable title to units of a security to be evidenced and transferred without a written instrument pursuant to the Order.
“Seal”	The common seal of the Company.
“Secretary”	Any person appointed by the Directors to perform any of the duties of secretary of the Company (including a temporary or assistant secretary), and in the event of two or more persons being appointed as joint secretaries any one or more of the persons so appointed.

“Share Scheme”	A scheme or schemes for encouraging or facilitating the holding of shares or debentures in the Company by or for the benefit of employees, executive directors, non-executive directors, consultants to the Company or any of its subsidiaries or individuals who are employees of a company providing management services to the Company or any of its subsidiaries, where such services are required in the opinion of the Board for the on-going successful operation of the business enterprise of the Company or any of its subsidiaries.
“Special Resolution”	A resolution of the Company passed as a special resolution in accordance with the Law.
“Statutes”	The Law, the Order and every other statute or statutory instrument for the time being in force in Jersey concerning limited companies and affecting the Company.
“Transfer Agent”	The transfer agents of the ordinary shares of the Company as the Board may retain from time to time.
“UK Companies Act”	The Companies Act 1985 (as amended) of the United Kingdom.
“United Kingdom”	The United Kingdom of Great Britain and Northern Ireland.
“Written Instruments”	Any document or instrument in writing and includes contracts, agreements, deeds, mortgages, hypothecs, charges, conveyances, transfers, assignments, releases, receipts, discharges, all paper writings, all cheques, drafts or orders for the payment of money and all notes, acceptances and bills of exchange.

1.2 In these Articles, unless inconsistent with the subject or context:

- (a) the word “may” shall be construed as permissive and the word “shall” shall be construed as imperative;
- (b) the word “signed” shall be construed as including a signature or representation or facsimile of a signature affixed by mechanical or other means;
- (c) the words “in writing” shall be construed as including written, printed, telexed, electronically transmitted or any other mode of representing or reproducing words in a visible form;
- (d) words importing “persons” shall be construed as including companies or associations or bodies of persons whether incorporated or unincorporated; words importing the singular number shall be construed as including the plural number and vice versa; words importing one gender only shall be construed as including any other gender;
- (e) a reference to the Company being a private company or a public company is a reference to such status as determined for the time being in accordance with the Law;
- (f) the words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;

- (g) where any expression is defined or the interpretation of it is set out herein, other parts of speech of such expression shall have a corresponding meaning; and
- (h) references to enactments are to such enactments as are from time to time modified, re-enacted or consolidated and shall include any enactment made in substitution for an enactment that is repealed.

The headings herein are for convenience only and shall not affect the construction of these Articles.

The expression “communication” shall have the meaning given to it in the UK Electronic Communications Act 2000 and the expression “electronic communication” shall have the meaning given to it in the Electronic Communications (Jersey) Law 2000, the latter including e-mail, facsimile, CD-Rom, audio tape and telephone transmission and (in the case of electronic communication by the Company in accordance with Article 39) publication on a web site.

The expression “address” shall include, in relation to electronic communication, any number or address used for the purposes of such communication.

References to a share (or to a holding of shares) being in certificated or uncertificated form are references, respectively, to that share being a certificated or an uncertificated unit of a security for the purposes of the Order.

Subject as aforesaid any words or expressions defined in the Law or the Order shall (if not inconsistent with the subject or context) bear the same meanings in these Articles.

## **2. Preliminary**

- 2.1 The preliminary expenses incurred in forming the Company may be discharged out of the funds of the Company.
- 2.2 The business of the Company shall be commenced as soon after the incorporation of the Company as the Directors think fit.

## **3. Share Capital**

The share capital of the Company is as specified in the Memorandum of Association and the shares of the Company shall have the rights and be subject to the conditions contained in these Articles.

## **4. Shares**

- 4.1 All shares shall be fully paid for at the time of issuance.
- 4.2 Without prejudice to any special rights for the time being conferred on the holders of any class of shares (which special rights shall not be varied or abrogated except with such consent or sanction as is required by Article 9.1 and subject to the Law) any share in the Company (including any share created on an increase or other alteration of share capital) may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividends, return of capital, voting or otherwise, as the Company may from time to time, by Special Resolution, determine.
- 4.3 The unissued shares for the time being in the capital of the Company shall be at the disposal of the Directors, and they may allot, grant options and warrants over, or otherwise dispose of them to such persons at such times and on such terms as they think proper.

- 4.4 The Directors may issue shares in the Company to any person and without any obligation to offer such shares to the Members (whether in proportion to the existing shares held by them or otherwise).
- 4.5 The Company may pay commissions as permitted by the Law and the Exchange Rules. Subject to the provisions of the Law and the Exchange Rules, any such commission may be satisfied either by the payment of cash or by the allotment of fully paid shares or partly in one way and partly in the other.
- 4.6 Except as required by law, no person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or recognise any equitable, contingent, future or partial interest in any share, or (except only as by these Articles otherwise provided or as by law required) any interest in any fraction of a share, or any other right in respect of any share, except an absolute right to the entirety thereof in the registered holder.

## **5. Certificated shares**

- 5.1 In relation to Certificated Shares every holder of shares shall be entitled:-
- (a) without payment, to one certificate for all his shares and, when part only of the shares comprised in a certificate is sold or transferred, to a new certificate for the remainder of the shares so comprised; or
  - (b) upon payment of such sum for each certificate as the Directors shall from time to time determine, to several certificates each for one or more of his shares.
- 5.2 Every certificate shall be issued within two months after allotment or lodgement of transfer (or within such other period as the conditions of issue shall provide), shall be issued either under seal or signed by two Directors or by one Director and the Secretary, (or by mechanical reproduction of such signatures together with the signature of a representative of the Transfer Agent), and shall specify the shares to which it relates and, if so required by the Law, the distinguishing numbers of such shares.
- 5.3 In respect of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
- 5.4 If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company in relation thereto as the Directors think fit.

## **6. Uncertificated shares**

- 6.1 The Board may, in accordance with the Law, the Order and the Exchange Rules, resolve that some or all of a class of shares are to become, or are to cease to be, in uncertificated form. The remaining provisions of this Article 6 shall only apply after such a resolution of the Board has been made.
- 6.2 Shares of a class shall not be treated as forming a separate class from other shares of the same class as a consequence of such shares being held in certificated or uncertificated form or of any provision in these Articles or the Order applying only to shares in certificated form or shares in uncertificated form, provided that for any purpose under these Articles, the Company may treat a Member's holding of shares in uncertificated form and of shares in

certificated form of the same class as if they were separate holdings, unless the Directors otherwise decide.

- 6.3 Any share which is in uncertificated form may be changed from uncertificated form to certificated form and from a certificated form to uncertificated form in accordance with the Order.
- 6.4 These Articles apply to shares held in uncertificated form only to the extent that these Articles are consistent with the holding of such shares in uncertificated form, with the transfer of title to such shares by means of the relevant system, with the exercise of any powers or functions by the Company or the effecting by the Company of any actions by means of the relevant system or with the Order.
- 6.5 Subject to the Law, the Board may lay down regulations not included in these Articles which (in addition to or in substitution for any provisions in these Articles):
- (a) apply to the issue, holding or transfer of shares in uncertified form;
  - (b) set out (where appropriate) the procedures for conversion and/or redemption of shares in uncertified form; and/or
  - (c) the Board considers necessary or appropriate to ensure that these Articles are consistent with the Order and/or the Approved Operator's rules and practices.
- 6.6 Such regulations will apply instead of any relevant provisions in these Articles which relate to certificates and the transfer, conversion and redemption of shares or which are not consistent with the Order, in all cases to the extent (if any) stated in such regulations. If the Board makes any such regulations, Article 6.4 will (for the avoidance of doubt) continue to apply to these Articles, when read in conjunction with those regulations.
- 6.7 Any instruction given by means of the relevant system shall be a dematerialised instruction given in accordance with the Order, the facilities and requirements of the relevant system and the Approved Operator's rules and practices.
- 6.8 Where the Company is entitled under the Law, the Order, the Approved Operator's rules and practices, these Articles or otherwise to dispose of, forfeit, enforce a lien over or sell or otherwise procure the sale of any shares of a class which is an uncertificated share which are held in uncertificated form, the Board may take such steps (subject to the Order and to such rules and practices) as may be required or appropriate, by instruction by means of the relevant system or otherwise, to effect such disposal, forfeiture, enforcement or sale including by:
- (a) requesting or requiring the deletion of any computer based entries in the relevant system relating to the holding of such shares in uncertificated form;
  - (b) altering such computer based entries so as to divest the holder of such shares of the power to transfer such shares other than to a person selected or approved by the Company for the purpose of such transfer;
  - (c) requiring any holder of such shares to take such steps as may be necessary to sell or transfer such shares as directed by the Company;
  - (d) otherwise rectify or change the Register in respect of any such shares in such manner as the Board considers appropriate (including by entering the name of a transferee into the Register as the next holder of such shares); and/or

- (e) appointing any person to take any steps in the name of any holder of such shares as may be required to change such shares from uncertificated form to certificated form and/or to effect the transfer of such shares (and such steps shall be effective as if they had been taken by such holder).
- 6.9 In relation to any share in uncertificated form:
- (a) the Company may utilise the relevant system to the fullest extent available from time to time in the exercise of any of its powers or functions under the Law, the Order or these Articles or otherwise in effecting any actions and the Company may from time to time determine the manner in which such powers, functions and actions shall be so exercised or effected;
  - (b) the Company may, by notice to the holder of that share, require the holder to change the form of that share to certificated form within such period as may be specified in the notice; and
  - (c) the Company shall not issue a share certificate.
- 6.10 The Company may, by notice to the holder of any share in certificated form, direct that the form of such share may not be changed to uncertificated form for a period specified in such notice.

## **7. Interests in Shares**

- 7.1 Each Director shall disclose, and the Directors shall have the power by notice in writing to require each Director to disclose, without delay to the Company all information which the Company needs to enable it to comply with the Exchange Rules. The Company shall keep a written record of such disclosures.
- 7.2 The Directors shall have power by notice in writing to require any Director or Member to disclose without delay to the Company the identity of any person (an “interested party”) who has or had within the 12 months preceding the date of the notice, to the knowledge of the Director or Member as the case may be, any interest in the Company's shares held by the Director or Member as the case may be and the nature of such interest and of any agreement or arrangement relating to the exercise of any rights conferred by the shares. In this Article 7, “interest” means any legal or beneficial interest, whether direct or indirect.
- 7.3 Any such notice referred to in Articles 7.1 and 7.2 shall require any information in response to such notice to be given in writing without delay but in any event within such time as the Directors shall determine.
- 7.4 The Company shall maintain a register of interested parties to which the provisions of Article 40 of the Law shall apply *mutatis mutandis* and whenever in pursuance of a requirement imposed on a Director or Member as aforesaid the Company is informed of an interested party the identity of the interested party and the nature of the interest shall be promptly inscribed therein together with the date of the request.
- 7.5 The Directors may be compelled to exercise their powers under Articles 7.1 and 7.2 on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the Company as carries at that date the right of voting at general meetings of the Company.
- 7.6 The requisition must:

- (a) state that the requisitionists are requiring the Directors to exercise their powers under this Article;
- (b) specify the manner in which they require those powers to be exercised; and
- (c) give reasonable grounds for requiring the Directors to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the Office.

7.7 The requisition may consist of several documents in like form each signed by one or more requisitionists.

7.8 On the deposit of a requisition complying with Articles 7.5 to 7.7 (inclusive) it is the Directors' duty to exercise their powers under Articles 7.1 and 7.2 in the manner specified in the requisition.

7.9 If any Director or Member has been duly served with a notice given by the Directors in accordance with Articles 7.1 or 7.2 and is in default for the prescribed period in supplying to the Company the information thereby required (either by failing to supply to the Company the information thereby required or, in purporting to comply with such notice, by making a statement which is false or inadequate in any material particular), then the Directors may in their absolute discretion at any time thereafter serve a notice (a "**direction notice**") upon such Director or Member as follows:

- (a) a direction notice may direct that, in respect of:
  - (i) the shares comprising such Director's or Member's account in the Register which comprises or includes the shares in relation to which the default occurred (all or the relevant number as appropriate of such shares being the "**default shares**"); and
  - (ii) any other shares held by the Director or Member;

the Director or Member shall not be entitled to attend or vote at a general meeting or meeting of the holders of any class of shares (as the case may be) either personally or by a duly authorised representative (if a corporation) or by proxy or to exercise any other right conferred by membership in relation to meetings of Members or of the holders of any class of shares of the Company (as the case may be); and

- (iii) the Director himself, neither he nor his alternate director shall be entitled to attend or vote at any meeting of the Directors; and
- (b) where the default shares represent at least 0.25 per cent in number of the issued shares of the class of shares concerned, then the direction notice may additionally direct that:
  - (i) in respect of the default shares, any dividend or part thereof or other money which would otherwise be payable on such shares shall be retained by the Company without any liability to pay interest thereon when such money is finally paid to the Member;
  - (ii) no transfer other than an approved transfer as set out in Article 7.13(c) of any of the shares held by such Director or Member shall be registered unless:

- A. the Director or Member is not himself in default as regards supplying the information requested; and
  - B. the transfer is of part only of the Member's holding and when presented for registration is accompanied by a certificate by the Member in a form satisfactory to the Directors to the effect that after due and careful enquiry the Member is satisfied that no person in default as regards supplying such information is interested in any of the shares the subject of the transfer.
- 7.10 The Company shall send to each other person appearing to be interested in the shares the subject of any direction notice a copy of the notice, but the failure or omission by the Company to do so shall not invalidate such notice.
- 7.11 If shares are issued to a Director or a Member as a result of that Director or Member holding other shares in the Company and if the shares in respect of which the new shares are issued are default shares in respect of which the Director or Member is for the time being subject to particular restrictions, the new shares shall on issue become subject to the same restrictions whilst held by that Director or Member as such default shares. For this purpose, shares which the Company procures to be offered to Directors or Members pro rata (or pro rata ignoring fractional entitlements and shares not offered to certain Directors or Members by reason of legal or practical problems associated with offering shares outside the United Kingdom or Jersey) shall be treated as shares issued as a result of a Director or Member holding other shares in the Company.
- 7.12 Any direction notice shall have effect in accordance with its terms for as long as the default, in respect of which the direction notice was issued, continues but shall cease to have effect in relation to any shares which are transferred by such Member by means of an approved transfer as set out in Articles 7.9(b)(ii) or 7.13(c). As soon as practical after the direction notice has ceased to have effect (and in any event within 7 days thereafter) the Directors shall procure that the restrictions imposed by Articles 7.9 and 7.15 shall be removed and that dividends and other moneys withheld pursuant to Article 7.9(b)(i) are paid to the relevant Member.
- 7.13 For the purpose of this Article 7:
- (a) a person shall be treated as appearing to be interested in any shares if the Member holding such shares has given to the Company a notification which either (a) names such person as being so interested or (b) fails to establish the identities of those interested in the shares and (after taking into account the said notification and any other relevant notification) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares;
  - (b) the prescribed period in respect of any particular Member is 28 days from the date of service of the said notice in accordance with Article 7.2 except where the default shares represent at least 0.25 per cent by number of the issued shares of the class of shares concerned in which case such period shall be 14 days;
  - (c) a transfer of shares is an approved transfer if but only if:
    - (i) it is a transfer of shares to an offeror by way or in pursuance of acceptance of a takeover offer (within the meaning of Article 116 of the Law) in respect of shares in the Company; or

- (ii) the Directors are satisfied that the transfer is made pursuant to a sale of the whole of the beneficial ownership of the shares to a party unconnected with the Member and with other persons appearing to be interested in such shares; or
- (iii) the transfer results from a sale made through a recognised investment exchange (as defined in the Financial Services and Markets Act 2000 of the United Kingdom (“FSMA”)) or any stock exchange outside the United Kingdom on which the Company's shares are normally traded.

7.14 Any Member who has given notice of an interested party in accordance with Article 7.2 who subsequently ceases to have any party interested in his shares or has any other person interested in his shares shall notify the Company in writing of the cessation or change in such interest and the Directors shall promptly amend the register of interested parties accordingly.

7.15 For the purposes of Article 7.13(c) a person shall be treated as being connected with a Member or with a director if that person is:-

- (a) a spouse, child (under the age of 18) or step child (under the age of 18) of the Member or Director; or
- (b) an associated body corporate which is a Company in which the Member or director alone, or with connected persons, is directly or indirectly beneficially interested in 20% or more of the nominal value of the equity share capital or is entitled (alone or with connected persons) to exercise or control the exercise of more than 20% of the voting power at general meetings; or
- (c) a trustee (acting in that capacity) of any trust, the beneficiaries of which include the Member or a Director or persons falling within paragraphs (a) or (b) above excluding trustees of a Share Scheme or pension scheme; or
- (d) a partner (acting in that capacity) of the Member or director or persons in categories (a) to (c) above.

## **8. Alteration of Share Capital**

8.1 The Company may, by altering its Memorandum of Association by Special Resolution, alter its share capital in any manner permitted by the Law.

8.2 Any capital raised by the issue of shares shall, unless otherwise provided by the conditions of issue of such shares, be considered as part of the original capital, and such shares shall be subject to the provisions of these Articles with reference to the transfer and transmission of shares, lien and other provisions of these Articles applicable to the existing shares in the Company.

8.3 Subject to the provisions of the Law, the Company may, by Special Resolution, reduce its share capital in any way.

## **9. Variation of Rights**

9.1 Whenever the capital of the Company is divided into different classes of shares, the special rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a winding up, with the consent in writing of the holders of the majority of the issued shares of that class, or with the sanction of a resolution passed at a separate

meeting of the holders of shares of that class, but not otherwise. To every such separate meeting all the provisions of these Articles and of the Law relating to general meetings of the Company or to the proceedings thereat shall apply, *mutatis mutandis*, except that the necessary quorum shall be two persons holding or representing at least one-third in nominal amount of the issued shares of that class but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those holders who are present in person shall be a quorum.

- 9.2 The special rights conferred upon the holders of any class of shares issued with preferred or other special rights shall be deemed to be varied by the reduction of the capital paid up on such shares and by the creation of further shares ranking in priority thereto, but shall not (unless otherwise expressly provided by these Articles or by the conditions of issue of such shares) be deemed to be varied by the creation or issue of further shares ranking after or *pari passu* therewith.

## **10. Register of Members**

- 10.1 The Directors shall keep or cause to be kept at the Office or at such other place in Jersey where it is made up, as the Directors may from time to time determine, a Register in the manner required by the Law. In each year the Directors shall prepare or cause to be prepared and filed an annual return containing the particulars required by the Law.
- 10.2 The Directors may rely upon the information provided to them from time to time by the Operator or the Transfer Agent for the purposes of keeping the Register up to date in accordance with the Law. No copy of the Register, list, record or information in respect of the members of the Company kept or maintained outside Jersey shall constitute the Register or any part of the Register and the Company shall not be bound to recognise any interest or right in respect of any share by virtue of it being contained or recorded in such copy of the Register or list, record or information.

## **11. Joint Holders**

- 11.1 Where two or more persons are registered as the holders of any share they shall be deemed to hold the same as joint tenants with the benefit of survivorship, subject to the following provisions:
- (a) the Company shall not be bound to register more than four persons as the joint holders of any share;
  - (b) any one of such joint holders may give a good receipt for any dividend, bonus or return of capital payable to such joint holders;
  - (c) only the senior of the joint holders of a share shall be entitled to delivery of the certificate relating to such share or to receive notices from the Company and any notice given to the senior joint holder shall be deemed notice to all the joint holders; and
  - (d) for the purpose of the provisions of this Article, seniority shall be determined by the order in which the names of the joint holders appear in the Register.

## **12. Transfer and Transmission of Shares**

- 12.1 Subject only to the Statutes and the provisions of this Article 12, all shares of the Company shall be freely transferable.

- 12.2 The Directors shall not refuse to register a transfer of shares permitted under these Articles.
- 12.3 All transfers of shares held in certificated form shall be effected by notice (a "Transfer Notice") in the usual common form or in any other form approved by the Directors.
- 12.4 All Transfer Notices shall be signed by or on behalf of the transferor. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered on the Register in respect thereof.
- 12.5 Notwithstanding anything to the contrary contained in these Articles, the shares of the Company (or any class thereof or any shares forming part of a class) may be held in uncertificated form. Subject to these Articles and the Law, all transfers of shares in uncertificated form shall be effected by means of the relevant system in accordance with the Order provided that title to such shares shall not pass until such transfer is entered onto the Register in Jersey.
- 12.6 Subject to the Statutes, the Directors may decline to recognise any Transfer Notice, unless:
- (a) the Transfer Notice is deposited at the Office or such other place as the Directors may appoint accompanied by the certificate for the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and
  - (b) the Transfer Notice is in respect of only one class of shares.
- 12.7 The Directors shall register a transfer of title to any share in uncertificated form in accordance with the Order except for any transfer which the Directors are required to decline to register under the Order or the relevant system.
- 12.8 Subject to the Statutes, the Directors may also refuse to register a transfer of shares in favour of more than four persons jointly.
- 12.9 If the Directors refuse to register a transfer of shares in the circumstances contemplated in this Article 12, they shall within two months after the date on which:
- (a) the instrument of transfer was lodged with the Company (in the case of shares held in certificated form); or
  - (b) the Operator-instruction was received by the Company (in the case of shares held in uncertificated form),
- send to the transferee notice in writing of the refusal.
- 12.10 All Transfer Notices relating to transfers of shares which are registered shall be retained by the Company, but any Transfer Notices relating to transfers of shares which the Directors decline to register shall (except in any case of fraud) be returned to the person depositing the same.
- 12.11 The registration of transfers of shares or of any class of shares may not be suspended.
- 12.12 In respect of any allotment of any share the Directors shall have the same right to decline to approve the registration of any renounee of any allottee as if the application to allot and the renunciation were a transfer of a share under these Articles.

- 12.13 In the case of the death of a Member, the survivors or survivor, where the deceased was a joint holder, and the executors or administrators of the deceased, where he was a sole or only surviving holder, shall be the only persons recognised by the Company as having any title to his interest in the shares, but nothing in this Article shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.
- 12.14 Any guardian of an infant Member and any curator or guardian or other legal representative of a Member under legal disability and any person becoming entitled to a share in consequence of the death or insolvency or bankruptcy of a Member or otherwise by operation of law may, upon such evidence as to his entitlement being produced as may from time to time be required by the Directors and subject as hereinafter provided, elect either to be registered himself as the holder of the share or to have some person nominated by him registered as the holder thereof.
- 12.15 If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the Company a notice signed by him stating that he so elects together with such evidence as to his entitlement as may from time to time be required by the Directors. If he shall elect to have another person registered, he shall testify his election by signing a Transfer Notice in favour of that person. All the limitations, restrictions and provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or Transfer Notice as aforesaid as would have existed had such transfer occurred before the death, insolvency or bankruptcy of the Member concerned.
- 12.16 A person becoming entitled to a share by reason of the death or insolvency or bankruptcy of a Member or otherwise by operation of law shall, upon such evidence as to his entitlement being produced as may from time to time be required by the Directors, be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a Member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company provided always that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within one month such person shall be deemed to have so elected to be registered himself and all the restrictions on the transfer and transmission of shares contained in these Articles shall apply to such election.
- 12.17 Unless otherwise decided by the Directors in their sole discretion, no fee shall be charged in respect of the registration of any probate, letters of administration, certificate of marriage or death, power of attorney or other document relating to or affecting the title to any shares.

### **13. Untraced Shareholders**

- 13.1 The Company may sell (in such manner and for such price as the Directors think fit) the shares of a Member or the shares to which a person is entitled by virtue of transmission on death or bankruptcy if:
- (a) during the period of 12 years prior to the date of the publication of the advertisements referred to in paragraph (b) below (or, if published on different dates, the first date), being a period during which at least three dividends have been payable, all warrants and cheques in respect of the shares in question sent in the manner authorised by these Articles have remained uncashed;
  - (b) the Company on expiry of the period of 12 years has given notice, by advertisement in both a national newspaper and a newspaper circulating in the area in which the last known address of the Member or the address at which service of notices may be

effected in the manner authorised by these Articles is located, of its intention to sell the shares;

- (c) during the period of 12 years and the period of three months following the publication of the advertisements, or following the later publication if the two advertisements are published on different dates, the Company has received no indication of either the whereabouts or the existence of the Member or person; and
- (d) the relevant notification requirements, if any, are complied with under the Exchange Rules.

13.2 To give effect to a sale the Company may appoint any person to execute as transferor an instrument of transfer of the shares. The instrument of transfer shall be as effective as if it had been executed by the registered holder of, or person entitled by transmission to, the shares and the title of the transferee shall not be affected by any irregularity or invalidity in the proceedings. The net proceeds of sale shall belong to the Company which shall be obliged to account to the former Member or other person previously entitled for an amount equal to the proceeds and shall enter the name of the former Member or other person in the books of the Company as a creditor for that amount. No trust shall be created in respect of the debt, no interest shall be payable in respect of it and the Company shall not be required to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments (other than shares of the Company or its holding company, if any) as the Directors think fit.

#### **14. General Meetings and Class Meetings**

14.1 The provisions of Article 14.2 shall apply with regard to annual general meetings of the Company unless all of the Members have agreed in writing to dispense with the holding of annual general meetings and any such agreement is and remains valid in accordance with the Law.

14.2 An annual general meeting shall be held once in every calendar year; but so long as the Company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in the year of its incorporation or in the following year. All other general meetings shall be called extraordinary general meetings. Each general meeting shall be held at such time and such place (either in or outside Jersey) as may be determined by the Directors.

14.3 The Directors may whenever they think fit, and upon a requisition made in writing by Members in accordance with the Law the Directors shall, convene an extraordinary general meeting of the Company.

14.4 At any extraordinary general meeting called pursuant to a requisition, unless such meeting is called by the Directors, no business other than that stated in the requisition as the objects of the meeting shall be transacted.

14.5 Save as is provided in this Article and otherwise in these Articles, all the provisions of these Articles and of the Law relating to general meetings of the Company and to the proceedings thereat shall apply, mutatis mutandis, to every class meeting. At any class meeting the holders of shares of the relevant class shall, on a poll, have one vote in respect of each share of that class held by each of them.

#### **15. Notice of General Meetings**

15.1 At least 21 clear days' notice shall be given of every annual general meeting and of every general meeting called for the passing of a Special Resolution, and at least fourteen clear

days' notice shall be given of all other general meetings, provided that the Company may determine that only those persons entered on the Register at the close of business on a day determined by the Company, such day being no more than 21 days before the day that notice of the meeting is sent, shall be entitled to receive such a notice. Every notice shall specify the place, the day and the time of the meeting and in the case of special business, the general nature of such business and, in the case of an annual general meeting, shall specify the meeting as such. Notice of every meeting shall be given in the manner hereinafter mentioned to all the Members and to the Directors and to the auditors.

- 15.2 A meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in Article 15.1, be deemed to have been duly called if it is so agreed:
- (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of any other meeting, by a majority in number of Members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent of the total voting rights of the Members who have that right.
- 15.3 In every notice calling a meeting of the Company there shall appear with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him and that a proxy need not also be a Member.
- 15.4 It shall be the duty of the Company, subject to the provisions of the Law, on the calling of a meeting on the requisition in writing of such number of Members as is specified by the Law:
- (a) to give to the Members entitled to receive notice of general meetings and to the Directors notice of any resolution which may properly be moved and which it is intended to move at that meeting; and
  - (b) to circulate to Members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.
- 15.5 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **16. Proceedings at General Meetings**

- 16.1 The business of an annual general meeting shall be to receive and consider the accounts of the Company and the reports of the Directors and auditors, to elect Directors (if necessary), to elect auditors and fix their remuneration, to sanction a dividend if thought fit so to do, and to transact any other business of which notice has been given.
- 16.2 No business shall be transacted at any general meeting except the adjournment of the meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Such quorum shall consist of not less than two Members present in person, but so that not less than two individuals will constitute the quorum, provided that, if at any time all of the issued shares in the Company are held by one Member, such quorum shall consist of the Member present in person.
- 16.3 If within half an hour from the time appointed for the meeting a quorum is not present, or if during the meeting a quorum ceases to be present, the meeting, if convened by or upon the requisition of Members, shall be dissolved. If otherwise convened the meeting shall stand

adjourned to the same day in the next week at the same time and place or such day, time and place as the Directors shall determine.

- 16.4 The chairman (if any) or the vice-chairman (if any) of the Directors shall preside as chairman at every general meeting of the Company. If there is no such chairman or vice-chairman, or if at any meeting neither is present, the Members present in person shall choose one of the Directors present to be chairman, or if no Director shall be present and willing to take the chair the Members present in person shall choose one of their number to be chairman.
- 16.5 The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. Save as aforesaid, it shall not be necessary to give any notice of any adjourned meeting or of the business to be transacted at an adjourned meeting.
- 16.6 Minutes of all resolutions and proceedings of general meetings shall be duly and regularly entered in books kept for that purpose and shall be available for inspection by a Member during business hours without charge. A Member may require a copy of any such minutes in such manner, and upon payment of such sum, as provided in the Law.
- 16.7 The Directors and the auditors shall be entitled to receive notice of and to attend and speak at any meeting of Members.

#### **17. Voting at General Meetings**

- 17.1 Save where otherwise provided in these Articles, no person shall be entitled to be present or take part in any proceedings or vote either personally or by proxy at any general meeting unless he has been registered as owner of the shares in respect of which he claims to vote.
- 17.2 Save where otherwise provided in the Law or in these Articles, all resolutions shall be adopted if approved by a majority of the votes cast. In the event of an equality of votes at any general meeting, whether upon a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.
- 17.3 At any general meeting every question shall be decided in the first instance by a show of hands and, unless a poll is demanded by either:
- (a) the chairman;
  - (b) not less than five Members having the right to vote at the meeting; or
  - (c) a Member or Members representing not less than 1/10th of the total voting rights of all the Members having the right to vote at the meeting,

a declaration by the chairman that a resolution has on a show of hands been carried or not carried, or carried or not carried by a particular majority or lost, and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution

- 17.4 On a show of hands every Member present in person shall have one vote.
- 17.5 If a poll is demanded in the manner mentioned above, it shall be taken at such time (within twenty-one days) and in such manner as the chairman directs and the results of such poll shall

be deemed to be the resolution of the Company in general meeting. A poll may be demanded upon the election of the chairman and upon a question of adjournment and such poll shall be taken forthwith without adjournment. Any business other than that upon which a poll has been demanded may proceed pending the taking of the poll.

- 17.6 Subject to any special voting powers or restrictions for the time being attached to any shares, as may be specified in the terms of issue thereof or these Articles, on a poll every Member present in person shall have one vote for each share held by him.
- 17.7 On a poll a Member entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 17.8 Where there are joint registered holders of any share, such persons shall not have the right of voting individually in respect of such share but shall elect one of their number to represent them and to vote whether in person or by proxy in their name. In default of such election the person whose name appears first in order in the Register in respect of such share shall be the only person entitled to vote in respect thereof.
- 17.9 A Member for whom a special or general attorney is appointed or who is suffering from some other legal incapacity or interdiction in respect of whom an order has been made by any court having jurisdiction (whether in Jersey or elsewhere) in matters concerning legal incapacity or interdiction may vote, whether on a show of hands or on a poll, by his attorney, curator, or other person authorised in that behalf appointed by that court, and any such attorney, curator or other person may vote by proxy. Evidence to the satisfaction of the Directors of the authority of such attorney, curator or other person may be required by the Directors prior to any vote being exercised by such attorney, curator or other person.
- 17.10 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.
- 17.11 Where a person is authorised under Article 19.11 to represent a body corporate at a general meeting of the Company the Directors or the chairman of the meeting may require him to produce a certified copy of the resolution from which he derives his authority.

## **18. Members' Resolutions in Writing**

- 18.1 A resolution in writing (including a Special Resolution but excluding a resolution removing an auditor) signed by all Members who would be entitled to receive notice of and to attend and vote at a general meeting at which such a resolution would be proposed, or by their duly appointed attorneys, shall be as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held.
- 18.2 Any such resolution may consist of several documents in the like form each signed by one or more of the Members or their attorneys and signature in the case of a corporate body which is a Member shall be sufficient if made by a director or other duly authorised officer thereof or its duly appointed attorney.

## **19. Proxies for General Meetings and Corporate Members**

- 19.1 Any Member of the Company may appoint a proxy, who need not be a Member of the Company, to act at a general meeting on his behalf.

- 19.2 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Member.
- 19.3 The appointment of a proxy must be in writing in any usual or common form or in any other form which the Directors may approve and must either be signed by the appointor or his attorney or comply with Article 39.
- 19.4 The signature on such appointment need not be witnessed. Where appointment of a proxy is signed on behalf of the appointor by an attorney, the power of attorney or a copy thereof certified notarially or in some other way approved by the Directors must (failing previous registration with the Company) be submitted to the Company, failing which the appointment may be treated as invalid.
- 19.5 The appointment of a proxy (together with such other documents, if any, required by Article 19.4 must be received at such address or one of such addresses (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no address is so specified, must be left at the Registered Office) within such time (not exceeding 48 hours) before the time appointed for the holding of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used as may be specified in such notice, and in default shall not be treated as valid. The appointment shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. An appointment relating to more than one meeting (including any adjournment thereof) having once been so delivered for the purposes of any meeting shall not require again to be delivered for the purposes of any subsequent meeting to which it relates.
- 19.6 A proxy shall have the right to demand or join in demanding a poll and the right to speak at the meeting.
- 19.7 A Member may, by one or more instruments specifically identifying the number (and, if applicable, the class) of shares to which it relates and otherwise complying with these Articles, appoint different proxies in respect of different shares held by such Member and who shall each have the right to attend, speak and vote at the meeting for which he is appointed. Each such proxy shall take effect in accordance with these Articles only in respect of such specified number of shares held by such Member.
- 19.8 Unless the contrary is stated thereon the instrument appointing a proxy shall be as valid as well for any adjournment of the meeting as for the meeting to which it relates.
- 19.9 A vote given in accordance with the terms of an instrument of proxy shall 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 provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company at the Office before the commencement of the meeting or adjourned meeting or the taking of the poll at which the proxy is used.
- 19.10 The Directors may at the expense of the Company send by post or otherwise to the Members instruments of proxy (with or without provision for their return prepaid) for use at any general meeting or at any separate meeting of the holders of any class of shares of the Company either in blank or nominating in the alternative any one or more of the Directors or any other persons. If for the purpose of any meeting invitations to appoint as proxy a person or one or more of a number of persons specified in the invitations are issued at the Company's expense

they shall be issued to all (and not to some only) of the Members entitled to be sent a notice of the meeting and to vote thereat by proxy.

- 19.11 Any body corporate which is a Member may 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 Members (or of any class of Members) and the person so authorised shall be entitled to exercise on behalf of the body corporate which he represents the same powers as that body corporate could exercise if it were an individual. The body corporate may, by one or more of such resolutions, specifically identifying the number (and, if applicable, the class) of shares to which it relates, appoint different persons in respect of different shares held by such body corporate. Each such resolution shall take effect in accordance with this Article only in respect of such specified number of shares held by such body corporate.
- 19.12 Where a person is authorised under this Article to represent a body corporate at a general meeting of the Company, the Directors or the chairman of the meeting may require him to produce a certified copy of the resolution from which he derives his authority.

## **20. Directors**

- 20.1 The Company may by ordinary resolution determine the maximum and minimum number of Directors and unless and until otherwise so determined the minimum number of Directors shall be two. The Company shall keep or cause to be kept at the Office a register of its Directors in the manner required by the Law.
- 20.2 A Director need not be a Member but shall nevertheless be entitled to receive notice of and to attend and speak at any general meeting or at any separate meeting of the holders of any class of shares in the Company.
- 20.3 The ordinary remuneration of the Directors (other than any Director who for the time being holds an executive office with the Company or a subsidiary of the Company) shall from time to time be determined by the Directors except that such remuneration shall not exceed £200,000 per annum in aggregate or such higher amount as may from time to time be determined by Ordinary Resolution of the Company and may be paid by way of cash, commission, shares or otherwise and shall (unless such resolution otherwise provides) be divisible among the Directors as they may agree, or, failing agreement, equally, except that any Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of remuneration related to the period during which he has held office.
- 20.4 Any Director who holds any executive office with the Company or any subsidiary of the Company (including for this purpose the office of chairman or deputy or vice chairman whether or not such office is held in an executive capacity), or who serves on any committee of the Directors, or who otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of salary, commission or otherwise or may receive such other benefits as the Directors may determine.
- 20.5 The Directors may pay on behalf of, or repay to, any Director all such reasonable expenses as he may incur in attending and returning from meetings of the Directors or of any committee of the Directors or shareholders' meetings or otherwise in connection with the business of the Company.
- 20.6 The Directors shall have power to pay and agree to pay gratuities, pensions or other retirement, superannuation, death or disability benefits to (or to any person in respect of) any

Director or ex-Director and for the purpose of providing any such gratuities, pensions or other benefits to contribute to any scheme or fund or to pay premiums.

**21. Alternate Directors**

21.1 Any Director may at his sole discretion and at any time and from time to time appoint any person (other than a person disqualified by law from being a director of a company) as an alternate Director to attend and vote in his place at any meetings of Directors at which he is not personally present. Each Director shall be at liberty to appoint under this Article more than one alternate Director provided that only one such alternate Director may at any one time act on behalf of the Director by whom he has been appointed. Every such appointment shall be effective and the following provisions shall apply in connection therewith:

- (a) every alternate Director while he holds office as such shall be entitled to notice of meetings of Directors and to attend and to exercise all the rights and privileges of his appointor at all such meetings at which his appointor is not personally present;
- (b) every alternate Director shall ipso facto vacate office if and when his appointment expires or the Director who appointed him ceases to be a Director of the Company or removes the alternate Director from office by notice under his hand served upon the Company;
- (c) every alternate Director shall be entitled to be paid all travelling, hotel and other expenses reasonably incurred by him in attending meetings. The remuneration (if any) of an alternate Director shall be payable out of the remuneration payable to the Director appointing him as may be agreed between them;
- (d) a Director may act as alternate Director for another Director and shall be entitled to vote for such other Director as well as on his own account, but no Director shall at any meeting be entitled to act as alternate Director for more than one other Director; and
- (e) a Director who is also appointed an alternate Director shall be considered as two Directors for the purpose of making a quorum of Directors when such quorum shall exceed two.

21.2 If a Director who has appointed an alternate Director is for the time being temporarily unable to act through ill health or disability the signature of the alternate Director to any resolution in writing made by the Directors shall be as effective as the signature of his appointer.

21.3 The instrument appointing an alternate Director may be in any form approved by the Directors including the following form:

“(Insert name of Company\_)

I, (\_\_\_) a Director of the above named Company, in pursuance of the power in that behalf contained in the Articles of Association of the Company, do hereby nominate and appoint (\_\_\_) of (\_\_\_) to act as alternate Director in my place at the meeting of the Directors to be held on the (\_\_\_) day of (\_\_\_) and at any adjournment thereof which I am unable to attend and to exercise all my duties as a Director of the Company at such meeting.

Signed this (\_\_\_) day of (\_\_\_)”

21.4 Save as otherwise provided in Article 21.1(b), any appointment or removal of an alternate Director shall be by notice signed by the Director making or revoking the appointment and

shall take effect when lodged at the Office or otherwise notified to the Company in such manner as is approved by the Directors.

## **22. Executive Directors**

- 22.1 The Directors may from time to time appoint one or more of their number to be the holder of any executive office on such terms and for such periods as they may determine. The appointment of any Director to any executive office shall be subject to termination if he ceases to be a Director, but without prejudice to any claim for damages for breach of any contract of service between him and the Company.
- 22.2 The Directors may entrust to and confer upon a Director holding any executive office any of the powers exercisable by the Directors, upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## **23. Appointment of Directors**

- 23.1 Subject to the provisions of Article 20.1, the Directors shall have power at any time and from time to time to appoint any person to be a Director, to fill a casual vacancy or as an additional Director.
- 23.2 The Company may by ordinary resolution appoint any person to office as a Director.
- 23.3 At any general meeting at which a Director retires or is removed from office the Company may elect a Director to fill the vacancy, unless the Company determines to reduce the number of Directors in office. If the Company in general meeting determines to increase the number of Directors in office the Company shall elect additional Directors.
- 23.4 Thirty-five clear days' notice shall be given to the Company of the intention of any Member to propose any person for election to the office of Director provided always that, if the Members present in person at a general meeting unanimously consent, the chairman of such meeting may waive the said notice and submit to the meeting the name of any person duly qualified and willing to act.

## **24. Resignation, Disqualification and Removal of Directors**

- 24.1 The office of a Director shall be vacated:
- (a) if he resigns his office by notice in writing to the Company; or
  - (b) if he ceases to be a Director by virtue of any provision of the Law or becomes prohibited or disqualified by law from being a Director; or
  - (c) if he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (d) is removed by Ordinary Resolution of the Company; or
  - (e) in the circumstances contemplated by Article 25.
- 24.2 Unless specified otherwise in the instrument or resolution of appointment, a Director shall hold office until he resigns or is disqualified in accordance with Article 24.1.

## **25. Powers of Directors**

- 25.1 The business of the Company shall be managed by the Directors who may exercise all such powers of the Company as are not by the Law or these Articles required to be exercised by the Company in general meeting, and the power and authority to represent the Company in all transactions relating to real and personal property and all other legal or judicial transactions, acts and matters and before all courts of law shall be vested in the Directors. The Directors' powers shall be subject to any regulations of these Articles, to the provisions of the Law and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting, but no regulations made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made.
- 25.2 The Directors may, by power of attorney, mandate or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

## **26. Transactions with Directors**

- 26.1 A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director and may act in a professional capacity to the Company on such terms as to tenure of office, remuneration and otherwise as the Directors may determine.

26.2

- (a) Subject to the requirements of the Law and (subject to the ordinary shares being admitted to an Exchange) the Exchange Rules, 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 Member or otherwise and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of or from his interests in such other company unless the Company otherwise directs.
- (b) No Director shall be disqualified by his office from contracting with the Company either as vendor purchaser or otherwise nor, subject to the provisions of the Law and Article 26.2(d), shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided or liable to be set aside.
- (c) A Director who has directly or indirectly an interest in a transaction entered into or proposed to be entered into by the Company or by a subsidiary of the Company which to a material extent conflicts or may conflict with the interests of the Company or which would be a related party transaction pursuant to governing legislation and the Exchange Rules (if the ordinary shares are admitted to an Exchange) (a "Related Party Transaction") and of which he has actual knowledge shall disclose to the Company:
- (i) at the first meeting of the Directors at which the transaction is considered after the Director concerned becomes aware of the circumstances giving rise to his duty to make it; or
- (ii) if for any reason the Director fails to comply with Article 26.2(c)(i), as soon as practical after that meeting, by notice in writing delivered to the Secretary,

the nature and extent of his interest and in the case of a Related Party Transaction the information required by the Exchange Rules (if the ordinary shares are admitted to an Exchange). Subject thereto any such Director shall not be liable to account to the Company for any profit or gain realised by him on such transaction.

- (d) Unless the transaction is a Related Party Transaction (in which case subject to the ordinary shares being admitted to an Exchange the relevant Exchange Rules, if any, shall apply), a notice in writing given to the Company by a Director that he is to be regarded as interested in a transaction with a specified person is sufficient disclosure of his interest in any such transaction entered into after the notice is given.
- (e) Provided he makes disclosure as required by Article 26.2(d) and subject to the terms of Articles 26.2(f) and, if the ordinary shares are admitted to an Exchange, the relevant Exchange Rules (if any), a Director may vote in respect of any such Related Party Transaction and if he does so vote his vote shall be counted and he shall be capable of being counted towards the quorum at any meeting of the Directors at which any such transaction shall come before the Directors for consideration.
- (f) Save as herein provided and without prejudice to any Exchange Rules (subject to the ordinary shares being admitted to an Exchange), a Director shall not vote at a meeting of the Directors in respect of any contract or arrangement or any other proposal whatsoever in which he has an interest which (together with any interest of any person connected with him) is to his knowledge a material interest otherwise than by virtue of his interests in shares or debentures or other securities of, or otherwise in or through, the Company. A Director shall not be counted in the quorum present at a meeting in relation to any resolution on which he is not entitled to vote.
- (g) A Director shall (in the absence of some material interest other than as indicated below) be entitled to vote (and be counted in the quorum) at a meeting of the Directors in respect of any resolution concerning any of the following matters, namely:
  - (i) relating to the giving of any security, guarantee or indemnity in respect of money lent or obligations incurred by him or by any other person at the request of, or for the benefit of, the Company or any of its subsidiary undertakings;
  - (ii) relating to the giving of any security, guarantee or indemnity in respect of a debt or obligation of the Company or any of its subsidiary undertakings for which he himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the giving of security;
  - (iii) relating to any contract, arrangement or other proposal concerning an offer of shares, debentures or other security of or by the Company or any of its subsidiary undertakings in which offer he is, or may be, entitled to participate as a holder of securities or interested as a participant in the underwriting or sub-underwriting thereof;
  - (iv) relating to any contract, arrangement or other proposal concerning another company in which he and any persons connected with him do not to his knowledge hold an interest in shares representing one per cent. or more of either any class of the equity share capital or the voting rights in such company;

- (v) relating to any contract, arrangement or other proposal concerning an arrangement for the benefit of the employees of the Company or any of its subsidiary undertakings which does not award him any privilege or benefit not awarded to the employees to whom such arrangement relates; or
  - (vi) concerning any contract, arrangement or other proposal concerning insurance which the Company proposes to maintain or purchase for the benefit of any Directors or for the benefit of persons including Directors.
- (h) Subject to the provisions of the Law, any Director may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director.
- (i) Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the Company or any body corporate in which the Company is interested, such proposals may be divided and considered in relation to each Director separately, and in such case each of the Directors concerned (if not debarred from voting under Article 26.2(f) shall be entitled to vote (and be counted in the quorum) in respect of each resolution that does not concern his own appointment.
- (j) For the purposes of this Article an interest of a person who is, for the purposes of the Law, connected (within the meaning of Article 7.15) with a Director shall be treated as an interest of the Director.
- (k) If any question arises at any meeting as to the materiality of a Director's interest (other than the chairman's interest) or as to the entitlement of any Director (other than the chairman) to vote or be counted in the quorum, and such question is not resolved by his voluntarily agreeing to abstain from voting or from being counted in the quorum, such question shall be referred to the chairman of the meeting and his ruling in relation to any such Director shall be final and conclusive except in a case where the nature or extent of the interests of the Director concerned has not been fairly disclosed.
- (l) If any question arises at any meeting as to the materiality of the chairman's interest or as to the entitlement of the chairman to vote or be counted in a quorum, and such question is not resolved by his voluntarily agreeing to abstain from voting or from being counted in the quorum, such question shall be decided by resolution of the Directors or committee members present at the meeting (excluding the chairman) whose majority vote shall be final and conclusive except in a case where the nature or extent of the interests of the chairman has not been fairly disclosed.
- 26.3 Where disclosure of an interest is made to the Secretary in accordance with this Article, the Secretary shall inform the Directors that it has been made and table the notice of the disclosure at the next meeting of the Directors. Any disclosure at a meeting of the Directors shall be recorded in the minutes of the meeting.

## **27. Proceedings of Directors**

- 27.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be determined by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director who is also an alternate director shall be entitled, in the absence of the Director whom he is representing, to a separate vote on behalf of such Director in addition to his own vote. A Director may, and the Secretary on the requisition of a Director shall, at any

time, summon a meeting of the Directors by giving to each Director and alternate Director not less than twenty-four hours' notice of the meeting provided that any meeting may be convened at shorter notice and in such manner as each Director or his alternate Director shall approve provided further that unless otherwise resolved by the Directors notices of Directors' meetings need not be in writing.

- 27.2 A meeting of the Directors at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed at any other number shall be two. For the purposes of this Article and subject to the provisions of Article 21.1(d), an alternate Director shall be counted in a quorum, but so that not less than two individuals shall constitute the quorum.
- 27.3 A Director, notwithstanding his interest, may be counted in the quorum present at any meeting at which he is appointed to hold any office or place of profit under the Company, or at which the terms of his appointment are arranged, but he may not vote on his own appointment or the terms thereof.
- 27.4 A Director, notwithstanding his interest, may be counted in the quorum present at any meeting at which any contract or arrangement in which he is interested is considered and, subject to the provisions of Article 26.2, he may vote in respect of any such contract or arrangement.
- 27.5 A Director may not attend or be counted in the quorum present at or vote at any meeting in contravention of the terms of a direction notice served on him under Article 7.9.
- 27.6 The continuing Directors may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of filling vacancies or of calling a general meeting of the Company.
- 27.7 If there are no Directors or no Director is able or willing to act, then any Member or the Secretary may summon a general meeting for the purpose of appointing Directors.
- 27.8 The Directors may from time to time elect from their number, and remove, a chairman and/or deputy chairman and/or vice-chairman and determine the period for which they are to hold office. The chairman, or in his absence the deputy chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Directors, but if no such chairman, deputy chairman or vice-chairman be elected, or if at any meeting the chairman, the deputy chairman and vice-chairman be not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be the chairman of the meeting.
- 27.9 The Directors may delegate any of their powers to committees consisting of such Directors or Director or such other persons as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors. The meetings and proceedings of any such committee consisting of two or more persons shall be governed by the provisions of these Articles regulating the meetings and proceedings of the Directors, so far as the same are applicable and are not superseded by any regulations made by the Directors under this Article.
- 27.10 If a Director is by any means in communication with one or more other Directors so that each Director participating in the communication can hear what is said by any other of them, each Director so participating in the communication is deemed to be present at a meeting with the other Directors so participating, notwithstanding that all the Directors so participating are not

present together in the same place. The place of any such meeting shall be recorded as the place at which the chairman is present, unless the Directors otherwise determine.

- 27.11 All acts done bona fide by any meeting of Directors or of a committee appointed by the Directors or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or committee or person acting as aforesaid, or that they or any of them were disqualified or had vacated office or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or a member of a committee appointed by the Directors and had been entitled to vote.

**28. Directors' Resolutions in Writing**

A resolution in writing of which notice has been given to all of the Directors or to all of the members of a committee appointed pursuant to Article 27.9 (as the case may be), if signed by a majority of the Directors or of the members of such committee (as the case may be), shall be valid and effectual as if it had been passed at a meeting of the Directors or of the relevant committee duly convened and held and may consist of two or more documents in like form each signed by one or more of the Directors or members of the relevant committee.

**29. Borrowing Powers**

The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge all or any part of its undertaking, property and assets (both present and future), including its uncalled capital and, subject to the Law, to issue debentures and other securities, whether outright or as collateral security, for any debt, liability or obligation of the Company or of any third party.

**30. Minute Book**

The Directors shall cause all resolutions in writing passed in accordance with Articles 18.1 and 28 and minutes of proceedings at all general meetings of the Company or of the holders of any class of the Company's shares and of the Directors and of committees appointed by the Directors to be entered in books kept for the purpose. Any minutes of a meeting, if purporting to be signed by the chairman of the meeting or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

**31. Secretary**

The Secretary shall be appointed by the Directors and any secretary so appointed may be removed by the Directors. Anything required or authorised to be done by or to the Secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or if there is no assistant or deputy secretary capable of acting, by or to any officer of the Company authorised generally or specially in that behalf by the Directors provided that any provisions of these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in place of, the Secretary. The Company shall keep or cause to be kept at the Office a register of particulars with regard to its Secretary in the manner required by the Law.

**32. Execution of Instruments, Seals and Authentication of Documents**

- 32.1 The Company may have a common seal and may, in accordance with the Law, have an official seal for use outside of the Island and an official seal for sealing securities issued by the Company or for sealing documents creating or evidencing securities so issued. The

Directors shall provide for the safe custody of all seals. No seal of the Company shall be used except by the authority of a resolution of the Directors or of a committee of the Directors authorised in that behalf by the Directors.

- 32.2 The Directors may, by resolution, authorise a person or persons to witness the affixing of the Company's common seal to any Written Instrument to which the Company is a party. In the absence of an express authorisation, either generally or with respect to a specific Written Instrument, any two Directors or a Director and the Secretary, are authorised to witness the affixing of the Company's common seal to any Written Instrument to which the affixing of the common seal has been approved by the Directors.
- 32.3 Written Instruments to which the Company's common seal is not to be affixed may be signed on behalf of the Company by such person or persons as the Directors may from time to time by resolution authorise. In the absence of an express authorisation, either generally or with respect to a specific Written Instrument, any one Director is authorised to sign any Written Instrument on behalf of the Company.
- 32.4 Any Director or the Secretary or any person appointed by the Directors for the purpose shall have power to authenticate any documents affecting the constitution of the Company (including the Memorandum of Association and these Articles) and any resolutions passed by the Company or the Directors and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts; and where books, records, documents or accounts are elsewhere than at the Office, the local manager or other officer of the company having the custody thereof shall be deemed to be a person appointed by the Directors as aforesaid.

### **33. Dividends**

- 33.1 Subject to the provisions of the Law, the Company may by resolution declare dividends in accordance with the respective rights of the Members, but no dividend shall exceed the amount recommended by the Directors.
- 33.2 Subject to any particular rights or limitations as to dividend for the time being attached to any shares, as may be specified in these Articles or upon which such shares may be issued, all dividends shall be declared, apportioned and paid in proportion to the number of shares held by the relevant Member during any portion or portions of the period in respect of which the dividend is paid.
- 33.3 Subject to the provisions of the Law, the Directors may, if they think fit, from time to time pay to the Members such interim dividends as appear to the Directors to be justified.
- 33.4 If at any time the share capital of the Company is divided into different classes, the Directors may pay interim dividends in respect of those shares in the capital of the Company which confer on the holders thereof deferred or non-preferred rights, as well as in respect of those shares which confer on the holders thereof preferential rights with regard to dividend. The Directors may also pay half-yearly, or at other intervals as appear to the Directors to be justified, any dividend which may be payable at a fixed rate if they are of the opinion that the profits of the Company justify the payment. Provided the Directors act bona fide they shall not incur any personal liability to the holders of shares conferring a preference for any damage that they may suffer by reason of the payment of an interim dividend on any shares having deferred or non-preferred rights.
- 33.5 Any resolution for the declaration or payment of a dividend on shares of any class, whether a resolution of the Company in General Meeting or a resolution of the Directors, may specify that the same shall be payable to the persons registered as the holders of such shares at the

close of business on a particular date, subject to Article 33.2, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights *inter se* in respect of such dividend of transferors and transferees of any such shares.

- 33.6 All unclaimed dividends may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed. No dividend shall bear interest as against the Company.
- 33.7 Any dividend which has remained unclaimed for a period of ten years from the date of declaration thereof shall, if the Directors so resolve, be forfeited and cease to remain owing by the Company and shall thenceforth belong to the Company absolutely.
- 33.8 Any dividend or other moneys payable on or in respect of a share shall be paid to the Member, to trustees upon such trusts for the members as the Directors may think fit, or to such other person as the Member (or, in the case of joint holders of a share, all of them) may in writing direct. Such dividend or other moneys may be paid:
- (a) by cheque sent by post to the payee or, where there is more than one payee, to any one of them; or
  - (b) by inter-bank transfer to such account as the payee or payees shall in writing direct; or
  - (c) (if so authorised by the holder of shares in uncertificated form) using the facilities of a relevant system (subject to the facilities and requirements of the relevant system); or
  - (d) by such other method of payment as the member (or, in the case of joint holders of a share, all of them) may agree to.

Every such cheque shall be sent at the risk of the person or persons entitled to the money represented thereby, and payment of a cheque by the banker upon whom it is drawn, and any transfer or payment within (b), (c) or (d) above, shall be a good discharge to the Company.

- 33.9 Subject to the provisions of these Articles and to the rights attaching to any shares, any dividend or other moneys payable on or in respect of a share may be paid in such currency or currencies as the Directors may determine, using such exchange rate for currency conversions as the Directors may select provided that holders of ordinary shares shall be entitled to be paid dividends in sterling. The Directors may in their discretion make provisions to enable a member to elect to receive dividends in such currencies as the Directors may determine.
- 33.10 The Company may cease to send any cheque, warrant or order by post for any dividend on any shares which is normally paid in that manner if in respect of at least four consecutive dividends payable on those shares the cheque, warrant or order has been returned undelivered or remains uncashed or following three such occasions reasonable enquiries have failed to establish any new address of the registered holder but, subject to the provisions of these Articles, shall recommence sending cheques, warrants or orders in respect of the dividends payable on those shares if the holder or person entitled by transmission claims the arrears of dividend and does not instruct the Company to pay future dividends in some other way.
- 33.11 A general meeting declaring a dividend may, upon the recommendation of the Directors, direct payment of such dividend wholly or in part by the distribution of specific assets, and in particular of paid up shares or debentures of any other company, and the Directors shall give effect to such resolution; and where any difficulty arises in regard to the distribution they may

settle the same as they think expedient, and in particular may issue certificates representing part of a shareholding or fractions of shares, and may fix the value for distribution of such specific assets or any part thereof, and may determine that cash payment shall be made to any Members upon the footing of the value so fixed, in order to adjust the rights of Members, and may vest any specific assets in trustees upon trust for the persons entitled to the dividend as may seem expedient to the Directors, and generally may make such arrangements for the allotment, acceptance and sale of such specific assets or certificates representing part of a shareholding or fractions of shares, or any part thereof, and otherwise as they think fit.

- 33.12 Any resolution declaring a dividend on the shares of any class, whether a resolution of the Company in general meeting or a resolution of the Directors, or any resolution of the Directors for the payment of a fixed dividend on a date prescribed for the payment thereof, may specify that the same shall be payable to the persons registered as the holders of shares of the class concerned at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed (or, as the case may be, that prescribed for payment of a fixed dividend), and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se in respect of such dividend of transferors and transferees of any shares of the relevant class.

#### **34. Reserve Fund**

Before the declaration of a dividend the Directors may set aside any part of the net profits of the Company to create a reserve fund, and may apply the same either by employing it in the business of the Company or by investing it in such a manner (not being the purchase of or by way of loan upon the shares of the Company) as they think fit. Such reserve fund may be applied for the purpose of maintaining the property of the Company, replacing wasting assets, meeting contingencies, forming an insurance fund, or equalising dividends or special dividends, or for any other purpose for which the net profits of the Company may lawfully be used, and until the same shall be applied it shall remain undivided profits. The Directors may also carry forward to the accounts of the succeeding year or years any balance of profit which they do not think fit either to divide or to place to reserve.

#### **35. Capitalisation**

- 35.1 The Company may, upon the recommendation of the Directors, resolve that it is desirable to capitalise any undistributed profits of the Company (including profits carried and standing to any reserve and accordingly that the Directors be authorised and directed to appropriate the amount resolved to be capitalised to the Members in the proportion in which such amount would have been divisible amongst them had the same been applicable and had been applied in paying dividends, and to apply such amount on their behalf in paying up in full any unissued shares or debentures of the Company, such shares or debentures to be allotted and distributed, credited as fully paid up, to and amongst such Members in the proportions aforesaid, provided that any unrealised profits may not be applied in the paying up of any debentures of the Company.

- 35.2 Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the amount resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to make such provision by the issue of certificates representing part of a shareholding or fractions of shares or by payments in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the Members entitled to the benefit of such appropriations and applications into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up,

of any further shares or debentures to which they may be entitled upon such capitalisation, and any agreement made under such authority shall be effective and binding on all such Members.

### **36. Accounts and Audit**

- 36.1 The accounting records shall be kept at the Office or at such other place or places as the Directors think fit and shall always be open to the inspection of the Directors the Secretary and any liquidator of the Company provided that if such records are kept outside Jersey the returns with respect to the business dealt with in such records shall be sent to and kept in Jersey where they must at all times be open to the inspection of the Directors the Secretary and any liquidator of the Company and must be such as to disclose with reasonable accuracy the financial position of the business in question at such intervals as shall be required by the Law and, from the time of admission of ordinary shares to an Exchange (if such period shall be longer than that prescribed by Law), as may be required by the Exchange Rules from time to time and enable the Directors to ensure that any accounts prepared by the Company comply with the requirements of the Law and the Exchange Rules. Subject to the provisions of the Law or any other law, such accounting records shall be preserved for a period of at least ten years from the date on which they are made.
- 36.2 Auditors shall be appointed for the Company under the provisions of the Law to examine and report in accordance with the Law and the Exchange Rules on the accounts of the Company. Subject to the provisions of the Law and the Exchange Rules, all acts done by any persons acting as Auditors shall, as regards all persons dealing in good faith with the Company, be valid, notwithstanding that there was some defect in their appointment or that they were at the time of their appointment not qualified for appointment or subsequently became disqualified. The Directors shall determine the powers and duties of the auditors and the scope of the auditors' report on the accounts of the Company and the re-appointment removal and replacement of the auditors, subject to the Law, other applicable laws and the Exchange Rules.
- 36.3 Within six months of the end of each financial period a copy of every balance sheet, profit and loss account and cash flow statement prepared in accordance with the requirements of Exchange Rules, and a copy of every Directors' and auditors' report on the same, shall be laid before a general meeting of the Company (including every document required by Law to be comprised therein or attached or annexed thereto). All such other accounts and reports, as may be required by Law or the Exchange Rules, shall be prepared by the Company or, where applicable, the auditor at the direction of the Company. Within six months after the end of each financial period, the Directors shall deliver to the registrar one copy and such other copies to such regulatory or administrative bodies as may be required by the Exchange Rules (subject to the ordinary shares being admitted to an Exchange) of the applicable accounts for that period signed by such of the Directors as may be required on behalf of them all and a copy of the auditor's report thereon.
- 36.4 The Directors shall determine and may vary the accounting reference date for the Company by resolution of the Directors. The first accounting reference period shall end no more than eighteen months after incorporation. Subject to the ordinary shares being admitted to an Exchange, the Company shall comply with any notification requirements set out in the Exchange Rules. Thereafter the Directors shall cause to be prepared annual accounts for the Company for periods of not more than twelve months.
- 36.5 The provisions of this Article 36 which require compliance with the Exchange Rules shall only apply from the date of admission of the shares to trading on the Exchange.

**37. Notices**

- 37.1 Any notice to be given to or by any person pursuant to these Articles shall be in writing, save as provided in Article 27.1. In the case of joint holders of a share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders.
- 37.2 Any notice may be posted to or left at the registered address of any person, and any notice so posted shall be deemed to be served three clear days after the day it was posted and in proving service by post, it shall be sufficient to prove that such notice was properly addressed, stamped and posted.
- 37.3 Any Member present in person at any meeting of the Company shall, for all purposes, be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.
- 37.4 Any notice or document served on a Member shall, notwithstanding that such Member be then dead or bankrupt and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served on such Member as sole or joint holder, unless his name shall at the time of the service of the notice or document have been removed from the Register, and such service shall for all purposes be deemed a sufficient service of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the shares of such Member.
- 37.5 Notwithstanding any of the provisions of these Articles, any notice to be given by the Company to a Director or to a Member may be given in any manner agreed in advance by any such Director or Member.
- 37.6 The accidental failure to send, or the non-receipt by any person entitled to, any notice of or other document relating to any meeting or other proceeding shall not invalidate the relevant meeting or other proceeding.
- 37.7 Any notice in writing given to that one of the joint holders of a share whose name stands first in the Register in respect of the share shall be sufficient notice to all the joint holders in their capacity as such.
- 37.8 If at any time by reason of the suspension or curtailment of postal services the Company is unable effectively to convene a shareholders' meeting by notices sent through the post, such meeting may be convened by a notice advertised in at least one UK national newspaper and such notice shall be deemed to have been duly served on all members entitled thereto on the day when the advertisement appears (or first appears).

**38. Signature of documents**

Where under these Articles a document requires to be signed by a member or other person then, if in the form of an electronic communication, to be valid it must incorporate the electronic signature or personal identification details (which may be details previously allocated by the Company) of that member or other person, in such form as the Directors may approve, or be accompanied by such other evidence as the Directors may require to satisfy themselves that the document is genuine. The Company may designate mechanisms for validating any such document, and any such document not so validated by use of such mechanisms shall be deemed not to have been received by the Company.

### **39. Electronic communication**

- 39.1 Any Member may notify the Company of an address for the purpose of his receiving electronic communications from the Company, and having done so shall be deemed to have agreed to receive notices and other documents from the Company by electronic communication of the kind to which the address relates. In addition, if a member notifies the Company of his e-mail address, the Company may satisfy its obligation to send him any notice or other document by:
- (a) publishing such notice or document on a web site; and
  - (b) notifying him by e-mail to that e-mail address that such notice or document has been so published, specifying the address of the web site on which it has been published, the place on the web site where it may be accessed, how it may be accessed and (if it is a notice relating to a shareholders' meeting) stating: (i) that the notice concerns a notice of a company meeting served in accordance with the Law; (ii) the place, date and time of the meeting; (iii) whether the meeting is to be an annual or Extraordinary General Meeting; and (iv) such other information as the Law or the Order may prescribe.
- 39.2 Any amendment or revocation of a notification given to the Company under this Article 39 shall only take effect if in writing, signed by the member and on actual receipt by the Company thereof.
- 39.3 An electronic communication shall not be treated as received by the Company if it is rejected by computer virus protection arrangements.
- 39.4 Nothing in any of Articles 39.1 to 39.3 shall affect any requirement of the Law or the Order that any particular offer, notice or other document be served in any particular manner.

### **40. Winding Up**

- 40.1 Subject to any particular rights or limitations for the time being attached to any shares, as may be specified in these Articles or upon which such shares may be issued, if the Company is wound up, the assets available for distribution among the Members shall be applied in proportion to the number of shares held by the relevant Member.
- 40.2 If the Company is wound up, the Company may, with the sanction of a Special Resolution and any other sanction required by the Law, divide the whole or any part of the assets of the Company among the Members in specie and the liquidator or, where there is no liquidator, the Directors, may, for that purpose, value any assets and determine how the division shall be carried out as between the Members or different classes of Members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the Members as he with the like sanction determines, but no Member shall be compelled to accept any assets upon which there is a liability.

### **41. Indemnity**

- 41.1 In so far as the Law allows, every present or former officer of the Company shall be indemnified out of the assets of the Company against any loss or liability incurred by him by reason of being or having been such an officer.
- 41.2 In so far as the Law allows, the Directors and officers of the Company may purchase and maintain insurance at the expense of the Company for the benefit of any Director and officer against any liability which may attach to him or loss or expenditure which he may incur in

relation to anything done or omitted to be done or alleged to have been done or omitted to be done as a director or officer of the Company.

#### **42. Non-Application of Standard Table**

The regulations constituting the Standard Table in the Companies (Standard Table) (Jersey) Order 1992 shall not apply to the Company.

#### **43. Special Provisions**

To the extent not otherwise provided by the Law the Members shall have the rights and the Company shall be subject to the provisions set out below. The rights and remedies set out in this Article 43 shall not in any way prejudice, and shall be cumulative with, all and any such rights or remedies any member may have under the Law or any other statute or customary law in Jersey. For the purposes of this Article 43:

“appraisal” means a process whereby the Court (as defined herein) may make such order as it deems necessary or expedient in order to determine the fair value of a Member’s shares for the purpose of their repurchase by the Company;

“complainant” means:

- (a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of the company or any of its affiliates; or
- (b) a Director or an officer or a former Director or officer of the Company or any of its affiliates; or
- (c) any other person who, in the discretion of the Court, is a proper person to make an application under the provisions of this Article;

“security holder” means the registered holder or beneficial holder of a security of the Company where security is defined as a share of any class or series of shares or a debt obligation of the Company and includes a certificate evidencing such a share or debt obligation;

##### *43.1 Derivative Action*

- (a) A complainant may apply to the Royal Court of Jersey or the Court of Queen’s Bench of Alberta (the “Court”) for leave to bring an action in the name and on behalf of the Company or any of its subsidiaries, or intervene in an action to which the Company or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the Company or subsidiary provided that:
  - (i) the complainant has given reasonable notice to the Directors or to the directors of its subsidiary of his intention to apply to the Court hereunder if the Directors or the directors of its subsidiary do not bring, diligently prosecute, defend or discontinue the action;
  - (ii) the complainant is acting in good faith; and
  - (iii) it appears to be in the interests of the Company or any of its subsidiaries that the action be brought, prosecuted, defended or discontinued.

- (b) In connection with an action brought or intervened in under this Article 43.1, the Court may at any time make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:
- (i) an order authorizing the complainant or any other person to control the conduct of the action;
  - (ii) an order giving directions for the conduct of the action;
  - (iii) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and
  - (iv) an order requiring the Company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

#### 43.2 *Oppression*

- (a) A complainant may apply to the Court for an order under this Article 43.2 and the Court may make an order to rectify the matters complained of if, on such application, the Court is satisfied in respect of the Company or any of its affiliates that:
- (i) any act or omission of the Company or any of its affiliates effects a result; or
  - (ii) the business or affairs of the Company or any of its affiliates are or have been carried on or conducted in a manner; or
  - (iii) the powers of the Directors or any of the affiliates of the Company are to have been exercised in a manner
- that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer.
- (b) In connection with an application hereunder, the complainant may ask the Court to make any interim or final order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:
- (i) an order restraining the conduct complained;
  - (ii) an order appointing a liquidator or receiver or receiver manager;
  - (iii) an order to regulate the Company's affairs by amending the Memorandum of Association or Articles of Association;
  - (iv) an order to regulate the Company's affairs by amending the Memorandum of Association or Articles of Association pursuant to Article 43.2(b)(iii) operated notwithstanding any unanimous agreement of the Members made before or after the date of the order, until the Court otherwise orders;
  - (v) an order directing an issue or exchange of securities;
  - (vi) an order appointing Directors in place of or in addition to all or any of the Directors then in office;

- (vii) an order directing the Company or any other person to purchase securities of a security holder;
- (viii) an order directing the Company or any other person to pay to a security holder any part of the money paid by him for securities;
- (ix) an order directing the Company, subject to the Law, to pay a dividend to the Members or to a class of Members;
- (x) an order varying or setting aside a transaction or contract to which the Company is a party and compensating the Company or any other party to the transaction or contract;
- (xi) an order requiring the Company, within a time specified by the Court, to produce to the Court or an interested person financial statement or an accounting in any other form the Court may determine;
- (xii) an order compensating an aggrieved person;
- (xiii) an order directing rectification of the Register or other records of the Company;
- (xiv) an order for the winding-up and dissolution of the Company;
- (xv) an order directing any person who appears to the Court to be qualified to do so to investigate such matters pertaining to the affairs of the Company as the Court shall determine;
- (xvi) an order requiring the trial of any issue; or
- (xvii) an order granting leave to the applicant to:
  - A. bring an action in the name and on behalf of the company or any of its subsidiaries, or
  - B. intervene in an action to which the Company or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing an action on behalf of the Company or any of its subsidiaries.
- (c) If an order made hereunder requires an amendment to be made to the Memorandum of Association or to the Articles, no other amendment to the Memorandum of Association or to the Articles in breach of that requirement shall be made without the consent of the Court.
- (d) A shareholder is not entitled to dissent, under Article 43.3 below if an amendment to the Memorandum of Association or to these Articles is affected under the provisions of this Article 43.2.
- (e) Nothing prevents an applicant under this Article from applying for an order for the winding-up and dissolution of the Company.

#### *43.3 Right of Dissent and Appraisal*

- (a) A holder of shares of any class of the Company may dissent and exercise the rights set out below if the Company resolves to:

- (i) amend these Articles to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class;
  - (ii) amend these Articles to add, change or remove any restrictions on the business or businesses that the corporation may carry on;
  - (iii) amend these Articles to add or remove an express statement establishing the unlimited liability of shareholders;
  - (iv) amalgamate with another company, other than a company or companies that are wholly-owned subsidiary companies;
  - (v) be continued under the laws of another jurisdiction;
  - (vi) sell, lease or exchange all or substantially all its property;
  - (vii) amend these Articles to add or remove an express statement establishing the unlimited liability of shareholders, if any, set out herein.
- (b) A holder of shares of any class or series of shares entitled to vote separately as a class, may dissent if the Company resolves to amend these Articles in a manner which amends the rights or privileges of one class of share in a manner different from other classes of shares.
- (c) In addition to any other right a Member may have but subject to the relevant provisions of the Law in regard to the ability of a Company to purchase its own shares, a Member entitled to dissent hereunder and who complies with the requirements of this Article 43.3 is entitled to be paid by the Company the fair value of the shares held by the Member in respect of which the Member dissents, determined as of the close of business on the last business day before the day on which the resolution from which the Member dissents was adopted.
- (d) A dissenting Member may only claim hereunder with respect to all the shares of a class held by such Member or on behalf of any one beneficial owner and registered in the name of such dissenting Member.
- (e) A dissenting Member shall send to the Company a written objection to a resolution referred to in Article 43.3(a) or 43.3(b):
- (i) at or before any meeting of Members at which the resolution is to be voted on; or
  - (ii) if the Company did not send notice to the Member of the purpose of the meeting or of his right to dissent, within a reasonable time after the Member learns that the resolution was adopted and of the Member's right to dissent;
- (f) An application may be made to the Court after the adoption of a resolution referred to in Article 43.3(a) or in 43.3(b):
- (i) by the Company; or
  - (ii) by a Member if the Member has sent an objection to the Company under Article 43.3(e),

requesting the Court to fix the fair value in accordance with Article 43.3(c) of the shares of a Member who dissents hereunder, or if applicable, to fix the time at which a shareholder of an unlimited liability corporation who dissents under this section ceases to become liable for any new liability, act or default of the unlimited liability corporation

- (g) If an application is made, the Company shall, unless the Court otherwise orders, send to each dissenting Member a written offer to pay him an amount considered by the Directors to be the fair value of the shares.
- (h) Unless the Court otherwise orders, an offer referred to in Article 43.3(g) shall be sent to each dissenting Member:
  - (i) at least 10 days before the date on which the application is returnable, if the Company is the applicant;
  - (ii) within 10 days after the Company is served with a copy of the notice of the application to the Court, if a Member is the applicant; or
  - (iii) (if applicable) within 10 days after the instruction of the independent accountant in accordance with Article 43.3(r).
- (i) Every offer made under Article 43.3(h) shall:
  - (i) be made on the same terms, and
  - (ii) contain or be accompanied by a statement showing how the fair value was determined.
- (j) A dissenting Member may make an agreement with the Company for the purchase of the Member's shares by the Company, in the amount of the Company's offer under Article 43.3(g) or otherwise, at any time before the Court pronounces an order fixing the fair value of the shares or the determination of the independent accountant under Article 43.3(r).
- (k) A dissenting Member:
  - (i) shall not be required by the Company to give security for costs in respect of an application under Article 43.3(f), and
  - (ii) except in special circumstances as determined by the Court shall not be required to pay the costs of the application or appraisal.
- (l) In connection with an application under Article 43.3(f) the Company or the Member may request the Court to give direction for:
  - (i) joining as parties all dissenting Members whose shares have not been purchased by the Company and for the representation of dissenting Members who, in the opinion of the court, are in need of representation;
  - (ii) the trial of issues and interlocutory matters, including pleadings and examinations for discovery;
  - (iii) the payment to the Member of all or part of the sum offered by the Company for the shares;

- (iv) the deposit of the share certificates with the Court or with the Company or its transfer agent;
  - (v) the appointment and payment of independent appraisers, and the procedures to be followed by them;
  - (vi) the service of documents; and
  - (vii) the burden of proof on the parties.
- (m) On an application under Article 43.3(f), the Company or the Member may request the Court to make an order:
- (i) fixing the fair value of the shares in accordance with Article 43.3(c) of all dissenting Members who are parties to the application;
  - (ii) giving judgment in that amount against the Company and in favour of each of those dissenting Members;
  - (iii) fixing the time within which the Company must pay that amount to a Member; and
  - (iv) if applicable, fixing the time at which a dissenting shareholder of an unlimited liability corporation ceases to become liable for any new liability, act or default of the unlimited liability corporation.
- (n) On:
- (i) the action approved by the resolution from which the Member dissents becoming effective;
  - (ii) the making of an agreement under Article 43.3(j) between the Company and the dissenting Member as to the payment to be made by the Company for the Member's shares, whether by the acceptance of the Company's offer under Article 43.3 (g) or otherwise;
  - (iii) the pronouncement of an order under Article 43.3(m); or
  - (iv) the determination of the independent accountant under Article 43.3(r),
- whichever first occurs, the Member shall cease to have any rights as a Member other than the right to be paid the fair value of the Member's shares in the amount agreed to between the Company and the Member or in the amount of the judgment, as the case may be.
- (o) Article 43.3(n)(i) does not apply to a Member referred to in Article 43.3(e)(ii).
- (p) Until one of the events mentioned in Article 43.3(n) occurs:
- (i) the Member may withdraw the Member's dissent; or
  - (ii) the Company may rescind the resolution,
- and in either event proceedings hereunder shall be discontinued.

- (q) The Court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Member, from the date on which the Member ceases to any rights as a Member by virtue of Article 43.3(p) until the date of payment.
- (r) If the Court is unable or unwilling to hear an application under Article 43.3(f), then either the Company or the Member referred to in Article 43.3(f)(ii) may apply to the President for the time being of the Jersey Society of Chartered and Certified Accountants to nominate an independent firm of accountants to determine the fair value in accordance with Article 43.3(c) of the shares of a Member who dissents hereunder and in doing so:
  - (i) the independent accountants shall determine the fair value on the following assumptions and bases:
    - A. valuing the relevant shares on an arm's length sale between a willing seller and a willing buyer;
    - B. if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so; and
    - C. considering any other factors which the independent accountant reasonably believes should be taken into account;
  - (ii) if any difficulty arises in applying any of these assumptions or bases then the independent accountant shall resolve that difficulty in such manner as they shall in their absolute discretion think fit;
  - (iii) the fees of the independent accountant shall be borne by the Company;
  - (iv) the independent accountant shall act as an expert and not as an arbitrator; and
  - (v) in the absence of fraud or manifest error, the determination of the independent accountant shall be final and binding on the parties,

and accordingly to the extent appropriate any reference to an "application" in this Article 43.3 shall be deemed to include application to the President for the time being of the Jersey Society of Chartered and Certified Accountants under this Article 43.3(r).

- (s) Where the Company is unable to purchase its shares the Company shall within 10 days after:
  - (i) the pronouncement of an order under Article 43.3(m);
  - (ii) the determination of the independent accountant under Article 43.3(r); or
  - (iii) the making of an agreement between the Member and the Company as to the payment to be made for his shares,

notify each dissenting Member that it is unable to lawfully purchase the shares of the dissenting Members.

- (t) Notwithstanding that a judgment has been given in favour of a dissenting Member under Article 43.3(m)(ii), if the Company is unable to purchase its shares, the dissenting Member, by written notice delivered to the Company within 30 days after

receiving the notice under Article 43.3(s), may withdraw his notice of objection, in which case the company is deemed to consent to the withdrawal and the Member is reinstated to the Member's full rights as a Member, failing which he retains a status as a claimant against the Company, to be paid as soon as the Company is lawfully able to do so or, in a winding up, to be ranked subordinate to the rights of creditors of the Company but in priority to its other Members.

- 43.4 The Company shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that
- (a) the Company is or would after the payment be unable to pay its liabilities as they become due, or
  - (b) the realizable value of the Company's assets would by reason of the payment be less than the aggregate of its liabilities.
- 43.5 The Company shall not issue any share for a consideration other than money if the amount of the consideration received is less than the fair equivalent of the money that the Company would have received if the share had been issued for money on the date of the resolution authorising the issue of such share.

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**LYDIAN INTERNATIONAL LIMITED  
CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS  
(UNAUDITED)**

**MARCH 31, 2020**

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# LYDIAN INTERNATIONAL LIMITED

## CONDENSED CONSOLIDATED INTERIM STATEMENTS OF FINANCIAL POSITION (UNAUDITED)

(expressed in thousands of US Dollars)

		As of	
	Note	March 31, 2020	December 31, 2019
<b>ASSETS</b>			
<i>Current assets</i>			
Cash and cash equivalents		\$ 1,677	\$ 3,221
Restricted cash	4	3	1,015
Other current assets	5	13,943	15,264
Total current assets		<u>15,623</u>	<u>19,500</u>
<i>Non-current assets</i>			
Mineral property, plant and equipment, net	6	26,931	27,993
Other non-current assets	7	4,490	5,167
Total non-current assets		<u>31,421</u>	<u>33,160</u>
<b>TOTAL ASSETS</b>		<u>\$ 47,044</u>	<u>\$ 52,660</u>
<b>LIABILITIES</b>			
<i>Current liabilities</i>			
Accounts payable and other current liabilities		\$ 2,147	\$ 1,615
Current deferred VAT payable		13,368	13,442
Stream liability and debt	8	366,742	354,378
Derivative liabilities	9	19,932	19,931
Current provisions	10	1,270	1,272
Total current liabilities		<u>403,459</u>	<u>390,638</u>
<i>Non-current liabilities</i>			
Provisions	10	3,189	3,180
Deferred VAT payable		102	723
Non-current portion of lease liabilities	11	35	67
Total liabilities		<u>406,785</u>	<u>394,608</u>
<b>EQUITY</b>			
Share capital	12	286,074	286,074
Employee share-based plan reserves		1,296	1,347
Translation of foreign operations		(18,453)	(18,479)
Accumulated deficit		(628,658)	(610,890)
Total equity		<u>(359,741)</u>	<u>(341,948)</u>
<b>TOTAL LIABILITIES AND EQUITY</b>		<u>\$ 47,044</u>	<u>\$ 52,660</u>
Going concern	1		
Commitments	18		
Contingencies	19		
Subsequent events	20		

On behalf of the Board of Directors:

"Edward A Sellers" (signed)

Edward A. Sellers, Interim President and  
Chief Executive Officer

"Victor Flores" (signed)

Victor Flores, Non-Executive Director

The accompanying notes are an integral part of these unaudited condensed consolidated interim financial statements.

# LYDIAN INTERNATIONAL LIMITED

## CONDENSED CONSOLIDATED INTERIM STATEMENTS OF LOSS AND COMPREHENSIVE LOSS (UNAUDITED)

(expressed in thousands of US Dollars)

		For the three months ended March 31,	
	Note	2020	2019
Interest income		\$ 7	\$ 26
<b>Total income</b>		<u>7</u>	<u>26</u>
Dislocation-related expense	14	16,687	21,702
Employee salaries and benefits expense	15	290	1,045
General and administrative expense		386	503
Depreciation and amortization expense		42	18
Gain on financial instruments fair value, net		-	(6,345)
Impairment of mineral property	6	-	28,000
Other expense, net		366	165
<b>Total expense</b>		<u>17,771</u>	<u>45,088</u>
<b>Loss before income taxes</b>		(17,764)	(45,062)
Income taxes		4	-
<b>Net loss</b>		<u>\$ (17,768)</u>	<u>\$ (45,062)</u>
<b>Net loss per share - basic and diluted</b>	16	<u>\$ (0.02)</u>	<u>\$ (0.06)</u>
<b>Other comprehensive loss:</b>			
Net loss		\$ (17,768)	\$ (45,062)
Other comprehensive income (loss):			
Currency translation adjustment		26	34
<b>Total comprehensive loss</b>		<u>\$ (17,742)</u>	<u>\$ (45,028)</u>

The accompanying notes are an integral part of these unaudited condensed consolidated interim financial statements.

# LYDIAN INTERNATIONAL LIMITED

## CONDENSED CONSOLIDATED INTERIM STATEMENTS OF CASHFLOWS (UNAUDITED)

(expressed in thousands of US Dollars)

	Note	For the three months ended March 31,	
		2020	2019
<b>Cash from operating activities</b>			
Net loss		\$ (17,768)	\$ (45,062)
<i>Adjustments for:</i>			
Interest and other financing costs		12,863	16,614
Gain on financial instruments at fair value, net		-	(6,345)
Share-based compensation	13	(51)	122
Impairment of mineral property	6	-	28,000
Loss on disposal of plant and equipment	6	134	-
Depreciation and amortization expense		928	1,582
Interest income		(7)	(26)
Other		22	278
<i>Working capital changes:</i>			
Change in other current assets		-	(870)
Change in accounts payable and accrued liabilities		890	(1,516)
<b>Cash used in operations</b>		<b>(2,989)</b>	<b>(7,223)</b>
<b>Cash flows from investing activities</b>			
Acquisition of mineral property, plant and equipment		-	(1,846)
Change in other assets		(289)	4,124
Interest income received		7	26
Other		-	-
<b>Cash (used in) provided by investing activities</b>		<b>(282)</b>	<b>2,304</b>
<b>Cash flows from financing activities</b>			
Proceeds from borrowings	8	1,507	7,000
Financing costs		230	(238)
Debt repayments	4	(1,012)	-
Decrease in restricted cash	4	1,012	-
Other		(15)	(69)
<b>Cash provided by financing activities</b>		<b>1,722</b>	<b>6,693</b>
Net (decrease) increase in cash and cash equivalents		(1,549)	1,774
Foreign exchange effect on cash		5	32
Cash and cash equivalents, beginning of period		3,221	3,386
<b>Cash and cash equivalents, end of period</b>		<b>\$ 1,677</b>	<b>\$ 5,192</b>

The accompanying notes are an integral part of these unaudited condensed consolidated interim financial statements.

# LYDIAN INTERNATIONAL LIMITED

## CONDENSED CONSOLIDATED INTERIM STATEMENTS OF CHANGES IN EQUITY (UNAUDITED)

(expressed in thousands of US Dollars)

	Reserves					Accumulated deficit	Total
	Share Capital	Employee share option plan reserve	Restricted stock unit plan reserve	Translation of foreign operations			
<b>Balance as of December 31, 2018</b>	\$ 284,924	\$ 2,586	\$ 2,183	\$ (18,479)	\$ (225,746)	\$ 45,468	
Issue of new shares	-	-	-	-	-	-	
Share based compensation	-	-	122	-	-	122	
Attributable to expired options	-	(899)	-	-	899	-	
Comprehensive loss	-	-	-	34	(45,062)	(45,028)	
<b>Balance as of March 31, 2019</b>	\$ 284,924	\$ 1,687	\$ 2,305	\$ (18,445)	\$ (269,909)	\$ 562	
<b>Balance as of December 31, 2019</b>	\$ 286,074	\$ 355	\$ 992	\$ (18,479)	\$ (610,890)	\$ (341,948)	
Share based compensation	-	-	(51)	-	-	(51)	
Comprehensive loss	-	-	-	26	(17,768)	(17,742)	
<b>Balance as of March 31, 2020</b>	\$ 286,074	\$ 355	\$ 941	\$ (18,453)	\$ (628,658)	\$ (359,741)	

The accompanying notes are an integral part of these unaudited condensed consolidated interim financial statements.

# LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

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## 1. GENERAL INFORMATION AND GOING CONCERN

Lydian International Limited (“Lydian”) is a corporation continued under the laws of Jersey effective on December 12, 2007 (formerly existing under the laws of Alberta, Canada). The registered office address of Lydian is Bourne House, 1st Floor, Francis Street, St Helier, Jersey JE2 4QE Channel Islands. Lydian’s ordinary shares (“Ordinary Shares”) were listed on the Toronto Stock Exchange (“TSX”) and began trading under the symbol LYD on January 10, 2008.

Lydian, together with its subsidiaries (the “Company”), is a gold development company, focusing on construction at its 100%-owned Amulsar Gold Project (“Amulsar”), located in south-central Armenia. Development at Amulsar is being conducted under the Mining Right (“Mining Right”) issued by the Republic of Armenia in May 2016. Construction has been suspended due to actions and inactions of the Government of Armenia that, among other things, have permitted illegal blockades and prevented access to Amulsar since June 2018.

On December 23, 2019, Lydian filed for protection under the Canadian Companies’ Creditors Arrangement Act (“CCAA”) and was granted protection pursuant to an order of the Ontario Superior Court of Justice (the “Court”). Alvarez & Marsal Canada Inc. is acting as the Court appointed monitor. Subsequently, trading of the Company’s Ordinary Shares was halted and a de-listing review by the TSX was initiated. This review resulted in the TSX deciding to delist the Company’s Ordinary Shares on February 5, 2020. While under CCAA protection, creditors and others are stayed from enforcing any rights against Lydian. It is not possible to predict the outcome of matters related to the CCAA proceedings. On March 12, 2020, the Company announced the resignation of a majority of its directors and of its Chief Financial Officer. As a result of the CCAA proceedings and other factors outlined below, a material uncertainty exists that cast significant doubt of Lydian’s ability to continue as a going concern.

In conducting development activities in Armenia, the Company is subject to considerations and risks not typically associated with companies operating in Jersey, the United Kingdom, or Canada. These include but are not limited to risks such as non-enforcement of the rule of law, and political, economic, and legal environments in emerging markets. The Company’s results and prospects have been and continue to be adversely affected by changes in political and social conditions, adverse governmental policies specific to Lydian, mining laws and regulations, currency conversion, remittance abroad, rates and methods of taxation, and other factors.

These unaudited interim condensed consolidated financial statements were prepared on a going concern basis that assumes the Company continues and will be able to realize its assets and discharge its liabilities in the normal course of business. As disclosed in the Company’s audited financial statements, management’s discussion and analysis and Annual Information Form for the year ended December 31, 2019 (the “2019 Public Filings”), blockades continue at the Amulsar Project site, having been in place since June 22, 2018. In addition, the Company continues to face challenges in obtaining operational support from the Government of Armenia in the form of permits and the enforcement of court orders. As a result of the actions and inactions of the Government of Armenia, the Company has fully written off the carrying value of its investment in development assets at Amulsar as at December 31, 2019.

The Company’s ability to continue as a going concern is dependent upon the Government of Armenia resolving the disputes it has created with the Company and making the Company whole. It will also be necessary for the Company to obtain additional funding from its senior lenders, or other lenders until a strategic alternative can be arranged, if at all, or to support the Company’s legal alternatives. Dislocation-related expenses will continue to be incurred until the illegal blockades are removed and unrestricted access for all purposes is available to

# LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

the Company. Should the Company gain access to the Amulsar site, it anticipates that additional time and funding will be needed for site restoration, sourcing of financing, if available, for completing construction and working capital until positive cash flows from operations can be achieved.

On March 11, 2020, while continuing under CCAA protection, the Court authorized the Company to obtain debtor-in-possession financing (the "DIP Facility") from the Company's existing senior secured lenders: Orion CO IV (ED) Limited, Resource Capital Fund VI L.P. and Osisko Bermuda Limited (the "DIP Lenders"). The DIP Facility was provided under the Company's existing Term B Facility, in order to continue operations to April 30, 2020. Upon the expiry of that period, the Court granted a stay extension until June 30, 2020, during which time, the DIP Lenders have agreed to extend the DIP Facility, subject to the Company submitting an Exit Plan acceptable to a majority of the DIP Lenders by May 21, 2020. While under CCAA protection, Lydian continues to engage with its senior lenders, stream financing providers, and equipment financiers to seek continuing funding for a range of strategic, financing, and legal alternatives.

There can be no assurance that an acceptable Exit Plan will be negotiated or that adequate financing will be available when needed at commercially acceptable terms and that the Company will ultimately be able to generate sufficient positive cash flow from operations, find an acceptable strategic alternative, or fund a legal alternative. Furthermore, there are no assurances of future forbearances or lenders not demanding repayment and exercising security rights under the respective credit agreements. These circumstances indicate the existence of material uncertainties that create significant doubt as to the Company's ability to meet its obligations when due, and accordingly, continue as a going concern. These factors may result in partial or full loss of the assets of the Company. As such, these unaudited interim condensed consolidated financial statements do not reflect the adjustments to the carrying values of assets and liabilities that would be necessary if the Company were unable to obtain adequate financing.

## 2. BASIS OF PRESENTATION, CRITICAL ACCOUNTING JUDGMENTS AND KEY ESTIMATION UNCERTAINTIES

### Statement of compliance

These financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS"), including International Accounting Standard ("IAS") 34, *Interim Financial Reporting*. The accounting policies applied in these unaudited interim condensed consolidated financial statements are consistent with those used in the Company's audited consolidated financial statements for the year ended December 31, 2019. Copies of the Company's 2019 Public Filings can be found at: [www.sedar.com](http://www.sedar.com).

The preparation of unaudited interim condensed consolidated financial statements requires management to make judgements, estimates, and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income, and expense. In management's opinion, all adjustments considered necessary for a fair presentation have been included in these unaudited interim condensed consolidated financial statements. Interim results are not necessarily indicative of the results expected for the financial year. Actual annual results may differ from interim estimates. The significant judgements made by management applied in the preparation of these unaudited interim condensed consolidated financial statements are consistent with those applied and disclosed in the Company's audited consolidated financial statements for the year ended December 31, 2019. For a description of the Company's critical accounting estimates and assumptions, please refer to the Company's audited consolidated financial statements and related notes for the year ended December 31, 2019.

## LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

### 3. NEW ACCOUNTING PRONOUNCEMENTS

There have been no new IFRS accounting pronouncements effective for periods beginning on or after January 1, 2020 which are applicable to the Company. The Company adopted IFRS 16, *Leases* as of January 1, 2019.

### 4. RESTRICTED CASH

As of December 31, 2019, the Company held \$1.0 million of restricted cash related to the Ameriabank Term Facility. This cash was restricted until expenditures to purchase equipment for Amulsar were acceptable to the lender.

The Company's Forbearance Agreement for the Ameriabank Term Facility expired on December 20, 2019. In an amendment to the Ameriabank loan covenant, a principle and interest payment which had been due on July 1, 2019 was postponed to January 8, 2020. On January 9, 2020, Ameriabank swept the cash accounts of the Company and applied the monies towards the Ameriabank Term Facility. The sweep included \$1.0 million of restricted cash and a nominal amount from the Company's cash account.

### 5. OTHER CURRENT ASSETS

	As of	
	March 31, 2020	December 31, 2019
Deferred VAT receivable	\$ 13,368	\$ 13,442
Advances to vendors and other receivables	444	510
Refundable VAT	53	1,070
Government receivables	7	173
Other	70	69
	<u>\$ 13,942</u>	<u>\$ 15,264</u>

Deferred value added tax ("VAT") is associated with the import of equipment into Armenia. The applicable regulations allow the Company to defer VAT payments for up to three years from the date of import. The deferred VAT payable has an equal and offsetting deferred VAT receivable. The deferred VAT receivable will become recoverable upon the Company meeting certain conditions or the export of a finished product.

## LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

### 6. MINERAL PROPERTY, PLANT AND EQUIPMENT, NET

	Plant and Equipment			
	Development Assets	Cost	Accumulated Depreciation	Total
<b>Cost</b>				
Balance as of December 31, 2018	\$ 304,531	\$ 61,127	\$ (9,825)	\$ 355,833
Impairment	(297,507)	(24,634)		(322,141)
Adjustments and additions	(6,934)	920	6,743	729
Disposals	(90)	(172)	127	(135)
Depreciation and amortization	-		(6,293)	(6,293)
Balance as of December 31, 2019	\$ -	\$ 37,241	\$ (9,248)	\$ 27,993
Impairment	-	-		-
Adjustments and additions	-	-		-
Disposals	-	(231)	97	(134)
Depreciation and amortization	-	-	(928)	(928)
Balance as of March 31, 2020	\$ -	\$ 37,010	\$ (10,079)	\$ 26,931

In accordance with the Company's accounting policy, non-current assets, including the Amulsar development asset, are reviewed at each reporting date to determine whether there are any indicators of impairment. An impairment is recognized when the carrying amount exceeds the recoverable amount.

At December 31, 2019, the Company determined that the recoverable amount of the Amulsar Gold Project was less than the carrying value. For the impairment, the Company separately evaluated what it considers to be its significant saleable fixed assets: the Mine Fleet and the Mine Camp. The Company concluded that the equipment finance loan value from CAT Finance approximated the recoverable value of its fleet of large-scale vehicles and mining equipment manufactured by Caterpillar of \$26.0 million. Furthermore, the Company concluded that the recoverable value of the Mine Camp was its salvage value of \$1.7 million. The Company has not made any updated estimates of the recoverable value of the Mine Fleet or Mine Camp.

During the first quarter of 2020, the Company closed its Denver office and disposed of all related furniture and fixtures.

### 7. OTHER NON-CURRENT ASSETS

	As of	
	March 31, 2020	December 31, 2019
Deferred VAT receivable	\$ 102	\$ 723
Refundable VAT	2,832	3,096
Restricted reclamation deposit	1,556	1,348
	\$ 4,490	\$ 5,167

According to the Mining Right, Lydian Armenia CJSC ("Lydian Armenia") is required to make installment payments to the Armenian Government as a guarantee for post mining rehabilitation and government monitoring. These rehabilitation deposits will be refunded to the Company after the Armenian Government accepts the post mine closure rehabilitation work.

## LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

### 8. STREAM LIABILITY AND DEBT

	Stream Liability	Term Facilities	Equipment Financing	Total
Balance as of December 31, 2018	\$ 78,473	\$ 141,366	\$ 77,191	\$ 297,030
Proceeds from borrowings	-	9,074	-	9,074
Financing Costs	-	(300)	-	(300)
Accrued interest	8,872	19,244	7,407	35,523
Amortization of financing costs	295	11,404	4,352	16,051
Debt payments	-	-	(3,000)	(3,000)
Balance as of December 31, 2019	\$ 87,640	\$ 180,788	\$ 85,950	\$ 354,378
Proceeds from borrowings	-	1,507	-	1,507
Financing Costs	-	-	-	-
Accrued interest	2,199	5,843	1,697	9,739
Amortization of financing costs	74	1,489	567	2,130
Debt payments	-	-	(1,012)	(1,012)
Balance as of March 31, 2020	\$ 89,913	\$ 189,627	\$ 87,202	\$ 366,742

As of March 31, 2020, the Company was in default of certain loan provisions contained in the Stream Agreement, the Term Facility and equipment financing facilities. As such, the stream, debt and associated derivatives are classified as current.

#### Amendments to the Term Facility

##### *Sixteenth Amendment to the Term Facility ("Sixteenth Amending Agreement")*

On March 10, 2020, the Company entered into the Sixteenth Amending Agreement whereby the Company's senior lenders agreed to provide funding to the Company by way of new post-filing advances under the Term Facility B to fund certain obligations in connection with the CCAA proceedings. This financing, referred to as the "DIP Facility", provided for funding up to a maximum of \$2.4 million less the amount, if any, received by the Company in the ordinary course of its operations or as a result of any extraordinary transaction, including proceeds of any asset sales or VAT refunds). At March 31, 2020, draws under the DIP Facility totaling \$1.5 million had been received.

For additional information regarding the Company's financing arrangements in effect prior to the first quarter of 2020, please refer to the Company's 2019 Public Filings which can be found at: [www.sedar.com](http://www.sedar.com).

### 9. FINANCIAL INSTRUMENTS

The Company's valuation of financial instruments at December 31, 2019 has not been updated for purposes of these unaudited condensed consolidated interim financial statements. For additional information regarding the Company's financial instruments, including the stream liability, debt and derivatives, please refer to the Company's 2019 Public Filings which can be found at: [www.sedar.com](http://www.sedar.com).

# LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

## 10. PROVISIONS

### Current – Contract closure provision

In November 2019, the Company entered into a settlement to resolve a dispute relating to cancellation of a long-term rental contract for employee accommodation in Jermuk, Armenia. The agreement provided for an immediate payment of \$0.2 million and a final payment on June 30, 2020, of \$1.27 million.

### Noncurrent – Reclamation provision

The provision for reclamation represents the present value of estimated future outflow of economic benefits that will be required to restore and rehabilitate Amulsar. The provision recognized as of March 31, 2020 relates only to the rehabilitation of Amulsar mine areas affected by exploration and development activities.

Balance as of December 31, 2018	\$	8,137
Change in estimate		(3,301)
Change in timing of cashflows		(1,161)
Change in inflation rate		(1,272)
Accreting and unwinding of discount		716
Foreign currency exchange		61
Balance as of December 31, 2019	\$	3,180
Foreign currency exchange		9
Balance as of March 31, 2020	\$	3,189

The Company's provisions reported at December 31, 2019 have not been updated for purposes of these unaudited condensed consolidated interim financial statements. For additional information regarding the Company's contract closure and reclamation provisions, please refer to the Company's 2019 Public Filings which can be found at: [www.sedar.com](http://www.sedar.com).

## 11. LEASE LIABILITIES

	As of	
	March 31, 2020	December 31, 2019
Opening balance	\$ 249	\$ -
Additions under adoption of IFRS 16	-	423
Lease payments	(107)	(233)
Amortization of discount	9	56
Foreign currency exchange	(7)	3
	<u>\$ 144</u>	<u>\$ 249</u>

On adoption of IFRS 16 on January 1, 2019, the right-of-use assets were measured at an amount equal to the lease liability, adjusted for lease deposits and accrued rent.

The current and noncurrent lease liabilities are shown in the table below:

	As of	
	March 31, 2020	December 31, 2019
Current portion of lease liability	\$ 109	\$ 182
Non-current portion of lease liability	35	67
Total lease liabilities	<u>\$ 144</u>	<u>\$ 249</u>

## LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

The table below analyzes the Company's lease liabilities into relevant contractual maturity date groupings based on the remaining period from March 31, 2020 to the contractual maturity date of the lease. The amounts shown in the table below are the contractual undiscounted cash flows related to lease liabilities.

	Less than 6 Months	6 months to 1 year	1 year to 2 years	2 years to 5 years	Total Contractual Cash Flows	Carrying amount
Lease liabilities	\$ 65	\$ 65	\$ 73	\$ -	\$ 203	\$ 144

The difference between the total contractual undiscounted cash flows related to lease payments to vendors and lessors and the carrying amount of the lease liability is the discount related to the lease liability.

### 12. SHARE CAPITAL

Share capital consists of one class of fully paid Ordinary Shares, with no par value. The Company is authorized to issue an unlimited number of Ordinary Shares. All shares are equally eligible to receive dividends and repayment of capital and represent one vote at the Company's shareholders' meetings.

	Number	Value
Shares outstanding, December 31, 2018	756,168,533	\$ 284,924
Shares issued under RSU Plan	3,848,488	1,150
Shares outstanding, December 31, 2019 and March 31, 2020	760,017,021	\$ 286,074

The Company's warrants as of March 31, 2020 consist of Forbearance Warrants which expire on July 8, 2024. The total outstanding warrants are shown below:

	Number of Warrants	Exercise Price (CAD)
Balance as of December 31, 2018	5,000,000	\$ 0.39
Issued	27,782,460	\$ 0.15
Expired	(5,000,000)	\$ (0.39)
Balance as of December 31, 2019 and March 31, 2020	27,782,460	\$ 0.15

### 13. SHARE-BASED COMPENSATION

#### Restricted Stock Unit Plan

On June 23, 2016, the shareholders approved the Company's Restricted Stock Unit ("RSU") Plan. Under the RSU Plan, awards can be either cash or equity settled upon vesting at the discretion of the Board of Directors. As the Company does not have a present obligation to settle in cash, the awards are treated as equity settled instruments and measured at fair value at the date of grant and recorded in equity. The associated

## LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

compensation cost is recorded in share-based compensation expense unless directly attributable to development assets.

The following table summarizes the outstanding restricted share units under the employee RSU Plan:

	Number of RSUs	Weighted Average	
		Award Price (CAD)	
Balance as of December 31, 2018	10,447,368	\$	0.40
Forfeited/Expired	(2,624,170)	\$	0.41
Redeemed	(3,848,488)	\$	0.40
Balance as of December 31, 2019	3,974,710	\$	0.39
Forfeited/Expired	(918,010)	\$	0.31
Balance as of March 31, 2020	3,056,700	\$	0.44

### Stock Option Plan

	Number of Options	Weighted Average	
		Exercise Price (CAD)	
Balance as of December 31, 2018	5,300,000	\$	0.84
Expired	(3,670,000)	\$	0.98
Balance as of December 31, 2019 and March 31, 2020	1,630,000	\$	0.52

The following summarizes the outstanding and exercisable share options under the employee share option plan as of March 31, 2020:

Range of exercise prices	Outstanding and exercisable options		
	Number outstanding	Weighted average remaining life (years)	Weighted average exercise price (CAD)
(CAD\$0-\$1.00)	1,630,000	0.21	\$ 0.52

For share-based compensation during the three months ended March 31, 2020 and 2019, \$nil and \$0.1 million were included in employee benefits expense. For the same periods, \$nil and \$nil were capitalized to development assets and \$nil and \$nil were included in dislocation-related expenses, respectively.

## 14. DISLOCATION-RELATED EXPENSES

Following the change in the Government of Armenia in May 2018, demonstrations and road blockades occurred sporadically throughout the country. These protests primarily targeted the mining sector, including the Amulsar Gold Project. Access to Amulsar has been blocked since June 2018. During the three months ended March 31, 2020 and 2019, dislocation-related expenses consisted of the following:

## LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

	For the three months ended March 31,	
	2020	2019
Interest and financing costs	\$ 12,148	\$ 16,364
Depreciation and accretion	1,084	1,781
Other (indirects/site G&A)	714	1,483
Labor costs	699	1,035
Legal and consulting	2,042	1,039
	<u>\$ 16,687</u>	<u>\$ 21,702</u>

The Company has incurred dislocation-related expenses totaling \$136.3 million since June 2018.

### 15. EMPLOYEE SALARIES AND BENEFITS EXPENSE

	For the three months ended March 31,	
	2020	2019
Salaries and other compensation	\$ 290	\$ 965
Share-based compensation	-	80
	<u>\$ 290</u>	<u>\$ 1,045</u>

### 16. NET LOSS PER SHARE

	For the three months ended March 31,	
	2020	2019
Net loss	\$ (17,768)	\$ (45,062)
Weighted average shares - basic and dilutive	760,017,021	756,168,533
Net loss per share - basic and dilutive	\$ (0.02)	\$ (0.06)

The treasury stock method assumes that all stock options and restricted stock units have been converted in determining fully diluted profit (loss) per share if they are in the money, except when such conversion is anti-dilutive.

### 17. RELATED PARTY TRANSACTIONS

The parent and ultimate controlling party of the Company is Lydian International Limited. No individual party had overall control of the Company during the periods being presented. Transactions between the Company and its subsidiaries, which are related parties of the Company, have been eliminated on consolidation and are not disclosed in this note. Details of transactions between the Company and other related parties are disclosed below.

Related party transactions primarily consist of compensation paid to members of the Board and executive management personnel. The compensation is comprised of Board fees, employee salaries, share-based long-term incentive plans, employee benefits and pension costs. One member of the Board has a contractual entitlement with the Company for payment of the remainder due of an annual retainer in the event the director's appointment is terminated other than for cause. None of the Board members are entitled to any other termination benefits, nor are they entitled to pension benefits.

# LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

Compensation awarded to key management was as follows:

	For the three months ended March 31,	
	2020	2019
Salaries and other compensation	\$ 365	\$ 2,585
Share-based compensation	-	133
	<u>\$ 365</u>	<u>\$ 2,718</u>

On August 9, 2019, a non-material subsidiary of the Company entered into a one-year, interest free loan for \$0.1 million with a party related to a member of executive management. As of March 31, 2020, the loan is classified as accounts payable and other current liabilities.

## 18. COMMITMENTS

### Construction contracts

The Company had entered into various contracts for purchase of equipment and supply, construction, and other service associated with Amulsar. Due to the blockades, all the construction contractors were terminated or suspended.

### Leases

#### *Land Leases*

The Company has multiple contracts for land use related to non-regenerative minerals at its Amulsar Gold Project which are outside of the scope of IFRS 16, *Leases*. The contracts are with three communities, Zaritap, Gorayq and Jermuk. All the contracts are either within close proximity to the mine site, or within the rock allocation area. These lands are necessary for the exploration or extraction of the mineralization at Amulsar. As March 31, 2020, the Company had \$10.3 million in land use obligations, of which \$0.9 million are due in under one year, \$3.4 million in more than one year, but less than five years, and \$6.0 million in more than five years.

#### *Software Leases*

The Company leases its accounting software through a software-as-a-service contract which is outside the scope of IFRS 16, *Leases*. The lease is \$0.04 million a year and expires in March 2022.

### Rehabilitation payments

In May 2016, Lydian Armenia signed an amended Mining Right with the Ministry of Energy, Infrastructure and Natural Resources of Armenia. Under the agreement, Lydian Armenia previously made payments to the Armenian Government as a guarantee for post-mining environmental rehabilitation and for ongoing monitoring. The amounts paid represented 15% of the contractual obligation. The remainder of the rehabilitation guarantee will be paid in equal installments of AMD 121.9 million, or \$0.3 million, over thirteen years commencing in 2016. In addition, Lydian Armenia is committed to invest annually AMD 61.0 million, or \$0.1 million, after mine closure for workforce social mitigation and AMD 61.5 million, or \$0.1 million, for adjacent communities' social-economic development. The rehabilitation guarantee (a.k.a., restricted reclamation deposit) will be refunded to the Company after mine closure when rehabilitation is completed and accepted by the Armenian Government.

# LYDIAN INTERNATIONAL LIMITED

NOTES TO THE CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

For the three months ended March 31, 2020 and 2019

(expressed in thousands of US Dollars, unless otherwise stated)

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## 19. CONTINGENCIES

### Contingent quarterly payment

On April 23, 2010, the Company purchased all of Newmont's interests in the Company's joint venture which included Newmont's interests in the Amulsar Gold Project. A portion of the consideration included a 3% net smelter royalty ("NSR"). However, as provided for in the purchase agreement, on April 9, 2018 Lydian exercised its option to terminate the 3% NSR and in lieu thereof, elected the quarterly payment option to pay Newmont the aggregate sum of \$20.0 million, without interest, in 20 equal quarterly installments of \$1.0 million each, commencing on the first day of the third calendar month following the start of commercial production. On July 3, 2018, Maverix Metals Inc. acquired the NSR from Newmont. These potential payments do not meet the definition of an obligation as the triggering event had not occurred as of March 31, 2020 and, therefore, are not recognized in the unaudited condensed consolidated interim financial statements.

### Taxes

The taxation system in Armenia is relatively new and is characterized by frequently changing legislation, which is often subject to interpretation. Often differing interpretations exist among various taxation authorities and jurisdictions. Taxes are subject to review and investigations by the tax authorities, which are enabled by law to impose severe fines and penalties.

These facts may create substantially more tax risks in Armenia than in other developing countries. The Company believes that it has adequately provided for tax liabilities based on its interpretation of tax legislation, however, the relevant authorities may have differing interpretations and the effects could be significant.

### Environmental matters

The Company is of the opinion that it has met the Government of Armenia's requirements concerning environmental matters and, therefore, believes that the Company has adequately provided for environmental liabilities. However, environmental legislation in Armenia is in the process of development and potential changes in the legislation and its interpretation may give rise to material liabilities in the future.

## 20. SUBSEQUENT EVENTS

Subsequent to March 31, 2020, the Company was advanced an additional \$1.7 million in DIP loan financing under the Sixteenth Amending Agreement. The term of the Sixteenth Amending Agreement provided funding up to April 30, 2020.

On April 30, 2020, the Court granted an extension of the existing stay of enforcement and the CCAA proceedings until June 30, 2020.

### *Seventeenth Amendment to the Term Facility ("Seventeenth Amending Agreement")*

In April 2020, the Company entered the Seventeenth Amending Agreement dated April 29, 2020, effective April 30, 2020. In accordance with this agreement, the DIP Lenders agreed to provide funding to the Company by way of additional post-filing advances under the Term Facility B to fund certain obligations in connection with the CCAA proceedings. This DIP Facility financing provides for funding up to a maximum of \$4.2 million less the amount, if any, received by the Company in the ordinary course of its operations or as a result of any extraordinary transaction (including proceeds of any asset sale or VAT refund). The term of the Seventeenth Amending Agreement provides for funding up to June 30, 2020, subject to the Company submitting an Exit Plan acceptable to a majority of DIP Lenders by May 21, 2020. The Company remains in discussion with its DIP Lenders regarding a draft Exit Plan provided to the DIP Lenders prior to May 21, 2020.

\$	June 30, 2020	Impact of restruc			
		37	38(a)	38(b)	38(c)
<b>Investments</b>					
Investment in Lydian Canada (shares issued)	-	-	-	-	-
Investment in Lydian US Corp (capital)	-	-	-	-	17,279
	-	-	-	-	<b>17,279</b>
<b>Current assets</b>					
<b>Cash &amp; cash equivalents</b>					
Scotiabank - USD	466	-	-	-	-
Scotiabank - CAD	141	-	-	-	-
Scotiabank - EUR	145	-	-	-	-
Funds with Monitor	517,051	1,866,000	-	-	-
	<b>517,803</b>	<b>1,866,000</b>	-	-	-
<b>Accounts Receivable</b>					
<b>Intercompany Receivables</b>					
Lydian US Corp	12,694,032	-	(3,372,612)	(9,304,141)	(17,279)
Lydian Armenia	181,818,992	(1,866,000)	3,372,612	-	-
Georgia Resource	2,799,000	-	-	-	-
Lydian Canada	1,000	-	-	-	-
Lydian UK	1,000	-	-	-	-
	<b>197,314,024</b>	<b>(1,866,000)</b>	-	<b>(9,304,141)</b>	<b>(17,279)</b>
Other Receivables	36,510	-	-	-	-
Other Deposits	1,730	-	-	-	-
	<b>38,240</b>	-	-	-	-
<b>Current Liabilities</b>					
Trade Payables	(517,000)	-	-	-	-
Intercompany Payables					
Lydian US Corp	(9,304,141)	-	-	9,304,141	-
	<b>(9,821,141)</b>	-	-	<b>9,304,141</b>	-
<b>Net assets / (liabilities)</b>					
	<b>188,048,926</b>	-	-	-	<b>(0)</b>
<b>Capital &amp; reserves</b>					
Share capital	286,073,774	-	-	-	-
Share Option Plan Reserve	355,752	-	-	-	-
Restricted Stock Unit Reserve	939,957	-	-	-	-
Retained earnings	(99,320,558)	-	-	-	-
<b>Net assets / (liabilities)</b>					
	<b>188,048,926</b>	-	-	-	-

ating steps so far implemented as outlined in paragraphs 36 to 38 of the representation

38(d)	38(e)	38(f)	38(g)	38(h)	38(i)	38(j)
-	185,191,604	-	-	-	(185,191,604)	-
-	-	-	-	-	-	-
-	<b>185,191,604</b>	-	-	-	<b>(185,191,604)</b>	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
1,866,000	(185,191,604)	(2,799,000)	(1,000)	-	-	(1,000)
-	-	-	-	-	-	-
-	-	-	-	-	-	-
<b>1,866,000</b>	<b>(185,191,604)</b>	<b>(2,799,000)</b>	<b>(1,000)</b>	-	-	<b>(1,000)</b>
-	-	-	-	-	-	-
-	-	-	-	-	-	-
(1,866,000)	-	-	-	-	-	-
-	-	-	-	-	-	-
<b>(1,866,000)</b>	-	-	-	-	-	-
-	-	<b>(2,799,000)</b>	<b>(1,000)</b>	-	<b>(185,191,604)</b>	<b>(1,000)</b>
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	(2,799,000)	(1,000)	-	(185,191,604)	(1,000)
-	-	<b>(2,799,000)</b>	<b>(1,000)</b>	-	<b>(185,191,604)</b>	<b>(1,000)</b>

39(a)	Post restructuring position	Post-Implementation Date Expenses paid	Bank charges	Accrued Monitor & lease costs
(17,279)	-	-	-	-
<b>(17,279)</b>	-	-	-	-
	466		(466)	
	141		(141)	
	145		(145)	
	<b>2,383,051</b>	<b>(1,156,551)</b>		
-	<b>2,383,803</b>	<b>(1,156,551)</b>	<b>(752)</b>	-
	-			
	-			
	-			
	-			
-	-	-	-	-
	36,510			(36,510)
	1,730			(1,730)
-	<b>38,240</b>	-	-	<b>(38,240)</b>
	(2,383,000)	1,156,551		
	-			
-	<b>(2,383,000)</b>	<b>1,156,551</b>	-	-
<b>(17,279)</b>	<b>39,043</b>	-	<b>(752)</b>	<b>(38,240)</b>
	286,073,774			
	355,752			
	939,957			
(17,279)	<b>(287,330,441)</b>		(752)	(38,240)
<b>(17,279)</b>	<b>39,043</b>	-	<b>(752)</b>	<b>(38,240)</b>

Current position	
-	-
-	-
-	-
-	-
-	-
1,226,500	1,226,500
1,226,500	1,226,500
-	-
-	-
-	-
-	-
-	-
-	-
-	-
(1,226,449)	(1,226,449)
-	-
-	-
(1,226,449)	(1,226,449)
51	51
286,073,774	286,073,774
355,752	355,752
939,957	939,957
(287,369,432)	(287,369,432)
0	0
51	51

**Lydian International Limited (the "Company")  
List of Creditors  
As at July 6, 2020, just prior to Plan implementation**

**Please note the following:**

1. This list of creditors has been prepared from information contained in the books and records of the Company
2. The amounts included in this list of creditors do not take into consideration any un-invoiced amounts, nor have the amounts been adjusted for any amounts that may also be receivable from
3. This list of creditors has been prepared without admission as to the liability for, or quantum of, any of the amounts shown.
4. Amounts owing to various government agencies, if any, are unknown at this time.

CREDITOR NAME	ADDRESS	CITY	PROVINCE / STATE	POSTAL / ZIP	COUNTRY	CURRENCY	AMOUNT (\$)
<b>Unsecured Creditors</b>							
Stikeman Elliott LLP	5300 Commerce Court West 199 Bay Street	Toronto	Ontario	M5L 1B9	Canada	Canadian Dollar	218,706.59
Alvarez & Marsal Canada Inc.	200 Bay Street, Suite 2900	Toronto	Ontario	M5J 2J1	Canada	Canadian Dollar	68,897.50
Thornton Grout & Finnigan LLP	Toronto Dominion Centre, 100 Wellington St. W., Suite 3200	Toronto	Ontario	M5K 1K7	Canada	Canadian Dollar	50,081.60
Black Swan Advisors Inc.	155 Wellington St. W., Suite 4000	Toronto	Ontario	M5V 3J7	Canada	United States Dollar	400,000.00
BMO Nesbitt Burns Inc.	100 King St. W., 4th Floor	Toronto	Ontario	M5X 1H3	Canada	United States Dollar	500,000.00
Le Gallais Self Storage	37 Hलगrove St.,	St Helier		JE2 4SL	Jersey	British Pound	221.48
Dorsey and Whitney LLP	P.O. Box 1680	Minneapolis	Minnesota	55480-1680	United States	United States Dollar	4,871.50
Mourant Ozannes	22 Grenville Street	St Helier		JE4 8PX	Jersey	British Pound	32,151.76
Intrado Digital Media UK Limited	Unit 1 Sawmills End	Barnwood	Gloucester	GL4 3DL	United Kingdom	British Pound	1,960.00
Freshfields Bruckhaus	2 rue Paul Cezanne	Paris		75008	France	Euro	5,467.00



Tue 12/10/2019 8:53 AM

Chris Knight <chris@palladiumgroup.co.uk>

Suite 3, Bourne House - Rent Review

To  Kevin Haney

---

Dear Kevin,

We hope you are well.

We are writing to advise you that your monthly rental amount has been reviewed;

**Your current rent is: £470.00 pcm**

**Increase amount: £15.00**

**New monthly rent: £485.00 pcm**

Your new rental amount of **£485.00** effective from 1<sup>st</sup> March 2020 and monthly thereafter on the 1<sup>st</sup> of each calendar month.

We appreciate your continued tenancy with us here at Honeycomb Jersey and our very best wishes to you over the festive period.

Should you have any queries please do not hesitate to contact us.

Kind regards,

**Chris Knights**

Estate Manager



*Palladium Group | Bourne House | Francis Street | St Helier | Jersey | JE2 4QE*

Check out our new Palladium Group residential development - <https://thesoane.com>

Mobile: 07797 894401

Work: 01534 888554

JLCB/202914.94

Agreement for short term occupancy of a Studio at Bourne House,  
1<sup>st</sup> Floor, Francis Street, St Helier, Jersey, JE2 4QE.

## **1 PARTIES**

### **LANDLORD**

Zoarcas Investments Limited  
6 Esplanade  
St Helier  
Jersey  
JE2 3QA

### **TENANT**

Irina Moreno  
Lydian International  
Suite 3  
5-6 Esplanade  
St Helier  
Jersey  
JE2 3QA

## **2 DEMISED PREMISES AND DEPENDENT RIGHTS**

Studio (3) at Bourne House 1<sup>st</sup> Floor, Francis Street, St Helier, Jersey, JE2 4QE ("Property") as identified on the plan attached hereto as Schedule 1 together with the use of 2 desks and 2 chairs to be found in each Studio.

The Tenant may by prior agreement with the Landlord make use of the meeting room at 4 Wharf Street, St Helier.

The non exclusive right together with the Landlord and all those in right of the Landlord to use the lavatories and kitchen facilities at the Property

The Tenant shall have right of access at all times over the common areas forming part of the Property to come and go to Studio and the right to connect to all services in the Property for the benefit of the Studio.

## **3 TERM**

A term to commence from the [1<sup>st</sup> September 2017 ] (the "Commencement Date") and to terminate on the expiration of written notice of 3 calendar months to be given by the Landlord to the Tenant or the Tenant to the Landlord provided always that no such notice may be given before the expiration of 12 calendar months from the Commencement Date and accordingly without prejudice to the rights of the Landlord under Clause 12 the term shall be of a minimum length of 15 calendar months.

## **4 RENTAL**

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JLCB/202914.94

The sum of (£470.00) per calendar month is payable monthly in advance as to a first payment on the Commencement Date and there after monthly in advance on or before 1<sup>st</sup> each month. The tenant agrees to set up a standing order and pay the rent by standing order on the 1<sup>st</sup> of each month. There is a late payment fee of £35.00 should the rent be more than 7 days late. GST will be charged if applicable. The Tenant shall pay to the Landlord on the Commencement Date an amount equivalent to three months rent (£1410.00) which shall be held by the Landlord to be applied in discharge of any amount due by the Tenant to the Landlord under this agreement from time to time. In the event of a default by the Tenant in payment of any sum due to the Landlord and the Landlord having recourse to the Deposit Sum then without prejudice to any other right of the Landlord he may require the Tenant to pay such amount deducted from the Deposit Sum in order to re-establish the Deposit Sum in its full amount.

In the absence of such default or any sum being due and outstanding to the landlord, he shall repay the deposit sum or the balance thereof to the tenant within 30 days of the termination of the rental.

The rent will be reviewed annually on the first day of January of each year at the discretion of the Landlord. The first rent review to be on 1<sup>st</sup> January 2019

The Tenant will be responsible for all accounts for telephone services to the Studio and in the event that such services are invoiced to the Landlord the Tenant shall pay on demand to the Landlord the full cost of such service.

#### **5 RATES**

The Tenant will pay all occupiers rates in respect of the Studio or in the event that such rates are invoiced to the Landlord reimburse the Landlord on demand the full amount of such rates

#### **6 CLEANING AND DECORATION AND CHANGE TO THE UNIT**

The Tenant will clean the Studio on a regular basis and keep the Studio clutter free. There should not be any visible signs of litter from the exterior corridor. If the term hereby created shall extend to three years or longer before termination in accordance with Clause 3 shall on termination of the term redecorate the Studio to the same good standard of decoration as it is to be found in on the Commencement Date in a colour scheme to be determined by the Landlord.

The Tenant shall carry out no alteration or change whatsoever to the Studio or the Property. The Tenant cannot install a blind to the window at the front or rear of the office that lets natural light into the corridor marked yellow on the plan.

#### **7 USER**

The Tenant shall use the Studio solely for office and training purposes.

#### **8 ASSIGNMENT OR SUBLETTING**

The Tenant shall have no right to assign or sublet or otherwise part with possession of the whole or any part of the studio to any third party.

#### **9 DAMAGE**

The Tenant shall immediately and at the Tenant's own expense put right any damage to the Studio and/or the Property caused by the Tenant or any invitee of the Tenant.

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JLCB/202914.94

The Tenant will cause no nuisance or inconvenience to the Landlord or to any other tenant of occupier of any part of the Property.

**10 LANDLORDS OBLIGATIONS**

The Landlord shall keep the Property wind and watertight and in structural repair.

The Landlord shall keep the common areas of the Property (to include the lavatories and kitchen areas) lit heated and in clean condition

The Landlord will provide light and heat electricity and a telephone connection point to the Unit

**11 RESERVED RIGHTS**

The Landlord reserves right of access on to the Studio – subject to such prior notice as appropriate (save in the case of emergency when no notice shall be required) not to unreasonably interfere with the enjoyment by the Tenant of the studio to carry out any work to the Property which cannot otherwise be reasonably and practically carried out.

**12 BREACH**

In the event of the breach by the Tenant of any provision of this agreement the Landlord may without prejudice to its right to recover any sum due to it cancel the present agreement on notice of five working days and if so required in order to recover possession of the Studio seek an order from court of competent jurisdiction confirming the terminating of this tenancy and ordering possession of the Studio be given to the Landlord

**13. SIGNAGE**

Any signage on the exterior of the doors has to have landlord's permission and can be refused at the landlord's discretion.

**14. BLINDS**

The tenant can erect blinds but must have landlords consent. The blinds must be SILVER VENETIAN SLATTED BLINDS. These can be obtained from The Channel Blind Company Ltd. The reason for this is so all blinds look the same.

**15. CHECK OUT FEE**

On vacating all tenants will pay a sign out fee of £150.00, which will include admin, light redecoration and office clean.

02/08/17

**SIGNED BY THE PARTIES on the**

Signed for and on behalf of the Landlord

In the presence of

L1638662.2

The image shows two handwritten signatures. The top signature is written over a horizontal line and appears to be 'M. J. and'. The bottom signature is a cursive signature, likely of the witness.

JLCB/202914.94

Signed for and on behalf of the Tenant

In the presence of

Am M. Struff  
Joe Moreno

L1638662.2



Jersey Financial  
Services Commission  
*Companies Registry*

Stephen Alexander  
Mourant Ozannes  
22 Grenville Street  
St Helier  
Jersey  
JE4 8PX

Our Ref: MH/99477

22 July 2020

Dear Mr Alexander

**LYDIAN INTERNATIONAL LIMITED**

Thank you for your letter dated 16 March 2020, regarding the appointment of Alvarez & Marsal Canada Inc as monitor for the above named company. We placed a copy of your letter onto the private side of the company file.

I would also like to bring your attention to the new requirements set out in the control of borrowing consent issued to the company on 1 January 2017, please ensure that details of all controllers are filed on the central register of beneficial owner and/or controller by completing a BOC17 form via the Registry Easy Company Registry Portal.

Should you have any questions relating to the above, please do not hesitate to contact the Registry.

**For and on behalf of the Registrar**

Tel: +44 (0) 1534 822030

Email: [registry@jerseyfsc.org](mailto:registry@jerseyfsc.org)

**This document does not require a signature.**

Authentication ID  
b8ff21b3-fb27-4110-986d-4eeabb1b4d6b



2132

Personal data provided to the Commission - a data controller as defined in the Data Protection (Jersey) Law 2005 - will be used by the Commission to discharge its statutory, administrative and operational functions. Further information may be found in the Commission's Data Protection policy, copies of which are available on request from the Commission and which may also be found on [www.jerseyfsc.org](http://www.jerseyfsc.org)



**Yerevan city First Instance Court of General Jurisdiction**

**CLAIMANT:** **Edgar Vyacheslav Abrahamyan**  
ID card: 001341171 issued on December 27, 2012 by 004  
Registration address: 5, A.Aharonyan str., Apt.43, Qanaqer-Zeytun, Yerevan

Counsel for the Claimant: Yerem Gerasim Sargsyan  
Passport: AM 0381088 issued on July 18, 2011 by 013  
Address for notices: K.Ulnetsi 3<sup>rd</sup> alley., bld. 2, apt.26, Yerevan  
e-mail: [yerem.sargsyan@gmail.com](mailto:yerem.sargsyan@gmail.com)  
Tel: 094 40 74 05

**RESPONDENTS:** **Lydian Armenia, CJSC**  
Address: 26/1 V.Sargsyan Str., Yerevan city

**Lydian International Limited**  
Address: Bourne House 1<sup>st</sup> Floor, Francis Street, St Helier, Jersey, JE2 4QE Channel Islands

June 26, 2020

**STATEMENT OF CLAIM**

**For Compensation of Damages**

**Facts**

1.1. Lydian Armenia, Closed Joint-Stock Company (hereinafter referred to as the “Lydian Armenia”) (previously named Geoteam, Closed Joint-Stock Company) is a company incorporated and operating in the Republic of Armenia under an indirect corporate control of Lydian International Limited (hereinafter referred to as the “Lydian International”), listed at Toronto (Canada) Stock Exchange (hereinafter referred to as the “Stock Exchange”) within the period of 2008 - February 5, 2020). Lydian Armenia, incorporated in 2005, discovered a gold deposit at the Amulsar mountain area (hereinafter referred to as the “Amulsar”) during a large-scale geological prospecting and exploration works. Lydian Armenia holds a mining right for the operation of the Amulsar gold mine (hereinafter referred to as the “Amulsar Project”).

1.2. Both Lydian Armenia and Lydian International used to cover and represent the Amulsar Project in mass media as a one meeting the highest international standards and the RA laws with zero impact on local water resources (surface and underground), land, air and other receptors. For example,

- Here is the answer given by Stepanyan Armen, Sustainability Manager for Lydian Armenia, in his interview of April 2, 2018 when commenting on possible impact on the water quality, crop and population health in adjacent communities:

“...There will be no change in quality of the water resources, soil, air and other receptors if the mine is managed properly...the impact of modern mines must be zero.”<sup>1</sup>

And in his interview of May 5, 2018, the same Armen Stepanyan assured that all the operations and works at the Amulsar gold deposit meet the best international standards.<sup>2</sup>

- In his interview of August 6, 2014, Lydian Armenia’s Managing Director, Hayk Aloyan, guaranteed a full compliance of all the Armenian laws and even more, an application of the best international practices that includes but is not limited to the Performance Standards of the International Finance Corporation, which will make the Amulsar mine an exemplary one bringing considerable positive changes to the RA.<sup>3</sup>
- Chief Manager of Lydian International, Nerses Karamanukyan, said in his interview on November 29, 2012 that no impacts are expected on the surface and underground water during the Amulsar mine operation.<sup>4</sup>

Based on the above-mentioned and by crediting the statements made by representatives of Lydian Armenia and Lydian International (not limited by the above-mentioned and to be supplemented by many more materials for consideration of the court), as well as considering the fact that Lydian International was issuing shares at the Stock Exchange, 68 660 shares of the Lydian International were purchased by the Claimant, through Ameriabank, CJSC, who paid USD 22 580 – equivalent AMD amount.

1.3. But, in May 2018 anti-Amulsar protests were launched by residents of the mine-adjacent Jermuk town and Gndevaz village in Vayots Dzor of the RA, who were keeping the mine-accessing roads blocked and were impeding the construction of the Amulsar mine by Lydian Armenia. On May 29, 2018, a number of environmental organizations, experts and lawyers applied the Armenian Government with a request to revoke the Company’s permits for the operation of the mine based on the legal and professional grounds submitted by them previously for the purpose of terminating the Amulsar gold-bearing quartzite deposit development. They demanded new expertise/assessments for the Project in light of the newly discovered circumstances. Numerous gross mistakes, omissions and deficiencies of internal procedures, permitted by the Company during the permitting process<sup>5</sup>, were highlighted by the organizations and experts.

To resolve the situation, Lydian International and Lydian Armenia used to request the Armenian Government and Police to have the Amulsar-leading roads deblocked but on July 12, 2018 the RA Investigating Committee received an Amulsar-related letter from the Armenian Prime-Minister. Evidential materials were collected by the Major Cases Investigating Department of the RA Investigating Committee and on July 20, 2018 a criminal case was initiated into the offence under the RA Criminal Code’s article 282.1, namely a willful non-disclosure by the RA Environmental Ministry’s officials of the environmental pollution-related information concerning the Amulsar deposit development. The institution of the criminal case entailed a suspension of the Amulsar mine construction operations.

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<sup>1</sup> See Lydian Armenia’s official site at <https://www.lydianarmenia.am/index.php?m=newsOne&lang=arm&nid=168>

<sup>2</sup> See Lydian Armenia’s official site at <https://www.lydianarmenia.am/index.php?m=newsOne&lang=arm&nid=171>

<sup>3</sup> See Lydian Armenia’s official site at <https://www.lydianarmenia.am/index.php?m=newsOne&lang=arm&nid=58>

<sup>4</sup> See Lydian Armenia’s official site at <https://www.lydianarmenia.am/index.php?m=newsOne&lang=arm&nid=10>

<sup>5</sup> The letter is available at <https://ecolor.org/files/uploads/pdf/Namak%20himqer%20varchapetin%20Amulsari%20tsragiri%20dem29.05.2018/letteramulsar29052018.pdf>

To determine the Amulsar mine-caused environmental impacts (on soil, air, water, flora and fauna) and the reasonability of the impacts-preventing mitigation measures, as well as the scientific validation of the data presented in the Environmental Impact Assessment /EIA/, the Environmental and Social Impact Assessment /ESIA/, annexes and research studies of the Project and of the other significant evidence found during the criminal investigation, the RA Investigating Committee resolved on August 13, 2018 to commission a complex environmental, geological, hydrological, geophysical, material engineering, soil study, chemical, engineering, construction and economic expert evaluation (hereinafter the “Complex expert evaluation”).

The complex expert evaluation was assigned to the *National Bureau of Expertise, state non-commercial organization* of the RA National Academy of Sciences. Twenty-two experts from the Yerevan State University, the Armenian National Academy of Sciences and other research institutions were involved into the complex expert evaluation.

In view of the Lydian Armenia’s statements on the Project assessments and evaluation being performed by renowned and leading international expert organizations, the Armenian Investigating Committee resolved to invite a known international expert company for the Complex expert evaluation. On January 15, 2019, ELARD (Earth link & Advanced Resources Development) international consultancy (hereinafter the “ELARD”) was selected by the Investigating Committee to conduct the ESIA independent review.

On August 7, 2019, ELARD’s final report was provided to the investigating body and on August 14, 2019 was posted on the Investigating Committee’s official website<sup>6</sup>.

On August 29, 2019, ELARD’s experts discussed the ELARD’s expertise report on the Amulsar Project during a videoconference<sup>7</sup> held with the RA Prime-Minister and stated that the Environmental and Social Impact Assessment submitted by the Lydian Armenia (hereinafter the “ESIA”) was deficient and incomplete.

According to the ELARD’s experts, “The Project’s ESIA of April 29, 2016 and Design are incomplete and cannot provide for a safe operation of the mine...a new assessment is required....the ESIA should be updated, with mitigation measures properly planned...The assessments, both social and environmental ones, are definitely deficient and not reliable<sup>8</sup>.”

1.4. Based on the statements and declaration made by Lydian Armenia and Lydian International on the best environmental standards being applied for the Project, the Claimant, just like hundreds of other Armenian nationals, bought the shares of Lydian International. But, as seen from the above-mentioned developments, Lydian Armenia and Lydian International’s statements and declarations on that the mine will be constructed and operated in compliance with the best international standards and the Armenian laws, failed to meet the reality. ELARD’s independent review report of the ESIA, which is available at the RA Investigating Committee’s official website<sup>9</sup>, testifies to the fact.

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<sup>6</sup> See at the RA Investigating committee’s official website at <http://investigative.am/news/view/amulsar-porcaqnnutyanezrakacutyun.html>

<sup>7</sup> See at the RA Prime-Minister’s official website at <http://primeminister.am/hy/press-release/item/2019/08/29/Nikol-Pashinyan-meeting/>, The videoconference is available at [https://www.youtube.com/watch?v=e4nhBD72UCs&feature=emb\\_title](https://www.youtube.com/watch?v=e4nhBD72UCs&feature=emb_title)

<sup>8</sup> *ibid*

<sup>9</sup> See at the RA Investigating committee’s official website at <http://investigative.am/news/view/amulsar-porcaqnnutyanezrakacutyun.html>

Because of the Company's false and ungrounded statements and representations, the Armenian government suspended the Amulsar project (the Amulsar-site-leading roads have been blocked since summer 2018 by now), followed by the Stock Exchange's decision of January 7, 2020 to delist Lydian International's securities starting from February 5, 2020. As a result, the price of the shares bought by the Claimant dropped to "0". As mentioned in the Stock Exchange's official site, the delisting decision was passed because of the Company's continuous failure to meet the Stock Exchange's requirements<sup>10</sup>. Based on the decision, the trade of the Lydian International's shares was also suspended<sup>11</sup>.

At this, on June 16, 2020, Lydian International declared on the arrangements reached with its secured creditors and a termination of its operations. The agreement implies a restructuring of Lydian International, which will result in the transfer to the creditors of all the Lydian International-owned property including the Lydian Armenia's shares, and a termination of Lydian International's activities<sup>12</sup> by liquidation. Hence it appears that this is not just about Lydian International's shares delisting but also about the termination of the Company's activities and existence in the nearest future which means that the investments, made by hundreds of the Company's small shareholders, the Claimant included, will be lost.

Thus, based on the above-mentioned, we think that the Claimant incurred financial losses because of the unlawful and illegal actions taken by Lydian International and Lydian Armenia and the loss should be compensated by the companies.

## Grounds of the Claim

2.1. As prescribed by the RA Civil Code, article 17.1, 17.2, and 17.3, *"A person, whose right has been violated, may require a full compensation for the damages caused thereto unless a lesser amount for the compensation of damages is provided for by law or by contract. Damages shall comprise the expenses incurred by the person whose right has been violated, which have been or must be covered by said person in order to restore the violated right, the loss of or harm to the property thereof (actual damage), unearned income that this person would have received under the usual conditions of civil practices that the right thereof not been violated (lost benefit), as well as intangible damages. Where the person, having violated the right, has received income as a result thereof, the person whose right has been violated, shall have the right to claim compensation for the lost benefit along with other damages in the amount not less than such income."*

2.2. Under the RA Civil Code, article 1058.1, *"Personal or property damage caused to a citizen, as well as damage to the property of a legal entity, shall be subject to full compensation by the person who caused the damage."*

## Grounds to bring an action of damages against Lydian International Limited in Armenia

According to the RA Civil Procedure Code, article 431.2.2, *"The courts of the Republic of Armenia are entitled to try civil cases with participation of foreign citizens in case if*

***...2. The defendant under property disputes owns a property in the Republic of Armenia. "***

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<sup>10</sup> See the Toronto (Canada) Stock Exchange official site available at [www.tsx.com/resource/en/98](http://www.tsx.com/resource/en/98)

<sup>11</sup> See the Toronto (Canada) Stock Exchange official site available at [www.tsx.com/news/reviews-and-suspensions?id=584&fbclid=IwAR28Mt3mmLj-V21cWP4vPKrYS7zXg45wTpOeausXopKnAywVm9EBcJMUjpo](http://www.tsx.com/news/reviews-and-suspensions?id=584&fbclid=IwAR28Mt3mmLj-V21cWP4vPKrYS7zXg45wTpOeausXopKnAywVm9EBcJMUjpo)

<sup>12</sup> See at <https://www.bloomberg.com/press-releases/2020-06-16/lydian-announces-proposed-plan-of-arrangement-with-secured-creditors-and-cease-trade-order>

In this case it is possible to bring an action against the foreign company of Lydian International in the RA as the latter has receivables from Lydian Armenia, which is a locally (RA) incorporated and operating company. This implies the concept of “property” stipulated by the RA Civil Code, article 132. According to the Lydian Armenia, CJSC’s financial statements for 2019 (attached), available at the Company’s website ([https://www.lydianarmenua.am/img/uploadFiles/57b118e212f420036ae1FS\\_LydianArmeniaCJSC\\_2018\\_arm.pdf](https://www.lydianarmenua.am/img/uploadFiles/57b118e212f420036ae1FS_LydianArmeniaCJSC_2018_arm.pdf)), the parent company, namely Lydian International, has some approximately USD 151 mln lent to Lydian Armenia. Besides, Lydian Armenia owes another USD 44 mln to the Lydian International in payables. The other evidence of the Lydian Armenia’s receivables from Lydian Armenia is available at [https://www.alvarezandmarsal.com/sites/default/files/canada/re\\_lydian\\_international\\_limited\\_et\\_al\\_-\\_plan\\_meeting\\_order\\_june\\_18\\_2020.pdf](https://www.alvarezandmarsal.com/sites/default/files/canada/re_lydian_international_limited_et_al_-_plan_meeting_order_june_18_2020.pdf). This is a restructuring plan approved by 3 major creditors of Lydian International and Lydian Armenia (detailed in motion to secure claim). According to clause 1.1 of the plan (the English excerpt is attached, the amount claimed by Lydian International against Lydian Armenia makes USD 187 mln (at this, according to clauses 6.3-(3)-(f) of the same plan, Lydian International plans to assign the claim to another company and this is the reason for our motion to secure claim detailed below.

Hence, Lydian International has receivables of at least USD 187 mln from Lydian Armenia, which under the Armenian Civil Code, namely article 132, is deemed to be a property. This means that Lydian International owns a property in the Republic of Armenia which makes it possible to bring an action against the company in the Armenian courts.

At this we think that Lydian International and Lydian Armenia have a joint and several obligation to compensate for the loss incurred by the Claimant. According to the RA Civil Code, article 361.1, *“Joint and several obligation (liability) or joint and several claim shall arise where the joint and several nature of the obligation or joint and several nature of the claim is envisaged by the contract or prescribed by law, particularly where the object of obligation is indivisible.”*

In this case, the loss/damage incurred by the Claimant is a result of unlawful activities of both Lydian International and Lydian Armenia. Thus, we find that the object of obligation is indivisible in this case and the damages shall be recovered from both respondents severally and jointly.

### **Claim**

Based on the above-mentioned, I’m asking the Court

1. To recover USD 22.580 (twenty-two thousand, five hundred and eighty dollars) in damages incurred by ABRAHAMYAN Edgar, from Lydian International Limited and Lydian Armenia severally and jointly,.

### **Motion to secure claim**

As prescribed by the RA Civil Procedure Code, article 128.1, *“The court, by motion of a person participating in the case, takes measures to secure the action, if the failure to take such measures can make the execution of the court act impossible or difficult.”*

According to the Civil Procedure Code, article 129.1, *“The means of securing the action are ...*

*2. to prohibit the committal of certain actions by the defendant;*

*3. to prohibit the committal of certain actions by other persons in relation to the object of the dispute.”*

The shares of Lydian International were acquired by the Claimant and other RA nationals given the presentation of the Amulsar project as an attractive investment project and the Lydian Armenia and Lydian International’s assurance of the Project’s compliance with the highest international environmental standards and Armenian laws and by considering the fact that the Project was the first mining project in Armenia owned by a Stock Exchange-listed company with shares available for trade. But, as mentioned in the statement of claim, the developments proved that Lydian Armenia and Lydian International’s assurances and declarations failed to meet the reality. The Armenian government passed a decision to suspend the Amulsar project (the Amulsar-site-leading roads have been blocked since summer 2018 by now) followed by the Stock Exchange’s decision to delist Lydian International’s securities because of the failure to meet the listing requirements. Based on the decision, the trade of the Lydian International’s shares was also suspended. Thus, the Claimant incurred a financial loss from the unlawful actions and inactivity of the Lydian International and Lydian Armenia and the loss shall be compensated by the Companies. **At the same time, the developments showed that the Lydian International and its major creditors have a clear purpose of “keeping out” the Claimant and other small shareholders and of continuing the Amulsar Project with the 3 major creditors.** Thus,

On June 16, 2020, Lydian International released a statement (attached) on arrangements reached with its secured creditors to restructure Lydian International resulting in the transfer to the creditors of the whole Lydian International-owned property, including the Lydian Armenia shares, and in termination of Lydian International’s operation by liquidation. This means that by restructuring Lydian International the Lydian Armenia and the Amulsar Project will slip into the control of the secured creditors, and the Claimant and other Armenian nationals, who have acquired the Lydian International’s shares, will be left out of the Amulsar Project and will lose all of their investments.

The meeting held on June 19, 2020 by the Lydian’s 3 major creditors, namely Orion CO IV (ED) Limited, Resource capital Fund VI L.P. and Osisko Bermuda Limited, approved the Lydian’s restructuring plan (the translated excerpt is attached). According to the plan, a new company will be incorporated by the three major creditors to be merged with Lydian Canada Ventures Corporation, which is another affiliate of the Lydian International and to become a parent company for the Lydian group of companies with Lydian International to be dissolved. As a result, the Amulsar Project will be transferred to the newly-incorporated company which will be owned by the above-mentioned three major creditors only and the Lydian International, with shares thereof owned by the Claimant and other nationals of the RA, will be dissolved with the investments thereof completely lost.

The failure by the court to take claim-securing actions under this case will make it difficult and impossible to execute the court decision and will damage the Claimant considerably as Lydian International will have stopped to exist by the time the court’s final judgement is made and the only property owned by Lydian International in Armenia, namely the receivables of USD 187 mln from Lydian Armenia, will have been transferred to the newly-incorporated Canadian company (this is clearly foreseen by the Plan approved by 3 major creditors at the meeting of June 19, 2020).

As a result, not only Lydian International will have no property to be confiscated, but no such company will exist by the time the final court decision is passed.

Based on the above-mentioned, we are applying for the below-mentioned measures to be taken to secure the claims. Namely,

1. To prohibit Lydian International Limited, Lydian Armenia CJSC, Orion CO IV (ED) Limited, Resource Capital Fund VI L.P., Osisko Bermuda Limited, and Lydian Canada Ventures Corporation, as well as legal assignees and other physical and legal entities thereof from taking actions and/or making decisions aimed to transfer (cede) any of the Lydian International's rights/receivables relating to Lydian Armenia to any other party;
2. To prohibit Lydian International Limited, Lydian Armenia CJSC, Orion CO IV (ED) Limited, Resource Capital Fund VI L.P., Osisko Bermuda Limited, and Lydian Canada Ventures Corporation, as well as legal assignees and other physical and legal entities thereof from taking actions and/or making decisions aimed to restrict/limit and/or to terminate the Claimant's rights of a Lydian International Limited's shareholder;
3. To prohibit Lydian International Limited, Lydian Armenia CJSC, Orion CO IV (ED) Limited, Resource Capital Fund VI L.P., Osisko Bermuda Limited, and Lydian Canada Ventures Corporation, as well as legal assignees and other physical and legal entities thereof from taking actions and/or making decisions aimed to remove Lydian Armenia, CJSC from the corporate control and/or corporate structure of Lydian International Limited and/or to restrict/to limit the corporate control of Lydian International Limited over Lydian Armenia, CJSC;
4. To prohibit the Republic of Armenia State and local self-government bodies from taking measures and/or passing decisions (except for legal accountability-related actions and decisions) that arise from the actions and/or decisions, listed in clauses 1-3 of this motion, of Lydian International Limited, Lydian Armenia CJSC, Orion CO IV (ED) Limited, Resource Capital Fund VI L.P., Osisko Bermuda Limited, and Lydian Canada Ventures Corporation, as well as legal assignees and other physical and legal entities.

**Honorable Court,**

**Considering the great urgency of the matter, namely Lydian's and its three major creditors' plan to complete the restructuring by June 30, we ask you to assume jurisdiction and to settle the claim-securing issue as fast as possible as every day and even hour matters in this case. Otherwise the Claimant and hundreds of Armenian nationals will lose their investments.**

Attached are:

1. Share certificate held by the Claimant, in the original;
2. Claimant's ID, copy;
3. Lydian Armenia, CJSC's financial statement for 2019, copy;
4. Plan of arrangements, an Armenian translation of excerpt;
5. Lydian's declaration of June 15, 2020, an Armenian translation;
6. Statements by Lydian's representatives on the compliance of the Amulsar mine with the best environmental standards, reproduced on 11 pages;
7. Letter of May 29, 2018 addressed to the Armenian Prime-Minister by a number of NGOs, copy;
8. RA Investigating Committee's website announcement on the ELARD's report;
9. RA Government's website announcement on teleconference with ELARD experts;
10. Receipt of State duty payment, in the original;
11. Power of attorney, in the original;

12. Counsel's ID, copy;
13. Counsel's license for practicing law, a copy;
14. Statement of claim and other attached documents, copies for all the parties

Yerem Sargsyan, (signed)