

# File Copy



## CERTIFICATE OF INCORPORATION OF A PRIVATE LIMITED COMPANY

Company No. 07101438

The Registrar of Companies for England and Wales, hereby certifies that

MORAY OFFSHORE RENEWABLES LIMITED

is this day incorporated under the Companies Act 2006 as a private company, that the company is limited by shares, and the situation of its registered office is in ENGLAND/WALES

Given at Companies House, Cardiff, on 10th December 2009



\*N07101438B\*



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —

The above information was communicated by electronic means and authenticated by the Registrar of Companies under Section 1115 of the Companies Act 2006



**Companies House**  
— for the record —

# IN01(ef)

## Application to register a company

Received for filing in Electronic Format on the: **10/12/2009**



XEFZZFOR

*Company Name  
in full:*

**MORAY OFFSHORE RENEWABLES LIMITED**

*Company Type:*

**Private limited by shares**

*Situation of Registered  
Office:*

**England and Wales**

*Proposed Register  
Office Address:*

**C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*I wish to adopt entirely bespoke articles*

## Proposed Officers

*Company Director*     *1*

*Type:*                                **Person**

*Full forename(s):*                **JOAO PAOLO**

*Surname:*                         **NOGUEIRA DE SOUSA COSTEIRA**

*Former names:*

*Service Address:*                **C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*Country/State Usually Resident:*    **SPAIN**

*Date of Birth:*    **12/08/1965**

*Nationality:*    **PORTUGUESE**

*Occupation:*    **DIRECTOR**

*Consented to Act:* **Y**

*Date authorised:* **10/12/2009**

*Authenticated:* **YES**

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*Company Director*      **2**

*Type:*                              **Person**

*Full forename(s):*              **LUIS**

*Surname:*                        **DE ABREU ADAO DA FONSECA**

*Former names:*

*Service Address:*              **C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*Country/State Usually Resident:*    **SPAIN**

*Date of Birth:*    **03/08/1975**                              *Nationality:*    **BRITISH**

*Occupation:*    **COMPANY DIRECTOR**

*Consented to Act:* **Y**                              *Date authorised:*    **10/12/2009**              *Authenticated:*    **YES**

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*Company Director*      **3**

*Type:*                      **Person**

*Full forename(s):*       **EMILIO**

*Surname:*                **GARCIA-CONDE NORIEGA**

*Former names:*

*Service Address:*       **C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*Country/State Usually Resident:*   **SPAIN**

*Date of Birth:*   **24/10/1955**                      *Nationality:*   **SPANISH**

*Occupation:*    **COMPANY DIRECTOR**

*Consented to Act:* **Y**                      *Date authorised:*   **10/12/2009**      *Authenticated:*   **YES**

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*Company Director*      **4**

*Type:*                              **Person**

*Full forename(s):*              **BAUTISTA JULIO**

*Surname:*                        **RODRIGUEZ SANCHEZ**

*Former names:*

*Service Address:*              **C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*Country/State Usually Resident:*    **SPAIN**

*Date of Birth:*    **08/11/1961**

*Nationality:*    **SPANISH**

*Occupation:*    **DIRECTOR**

*Consented to Act:*    **Y**

*Date authorised:*    **10/12/2009**

*Authenticated:*    **YES**

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*Company Director*      **5**

*Type:*                              **Person**

*Full forename(s):*              **JOEL BONNAR**

*Surname:*                        **STAADECKER**

*Former names:*

*Service Address:*              **C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*Country/State Usually Resident:*    **UNITED KINGDOM**

*Date of Birth:*    **21/12/1946**                              *Nationality:*    **AMERICAN**

*Occupation:*    **CEO SEAENERGY  
RENEWABLES LIMITED**

*Consented to Act:*    **Y**                              *Date authorised:*    **10/12/2009**              *Authenticated:*    **ERRO**

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*Company Director*      **6**

*Type:*                      **Person**

*Full forename(s):*        **RONALD**

*Surname:*                **BONNAR**

*Former names:*

*Service Address:*        **C/O 7SIDE SECRETARIAL LIMITED  
1ST FLOOR 14/18 CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

*Country/State Usually Resident:*    **UNITED KINGDOM**

*Date of Birth:*    **11/09/1963**

*Nationality:*    **BRITISH**

*Occupation:*    **DIRECTOR**

*Consented to Act:* **Y**

*Date authorised:* **10/12/2009**

*Authenticated:* **YES**

## Statement of Capital (Share Capital)

<b>Class of shares</b>	<b>ORDINARY 'A'</b>	<i>Number allotted</i>	<b>25000</b>
		<i>Aggregate nominal value</i>	<b>25000</b>
<i>Currency</i>	<b>GBP</b>	<i>Amount paid</i>	<b>0</b>
		<i>Amount unpaid</i>	<b>1</b>
<i>Prescribed particulars</i>	<p>THE ORDINARY 'A' SHARES SHALL BE NON REDEEMABLE BUT SHALL HOLD FULL RIGHTS IN RESPECT OF VOTING, AND SHALL ENTITLE THE HOLDER TO FULL PARTICIPATION IN RESPECT OF EQUITY AND IN THE EVENT OF A WINDING UP OF THE COMPANY. THE SHARES MAY BE CONSIDERED BY THE DIRECTORS WHEN CONSIDERING DIVIDENDS FROM TIME TO TIME.</p>		
<b>Class of shares</b>	<b>ORDINARY 'B'</b>	<i>Number allotted</i>	<b>75000</b>
		<i>Aggregate nominal value</i>	<b>75000</b>
<i>Currency</i>	<b>GBP</b>	<i>Amount paid</i>	<b>0</b>
		<i>Amount unpaid</i>	<b>1</b>
<i>Prescribed particulars</i>	<p>THE ORDINARY 'B' SHARES SHALL BE NON REDEEMABLE BUT SHALL HOLD FULL RIGHTS IN RESPECT OF VOTING, AND SHALL ENTITLE THE HOLDER TO FULL PARTICIPATION IN RESPECT OF EQUITY AND IN THE EVENT OF A WINDING UP OF THE COMPANY. THE SHARES MAY BE CONSIDERED BY THE DIRECTORS WHEN CONSIDERING DIVIDENDS FROM TIME TO TIME.</p>		

## Statement of Capital (Totals)

<i>Currency</i>	<b>GBP</b>	<i>Total number of shares</i>	<b>25000</b>
		<i>Total aggregate nominal value</i>	<b>25000</b>
<i>Currency</i>	<b>GBP</b>	<i>Total number of shares</i>	<b>75000</b>
		<i>Total aggregate nominal value</i>	<b>75000</b>

## Initial Shareholdings

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*Name:*        **SEAENERGY RENEWABLES MORAY FIRTH LIMITED**

<i>Address:</i>	<b>C/O 7SIDE SECRETARIAL LIMITED 1ST FLOOR 14/18 CITY ROAD CARDIFF UNITED KINGDOM CF24 3DL</b>	<i>Class of share:</i>	<b>ORDINARY 'A'</b>
		<i>Number of shares:</i>	<b>25000</b>
		<i>Currency:</i>	<b>GBP</b>
		<i>Nominal value of each share:</i>	<b>1</b>
		<i>Amount unpaid:</i>	<b>1</b>
		<i>Amount paid:</i>	<b>0</b>

*Name:*        **EDPR UK LIMITED**

<i>Address:</i>	<b>C/O 7SIDE SECRETARIAL LIMITED 1ST FLOOR 14/18 CITY ROAD CARDIFF UNITED KINGDOM CF24 3DL</b>	<i>Class of share:</i>	<b>ORDINARY 'B'</b>
		<i>Number of shares:</i>	<b>75000</b>
		<i>Currency:</i>	<b>GBP</b>
		<i>Nominal value of each share:</i>	<b>1</b>
		<i>Amount unpaid:</i>	<b>1</b>
		<i>Amount paid:</i>	<b>0</b>

## Statement of Compliance

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*I confirm the requirements of the Companies Act 2006 as to registration have been complied with.*

*memorandum delivered by an agent for the subscriber(s):* **Yes**

*Agent's Name:* **7SIDE LIMITED**

*Agent's Address:* **14 - 18  
CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

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## *Authorisation*

*Authoriser Designation:* **agent**

*Authenticated:* **Yes**

*Agent's Name:* **7SIDE LIMITED**

*Agent's Address:* **14 - 18  
CITY ROAD  
CARDIFF  
UNITED KINGDOM  
CF24 3DL**

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**MEMORANDUM**

**AND**

**ARTICLES OF ASSOCIATION**

**OF**

**MORAY OFFSHORE RENEWABLES LIMITED**

**COMPANY HAVING A SHARE CAPITAL**

**MEMORANDUM OF ASSOCIATION**

**OF**

**MORAY OFFSHORE RENEWABLES LIMITED**

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

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**Name of each subscriber**

**Authentication by each subscriber**

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SEAENERGY RENEWABLES MORAY FIRTH LIMITED  
EDPR UK LIMITED

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Dated: 10 December 2009

Company No. ◆

**ARTICLES OF ASSOCIATION**  
**OF**  
**MORAY OFFSHORE RENEWABLES LIMITED**

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**ARTICLES OF ASSOCIATION**  
**OF**  
**MORAY OFFSHORE RENEWABLES LIMITED**  
**("Company")**

**PART 1: PRELIMINARY AND LIMITATION OF LIABILITY**

**1. Regulations and articles not to apply**

No regulations or articles set out in any statute, or in any statutory instrument or other subordinate legislation made under any statute, concerning companies shall apply as the regulations or articles of the Company.

**2. Defined terms and interpretation**

**2.1** In these articles, unless the context requires otherwise:

**"A Director"** means any director appointed by the holders of the A Shares from time to time under the provisions of article 23.2;

**"A Shares"** means each of the ordinary shares of £1 in the capital of the Company designated as an A Share and to be subscribed, in the first instance, by SERL;

**"Act"** means the Companies Act 2006;

**"Affiliate"** means in relation to any company, a subsidiary of that company, a holding company of that company or another subsidiary of such holding company;

**"appointor"** has the meaning given in article 26.1;

**"articles"** means the Company's articles of association;

**"Awarded Zone"** means Zone 1 (Moray Firth) described in schedule 1 of the Zone Development Agreement, as the same may be amended from time to time;

**"B Director"** means any director appointed by the holders of B Shares from time to time under the provisions of article 23.3;

**"B Shares"** means the B ordinary shares of £1 each in the capital of the Company from time to time;

**"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;

**"Business"** means the business of:

- (a) acting as zone partner for the Awarded Zone;

(b) entering into and performing its obligations under the Zone Development Agreement and the Round 3 Documentation, as appropriate, with the Crown Estate;

(c) whether directly or indirectly through subsidiaries incorporated for this purpose, undertaking the development, construction, financing and operation of offshore wind farm projects in the Awarded Zone and all ancillary, related and appropriate activities in relation thereto; and

(d) such other business as the shareholders may agree from time to time in writing should be carried on by the Company;

**"Business Day"** means a day other than a Saturday or a Sunday on which banks are open for business in London;

**"Change of Control"** has the meaning given to it in the Shareholders' Agreement;

**"chairman"** has the meaning given in article 15;

**"chairman of the meeting"** has the meaning given in article 65.3;

**"Companies Acts"** means every statute for the time being in force concerning companies (including any statutory instrument or other subordinate legislation made under any such statute), so far as it applies to the Company;

**"Control"** has the meaning (other than in the definition of "Change of Control") ascribed thereto by section 840 of the Income and Corporation Taxes Act 1988;

**"Crown Estate"** means The Crown Estate Commissioners of The Crown Estate, as applicable, acting on behalf of Her Majesty in accordance with The Crown Estate Act 1961;

**"Default Equity Value"** means 90 per cent. of the Fair Market Value of a number of A Shares equal to the Equity Floor;

**"Defaulting Shareholder"** means a shareholder committing an Event of Default;

**"director"** means a director for the time being of the Company, and includes any person for the time being occupying the position of director, by whatever name called;

**"distribution recipient"** has the meaning given in article 54.2;

**"document"** includes, unless otherwise specified, any document sent or supplied in electronic form;

**"electronic form"** and **"electronic means"** have the meanings given to them in section 1168 of the Act;

**"eligible director"** means:

(a) in relation to a decision at a directors' meeting, a director who is to be counted as participating for quorum and voting purposes in the decision at the meeting; and

(b) in relation to a directors' written resolution or a unanimous decision, a director who would have been counted as participating for quorum and voting purposes in the

decision had the resolution or matter been proposed as a resolution at a directors' meeting;

**"Equity Floor"** means a number of A Shares equivalent to a percentage of 6.67 per cent. of the total number of shares issued by the Company;

**"Event of Default"** means in relation to each shareholder: (a) a breach of the provisions of clause 24 of the Shareholders' Agreement; or (b) the existence of an Insolvency Event in relation to such shareholder or, to the extent that an Insolvency Event in relation to an Affiliate of such shareholder would constitute an event of default under clause 28.1 or clause 28.2 (Events of Default by the Partner) of the Zone Development Agreement, that Affiliate.

**"Fair Market Value"** means the fair value of each the shares held or beneficially owned by the shareholder whose shares are to be sold calculated on the basis of a sale of shares in a going concern between a willing seller in the circumstances of the selling shareholder and a willing purchaser as at the date of issue of the Default Notice. The Company and the shareholders shall render all such assistance and provide all such documentation and other information to the Auditors as the Auditors may consider necessary and shall use their respective best endeavours to procure that the Auditors shall issue a certificate as to the fair value of the shares to be disposed as soon as reasonably practicable, and the costs of the Auditors in connection with the assessment of Fair Market Value shall be borne by the Company;

**"fully paid"** in relation to a share means that the nominal value and any premium to be paid to the Company in respect of that share have been paid to the Company;

**"hard copy form"** has the meaning given in section 1168 of the Act;

**"holder"** in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

**"Insolvency Event"** means, in relation to a company, that:

(a) the company in question is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(b) a resolution is passed, or an order is made, for the winding up of the company in question other than for the purpose of a scheme for a solvent amalgamation of the company in question with one or more other companies or the solvent reconstruction of the company in question; or

(c) an order is made for the appointment of an administrator over the company in question; or

(d) a floating charge holder over the assets of the company in question has appointed an administrative receiver; or

(e) a creditor or encumbrancer of the company in question attaches or takes possession of, or an attachment, a distress, execution, diligence, sequestration or other such process (not being reasonably considered to be defensible or vexatious, in good faith) is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 28 days; or

(f) any event occurs, or proceeding is taken, with respect to the company in question in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-paragraph (a) to (e) (inclusive) above;

**"instrument"** means a document in hard copy form;

**"Intellectual Property"** includes patents, inventions, know how, trade secrets and other Confidential Information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, database rights and design rights, topography rights, trade marks, service marks, business names, trade names, moral rights, registration of an application to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country, rights in the nature of unfair competition rights and rights to sue for passing off;

**"non-disclosable interest"** has the meaning given in article 21.1;

**"ordinary resolution"** has the meaning given in section 282 of the Act;

**"paid"** means paid or credited as paid;

**"participate"**, in relation to a directors' meeting, has the meaning given in article 13;

**"Project"** has the meaning given to it in the Zone Development Agreement;

**"proxy notice"** has the meaning given in article 71.1;

**"Reserved Matters"** means the list of matters regarding unanimous shareholder approval set out in article 68.4;

**"Round 3 Documentation"** has the meaning given to it in the Shareholders' Agreement;

**"Shareholder Loans"** means shareholder loan to be advanced to the Company in accordance with the terms of clause 10 of the Shareholders' Agreement;

**"Shareholders' Agreement"** means the Shareholders' Agreement entered into on the date of the adoption of these articles and made between the Company and the shareholders subscribing for shares pursuant to the terms of the Shareholders' Agreement;

**"shareholder"** means a person who is the holder of a share;

**"shares"** means shares in the capital of the Company;

**"special resolution"** has the meaning given in section 283 of the Act;

**"subsidiary"** has the meaning given in section 1159 of the Act and **"Subsidiaries"** means the subsidiaries of the Company from time to time;

**"transmittee"** means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law;

**"working day"** has the meaning given in section 1173(1) of the Act;

**"writing"** and **"written"** 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;

**"Zone"** has the meaning given to it in the Shareholders' Agreement; and

**"Zone Development Agreement"** means the Zone Development Agreement to be entered into between the Company in its capacity as Zone Partner and the Crown Estate .

- 2.2 Unless the context requires otherwise, 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.
- 2.3 Words incorporating the masculine gender only include the feminine and neuter genders and words incorporating the singular number only include the plural and vice versa.
- 2.4 References to persons shall include bodies corporate, unincorporated associations and partnerships.
- 2.5 References to written or in writing shall include any method of representing or reproducing words in a legible form.
- 2.6 If, and for so long as, the Company has only one director, all references in these articles to **"directors"** (other than in those provisions which govern the decision-making by directors and directors' interests) shall be construed as a reference to that sole director.
- 2.7 References in these articles to the day on which a notice is given are to the day on which the notice is deemed received in accordance with article 80.
- 2.8 References to numbered "articles" are references to numbered provisions in these articles.
- 2.9 Headings in these articles are used for convenience only and shall not affect the meaning of these articles.
- 2.10 In the event of any ambiguity, inconsistency or conflict between any provision of these articles and a provision of the Shareholders' Agreement, the provision of the Shareholders' Agreement will prevail over these articles, except in relation to articles 36, 37, 38, 39 and 40 which will (in the event of any such ambiguity, inconsistency or conflict) prevail over the provisions of the Shareholders' Agreement.

### **3. Liability of members**

The liability of the members of the Company is limited to the amount, if any, unpaid on the shares held by them.

## **PART 2: OFFICERS**

### **DIRECTORS' POWERS AND RESPONSIBILITIES**

#### **4. Directors' general authority**

Subject to the business plan and 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 the formulation of the policies and guidelines to be applied in the conduct of its business.

The directors will, subject to compliance with any statutory requirement from time to time, ensure that such policies and decisions are applied consistently by the Company.

**5. Shareholders' reserve power**

- 5.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 5.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

**6. Directors may delegate**

- 6.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles (except for Reserved Matters and the matters referred to in article 6.4 which may not be delegated) and which are not specifically reserved to the directors only:

- 6.1.1 to such person or committee;
- 6.1.2 by such means (including by power of attorney);
- 6.1.3 to such an extent;
- 6.1.4 in relation to such matters or territories; and
- 6.1.5 on such terms and conditions,

as they think fit.

- 6.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 6.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 6.4 The directors will not be able to delegate the matters referred to in clause 6.6 of the Shareholders' Agreement. Such matters must be discussed and agreed in a directors' meeting.

**7. Committees**

- 7.1 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 decision-making by directors.
- 7.2 Subject to the articles, 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.

**8. Officers**

- 8.1 The directors shall be entitled to appoint and remove the following management positions:
  - 8.1.1 Managing Director (to whom the directors may delegate certain of their powers in accordance with article 6);
  - 8.1.2 Administrative and Finance Manager; and

- 8.1.3            Operation and Maintenance Manager.

## **DECISION-MAKING BY DIRECTORS**

### **9.        Directors to take decisions collectively**

- 9.1        The general rule about decision-making by directors is that any decision of the directors must be:
- 9.1.1            a majority decision at a meeting;
- 9.1.2            a majority decision by a directors' written resolution adopted in accordance with article 10; or
- 9.1.3            a unanimous decision taken in accordance with article 11.
- 9.2        No resolution or business shall be passed or transacted at any meeting of the directors except as was fairly disclosed in the agenda for such meeting.
- 9.3        If an item on the agenda is not voted for by majority of the directors present or represented at the meeting, the relevant item will be referred promptly to the shareholders to be decided by ordinary resolution.
- 9.4        The directors are empowered to decide upon the Reserved Matters, but no resolution of the directors shall be effective in relation thereto unless agreed in accordance with article 9.1 above but with at least one A Director and one B Director voting in favour.
- 9.5        If there is any dispute as to whether any matter is a Reserved Matter, then that dispute will be referred to the expert specified in clause 22 of the Shareholders' Agreement.

### **10.      Directors' written resolutions**

- 10.1       Any director may propose a directors' written resolution and the company secretary (if any) must propose a directors' written resolution if a director so requests.
- 10.2       Subject to article 10.3, a directors' written resolution is proposed by giving notice in writing of the proposed resolution to each director, unless the director is absent from the United Kingdom and has not given the Company an address to which such notices may be given by electronic means during his absence.
- 10.3       Any director may waive his entitlement to notice of any proposed directors' written resolution, either prospectively or retrospectively, and any retrospective waiver shall not affect the validity of the directors' written resolution.
- 10.4       A proposed directors' written resolution is adopted when a majority of the eligible directors have signed one or more copies of it, provided that those directors would have formed a quorum at a directors' meeting had the resolution been proposed at such a meeting. Once a directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a directors' meeting in accordance with the articles.

- 10.5 A director, or any other person, who is an alternate director may sign a proposed directors' written resolution (in addition to signing it in his capacity as a director, if relevant) on behalf of each of his appointors who:

10.5.1 have not signed or are not to sign the directors' written resolution; and

10.5.2 are eligible directors in relation to the directors' written resolution,

provided that (a) the alternate director is himself an eligible director in relation to the directors' written resolution and (b) those persons actually signing the directors' written resolution would have formed a quorum at a directors' meeting had the resolution been proposed at such a meeting.

## **11. Unanimous decisions**

- 11.1 A unanimous 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. Once a unanimous decision of the directors has been taken, it must be treated as if it had been a decision taken at a directors' meeting in accordance with the articles.

- 11.2 A decision may not be taken on a matter in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting had the matter been proposed as a resolution at such a meeting.

- 11.3 A director, or any other person, who is an alternate director may participate in a unanimous decision of the directors (in addition to participating in his capacity as a director, if relevant) on behalf of each of his appointors who:

11.3.1 are not participating in the unanimous decision; and

11.3.2 are eligible directors in relation to the decision,

provided that (a) the alternate director is himself an eligible director in relation to the decision and (b) those persons actually participating in the unanimous decision of the directors would have formed a quorum at a directors' meeting had the matter been proposed as a resolution at such a meeting.

## **12. Calling a directors' meeting**

- 12.1 Unless otherwise agreed by the directors, meetings of the directors shall be held at least once every month. At least three Business Days' written notice of such directors' meeting shall be given to each director. A meeting of the directors may be convened by giving not less than two Business Days' written notice if the interests of the Company would be likely to be adversely affected to a material extent or if the business to be transacted at such Board meeting must be dealt with as a matter of urgency or if all the directors agree.

- 12.2 Prior to each directors' meeting, written notice of such meeting (described further in article 12.5 below) should be accompanied by an agenda identifying in reasonable detail the issues to be considered by the directors at any such meeting and copies of any relevant papers to be discussed.

- 12.3 The directors must, within two Business Days of receipt of notice of a directors' meeting, inform the Chairman of the Board if they can not attend and, if so, propose an alternative time for a meeting to take place within the next three Business Days.

- 12.4 Without prejudice to the other provisions of this article 12, any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 12.5 Notice of any directors' meeting must indicate:
- 12.5.1 its proposed date and time;
  - 12.5.2 where it is to take place; and
  - 12.5.3 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.
- 12.6 Subject to article 12.7, notice of a directors' meeting must be given to each director, unless the director is absent from the United Kingdom and has not given the Company an address to which such notices may be given by electronic means during his absence. A director who participates in a meeting shall be deemed to have received proper notice of the meeting.
- 12.7 Any director may waive his entitlement to notice of any directors' meeting, either prospectively or retrospectively, and any retrospective waiver shall not affect the validity of the meeting or of any business conducted at it.
- 13. Participation in directors' meetings**
- 13.1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
- 13.1.1 the meeting has been called and takes place in accordance with the articles; and
  - 13.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 13.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 13.3 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.
- 14. Quorum for directors' meetings**
- 14.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 14.2 The quorum for directors' meetings is two directors, to include at least one A Director and one B Director PROVIDED that if a planned meeting is not quorate then (i) a revised meeting will be called by the chairman at a time within the next five Business Days; and (ii) if the representatives of a shareholder do not attend such revised meeting then a meeting of the directors will be considered to be quorate if two directors (excluding the Chairman of the Board) are present.
- 14.3 The directors shall use all reasonable endeavours to ensure that they or, if appropriate, alternate directors acting on their behalf will attend each directors' meeting and to procure that a quorum is present throughout each such meeting.

- 14.4 A person who is an alternate director but not a director may be counted as participating for the purposes of determining whether a quorum is participating in any decision at a directors' meeting, provided that his appointor (or one of his appointors):

14.4.1 is not participating in the decision at the directors' meeting; and

14.4.2 would have been an eligible director in relation to the decision if he had been participating in it.

But this does not apply if, in accordance with the articles, an alternate director is not himself an eligible director in relation to the decision.

- 14.5 No alternate, whether a director or any other person, may be counted as more than one director for the purposes of determining whether a quorum is participating in any decision at a directors' meeting.

## **15. Chairing of directors' meetings**

EDPR will appoint a director (the "**chairman**") to chair the meetings of the board of directors. The Chairman of the Board shall not have a second or casting vote.

## **16. Voting at directors' meetings**

- 16.1 A decision is taken at a directors' meeting by a majority of the votes of the eligible directors participating in the decision at the meeting.

- 16.2 Subject to the articles, each director participating in a decision at a directors' meeting has one vote.

- 16.3 A director, or any other person, who is an alternate director shall have one vote (in addition to his own vote as a director, if relevant) on any decision at a directors' meeting for each of his appointors who:

16.3.1 are not participating in the decision at the directors' meeting; and

16.3.2 would have been eligible directors in relation to the decision if they had been participating in it.

But this does not apply if, in accordance with the articles, an alternate director is not himself an eligible director in relation to the decision.

## **17. Participating and voting when director interested**

- 17.1 Without prejudice to the obligations of any director:

17.1.1 to disclose any interest in proposed or existing transactions or arrangements with the Company in accordance with the Companies Acts; and

17.1.2 to disclose any interest in accordance with article 21.1,

and subject always to the terms on which any authorisation by the directors for the purposes of section 175 of the Act has been given, a director shall be counted as participating for quorum and voting purposes in any decision at a directors' meeting that is concerned with a matter in which he has, directly or indirectly, an interest.

**18. Minutes of meetings**

Minutes taken of each directors' meeting are to be taken in the English language and distributed to each director within 5 Business Days following each such meeting.

**19. Records of directors' decisions to be kept**

The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

**DIRECTORS' INTERESTS**

**20. Transactions or arrangements with the Company**

20.1 Subject to compliance with the Companies Acts (including sections 177 (Duty to declare interest in proposed transaction or arrangement) and 182 (Declaration of interest in existing transaction or arrangement) of the Act), a director may be a party to, or otherwise (directly or indirectly) interested in, any transaction or arrangement with the Company.

20.2 Where there is any proposal before the directors' meeting relating to dealings between the Company and any director, shareholder, any Affiliate of a shareholder or any related party of a director, the directors must ensure that such proposal is:

20.2.1 negotiated on an arm's-length basis;

20.2.2 finalised on reasonable commercial terms; and

20.2.3 properly documented.

**21. Directors' conflicts of interest**

21.1 Provided that a director has declared the nature and extent of his interest (other than a non-disclosable interest) to the other directors, he shall be authorised for the purposes of section 175 of the Act:

21.1.1 to hold office as a director or other officer of, be employed or engaged by, hold shares or other securities in, or otherwise be interested in, whether directly or indirectly, any group undertaking of the Company (which includes, for the avoidance of doubt, the undertakings of the shareholders and their Affiliates) or any other undertaking in which the Company is otherwise (directly or indirectly) interested;

21.1.2 to participate in any scheme, transaction or arrangement for the benefit of employees or former employees of the Company or any group undertaking of the Company (including any pension fund or retirement, death or disability scheme or other bonus or employee benefit scheme);

21.1.3 to act as a trustee of any scheme for the benefit of employees or former employees of the Company or any group undertaking of the Company (including any pension, retirement, death or disability scheme or other bonus or employee benefit scheme);

- 21.1.4 to enter into, or otherwise be interested in, any transaction or arrangement in which the Company is (directly or indirectly) interested (other than a transaction or arrangement with the Company); and
- 21.1.5 to be a party to any transaction or arrangement with any group undertaking of the Company or any other undertaking in which the Company is otherwise (directly or indirectly) interested.

A "**non-disclosable interest**" is an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest or one that the other directors are already aware of or ought reasonably to be aware of.

- 21.2 If a matter, office, employment, position, transaction or arrangement or interest has been authorised either pursuant to article 21.1 or by the directors in accordance with section 175 of the Act, then the director in question shall not be required to disclose to the Company any confidential information relating to such matter, office, employment, position, transaction or arrangement or interest, or to use such information in relation to the Company's affairs, if to do so would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter, office, employment, position, transaction or arrangement or interest.

## **22. Accounting for profit when interested**

Subject always (i) to the obligation of the director to disclose his interest in proposed or existing transactions or arrangements with the Company in accordance with the Companies Acts and (ii) the obligation of the director to disclose his interest in accordance with article 21.1 and to the terms on which any authorisation for the purposes of section 175 of the Act has been given:

- 22.1.1 a director shall not be accountable to the Company for any profit, remuneration or other benefit which he (or a person connected with him as defined in section 252 of the Act) derives from or in connection with any interest (whether directly or indirectly) in any transaction or arrangement with the Company or in connection with anything authorised pursuant to article 21.1 or by the directors for the purposes of section 175 of the Act;
- 22.1.2 no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest, profit, remuneration or benefit and no such thing authorised shall be liable to be avoided on the grounds of any such interest, profit, remuneration or benefit; and
- 22.1.3 the receipt of any such profit, remuneration or other benefit shall not constitute a breach of his duty under section 176 of the Act.

## **DIRECTORS' TERMS OF OFFICE**

### **23. Methods of appointing directors**

- 23.1 Unless and until otherwise determined by special resolution the maximum number of directors (other than alternate directors) shall be six, comprising up to two A Directors and up to four B Directors.
- 23.2 The holders of a majority in nominal value of the A Shares may from time to time appoint any person to be an A Director by notice and may in like manner remove any A Director and

by like notice from time to time appoint any other person to be a director in the place of a director so removed, provided always that no more than two A Directors shall hold office at any one time.

- 23.3 The holders of a majority in nominal value of the B Shares may from time to time appoint any person to be a B Director, and shall appoint one of such persons to act as Chairman of the Board, by notice and may in like manner remove any B Director and by like notice from time to time appoint any other person to be a director in the place of a director so removed provided always that no more than four B Directors shall hold office at any one time.
- 23.4 The appointment or removal of an A Director or a B Director shall be effected by notice in writing signed by the shareholder or shareholders making the same or in the case of a corporate shareholder signed by a director of that shareholder and such notice shall take effect when it is received by the Company or on such later date (if any) as may be specified therein.
- 23.5 Every director appointed pursuant to this article 23 shall be entitled from time to time to make such disclosure to his appointor about the business and affairs of the Company and its subsidiaries as he shall in his absolute discretion determine.
- 23.6 The directors shall not be required to retire by rotation.

#### **24. Termination of director's appointment**

- 24.1 The shareholder possessing the right to appoint a director is the sole person entitled to remove such director, in each case by written notice to the Company. The shareholders cannot remove a director nominated by one of the other shareholders.
- 24.2 The shareholders undertake to vote in favour of the appointment or removal of any director nominated by any of the other shareholders.
- 24.3 Subject to article 24.5 below, if a shareholder wishes to remove any of the directors it has appointed, such removal cannot take place before a new director has been nominated by the respective shareholder. Such replacement of a director shall be approved by the next meeting of the shareholders.
- 24.4 If a shareholder ceases to be a shareholder, the elected directors appointed by that shareholder must resign and will no longer be entitled to participate in directors' meetings.
- 24.5 Any shareholder removing a director appointed by it shall be responsible for and agrees with the other shareholders to indemnify each of the other shareholders and the Company against all losses, liabilities and costs which each other shareholder or the Company may incur arising out of, or in connection with, any claim by that director for wrongful or unfair dismissal or other compensation arising out of that director's removal.
- 24.6 A person ceases to be a director (and will no longer be entitled to participate in directors' meetings) as soon as:
  - 24.6.1 that person ceases to be a director by virtue of any provision of the Companies Acts (including pursuant to section 168 of the Act) or is prohibited from being a director by law;
  - 24.6.2 a bankruptcy order is made against that person;

- 24.6.3 a composition or arrangement is made with that person's creditors generally in satisfaction of that person's debts;
- 24.6.4 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 three months;
- 24.6.5 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; or
- 24.6.6 notice in writing is received by the Company from the director that he is resigning from office, and such resignation has taken effect in accordance with its terms

and in each such case, the shareholder appointing such director must ensure that it promptly nominates a new director to replace such person. In such circumstances, the envisaged replacement will take effect immediately following such nomination; if required, the shareholders will promptly convene a meeting in order to approve such appointment.

## **25. Directors' remuneration**

- 25.1 Directors may undertake any services for the Company that the directors decide. Directors shall be remunerated in their capacity as directors of the Company and for any such aforementioned services by the appointing shareholder.
- 25.2 The appointing shareholder will bear the cost of travelling and other expenses incurred by any director when attending directors' meetings.
- 25.3 Subject to the articles, a director's remuneration may:
  - 25.3.1 take any form; and
  - 25.3.2 include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- 25.4 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director.

## **ALTERNATE DIRECTORS**

## **26. Appointment and removal of alternate directors**

- 26.1 Any director (other than an alternate director) ("**appointor**") may appoint as an alternate any person willing to act to:
  - 26.1.1 exercise that director's powers; and
  - 26.1.2 carry out that director's responsibilities,

in relation to the taking of decisions by the directors in the absence of the alternate's appointor, and may remove from office an alternate so appointed by him.

26.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors. The appointment or removal shall take effect when the notice is received by the Company or on such later date (if any) specified in the notice.

26.3 The notice must:

26.3.1 identify the proposed or existing alternate; and

26.3.2 in the case of a notice of appointment, contain (or be accompanied by) a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

26.4 A person may act as an alternate for more than one director.

## **27. Rights and responsibilities of alternate directors**

27.1 Except as the articles specify otherwise, alternate directors:

27.1.1 are deemed for all purposes to be directors;

27.1.2 are liable for their own acts and omissions;

27.1.3 are subject to the same restrictions as their appointors; and

27.1.4 are not deemed to be agents of or for their appointors.

27.2 Subject to the articles, an alternate director has the same rights in relation to any decision of the directors and any meetings of committees of directors as each of the alternate's appointors. In particular, each alternate director is entitled to receive notice of all proposed directors' written resolutions and of all directors' meetings and meetings of committees of directors which each of his appointors is entitled to receive (disregarding, for these purposes, any absence of such appointor from the United Kingdom), unless the alternate director is absent from the United Kingdom and has not given the Company an address to which such notices may be given by electronic means during his absence.

## **28. Termination of alternate directorship**

An alternate director's appointment as an alternate for an appointor terminates:

28.1 when that appointor removes his alternate director in accordance with article 26;

28.2 on the occurrence in relation to the alternate director of any event which, if it occurred in relation to that appointor, would result in the termination of that appointor's appointment as a director;

28.3 on the death of that appointor;

28.4 when that appointor's appointment as a director terminates; or

28.5 when notice in writing is received by the Company from the alternate director that he is resigning as an alternate director of that appointor, and such resignation has taken effect in accordance with its terms.

## **COMPANY SECRETARY**

### **29. Secretary's terms of office**

The directors may appoint any person who is willing to act to be the company secretary for such term and on such conditions as they think fit, and may remove any company secretary so appointed.

## **PART 3: SHARES AND DISTRIBUTIONS**

### **SHARES**

### **30. Share Capital**

- 30.1 The maximum number of shares that may be issued by the Company at the date of adoption of these articles is 100,000 divided into 25,000 A Shares of £1 each and 75,000 B Shares of £1 each.
- 30.2 The 25,000 A Shares have been issued to SeaEnergy Renewables Moray Firth Limited and the 75,000 B shares have been issued to EDPR UK Limited as the agreed structure for the joint venture between them.
- 30.3 The A Shares and the B Shares shall constitute different classes of shares for the purposes of the Act and any alteration to the memorandum of association or these articles shall be deemed to constitute an alteration to the rights attached to each separate class of shares but save as expressly otherwise provided in these articles the A Shares and the B Shares shall rank *pari passu* in all respects.

### **31. Issue of shares**

- 31.1 Unless all the shareholders otherwise agree in writing or in the case of an allotment of shares pursuant to the provisions of clause 10 of the Shareholders' Agreement, any shares from time to time created shall be created as A Shares and B Shares in the same proportion (as nearly as may be) to the proportions that the then existing authorised and issued A Shares and B Shares bear to each other and all the shares so created shall be offered to the existing shareholders for allotment and issue in accordance with the following provisions:
  - 31.1.1 on each occasion the A Shares and the B Shares shall be offered to the shareholders at the same price per share and on the same terms as to payment;
  - 31.1.2 no shares of either class shall be offered or issued otherwise than to shareholders already holding shares of the same class without the prior written consent of all the shareholders; and
  - 31.1.3 as between shareholders holding shares of the same class, the shares of that class shall be offered amongst such shareholders in the same proportion (as nearly as maybe) to their existing holdings of shares of that class or in such other proportions as all such shareholders shall unanimously agree in writing.
- 31.2 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (within the meaning of section 560 of the Act) by the Company.

**32. Powers to issue different classes of share**

- 32.1 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder. The terms, conditions and manner of redemption of any such shares may be determined by the shareholders as set out in the articles.

**33. Company not bound by less than absolute interests**

Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the articles, the Company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

**34. Share certificates**

- 34.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

- 34.2 Every certificate must specify:

- 34.2.1 in respect of how many shares, of what class, it is issued;
- 34.2.2 the nominal value of those shares;
- 34.2.3 the amount paid up on them (including both the nominal value and any share premium); and
- 34.2.4 any distinguishing numbers assigned to them.

- 34.3 No certificate may be issued in respect of shares of more than one class.

- 34.4 If more than one person holds a share, only one certificate may be issued in respect of it.

- 34.5 Certificates must be executed in accordance with the Companies Acts.

**35. Replacement share certificates**

- 35.1 If a certificate issued in respect of a shareholder's shares is:

- 35.1.1 damaged or defaced; or
- 35.1.2 said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

- 35.2 A shareholder exercising the right to be issued with such a replacement certificate:

- 35.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

- 35.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
- 35.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

**36. Defaulting members and deemed sale notices**

- 36.1 If a shareholder ("**Defaulting Shareholder**") commits an Event of Default, then the other shareholders ("**Non-Defaulting Shareholders**") shall, in their absolute discretion, determine whether to set a reasonable time period for the remedy of such Event of Default by the Defaulting Shareholder. Upon the occurrence of an Event of Default or, if so agreed by the Non-Defaulting Shareholders, the expiration of any grace period for remedy of such Event of Default, the Non-Defaulting Shareholders may, without prejudice to any other rights and remedies which they may have, serve a written notice ("**Default Notice**") on the Defaulting Shareholder at any time.
- 36.2 Following the later of the expiry of the aforementioned grace period for remedy of such Event of Default (if any), the date of the Default Notice and any date specified in the Default Notice for such purposes (the "**Default Transfer Date**"), the Non-Defaulting Shareholders have the right to require the Defaulting Shareholder to immediately:
  - 36.2.1 offer all (and not part) of its shares for sale to the Non-Defaulting Shareholders;
  - 36.2.2 if the Defaulting Shareholder is a holder of A Shares, then its A Shares will be offered for sale to the holders of B Shares at the Default Equity Value; and
  - 36.2.3 sell and transfer its Shareholder Loans to the Non-Defaulting Shareholders at the amount of principal outstanding together with interest accrued until the date of transfer on such principal.

**37. Failure to comply with Default Notice: automatic consequences**

- 37.1 In the event that the Defaulting Shareholder fails to carry out the sale of its shares in accordance with the provisions of article 36, the directors appointed by the Non-Defaulting Shareholders shall:
  - 37.1.1 be mandated as agent on behalf of the Defaulting Shareholder to execute a transfer of such shares in favour of the Non-Defaulting Shareholders and the Company may give a good receipt for the purchase price of such shares and may register the Non-Defaulting Shareholders as the holder thereof and issue to it a certificate for the same whereupon the Non-Defaulting Shareholders shall become indefeasibly entitled to the shares. The Defaulting Shareholder shall, in such case, be bound to deliver up his certificate for the shares to the Company whereupon the Defaulting Shareholder shall be entitled to receive the purchase price which shall, in the meantime, be held by the Company on trust for the Defaulting Shareholder and without interest; and
  - 37.1.2 if the Defaulting Shareholder fails to promptly comply with its obligations under this article 37, be empowered to declare that any share held by the Defaulting Shareholder is forfeited, and the forfeiture is to include all dividends or other sums payable in respect of the forfeited shares and not paid before the forfeiture. If a share is declared to be forfeited pursuant to the provisions of this article, the provisions of article 38 will apply.

- 37.2 If, in the reasonable opinion of the Non-Defaulting Shareholders a valid claim by the Company and/or the Non-Defaulting Shareholders against the Defaulting Shareholder exists as a result of the Event of Default, then such Non-Defaulting Shareholders shall be entitled to make a retention out of the consideration payable to the Defaulting Shareholder under articles 36.2 and 37.1.1 for its shares and Shareholder Loans equal to the amount of the claim (the retention monies being held in an interest bearing bank deposit account) until such time as the claim is fully and finally settled whereupon any such retention not applied in settlement of such claim (together with the interest that has accrued thereon) shall be repaid by the Non-Defaulting Shareholders to the Defaulting Shareholder within 14 days of the date of settlement.
- 37.3 Upon the occurrence of an Event of Default and for so long as an Event of Default is outstanding:
- 37.3.1 the Defaulting Shareholder shall not be entitled to attend any general meetings of the Company nor be entitled to cast any votes at such meetings; and
- 37.3.2 the Non-Defaulting Shareholders shall be entitled to revoke the directors appointed by the Defaulting Shareholder.
- 37.4 For so long as an Event of Default is outstanding, notwithstanding any other provision to the contrary in these articles or the Shareholders' Agreement or unless otherwise agreed by all of the other shareholders in writing:
- 37.4.1 the Defaulting Shareholder (and any director appointed by the Defaulting Shareholder) shall not be entitled to exercise their right to vote on any resolution which, pursuant to the terms of the Shareholders' Agreement and these articles, requires the approval of all shareholders or any majority of the shareholders. In such circumstances, any resolution passed by the remaining shareholders shall be binding for all purposes on the Defaulting Shareholder and if, notwithstanding the provisions of this article 37, the Defaulting Shareholder is entitled by law to exercise any voting rights as a shareholder, the Defaulting Shareholder hereby irrevocably appoints the other shareholders jointly as its proxy for the exercise of such voting rights; and
- 37.4.2 the number of directors otherwise required to constitute a quorum for the transaction of business at a meeting of the directors shall be the number required to be present excluding any requirement for director appointed by any Defaulting Shareholder to be present; and
- 37.4.3 from the date on which the Non-Defaulting Shareholder exercises its option to acquire the shares of the Defaulting Shareholder, the Defaulting Shareholder shall not be entitled to receive dividends or distributions of any kind unless previously declared.
- 37.5 A person becoming entitled to a share in consequence of the death or bankruptcy of a shareholder or an Insolvency Event in relation to a corporate shareholder shall be deemed to have served a Sale Notice and all the provisions of article 51 shall mutatis mutandis apply save that the Sale Notice shall be irrevocable even if such person shall have actually served a Sale Notice on the Company and the Price shall be the Default Equity Floor.
- 37.6 Save where the provisions of article 51.5 to 51.7 have been complied with, if a shareholder being a corporation shall at any time cease to be Controlled by the person or persons who had Control of the corporation at the time it became a shareholder, the shareholder shall be deemed (immediately prior to the Change of Control) to have served a Sale Notice and all the

provisions of article 51 shall mutatis mutandis apply save that the Sale Notice shall be irrevocable even if such shareholder shall have actually served a Sale Notice on the Company.

**38. Company's lien**

38.1 The Company has a lien ("Company's lien") over every share which is not fully paid for any part of:

38.1.1 that share's nominal value; and

38.1.2 any premium at which it was issued,

which has not been paid to the Company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

38.2 The Company's lien over a share:

38.2.1 takes priority over any third party's interest in that share; and

38.2.2 extends to any dividends or other sums payable by the Company in respect of that share and (if the lien is enforced and the share is sold by the Company) the proceeds of sale of that share.

38.3 The directors may at any time decide that a share which is or would otherwise be subject to the Company's lien shall not be subject to it, either wholly or in part.

**39. Enforcement of the Company's lien**

39.1 Subject to the provisions of this article, if:

39.1.1 a lien enforcement notice has been given in respect of a share; and

39.1.2 the person to whom the notice was given has failed to comply with it,

the Company may sell that share in such manner as the directors decide.

39.2 A lien enforcement notice:

39.2.1 may only be given in respect of a share which is subject to the Company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

39.2.2 must specify the share concerned;

39.2.3 must be in writing and require payment of the sum payable within 14 clear days of the notice (that is, excluding the day on which the notice is given and the day on which that 14 day period expires);

39.2.4 must be addressed either to the holder of the share or to a transmittee entitled to it; and

39.2.5 must state the Company's intention to sell the share if the notice is not complied with.

- 39.3 Where shares are sold under this article:
- 39.3.1 the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and
  - 39.3.2 the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.
- 39.4 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:
- 39.4.1 first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice; and
  - 39.4.2 secondly, to the person entitled to the shares immediately before the sale, but only after the certificate for the shares sold has been surrendered to the Company for cancellation or an indemnity in a form reasonably satisfactory to the directors has been given for any lost certificates, and provided that the Company's lien shall also apply to such proceeds for any money payable in respect of the shares after the date of the lien enforcement notice.
- 39.5 A statutory declaration by a director or the company secretary (if any) that the declarant is a director or the company secretary (as applicable) and that a share has been sold to satisfy the Company's lien on a specified date:
- 39.5.1 is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - 39.5.2 subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.
- 40. Call notices**
- 40.1 Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "call notice") to a shareholder requiring the shareholder to pay the Company a specified sum of money (a "call") which is payable in respect of shares which that shareholder holds (whether solely or jointly with others) at the date when the directors decide to send the call notice.
- 40.2 A call notice:
- 40.2.1 may not require a shareholder to pay a call which exceeds the total sum unpaid on that shareholder's shares (whether as to the share's nominal value or any amount payable to the Company by way of premium);
  - 40.2.2 must be in writing and state when and how any call to which it relates it is to be paid; and
  - 40.2.3 may permit or require the call to be paid by instalments.
- 40.3 A shareholder must comply with the requirements of a call notice, but no shareholder is obliged to pay any call before 14 clear days have passed since the notice was sent (that is,

excluding the day on which the call notice is given and the day on which that 14 day period expires).

40.4 Before the Company has received any call due under a call notice, the directors may:

40.4.1 revoke it wholly or in part; or

40.4.2 specify a later time for payment than is specified in the notice,

by a further notice in writing to the shareholder in respect of whose shares the call is made.

#### **41. Liability to pay calls**

41.1 Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

41.2 Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

41.3 Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them:

41.3.1 to pay calls which are not the same; or

41.3.2 to pay calls at different times.

#### **42. When call notice need not be issued**

42.1 A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the Company in respect of that share (whether in respect of nominal value or premium):

42.1.1 on allotment;

42.1.2 on the occurrence of a particular event; or

42.1.3 on a date fixed by or in accordance with the terms of issue.

42.2 But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

#### **43. Failure to comply with call notice: automatic consequences**

43.1 If a person is liable to pay a call and fails to do so by the call payment date:

43.1.1 the directors may issue a notice of intended forfeiture to that person; and

43.1.2 until the call is paid, that person must pay the Company interest on the call from the call payment date at the relevant rate.

43.2 For the purposes of this article:

43.2.1 **"call payment date"** means the time when the call notice states that a call is to be paid, unless the directors give a notice in writing specifying a later date, in which case the **"call payment date"** is that later date;

43.2.2 **"relevant rate"** means:

43.2.2.1 the rate fixed by the terms on which the share in respect of which the call is due was allotted;

43.2.2.2 such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

43.2.2.3 if no rate is fixed in either of these ways, five per cent per annum.

43.3 The relevant rate must not exceed by more than five percentage points the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part 2 of the Bank of England Act 1998.

43.4 The directors may waive any obligation to pay interest on a call wholly or in part.

#### **44. Notice of intended forfeiture**

A notice of intended forfeiture:

44.1 may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

44.2 must be in writing and sent to the holder of that share or to a transmittee entitled to it;

44.3 must require payment of the call and any accrued interest by a date which is not less than 14 clear days after the date of the notice (that is, excluding the day on which the notice is given and the day on which that 14 day period expires);

44.4 must state how the payment is to be made; and

44.5 must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

#### **45. Directors' power to forfeit shares**

If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which such notice was given is forfeited, and the forfeiture is to include all dividends or other sums payable in respect of the forfeited shares and not paid before the forfeiture.

#### **46. Effect of forfeiture**

46.1 Subject to the articles, the forfeiture of a share extinguishes:

46.1.1 all interests in that share, and all claims and demands against the Company in respect of it; and

- 46.1.2 all other rights and liabilities incidental to the share as between the person whose share it was before the forfeiture and the Company.
- 46.2 Any share which is forfeited in accordance with the articles:
  - 46.2.1 is deemed to have been forfeited when the directors decide that it is forfeited;
  - 46.2.2 is deemed to be the property of the Company; and
  - 46.2.3 may be sold, re-allotted or otherwise disposed of as the directors think fit.
- 46.3 If a person's shares have been forfeited:
  - 46.3.1 the Company must send that person notice in writing that forfeiture has occurred and record it in the register of members;
  - 46.3.2 that person ceases to be a shareholder in respect of those shares;
  - 46.3.3 that person must surrender the certificate for the shares forfeited to the Company for cancellation (although failure to so surrender the relevant certificate will not prejudice the Company's and Non-Defaulting Shareholders' rights and powers pursuant to these articles and the Shareholders' Agreement);
  - 46.3.4 that person remains liable to the Company for all sums payable by that person under the articles and the Shareholders' Agreement at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
  - 46.3.5 the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- 47. Procedure following forfeiture**
  - 47.1 If a forfeited share is to be disposed of by being transferred, the Company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.
  - 47.2 A statutory declaration by a director or the company secretary (if any) that the declarant is a director or the company secretary (as applicable) and that a share has been forfeited on a specified date:
    - 47.2.1 is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
    - 47.2.2 subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.
  - 47.3 A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any), nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

47.4 If the Company sells a forfeited share, the person who held it before its forfeiture is entitled to receive from the Company the net proceeds of such sale, after payment of the costs of sale and any other costs relating to the forfeiture of the share, and excluding any amount which:

47.4.1 was, or would have become, payable; and

47.4.2 had not, when that share was forfeited, been paid by that person in respect of that share,

but no interest is payable to such a person in respect of such proceeds, and the Company is not required to account for any money earned on them.

#### **48. Surrender of shares**

48.1 A shareholder may surrender any share:

48.1.1 in respect of which the directors may issue a notice of intended forfeiture;

48.1.2 which the directors may forfeit; or

48.1.3 which has been forfeited.

48.2 The directors may accept the surrender of any such share.

48.3 The effect of surrender on a share is the same as the effect of forfeiture on that share.

48.4 A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

#### **49. Share transfers**

49.1 No shareholder shall sell, transfer or otherwise dispose of any interest in, or right attaching to, or renounce or assign any right to receive or subscribe for any share (save as may be required in pursuance of his obligations under these articles or the Shareholders' Agreement) or create or permit to exist any charge, lien, encumbrance or trust over any share or agree (whether subject to any condition precedent, condition subsequent or otherwise) to do any of such things except as permitted by these articles or the Shareholders' Agreement pursuant to any change over shares entered into with the Crown Estates or otherwise.

49.2 If a shareholder at any time attempts to deal with, sell, transfer or otherwise dispose of a share or any interest therein or right attaching thereto otherwise than as permitted by these articles and the Shareholders' Agreement, he shall be deemed immediately prior to such attempt to have given a transfer notice in respect of such share.

49.3 A shareholder must not dispose of any of its shares if the disposal would constitute a breach of these articles, the Zone Development Agreement or the Round 3 Documentation.

49.4 It shall be a condition of any transfer of shares by a shareholder that there is transferred with the relevant shares a proportion of the Shareholder Loans equivalent to that proportion of the relevant shareholder's shares then being transferred.

49.5 For the purpose of ensuring that a particular transfer of shares is permitted hereunder the directors may require the transferor or the person named as transferee in any transfer lodged for registration to furnish the Company with such information and evidence as the directors

may think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors within a period of 28 days after such request the directors shall be entitled to refuse to register the transfer in question.

- 49.6 Where a transfer notice in respect of any share is deemed to have been given under any provision of these articles or under the Shareholders' Agreement and the circumstances are such that the directors (as a whole) are unaware of the facts giving rise to the same such transfer notice shall be deemed to have been received by the directors on the date on which the directors (as a whole) actually become aware of such facts and the provisions of article 51 shall apply accordingly.
- 49.7 A deemed transfer notice shall not be revocable.
- 49.8 The directors may not refuse to register any transfer of a share which is permitted under these articles, unless it is not duly stamped (or it is not duly certified or otherwise shown to the satisfaction of the directors to be exempt from stamp duty) or they suspect that the proposed transfer may be fraudulent.
- 49.9 If a shareholder or any director appointed by a shareholder becomes aware of any event which is deemed to give rise to an obligation to serve a transfer notice he shall forthwith give written notice thereof to the directors.
- 49.10 Whenever a share is transferred to, or subscribed by, a shareholder holding shares only of another class such first mentioned share shall ipso facto and forthwith be converted into and redesignated as a share of such other class.

## **50. Permitted Transfers of shares**

### **Group transfers**

- 50.1 A shareholder which is an undertaking ("**Original Undertaking**") may transfer any shares held by it to any Affiliate provided that:
- 50.1.1 the Affiliate enters into a deed of adherence to the Shareholders' Agreement in the form attached in schedule 1 to the Shareholders' Agreement;
- 50.1.2 the transferring undertaking informs the other shareholders by written notification to all directors of the financial and technical standing, and the identity and shareholding participations of the Affiliate's shareholders;
- 50.1.3 the transferring undertaking guaranteeing to the other shareholders the due performance by the Affiliate of all obligations arising hereunder by means of a parent company guarantee, if in the reasonable opinion of the other Parties, the Affiliate does not have the financial capability to fulfil such obligations; and
- 50.1.4 any necessary statutory consent and/or authorisation and the Crown Estates' consent, to the extent applicable and if required, for such transfer of shares being obtained.
- 50.2 Where shares have been transferred pursuant to article 50.1 whether directly or by a series of transfers from an undertaking ("**Transferor Undertaking**") to an undertaking which in relation to the Transferor Undertaking is a group undertaking ("**Transferee Undertaking**") and subsequently the Transferee Undertaking ceases to be a group undertaking in relation to the Transferor Undertaking then the Transferee Undertaking shall forthwith transfer any shares in the Company held by it to the Transferor Undertaking or an undertaking which in

relation to the Transferor Undertaking is a group undertaking and in default thereof the Transferee Undertaking shall be deemed to have given a Sale Notice (as defined in article 43.1) in respect of all such shares.

## **51. Pre-emption rights on transfer**

- 51.1 If a shareholder ("**Proposing Transferor**") proposes to sell, transfer or otherwise dispose of part or all of its shares, subject to article 51.2 below (in each case, the "**Offered Shares**"), to any person (other than an Affiliate pursuant to article 50.1), it shall firstly by notice (the "**Sale Notice**") to the other shareholders ("**Offerees**") offer such shares for sale to the Offerees in proportion to each Offeree's interest at a price stated in the Sale Notice specifying the number and class of the shares proposed to be sold. The Offerees shall indicate whether they wish to accept or reject such offer within 15 Business Days of receipt of such Sale Notice.
- 51.2 If proposing to sell only part of its shares, the Proposing Transferor may not offer to sell a number of shares lower than five per cent. of the total number of shares in the Company.
- 51.3 If within 15 Business Days of receipt of the notice referred to in article 51.1 such offer is accepted in respect of the Offered Shares by all or any of the Offerees without objection to the price stated as aforesaid, the Proposing Transferor will be bound to sell and transfer, and the Offerees will be bound to purchase and pay for, the Offered Shares at the said price and the Sale Notice shall constitute that company the agent of the Proposing Transferor for the sale of the Offered Shares.
- 51.4 If the offer is not accepted pursuant to the foregoing procedures, the Proposing Transferor will be entitled to transfer the Offered Shares to any third party referred to in article 51.1 for a consideration not less than the price stated in its notice to the Offerees under article 51.1. However, in advance of any such transfer the Proposing Transferor shall be obliged to once again offer such shares for sale to the Offerees, this time at the price and on the terms on which the relevant third party is willing to purchase such shares and if the Offerees accept this further offer unconditionally within 20 Business Days of the date of the further offer in respect of all such shares, the Proposing Transferor will be bound to sell and transfer, and the Offerees will be bound to purchase and pay for, the said shares at the said price, and the General Assembly will not be entitled to decline or refuse to register any such transfers.
- 51.5 If a Change of Control is proposed in respect of any shareholder (the "**Target Shareholder**"), that Target Shareholder shall notify the other shareholders (the "**Unaffected Shareholder**") of the same and will procure that the Unaffected Shareholder and/or its Affiliates receive a legally binding offer (the "**Shareholder Control Offer**") to purchase any shares or other rights in the Target Shareholder (or any holding company of the Target Shareholder) that are to be offered for sale or transfer and which, if completed, would give effect to the Change of Control. The Shareholder Control Offer will be made at a price stated in the notice. The Shareholder Control Offer will include details of the identity of the proposed purchaser or transferee of the shares or rights. The recipient(s) of such notice shall indicate whether they wish to accept or reject such offer within 15 Business Days of receipt of such notice.
- 51.6 If the offer is not accepted within 15 Business Days of receipt of such notice pursuant to the foregoing procedures, the aforementioned sale or transfer of shares or other rights to a third party may, subject to article 51.7 below, take place and the Change of Control may be effected provided that such sale or transfer may only take place for consideration that is, in aggregate, equal to or greater than the price offered to the Unaffected Shareholder and/or its Affiliates in the Shareholder Control Offer under article 51.5 above.

- 51.7 In advance of any such sale or transfer to a third party pursuant to article 51.5 above, the proposing transferor shall be obliged to once again offer such shares for sale to the Unaffected Shareholder and/or its Affiliates, this time at the price and on the terms on which the relevant third party is willing to purchase such rights or shares. The identity of such third party will be confirmed in writing to the Unaffected Shareholder and/or its Affiliates. If this final offer is not accepted, the Change of Control may be effected.
- 51.8 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor and (if any of the shares are not fully paid) by and on behalf of the transferee.
- 51.9 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 51.10 The Company may retain any instrument of transfer which is registered.
- 51.11 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **52. Procedure for declaring dividends**

- 52.1 The Company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- 52.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 52.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 52.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, a dividend must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 52.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.
- 52.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 52.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

### **53. Calculation of dividends**

- 53.1 Except as otherwise provided by the articles or the rights attached to shares, all dividends must be declared and paid in proportions based on the amounts paid up on the nominal value of the shares during any portion or portions of the period in respect of which the dividend is paid.

- 53.2 If any share is issued on terms providing that such share shall be entitled to a dividend as if the nominal value of it were fully paid or partly paid from a particular date (in the past or the future), then such share shall be entitled to a dividend on that basis.

**54. Payment of dividends and other distributions**

- 54.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:

54.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

54.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

54.1.3 sending by post a cheque made payable to such person, and sent to such person at such address, as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

54.1.4 any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

- 54.2 In the articles, the "**distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:

54.2.1 the holder of the share; or

54.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members.

**55. No interest on distributions**

The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

- 55.1 the terms on which the share was issued; or

- 55.2 the provisions of another agreement between the holder of that share and the Company.

**56. Unclaimed distributions**

- 56.1 All dividends or other sums which are:

56.1.1 payable in respect of shares; and

56.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.

56.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.

56.3 If:

56.3.1 12 years have passed from the date on which a dividend or other sum became due for payment; and

56.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

## **57. Non-cash distributions**

57.1 Subject to the terms of issue of the share in question, the Company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

57.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

57.2.1 fixing the value of any assets;

57.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

57.2.3 vesting any assets in trustees.

## **58. Waiver of distributions**

Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in writing to that effect, but if:

58.1 the share has more than one holder; or

58.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

## **CAPITALISATION OF PROFITS**

### **59. Authority to capitalise and appropriation of capitalised sums**

59.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:

59.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of any other reserve of the Company (including any share premium account, capital redemption reserve or other undistributable reserve); and

- 59.1.2 appropriate any sum which they so decide to capitalise (a "**capitalised sum**") to the persons who would have been entitled to it if it were distributed by way of dividend ("**persons entitled**") and in the same proportions as their entitlement to dividends ("**relevant proportions**").
- 59.2 Capitalised sums must be applied on behalf of the persons entitled and in the relevant proportions.
- 59.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum, which are then allotted, credited as fully paid, to the persons entitled or as they may direct.
- 59.4 A capitalised sum which was appropriated from profits available for distribution may be applied:
- 59.4.1 in or towards paying up any amounts unpaid on existing shares held by the persons entitled (whether as to the nominal value of the shares or any amount payable to the Company by way of premium); or
- 59.4.2 in paying up new debentures of the Company which are then allotted, credited as fully paid, to the persons entitled or as they may direct.
- 59.5 Subject to the articles, the directors may:
- 59.5.1 apply capitalised sums in accordance with articles 59.3 and 59.4 partly in one way and partly in another;
- 59.5.2 make such arrangements as they think fit where any difficulty arises with regard to any distribution of any capitalised sum; and, in particular, in the case of shares or debentures becoming distributable under this article 59 in fractions, the directors may decide that the benefit of fractional entitlements belongs to the Company, that fractions are to be ignored, to make payments in cash in lieu of fractional entitlements, or otherwise deal with fractions as they think fit;
- 59.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article 59; and
- 59.5.4 generally do all acts and things required to give effect to the ordinary resolution.
- 60. Capitalisation to deal with fractions arising on a consolidation of shares**
- Whenever, as the result of any consolidation or consolidation and division of shares, any shareholders would become entitled to fractions of shares, the directors may, subject to the provisions of the Companies Acts, allot to each such shareholder, credited as fully paid by way of capitalisation, the minimum number of new shares required to round up his holding following the consolidation to a whole number (such allotment being deemed to have been effected immediately before consolidation). For such purpose, the directors may:
- 60.1 capitalise a sum equal to the aggregate nominal amount of the new shares to be allotted on that basis out of any profits or reserve referred to in article 59.1.1; and
- 60.2 appropriate and apply such sum in paying up in full the appropriate number of new shares for allotment and distribution to such shareholders on that basis; and

- 60.3 generally do all acts and things required to give effect to any capitalisation pursuant to this article 60.

## **PART 4: DECISION-MAKING BY SHAREHOLDERS**

### **WRITTEN RESOLUTIONS**

#### **61. Written resolutions**

A resolution of the shareholders (or a class of shareholders) may be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Act.

### **GENERAL MEETINGS**

#### **ORGANISATION OF GENERAL MEETINGS**

#### **62. Calling general meetings**

- 62.1 If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any shareholder of the Company may call a general meeting.
- 62.2 A shareholder present in person or by proxy at a general meeting shall be deemed to have received proper notice of the meeting and, if required, of the purposes for which it was called.

#### **63. Attendance and speaking at general meetings**

- 63.1 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.
- 63.2 A person is able to exercise the right to vote at a general meeting when:
- 63.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - 63.2.2 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.
- 63.3 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.
- 63.4 In determining attendance at a general meeting, it is immaterial whether any two or more shareholders attending it are in the same place as each other.
- 63.5 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.

#### **64. Quorum for general meetings**

- 64.1 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

- 64.2 The shareholders shall use all reasonable endeavours to procure that their respective representatives attend each general meeting of the shareholders of the Company and that a quorum exists throughout each such meeting.
- 64.3 Subject to Articles 64.5, 64.6 and 64.7, a quorum for a general meeting will require at least 80% of the share capital of the Company to be represented at such meeting. A general meeting that is not quorate will be adjourned.
- 64.4 If a general meeting is adjourned due to a lack of quorum, the meeting will be rescheduled for a date within the next five Business Days and for the purposes of such rescheduled meeting, a quorum will be constituted by 50% of the share capital of the Company being present or represented.
- 64.5 Notwithstanding the provisions of Articles 64.3 and/or 64.4, a quorum for a general meeting at which any Reserved Matter is to be considered will require at least 95% of the share capital of the Company to be represented at such meeting. Any such general meeting that is not quorate will be adjourned.
- 64.6 If any general meeting as described at Article 64.5 is adjourned due to a lack of quorum, the meeting will be rescheduled for a date within the next five Business Days and for the purposes of such rescheduled meeting, a quorum will be constituted by 85% of the share capital of the Company being present or represented. Any such general meeting that is not quorate will be adjourned.
- 64.7 If any general meeting as described at Article 64.6 is adjourned due to a lack of quorum, the meeting will be rescheduled for a date within the next five Business Days and for the purposes of such rescheduled meeting, a quorum will be constituted by 55% of the share capital of the Company being present or represented. Any such general meeting that is not quorate will be adjourned.

## **65. Chairing general meetings**

- 65.1 If present, the chairman will chair general meetings.
- 65.2 If the chairman is unable to chair the general meeting or is not present within 10 minutes of the time at which a meeting was due to start, the representatives of the shareholders present must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.
- 65.3 The person chairing a general meeting in accordance with this article is referred to as "**the chairman of the meeting**".

## **66. Attendance and speaking by directors and non-shareholders**

- 66.1 Directors may attend and speak at general meetings, whether or not they are shareholders.
- 66.2 The chairman of the meeting may permit other persons who are not:
- 66.2.1 shareholders of the Company; or
  - 66.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings,
- to attend and speak at a general meeting.

## **67. Adjournment**

- 67.1 Subject to article 64, 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 chairman of the meeting must adjourn it. If at such an adjourned meeting the persons attending within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during such an adjourned meeting a quorum ceases to be present, the meeting shall be dissolved.
- 67.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
- 67.2.1 the meeting consents to an adjournment; or
  - 67.2.2 it appears to the chairman 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.
- 67.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 67.4 When adjourning a general meeting, the chairman of the meeting must:
- 67.4.1 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
  - 67.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 67.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least seven clear days' notice of it (that is, excluding the day on which the notice is given and the day of the adjourned meeting):
- 67.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 67.5.2 in the same manner in which such notice is required to be given and containing the same information which such notice is required to contain.
- 67.6 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**

### **68. Voting and Reserved Matters**

- 68.1 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 the articles.
- 68.2 At each general meeting, each share shall be entitled to one vote. Subject to article 68.4 below, all decisions will be taken by ordinary resolution.
- 68.3 In article 68.4 below, "unanimous approval" means the approval of at least 90.1 per cent of the paid up share capital present or represented at a quorate general meeting, as such quorum is determined in accordance with the provisions of Article 64.

- 68.4 Until such time as one shareholder shall become the holder or beneficial owner of more than 90 per cent in nominal value of the shares, none of the following matters shall be undertaken by the Company without the unanimous approval of the shareholders:
- 68.4.1 Permit the registration (upon subscription or transfer) of any person as a member of the Company other than (i) the shareholders in respect of the shares; and (ii) transfers permitted under article 50.1.
  - 68.4.2 Increase the amount of the Company's authorised or issued share capital or grant any option or other interest (in the form of convertible securities or in any other form) over or in respect of the Company's share capital, except if so required pursuant to the terms of the Shareholders' Agreement.
  - 68.4.3 Redeem or purchase any of its shares or reduce its share capital or effect any other reorganisation of its share capital, except if so required pursuant to the terms of the Shareholders' Agreement.
  - 68.4.4 Issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital, except in respect of any Shareholder Loans.
  - 68.4.5 Incur any borrowing or any other indebtedness or liability in the nature of borrowing (including hire purchase, operating leases, lease finance or other quasi borrowings, guarantees and indemnities) in excess of more than 20 per cent. of that proposed in the approved budget for the relevant financial year or on terms materially different to those stated in the approved business plan for the relevant financial year.
  - 68.4.6 Apply for the listing of any of the Company's shares or debt securities on any recognised investment exchange or the alternative investment market.
  - 68.4.7 Take any steps to wind up or dissolve the Company or for the appointment of an administrator, except if required by law.
  - 68.4.8 Engage in any business other than the development of the Awarded Zone or individual Projects within such Zone or the activities envisaged pursuant to the Round 3 Documentation and, in each case, any activities reasonably ancillary thereto.
  - 68.4.9 Form any subsidiary, acquiring shares in any company or participate in any partnership or joint venture (incorporated or not), in each case (i) other than for the purposes of conducting the Business; or (ii) other than on terms not materially different to those set out in the approved budget or the approved business plan for the relevant financial year.
  - 68.4.10 Close down or make any material change in the nature, scope or location of any business operation or dispose of or dilute its interest or a substantial part of its interest in any of its subsidiaries for the time being, (i) except for any such action permitted by this agreement, or (ii) other than on terms not materially different to those set out in the approved budget or the approved business plan for the relevant financial year or (iii) otherwise than may be required by law or a court with relevant jurisdiction.
  - 68.4.11 Amalgamate itself or merge with any other company or business undertaking.

- 68.4.12 Acquire, lease, or dispose of any assets (including any freehold or leasehold properties and whether by a single transaction or a series of related transactions) of aggregate value of more than 20 per cent. of that proposed in the approved budget for the relevant financial year or on terms materially different to those stated in the approved business plan for the relevant financial year.
- 68.4.13 Enter into any contract of a value exceeding Euros 1,000,000, except if such contract was included in the approved budget or business plan.
- 68.4.14 Enter into any arrangement, contract or transaction outside the normal course of business or otherwise than on arm's length terms.
- 68.4.15 Grant any rights (by licence or otherwise) in or over any Intellectual Property owned or used by the Company, except as set out in the Round 3 Documentation and this agreement.
- 68.4.16 Create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any asset other than (i) charges required pursuant to the Round 3 Documentation, (ii) liens arising in the ordinary course of business or by operation of law; and (iii) those required by the Crown Estate.
- 68.4.17 Adopt the business plan or amend the business plan budget in a manner that would increase the Company's expenditure by more than 20 per cent. of the expenditure envisaged by the initial business plan for that year.
- 68.4.18 Adopt the annual budget or amend the annual budget in a manner that would increase the Company's expenditure by more than 20 per cent. of the expenditure envisaged by the initial budget for that year.
- 68.4.19 Establish or amend any profit-sharing or share option.
- 68.4.20 Establish or amend any pension scheme or grant any pension rights to any director, employee, former director or employee or any member of any such person's family.
- 68.4.21 Employ any employee within the Company with a salary in excess of £100,000.
- 68.4.22 Recommend, declare or distribute any dividend or other payment out of the distributable profits as defined in this agreement of the Company or making any distribution of a capital nature, except in each case if provided for by the business plan or budget for the relevant year.
- 68.4.23 Incur or agree to incur any capital expenditure commitment (whether or not on lease or hire purchase) in a particular year in an aggregate amount exceeding by more than 20 per cent. the amount originally envisaged in respect of capital expenditure in the relevant annual operating budget or business plan or required pursuant to the budget approved by the Zone Development Committee.
- 68.4.24 Approve any conflict of interest by its directors as envisaged under Section 175 of the Companies Act 2006, provided (for the avoidance of doubt) that the Company may freely enter into contractual arrangements with the shareholders or their Affiliates.
- 68.4.25 Vary or replace the articles of association of the Company.

**69. Errors and disputes**

- 69.1 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.
- 69.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

**70. Poll votes**

- 70.1 A poll on a resolution may be demanded:
- 70.1.1 in advance of the general meeting where it is to be put to the vote; or
  - 70.1.2 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.
- 70.2 A poll may be demanded by:
- 70.2.1 the chairman of the meeting;
  - 70.2.2 the directors;
  - 70.2.3 two or more persons having the right to vote on the resolution;
  - 70.2.4 a person or persons representing not less than 10 per cent of the total voting rights of all the shareholders having the right to vote on the resolution; or
  - 70.2.5 a person or persons who hold (or are representing a holder or holders of) shares conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10 per cent of the total sum paid up on all the shares conferring the right to vote on the resolution.
- 70.3 A demand for a poll may be withdrawn if:
- 70.3.1 the poll has not yet been taken; and
  - 70.3.2 the chairman of the meeting consents to the withdrawal.

A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

- 70.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

**71. Content of proxy notices**

- 71.1 Proxies may only validly be appointed by a notice in writing ("**proxy notice**") which:
- 71.1.1 states the name and address of the shareholder appointing the proxy;
  - 71.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting or adjourned meeting in relation to which that person is appointed;

- 71.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may otherwise determine;
  - 71.1.4 is delivered to the Company in accordance with the articles and any instructions contained in the notice of the general meeting or adjourned meeting to which it relates; and
  - 71.1.5 is received by the Company no later than 48 hours (excluding any part of a day that is not a working day) before the time appointed for the commencement of the general meeting or adjourned meeting to which the proxy relates or such later time as the directors may determine.
- 71.2 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 71.3 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.
- 71.4 Unless a proxy notice indicates otherwise, it must be treated as:
- 71.4.1 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
  - 71.4.2 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.
- 72. Delivery of proxy notices**
- 72.1 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. However, if that person votes at the meeting or adjourned meeting on a resolution, then as regards that resolution any proxy notice delivered to the Company by or on behalf of that person shall:
- 72.1.1 on a show of hands, be invalid;
  - 72.1.2 on a poll, be invalid to the extent that such person votes in respect of the shares to which the proxy notice relates.
- 72.2 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.
- 72.3 A notice revoking a proxy appointment only takes effect if it is received by the Company before the commencement of the meeting or adjourned meeting to which it relates.
- 72.4 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.
- 72.5 When two or more valid but different proxy notices are received in respect of the same share for use at the same meeting or adjourned meeting, the one which is last validly received (regardless of its date or the date of its execution) shall be treated as replacing and revoking

the other(s) as regards that share. If the Company is unable to determine which was last received, none of them shall be treated as valid in respect of that share.

**73. Corporate representatives**

Where a shareholder that is a corporation has authorised a representative or representatives to act on its behalf at a general meeting in accordance with section 323 of the Act:

- 73.1 a director or the company secretary (if any) may require any such representative to produce a certified copy of such authority before such representative is entitled to exercise any power on behalf of the corporation which he represents; and
- 73.2 a vote given or poll demanded by such representative at a general meeting or adjourned meeting shall be valid even though his authority has previously terminated unless notice in writing of the termination was received by the Company before the commencement of that meeting.

**74. No voting of shares on which money owed to the Company**

Unless the directors otherwise determine, no voting rights attached to a share may be exercised unless all amounts (including the nominal value and any share premium) payable to the Company in respect of that share have been paid.

**75. Amendments to resolutions**

- 75.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
  - 75.1.1 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 chairman of the meeting may determine); and
  - 75.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 75.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - 75.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 75.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 75.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

**PART 5: ADMINISTRATIVE ARRANGEMENTS**

**76. Form of notice**

Any notice or other document to be given pursuant to the articles (other than a notice calling a meeting of the directors) must be in writing.

**77. Notices to the Company**

Any notice, document or other information may be served on or sent or supplied to the Company by anyone:

- 77.1 by sending it through the post in a prepaid envelope addressed to the Company or any officer of the Company at its registered office or such other place in the United Kingdom as may from time to time be specified by the Company for that purpose;
- 77.2 by delivering it by hand to or leaving it at its registered office or such other place in the United Kingdom as may from time to time be specified by the Company for that purpose in an envelope addressed to the Company or any officer of the Company;
- 77.3 by sending or supplying it by electronic means to an address specified by the Company from time to time for that purpose; or
- 77.4 by any other means authorised in writing by the Company.

**78. Notices to shareholders**

- 78.1 Any notice, document or other information may be served on or sent or supplied to any shareholder:

- 78.1.1 personally;
- 78.1.2 by sending it through the post in a prepaid envelope addressed to the shareholder at his registered address;
- 78.1.3 by delivering it by hand to or leaving it at that address in an envelope addressed to the shareholder;
- 78.1.4 by sending or supplying it by electronic means to an address notified by the shareholder to the Company from time to time for that purpose; or
- 78.1.5 by any other means authorised in writing by the relevant shareholder.

- 78.2 Nothing in article 78.1 shall affect any provision of the Companies Acts requiring offers, notices or documents to be served on or sent or supplied to a shareholder in a particular way.

- 78.3 In the case of joint holders of a share:

- 78.3.1 all notices, documents or other information shall be served on or sent or supplied to the person named first in the register in respect of the joint holding, and notice so given shall be sufficient notice to all joint holders; and
- 78.3.2 any request for consent to the receipt of communications in electronic form shall be sent or supplied to the person named first in the register in respect of the joint holding, and any express consent given by such holder to the receipt of communications in such manner shall bind all joint holders.

**79. Notices to directors**

Any notice, document or other information may be served on or sent or supplied to a director by the Company or by any other director or the company secretary (if any):

- 79.1 personally;
- 79.2 (other than a notice of a proposed directors' written resolution) by word of mouth;
- 79.3 by sending it through the post in a prepaid envelope addressed to the director at his registered address or such other postal address as may from time to time be specified by him for that purpose;
- 79.4 by delivering it by hand to or leaving it at that address in an envelope addressed to him;
- 79.5 by sending or supplying it by electronic means to an address specified from time to time by the director for that purpose; or
- 79.6 by any other means authorised in writing by the director.

**80. Service of notices on shareholders or directors**

Any notice, document or other information (other than any notice, document or other information given to the Company including, for the avoidance of doubt, the appointment of a proxy):

- 80.1 addressed to a shareholder or a director in the manner prescribed by the articles shall, if sent by post (whether in hard copy or electronic form), be deemed to have been received:

- 80.1.1 (if prepaid as first class) 24 hours after it was posted;
- 80.1.2 (if prepaid as second class) 48 hours after it was posted;
- 80.1.3 (if prepaid as airmail) 72 hours after it was posted,

and, in proving such receipt, it shall be sufficient to prove that the envelope containing such notice, document or other information was properly addressed, prepaid and put in the post;

- 80.2 not sent by post, but addressed to a shareholder or a director and delivered by hand to or left at an address in accordance with the articles, shall be deemed to have been received on the day it was so delivered or left;
- 80.3 served, sent or supplied to a shareholder or a director by electronic means shall be deemed to have been received on the day it was sent, and, in proving such receipt, it shall be sufficient to show that such notice, document or information was properly addressed;
- 80.4 served, sent or supplied by any other means authorised in writing by the shareholder or the director shall be deemed to have been received when the Company has carried out the action it has been authorised to take for that purpose.

**81. Company seals**

- 81.1 Any common seal may only be used by the authority of the directors.

- 81.2 The directors may decide by what means and in what form any common seal is to be used.
- 81.3 Unless otherwise decided by the directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by:
- 81.3.1 two directors;
  - 81.3.2 one director and the company secretary (if any); or
  - 81.3.3 one authorised person in the presence of a witness who attests the signature.
- 81.4 For the purposes of this article, an authorised person is:
- 81.4.1 any director of the Company;
  - 81.4.2 the company secretary (if any); or
  - 81.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

**82. No right to inspect accounts and other records**

Except 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 shareholder.

**83. 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**

**84. Directors' indemnity and insurance**

To the extent permitted by the Companies Acts, the Company may:

- 84.1 indemnify any director of the Company or of any associated company against any liability;
- 84.2 purchase and maintain insurance against any liability for any director of the Company or of any associated company.