

Company Number 4070264

The Companies Acts 1985 to 1989

Private Company Limited by Shares

Written Resolution

of


Fresh Minds Limited

(passed 26<sup>th</sup> August 2004)

On the 26<sup>th</sup> August 2004 the following resolution was duly passed as a written resolution.

"THAT

- 1) the document in the form attached to this written resolution be and it is hereby adopted as the Articles of Association of the Company in substitution for the existing Articles of Association; and
- 2) the Directors may allot up to 1,288 new ordinary shares of 1p each to David Verey for cash and no offer of such shares to existing Members need be made."

  
.....  
Director/~~Secretary~~



**THE COMPANIES ACT 1985 to 1989**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**FRESH MINDS LIMITED**

(As adopted by Written Special Resolution passed on 26 August 2004)

**1. Preliminary**

- (a) Subject as hereinafter provided the regulations contained in Table A set out in the Schedule to the Companies (Tables A to F) Regulations 1985 shall apply to the Company.
- (b) Regulations 3 and 35 of Table A shall not apply to the Company, but the regulations hereinafter contained together with the remaining regulations of Table A shall, subject to the modifications hereinafter expressed, constitute the regulations of the Company.
- (c) Any reference in these regulations to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.
- (d) In these Articles the following words and expressions shall have the meanings set out below:

“the Act”	the Companies Act 1985 including every statutory modification or re-enactment thereof for the time being in force
“connected person”	has the same meaning as set out in section 839 Income and Corporation Taxes Act 1988
“the Directors”	the directors for the time being of the Company or a quorum of such directors present at a meeting of the directors
“shares”	Ordinary Shares of 1p each in the capital of the Company

**2. Interpretation**

In Regulation 1 of Table A there shall be inserted before the words ‘office’ and ‘secretary’ the word ‘the’ and between the words ‘regulations’ and ‘the Act’ the words ‘and in any regulations adopting the whole or in part the same’.

### **3. Share Capital**

- (a) The share capital of the Company at the date of adoption of these Articles is £1,000 divided into 100,000 shares.
- (b) Notwithstanding any of the provisions of these Articles and unless otherwise agreed by a special resolution of the members the Company will not issue any shares (of whatever class) without first offering any such shares so issued to the members of the Company as will enable the members to whom the offer is made to maintain their shareholding (measured in nominal value) in the same proportion as nearly as may be to the nominal value of the issued share capital (taken as a whole) in the Company. All shares issued pursuant to such offer shall be issued on equal terms and conditions to all members.
- (c) The Directors of the Company are generally and unconditionally authorised for the purposes of Section 80 of the Act to allot, grant options over or otherwise deal with or dispose of the Shares in the capital of the Company at the date of adoption of these Articles to such persons at such times and on such conditions as they think fit, subject to the provisions of that Section and Article 3 (b) above and provided that no Shares shall be issued at a discount. In accordance with Section 91 of the Act Sections 89(1) and 90(1) to 90(6) of the Act shall not apply to the Company.
- (d) The general authority conferred on the Directors by regulation 3c) of these Articles shall extend to all relevant securities (as defined by Section 80 of the Act) in the capital of the Company at the date of adoption of these Articles during the period of five years from such date but the Directors may, after the authority has expired, allot any shares in pursuance of an offer or agreement so to do made by the Company before the authority expired. The authority may be renewed varied or revoked by the Company in General Meeting.

### **4. Transfer of Shares**

- (a) Save for a transfer made in accordance with Article 6, any person ("the proposing transferor") proposing to transfer any shares ("the sale shares") shall give notice in writing ("the transfer notice") to the Company that he desires to transfer the same and specifying the price per share which in his opinion constitutes the market value thereof. The transfer notice which shall be accompanied by the share certificate shall constitute the Company the agent of the proposing transferor for the sale of all (but not some of) the sale shares to the holders of shares willing to purchase the same ("the purchasing member") at the price specified therein or (if appropriate) at the market value certified in accordance with Article 4(e) below (whichever shall be the lower). A transfer notice shall be revocable in accordance with Article 4e).
- (b) The sale shares shall be offered by notice in writing ("the offer notice") within seven days after the receipt by the Company of either the transfer notice or (if appropriate) the certificate of market value as requested under Article 4 (e) below (whichever is the later).
- (c) The offer notice (which shall state the price per sale share) shall invite such members to state in writing within 28 days after the date of the offer notice whether they are willing to purchase any and if so, how many of the sale shares. For the purpose of this Article 4 an offer shall be deemed to be accepted on the day on which the acceptance is received by the Company.

- (d) If any of such members applies for the sale shares within the period specified in Article 4(c) then:-
- (i) if the aggregate number of shares applied for is equal to the number of sales shares, the Directors shall allocate the number applied for in accordance with such applications; or
  - (ii) if the aggregate number of shares applied for is more than the number of the sale shares the Directors shall allocate the sale shares at either stage as between such applicants pro rata (as nearly as may be in the discretion of the Directors) to their holdings of shares.

but so that no such applicant shall be allocated more sale shares than applied for.

- (e) If a transfer notice is given in respect of shares then the Directors may, in their entire discretion and prior to the despatch of any offer notice, request (subject as mentioned below) that a firm of independent chartered accountants (but not the Auditors) ("Experts") be appointed to certify in writing the sum which in their opinion represents the market value of the sale shares calculated on the basis of a sale as between a willing buyer and a willing seller on arms' length terms having regard to the fair value of the Company's business as a going concern. No discount (or premium) shall be applied in valuing any sale shares by reason of the fact that they represent a minority (or majority) of the issued ordinary share capital. The costs of such valuation shall be borne by the proposing transferor. In certifying the market value as aforesaid the Experts shall be considered to be acting as experts and not as arbitrators and their decision shall be final. The Company shall send a copy of the certificate to the proposing transferor as soon as practicable following its issue. The proposing transferor may serve written notice on the Company revoking any transfer notice within 14 days of the date of despatch to him of the certificate if the certificate specifies a different price to that specified in the transfer notice; in such circumstances the Company shall be liable for the costs of the Expert.
- (f) Upon receipt of the certificate of the Experts and provided that the proposing transferor shall not have served written notice revoking the transfer notice in accordance with Article 4e), the Company shall set out in the offer notice the price per share (being the lower of the price specified in the transfer notice and the certified market value of each share) at which the sale shares are offered for sale.
- (g) If purchasing members shall be found for all the sale shares within the period specified in Articles 4 (c) the Company shall, not later than seven days thereafter, give notice in writing ("the sale notice") to the proposing transferor specifying the purchasing members and the proposing transferor shall be bound upon payment of the price due in respect of the sale shares to transfer the sale shares to the purchasing members.
- (h) If in any case the proposing transferor after having become bound as aforesaid makes default in transferring any sale shares the Company may receive the purchase money on his behalf, and may authorise some person to execute a transfer of such shares in favour of the purchasing member. The receipt of the Company for the purchase money shall be a good discharge to the purchasing members. The Company shall pay the purchase money into a separate bank account.

- (i) If the Company shall not give a sale notice to the proposing transferor within the time specified in Article 4(g) above he shall, during the period of ninety days next following the expiry of the time specified, be at liberty with the prior written permission of the Board to transfer all (but not some only) of the sale shares to any person or persons approved in writing by the Board at a price not being less than the price specified in the transfer notice. In the event that the Board do not approve any transferee they shall notify the proposing transferor within 14 days of the written request for approval from the proposing transferee.
- (j) The restrictions on transfer contained in these Articles will not apply to any transfer approved in writing by all the members for the time being.

## **5. Transmission of Shares**

- a) When a member dies the survivor or survivors where he was a joint holder, and his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest; but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been held by him.
- b) A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the Directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder, he shall give notice to the Company to that effect. If he elects to have another person registered who is a person entitled under the will or intestacy of a deceased member, he may execute an instrument of transfer of the share to that person and Articles 4, 6 and 7 shall not apply to such a transfer but in relation to any other transfer Articles 4, 6 and 7 shall apply.
- c) A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall have the rights to which he would be entitled if he were the holder of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any meeting of the Company or at any separate meeting of the holders of any class of shares in the Company.

## **6. Drag Along Option**

- a) If at any time the holders of not less than 65% of the shares in issue (together "the Selling Shareholders") wish to transfer their shares in the company pursuant to a bona fide arm's length transaction ("the Offer") then the Selling Shareholders shall have the option ("the Drag Along Option") to require all the other holders of shares to transfer all their shares to the third party purchaser or as the third party purchaser shall direct with full title guarantee and for the same consideration per share.
- b) The Selling Shareholders may exercise the Drag Along Option by giving notice to that effect (a "Drag Along Notice") to all other Shareholders ("the Called Shareholders") at any time before the transfer of shares by the Selling Shareholders. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Shares ("the Called Shares") pursuant to article 6a), the consideration at which the Called Shares are to be transferred and the proposed date of transfer.

- c) A Drag Along Notice is irrevocable but the Drag Along Notice and all obligations thereunder will lapse if for any reason there is not a transfer of requisite number of Shares by the Selling Shareholders to the third party purchaser within 60 days after the date of the Drag Along Notice.
- d) If any Called Shareholder shall make default in transferring their shares pursuant to this Article 6 then the Directors may appoint any person to be the attorney for the Called Shareholder and to execute a transfer of the Called Shares. In such circumstances the cash element of the consideration for the transfer (if any) shall be placed in a non interest bearing account in the Company's name.
- e) The provisions of this Article 6 shall also apply to any shares acquired on the exercise of any option within 60 days of the date of completion of the sale by the Selling Shareholders to the third party purchaser and the option holder may be required to transfer such shares within 14 days of allotment and in default Article 6d) shall apply.

## **7. Tag Along Right**

- a) Notwithstanding any other provision in these articles no sale or transfer or other disposition of any interest in any Share shall have any effect, if it would result in a Change of Control, unless before the sale transfer or other disposition take effect, the third party purchaser has made a bona fide offer in accordance with this article to purchase all the shares held by the members (except any Member which has waived its right to receive such an offer for the purpose of this article in writing) at the Specified Price.
- b) An offer made under Article 7 shall be in writing, be open for acceptance for at least 21 days and shall be deemed to be rejected by any member who has not accepted it in accordance with its terms within 21 days and the consideration under such an offer shall be settled in full on completion of the purchase and within 28 days.
- c) For the purposes of Article 7:-
  - 1) the expressions "transfer", "transferor" and "transferee" include respectively the renunciation of a renounceable letter of allotment and any renouncer and renounee of such letter; and
  - 2) the expression "Specified Price" means a price per share equal to the highest price paid or payable by the third party purchaser or persons acting in concert with him or connected with him for any shares within the last 6 months plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the specified shares which, having regard to the substance of the transaction as a whole, can reasonably be regarded as part of the overall consideration paid or payable for the specified shares.
  - 3) "Change of Control" means the acquisition of shares by any person (other than a person who is a member on the date of adoption of these Articles) of any interest in any shares if upon completion of that acquisition the third party purchaser would hold more than 50% of the issued share capital.

## **General Meetings and Resolutions**

8. Every notice convening a General Meeting shall comply with the provisions of Section 372(3) of the Companies Act 1985 as to giving information to members in regard to their right to appoint proxies; notices of and other communications relating to any General Meeting which any member is entitled to receive shall be sent to the Directors and to the Auditors.
9. No business shall be transacted at any meeting unless a quorum is present. A quorum shall consist of two persons entitled to vote upon the business to be transacted. Regulation 41 of Table A shall be amended by adding the following words to the end of Regulation 41 ".....and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the member or members present in person or by proxy shall be a quorum".
10. One member present in person or by proxy or the Chairman of the meeting may demand a poll and Regulation 46 of Table A shall be deemed to be altered and modified accordingly.
11. Subject to any special rights or restrictions as to voting attached to any shares or in accordance with these Articles on a show of hands every member who, being an individual, is present in person or (being a corporation) is present by a representative, shall have one vote and on a poll every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these Articles have one vote for each share of which he is the holder.
12. Subject to the provisions of the Companies Act 1985, a resolution in writing signed by all the members of the Company who would be entitled to receive notice of and to attend and vote at a General Meeting, or by their duly appointed proxies or attorneys, shall be as valid and effectual as if it had been passed at a General Meeting of the Company duly convened and held. Any such resolution may be contained in one document or in several documents in the same terms each signed by one or more of the members or their proxies or attorneys, and in the case of a body corporate signed by a Director or the secretary thereof or by its duly authorised representative.

## **Directors**

13. Unless and until the Company in General Meeting shall otherwise determine the number of Directors shall not be less than two but there shall be no maximum number of Directors.
14. The Company may by ordinary resolution appoint a person who is willing and able to act as Director either to act as Director to fill a vacancy or as an additional Director and may also determine the rotation in which any additional Directors are to retire.
15. The quorum for the transaction of the business of the Directors shall be two Directors unless the Company has a sole Director in which case the quorum shall be one. A person who holds office only as an alternate Director shall, if his appointor is not present, be counted in the quorum.

16. In the event that a proposed Meeting of Directors is inquorate the Meeting shall if so required by the attending Director be adjourned to the same time and place 7 days thereafter and if at the adjourned meeting a quorum is still not present the attending Director shall have authority thereupon to appoint an additional Director to the Board.
17. The Chairman shall have a second or casting vote and Regulation 88 of Table A shall apply.

### **Borrowing Powers**

18. The Director may exercise all powers of the Company to borrow money and to mortgage or charges its undertaking property and uncalled capital, or any part thereof, and subject to the provisions of Section 80 of the Companies Act 1985 and any resolutions of the Company in General Meeting passed pursuant thereto to issue debentures, debenture stock and other securities, whether outright or as security for any debt liability or obligation of the Company or of any third party provided always that without the consent of the holders of the majority of the issued shares from time to time the aggregate amount of monies borrowed and guarantees given by the Company and/or any of its Subsidiaries shall not exceed one half of the aggregate of the Company's issued share capital and consolidated reserves (as shown in the last published audited consolidated accounts of the Company and its Subsidiaries).

### **Powers and Duties of Directors**

19. A Director who is in any way either directly or indirectly interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at a meeting of the Directors of the Company in accordance with the Section 317 of the Companies Act 1985. Subject to such disclosure, a Director shall be entitled to vote in respect of any contract or arrangement in which he is interested and if he shall so vote his vote shall be counted and he may be taken into account in ascertaining whether a quorum is present.
20. The Directors may procure the establishment and maintenance of or participate in or contribute to any non-contributory or contributory pension or superannuation fund, scheme or arrangement or life assurance scheme or arrangement for the benefit of, and pay, provide for or procure the grant of donations, gratuities, pensions, allowances, benefits or emoluments to, any persons (including Directors and other officers) who are or shall have been at any time in the employment or service of the Company or of any Company which is a subsidiary of or associated with the Company or of the predecessors in business of the Company or any such subsidiary or associated company and the wives, widows, families or dependants of any such persons.

### **Disqualification and Changes to the Board**

21. No Director shall vacate his office or be ineligible for appointment or re-appointment as a Director by reason only of having attained any particular age, nor shall special notice be required on any resolution appointing or approving the appointment of such Director or any notice be required to state the age of the person to whom such resolution relates.



22. The office of a Director shall be vacated if:-
- (a) he is prohibited from being a Director by an order made under the Company Directors Disqualification Act 1985;
  - (b) he becomes bankrupt or a receiving order is made against him or he makes an arrangement or composition with his creditors generally;
  - (c) he becomes incapable by reason of mental disorder illness or injury of managing and administering his property and affairs;
  - (d) he absents himself from attendance at meetings of Directors without special leave of absence from the Directors for a period in excess of six months, and they pass a resolution that he has by reason of such absence vacated office;
  - (e) by notice in writing to the Company he resigns his office; or
  - (f) in the circumstances described in Article 23 below.
23. A member or members holding more than one half of the issued Ordinary Share Capital of the Company may at any time appoint any person to be a director, either as an additional director or to fill a vacancy, and to remove from office any director however appointed. The appointment or removal shall be effected by notice in writing to the Company signed by the member or members giving it or, in the case of a corporate member, signed by a director and shall take effect when the notice is delivered to the registered office of the Company.
24. In Regulation 79 of Table A the second sentence and third sentence thereof shall be deemed to be deleted.

#### **Proceedings of Directors**

25. It shall be necessary to give notice of a meeting of Directors to a Director who is absent from the United Kingdom PROVIDED THAT such Director has furnished the Company Secretary with an address for service of such notice outside the United Kingdom.
26. A resolution in writing signed or approved by letter, telex, facsimile transmission or telex by all of the Directors for the time being entitled to receive notice of meeting of Directors shall be as effective as a resolution passed at a meeting of Directors duly convened and held and may consist of several documents in the same terms each signed or approved by one or more of the Directors.
27. Meetings of the Directors may be held by telephone or audio-visual communication and such meetings shall, subject to notice thereof having been given in accordance with these Articles, be as effective as if the Directors had met in person, provided always that the number of Directors participating in such communications is not less than the quorum stipulated by these Articles. A resolution made by a majority of the said Directors in pursuance of this Article shall be as valid as it would have been if made by them at a meeting convened and held in person.

### **Alternate Directors**

28. Each Director shall have power by notice in writing under his hand (which shall take effect on the service thereof at the registered office of the Company) to nominate (1) any other Director or (2) any person approved for that purpose by the Directors such approval not to be unreasonably withheld refused or delayed, to act as his alternate, and at his discretion to remove such alternate Director. On such appointment being made the alternate Director shall be for all purposes counted as a Director of the Company, and except as regards remuneration and the power to appoint an alternate, shall while so acting be entitled to exercise and discharge all the functions, powers and duties of the Director whom he represents. Any Director acting as alternate shall have an additional vote for each Director for whom he acts as alternate but shall not be considered as two Directors for the purpose of making a quorum of Directors. An alternate Director shall ipso facto cease to be an alternate Director if his appointor ceases for any reason to be Director or on the happening of any event which if the alternate were a Director would cause him to vacate such office. An alternate Director shall during his appointment be an officer of the Company and shall not be deemed to be an agent of his appointor. An appointment of an alternate shall not prejudice the right of the appointor to receive notice of and to attend and vote at meetings of the Board of Directors.

### **Managing Director**

29. Subject to the foregoing provisions of these Articles, the Directors may from time to time appoint one or more of their body to be managing Director or to hold such other office in the management, administration or conduct of the business of the Company for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. Subject to the terms of any such agreement, any managing Director or a Director appointed to any other office as aforesaid shall be subject to the same provisions as to resignation and removal as the other Directors of the Company and shall ipso facto and immediately cease to be managing Director or to hold such other office in the management, administration or conduct of business of the Company if he ceases to hold the office of Director from any cause.
30. The remuneration of a managing Director or any Director who may be appointed an executive in the management, administration or conduct of the business of the Company shall from time to time (subject to the provisions of any agreement between him and the Company) be fixed by a panel of the members of the Board of the Company, (not including the said Director), and may be by way of fixed salary, or commission on the dividends, profits, sales or turnover of the Company, or any other company in which the Company is interested, or other participation in any such profits, or by way of retiring salary or provision for a pension for himself or his dependants, or by all or any of these modes, and (subject as aforesaid) the remuneration so fixed shall be additional to any ordinary remuneration to which he may be entitled as a Director of the Company.

### **Notices to Members**

31. A notice may be given by the Company to any member either personally or by sending it by prepaid first class post, airmail, telemessage, facsimile transmission or telex to his registered address or to any other address supplied by him to the Company for the giving of notice to him. A properly addressed and prepaid notice sent by post shall be deemed to have been served at an address within the United Kingdom, in the case of notice of a meeting, at the expiry of 24 hours after the notice is posted and, in the case of notice of any other matter, at the time at which the notice would be delivered in the ordinary course of post and, in either case, served at an address outside the United Kingdom at the expiry of five days from the date of posting. Where a notice is given by telemessage, service of the same shall be deemed to be effected at the expiry of 24 hours after it is delivered by the Company to British Telecom or any other body charged with the same functions. Where a notice is given by telex, service of the same shall be deemed to be effected upon receipt of the appropriate answer back code at the end of the sender's copy of the telex. Where a notice is given by facsimile transmission, service of the same shall be deemed to be effected upon transmission PROVIDED THAT if as a result of such deeming provisions service shall thereby occur outside the hours of 9.00 am and 5.30pm on Business Day service shall be deemed to take place on the next available Business Day.

### **Indemnity**

32. In addition to the indemnity contained in Regulation 118 Table A and subject to the provisions of Section 310 of the Companies Act 1985, every Director, agent, auditor, secretary, and other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities properly incurred by him in or about the execution and discharge of the duties of his office.