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THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

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COMPANIES HOUSE

MEMORANDUM OF ASSOCIATION

OF

COMMERCIAL SERVICES KENT LIMITED

The subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of a company and to take at least one share

Name of subscriber

Authentication by each subscriber

Kent County Council

Dated 21<sup>st</sup> March 2013

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION  
OF  
COMMERCIAL SERVICES KENT LIMITED

1 **PRELIMINARY**

The model articles of association for private companies limited by shares contained in Schedule 1 to The Companies (Model Articles) Regulations 2008 in force on the date when these Articles become binding on the Company ("Model Articles") apply to the Company except in so far as they are excluded or varied by these Articles

2 **INTERPRETATION**

2.1 In these Articles the following expressions have the following meanings unless inconsistent with the context

<b>"2006 Act"</b>	the Companies Act 2006 (as amended from time to time)
<b>"these Articles"</b>	these Articles of Association as amended from time to time
<b>"Council"</b>	being Kent County Council of Sessions House, County Hall, Maidstone, Kent ME14 1XQ
<b>The Council's Executive Director</b>	The Council's' Executive Director , Environment, Highways & Waste or such other officer as shall be designated from time to time by the Council to exercise control over the Company
	has the meaning given in section 1168 of the 2006 Act
<b>"electronic means"</b>	
<b>"eligible directors"</b>	has the meaning given in Model Article 8(3)
<b>"Majority Shareholder"</b>	a shareholder or shareholders together holding a majority of the voting rights in the Company (within the meaning of section 1159(1) of and paragraph (2) of Schedule 6 to the 2006 Act)
<b>"Statutes"</b>	the Companies Acts as defined in section 2 of the 2006 Act and every other statute, order, regulation or other subordinate legislation for the time being in force relating

to companies and affecting the Company

**“United Kingdom”**

Great Britain and Northern Ireland

2 2 Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Statutes but excluding any statutory modification of the same not in force when these Articles become binding on the Company

2 3 References to any statute or statutory provision include, unless the context otherwise requires, a reference to that statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time and any subordinate legislation made under the relevant statute or statutory provision

**3 COUNCIL**

3 1 The principal object of the Company is to supply services to the Council (and any other local authority shareholders from time to time) and consequently the powers of the Company shall be limited to those necessary and appropriate to that purpose

3 2 The Council’s Protocol for KCC Companies (dated November 2011) (and any amendments made to it) shall be read in conjunction with the contents of these Articles and shall take precedence if at any time a conflict should arise (except in respect of the position of the registered office in respect of which the decision of the Council’s Executive Director shall take precedence)

**4 APPOINTMENT OF SECRETARY**

The Company shall at all times have appointed to it a Secretary, who shall be duly nominated by the Council

**5 DIRECTORS’ GENERAL AUTHORITY**

5 1 Subject to Article 3, the Company shall be governed at all times by the Council, and any strategic business objectives and significant decisions shall require the prior written approval of the Council’s Executive Director

5 2 For the avoidance of doubt decisions which require the prior written approval under Article 5 2 shall include (but not be limited) to the following

5 1 1 approval of the annual operating and capital expenditure budgets and any strategic changes to them,

5 1 2 extension of the Company’s activities into new business or geographic areas,

5 1 3 changes to the Company’s capital structure (which for the avoidance of doubt includes the formation or acquisition of any subsidiary or any interest in one),

5 1 4 the issue of shares in the Company,

5 1 5 control measures in respect of the company’s internal control and risk management, and

- 5 1 6 approval of policies, including but not limited to Code of Conduct, Health & Safety policy, Environmental policy, Communication policy, Employment and remuneration policies
- 5 1 7 the delegation of responsibility by the Company to and as between the Directors
- 5 1 8 the selection and appointment of external auditors and other external professional advisers

5 3 Model Article numbers 3 and 5 shall be deleted accordingly

## **6 MEETINGS AND DECISIONS OF DIRECTORS**

6 1 A decision of the directors may take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing Article 8(2) shall not apply to the Company

6 2 Model Article 9(1) shall be amended by the addition of the words “ and to the Council’s Executive Director” after the words “to the directors” The Council’s Executive Director shall be entitled (if he shall so choose) to attend any meeting of the Directors as an observer or to nominate another person to do so

6 3 Without prejudice to Article 6 2 above there shall be sent to the Council’s Executive Director a copy of

- a) of every formal decision taken by the directors
- b) the minutes of any meeting of the directors and

and in each case within 7 days after such decision or meeting (as the case may be)

7        **NUMBER OF DIRECTORS**

7.1        Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be the subject to any maximum but shall not be less than one. A sole director will be able only to take the actions specified in Model Article 11(3). The directors shall be appointed and removed by the Majority Shareholder.

7.2        Each such appointment and removal as referred to in Article 7.1 shall be made in writing to the Company by the Majority Shareholder, without prejudice to a shareholder's right to at any times remove a director appointed by it under Article 8.1. The Majority Shareholder may at the time that they appoint a director under Article 8.1 specify a date when such director's office shall automatically terminate and such director shall be deemed to have been removed as a director on such date without the need for the Majority Shareholder to give any further notice of such removal. A notice which is not in electronic form shall take effect when it is deposited at the registered office for the time being of the Company or when delivered to a meeting of the directors. A notice which is in electronic form shall take effect when it is received at the address specified by the Company for the purpose of receiving such communications in electronic form.

8        **PARTICIPATION IN DIRECTORS' MEETINGS**

Model Article 9(2)(c) shall be amended by the insertion of the word "simultaneously" after the words "how it is proposed that they should" and before the words "communicate with each other during the meeting".

9        **QUORUM FOR DIRECTORS' MEETINGS**

The following shall be added as paragraph (4) to Model Article 11 -

"(4) If, as a consequence of section 175(6) of the 2006 Act, a director cannot vote or be counted in the quorum at a directors' meeting then the following shall apply -

- (a)        if the eligible directors participating in the meeting do not constitute a quorum then the quorum for the purposes of the meeting shall be reduced by one for each director who cannot vote or be counted in the quorum, and
- (b)        if despite sub-paragraph (a) the eligible directors participating in the meeting still do not constitute a quorum or there are no eligible directors then the meeting must be adjourned to enable the shareholders to authorise any situation in which a director has a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company."

10       **DIRECTORS' INTERESTS**

10.1       The Company shall not enter into any transaction or arrangement in which any Director of the Company has any interest except where

A. the transaction is the direct employment of the Director in his or her personal capacity by the Company

OR

B) both 1 such transaction or arrangement is one solely between two or more limited companies all of which are wholly owned by the Council AND

ii the interest of the Director in the arrangement or transaction is only by virtue of him or her being a director of one or more of the companies nominated to be such by the Council and/or by virtue of him or her being employed by one or more of those companies on terms already approved in writing by the Council's Executive Director

10 2 In every such case which might be permitted by Article 10 1 above

A No decision of the Company to enter into any such transaction or arrangement or relating to any material terms of such matter shall be taken by the Directors or any of them but all such decisions shall be taken by the Company in General meeting and

B Before the approval by the General Meeting the detailed terms of the proposed transaction or arrangement must have been approved in writing in advance by two persons being the Council's Executive Director and any one of the following

i the Leader of the Council at the time of the decision

ii the Deputy Leader of the Council at the time of the decision

iii the Cabinet Member responsible for this area of the Council's business at the time of the decision

iv the Deputy Cabinet Member responsible for this area of the Council's business at the time of the decision

provided that such approval shall be of no effect if the person giving it has himself or herself an interest in the proposed transaction or arrangement

C In respect of any matter which is required by Article 10 2 (A) above to be approved by the Company in General Meeting no person who has an interest in the matter will be counted as participating in the decision making process for quorum or voting purposes in any General Meeting (or in any directors' meetings or part of a directors' meeting if notwithstanding the above any relevant decision is and can be taken by the directors)

10 3 For the avoidance of doubt an interest of a director who appoints an alternate director shall be treated as an interest of the alternate director

10 4 Model Article 14 shall not apply to the Company

## 11 **TERMINATION OF DIRECTOR'S APPOINTMENT**

In addition to the circumstances set out in Model Article 18 (a) to (f) (inclusive) a person ceases to be a director as soon as that person is removed from office as a director pursuant to Article 7 2

## 12 **DIRECTORS' REMUNERATION AND EXPENSES**

12 1 Where a director (or alternate director) is an employee of the Company, any remuneration expenses or other monies will not be paid except and to the extent that this is within the director's (or alternate director's ) contract of employment Any contract of employment for a director (or alternate director) must be approved in writing in advance, by the Council's Executive Director

12 2 Where a director (or alternate director) is an employee or elected member of the Council, no remuneration expenses or other monies will be paid by the Company to that person

## 13 **ALTERNATE DIRECTORS**

### 13 1 **Appointment and removal of alternates**

13 1 1 Any director (the "appointor") may appoint as an alternate any other person (not already being a director of the company ) who is approved by the Council's Executive Director to

13 1 1 1 exercise that director's powers, and

13 1 1 2 carry out that director's responsibilities,

in relation to participation in directors' meetings and the taking of decisions by the directors in the absence of the alternate's appointor

13 1 2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor and countersigned by the Council's Executive Director

13 1 3 The notice must -

13 1 3 1 identify the proposed alternate, and

13 1 3 2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice

### 13 2 **Rights and responsibilities of alternate directors**

13 2 1 An alternate director has the same rights, in relation to participation in directors' meetings and the taking of decisions by the directors and in relation to directors' written resolutions, as the alternate's appointor

13 2 2 An alternate director may not act as an alternate director for more than one appointor

13 2 3 Except as these Articles specify otherwise, alternate directors -

13 2 3 1 are deemed for all purposes to be directors,

13 2 3 2 are liable for their own acts and omissions,

13 2 3 3 are subject to the same restrictions as their appointors, and

13 2 3 4 are not deemed to be agents of or for their appointors

and, each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member

13 2 4 A person who is an alternate director but not a director -

13 2 4 1 may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and

13 2 4 2 may participate in a unanimous decision of the directors (but only if his appointor is an eligible director in relation to that decision, but does not participate)

No alternate may be counted as more than one director for such purposes

13 2 5 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company

### 13 3 Termination of alternate directorship

13 3 1 An alternate director's appointment as alternate terminates -

13 3 1 1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate,

13 3 1 2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director,

13 3 1 3 on the death of the alternate's appointor, or

13 3 1 4 when the alternate's appointor's appointment as a director terminates

13 3 1 5 On notification given by the Council's Executive Director to the Company that the appointment of the alternate director is no longer approved



14       **EXPENSES**

Model Article 20 shall not apply and all expenses will be governed by Article 12 above

15       **SHARES**

In accordance with section 567(1) and (2) of the 2006 Act, sections 561(1) and 562 (1) to (5) (inclusive) of that Act shall not apply to the Company

16       **TRANSFER OF SHARES**

Model Article 26(5) shall be amended by the addition of the following words “The directors may not refuse to register the transfer of a share made with the prior written approval of the Majority Shareholder In any other case” before the words “the directors may refuse to register”

17       **TRANSMITTEES BOUND BY PRIOR NOTICES**

Model Article 29 shall be amended by the insertion of the words “, or the name of any person nominated under Model Article 27(2),” after the words “the transmittee’s name”

18       **NOTICE OF GENERAL MEETINGS**

Every notice convening a general meeting shall

18 1       comply with section 325(1) of the 2006 Act as to giving information to shareholders relating to their right to appoint proxies, and

18 2       be given in accordance with section 308 of the 2006 Act, that is in hard copy form, electronic form or by means of a website

19       **PROCEEDINGS AT GENERAL MEETINGS**

19 1       The Council’s Executive Officer shall from time to time nominate

a) the chairman of the board of directors and

b) the chairman of the general meetings of the Company (who will not be a director of the Company )

19 2       If a quorum is not present within half an hour of the time at which a general meeting is due to start or if, during a general meeting, a quorum ceases to be present the chairman of the meeting must adjourn it

19 3       When adjourning the general meeting the chairman of the meeting must specify that the meeting is adjourned either

19 3 1       to the same day, place and time the following week, or

19 3 2       to another day, place and time to be decided by the directors

19 4 If a quorum is not present within half an hour of the time at which the adjourned meeting is due to start the shareholder or shareholders present in person or by proxy or by corporate representative and who are entitled to vote shall

19 4 1 constitute a quorum, and

19 4 2 have power to decide on all matters which could have been transacted at the meeting which was adjourned

19 5 Model Article 41 shall not apply to the Company

## 20 **WRITTEN RESOLUTIONS**

20 1 A written resolution, proposed in accordance with section 288(3) of the 2006 Act, will lapse if it is not passed before the end of the period of 28 days beginning with the circulation date

20 2 For the purposes of this Article "circulation date" is the date on which copies of the written resolution are sent or submitted to shareholders or, if copies are sent or submitted on different days, to the first of those days

## 21 **COMPANY COMMUNICATION PROVISIONS**

21 1 Where -

21 1 1 a document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom and

21 1 2 the Company is able to show that it was properly addressed, prepaid and posted

it is deemed to have been received by the intended recipient 24 hours after it was posted

21 2 Where -

21 2 1 a document or information is sent or supplied by electronic means, and

21 2 2 the Company is able to show that it was properly addressed,

it is deemed to have been received by the intended recipient immediately after it was sent

21 3 Where a document or information is sent or supplied by means of a website, it is deemed to have been received by the intended recipient -

21 3 1 when the material was first made available on the website, or

21 3 2 if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website

21 4 Pursuant to section 1147(6) of the 2006 Act, subsections (2) (3) and (4) of that section shall be deemed modified by Articles 18 1, 18 2 and 18 3

- 21 5 Subject to any requirements of the 2006 Act, documents and notices may be sent to the Company in electronic form to the address specified by the Company for that purpose and such documents or notices sent to the Company are sufficiently authenticated if the identity of the sender is confirmed in the way the Company has specified

## 22 **DIRECTORS' INDEMNITY AND INSURANCE**

- 22 1 Subject to, and so far as may be permitted by, the 2006 Act and without prejudice to any indemnity to which the person concerned may be otherwise entitled, the Company may indemnify every director, former director, alternate director, secretary or other officer of the Company or of any associated company (as defined in section 256 of the 2006 Act) against any liabilities incurred by him in the execution and discharge of his duties or the exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, including any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust in relation to anything done or omitted to be done or alleged to have been done or omitted to be done by him as a director, former director, alternate director, secretary or other officer of the Company or of any such associated company and against any such liability incurred by him in connection with the Company's activities as trustee of an occupational pension scheme as defined in section 235(b) of the 2006 Act

- 22 2 Subject to the 2006 Act the directors may purchase and maintain at the cost of the Company insurance cover for or for the benefit of every director, former director, alternate director, secretary or other officer of the Company or of any associated company (as defined in section 256 of the 2006 Act) against any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust by him in relation to the Company (or such associated company), including anything done or omitted to be done or alleged to have been done or omitted to be done by him as a director, former director, alternate director, secretary or other officer of the Company or associated company

- 22 3 Subject to, and so far as may be permitted by, the 2006 Act, the Company shall be entitled to fund the expenditure of every director, former director, alternate director, secretary, or other officer of the Company incurred or to be incurred

22 3 1 in defending any criminal or civil proceedings, or

22 3 2 in connection with any application under sections 661(3), 661(4) or section 1157 of the 2006 Act

## 23 **REGISTERED OFFICE**

The situation of the registered office is in England and Wales and shall be at such location as specified by the Council's Executive Director from time to time)

## 24 **LIMITED LIABILITY**

The liability of the members is limited

Name, address and description of Subscriber	No. of issued ordinary shares of £1.00
Kent County Council Sessions House County Hall Maidstone Kent ME14 1XQ	2

Dated 21<sup>st</sup> March 2013