

North Yorkshire County Council

Shareholder Committee

29 September 2020

Articles of Association for NY Highways Limited

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 Purpose of Report

1.1 To seek Shareholder approval of the Articles of Association for NY Highways Limited.

2.0 Background

2.1 The Executive approved the setup of NY Highways Limited on 16 April 2019 to deliver the Council's highway maintenance function. The current contract is outsourced to Ringway Infrastructure Services Limited.

2.2 NY Highways Limited was incorporated on 21 September 2019 as a private company limited by shares, and is a wholly owned subsidiary of the Council.

2.3 The Company was established as a dormant company, with Model Articles of Association. To prepare for the company to become operational from 2021, the Council needs to be able to directly award contracts to this wholly owned company without the need for a competitive procurement exercise.

2.4 To facilitate the direct award of contracts to NY Highways Limited, the Company needs to be controlled by the Council as if it was an internal department. The bespoke Articles of Association will demonstrate the Council's control over the Company. This control element is part of what is known as the "Teckal" exemption.

2.5 This approach will enable the Council to achieve value for money for the service and provide greater control and flexibility over our highways service delivery.

3. The Teckal Exemption

3.1 The Council is a contracting authority for the purposes of the Public Contracts Regulations 2015 (the Regulations). Public contracts must be awarded in accordance with the Regulations; however, there are certain exemptions to this.

3.2 One of these exemptions is known as the Teckal test, which is set out in Regulation 12 of the Regulations. The basic test provides that a public contract awarded by a contracting authority to an entity, which is owned by it, falls outside of the procurement rules where all of the following conditions are fulfilled:

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

(b)more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and

(c)there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

- 3.3 The first element of the Teckal test: "*Control*", is established where all of the following conditions are fulfilled:
- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or
 - (b) the control is exercised by another legal person which is itself controlled in the same way by the contracting authority.
- 3.4 NY Highways Limited adopted Model Articles of Association upon incorporation under the Companies Act 2006. These are currently not Teckal compliant, as they do not allow the Council to have enough control over the Company.
- 3.5 In order to meet the 'control' limb of the Teckal test outlined above, the Company's Articles of Association need to be designed to ensure the Council as shareholder can exercise sufficient control over the NY Highways Limited. The shareholder can exercise control over key decisions of a Teckal Company through the requirement for unanimous approval of the Reserved Matters in the Articles of Association.
- 3.6 The Articles of Association contained at Appendix 1, drafted by our external legal advisors, Bevan Brittan, are considered to exercise sufficient control over the company to be Teckal compliant.
- 3.7 The Written Resolution at Appendix 2 is the formal approval of the Articles of Association by the shareholder, which must be signed and sent to Companies House.

4. Recommendation

- 4.1 The Shareholders Committee is recommended to:
- (i) Approve the Articles of Association for NY Highways Limited; and
 - (ii) Agree the Written Resolution be signed by the Chief Executive on behalf of the shareholder.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)

Author of report: Sarah Morton, Senior Solicitor Commercial Contracts and Procurement
Present of report: Barry Khan, Assistant Chief Executive (Legal and Democratic Services)

24 September 2020

Appendices:

Appendix 1 - Articles of Association
Appendix 2 –Written Resolution

COMPANY NUMBER 12220433

**THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION
OF
NY HIGHWAYS LIMITED**

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THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
NY HIGHWAYS LIMITED

PART 1 – INTERPRETATION

1 DEFINED TERMS

1.1 In the Articles, unless the context requires otherwise:

Accounting Reference Date means 31 March

Articles means the Company's articles of association as amended 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

Board means the board of Directors of the Company or such of them as are present at a duly convened and quorate meeting of the Directors

Business has the meaning given in Article 6.1

Business Plan means the operational business plan and budget of the Company as adopted and amended in accordance with Article

Chair has the meaning given in Article 13

Chair of the Meeting has the meaning given in Article 46

Companies Acts means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company

Company means the company governed by the Articles

Conflict has the meaning given in Article 15

Council means North Yorkshire County Council and any statutory successor

Council Director means a Director of the Company who is an employee, elected member or officer of the Council

Council Shareholder Committee means the person(s) nominated by the Council from time to time to act as its authorised representative(s) and on its behalf which shall be determined by the Council in accordance with its constitution from time to time and notified to the Company in writing. References to the Council Shareholder Committee shall be deemed to include any members thereof and any relevant officers with delegated authority to act for the Shareholder Committee

Director means a director of the Company, and includes any person occupying the position of director, by whatever name called

Distribution Recipient has the meaning given in Article 36.2

Document includes, unless otherwise specified, any Document sent or supplied in Electronic Form

Electronic Form has the meaning given in section 1168 of the Companies Act 2006

Eligible Director means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Directors

Financial Year means each accounting reference period of 12 months ending on the Accounting Reference Date other than the First Accounting Reference Period or such longer or shorter period as the Council shall from time to time determine.

First Accounting Reference Period means the period which shall run on and from the date of incorporation of the Company to and including the Accounting Reference Date in the calendar year following the date of this Agreement

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

Group Company means, in relation to a company:

- (a) any subsidiary of the Company;
- (b) any parent undertaking or undertakings of the Company; and
- (c) any subsidiary of any such parent undertakings

Hard Copy Form has the meaning given in section 1168 of the Companies Act 2006

Holder in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares

Independent Director means a Director appointed who is not an employee, officer or elected member of the Council

Instrument means a Document in Hard Copy Form

ordinary resolution has the meaning given in section 282 of the Companies Act 2006

paid means paid or credited as paid

participate, in relation to a Directors' meeting, has the meaning given in Article 11

Proxy Notice has the meaning given in Article 52

Reserved Matter means any matter reserved by the Council as a reserved matter in accordance with Article 3 including the list of reserved matters at Schedule 1 to these Articles.

Shareholder means a person who is the Holder of a Share.

Shares means shares in the Company

special resolution has the meaning given in section 283 of the Companies Act 2006

Transmittee means a person entitled to a Share by reason of the death or bankruptcy of a Shareholder or otherwise by operation of law

writing means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise

- 1.2 Unless the context otherwise requires, other words or expressions contained in the Articles bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles become binding on the Company.
- 1.3 A reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.14 References to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.15 The expressions **body corporate**, **holding company**, **subsidiary**, **parent undertaking**, **subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
 - 1.15.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or

- 1.15.2 any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
- 1.15.3 any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (a) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (b) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

PART 2 - DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

2 DIRECTORS' GENERAL AUTHORITY

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

3 SHAREHOLDERS' RESERVE POWER AND RESERVED MATTERS

- 3.1 The Council may, by special resolution, direct the Directors to take, or refrain from taking, specified action.
- 3.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.
- 3.3 Insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

4 DIRECTORS MAY DELEGATE

- 4.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles as follows:
- 4.1.1 to such person or committee;
- 4.1.2 by such means (including by power of attorney);
- 4.1.3 to such an extent;
- 4.1.4 in relation to such matters or territories; and

4.1.5 on such terms and conditions,

as they think fit.

4.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.

4.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

5 COMMITTEES

5.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by Directors.

5.2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

6 THE BUSINESS AND BUSINESS PLANNING

6.1 The business of the Company (**Business**) shall be to deliver the Council's statutory function to maintain the highways maintainable at public expense; winter maintenance; surface dressing; street cleansing; maintenance of the street lighting on the highway; maintenance of the Council's vehicle fleet; delivery of highway improvement schemes; construction works and other similar works in accordance with any Business Plan then in force or as otherwise determined by the Shareholder from time to time.

6.2 The Company shall prepare in respect of each Financial Year a Business Plan to include:

6.2.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);

6.2.2 a balance sheet forecast;

6.2.3 a minimum three year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company and a list of key risks of its business;

6.2.4 long term projections to cover a period of three years from the 1st June ;

6.2.5 a plan for the use of any surpluses made in each Financial Year including the making of any distribution of profit subject to the provisions of the Companies Act 2006;

6.2.6 an annual profit and loss account and cashflow statement;

6.2.7 any risks and opportunities for the Company;

6.2.8 a report of Health and Safety and Environmental issues for the Company; and

6.2.9 such other content as the Council may require from time to time and notify to the Company in writing.

6.3 The Business Plan for a given Financial Year shall be:

6.3.1 prepared by the Board and circulated by the Board to the Council in draft form not less than two months prior to the end of the Financial Year preceding the Financial Year to which the draft Business Plan relates; and

6.3.2 considered and, if thought fit, approved as soon as possible by the Council and in any event within two months of the date of receipt of the draft Business Plan from the Board.

6.4 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with articles 6.2 and 6.3 and that the business of the Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.

7 PROVISION OF INFORMATION

7.1 The Company shall provide to the Council:

7.1.1 draft annual accounts in accordance with a timetable as agreed with the Council;

7.1.2 final audited annual accounts by 31 December in each Financial Year;

7.1.3 minutes of all Board meetings within 20 Business Days after the relevant Board meeting to which they relate;

7.1.4 all information required to be provided pursuant to any other contractual commitments, within a timescale agreed with the Council; and

7.1.5 any other information reasonably required by the Council from time to time.

7.2 The Company shall respond promptly to all reasonable requests from the Council for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Council may require.

7.3 The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.

7.4 The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.

7.5 The Company shall immediately notify the Council of:

7.5.1 any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company; and

7.5.2 any matter of which it is aware which may bring the Company or the Council into disrepute.

DECISION-MAKING BY DIRECTORS

8 DIRECTORS TO TAKE DECISIONS COLLECTIVELY

8.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 9.

8.2 If only one Director is eligible to vote on any authorisation required under Article 15, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.

8.3 Each Council Director shall (so long as he or she is an Eligible Director) be entitled to cast two votes on any resolution put to the Directors. In the event that a Council Director (who would have been an Eligible Director) is absent, those Council Directors present at the meeting (who are also Eligible

Directors) can cast the absent Council Director's vote. Any Director other than a Council Director shall (so long as he or she is an Eligible Director) be entitled to cast one vote on any resolution put to the Directors.

8.4 If the numbers of votes for and against a proposal are equal, the Chair shall not have a casting vote.

9 UNANIMOUS DECISIONS

9.1 A decision of the Directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.

9.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each Eligible Director or to which each Eligible Director has otherwise indicated agreement in writing.

9.3 A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

10 CALLING A DIRECTORS' MEETING

10.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors and the Council in accordance with Article 10.2 or by authorising the company secretary (if any) to give such notice.

10.2 A meeting of the Directors must be called by at least seven days' notice unless either:

10.2.1 the Directors and the Council unanimously agree otherwise; or

10.2.2 urgent circumstances require shorter notice.

10.3 Notice of any Directors' meeting must include:

10.3.1 its proposed date and time;

10.3.2 where it is to take place;

10.3.3 if it is anticipated that persons 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;

10.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and

10.3.5 copies of any papers to be discussed at the meeting or the committee meeting.

10.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

11 PARTICIPATION IN DIRECTORS' MEETINGS

11.1 Subject to the Articles, Directors **participate** in a Directors' meeting, or part of a Directors' meeting, when:

11.1.1 the meeting has been called and takes place in accordance with the Articles; and

11.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

- 11.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 11.3 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.
- 11.4 The Council Shareholder Committee shall have the right to receive notice of and nominate person(s) to attend (but not vote at) any Board meetings and receive papers in relation to such meetings at the same time as those papers are given to the Directors.

12 QUORUM FOR DIRECTORS' MEETINGS

- 12.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 12.2 Subject to Article 8.2, the quorum for a Directors' meeting shall be two Directors including at least one Council Director.
- 12.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:
 - 12.3.1 to appoint further Directors; or
 - 12.3.2 to call a general meeting so as to enable the Shareholders to appoint further Directors.
- 12.4 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine in accordance with the Articles.

13 CHAIRING OF DIRECTORS' MEETINGS

- 13.1 The person appointed pursuant to Article 13.2 or Article 13.3 (as the case may be) shall be known as the Chair.
- 13.2 With the prior written consent of the Council, the Directors may:
 - 13.2.1 appoint a person chair of the Directors;
 - 13.2.2 determine the period for which he is to hold office; and
 - 13.2.3 at any time remove him from office.
- 13.3 If at the date and time of a meeting of the Directors no person has been appointed as Chair pursuant to Article 13.2, then the participating Directors at that meeting may appoint a Director present to chair the meeting. The participating Directors may also terminate the appointment of a person as Chair made under this Article 13.3 at any time during the meeting at which he is appointed.

14 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY

- 14.1 The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.
- 14.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office:
 - 14.2.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company of the Company or in which either or both of them is/are otherwise interested;

- 14.2.2 may be a director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company of the Company or in any body corporate promoted by the Company, the Council, or a Group Company of the Company, or in which any of them is/are interested; and
 - 14.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).
- 14.3 For the purposes of this Article 14:
- 14.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of the Council or any Group Company of the Company; and
 - 14.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.
- 14.4 Where a Director is a director, officer, or employee of the Council or a Group Company of the Company, he:
- 14.4.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and
 - 14.4.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of the Council or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 15.5.

15 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION

- 15.1 The Directors may authorise any matter which would otherwise involve a Director (a **Relevant Director**) breaching his duty under section 175 of the Companies Act 2006 to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a **Conflict**).
- 15.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under the Articles save that the Relevant Director (and any Director) shall not count towards the quorum nor vote on any resolution giving such authority.
- 15.3 Where the Directors give authority in relation to a Conflict:
- 15.3.1 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and
 - 15.3.2 the Directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.
- 15.4 A Conflict in relation to a Director arising solely as a result of him being a director, officer or employee of the Council or any Group Company of the Company shall be deemed to have been authorised for the purposes of this Article 15 and section 175 of the Companies Act 2006.
- 15.5 Where Article 15.4 above applies or the Directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in Article 14 (a **Permitted Situation**) applies:

- 15.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;
- 15.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict or Permitted Situation; and
- 15.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.
- 15.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the Council for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this Article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

16 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING

- 16.1 Subject where applicable to disclosure in accordance with the Articles and subject to any terms imposed by the Directors in relation to any Conflict or Permitted Situation, a Director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.
- 16.2 However, a Director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.
- 16.3 Subject to Article 16.4 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 16.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

17 RECORDS OF DECISIONS TO BE KEPT

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

18 DIRECTORS' DISCRETION TO MAKE FURTHER RULES

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

APPOINTMENT OF DIRECTORS

19 METHODS OF APPOINTING DIRECTORS

- 19.1 The board of Directors shall comprise of a minimum of three Directors and a maximum of six Directors to include:

- 19.1.1 at least 2 Council Directors appointed in accordance with Article 19.3 ; and
- 19.1.2 at least 1 Independent Director shall be appointed by the Board in accordance with Article 19.4
- 19.2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed as a Director in accordance with these Articles.
- 19.3 Subject to the Articles, any appointment(s) or termination(s) of a Council Director shall be effected by the Council, giving notice in writing to the Company, with the date of appointment or termination effective on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 19.4 Independent Directors shall be appointed by a resolution of the Directors, subject to the prior written approval of the Council.
- 19.5 The Council may at any time appoint any person to be a Director, whether as an additional Director or to fill a vacancy, and may remove from office any Director howsoever appointed and any alternate Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Company by the Council. Any such appointment or removal shall take effect:
 - 19.5.1 if it is effected by ordinary resolution, at the point the resolution is passed; and
 - 19.5.2 if it is effected by notice in writing to the Company, when it is delivered to the registered office of the Company or, if it is produced at a meeting of the Directors, when it is so produced or, if sent by electronic means to an address generally used by the Company, when it is sent.
- 19.6 Any removal pursuant to this Article 19 shall be without prejudice to any claim that a director may have under any contract between him and the company.

20 TERMINATION OF A DIRECTOR'S APPOINTMENT

- 20.1 A person ceases to be a Director as soon as:
 - 20.1.1 the Council notifies the Company that the individual is to be removed as a Director;
 - 20.1.2 the Council serves notice to remove the Director in accordance with Article 19.5, and such notice has taken effect in accordance with its terms;
 - 20.1.3 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
 - 20.1.4 a bankruptcy order is made against that person;
 - 20.1.5 a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - 20.1.6 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; or
 - 20.1.7 notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms.

21 DIRECTORS' REMUNERATION AND EXPENSES

- 21.1 Any remuneration of the Directors shall require the prior approval of the Council.

21.2 Any policy regarding expenses of Directors (and alternate Directors) shall be determined by the Council.

22 ALTERNATE DIRECTORS

22.1 Any Council Director (the **Appointor**) may appoint any person (whether or not a Director) to be his or her alternate to exercise the Appointor's powers, and carry out the Appointor's responsibilities, in relation to the taking of decisions by the Directors, in the absence of the Appointor. A person may be appointed an alternate by more than one Director.

22.2 Any appointment or removal of an alternate must be approved in writing by the Council and be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, or in any other manner approved by the Directors.

22.3 The notice must:

22.3.1 identify the proposed alternate; and

22.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the Appointor.

22.4 An alternate has the same rights, in relation to any decision of the Directors, as the alternate's Appointor.

22.5 Except as the Articles specify otherwise, alternates:

22.5.1 are deemed for all purposes to be Directors;

22.5.2 are liable for their own acts and omissions;

22.5.3 are subject to the same restrictions as their Appointors; and

22.5.4 are not deemed to be agents of or for their Appointors,

and, in particular (without limitation), each alternate shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.

22.6 A person who is an alternate but not a Director may, subject to him being an Eligible Director:

22.6.1 be counted as participating for the purposes of determining whether a quorum is present at a meeting of Directors (but only if that person's Appointor is an Eligible Director and is not participating); and

22.6.2 participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, and does not himself participate).

22.7 A Director who is also an alternate is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the Directors.

22.8 An alternate may be paid expenses and may be indemnified by the Company to the same extent as if he were a Director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.

22.9 A person's appointment as an alternate (in respect of a particular Appointor) terminates:

22.9.1 when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or

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

22.9.3 when the alternate's Appointor ceases to be a Director for whatever reason.

PART 3 - SHARES AND DISTRIBUTIONS

SHARES

23 ROLE OF SHAREHOLDER COMMITTEE

23.1 Any notice to or from the Council shall be sent to or from the Council Shareholder Committee. Where a consent or approval is expressed in these Articles to be required of the Council, it shall be given by the Council Shareholder Committee. Such consent or approval shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.

23.2 Once a consent or approval is given in accordance with Article 23.1 then, to the extent a special or an ordinary resolution is required pursuant to the Companies Acts or otherwise, the Company shall prepare and circulate to the Council a draft resolution for consideration and, if thought fit, approval by the Council.

24 APPOINTMENT OF SHAREHOLDERS

24.1 The subscribers to the Memorandum are the first Shareholders.

24.2 No person shall be admitted as a Shareholder unless they are approved unanimously by the Shareholders.

24.3 The Directors or company secretary (if appointed) must keep a register of names and addresses of the Shareholders.

25 LIABILITY OF SHAREHOLDERS

The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them.

26 ALL SHARES TO BE FULLY PAID UP

26.1 No Share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.

26.2 This does not apply to Shares taken on the formation of the Company by the subscribers to the Company's Memorandum.

27 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE

27.1 Subject to the Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares with such rights or restrictions as may be determined by ordinary resolution.

27.2 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, and the Directors may determine the terms, conditions and manner of redemption of any such Shares.

28 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.

29 SHARE CERTIFICATES

- 29.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.
- 29.2 Every certificate must specify:
- 29.2.1 in respect of how many Shares, of what class, it is issued;
 - 29.2.2 the nominal value of those Shares;
 - 29.2.3 that the Shares are fully paid; and
 - 29.2.4 any distinguishing numbers assigned to them.
- 29.3 No certificate may be issued in respect of Shares of more than one class.
- 29.4 If more than one person holds a Share, only one certificate may be issued in respect of it.
- 29.5 Certificates must be executed in accordance with the Companies Act 2006.

30 REPLACEMENT SHARE CERTIFICATES

- 30.1 If a certificate issued in respect of a Shareholder's Shares is:
- 30.1.1 damaged or defaced; or
 - 30.1.2 said to be lost, stolen or destroyed,
- that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.
- 30.2 A Shareholder exercising the right to be issued with such a replacement certificate:
- 30.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - 30.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
 - 30.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

31 SHARE TRANSFERS

- 31.1 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.
- 31.2 No fee may be charged for registering any Instrument of transfer or other Document relating to or affecting the title to any Share.
- 31.3 The Company may retain any Instrument of transfer which is registered.

31.4 The transferor remains the Holder of a Share until the transferee's name is entered in the register of members as Holder of it.

31.5 The Directors may refuse to register the transfer of a Share, and if they do so, the Instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

32 TRANSMISSION OF SHARES

32.1 If title to a Share passes to a Transmitttee, the Company may only recognise the Transmitttee as having any title to that Share.

32.2 A Transmitttee who produces such evidence of entitlement to Shares as the Directors may properly require:

32.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and

32.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

32.3 However, Transmitttees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of Shares to which they are entitled, by reason of the Holder's death or bankruptcy or otherwise, unless they become the holders of those Shares.

33 EXERCISE OF TRANSMITEES' RIGHTS

33.1 Transmitttees who wish to become the holders of Shares to which they have become entitled must notify the Company in writing of that wish.

33.2 If the Transmitttee wishes to have a Share transferred to another person, the Transmitttee must execute an Instrument of transfer in respect of it.

33.3 Any transfer made or executed under this Article is to be treated as if it were made or executed by the person from whom the Transmitttee has derived rights in respect of the Share, and as if the event which gave rise to the transmission had not occurred.

34 TRANSMITEES BOUND BY PRIOR NOTICES

If a notice is given to a Shareholder in respect of Shares and a Transmitttee is entitled to those Shares, the Transmitttee is bound by the notice if it was given to the Shareholder before the Transmitttee's name has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

35 PROCEDURE FOR DECLARING DIVIDENDS

35.1 The Company may by ordinary resolution declare dividends, and the Directors may decide to pay interim dividends.

35.2 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.

35.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.

35.4 Unless the Shareholders' resolution to declare or Directors' decision to pay a dividend, or the terms on which Shares are issued, specify otherwise, it 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.

- 35.5 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.
- 35.6 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.
- 35.7 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.

36 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS

- 36.1 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:
- 36.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in writing or as the Directors may otherwise decide; or
- 36.1.2 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.
- 36.2 In the Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:
- 36.2.1 the Holder of the Share; or
- 36.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members; or
- 36.2.3 if the Holder is no longer entitled to the Share by reason of death or bankruptcy their executor or trustee in bankruptcy; or
- 36.2.4 otherwise by operation of law, the Transmitter.

37 NO INTEREST ON DISTRIBUTIONS

- 37.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:
- 37.1.1 the terms on which the Share was issued; or
- 37.1.2 the provisions of another agreement between the Holder of that Share and the Company.

38 UNCLAIMED DISTRIBUTIONS

- 38.1 All dividends or other sums which are:
- 38.1.1 payable in respect of Shares; and
- 38.1.2 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.
- 38.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 38.3 If:

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

38.3.2 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.

39 NON-CASH DISTRIBUTIONS

39.1 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).

39.2 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:

39.2.1 fixing the value of any assets;

39.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and

39.2.3 vesting any assets in trustees.

40 WAIVER OF DISTRIBUTIONS

40.1 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:

40.1.1 the Share has more than one Holder; or

40.1.2 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

41 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS

41.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

41.1.1 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 the Company's share premium account or capital redemption reserve; and

41.1.2 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 (the **persons entitled**) and in the same proportions.

41.2 Capitalised sums must be applied:

41.2.1 on behalf of the persons entitled; and

41.2.2 in the same proportions as a dividend would have been distributed to them.

- 41.3 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.
- 41.4 A capitalised sum which was appropriated from profits available for distribution may be applied 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.
- 41.5 Subject to the Articles, the Directors may:
- 41.5.1 apply capitalised sums in accordance with Articles 41.3 and 41.4 partly in one way and partly in another;
 - 41.5.2 make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article (including the issuing of fractional certificates or the making of cash payments); and
 - 41.5.3 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.

PART 4 - DECISION-MAKING BY SHAREHOLDERS

42 WRITTEN RESOLUTIONS

A resolution of the Shareholder (or class thereof) may be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Companies Act 2006.

ORGANISATION OF GENERAL MEETINGS

43 GENERAL MEETINGS

- 43.1 The Council shall appoint and may remove or replace, the Council Shareholder Committee (or any member thereof) in accordance with its constitution and will provide notice in writing to the Company, in accordance with section 323 of the Companies Act 2006, to act as the representative of the Council in accordance with the Articles.
- 43.2 Notice of a general meeting shall be given in Hard Copy Form, in Electronic Form or by means of a website, provided that the Company complies with any requirements relating to the giving of notice under the Companies Act 2006.
- 43.3 Any Director or the company secretary (if any) shall send notice of a general meeting to the Council Shareholder Committee, the Council, every Director and any other person required by law to be sent such notice.
- 43.4 Notice of a general meeting shall:
- 43.4.1 state the time, date and place of the meeting;
 - 43.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and
 - 43.4.3 be accompanied by a proxy form;
- notice of a general meeting need not be in writing.
- 43.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Directors are unaware shall not invalidate the proceedings of that meeting.

44 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 44.1 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.
- 44.2 A person is able to exercise the right to vote at a general meeting when:
- 44.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - 44.2.2 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.
- 44.3 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.
- 44.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 44.5 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.

45 QUORUM FOR GENERAL MEETINGS

No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting unless an authorised representative of each Shareholder (or in the case of the Council the Council Shareholder Committee) is present.

46 CHAIRING GENERAL MEETINGS

- 46.1 The person chairing a meeting in accordance with this Article is referred to as the **Chair of the Meeting**.
- 46.2 The Chair (if one is appointed under Article 13.2) shall chair general meetings if present and willing to do so.
- 46.3 If no Chair has been appointed under Article 13.2 or (if appointed) the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
- 46.3.1 the Directors present; or
 - 46.3.2 (if no Directors are present) the meeting,
- must appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the Meeting must be the first business of the meeting.

47 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS

- 47.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.
- 47.2 The Chair of the Meeting may permit other persons who are not:
- 47.2.1 Shareholders; or
 - 47.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

48 ADJOURNMENT

- 48.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the Chair of the meeting must adjourn it.
- 48.2 The Chair of the Meeting may adjourn a general meeting at which a quorum is present if:
- 48.2.1 the meeting consents to an adjournment; or
 - 48.2.2 it appears to the Chair of the Meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 48.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 48.4 When adjourning a general meeting, the Chair of the meeting must:
- 48.4.1 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
 - 48.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 48.5 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 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 48.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
 - 48.5.2 containing the same information which such notice is required to contain.
- 48.6 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

49 VOTING: GENERAL

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.

50 ERRORS AND DISPUTES

- 50.1 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.
- 50.2 Any such objection must be referred to the Chair of the Meeting, whose decision is final.

51 POLL VOTES

- 51.1 A poll on a resolution may be demanded:
- 51.1.1 in advance of the general meeting where it is to be put to the vote, or
 - 51.1.2 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.

- 51.2 A poll may be demanded by:
- 51.2.1 the Chair of the Meeting;
 - 51.2.2 the Directors;
 - 51.2.3 two or more persons having the right to vote on the resolution; or
 - 51.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.
- 51.3 A demand for a poll may be withdrawn if:
- 51.3.1 the poll has not yet been taken; and
 - 51.3.2 the Chair of the Meeting consents to the withdrawal.
- 51.4 Polls must be taken immediately and in such manner as the Chair of the Meeting directs.

52 CONTENT OF PROXY NOTICES

- 52.1 Proxies may only validly be appointed by a notice in writing (a **Proxy Notice**) which:
- 52.1.1 states the name and address of the Shareholder appointing the proxy;
 - 52.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
 - 52.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
 - 52.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 52.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 52.3 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.
- 52.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- 52.4.1 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
 - 52.4.2 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.

53 DELIVERY OF PROXY NOTICES

- 53.1 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.
- 53.2 An appointment under a Proxy Notice:
- 53.2.1 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; and

53.2.2 shall be revoked if the person by whom or on whose behalf the Proxy Notice was given is present at the meeting or adjourned meeting to which it relates.

53.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

53.4 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.

54 AMENDMENTS TO RESOLUTIONS

54.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

54.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chair of the Meeting may determine); and

54.1.2 the proposed amendment does not, in the reasonable opinion of the Chair of the Meeting, materially alter the scope of the resolution.

54.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

54.2.1 the Chair of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

54.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

54.3 If the Chair of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair of the Meeting's error does not invalidate the vote on that resolution.

PART 5 - ADMINISTRATIVE ARRANGEMENTS

55 MEANS OF COMMUNICATION TO BE USED

55.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.

55.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.

55.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

56 COMPANY SEALS

56.1 Any common seal may only be used by the authority of the Directors.

56.2 The Directors may decide by what means and in what form any common seal is to be used.

56.3 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 at least one authorised person in the presence of a witness who attests the signature.

56.4 For the purposes of this Article, an authorised person is:

56.4.1 any Director;

56.4.2 the company secretary (if any); or

56.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

57 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

The Council and their authorised representatives or the Council Shareholder Committee shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company.

58 APPOINTMENT OF COMPANY SECRETARY

The Council may appoint (and remove) the company secretary by notice in writing to the Company.

59 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

60 INDEMNITY

60.1 Subject to Article 60.2, a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

60.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated Company;

60.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

60.1.3 any other liability incurred by that Director as an officer of the Company or an associated Company.

60.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

60.3 In this Article:

60.3.1 companies are **associated** if one is a Subsidiary of the other or both are subsidiaries of the same body corporate; and

60.3.2 a **relevant Director** means any Director or former Director of the Company or an associated Company.

61 INSURANCE

61.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Director in respect of any relevant loss.

61.2 In this Article:

- 61.2.1 a **relevant Director** means any Director or former Director of the Company or an associated Company;
- 61.2.2 a **relevant loss** means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director's duties or powers in relation to the Company, any associated Company or any pension fund or employees' share scheme of the Company or associated Company; and
- 61.2.3 companies are **associated** if one is a Subsidiary of the other or both are subsidiaries of the same body corporate.

SCHEDULE 1- RESERVED MATTERS

Number	Reserved Matter
	Constitution of the company
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	Officers and Shareholders of the company
2	The appointment and the appointment terms (including any remuneration terms) of any of the Council Directors.
3	The appointment and the appointment terms (including any remuneration terms) of the chief executive officer.
4	The removal of any of the Council Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	Future direction and development of the company
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the company.
9	Adopting or amending the Business Plan of each respective company and any in-year changes or adopting or amending any long term financial strategy for the company.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council.
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services to be provided by the company to a third party not approved under the Business Plan.
13	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the company, other than the appointment of an agent to conduct an area of the business of a company.
14	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	Management of the business of the company
15	Changing the company's registered office.

Number	Reserved Matter
16	Changing the company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the company's assets, shares or income.
18	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the company.
20	Agreeing to enter into or entering into agreements or arrangements in respect of the hire/purchase or acquisition or disposal of any material assets by the company the total value of which exceeds £250,000 per annum.
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £100,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the company.
23	Changing the company's auditors.
24	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
25	Changing the Financial Year of the company.
26	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).
27	Declare or pay any end of year dividend of the company (where applicable).
28	Entering into any borrowing, credit facility or investment arrangement (other than in the normal course of trading) from any third party that is not the Council.
29	Settling any legal matters and insurance claims in excess of £50,000.
30	Introducing any change to union recognition or representations arrangements of employees.
31	Establishing or amending any pension scheme for any director, officer, employee, former director, officer or employee, or any member of such person's family.
32	Tenders for work with an estimated total value in excess of £100,000.

1.1 Company Number 12220433

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

NY HIGHWAYS LIMITED (the 'Company')

24 September 2020

Under Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolution is passed as a special resolution (the 'Resolution').

SPECIAL RESOLUTION

1. THAT the draft articles of association attached to this Resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the Company's existing articles of association.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, a person entitled to vote on the Resolution 24 September 2020, hereby irrevocably agrees to the Resolution:

Signed by the Corporate Representative
of NORTH YORKSHIRE COUNTY
COUNCIL:

.....

Date:

.....

NOTES:

1. If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning the signed version, either by hand or by post to: **Legal Services, County Hall, Northallerton, North Yorkshire, DL7 8AD.**

You may also return the Resolution by email to Bethany Bilby, Legal Services – Bethany.bilby@northyorks.gov.uk

If you do not agree to the Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.

3. Unless by 22 October 2020 sufficient agreement is received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.

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