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TEMPLATE

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## SPOLEČENSKÁ SMLOUVA

## MEMORANDUM OF ASSOCIATION

společnosti [●] s.r.o.  
(dále jen "**Společnost**")

of [●] s.r.o.  
("**Company**")

podle zákona č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích), v platném znění ("**ZOK**")

pursuant to Act No. 90/2012 Coll., on Business Companies and Cooperatives (Business Corporations Act), as amended ("**BCA**")

### 1 Základní ustanovení

### 1 Basic provisions

1.1 Obchodní firma Společnosti je [●] s.r.o.

1.1 The Company's business name is [●] s.r.o.

1.2 Sídlo Společnosti je v [●].

1.2 Registered office of the Company is in [●].

1.3 Společnost je založena na dobu neurčitou.

1.3 The Company is established for an indefinite period of time.

### 2 Předmět podnikání a činnosti Společnosti

### 2 Subject of business and other activities of the Company

2.1 Předmětem podnikání Společnosti je:

2.1 The subject of the Company's business is:

(i) [výroba, obchod a služby neuvedené v přílohách 1 až 3 živnostenského zákona, a to v rozsahu těchto oborů činnosti:]

(i) [manufacture, trade and services not specified in Annexes 1 to 3 to the Trade Licensing Act in the scope of the following fields of activity:]

- [●];

- [●];

(ii) [●].

(ii) [●].

2.2 Předmětem činnosti Společnosti je:

(i) [•]; a

(ii) [•].

2.2 The subject of the Company's activity is:

(i) [•]; and

(ii) [•].

### 3 Základní kapitál a společníci

3.1 Základní kapitál Společnosti činí [•],- Kč (slovy: [•] korun českých).

3.2 Společníky Společnosti jsou:

(i) [•], [IČO: [•],] se sídlem [•], zapsaná v [•] [pod registračním číslem [•]]; a

(ii) [•], nar. dne [•], bytem [•].

3.3 Společnost vede seznam společníků, za jehož úplnost a správnost odpovídá/[ají] jednatel[é].

### 3 Registered capital and shareholders

3.1 The registered capital of the Company is CZK [•] (in words: [•] Czech crowns).

3.2 The shareholders of the Company are:

(i) [•], [ID No.: [•]] with its registered office at [•], registered in [•] [under registration number [•]]; and

(ii) [•], born on [•], residing at [•].

3.3 The Company maintains a list of shareholders, with the Managing Director[s] being responsible for its completeness and correctness.

### 4 Vklady a podíly

4.1 Vklady a podíly společníků Společnosti jsou následující:

(i) společník [•] má podíl ve výši [•] %, na nějž připadá peněžitý vklad ve výši [•],-Kč (slovy: [•] korun českých); a

(ii) společník [•] má podíl ve výši [•] %, na nějž připadá peněžitý vklad ve výši [•],-Kč (slovy: [•] korun českých).

### 4 Contributions and shareholdings

4.1 The contributions and shareholdings of the Company's shareholders are as follows:

(i) shareholder [•] has a shareholding of [•]%, which corresponds to a cash contribution of CZK [•] (in words: [•] Czech crowns); and

(ii) shareholder [•] has a shareholding of [•]%, which corresponds to a cash contribution of CZK [•] (in words: [•] Czech crowns).

- |     |   |     |  |
|-----|---|-----|--|
| 4.2 | Ve společnosti existuje [jeden druh podílu, a to podíl základní]/[[•] druh[y]/[ů] podílů, a to: [•]].   | 4.2 | There [is one class]/[are [•] classes] of shareholding in the Company, being [the basic shareholding]/[[•]].   |
| 4.3 | Každý společník může vlastnit více podílů[, a to i různého druhu].  | 4.3 | Each shareholder can own multiple shares[ of one or more classes].   |
| 4.4 | [Každý společník je oprávněn převést svůj podíl nebo jeho část na [jiného společníka nebo] osobu, která není společníkem, pouze se souhlasem valné hromady.]/[Každý podíl je volně převoditelný.] | 4.4 | [Each shareholder may transfer their shareholding or a part thereof to [another shareholder or] a person who is not a shareholder only upon obtaining the consent of the General Meeting.]/[Each shareholding is freely transferable.] |
| 4.5 | Zánikem právnické osoby, která je společníkem Společnosti, přechází její podíl na jejího právního nástupce  | 4.5 | Upon the dissolution of a legal entity which is a shareholder of the Company its shareholding passes on to its legal successor.  |
| 4.6 | V případě smrti fyzické osoby, která je společníkem Společnosti, [přechází její podíl v souladu s § 42 ZOK na dědice zemřelého společníka]/[se její podíl nedědí].                                | 4.6 | Upon the death of an individual who is a shareholder of the Company its shareholding [passes on to their heirs in accordance with Section 42 BCA]/[shall not be subject to inheritance].   |

## **5 Orgány Společnosti**

Orgány Společnosti jsou

- a) valná hromada; a
- b) jednatel[é].

## **6 Valná hromada**

- 6.1 Valná hromada je nejvyšší orgán Společnosti. Valná hromada (i) se koná nejméně jednou ročně, (ii) schválí řádnou účetní závěrku nejpozději do šesti (6) měsíců od posledního dne předcházejícího účetního období.

## **5 Bodies of the Company**

The bodies of the Company are

- a) the general meeting; and
- b) the Managing Director[s].

## **6 General Meeting**

- 6.1 The General Meeting is the supreme body of the Company. The General Meeting (i) shall be held at least once a year, (ii) shall approve the ordinary financial statements not later than six (6) months from the last day of the preceding financial year.

6.2 Valná hromada rozhoduje v záležitostech stanovených právními předpisy a touto společenskou smlouvou, jakož i v případě, že to vyžadují zájmy Společnosti.

Do působnosti valné hromady patří též:

- a) rozhodování o změně obsahu společenské smlouvy, nedochází-li k ní na základě zákona;
- b) schvalování udělení a odvolání prokury, určení výše odměny prokuristů;
- c) [volba a odvolání likvidátora];
- d) [schválení pachtu závodu nebo takové části jmění, která by znamenala podstatnou změnu skutečného předmětu podnikání nebo činnosti Společnosti;]
- e) [udělování souhlasu jednatelem k tomu, aby souhlasil s dobrovolným příplatkem společníka mimo základní kapitál;]
- f) [schválení jakýchkoliv právních jednání, jejichž hodnota jednorázově [anebo v součtu na základě více transakcí uskutečněných v průběhu kterýchkoli 12 (slovy: dvanácti) po sobě jdoucích kalendářních měsíců] převyšuje částku [•] (slovy: [•]);]

6.2 The General Meeting decides on matters provided for by law and this Memorandum of Association, as well as when the interests of the Company require so.

The competences of the General Meeting include also:

- a) deciding on changes of the Memorandum of Association, unless such changes occur by operation of law;
- b) approving the granting and revocation of proxies, determining the amount of proxy remuneration;
- c) [the election and removal of liquidator];
- d) [approval of a lease of an enterprise or such part of assets which would result in a substantial change to the actual scope of business or activities of the Company;]
- e) [giving approval to the Managing Director to agree to a voluntary shareholder premium outside the registered capital;]
- f) [approval of any legal actions, the value of which, on a one-time basis [or in aggregate for several transactions carried out during any 12 (in words: twelve) consecutive calendar months], exceeds the amount of [•] (in words: [•]);]

- g) [•].
- 6.3 Každý společník má jeden hlas na každou 1,- Kč (slovy: jednu korunu českou) jeho vkladu.
- 6.4 Valná hromada rozhoduje prostou většinou hlasů přítomných společníků, nevyžaduje-li zákon [nebo tato společenská smlouva] kvalifikovanou většinu.
- 6.5 Souhlas [•] % [přítomných]/[všech] společníků se vyžaduje k rozhodnutí [•].
- 6.6 Společník se účastní jednání valné hromady osobně nebo prostřednictvím svého zmocněnce na základě písemné plné moci, z níž musí vyplývat, zda byla udělena pro zastoupení na jedné nebo na více valných hromadách.
- 6.7 Společníci přijímají rozhodnutí na valné hromadě nebo mimo valnou hromadu. [Společníci mohou hlasovat na valné hromadě, resp. rozhodovat mimo valnou hromadu, s využitím technických prostředků umožňujících Společnosti ověřit totožnost osoby oprávněné vykonávat hlasovací právo a určit podíly, s nimiž je spojeno vykonávané hlasovací právo. Valné hromady mohou být tudíž konány i ve formě videokonference, přičemž osoby vykonávající hlasovací práva za společníka musí doložit svoji totožnost (např. předložením průkazu totožnosti) a své oprávnění k výkonu hlasovacích práv (zejména předložením výpisu z obchodního rejstříku společníka a případně plné moci).]
- g) [•].
- 6.3 Each shareholder has one vote for every CZK 1 (in words: one Czech crown) of their contribution.
- 6.4 The General Meeting decides by a simple majority of the votes of the shareholders present, unless a qualified majority is required by law [or this Memorandum of Association].
- 6.5 The consent of [•]% of [present]/[all] shareholders is required to adopt a resolution on [•].
- 6.6 A shareholder attends the General Meeting in person or by proxy on the basis of a written power of attorney, which must indicate whether it was granted for representation at one or more General Meetings.
- 6.7 Shareholders adopt resolutions at the General Meeting or outside of the General Meeting. [Shareholders may vote at the General Meeting – or resolve outside of the General Meeting – with the use of technical means enabling the Company to verify the identity of the person entitled to exercise the voting right and determine the shareholdings in relation to which the voting right is exercised. General Meetings may therefore take place via videoconference, provided that the persons exercising voting rights on behalf of shareholder must provide a proof of identity (e.g. by presenting identity card) and their authorisation to exercise the voting rights (in particular by presenting extract from the commercial register of the

shareholder and powers of attorney, as applicable).]

## **7 Jediný společník**

- 7.1 Má-li Společnost jediného společníka, vykonává působnost valné hromady jediný společník.
- 7.2 Rozhodnutí společníka, které jinak spadají do působnosti valné hromady, musí být učiněna písemně a musí být podepsána. Tím není dotčena povinnost vyhotovit rozhodnutí jediného společníka v působnosti valné hromady ve formě veřejné listiny v případech, kde to vyžaduje zákon. Rozhodnutí jediného společníka je společník povinen doručit jednatel[i]/[ům].

## **7 Sole shareholder**

- 7.1 If the Company has a sole shareholder, the powers of the General Meeting shall be exercised by the sole shareholder.
- 7.2 Decisions of a shareholder that otherwise fall within the competence of the general meeting must be made in writing and must be signed. This is without prejudice to the obligation to draw up a resolution of the sole shareholder within the competence of the general meeting in the form of a public deed in cases where this is required by law. The decision of the sole shareholder shall be delivered by the shareholder to the Managing Director[s].

## **8 Jednatel[é]**

- 8.1 Statutárním orgánem Společnosti je [každý] jednatel. Společnost má [jednoho]/[•] jednatel[e]/[ů].
- 8.2 [O otázkách obchodního vedení rozhodují] jednatelé [prostou]/[•] většinou.]
- 8.3 Za společnost [jedná [každý] jednatel samostatně]/[jednají [•] jednatelé společně].
- 8.4 [Nad rámec]/[Odchylně od] ustanovení § 199 ZOK [žádný] jednatel [nesmí]/[může] [•].

## **8 Managing Director[s]**

- 8.1 The statutory body of the Company shall be [the]/[each] Managing Director. The Company has [one]/[•] Managing Director[s].
- 8.2 [The business management matters are resolved by [simple]/[•] majority of the Managing Directors.]
- 8.3 [[The]/[Each] Managing Director represents the Company individually.]/[[•] Managing Directors acting jointly represent the Company.]
- 8.4 [In addition to]/[By way of derogation from] Section 199 BCA, [the]/[each] Managing Director can[not] [•].

## 9 Závěrečná ustanovení

Tato společenská smlouva se řídí českým právem, zejména ZOK.

## 10 [Opatrovník Společnosti]

[Společnosti má být jako opatrovník ve smyslu § 488 zákona č. 89/2012 Sb., občanského zákoníku, ve znění pozdějších předpisů, jmenován soudem [•].]

## 11 Dočasná ustanovení při zakládání Společnosti

11.1 Zakladatel Společnosti, [•], [IČO: [•],] se sídlem [•], zapsaná v [•] [pod registračním číslem [•]], tímto přebírá vkladovou povinnost a zavazuje se splnit ji vnesením peněžitého vkladu v celkové výši [•],-Kč (slovy: [•] korun českých), a to do [15 (slovy: patnácti)] dní ode dne podepsání této společenské smlouvy.

11.2 Zakladatel Společnosti, [•], nar. dne [•], bytem [•], tímto přebírá vkladovou povinnost a zavazuje se splnit ji vnesením peněžitého vkladu v celkové výši [•],-Kč (slovy: [•] korun českých), a to do [15 (slovy: patnácti)] dní ode dne podepsání této společenské smlouvy.

11.3 [•] se určuje správcem vkladu.

11.4 Zakladatelé určují prvním [i] jednatelem [em]/[i] Společnosti [•].

## 9 Final provisions

This Memorandum of Association is governed by Czech law, in particular by the BCA.

## 10 [Legal guardian of the Company]

[[•] shall be appointed by the court as the legal guardian of the Company in accordance with Section 488 of Act No. 89/2012 Coll., the civil code, as amended.]

## 11 Temporary provisions for the incorporation of the Company

11.1 The founder of the Company, [•], [ID No.: [•],] with its registered office at [•], registered in [•] [under registration number [•]], hereby assumes the deposit obligation and undertakes to fulfil it by making a cash deposit in the total amount of CZK [•] (in words: [•] Czech crowns), within [15 (in words: fifteen)] days from the date of signing of this Memorandum of Association.

11.2 The founder of the Company, [•], born on [•], residing at [•], hereby assumes the deposit obligation and undertakes to fulfil it by making a cash deposit in the total amount of CZK [•] (in words: [•] Czech crowns), within [15 (in words: fifteen)] days from the date of signing of this Memorandum of Association.

11.3 [•] is hereby appointed as the deposit administrator.

11.4 The founders appoint [•] as the first Managing Director[s] of the Company.

## **NOTES TO THE MEMORANDUM OF ASSOCIATION TEMPLATE ("MOA")**

### **1 Miscellaneous / Disclaimer**

**THE MOA HAS BEEN PUT TOGETHER WITH DUE CARE; NEVERTHELESS, SCHÖNHERR RECHTSANWÄLTE GMBH AND ITS RESPECTIVE PARTNERS, DIRECTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS DO NOT ASSUME ANY RESPONSIBILITY IN CONNECTION WITH THE MOA. BY USING THE MOA, YOU ACCEPT THIS DISCLAIMER.**

**THE MOA CAN ONLY BE USED AT A PARTY'S OWN RISK, AND IT IS STRONGLY RECOMMENDED THAT THE PARTIES USING THE MOA OBTAIN PROFESSIONAL SUPPORT, IN PARTICULAR BY THEIR LEGAL AND TAX ADVISORS, BEFORE USING THE MOA.**

**THESE NOTES DO NOT CONSTITUTE LEGAL ADVICE AND SHOULD NOT BE READ TO THAT EFFECT.**

### **2 Background**

Incorporating a company should be fast and cheap. The MOA is intended as standardized document to ensure fast, simple and efficient incorporation of a Czech private limited liability company (*společnost s ručením omezeným*), subject to Czech law. The MOA is to be used as a starting point when the founders wish to incorporate a Czech private limited liability company to formalize their business setup; as such, it does not cover specifics pertaining to equity investment by third party investors at a later stage.

Various corporate mechanics might need to be further elaborated upon entry of an investor into the company, e.g. catalogue of shareholder reserved matters, creation of supervisory board, rules for nomination, appointment and recall of corporate officers, shareholding transferability etc.

### **3 General notes**

The MOA is to be executed in the form of a **notarial deed** drawn up by a Czech notary.

The MOA envisages two shareholders – a legal entity and a private individual (to illustrate the scope of identification details required for each of them).

The MOA does not establish supervisory board or collective body of managing directors.

### **4 Notes to specific provisions**

- Clause 1.2: The registered office is commonly specified only as municipality (e.g. Prague) instead of concrete address.

- Clause 2: The MOA reflects the split of business activities (e.g. under a trade licence) and other activities which are not subject to licensing regime (e.g. administration of own assets). Since 15 January 2023 the scope of activities does not have to mirror the relevant licence but may be worded in a way effectively reflecting the actual scope of business (noting that the prevailing practice remains to list the relevant licences).
- Clause 4.1: The MOA envisages a simple allocation of shareholdings corresponding to the monetary contributions; other options (e.g. in-kind contributions, disproportionate shareholdings) may be incorporated here accordingly.
- Clause 4.2: BCA allows for differentiation of various shareholding classes, differing in e.g. voting rights, priority distribution rights, managing director nomination rights or transferability of shareholdings. Due to the number of available options the MOA does not describe the individual alternatives in more detail, but the relevant structure of shareholding classes may be set out here.
- Clause 4.3: Under the BCA a shareholder is entitled to own multiple shareholdings, if so allowed by the MOA. The common approach allows this to enable division of shareholdings prior to their transfer.
- Clause 4.4: Default rule under the BCA allows transfers between shareholders and requires general meeting consent (with simple majority) to third party transfers – this may be modified in the MOA by setting out the relevant rules here (e.g. consent of the managing directors, qualified majority approval by the general meeting); the transferability rules may be set out differently for individual shareholding classes. Also, additional protective mechanisms, such as pre-emption right (right of first refusal) of the other shareholders may be incorporated in the MOA.
- Clause 4.6: As a default rules under the BCA, shareholding owned by a private individual may be inherited by their heirs – this may be prohibited by the MOA, in which case the share would be vacated and a settlement share would become payable to the heirs (noting that the statutory rules of settlement share calculation may also be modified by the MOA, as need be).
- Clause 6.2: To simplify the wording of MOA, the statutory competences of the general meeting are not repeated in this clause; instead, additional competences are to be listed here (several common examples are already included).
- Clauses 6.4 and 6.5: The BCA allows to set out qualified quora and voting majorities for individual matters based on the shareholders' preference (including voting by shareholding classes) – the law allows a wide discretion for the shareholders, but note that the statutory qualified majorities (e.g. approval of transformations or liquidation) cannot be lowered by the MOA.
- Clause 6.7: The MOA contains a sample wording on the use of technical means in adoption of general meeting resolutions; note that the voting outside of general meeting is permitted by law unless expressly disallowed by the MOA. The use of technical means, however, must be expressly permitted by the MOA.

- Clause 8.1: Precise number of managing directors must be set out in the MOA (i.e. it is not permitted to set out a range of managing directors to be appointed). Both private individuals and legal entities may be appointed as managing directors. If a legal entity is appointed as a managing director, it must consequently appoint a single private individual as its representative in the corporate office.
- Clause 8.2: Internal decisions on business management of the company are decided by simple majority of managing directors (if the company has more than one managing director) – MOA may provide additional rules, e.g. by setting out a qualified majority or providing a catalogue of matters with different voting majorities.
- Clause 8.3: The manner of acting on behalf of the company may be set out generally by allowing each managing director to act individually or several managing directors acting jointly in all matters, or provide a specific set of rules/combinations (e.g. individual representation in matters not exceeding certain threshold / joint representation in matters exceeding the threshold; separate rules for representation in designated matters such as HR, financing etc.).
- Clause 8.4: Section 199 BCA provides for a basic non-competition obligation of the Managing Directors. The MOA may expand on the statutory scope of this obligation or allow the Managing Directors to carry out specific activities which would otherwise be prohibited.
- Clause 10: The Czech civil code allows for the shareholders to agree on a particular legal guardian for the Company, in the event one should be appointed in situations envisaged by applicable law (typically where the statutory body of the Company is dysfunctional).
- Clause 11: These provisions are required for incorporation and become obsolete upon registration of the company in the Commercial Register. A shareholder or managing director may be selected as the administrator of contributions. The first managing directors are to be identified by their name, date of birth and address of residence (for private individuals) and by their business name, identification/registration number and registered office (for legal entities)