

FORMATION

of the foundation:

Stichting Volkswagen Investor Settlement,

having its seat in the City of Amsterdam, the Netherlands

On this twenty-sixth day of January in the year two thousand and sixteen, the following person appeared before me, *mr.* Frank Jan Oranje, a civil law notary practising in The Hague:

professor mr. Jan Hubertus Maria Willems, residing at *[personal details]*, born in Sittard on the fifteenth day of August nineteen hundred and forty-four, whose identity has been established by reference to passport number *[personal details]*, issued in *[personal details]* on the *[personal details]*.

PREAMBLE.

The person appearing declared:

- a. that the person appearing wishes to form a foundation to promote, protect and represent the interests of Investors who have a Claim on one or more Policymakers and/or Volkswagen Entities;
- b. that the person appearing, in view of the provisions set out in clause (a.) intends to form a foundation which has the intention, inter alia, to initiate:
 - i. legal actions as referred to in Section 305a in Book 3 of the Dutch Civil Code and Section 240 in Book 6 of the Dutch Civil Code, and
 - ii. other legal proceedings in and/or outside the Netherlands;
- c. that the person appearing endorses the Claims Code which took effect on the first day of July two thousand and eleven and wishes to align the Constitution of the Foundation with the provisions of the Claims Code;
- d. that before instituting any legal action as referred to in clause (b.) the Foundation will, inter alia, conduct an investigation into the losses and/or damage (potentially) suffered as a consequence of the acts or omissions of:
 - i. one or more Policymakers, and/or

- ii. one or more of the Volkswagen Entities;
- e. that the capitalized terms in this preamble have the meanings assigned to them in Article 1 of the Constitution set forth below.

END OF THE PREAMBLE.

Thereupon the person appearing, in implementation of the preliminary declarations set out above, declared that he formed a foundation which is governed by the following Constitution:

CONSTITUTION.

Definitions.

Article 1.

In this Constitution, the following capitalized terms have the following meanings:

- **Claims Code:**

the claims code which took effect on the first day of July two thousand and eleven and which is published, inter alia, on the website of the Dutch Consumers' Association (*Consumentenbond*).

- **Claims:**

complaints, entitlements and claims of Investors vis-à-vis:

- a. one or more Policymakers;
- b. one or more of the Volkswagen Entities,
with respect to (alleged) loss or damage already suffered or yet to be suffered by the Investors, which is related to and/or a consequence of, inter alia:
 - a. violation of laws and regulations, including but not limited to violations of the U.S. Clean Air Act;
 - b. misrepresentation and/or withholding of information regarding the emissions of engines as designed, developed and/or manufactured by and/or on the instructions of one or more of the Volkswagen Entities;
 - c. deceiving market analysts, market makers, investors (including Investors) and/or the market as a whole;
 - d. deceiving authorities and/or regulators;
 - e. improper performance of duties (including improper management), and/or
 - f. any other (alleged) unlawful act or omission,
by and/or on behalf of one or more Policymakers and/or Volkswagen Entities,
all in the broadest sense of the word.

- **Controlling Interest:**

an interest in an entity where such interest is sufficient to allow the interest holder directly or indirectly to direct or cause the direction of the management

and policies of the entity, whether through the ownership of voting shares, by contract, or otherwise.

- **Court of Appeal:**

the Court of Appeal (*Gerechtshof*) in Amsterdam, the Netherlands.

- **Foundation:**

the foundation Stichting Volkswagen Investor Settlement.

- **Investors:**

all persons (including legal entities) who have invested directly or indirectly in financial instruments, including ordinary shares and/or preference shares in and/or bonds of one or more of the Volkswagen Entities, and whose interests as Investors the Foundation promotes, protects and represents pursuant to its objects.

The aforementioned financial instruments include, but are not limited to, ordinary and/or preference shares in the capital of Volkswagen AG with either one of the following ISIN-codes: DE0007664039 and DE0007664005, which were directly or indirectly purchased or otherwise acquired between the twenty-third day of April two thousand and eight and the fourth day of January two thousand and sixteen.

- **Participants:**

the Investors or their representatives who have entered into (or will enter into) a Participation Agreement with the Foundation.

- **Participation Agreement:**

a specific agreement between a Participant and the Foundation which sets specific conditions.

- **Party:**

a party to one of the Settlement Agreements.

- **Policymakers:**

the natural persons who, in various capacities – including but not limited to those of director, supervisory board member, (de facto) policymaker/co-policymaker and/or employee of one or more of the Volkswagen Entities – were responsible for the (actual) course of affairs at, the supervision of and/or the policies of one or more of the Volkswagen Entities.

- **Settlement Agreement:**

a settlement agreement entered into between the Foundation and one or more Policymakers and/or Volkswagen Entities for the settlement of one or more Claims of Investors against one or more Policymakers and/or Volkswagen Entities.

- **Volkswagen Entities:**
 - a. the following legal entities:
 - Volkswagen AG;
 - Volkswagen Group of America, Inc.;
 - Pon Automobielhandel B.V.;
 - AUDI AG;
 - Seat S.A.;
 - ŠKODA Auto a.s.;
 - b. legal entities involved in the design, development and/or production of the aforementioned engines, and/or
 - c. all respective parent companies, legal successors, legal predecessors, affiliated companies, divisions, business units, subsidiaries, group companies and entities in which (one of) the legal entities mentioned in clauses (a.) and (b.) have a Controlling Interest or that have a Controlling Interest in (one of) them.

Words and terms importing the singular shall be construed as importing the plural and vice versa, except as otherwise stated or required by context.

Name and seat.

Article 2.

- 2.1. The name of the Foundation is **Stichting Volkswagen Investor Settlement**.
The abbreviated name of the Foundation is Volkswagen Investor Settlement Foundation.
- 2.2. The Foundation has its seat in the City of Amsterdam, the Netherlands.

Objects and means.

Article 3.

- 3.1. The objects of the Foundation are:
 - a. to promote, protect and represent the interests of Investors who are suffering, are in danger of suffering and/or have suffered loss or damage as a consequence of the acts or omissions of:
 - i. one or more Policymakers, and/or
 - ii. one or more of the Volkswagen Entities,which acts or omissions give rise to a Claim;
 - b. to represent the interests of Investors in relation to a Settlement Agreement in respect of which the Court of Appeal will be requested to make an order declaring the agreement binding pursuant to the Dutch Class Action (Financial Settlement) Act (*Wet Collectieve Afwikkeling Massaschade* or *WCAM*);

- c. to obtain and distribute financial compensation for (part of) the loss or damage which Investors claim to have suffered, subject to the provisions of a Settlement Agreement,
and to perform any acts relating or potentially conducive to the above provisions, all in the broadest sense of the word.
- 3.2. The Foundation endeavours to achieve these objects by, inter alia:
- a. conducting investigations and substantiating one or more Claims;
 - b. providing appropriate information and guidance to Investors whose interests it promotes, protects and represents pursuant to Article 3.1, and performing any other activities relating to the promotion, protection and representation of interests;
 - c. offering Investors the opportunity to join the Foundation as Participants by entering into Participation Agreements;
 - d. selecting and monitoring one or more attorneys, claims administrators and/or escrow agents;
 - e. initiating legal proceedings in and outside the Netherlands, including without limitation:
 - i. in the Netherlands: initiating proceedings as referred to in Section 305a in Book 3 of the Dutch Civil Code and Section 240 in Book 6 of the Dutch Civil Code, and
 - ii. initiating other legal proceedings (such as applying for declaratory judgments);
 - f. conducting negotiations (where necessary) with relevant parties, including without limitation one or more Policymakers and/or Volkswagen Entities;
 - g. entering into one or more Settlement Agreements between the Foundation and one or more Policymakers and/or Volkswagen Entities on the settlement of the Claims of Investors in full and final settlement of those Claims and/or in return for a waiver of rights;
 - h. filing an application, individually or jointly with others, under the Dutch Class Action (Financial Settlement) Act (WCAM) with the Court of Appeal for an order declaring one or more Settlement Agreements binding, and making every possible effort to have one or more Settlement Agreements declared binding, including responding to statements of defence submitted to the Court of Appeal in the action, and (where necessary) instituting other legal actions;

- i. entering into such agreements as are necessary and/or useful for the performance of one or more Settlement Agreements and/or the carrying out of an order declaring one or more Settlement Agreements binding;
- j. collecting debts, whether or not by virtue of a power of attorney from or on the instructions of Investors;
- k. establishing and maintaining contacts with the media;
- l. collecting payments on account of the (group) claims of one or more Investors against one or more Policymakers and/or Volkswagen Entities under the Settlement Agreements, and distributing such payments among the Investors concerned and/or ensuring that such payments are collected and distributed among the Investors concerned, either together with other payments intended for the Investors or separately, in accordance with the Settlement Agreements, as well as overseeing such payments, and
- m. performing any acts relating or potentially conducive to the foregoing, all in the broadest sense of the word.

3.3. The Foundation is a not-for-profit organization.

Financial resources.

Article 4.

The financial resources of the Foundation consist of:

- a. income from activities undertaken by the Foundation;
- b. contributions received from the Participants;
- c. subsidies, grants and gifts;
- d. assets inherited or received as a bequest or legacy, with the proviso that the Foundation may accept inheritances only conditionally (under benefit of inventory);
- e. any other income.

Board: membership, appointment and termination of office.

Article 5.

- 5.1. The Foundation has a Board consisting of such a number of natural persons as the Supervisory Board shall determine, subject to a minimum of three. If the Board is incomplete, it shall nonetheless keep its powers. Vacancies shall be filled as soon as possible after they occur.
- 5.2. The membership of the Board shall be such that it has the specific expertise necessary for instituting legal actions and/or filing Claims, with the proviso that at least one Board member has the specific experience and legal expertise

necessary for the proper promotion, protection and representation of the interests of Investors and for litigating under the Dutch Class Action (Financial Settlement) Act (WCAM).

- 5.3. The Board members shall be appointed by the Supervisory Board subject to the provisions of Article 5.2, with the proviso that the following shall not be eligible for appointment to the Board:
- a. a person who is (or has been) employed by a Volkswagen Entity or who otherwise performs (or has performed) work for a Volkswagen Entity in return for any form of remuneration, regardless of the basis on which he performs (or has performed) the work in question;
 - b. a person who has (or has had) a direct or indirect financial interest in a Volkswagen Entity other than by participating in a mutual fund or blind trust;
 - c. the spouse, registered partner and/or relatives by blood or marriage in the first degree of:
 - i. any of the Board members;
 - ii. any of the Supervisory Board members, and
 - iii. any of the persons referred to in clauses (a.) and/or (b.) of Article 5.3.

For the purposes of this Article 5.3, the term 'spouse' also includes an unmarried person with whom a person as referred to in clause (c.)(i), (c.)(ii) or (c.)(iii) has entered into a notarial cohabitation agreement or with whom such person is listed in the Personal Records Database, or an equivalent foreign register, as residing at the same address.

- 5.4. The Board shall appoint a president, a secretary and a treasurer from its number. The positions of secretary and treasurer may also be held by one person.
- 5.5. Board members shall be appointed for a maximum term of four years and shall retire in accordance with a retirement schedule prepared by the Board. A Board member retiring in accordance with the schedule shall be eligible for immediate reappointment without limitation.
- 5.6. A person who has retired from office as a Board member may not be appointed or reappointed as a Board member, with the exception of a reappointment as referred to in Article 5.5.
- 5.7. The Supervisory Board may suspend or remove a Board member from office. If a Board member is suspended and no resolution is passed on his removal from office within three months, the suspension shall end on expiry of that period.

- 5.8. A Board member shall also cease to hold office:
- a. if he dies;
 - b. if he no longer meets the provisions set out in Article 5.3;
 - c. if he is declared bankrupt, applies for court protection from creditors (moratorium) or applies for a debt payment programme under the statutory debt arrangement scheme as defined in the Dutch Bankruptcy and Insolvency Act (*Faillissementswet*), or an equivalent scheme under foreign law which is applicable to the Board member in question;
 - d. if he is placed under guardianship or otherwise loses the right to freely dispose of his assets;
 - e. if he steps down, either in accordance with the schedule referred to in Article 5.5 or otherwise;
 - f. if he accepts an appointment as Supervisory Board member;
 - g. if he is removed from office by the court in the cases determined by law.
- 5.9. A resolution on the suspension or removal from office of a Board member as referred to in Article 5.7 shall require a majority of at least two thirds of the votes cast at a Supervisory Board meeting at which at least two thirds of the Supervisory Board members are present or represented. If fewer than two thirds of the Supervisory Board members are present or represented at a Supervisory Board meeting, a second meeting shall be convened, to be held no earlier than two and no later than four weeks after the first meeting, at which second meeting a valid resolution may be passed on such suspension or removal from office by a majority of at least two thirds of the votes cast, on condition that at least fifty per cent of the Supervisory Board members are present or represented at that meeting. The notice of the second meeting shall state that and why a resolution may be passed on such suspension or removal from office at a meeting at which only fifty per cent of the Supervisory Board members need be present or represented.
- 5.10. If one or more Board members are absent or unable to act, the remaining Board members shall temporarily be charged with the management. If all the Board members or the only Board member is/are absent or unable to act, one or more persons appointed for that purpose by the Supervisory Board shall temporarily be charged with the management.

Board: duties and powers.

Article 6.

- 6.1. The Board is charged with the management of the Foundation.
- 6.2. Unless this Constitution provides otherwise, the Board shall be entitled to pass any resolutions, in particular resolutions:
 - a. to institute legal proceedings;
 - b. to seek legal assistance and to engage such experts as the Board reasonably considers necessary to perform its duties under this Constitution;
 - c. to take out directors' and officers' liability insurance for members of the Board and the Supervisory Board;
 - d. to enter into Settlement Agreements;
 - e. to file an application under the Dutch Class Action (Financial Settlement) Act (WCAM) with the Court of Appeal for an order declaring one or more Settlement Agreements binding, and to perform all acts with respect to such application; and
 - f. to select and appoint a claims administrator to act on behalf of the Foundation, subject to the prior approval by the other Parties of the proposed agreement between the Foundation and the claims administrator.
- 6.3. The Board shall require the prior written approval of the Supervisory Board for:
 - a. a resolution as referred to in Article 6.2 clauses (a.) to (f.), Article 7.1, Article 7.2, Article 21.1, Article 24.3 and Article 26.1;
 - b. a resolution to adopt the budget for the next year;
 - c. a resolution to incur significant expenditure that is not or not fully covered by the adopted budget;
 - d. a resolution to conduct and/or break off negotiations in the context of the objects under the Constitution.

The Supervisory Board may also subject resolutions of the Board other than those referred to in Article 6.3 to its prior written approval. Such resolutions must be clearly specified and notified in writing to the Board.
- 6.4. The Board shall not be entitled to pass resolutions to enter into agreements for the acquisition, disposal and encumbrance of property subject to compulsory registration, and to enter into agreements by which the Foundation binds itself as surety, guarantor or joint and several debtor, warrants performance by a third party or provides security for a debt of another party.
- 6.5. The Board shall not be entitled either to pass resolutions to enter into agreements with a natural person or legal entity in which a Board member, a Supervisory Board member or a person as referred to in Article 5.3(c.) is

involved in the capacity of director, incorporator, founder, shareholder, supervisor or employee.

6.6. In the performance of their duties, the Board and each of the Board members shall be guided by the interests of the Investors.

6.7. Board members may be remunerated for the services they perform for the Foundation in accordance with the Claims Code. Such remuneration (expense allowances, attendance fees and/or retainers) shall be determined by the Supervisory Board and may be set at nil if this is necessary in view of the financial position of the Foundation.

Board members shall receive no remuneration for their services to the Foundation other than the aforesaid remuneration, neither directly nor indirectly.

The payments made to Board members shall be disclosed as such and explained in the financial statements with due regard for the provisions of the Claims Code.

6.8. Neither natural persons nor legal entities may dispose of the Foundation's financial resources as if they were their own financial resources.

Compliance with the Claims Code.

Article 7.

7.1. The Board shall ensure compliance with the Claims Code.

A resolution of the Board to depart from the Claims Code shall be subject to the prior written approval of the Supervisory Board.

7.2. Each year the Board shall adopt a governance document as referred to in Elaboration 1 of Principle I of the Claims Code, subject to the written approval of the Supervisory Board.

7.3. The governance document referred to in Article 7.2 shall be published on the website of the Foundation after it has been adopted.

Board: convening of meetings.

Article 8.

8.1. Board meetings shall be held whenever the president or two other Board members jointly convene a meeting, subject to a minimum of two meetings per year.

8.2. Board meetings shall be convened by the person or persons referred to in Article 8.1, or by the secretary on their behalf, subject to at least seven days' prior written notice. The notice of a meeting shall specify the business to be considered. Notices of meeting may be sent by electronic communication, in

the form of a message that is capable of being reproduced, to the Board members' addresses notified by them for that purpose (for example, by email).

- 8.3. The meetings of the Board shall be held in the Netherlands or in any other country, as determined by the person convening the meeting or arranging for the meeting to be convened.
- 8.4. If the provisions of Article 8.2 and/or Article 8.3 have not been complied with, the Board may nevertheless pass valid resolutions provided that all the Board members are in attendance at the meeting and none of the Board members objects to the passing of resolutions in that case, or – if not all the Board members are in attendance at the meeting – if the Board members not attending the meeting declare in writing before the start of the meeting that they do not object to the passing of resolutions. In the latter case the provision in the first sentence of Article 11.4 shall apply in full. A declaration made electronically shall be equivalent to a declaration made in writing.

Board: admission to meetings.

Article 9.

- 9.1. The meetings of the Board may be attended by the Board members and by anyone invited for that purpose by the president or by two other Board members jointly.
- 9.2. A Board member may arrange to be represented at a meeting by a fellow Board member. The proxy in question must be granted in writing. A proxy granted electronically shall be equivalent to a written proxy. The proxy shall not deprive the principal of the right to attend the meeting and to vote in person at the meeting. A Board member may represent only one other Board member at a meeting.
- 9.3. A Board member may participate in a meeting by using an electronic means of communication – including, without limitation, by telephone or video conferencing – on condition that the electronic means of communication allows the identity of such Board member to be established and enables him to follow the proceedings at the meeting in real time and to participate in the deliberations and voting. The Board member shall then be deemed to be present at such meeting.

Board: chairing of meetings.

Article 10.

The president of the Board shall chair the Board meetings. In his absence the meeting shall appoint someone else to chair the meeting. Until then, the oldest Board member present at the meeting shall chair the meeting.

Board: decision-making at meetings.

Article 11.

- 11.1. The person chairing the meeting shall decide the method of voting at meetings, provided that votes on matters concerning persons shall be taken by ballot if so requested by one of the Board members.
- 11.2. Unless this Constitution prescribes a larger majority, all Board resolutions shall be passed by an absolute majority of the votes cast.
- 11.3. Each Board member has one vote. Blank votes shall be treated as abstentions. If the votes are equally divided, the motion is defeated.
- 11.4. With respect to the decision-making by the Board it is provided that the Board may pass valid resolutions only at a meeting at which at least fifty per cent of the Board members are present or represented, except as otherwise provided in this Constitution.

If fewer than fifty per cent of the Board members are present or represented at a meeting, a second meeting shall be convened, to be held no earlier than two and no later than four weeks after the first meeting, at which second meeting a valid resolution may be passed, regardless of the number of Board members present or represented, on the items that were included on the agenda for the first meeting but in respect of which no resolution could be passed at that meeting because it was inquorate. The notice of the second meeting shall state that and why a resolution may be passed regardless of the number of Board members present or represented at the meeting.

- 11.5. The opinion expressed at a meeting by the chair of the meeting regarding the result of a vote shall be decisive. The same shall apply to the content of a resolution that has been passed in so far as the motion voted on was not recorded in writing. If the correctness of the opinion of the chair is disputed immediately after it is expressed, a new vote shall be taken if the majority of the meeting or, if the original vote was not taken by roll call or by ballot, a person who is present and entitled to vote so desires. The legal consequences of the original vote shall become null and void as a result of such a new vote.

Board: written resolution procedure.

Article 12.

All Board resolutions may also be passed without holding a meeting (written resolution procedure), provided that all the Board members are given an opportunity to cast their vote and that they have all declared in writing that they do not object to this method of passing resolutions. In that case a resolution has been passed if the required majority of all the Board members have declared in writing that they support the

motion in question. The term 'in writing' shall be construed to include any message sent by electronic means that is capable of being reproduced. The secretary of the Board shall make a record of a resolution passed without holding a meeting, which record shall be confirmed at the next meeting and be signed as a true and accurate record by the chair and the minuter of that meeting. The record thus confirmed shall be kept with the minutes of the meetings of the Board, along with the documents referred to in the first sentence of this Article 12.

Board: conflicting interests.

Article 13.

- 13.1. A Board member shall not take part in the deliberations and shall abstain from voting on any Board resolution in respect of a matter in which he has a direct or indirect interest which conflicts with the interests of the Foundation. The Board member does have the right to attend the Board meeting in question, but his presence shall be disregarded for the purpose of determining the number of Board members present or represented with respect to the Board resolution in question.
- 13.2. If none of the Board members can take part in the decision-making as a consequence of the provision in the first sentence of Article 13.1, the resolution shall be passed by the Supervisory Board.

Board: minutes of meetings.

Article 14.

The proceedings at Board meetings shall be recorded in minutes kept by the secretary or by another person designated for that purpose by the person chairing the meeting. The minutes shall be confirmed at the meeting in question or at the next meeting, and shall subsequently be signed as a true and accurate record by the chair and the minuter of that meeting. The minutes and the documents referred to in Article 12 shall be sent to each of the Board members.

Board: representation.

Article 15.

- 15.1. The Board shall represent the Foundation.
- 15.2. The authority to represent the Foundation is also vested in two Board members acting jointly.
- 15.3. The Board may decide to grant power of attorney to one or more Board members and to third parties to represent the Foundation within the terms of the power of attorney.

Supervisory Board: membership, appointment and termination of office.

Article 16.

- 16.1. The supervision of the policies of the Board and the day-to-day running of the Foundation is entrusted to a Supervisory Board.
- 16.2. The Supervisory Board shall consist of no fewer than three and no more than five natural persons, as determined by the Supervisory Board. If the Supervisory Board is incomplete, it shall nonetheless keep its powers. Vacancies shall be filled as soon as possible after they occur.
- 16.3. The membership of the Supervisory Board shall be such that:
 - a. at least one Supervisory Board member has the specific experience and legal expertise necessary for the proper promotion and protection of the interests of Investors and for litigating under the Dutch Class Action (Financial Settlement) Act (WCAM).
 - b. at least one Supervisory Board member has the specific financial expertise necessary for giving adequate advice on and carrying out adequate supervision of the financial policies and strategies pursued by the Board, including the budget prepared by the Board, the financial statements and the annual report.
- 16.4. The Supervisory Board members shall be appointed by the Supervisory Board, with the proviso that the following shall not be eligible for appointment to the Supervisory Board:
 - a. a person who is (or has been) employed by a Volkswagen Entity or who otherwise performs (or has performed) work for a Volkswagen Entity in return for any form of remuneration, regardless of the basis on which he performs (or has performed) the work in question;
 - b. a person who has (or has had) a direct or indirect financial interest in a Volkswagen Entity other than by participating in a mutual fund or blind trust;
 - c. the spouse, registered partner and/or relatives by blood or marriage in the first degree of:
 - i. any of the Board members;
 - ii. any of the Supervisory Board members, and
 - iii. any of the persons referred to in clauses (a.) and/or (b.) of Article 16.4.

For the purposes of this Article 16.4, the term 'spouse' also includes an unmarried person with whom a person as referred to in clause (c.)(i), (c.)(ii) or (c.)(iii) has entered into a notarial cohabitation agreement or with whom such person is listed in the Personal Records Database, or an equivalent foreign register, as residing at the same address.

- 16.5. The Supervisory Board shall appoint a president and a secretary from its number.
- 16.6. Supervisory Board members shall be appointed for a maximum term of four years and shall retire in accordance with a retirement schedule prepared by the Supervisory Board. A Supervisory Board member retiring in accordance with the schedule shall be eligible for immediate reappointment without limitation.
- 16.7. A Supervisory Board member shall cease to hold office:
- a. if he dies;
 - b. if he no longer meets the provisions set out in Article 16.4;
 - c. if he is declared bankrupt, applies for court protection from creditors (moratorium) or applies for a debt payment programme under the statutory debt arrangement scheme as defined in the Dutch Bankruptcy and Insolvency Act (*Faillissementswet*), or an equivalent scheme under foreign law which is applicable to the Supervisory Board member in question;
 - d. if he is placed under guardianship or otherwise loses the right to freely dispose of his assets;
 - e. if he steps down, either in accordance with the schedule referred to in Article 16.6 or otherwise;
 - f. if he accepts an appointment as Board member;
 - g. if he is removed from office by the Supervisory Board.
- 16.8. A Supervisory Board member whose removal from office as referred to in Article 16.7 (g.) is under consideration shall have the right to attend and address the Supervisory Board meeting or meetings in question. His presence shall be disregarded for the purpose of determining the number of Supervisory Board members present or represented and he shall not be entitled to vote on any motions relating to his proposed removal from office. The second sentence of this Article 16.8 shall not apply, however, if the Supervisory Board consists of only two members at that time.

Supervisory Board: duties and powers.

Article 17.

- 17.1. The Board shall furnish the Supervisory Board in good time with the information it requires to perform its duties and powers and shall, furthermore, furnish each Supervisory Board member with all such information relating to the Foundation's affairs as such member may request. The Supervisory Board has the right to inspect all the books, records and other data carriers of the

Foundation. Each Supervisory Board member shall have access at any time to all premises used by the Foundation.

- 17.2. In the discharge of its duties, the Supervisory Board may seek the assistance of one or more experts at the expense of the Foundation.
- 17.3. Each year the Supervisory Board shall adopt an accountability document in which it accounts for its supervision in the past year.
- 17.4. The accountability document referred to in Article 17.3 shall be published on the website of the Foundation after it has been adopted.
- 17.5. Supervisory Board members may be remunerated for the services they perform for the Foundation in accordance with the Claims Code. Such remuneration (expense allowances, attendance fees and/or retainers) shall be determined by the joint meeting of the Board and the Supervisory Board referred to in Article 19 and may be set at nil if this is necessary in view of the financial position of the Foundation.

Supervisory Board members shall receive no remuneration for their services to the Foundation other than the aforesaid remuneration, neither directly nor indirectly.

The payments made to Supervisory Board members shall be disclosed as such and explained in the financial statements with due regard for the provisions of the Claims Code.

Supervisory Board: meetings, decision-making and conflicting interests.

Article 18.

- 18.1. The provisions of Articles 8, 9, 10, 11, 12 and 14 of this Constitution shall apply by analogy to the Supervisory Board as far as possible, with the proviso that Board members are admitted to the meetings of the Supervisory Board only if they have been invited by the Supervisory Board to attend the meeting in question. The Supervisory Board shall meet at least once a year.
- 18.2. A Supervisory Board member shall not take part in the deliberations and shall abstain from voting on any Supervisory Board resolution in respect of a matter in which he has a direct or indirect interest which conflicts with the interests of the Foundation. The Supervisory Board member does have the right to attend the Supervisory Board meeting in question, but his presence shall be disregarded for the purpose of determining the number of Supervisory Board members present or represented with respect to the Supervisory Board resolution in question.
- 18.3. If none of the Supervisory Board members can take part in the decision-making as a consequence of the provision in the first sentence of Article 18.2,

the Supervisory Board member or members whose interests conflict with those of the Foundation may nevertheless take part in the deliberations and the vote. In that case an extract from the minutes referred to in Article 14 or, as the case may be, the record referred to in Article 12, specifying the conflicting interest in question, shall be added to the financial statements for the financial year in which the resolution is passed.

- 18.4. More detailed provisions concerning the functioning of the Supervisory Board may be laid down in standing orders for the Supervisory Board adopted by the Supervisory Board subject to prior consultation with the Board.

Joint meeting of the Board and the Supervisory Board.

Article 19.

- 19.1. The Board and the Supervisory Board shall hold a joint meeting at least once a year:
- a. to discuss the broad outline of current and future policy, and
 - b. to determine the remuneration payable to the Supervisory Board members as referred to in Article 17.5.
- 19.2. The Board and the Supervisory Board shall be equally entitled to convene a joint meeting.
- 19.3. The joint meetings shall be chaired by the president of the Supervisory Board.

Participants.

Article 20.

- 20.1. The Board of the Foundation may decide to admit Participants to the Foundation, in which case the provisions of this Article 20 shall apply.
- 20.2. Only persons who are Investors and who have entered into a Participation Agreement with the Foundation may be Participants of the Foundation. A Participant is admitted as such by the Board.
- 20.3. Participants may be consulted in writing or at a meeting – as decided by the Board – about matters determined by the Board, with the proviso that the Board may also limit such consultation to specific categories of Participants.
- 20.4. A Participant shall cease to be a Participant:
- a. if he dies or ceases to exist;
 - b. if he no longer meets the requirements for being a Participant as set out in Article 20.2;
 - c. if the Participant is declared bankrupt, applies for court protection from creditors (moratorium) or applies for a debt payment programme under the statutory debt arrangement scheme as defined in the Dutch Bankruptcy and Insolvency Act (*Faillissementswet*), or an equivalent

scheme under foreign law which is applicable to the Participant in question;

- d. if the Participant is placed under guardianship or otherwise loses the right to freely dispose of his assets;
- e. if the Participant gives notice of termination of participation;
- f. if the Board gives notice of termination of participation;
- g. if the Participant conducts legal proceedings against the Foundation and/or its (former) Board members and/or (former) Supervisory Board members and/or the Parties.

Notice of termination of participation as referred to in clause (e.) may be given with effect from the end of a financial year only and the period for giving such notice is two months. However, a Participant or the Board may terminate a Participant's participation as referred to in clauses (e.) and (f.) with immediate effect if the Participant or the Board cannot reasonably be required to continue the Participant's participation in the Foundation. A Participant may also terminate his participation as referred to in clause (e.) with immediate effect within one month of the date on which he becomes aware of or is informed of a resolution resulting in an increase in the financial obligations of the Participants. In that case such resolution shall not apply to the Participant.

A resolution as referred to in clause (f.) may be passed only by a majority of at least two thirds of the votes cast at a meeting at which at least two thirds of all the Board members are present or represented.

- 20.5. The Board may determine that each Participant, or a specific category of Participants, is under an obligation to the Foundation to pay such a contribution as shall be set each year by the Board. The Board may set a different annual contribution for each category of Participants.
- 20.6. A Participant who ceases to be a Participant in the course of a financial year shall nevertheless be required to pay the full contribution set for such year.
- 20.7. The Board shall keep a register in which the names and addresses of all the Participants shall be entered. Each Participant shall be required to provide his or her address to the Board in writing. If the Board is also notified of an electronic address for entry in the register of Participants, such notification shall imply that the Participant in question agrees to receive all notices and communications in electronic form (for example, by email).

Committees.

Article 21.

- 21.1. The Board may decide to establish and abolish committees, subject to the prior written approval of the Supervisory Board. When establishing a committee, the Board shall formulate its terms of reference.
- 21.2. Third parties, Board members as well as Supervisory Board Members may be appointed as members of committees established by the Board. The members of the committees established by the Board shall be appointed and may be removed by the Board, which shall also determine the number of members of each committee.
- 21.3. All matters concerning committees shall be regulated by standing orders as referred to in Article 25.

Indemnification.

Article 22.

- 22.1. The Foundation indemnifies each of the (former) Board members against claims from third parties in connection with:
 - a. any financial loss or damage suffered by the indemnitee; and
 - b. expenses reasonably paid or incurred by the indemnitee in connection with any imminent, pending or completed suit, claim, action or (legal) proceedings, whether formal or informal, and whether civil, criminal, administrative or investigative in nature, in which the indemnitee becomes involved,to the extent that the above relates to his position as a (former) Board member, in each case to the fullest extent permitted by applicable law.
- 22.2. No indemnification is provided to a (former) Board member:
 - a. if a Dutch court has ruled in a final and non-appealable judgment that the acts or omissions of such (former) Board member that have resulted in the financial loss, damage, suit, claim, action or (legal) proceedings referred to in Article 22.1, are the result of improper discharge of his duties as a (former) Board member or an unlawful, illegal or wrongful act; or
 - b. to the extent that his financial loss, damage and expenses are covered by an insurance policy and the insurance company has compensated (or stated that it will compensate) him for such financial loss, damage and expenses.
- 22.3. The Board may determine that additional provisions, terms, conditions and restrictions apply to the indemnification referred to in Article 22.1.
- 22.4. The indemnification provided pursuant to this Article 22 shall apply by analogy to each (former) Supervisory Board member.

Provision of information.

Article 23.

The Board shall maintain a website for the Foundation on which at least the following information shall be made publicly available:

- a. the Constitution of the Foundation;
- b. the governance document referred to in Article 7.2 and the accountability document referred to in Article 17.3;
- c. details of the contributions payable by Participants;
- d. the curriculum vitae of each of the Board members;
- e. the curriculum vitae of each of the Supervisory Board members;
- f. the main points of a plan of action on the basis of which a potential Participant can assess whether the nature and working procedures of the Foundation correspond with his interests;
- g. an overview of the status of legal proceedings in which the Foundation is involved;
- h. an overview of the main points of Settlement Agreements entered into by the Foundation.

Financial year, financial statements and annual report.

Article 24.

24.1. The Foundation's financial year coincides with the calendar year.

24.2. The Board is obliged to keep such records of the Foundation's financial position and of everything relating to the activities of the Foundation, in a manner appropriate to those activities, and to keep the corresponding books, records and other data carriers in such a manner as to ensure that the Foundation's rights and obligations can be ascertained at any time.

The records must also clearly disclose:

- a. the nature and amount of any expenses reimbursed and any expense allowances, attendance fees and retainers (remuneration) payable to the individual members of the Board and the Supervisory Board;
 - b. the nature and amount of the costs incurred by the Foundation on managing the Foundation, as well as the nature and amount of any other expenditure incurred by the Foundation;
 - c. the nature and amount of the Foundation's income, and
 - d. the nature and amount of the Foundation's assets.
- 24.3. Within six months of the end of each financial year, the Board shall prepare the financial statements of the Foundation and the annual report.

The financial statements and the annual report shall require the approval of the Supervisory Board. For that purpose the financial statements and the annual report shall be sent to the Supervisory Board as soon as possible after they have been prepared.

Before giving its approval to the financial statements, the Supervisory Board may instruct the Board to arrange for the financial statements and/or the annual report to be audited by a *registeraccountant* designated by the Supervisory Board.

This *registeraccountant* shall report on his audit to the Supervisory Board and present the findings of his audit in an opinion on the fair presentation of the financial statements and/or the annual report. He shall notify the Board of his report.

Approval of the financial statements shall automatically constitute adoption of the financial statements. The annual report shall be adopted by the Board subject to the prior approval of the Supervisory Board.

- 24.4. The Board shall be required to retain the books, records and other data carriers referred to in the preceding Paragraphs for a period of seven years.
- 24.5. The financial statements and the annual report may be published on the Foundation's website after their adoption.
- 24.6. The data stored on a data carrier, with the exception of the financial statements, may be transferred to and saved on another data carrier, on condition that the data in question is transferred correctly and completely, and that such data is available throughout the prescribed retention period and can be viewed as human-readable text within a reasonable time.

Standing orders.

Article 25.

- 25.1. The Board may adopt, amend or repeal standing orders other than the standing orders for the Supervisory Board referred to in Article 18.4. Such standing orders may contain specific provisions regarding aspects of the functioning of the Foundation and its Board that are not or not fully covered by this Constitution.
- 25.2. The provisions of Articles 26.1, 26.2 and 26.3 (with the exception of the last sentence) shall apply by analogy to the adoption and repeal of and any amendments to standing orders.

Amendments to the Constitution.

Article 26.

- 26.1. The Board may amend the Constitution subject to the provisions of this Article 26. A resolution of the Board to amend the Constitution shall be subject to the prior written approval of the Supervisory Board; the provisions of Article 26.2 shall apply by analogy to such a resolution of the Supervisory Board.
- 26.2. A Board resolution to amend the Constitution may be passed only by a majority of at least two thirds of the votes cast at a Board meeting at which at least two thirds of the Board members are present or represented. If the Board meeting at which a motion to amend the Constitution is to be considered is inquorate, a second meeting shall be convened, to be held no earlier than two and no later than four weeks after the first meeting, at which second meeting a valid resolution may be passed by a majority of at least two thirds of the votes cast, on condition that at least fifty per cent of the Board members are present or represented at such meeting. The notice of the second meeting shall state that and why a resolution to amend the Constitution may be passed at a meeting at which only fifty per cent of the Board members need be present or represented. The provisions in the second sentence of Article 11.4 of this Constitution shall not apply to a resolution to amend the Constitution.
- 26.3. If a motion to amend the Constitution will be considered at a meeting, this must always be announced in the notice of the meeting in question. The notice of the meeting must also be accompanied by a copy of the motion containing the exact wording of the proposed amendment. In this case, the minimum notice period shall be two weeks.
- 26.4. An amendment to the Constitution shall not take effect until it has been recorded in a notarial deed. Each Board member shall be entitled to arrange for such deed to be executed.
- 26.5. The Board members are required to lodge a certified copy of the amendment and the full text of the amended Constitution with the office of the Trade Register.

Dissolution, liquidation and winding-up.

Article 27.

- 27.1. The Board may dissolve the Foundation.
- 27.2. The provisions of Article 26.1, second sentence, and Articles 26.2 and 26.3 shall apply by analogy to a Board resolution to dissolve the Foundation.
- 27.3. Once the Foundation has been dissolved, its affairs shall be wound up and its assets shall be liquidated by the Board, unless one or more other liquidators are appointed by the court or by the resolution to dissolve the Foundation.

- 27.4. The liquidators shall notify the Trade Register of the dissolution and of their role as liquidators and shall provide such details of themselves to the Trade Register as are required of a Board member.
- 27.5. In its resolution to dissolve the Foundation, the Board shall stipulate how any surplus on winding up is to be allocated. The surplus shall be allocated to those who are Participants at the time when the resolution to dissolve the Foundation is passed. The surplus shall be divided pro rata to the contribution paid by each Participant in the last financial year, except as otherwise decided by the Board in its resolution to dissolve the Foundation.
- However, the resolution to dissolve the Foundation may also determine that the surplus on winding up must be applied differently, on condition that it is given to:
- a. a public benefit organization, as defined in Section 5b of the Dutch General Taxation Act (*Algemene wet inzake rijksbelastingen*) or any substitute regulation, with objects that are similar to the Foundation's objects as far as possible, or
 - b. a foreign organization which exclusively or virtually exclusively pursues the common good and which has objects that are similar to the Foundation's objects as far as possible.
- 27.6. In its resolution to dissolve the Foundation, the Board shall also designate a custodian to keep the books, records and other data carriers of the dissolved Foundation.
- 27.7. After its dissolution the Foundation shall continue to exist in so far as this is necessary for the liquidation of its assets. The provisions of this Constitution shall remain in force as far as possible during the winding-up and liquidation period. The words 'in liquidatie' (in liquidation) must be added to the Foundation's name in documents and notices issued by the Foundation.
- 27.8. Once the winding up and liquidation is complete, the books, records and other data carriers of the dissolved Foundation shall, for a period of seven years after the Foundation has ceased to exist, remain in the custody of the custodian appointed by the Board in its resolution to dissolve the Foundation. This person must ensure that his appointment and his name and address are recorded in the Trade Register within eight days of the commencement of his custodial duty.

Final provision.

Article 29.

- 29.1. The first members of the Board and the Supervisory Board are appointed by this deed.
- 29.2. The Foundation's first financial year will end on the thirty-first day of December two thousand and sixteen.

END OF THE CONSTITUTION.

In conclusion, the person appearing declared that by this deed of formation:

- the following three (3) persons are appointed as the first members of the Foundation's Board, to the positions stated after their names:
 - a. *professor mr.* Jan Hubertus Maria Willems, born in Sittard on the fifteenth day of August nineteen hundred and forty-four: president of the Board;
 - b. *professor mr. dr.* Frans van der Wel, *RA*, born in Zutphen on the twenty-second day of October nineteen hundred and fifty-five: secretary/treasurer;
 - c. *drs.* Robertus Willem Okhuijsen, born in Utrecht on the fifteenth day of August nineteen hundred and seventy-seven: Board member;
- the following three (3) persons are appointed as the first members of the Foundation's Supervisory Board, to the positions stated after their names:
 - a. *mr.* Bernardus Franciscus Maria Knüppe, born in Dordrecht on the fourth day of July nineteen hundred and fifty-two: president of the Supervisory Board;
 - b. *professor dr.* Astrid Stadler, born in Ulm, Germany, on the fourth day of September nineteen hundred and fifty-nine: Supervisory Board member;
 - c. Hans de Munnik, born in Amsterdam on the second day of August nineteen hundred and forty-six: Supervisory Board member.

Concluding statement.

The person appearing is known to me, civil law notary.

THIS DEED was executed in one original copy in The Hague on the day and in the year first above written.

After the sum and substance of this deed had been stated and its contents had been explained to the person appearing, he declared that he had been given an opportunity to take note of the contents of this deed in good time prior to its execution and that he had in fact taken note thereof, that he agreed to the contents of this deed and that he did not require the deed to be read out in full.

Immediately after at least those parts of this deed had been read out that must be read out by law, this deed was signed, first by the person appearing and immediately thereafter by me, civil law notary.