

COMPANIES ACT 2014

PRIVATE LIMITED COMPANY HAVING A SHARE CAPITAL

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CONSTITUTION

of

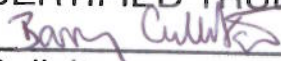
EUROPEAN RAIL FINANCE (2) LIMITED

(as amended by Special Resolutions dated 13 March 2012, 23 April 2012,  
10 October 2016 and 19 December 2016)

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McCann FitzGerald  
Solicitors  
Riverside One  
Sir John Rogerson's Quay  
Dublin 2  
IXXG\4317240.6

CERTIFIED TRUE COPY

  
Solicitor

Date: 19/01/2017

Newmount House  
22-24 Mount Street Lower  
Dublin 2, Ireland

COMPANIES ACT 2014  
PRIVATE LIMITED COMPANY HAVING A SHARE CAPITAL  
CONSTITUTION

- OF -

EUROPEAN RAIL FINANCE (2) LIMITED

1. The name of the Company is European Rail Finance (2) Limited.
2. The Company is a private company limited by shares registered under Part 2 of the Companies Act 2014.
3. The liability of the members is limited.
4. The share capital of the Company is £100,000,000 divided into 100,000,000 shares of £1.00 each.
5. Interpretation
  - 5.1 When and while the Act applies to the Company:
    - (a) these Regulations; and
    - (b) the optional provisions of the Act (within the meaning of section 54(1) of the Act),shall apply and be construed such that:
    - (i) these Regulations continue to apply in the manner that is as close as is possible to their form and effect under the Companies Act 1963 to 2013, and
    - (ii) any provision of these Regulations that is inconsistent or incompatible with an optional provision of the Act shall be taken to be a statement in these Regulations that the relevant optional provision of the Act applies to the Company only to the extent that is consistent or compatible with the Regulations as they applied under the Companies Act 1963 to 2013.
  - 5.2 In this Constitution the following terms shall have the following meanings:
    - (a) “Act” means the Companies Act 2014 and every other enactment which is to be read together with that Act;  
  
“electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means; and,  
  
“electronic means” means any process or means provided or facilitated by electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.
    - (b) Any word or phrase used in this Constitution the definition of which is contained or referred to in the Act shall be construed as having the meaning that is, at the date on which this Constitution becomes binding on the Company, attributed to it in the Act.

- (c) (i) Unless the contrary intention appears, any expression in this Constitution referring to writing (or any cognate word):
  - (A) shall be construed as including a reference to printing, lithography, photography and any other mode of representing or reproducing words in a legible and non-transitory form; and
  - (B) subject to the circumstances in sub-clause (ii) and to the requirements of the Act, shall not include writing in electronic form.
- (ii) The circumstances mentioned in sub-clause (c)(i) (in which writing (and cognate words) includes writing in electronic form) are:
  - (A) where such is provided in this Constitution; and
  - (B) in the case of a notice, communication, document or information to be given, served or delivered to the Company, where the Company has agreed to receipt in electronic form and such notice, communication, document or information is given, served or delivered in such electronic form and manner as may have been specified by the directors from time to time for the giving, serving or delivery of notices, communications, documents or information in electronic form.
- (d) References in this Constitution:
  - (i) to execution of any document shall include any mode of execution, whether under seal or under hand or any mode of electronic signature as may from time to time be approved by the directors;
  - (ii) to a section is to a section of the Act, unless otherwise stated; and
  - (iii) to gender includes, where a person is a body corporate, the neuter gender.
- (e) A notice, communication, document or information is given, served or delivered in electronic form if it is given, served or delivered by electronic means including, without limitation, by making such notice, communication, document or information available on a website or by sending such notice, communication, document or information by e-mail.

- 5.3 Where a member has provided an electronic address to the Company the member shall be deemed to have given his or her consent to the use by the Company of electronic means in sending notices or other communications, information or documentation (including without limitation, financial statements) to that member. A member may from time to time notify the Company of a change to the electronic address to be used for such member.

## CAPITAL

6. Subject to the provisions of Part 3 of the Act (Share Capital, Shares and Certain Other Instruments), the Company may issue, or convert any of its shares into, shares which are, or are liable at the option of the Company or the holder thereof, to be redeemed and may redeem such shares accordingly. Subject as aforesaid, the Company may cancel any shares so redeemed or may hold them as treasury shares and re-issue any such treasury shares as shares of any class or classes or cancel them.



7. (a) The lien conferred by section 80 shall attach to fully paid as well as partly paid shares and shall also apply in respect of all monies immediately payable by the registered holder or his or her estate to the Company.
- (b) Notwithstanding Regulation 7(a) and anything to the contrary in these Regulations, the lien conferred by section 80 shall not apply where any such shares have been mortgaged or charged or otherwise encumbered by way of security in which event such lien shall rank behind any such security.

#### ALLOTMENT

8. (a) The directors are hereby generally and unconditionally authorised to exercise all the powers of the Company to allot relevant securities within the meaning of section 69 of the Act. The maximum amount of relevant securities which may be allotted under the authority hereby conferred shall be 99,999,999 shares of £1.00 each.
- (b) In accordance with section 69(12) of the Act, subsections (6), (9) and (10) of section 69 of the Act shall not apply to any allotment by the directors of equity securities.

#### PURCHASE OF OWN SHARES

9. Subject to the provisions of the Act and to any rights conferred on the holders of any class of shares, the Company may purchase all or any of its own shares of any class, including any redeemable shares, and may cancel any shares so purchased or may hold them as treasury shares and reissue any such treasury shares as shares of any class or classes or cancel them. Neither the Company nor the directors shall be required to select the shares to be purchased rateably or in any other particular manner as between the holders of shares of the same class or as between them and the holders of shares of any other class or in accordance with the rights as to dividends or capital conferred by any class of shares. Notwithstanding anything to the contrary contained in these Regulations, the rights attached to any class of shares shall be deemed not to be varied by anything done by the Company pursuant to this Regulation 9.

#### TRANSFER OF SHARES

10. (a) All transfers of shares may be effected by transfer in writing in the usual or common form, or in such other form as the directors may accept.
- (b) The instrument of transfer of a share shall be signed by or on behalf of the transferor but need not (in cases other than partly paid shares) be executed on behalf of the transferee and need not be attested. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof.
- (c) Notwithstanding anything contained in these Regulations, the Directors shall promptly register any transfer of shares and shall not suspend registration thereof where such transfer:
- (i) is to any bank or institution to whom such shares have been charged by way of security or to any nominee or any transferee of such bank or institution (a "Secured Institution"); or
  - (ii) is delivered to the Company for registration by a Secured Institution or its nominee in order to register the Secured Institution as legal owner of the shares; or

- (iii) is executed by a Secured Institution or its nominee pursuant to the power of sale or other power under such security,

and furthermore, notwithstanding anything to the contrary contained in these Regulations or in any other agreement between any shareholders for the time being of the Company or any of them, no transferor of any shares in the Company or proposed transferor of such shares to a Secured Institution or its nominee, and no Secured Institution or its nominee, shall be required to offer the shares which are or are to be the subject of any transfer as aforesaid to the shareholders for the time being of the Company or any of them and no such shareholder shall have any right under the Regulations or otherwise howsoever to require such shares to be transferred to them whether for consideration or not. No resolution shall be proposed or passed the effect of which would be to delete or amend this Regulation unless not less than 21 days' written notice thereof shall have been given to any such Secured Institution by the Company.

#### **SHAREHOLDERS' WRITTEN RESOLUTIONS**

11. A resolution in writing (other than one in respect of which extended notice is required by the Act to be given) signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held and, if described as a special resolution, shall be deemed to be a special resolution within the meaning of the Act. Any such resolution may consist of several documents in the like form each signed by one or more members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives).

#### **GENERAL MEETINGS**

12. Without prejudice to Section 176 of the Act, annual general meetings shall be held at such locations as the Directors appoint unless in respect of any particular meeting either all the members entitled to attend and vote at such meeting consent in writing to its being held elsewhere or a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting. Extraordinary general meetings may be held in or outside Ireland.

#### **PROCEEDINGS AT GENERAL MEETINGS**

13. In the application of Section 182(5)(b)(ii) to this Constitution, the words "the meeting shall be dissolved" shall be substituted for the words "the members present shall be a quorum".
14. Section 187(6) shall not apply so that it shall not be necessary to give any notice of an adjourned meeting.



15. A poll may be demanded by any member present in person or by proxy and section 189 shall be modified accordingly.
16. The time period for the purposes of section 183(6) is any time before the commencement of the meeting or, as the case may be, the taking of the poll.

#### **PROXIES**

17. The appointment of a proxy may, subject to the directors so approving such appointment in the case of any particular meeting, notwithstanding any other provisions of these Regulations, be made by electronic means:
  - (a) in a form specified by the directors from time to time;
  - (b) executed with such electronic signature as may be specified by the directors from time to time; and

sent to such address as may be notified by the directors for that purpose from time to time and provided that the directors shall not be obliged to so approve in any particular case.

#### **SINGLE-MEMBER COMPANY**

18. If and for so long as the Company has only one member:
  - (a) in relation to a general meeting, the sole member or a proxy for that member or (if the member is a corporation) a duly authorised representative of that member shall be a quorum;
  - (b) a proxy for the sole member may vote on a show of hands;
  - (c) the sole member or a proxy for that member or (if the member is a corporation) a duly authorised representative of that member shall be chairman of any general meeting of the Company;
  - (d) all other provisions of these Regulations shall apply with any necessary modification (unless the provision expressly provides otherwise).

#### **DIRECTORS**

19. The number of directors shall not be less than two and unless and until otherwise determined by the Company in general meeting not more than ten.
20. A director need not hold any shares of the Company to qualify him as a director.
21. In addition to the circumstances provided for in section 148(1), the office of director shall be vacated automatically:
  - (a) if he is adjudged bankrupt, or any event equivalent or analogous thereto occurs, in the State or any other jurisdiction or he makes any arrangement or composition with his creditors generally; or
  - (b) if he in the opinion of his co-directors becomes incapable by reason of mental disorder of discharging his duties as director; or

- (c) if he ceases to be a director or is prohibited from being a director by reason of any order made (or deemed to have been made) under any provision of the Act; or
  - (d) if he is absent from meetings of the directors for six consecutive months without leave, and his alternate director (if any) shall not during such period have attended in his stead and the directors resolve that his office be vacated; or
  - (e) if he, not being a director holding any executive office for a fixed period, resigns his office by notice in writing to the Company; or
  - (f) if he is convicted of an indictable offence unless the directors otherwise determine; or
  - (g) if the Court makes a declaration in respect of him under section 819 of the Act.
22. The directors shall not retire by rotation.
23. Subject to section 144 (1), the directors may resolve to appoint a person as an addition to the board or to fill a casual vacancy.
24. A director appointed by the directors to fill a casual vacancy or as an addition to the board shall not retire from office at the annual general meeting next following his appointment and Section 144 (3) of the Act is modified accordingly.
25. Notwithstanding the provisions of section 146 of the Act, the Company may by special resolution remove any director before the expiration of his term of office. Subject to section 144 (1), the Company may by ordinary resolution appoint another person in place of the director so removed.
26. Intentionally omitted.
27. A resolution or other document in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors, and such resolution or other document or documents when duly signed may be delivered or transmitted (unless the directors shall otherwise determine either generally or in any specific case) by electronic means, facsimile transmission or some other similar means of transmitting the contents of documents. A resolution or other document signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.
28. (a) For the purposes of these Regulations, the contemporaneous linking together by telephone or other means of electronic communication of a number of directors not less than the quorum shall be deemed to constitute a meeting of the directors, and all the provisions in these Regulations as to meetings of the directors shall apply to such meetings, provided that:
- (i) each of the directors taking part in such a meeting must be able hear, and speak to, each of the other directors taking part; and
  - (ii) at the commencement of such a meeting each director must acknowledge his presence and that he accepts that the proceedings will be deemed to be a meeting of the directors.



- (iii) Intentionally omitted.
  - (iv) Intentionally omitted.
  - (b) A director may not cease to take part in the meeting by disconnecting his telephone or other means of communication unless he has previously obtained the express consent of the chairman of the meeting, and a director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he has previously obtained the express consent of the chairman of the meeting to leave the meeting.
  - (c) A minute of the proceedings at such meeting by telephone or other means of communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairman of the meeting.
  - (d) The provisions of this Regulation shall apply, mutatis mutandis, to meetings of committees of the directors.
29. Unless the members of the Company shall otherwise determine, and subject always to the other regulations of this Constitution, a director is permitted to use, for his or her own benefit, or anyone else's benefit, any of the Company's property where such use is directly or indirectly related to the performance of the director's duties to the Company or has been authorised (expressly or implicitly) by the directors.
30. A director may vote in respect of any contract, appointment or arrangement in which he or she is interested and shall be counted in the quorum present at the meeting and shall not be treated as being in breach of his or her duty set out in section 228(1)(f) of the Act. Section 163 of the Act shall not apply.
31. Without prejudice to Regulation Error! Reference source not found., section 161(6) shall apply subject to:
- (a) the meeting being deemed to take place where the chairperson of the meeting then is unless otherwise decided by the meeting; and
  - (b) a director not being able to cease to participate in the meeting by disconnecting his or her telephone or other means of communication unless he or she has previously obtained the express consent of the chairman of the meeting, and a director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairman of the meeting to leave the meeting.

#### ALTERNATE DIRECTORS

32. (a) A director shall be entitled to appoint any person as his alternate director and may at any time revoke any appointment so made. Any such appointment or removal shall be effected by a notice in writing by the appointor and shall be effective forthwith upon the delivery of such notice to the Company at the registered office.
- (b) Any alternate director shall be entitled to notice of meetings of directors, to attend and vote as a director at any meeting at which his appointor is not present and to exercise all the functions of his appointor as a director (except in respect of the power to appoint an alternate). Every person acting as an alternate director shall have one



vote for each director for whom he acts as alternate (in addition to his own vote if he is also a director).

- (c) An alternate director shall while acting as such be deemed an officer of the Company and not the agent of his appointor. An alternate director shall not be entitled to receive from the Company any part of his appointor's remuneration.
- (c) An alternate director shall cease to be an alternate director if for any reason his appointment is revoked or his appointor ceases to be a director or any of the circumstances in Regulation 21 occurs in respect of the alternate.

#### **BORROWING POWERS**

- 33. The directors may exercise all the powers of the Company conferred by the general power of management and delegation under section 158 of the Act to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, and to mortgage or charge all or any of the property and rights of the Company both present and future including its goodwill and 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.

#### **EXECUTIVE OFFICE**

- 34. The directors may from time to time appoint one or more of their body to hold any executive office in the management of the business of the Company, including the office of chairman or deputy chairman or managing or joint managing or deputy or assistant managing director, as the directors may decide, for such fixed term or without limitation as to period and on such terms as to remuneration and otherwise as they think fit, and a director appointed to any executive office shall (without prejudice to any claim for damages for breach of any service contract between him and the Company) if he ceases to hold the office of director from any cause ipso facto and immediately cease to hold such executive office. The directors may entrust to and confer upon any director so appointed to executive office any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw or vary all or any of such powers.
- 35. The directors may appoint any managers or agents for managing any of the affairs of the Company, either in the State or elsewhere, and may fix their remuneration, and may delegate to any manager or agent any of the powers, authorities and discretions vested in the directors, with power to sub-delegate, and any such appointment or delegation may be made upon such terms and subject to such conditions as the directors may think fit, and the directors may remove any person so appointed, and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

#### **SECRETARY**

- 36. Anything by the Act or these Regulations required or authorised to be done by or to the secretary may be done by or to any assistant or acting secretary, or if there is no assistant or acting secretary capable of acting, by or to any officer of the Company authorised generally or specially in that behalf by the directors.

## FINANCIAL STATEMENTS

37. Where the Company is obliged by the Act or by these Regulations to send a member (i) copies of the Company's financial statements and of the directors' and auditors' reports or (ii) any other document, such copies or other document may be sent by electronic means to such electronic address as may have been provided to the Company by that person or be provided on a website in accordance with Regulation 43.

## NOTICES

38. (a) Subject to the Act and except where otherwise expressly provided in these Regulations, any notice, document or information to be given, served or delivered to the Company pursuant to this Constitution shall be in writing in a paper copy or, subject to paragraph (b), in electronic form.
- (b) Subject to the Act and except where otherwise expressly provided in these Regulations, a notice, communication, document or information may be given, served or delivered to the Company in electronic form only if this is done in such form and manner as may have been specified by the directors from time to time for the giving, service or delivery of notices, documents or information in electronic form. The directors may prescribe such procedures as they think fit for verifying the authenticity or integrity of any such notice, document or information given, served or delivered to it in electronic form.
39. (a) Subject to the Act and except where otherwise expressly provided in these Regulations, any notice, communication, document or information to be given, served or delivered by the Company pursuant to these Regulations shall be in writing in paper copy or electronic form.
- (b) Subject to the Act and except where otherwise expressly provided in these Regulations, any notice, communication, document or information to be given, served or delivered in pursuance of these Regulations may be given to, served on or delivered to any member by the Company:
- (i) by handing same to him or his authorised agent;
  - (ii) by leaving the same at his registered address;
  - (iii) by sending the same by the post or other delivery service in a pre-paid cover addressed to him at his registered address; or
  - (iv) by sending the notice, the communication, the document (other than a share certificate) or the information in electronic form to such electronic address as may from time to time be authorised by the member or by making it available on a website (provided the member receives, by any of the means at (i) to (iii) above or by electronic means to such electronic address as may from time to time be authorised by the member, notification complying with Regulation 43 of the fact that the notice, document or information has been placed on the website).
- (c) Where a notice, communication, document or information is given, served or delivered pursuant to sub-paragraph (b)(i) or (ii), the giving, service or delivery thereof shall be deemed to have been effected at the time the same was handed to the member or his authorised agent, or left at his registered address (as the case may be).



- (d) Where a notice, communication, document or information is given, served or delivered pursuant to sub-paragraph (b)(iii), the giving, service or delivery thereof shall be deemed to have been effected at the expiration of twenty four hours after the cover containing it in paper copy form was posted or given to delivery agents (as the case may be). In proving such giving, service or delivery, it shall be sufficient to prove that such cover was properly addressed, pre-paid and posted or given to delivery agents.
  - (e) Where a notice, communication, document or information is given, served or delivered pursuant to sub-paragraph (b)(iv), the giving, service or delivery thereof shall be deemed to have been effected:
    - (i) if sent in electronic form to an electronic address, at the expiration of twenty four hours after the time it was sent; or
    - (ii) if made available on a website, at the expiration of twenty four hours after the time when it was first made available on the website.
  - (f) Where any member has furnished his or her electronic address to the Secretary and has not notified the Secretary in writing (including by electronic mail) that he no longer wishes to receive communications by electronic mail, then the delivery to him of any notice, communication, document or information by electronic mail (whether contained in the body of the electronic mail message or as an attachment to it) shall be deemed good delivery on the terms set out in sub-paragraph (e) above.
  - (g) If the Company receives a delivery failure notification following the sending of a notice, document or other information in electronic form to an electronic address in accordance with sub-paragraph (b)(iv), the Company shall give, serve or deliver the notice, document or information in paper copy or electronic form (but not by electronic means) to the member either personally or by post addressed to the member at his registered address or (as applicable) by leaving it at that address. This shall not affect when the notice, document or information was deemed to be received in accordance with sub-paragraph (e).
40. Every person who, by operation of law, transfer or other means, shall become entitled to any share shall be bound by every notice or other document which, prior to his or her name and address being entered on the register in respect of such share, shall have been given to any person in whose name the share shall have been previously registered.
41. Any notice, communication, document or information given, served or delivered to a member in accordance with Regulation 39 shall, notwithstanding that such member be then deceased, and whether or not the Company has notice of his or her death, shall be deemed to have been duly given, served or delivered in respect of any shares, whether held solely or jointly with other persons by such member, until some other person or persons be registered in his or her place as the holder or joint holders of such shares, and such delivery or service shall for all purposes of this Constitution be deemed a sufficient service or delivery of such notice, communication, document or information on his or her executors or administrators, and all persons (if any) jointly interested with him or her in any such share.
42. The signature to any notice to be given by the Company may be written or printed.

#### PUBLICATION ON WEBSITE



43. A notification to a member of the publication of a notice, communication, document or information on a website pursuant to these Regulations shall state:
- (a) the fact of the publication of the notice, communication, document or information on a website;
  - (b) the address of that website and, where necessary, the place on that website where the notice, communication, document or information may be accessed and how it may be accessed; and
  - (c) in the case of a notice of a general meeting of members or class of members:
    - (i) that it concerns a notice of a meeting served in accordance with these Regulations or by order of a court, as the case may be;
    - (ii) the place, date and time of the meeting;
    - (iii) whether the meeting is to be an annual general meeting or an extraordinary general meeting; and
    - (iv) the address of any other website (if such is the case) where procedures as to voting are stated or facilitated.
44. The notice, communication, document or information referred to in Regulation 43 shall be published on that website, in the case of a notice of meeting, throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting, and in any other case the notice, communication, document or information shall be published on the website for a period of not less than 21 days from the giving of the notification except that, in the case of the documents referred to in section 338(2), the documents are published on the website until the conclusion of the relevant meeting.
45. Nothing in Regulations 43 or 44 shall invalidate the proceedings of a meeting where:
- (a) any notice that is required to be published as mentioned in Regulation 43 is published for a part, but not all, of the period mentioned in that Regulation; and
  - (b) the failure to publish that notice throughout that period is attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid, including, without limitation, system, telecommunications or power outages.

## INDEMNITY

46. Every director, managing director, agent, auditor, secretary or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 233 or section 234 of the Act in which relief is granted to him by the Court, and no director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Regulation shall only have effect in so far as its provisions are not avoided by section 235 of the Act.

We, the several persons whose names and addresses are subscribed, wish to be formed into a Company in pursuance of this Constitution, and we agree to take the number of shares in the capital of the Company set opposite our respective names.

**Names, Addresses and descriptions of Number of Shares taken by each Subscriber.**

European Rail Finance Holdings Limited                      One

Fitzwilliam Hall

Filtzwilliam Place

Dublin 2

Corporate Entity

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Director/ Authorised Signatory

Name:

Total Shares taken One

Dated: this        day of                      2012

Witness to the above signatures:

**Signature:**

**Name:**

**Address:**