

**THE COMPANIES ACT 1985 AND 1989**

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**ARTICLES OF ASSOCIATION**

**- of -**

**NYNET LIMITED**

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Company Number : 06069791

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**A PRIVATE COMPANY LIMITED BY SHARES**

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- of -

**NYNET LIMITED**

**PRELIMINARY**

1.
  - (a) The Company is a Private Company and, subject as hereinafter provided and except where the same are varied or excluded by or inconsistent with these Articles, the regulations contained or incorporated by reference to Table A in the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 and the Companies Act 1985 (Electronic Communications) Order 2000 (hereinafter called "Table A") shall apply to the Company save insofar as they are excluded or varied hereby and such Regulations (save as so excluded or varied) and shall be deemed to form part of these Articles. References herein to regulations are to regulations in Table A unless otherwise stated.
  - (b) In these Articles the expression the Act means the Companies Act 1985, but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

**DEFINITIONS**

2. In these Articles unless the context otherwise requires:-

"Business Plan"	means the operational business plan and budget of the Company produced by the Board subject to such amendments as required by the Council and as adopted and amended in accordance with Article 10.B;
"Council"	means North Yorkshire County Council and any statutory successor;
"Council Director"	means a Director who is an office, member or employee of the Council;
"these Articles"	means the Articles of Association in their present form or as from time to time altered;
"the Board"	means the Board of Directors of the Company or a duly authorised committee thereof or the Directors present at a meeting of the Board of Directors of the Company or a duly authorised committee thereof, in each case at which a quorum is present;

"Independent Director" means a Director who is not a Council Director;

"Member" means a member of the Company; and

"Non-Director Officer" means, for the purposes of Article 25, any officer or auditor of the Company other than a Director;

"Reserved Matter" means any matter reserved by the Council as a reserved matter in accordance with Article 11A including the list of reserved matters at Schedule 1 to these Articles.

## SHARE CAPITAL

3. The share capital of the Company is one Ordinary Share of £1.00 each.

## SHARES

4.

- (a) The Directors are generally and unconditionally authorised for the purposes of Section 80 of the Act to exercise any power of the Company to allot and grant rights to subscribe for or convert securities into shares of the Company up to the amount of the authorised share capital with which the Company is incorporated at any time or times during the period of five years from the date of incorporation and the Directors may, after that period, allot any shares or grant any such rights under this authority in pursuance of an offer or agreement so to do made by the Company within that period. The authority hereby given may at any time (subject to the said Section 80) be renewed, revoked or varied by Ordinary Resolution of the Company in General Meeting.
- (b) All unissued shares or securities of the Company not comprising relevant securities shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to such persons, at such times, and on such terms as it thinks proper.
- (c) Pursuant to Section 91 of the Act, sub-section (1) of Section 89 and sub-sections (1) to (6) inclusive of Section 90 of the Act shall be excluded from applying to the Company.

## LIEN

5. The lien conferred by Regulation 8 shall also attach to fully paid shares and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person, whether he shall be the sole registered holder thereof or shall be one of one or more joint holders for all moneys presently payable by him or his estate to the Company. Regulation 8 shall be modified accordingly.

## FORFEITURE

6. The liability of any Member in default of payment of a call shall, if the Board so directs, also include any costs and expenses suffered or incurred by the Company in respect of such non-payment and the powers conferred on the Board by Regulation 18 and the provisions of Regulation 21 shall be extended accordingly.

## **TRANSFER OF SHARES**

7. The Board may, in its absolute discretion, and without giving any reason therefore, decline to register a transfer of any share, whether or not it is a fully paid share. Regulation 24 shall not apply to the Company.

## **TRANSMISSION OF SHARES**

8. The Board may at any time give notice by electronic means or otherwise requiring any person entitled to a share by reason of the death or bankruptcy of the holder thereof to elect either to be registered himself in respect of the share or to transfer the share and if the notice is not complied with within sixty days the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with. Regulation 31 shall be modified accordingly.

## **PROCEEDINGS AT GENERAL MEETINGS**

9. If within half an hour from the time appointed for a general meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed for that meeting, the meeting shall be dissolved. Regulation 41 shall not apply to the Company.

A poll may be demanded at any general meeting by any member present in person or by proxy and entitled to vote. Regulation 46 shall be modified accordingly.

10. For so long as the Company has only a sole Member:-
  - (i) that Member shall constitute a quorum if present in person or by proxy or, if that Member is a corporation, by a duly authorised representative; and
  - (ii) any decisions or actions made or taken by that Member which are ordinarily required to be made or taken in General Meeting of the Company or by means of a written resolution, that decision shall be as valid and effectual as if agreed by the Company in General Meeting save that this paragraph shall not apply to resolutions passed pursuant to Sections 303 and 391 of the Act.
  - (iii) any decision taken by a sole Member pursuant to paragraph (ii) above shall be recorded in writing and delivered by that Member to the Company for entry in the Company's Minute Book.

## **RESERVED MATTERS**

- 10A. Insofar as a matter is a Reserved Matter relating to the Company, the Board 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.

## **BUSINESS PLAN**

- 10B. The Board shall deliver the business of the Company in accordance with any current Business Plan approved in writing by the Council.

### **PROVISION OF INFORMATION**

10C

- a) The Company shall provide to the Council:
- (i) draft annual accounts in accordance with a timetable as agreed with the Council;
  - (ii) final audited annual accounts by 31 December in each financial year;
  - (iii) minutes of all Board meetings within 20 business days after the relevant Board meeting to which they relate;
  - (iv) all information required to be provided pursuant to any other contractual commitments, within a timescale agreed with the Council; and
  - (v) any other information reasonably required by the Council from time to time.
- b) 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.
- c) 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.
- d) 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.
- e) The Company shall immediately notify the Council of:
- (i) any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company; and
  - (ii) any matter of which it is aware which may bring the Company or the Council into disrepute.

### **DELEGATION OF DIRECTORS' POWERS**

11. Any committee of the Board may consist of one or more co-opted persons other than Directors on whom voting rights may be conferred as members of the committee but so that:-
- (i) the number of co-opted members shall be less than one-half of the total number of members of the committee; and
  - (ii) a resolution of the committee shall not be effective unless a majority of the members of the committee present at the meeting are Directors.

Regulation 72 shall be modified accordingly.

## **APPOINTMENT AND RETIREMENT OF DIRECTORS**

### **12.**

- (a) The board of Directors shall comprise of:
  - (i) up to 4 Council Directors; and
  - (ii) up to 3 Independent Directors.
- (b) Subject to the Articles, any appointment(s) or termination(s) of Directors 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.
- (c) The minimum number of Directors shall be three and the maximum shall be seven. Regulations 64, and 90 shall be modified (and all other Regulations in these Articles relating to Directors shall be construed) accordingly.
- (d) The Directors shall not be subject to retirement by rotation and accordingly:-
  - (i) Regulations 73 to 75 inclusive, Regulation 80 and the last sentence of Regulation 84 shall not apply to the Company;
  - (ii) Regulation 76 shall apply but with the deletion of the words "other than a Director retiring by rotation";
  - (iii) Regulation 77 shall apply but with the deletion of the words in brackets "(other than a Director retiring by rotation at the meeting)";
  - (iv) Regulation 78 shall apply but with the deletion of the words "and may also determine the rotation in which any additional Directors are to retire"; and
  - (v) Regulation 79 shall apply but with the deletion of the words "and shall not be taken into account in determining the Directors who are to retire by rotation at the meeting".

### **12A. TERMINATION OF A DIRECTOR'S APPOINTMENT**

- a) A person ceases to be a Director as soon as:
  - (i) the Council notifies the Company that the individual is to be removed as a Director;
  - (ii) in the case of a Council Director, that individual ceases to be an officer, member or employee of the Council;
  - (iii) 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;
  - (iv) a bankruptcy order is made against that person;

(v) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(vi) 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

(vii) 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.

13. The personal representatives of any person occupying the position of both a sole director and sole member of the Company upon his death shall be entitled, on serving notice in writing at the Company's Registered Office, to appoint a person as a Director. Any such appointment shall be deemed for all purposes to be as valid as an appointment made in accordance with the provisions of Regulation 78 as amended.

### **BORROWING POWERS**

14. The Directors may exercise all the powers of the Company to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and subject (in the case of any security convertible into shares) to Section 80 of the Act to grant any mortgage, charge or standard security over its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

### **DIRECTORS**

15. The Directors shall be entitled to such remuneration (if any) by way of fee as shall from time to time be determined by the Company in General Meeting. Unless and until so determined, remuneration shall be at such rate as the Board shall from time to time determine. Such remuneration shall be deemed to accrue from day to day. The Directors (including alternate Directors) shall also be entitled to be paid their reasonable travelling, hotel and other expenses of attending and returning from meetings of the Company or otherwise incurred while engaged on the business of the Company or in the discharge of their duties. Regulations 82 and 83 shall not apply to the Company.
16. Any Director, who, by request, performs special services or goes or resides abroad for any purposes of the Company or who otherwise performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director shall receive such extra remuneration by way of salary, percentage of profits or otherwise as the Board may determine which shall be charged as part of the Company's ordinary working expenses.
17. Subject to the provisions of the Act and provided that he has disclosed to the Directors the nature and extent of any material interest of his, a Director notwithstanding his office:-
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is in any way interested;

- (b) may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
- (c) may, or any firm or company of which he is a member or Director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
- (d) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from such office, service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- (e) shall be entitled to vote and be counted in the quorum on any matter concerning paragraphs (a) and (d) above.

For the purposes of this Article:-

- (i) a general notice 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 transaction or arrangement 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 transaction of the nature and extent so specified;
- (ii) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
- (iii) an interest of a person who is, for any purpose of the Act (excluding any statutory modification not in force when this Article becomes binding on the Company), connected with a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director without prejudice to any interest which the alternate Director has otherwise.

Regulations 86, and 94 to 96 inclusive shall not apply to the

Company:-

#### **PROCEEDINGS OF DIRECTORS**

- 18. An alternate Director who is himself a Director and/or who acts as an alternate Director for more than one Director shall be entitled, in the absence of his appointor(s), to a separate vote or votes on behalf of his appointor(s) in addition (if he is himself a Director) to his own vote. Regulation 88 shall be modified accordingly.
- 18A. The Directors shall appoint an Independent Director to be the chair of the board of directors and may at any time remove him from office. Regulation 91 shall apply but with the deletion of the first sentence.
- 19. Any Director enabled to participate in the proceedings of a meeting by means of a telephone or other communication device which allows all the other Directors present at such meeting whether in person or by means of such communication device to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (whether in person or by means of such

type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

20. A meeting at which one or more of the Directors attends by such means as specified in Article 19 is deemed to be held at such place as the Directors shall at that meeting resolve. In the absence of a resolution as aforesaid, the meeting shall be deemed to be held at the place, if any, where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the chair of the meeting is physically present.

## **DIVIDENDS**

21. Dividends shall be declared and paid according to the amounts paid up or credited as paid up on the shares on which the dividend is paid. Regulation 104 shall be construed accordingly.

## **NOTICES**

22. A notice served by post, fax, or electronic mail shall be deemed to be given at the expiration of twenty four hours (or, where second class mail is employed, forty-eight hours) after the time when the cover containing the same is posted, or transmitted. Regulation 115 shall be modified accordingly.

## **SEAL**

23. The Directors shall decide whether the company shall have a seal and if so shall provide for the safe custody of the Seal and of any official Seal for use abroad pursuant to the Statutes, and such Seals shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf, and every instrument to which the Seal shall be affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose. Regulation 101 of Table A shall not apply.

## **SHARE CERTIFICATES**

24. In the event that the Directors decide that the Company shall not have a seal then share certificates or other documents issued by the Company may be signed by a director and secretary of the Company, or two directors of the Company, and expressed (in whatever form of words) to be executed by the Company and shall have the same effect as if executed under the common seal of the Company and Regulation 6 of Table A shall be modified accordingly.

## **INDEMNITY**

25.
  - (a) A Director shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him:
    - (i) in defending any civil proceedings (unless judgment is given against the Director and the judgment is final);
    - (ii) in defending any criminal proceedings (unless the Director is convicted and the conviction is final); and

- (iii) in connection with any application for relief from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company (unless the court refuses to grant the director relief, and the refusal is final),

but this Article shall only have effect in so far as its provisions are not avoided by Sections 309A and 309B of the Act.

- (b) A judgment, conviction or refusal of relief becomes final if:
  - (i) the period for bringing an appeal (or any further appeal) has ended; and  
any appeal brought is determined, abandoned or otherwise ceases to have effect.
- (c) Every director shall be entitled to have funds provided to him by the Company to meet expenditure incurred or to be incurred in any proceedings (whether civil or criminal) brought by any party which relate to anything done or omitted or alleged to have been done or omitted by him as a director, provided that he will be obliged to repay such amounts no later than:
  - (i) in the event he is convicted in proceedings, the date when the conviction becomes final;
  - (ii) in the event of judgment being given against him in proceedings, the date when the judgment becomes final; or
  - (iii) in the event of the court refusing to grant him relief on any application under sections 144(3) or (4) or 727 of the Act, the date when refusal becomes final.
- (d) Every Non-Director Officer of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any negligence, default, breach of duty or breach of trust on his part or in connection with any application under Section 727 in which relief is granted to him by the Court and no Non-Director Officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto but this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
- (e) The Directors shall have power to purchase and maintain for any Director or Non-Director Officer of the Company insurance against any such liability as is referred to in Sections 309A(1) or 310(1) of the Act from and after the bringing into force of Section 136 of the Companies Act 1989.
- (f) This Article is without prejudice to any other indemnity to which a Director may be entitled.

Regulation 118 shall not apply to the Company.

**SCHEDULE 1 - RESERVED MATTERS**

<b>Number</b>	<b>Reserved Matter</b>
	<b>Constitution of the company</b>
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.
	<b>Officers and Shareholders of the company</b>
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).
	<b>Future direction and development of the company</b>
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).
	<b>Management of the business of the company</b>

Number	Reserved Matter
15	Changing the company's registered office.
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 of any material assets by the company the total value of which exceeds £1,000,000 per annum.
21	Agreeing to enter into or entering into agreements or arrangements in respect of the disposal of any material assets by the company the total value of which exceeds £250,000 per annum.
22	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.
23	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the company.
24	Changing the company's auditors.
25	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).
26	Changing the Financial Year of the company.
27	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).
28	Declare or pay any end of year dividend of the company (where applicable).
29	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.
230	Settling any legal matters and insurance claims in excess of £50,000.

<b>Number</b>	<b>Reserved Matter</b>
31	Introducing any change to union recognition or representations arrangements of employees.
32	Establishing or amending any pension scheme for any director, officer, employee, former director, officer or employee, or any member of such person's family.
33	Tenders for work with an estimated total value in excess of £1,000,000.

