

FILING PRINT OF WRITTEN RESOLUTION

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

OPEN WATER MARKET LIMITED

(Registered in England and Wales No 8791025)

(the "Company")

WRITTEN RESOLUTION

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the following written resolution of the Company has been duly passed as a Special Resolution on 31 JANUARY 2014.

SPECIAL RESOLUTION

THAT the Articles of Association of the Company annexed to this resolution be adopted as the Articles of Association of the Company in substitution for, and to the exclusion of, the existing Articles of Association

Signed



ROGER WILLIAM CAIRNS, DIRECTOR

Full Name FOR AND ON BEHALF OF CHARLOTTE SELLERDINE LIMITED, Director

For and on behalf of Open Water Market Limited

THURSDAY



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Companies Act 2006
Company Limited by Guarantee

ARTICLES OF ASSOCIATION

of

OPEN WATER MARKET LIMITED

Company Number 08791025

Adopted by Special Resolution on 31 January 2014

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Companies Act 2006
Company Limited by Guarantee and not having a Share Capital
ARTICLES OF ASSOCIATION
of
OPEN WATER MARKET LIMITED

PART 1
INTERPRETATION AND LIMITATION OF LIABILITY

1. Defined terms

1 1 In the articles, unless the context requires otherwise

"Act"	means the Companies Act 2006
"articles"	means the company's articles of association
"associated company"	means, in relation to a company, any company which is for the time being a subsidiary undertaking of that company or a parent undertaking of the first company or a subsidiary undertaking of any such parent undertaking
"bankruptcy"	includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy
"chair of the meeting"	has the meaning given in article 43
"chairperson"	means the person appointed to the office of chairperson of the board of directors in accordance with article 20 2(iii)
"director"	means a director of the company, and includes any person occupying the position of director, by whatever name called
"document"	includes, unless otherwise specified, any document sent or supplied in electronic form
"electronic form"	has the meaning given in section 1168 of the Act
"executive director"	means a director appointed to hold office pursuant to article 20 3
"High Level Group"	means the high level group established by the Department of Food, Environment and Rural Affairs to help drive forward the process of market reform of the water and sewerage markets in England and coordination with the existing market in Scotland
"Industry Funding Member"	has the meaning given in article 8 6 1
"Industry Non-Funding Member"	has the meaning given in article 8 6 2
"Industry Member"	means a member admitted to membership in accordance with the provisions of articles 8 6 1 or 8 6 2 and 9
"member"	has the meaning given in section 112 of the Act
"non-executive director"	means a director appointed to hold office by the Regulator Members pursuant to articles 20 2(i) and 20 4

"Open Water Programme"	means the programme established by the High Level Group to facilitate the implementation of market reform in the water and sewerage markets in England with a view to the creation of a new market for retail water and sewerage services for non-household customers in England and coordination with the existing market in Scotland
"ordinary resolution"	has the meaning given in section 282 of the Act
"participate"	in relation to a directors' meeting, has the meaning given in article 32
"person"	means any natural or legal person
"proxy notice"	has the meaning given in article 49
"Regulator Members"	means The Water Services Regulation Authority ("Ofwat") and The Water Industry Commission for Scotland ("WICS") or their respective successors as regulators of the water and sewerage industry in England and Wales and Scotland from time to time
"Regulator Member Rights"	has the meaning given in article 15
"Regulator Members' statutory powers and duties"	means the various powers and duties imposed on the Regulatory Members under statute, including by the Water Industry Act 1991, any Water Act 2014, the Water Industry (Scotland) Act 2002 and the Water Services etc (Scotland) Act 2005
"Restricted Articles"	has the meaning given in article 16
"special resolution"	has the meaning given in section 283 of the Act
"subsidiary"	has the meaning given in section 1159 of the Act
"writing"	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise
1 2	Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company

2. Exclusion of Model Articles

The Regulations contained in the Model Articles for Companies Limited by Guarantee set out in Appendix 1 of the Act shall not apply to the Company

3. Liability of members

The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for

- 3 1 payment of the company's debts and liabilities contracted before he ceases to be a member,
- 3 2 payment of the costs, charges and expenses of winding up, and
- 3 3 adjustment of the rights of the contributories among themselves

PART 2 OBJECTS, FUNDING AND DEVELOPMENT OF THE COMPANY

4. Objects of the company

The objects for which the company is established are

- 4 1 to undertake prudent preparatory work in relation to the development of market arrangements for non-household retail water and sewerage services in England in order to implement the policy decisions of the UK Government and to ensure effective coordination with the corresponding market arrangements in Scotland,
- 4 2 to act as a funding vehicle for the Open Water Programme and in doing so to receive, collect, hold and disseminate funds on behalf of and in connection with the Open Water Programme and to build the capability to complete those central market tests necessary for, or essential to, market opening,

and to do all such other things as may seem incidental or conducive to the pursuit of the foregoing objects and the exercise of the powers of the company (whether express or implied)

5. Development of the company

- 5 1 Subject to the adoption of relevant primary and secondary legislation by the UK Parliament, the company will transition from a phase of prudent preparatory work to developing the necessary infrastructure and skills to support the establishment of a non-household retail water and sewerage services market to be owned and operated by the parties participating in such market
- 5 2 In order to facilitate such transition the members will procure that the provisions of the articles, including but not limited to, the objects set out in article 4, the membership rights and the rights to appoint members of the board of directors will be revised to accommodate the governance composition and structure anticipated by the Information Notice published by OFWAT on 14th January 2014 and agreed from time to time by the Regulator Members for each subsequent phase

6. Funding of the company

- 6 1 In order to fund the activities of the company and in addition to receipts by way of subscription or dues as set out in article 6 2 below, it shall have powers to obtain, collect and receive money and funds by way of contributions, donations, affiliation fees, subscriptions, grants, loans and any other lawful method, and to take, accept and receive legacies, gifts and bequests of property of any description (and whether subject to any special trust or not), and to issue and make appeals and to take such other steps as may be required for the purpose of procuring contributions to the funds of the company by any such method
- 6 2 The members of the company may be required to pay to the company an annual subscription or other sums or dues requested relating to the budgeting and financial administration of the company. Different rates of annual subscription may be fixed for different classes of membership and for different sizes of organisation. The rate or rates of annual subscription payable by the members, the subscription year of the company, the subscription payment date or dates and the proportion of the annual subscription payable in respect of part only of a subscription year shall be fixed by the directors of the company in agreement with the Regulator Members

7. Prohibition on distributions

- 7 1 The income and property of the company, shall be applied solely towards the promotion of the objects of the company as set out in article 4, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members
- 7 2 Provided that nothing herein shall prevent any payment in good faith by the company -
 - (a) of interest on money lent by any member or by any director at a rate per annum not exceeding a commercial rate,
 - (b) of reasonable and proper rent not exceeding open market rate for premises let to the company by any member or by any director,

- (c) of reasonable and proper fees, remuneration or other benefit in money or money's worth for any services (not being of a management nature) rendered, or goods supplied, to the company by any company in which a director is a member (provided that such director shall not hold more than one hundredth part of the capital of such company or, if such director is the holder of more than one hundredth part of the capital of such company, provided that such director absents himself or herself from any meeting at which the supply of any such services or goods is discussed and such services are rendered or such goods are supplied on terms and conditions which the other directors consider represent market value), and such director shall not be bound to account to the company for any share of profits he or she may receive in respect of such payment
- 7 3 Following cessation of the business of the company or any of its subsidiaries, and following settlement of the company or subsidiaries' liabilities, any remaining assets will be transferred to some other body or bodies (whether incorporated or unincorporated) whose objects are altogether or in part similar to the objects of the company and whose constitution restricts the distribution of income and assets among members to an extent at least as great as this article 7
- 7 4 The body or bodies to which property is transferred under article 7 3 shall be determined by the members of the company at or before the time of dissolution or, failing such determination, by such court as may have or may acquire jurisdiction
- 7 5 To the extent that effect cannot be given to the provisions of articles 7 3 and 7 4, the relevant property shall be applied to some charitable object or objects

PART 3 MEMBERS

BECOMING AND CEASING TO BE A MEMBER

8. Membership

- 8 1 Membership of the company is not transferable
- 8 2 The rights and privileges of a member of the company shall be personal and shall not be transferable or transmissible by any means
- 8 3 There shall be no limit on the number of members
- 8 4 A register of the members for the time being of the company shall be kept by the company secretary and shall contain each member's name, address and date of admission to membership of the company and such register shall, in so far as applicable, comply with the provisions of section 113 of the Act
- 8 5 The members of the company shall be the members at the date of adoption of these articles and such other persons as are admitted to membership in accordance with the provisions of these articles and, in each case, who have not subsequently retired from membership or been removed in accordance with the provisions of the articles from time to time
- 8 6 The membership of the company shall comprise the following classes of member
- 8 6 1 Industry Funding Membership
- Industry Funding Membership of the company shall be open to undertakers holding appointments under the Water Industry Act 1991 (such members to be known as "Industry Funding Members")
- 8 6 2 Industry Non-Funding Membership
- Industry Non-Funding Membership shall be open to companies holding water or sewerage supply licences under the Water Industry Act 1991, to Scottish Water and to companies holding licences granted under the Water Services etc (Scotland) Act 2005 (such members to be known as "Industry Non-Funding Members")
- 8 6 3 Regulator Membership

Regulator Membership of the company shall be open to the Regulator Members only

- 8 7 Subject to the provisions of these articles, the Industry Funding Members, the Industry Non Funding Members and the Regulator Members shall each be entitled to one vote in a general meeting and each class of membership shall be treated as a single class for the purposes of voting and shall not be deemed to be separate classes of members for the purposes of class rights

9. Applications for membership

- 9 1 No person shall become a member of the company unless that person has completed an application for membership in a form approved by the directors and lodged such evidence in support of the application as the directors require
- 9 2 Any application for membership as an Industry Non-Funding Member shall require the consent of the Regulator Members to be provided in terms of the membership policy of the company to be adopted from time to time and it shall not be competent for the directors to admit any applicant as an Industry Non-Funding Member where such consent has not been provided
- 9 3 Upon the company secretary receiving an application for membership, the company secretary shall add such application to the agenda for the next meeting of the board of directors. At that meeting the directors shall consider the application together with, in the case of any application for admission as an Industry Non-Funding Member, the consent of the Regulator Members and determine whether or not to admit such person to membership of the company
- 9 4 No company shall be admitted as an Industry Funding Member and as an Industry Non-Funding Member during the same membership period however where a member admitted as either such class of member ceases to meet the criteria to be such a category of member but meets the criteria to fulfil the other category of member they may be re-categorised as such subsequent category of membership by resolution of the directors
- 9 5 No associated company of an Industry Funding Member or of an Industry Non-Funding Member may also be admitted as the same category of Industry member and such an application for membership from an associated company of a member shall be rejected. If two or more associated companies apply to be appointed as the same category of Industry member or two or more members which are the same category of Industry member become associated companies, then the applicant whose application was first received by the company or the member who first became a member (as the case may be) shall be appointed as or shall remain as a member and where the directors cannot determine which application was received first or who first became a member then the directors may determine, in their absolute discretion, which applicant shall be appointed or which member shall continue to be a member. Notwithstanding the foregoing it shall be competent for an Industry Funding Member and an Industry Non-Funding Member to be associated companies
- 9 6 The directors shall not be obliged to give any reason for refusing to admit any person to membership of the company
- 9 7 Where the directors determine to admit a person to membership the directors shall
- 9 7 1 approve the issue of, and issue, a certificate of membership in the company to the applicant, and
- 9 7 2 instruct the company secretary to enter the name of that applicant in the register of members

10. Termination of membership

- 10 1 An Industry Funding Member or Industry Non-Funding Member of the company shall cease to be a member of the company forthwith upon
- 10 1 1 the dissolution of that member,
- 10 1 2 the termination of that member's membership of the company in accordance with article 10 3 or 10 4 below, or

- 10 1 3 the member ceasing to meet the relevant criteria for membership as set out in article 8 6 1 or article 8 6 2 (as applicable)
- 10 2 A person who ceases (for whatever reason) to be a member of the company shall not be entitled to any refund (in whole or in part) of any subscription paid by that person to the company
- 10 3 The directors shall be entitled (but shall not be bound) to terminate the membership of the company of any Industry Funding Member or Industry Non-Funding Member -
- 10 3 1 who shall become insolvent or apparently insolvent or who shall suspend payment to or compound with that member's creditors,
- 10 3 2 in respect of whose property and undertaking, or any part thereof, a receiver is appointed,
- 10 3 3 in respect of whom an effective winding-up order is made or an effective winding-up resolution is passed (other than for the purpose of any amalgamation or reconstruction), or
- 10 3 4 in respect of whom an administration order is made
- 10 4 The directors shall be entitled (but shall not be bound) to terminate the membership of the company of any Industry Funding Member or Industry Non-Funding Member if any subscription or dues payable by that member to the company -
- 10 4 1 is in excess of ten days from the payment due date, and
- 10 4 2 on or after the day specified in article 10 4 1 above the directors have issued notice to that member to pay the outstanding amount, and
- 10 4 3 the amount invoiced has remained unpaid for a further ten days after the date of the Director's notice under article 10 4 2 above, or
- 10 4 4 the member fails to pay an amount properly due by it on three or more occasions in a twelve month period and fails to remedy such non-payment upon the first two occasions within the following periods from the date of notice thereof from the directors -
- (i) ten days in the first instance, and
- (ii) five days in the second instance
- 10 5 The Regulator Members shall cease to be members of the Company in accordance with the provisions of article 13

11. Members' Representatives

Each member may authorise such person as it thinks fit to act as its representative (a "member's representative") at any general meeting, in the manner provided in section 323 of the Act and section 323 of the Act shall apply *mutatis mutandis* to any member which is neither a corporation nor an individual as though such member were a corporation. Such member's representative shall be entitled to exercise the same powers on behalf of the member in question as that member could exercise if it were the member and such member shall for the purposes of the articles be deemed to be present in person at any such meeting if a member's representative so authorised is present

PART 4 RIGHTS OF THE REGULATOR MEMBERS

12. Role and responsibility of the Regulator Members

Notwithstanding any other provision of these articles, the involvement of the Regulator Members in the establishment and administration of the company shall be to supervise and support the company in achieving those objects set out in article 4 together with such other objects as may be adopted from time to time whilst the Regulator Members remain members of the company. In so doing, the Regulator Members shall exercise the Regulator Member Rights and their voting rights as members

of the company in accordance with the Regulator Members' statutory powers and duties and those principles underpinning such powers and duties

13. Cessation of membership of the Regulator Members

The Regulator Members shall cease to be members of the company on the date falling 6 months after the date of opening of the non-household retail water and sewerage services market in England and upon such termination of membership the directors appointed by the Regulator Members in terms of article 20 2(i) shall cease to hold office

14. Communication of information to the Regulator Members

Any director may, subject to any obligations of confidentiality agreed from time to time between the company and the Regulator Members, communicate any information which any of them may receive in their roles as directors to the Regulator Members or to any employees or advisers of the Regulator Members

15. Variation of Regulator Member Rights

The rights of the Regulator Members hereunder (the "Regulator Member Rights") may not be varied, limited or deleted without the prior written consent of the Regulator Members. Without limitation to the generality of the foregoing, the amendment, removal or alteration of effect of all or any of the following articles or, where specified, the relevant parts of the following articles shall be deemed to be a variation of the Regulator Member Rights and shall therefore only be effective with the prior written consent of each of the Regulator Members

- 15 1 article 5 2,
- 15 2 article 6 2,
- 15 3 article 8 6 3,
- 15 4 article 9 2,
- 15 5 article 12,
- 15 6 article 13,
- 15 7 article 14,
- 15 8 this article 15,
- 15 9 article 16,
- 15 10 article 17,
- 15 11 article 18,
- 15 12 article 20 2(i),
- 15 13 article 20 2(iii),
- 15 14 article 21 2,
- 15 15 article 22 1,
- 15 16 article 22 3,
- 15 17 article 36 3,
- 15 18 article 40 1,
- 15 19 article 40 2,
- 15 20 article 40 3,
- 15 21 article 48 2 5, or
- 15 22 article 1 insofar as the amendment, removal or alteration of effect of the relevant definition or provision relates to or is used within any of the foregoing articles or relates to the Regulator Members

16. Variation of Restricted Articles

The amendment, removal or alteration of effect of all or any of the following articles or, where specified, the relevant parts thereof (the "Restricted Articles") shall only be effective with the prior consent in writing of the Regulator Members

- 16 1 article 4,
- 16 2 article 5 2,
- 16 3 article 6,
- 16 4 article 7,
- 16 5 article 8 6 1,
- 16 6 article 9 4,
- 16 7 article 20, or
- 16 8 article 1 insofar as the amendment, removal or alteration of effect of the relevant definition or provision relates to or is used within any of the foregoing articles

17. Waiver by the Regulator Members

The Regulator Members may from time to time and at any time by written notice to the company waive all of any of their rights under articles 15 or 16 to such extent and for such periods (including permanently and irrevocably) as set out in such notice and the articles shall be construed accordingly

18. Entrenchment of Regulator Member Rights and Restricted Articles

On a vote at a general meeting in relation to a resolution proposed to amend, remove or alter the effect of articles 15 or 16, if the Regulator Members vote against such resolution the Regulator Members shall have one more vote than the total of all other votes cast and, if the Regulator Members vote in favour of such a resolution then they shall each have one vote

PART 5 DIRECTORS

COMPANY SECRETARY AND APPOINTMENT OF DIRECTORS

19. Company Secretary

The company shall have a company secretary

20. Appointment of directors

- 20 1 The maximum number of directors shall be 6
- 20 2 The board of directors of the company shall comprise of the following -
 - (i) a maximum of 2 non-executive directors nominated by the Regulator Members,
 - (ii) a maximum of 3 executive directors, and
 - (iii) an independent non-executive chairperson attracting the unanimous support of the executive directors and the non-executive directors
- 20 3 The executive directors shall be industry representatives with appropriate skills and experience to be involved in the delivery of the objects set out in article 4
- 20 4 Proposed appointees intimated to or nominated in accordance with article 20 2 shall require to be confirmed as appointed at a board meeting at which evidence of that appointee's willingness to act is provided
- 20 5 Directors shall serve for a maximum term of 2 years without coming up for re-appointment by the board of directors however a director being presented for re-appointment may be re-elected for a further term of such period (not exceeding 2 years) as the board shall determine

- 20 6 The directors shall have power at any time to appoint any person to be an adviser of the company in relation to a specific project or matter or with skills to assist the company in carrying out its objects. Any adviser so appointed may be invited to attend and speak at board meetings and general meetings and may be retained by the company until the specific project concludes or such other time as a majority of directors may agree

21. Termination of director's appointment

- 21 1 A person ceases to be a director as soon as
- 21 1 1 that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law,
 - 21 1 2 a bankruptcy order is made against that person,
 - 21 1 3 a composition is made with that person's creditors generally in satisfaction of that person's debts,
 - 21 1 4 a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than six months,
 - 21 1 5 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have,
 - 21 1 6 notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms,
 - 21 1 7 that person becomes an employee of the company (save where they have been appointed in accordance with article 20 2(ii)), or
 - 21 1 8 that person is absent (without permission of the directors) from more than three successive meetings of the directors and the directors resolve to remove that person from office
- 21 2 The Regulator Members may, by notice in writing, remove from office any director appointed in accordance with article 20 2(i) and may nominate another person to be appointed in place of any director so removed

22. Directors' remuneration

- 22 1 The remuneration of the non-executive directors shall be from time to time determined by the executive directors with the agreement of the Regulator Members
- 22 2 A director appointed in accordance with article 20 2(ii) may receive and retain any reasonable remuneration paid to him or her in respect of his or her employment by the company
- 22 3 The remuneration of each of the executive directors shall be from time to time determined by the board of directors with the agreement of the Regulator Members

23. Directors' expenses

The company may pay any reasonable travelling, accommodation and other expenses which the directors properly incur in connection with their attendance at

- 23 1 meetings of directors or committees of directors,
 - 23 2 general meetings, or
- otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company

24. Alternate Directors

- 24 1 A director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by her / him
- 24 2 An alternate director shall, subject to article 24 3, be entitled to be given notice of all meetings of directors and of all meetings of committees of directors of which her / his appointer is a member, to attend and vote at any such meeting at which the director appointing her / him is not personally present and generally to perform all the functions of the appointer as a director in her / his absence
- 24 3 No notice of a meeting of directors or of a meeting of a committee of directors need be given to an alternate director who is absent from the United Kingdom
- 24 4 An alternate director shall not be entitled to receive any remuneration from the company for her / his services as an alternate director
- 24 5 An alternate director shall, subject to article 24 6, cease to be an alternate director if her / his appointer ceases to be a director
- 24 6 If a director retires but is re-appointed at the meeting at which s/he retires, any appointment of an alternate director made by her / him which was in force immediately prior to retirement shall continue after her / his appointment
- 24 7 An appointment or removal of an alternate director may be effected by notice given to the company signed by the director making or revoking the appointment or may be effected in any other manner approved by the directors
- 24 8 An alternate director shall alone be responsible for her / his own acts and defaults, an alternate director shall not be deemed to be the agent of the director appointing her / him
- 24 9 References in these articles to directors shall, unless the context otherwise requires, be construed as including alternate directors

DIRECTORS' POWERS AND RESPONSIBILITIES

25. Directors' general authority

Subject to the articles the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company and may regulate their proceedings as they see fit

26. Directors may delegate

- 26 1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles
- 26 1 1 to such person or committee (whether directors or not),
- 26 1 2 by such means (including by power of attorney),
- 26 1 3 to such an extent,
- 26 1 4 in relation to such matters or territories, and
- 26 1 5 on such terms and conditions,
- as they think fit
- 26 2 If the directors so specify, any such delegation (by power of attorney or otherwise) may authorise further delegation of the directors' powers by any person to whom they are delegated
- 26 3 The directors may revoke any delegation in whole or part, or alter its terms and conditions

27. Signature on cheques

All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments and all receipts for monies paid to the company shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine

28. Committees

- 28 1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors however they may include persons who are not directors
- 28 2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them

DECISION-MAKING BY DIRECTORS

29. Directors to take decisions collectively

- 29 1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision of those directors present at a meeting or a decision taken in accordance with article 30
- 29 2 A director who is also an alternate director shall be entitled in the absence of her / his appointer to a separate vote on behalf of her / his appointer in addition to her / his own vote
- 29 3 All acts done by a meeting of directors or by a meeting of a committee of directors or by a person acting as a director shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any director or that any of them was disqualified from holding office or had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote

30. Unanimous decisions

- 30 1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter
- 30 2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing
- 30 3 References in this article to eligible directors are to directors who would have been entitled to receive notice of a meeting and vote on the matter had it been proposed as a resolution at a directors' meeting
- 30 4 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting
- 30 5 The provisions of this article 30 shall also apply to a decision to be taken by a committee of directors save that references to eligible directors shall be to those directors eligible to receive notice of a meeting and vote on the matter had it been proposed as a resolution at a meeting of such committee

31. Calling a directors' meeting

- 31 1 Any director may call a directors' meeting by giving notice of the meeting to the directors
- 31 2 Notice of any directors' meeting must indicate
 - 31 2 1 its proposed date and time,
 - 31 2 2 where it is to take place, and

- 31 2 3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting
- 31 3 Subject to article 31 4, notice of a directors' meeting must be given to each director
- 31 4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it

32. Participation in directors' meetings

- 32 1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when
- 32 1 1 the meeting has been called and takes place in accordance with the articles, and
- 32 1 2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting
- 32 2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other
- 32 3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is

33. Quorum for directors' meetings

- 33 1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting
- 33 2 Subject to articles 33 3 and 33 4, the quorum for directors' meetings may be fixed from time to time by a unanimous decision of the directors and, unless otherwise fixed at any other number, shall be four, a person (other than a director) acting as an alternate director shall, if her / his appointer is not present, be counted in the quorum
- 33 3 Notwithstanding article 33 2, the quorum for a directors' meeting at which the authorisation of a director's conflict is to be considered, in accordance with article 36 5 2, shall be three
- 33 4 During the initial set up phase of the company, for so long as less than 4 directors have been appointed the quorum for directors' meetings shall be two
- 33 5 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision
- 33 5 1 to appoint further directors, or
- 33 5 2 to call a general meeting so as to enable the members to appoint further directors
- The decision of the directors to take any action under articles 33 5 1 or 33 5 2 must be unanimous

34. Chairing of directors' meetings

- 34 1 Unless s/he is unwilling to do so, the chairperson shall preside as chair at every meeting of directors at which s/he is present
- 34 2 If the chairperson is unwilling to act as chair or is not present within fifteen minutes of the time appointed for the meeting the directors present may appoint one of the other non-executive directors to be chair of the meeting

35. Casting vote

- 35 1 If the numbers of votes for and against a proposal at a directors' meeting are equal, the chairperson shall have a casting vote

- 35 2 Article 35 1 does not apply if, in accordance with the articles, the chairperson is not to be counted as participating in the decision-making process for quorum or voting purposes

36. Conduct of directors and conflicts of interest

- 36 1 It is the duty of each director of the company, in exercising functions as a director, to act in such a way which they in good faith believe to be in the best interests of the company and in a way which is most likely to promote the success of the company in achieving its objects (as set out in article 4) irrespective of any duties they owe to any office, post, engagement or other connection they hold or may have with any other body
- 36 2 In circumstances where there is a possibility of a conflict of interest between the duties under article 36 1 and the duties owed to, or interest in any other office, post, engagement or other connection which they hold or may have with any other body, the directors must put the interests of the company before that of the other party. Where the conflict prevents the directors from affecting their duty under article 36 1 they must disclose the conflicting interest and refrain from participating in, or attending, any deliberation or decision of the other directors with regard to the matter which gives rise to the conflict
- 36 3 For the purposes of article 36 1 a conflict of interest will not arise if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest. For the avoidance of doubt, a director appointed in accordance with article 20 2(i), will not automatically be deemed to be conflicted in a situation which involves a transaction or arrangement with either of the Regulator Members
- 36 4 If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested and that proposed transaction or arrangement can reasonably be regarded as giving rise to a conflict of interest, that director is not to be counted as participating in the decision-making process for quorum or voting purposes unless article 36 5 applies. For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting
- 36 5 A director who is interested in an actual or proposed transaction or arrangement with the company and whose interest can be reasonably regarded as likely to give rise to a conflict is to be counted as participating in the decision-making process for quorum and voting purposes when
- 36 5 1 the company by ordinary resolution dis-applies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process, or
- 36 5 2 the directors authorise a director to vote in relation to an actual or proposed transaction or arrangement in which that director is interested, provided that
- (i) the interested director does not count towards a quorum at the meeting at which the authority is considered, and
- (ii) the authorisation was given without their voting,
- all in accordance with Section 175 of the Act, or
- 36 5 3 the director's conflict of interest arises from a permitted cause
- For the purposes of this article, the following are permitted causes
- (i) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries,
- (ii) subscription, or an agreement to subscribe, for securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such securities, and
- (iii) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the

company or any of its subsidiaries which do not provide special benefits for directors or former directors

For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting

- 36 6 Subject to article 36 7, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive
- 36 7 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes

37. Minutes

The directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the directors and meetings of committees of directors, a minute of a meeting of directors or of a committee of directors shall include the names of the directors present

38. Directors' discretion to make further rules

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors

PART 6 GENERAL MEETINGS

ORGANISATION OF GENERAL MEETINGS

39. Annual General Meetings

The company shall in each calendar year hold a general meeting as the company's Annual General Meeting in addition to any other general meeting of the company held in that calendar year and the company shall specify the general meeting as the Annual General Meeting in the notice calling it. Unless the members resolve otherwise by way of ordinary resolution, not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next, provided that so long as the company holds the company's first annual general meeting within 18 months of the company's incorporation, the company need not hold such first annual general meeting in the calendar year of the company's incorporation or in the following calendar year. Each annual general meeting of the company shall be held at such time and place as the directors shall appoint

40. Convening of general meetings

- 40 1 The directors may, whenever they think fit, convene any general meeting of the company, and a general meeting of the company shall also be convened on requisition in accordance with the Act or on the requisition of the Regulator Members
- 40 2 Where a general meeting is convened by the Regulator Members the provisions of sections 303(4) to 303(6) of the Act shall apply to any requisition by the Regulator Members under article 40 1 above except that references to those sections to "members" shall be read as references to the "Regulator Members"
- 40 3 An annual general meeting of the company and a general meeting of the company shall be called by at least 14 clear days' notice in writing. The notice shall specify the place, the day and the hour of the general meeting and the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to the members of the company, to the directors and to the auditors of the company, provided that a general meeting of the company shall,

notwithstanding that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed -

- 40 3 1 in the case of a general meeting called as the annual general meeting of the company, by all the members of the company entitled to attend and vote thereat, and
- 40 3 2 in the case of any other general meeting, by a majority in number of the members of the company having a right to attend and vote at the general meeting, being a majority together representing not less than 90 per cent of the ordinary members of the company and including the Regulator Members
- 40 4 The accidental omission to give notice of any general meeting of the company to, or the non-receipt of a notice of a general meeting of the company by, any person entitled to receive notice shall not invalidate the proceedings at that general meeting

41. Attendance and speaking at general meetings

- 41 1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting
- 41 2 A person is able to exercise the right to vote at a general meeting when
 - 41 2 1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - 41 2 2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting
- 41 3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it
- 41 4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other
- 41 5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them

42. Quorum for general meetings

- 42 1 No business other than the appointment of the chair of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum
- 42 2 Four members (present in person or by proxy or representative) shall constitute a quorum however for so long as the membership of the company is less than four then the quorum shall be such number of members as are admitted to membership at that time

43. Chairing general meetings

- 43 1 The chairperson shall chair general meetings if present and willing to do so
- 43 2 If a chairperson has not been appointed, or if the chairperson is unwilling to chair the meeting or is not present within half an hour of the time at which a meeting was due to start
 - 43 2 1 the directors present, or
 - 43 2 2 (if no directors are present), the meeting,
 must appoint a director or member to chair the meeting, and the appointment of the chair of the meeting must be the first business of the meeting
- 43 3 The person chairing a meeting in accordance with this article is referred to as "the chair of the meeting"

44. Attendance and speaking by directors and non-members

- 44 1 Directors may attend and speak at general meetings
- 44 2 The chair of the meeting may permit other persons who are not representatives of members of the company to attend and speak at a general meeting

45. Adjournment

- 45 1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chair of the meeting must adjourn it
- 45 2 The chair of the meeting may adjourn a general meeting at which a quorum is present if
- 45 2 1 the meeting consents to an adjournment, or
- 45 2 2 it appears to the chair of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner
- 45 3 The chair of the meeting must adjourn a general meeting if directed to do so by the meeting
- 45 4 When adjourning a general meeting, the chair of the meeting must
- 45 4 1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
- 45 4 2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting
- 45 5 If the continuation of an adjourned meeting is to take place more than 30 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)
- 45 5 1 to the same persons to whom notice of the company's general meetings is required to be given, and
- 45 5 2 containing the same information which such notice is required to contain
- 45 6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place

VOTING AT GENERAL MEETINGS

46. Voting: general

- 46 1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with article 48
- 46 2 Unless a poll is demanded in accordance with article 48, a declaration by the chair of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority, and an entry to that effect in the minutes of the meeting, shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution
- 46 3 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall be entitled to a casting vote in addition to any other vote s/he may have

47. Errors and disputes

- 47 1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid
- 47 2 Any such objection must be referred to the chair of the meeting whose decision is final

48. Poll votes

- 48 1 A poll on a resolution may be demanded

- 48 1 1 in advance of the general meeting where it is to be put to the vote, or
- 48 1 2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared
- 48 2 A poll may be demanded by
 - 48 2 1 the chair of the meeting,
 - 48 2 2 the directors,
 - 48 2 3 three or more persons having the right to vote on the resolution,
 - 48 2 4 a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution, or
 - 48 2 5 any Regulator Member
- 48 3 A demand for a poll may be withdrawn if
 - 48 3 1 the poll has not yet been taken, and
 - 48 3 2 the chair of the meeting consents to the withdrawal
- 48 4 Polls must be taken immediately by means of a secret ballot of all persons present and entitled to vote and in such manner as the chair of the meeting directs
- 48 5 The result of a poll shall be declared at the meeting at which the poll was demanded

49. Content of proxy notices

- 49 1 Proxies may only validly be appointed by a notice in writing (a "proxy notice") which
 - 49 1 1 states the name and address of the member appointing the proxy,
 - 49 1 2 identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed,
 - 49 1 3 is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine, and
 - 49 1 4 is delivered to the company not less than 48 hours before the time for holding the meeting and otherwise complies with any instructions contained in the notice of the general meeting to which they relate
- 49 2 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes
- 49 3 An instrument of proxy which does not conform with the requirements of article 49 1 or any form set down by the company under article 49 2 shall be invalid
- 49 4 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions
- 49 5 Unless a proxy notice indicates otherwise, it must be treated as
 - 49 5 1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
 - 49 5 2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself

50. Delivery of proxy notices

- 50 1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person
- 50 2 An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given

- 50 3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates and, unless a notice is so delivered, any vote given, or poll demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding the poll had terminated prior to the giving of such vote or demanding of such poll
- 50 4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf

51. Amendments to resolutions

- 51 1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if
- 51 1 1 notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chair of the meeting may determine), and
- 51 1 2 the proposed amendment does not, in the reasonable opinion of the chair of the meeting, materially alter the scope of the resolution
- 51 2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if
- 51 2 1 the chair of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
- 51 2 2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution
- 51 3 If the chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chair of the meeting's error does not invalidate the vote on that resolution

PART 7 ADMINISTRATIVE ARRANGEMENTS

52. Means of communication to be used

- 52 1 Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company
- 52 2 Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being
- 52 3 A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours

53. Company seal

The company shall not have a common seal

54. No right to inspect accounts and other records

- 54 1 The Regulator Members, or any person or persons acting on their behalf or engaged by them, shall be entitled to inspect the company's accounting or other records or documents from time to time on giving reasonable notice to the company

- 54 2 Other than as provided in article 54 1 or as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member

55. Provision for employees on cessation of business

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary

DIRECTORS' INDEMNITY AND INSURANCE

56. Indemnity

- 56 1 Subject to article 56 2, a relevant director of the company or an associated company shall be indemnified out of the company's assets against
- 56 1 1 any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
 - 56 1 2 any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act),
 - 56 1 3 any other liability incurred by that director as an officer of the company or an associated company
- 56 2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law
- 56 3 In this article
- 56 3 1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
 - 56 3 2 a "relevant director" means any director or former director of the company or an associated company

57. Insurance

- 57 1 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss
- 57 2 In this article
- 57 2 1 a "relevant director" means any director or former director of the company or an associated company,
 - 57 2 2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund of the company or associated company or any employees' share scheme of any associated company, and
 - 57 2 3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate